



# WENK

What Employees  
Need to Know

## Introduction

Virginia Risk Sharing Association (VRSA) introduces WENK – What Employees Need to Know.

WENK is an easy-to-read guide on workers' compensation topics designed to educate employees on their rights and responsibilities under the Virginia Workers' Compensation Act. We recommend posting this guide on the member's intranet if one is available for your employees and / or provide this guide to employees when a workers' compensation claim is reported.

### *Disclaimer*

This guide is not a substitute for the Virginia Workers' Compensation Act as found in title 65.2, in the Code of Virginia. It is also not a substitute for competent legal advice on matters relating to workers' compensation and employment law in Virginia. While every effort has been made to present the contents of the Act as accurately as possible, it should be noted that this document includes information, which may be subject to change as a result of future legislative action by the Virginia General Assembly. Case law rulings related to workers' compensation may also impact the contents and interpretation of the information contained in this guide. For a more complete resource on workers' compensation law, the reader is referred to the full text of the Virginia Workers' Compensation Act.

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## VRSA Team

Your Employer is a member of Virginia Risk Sharing Association (VRSA). VRSA is a non-profit organization of Virginia local political subdivisions providing workers' compensation coverage to more than 48,000 employees.

A "Team" of VRSA staff, consisting of a safety consultant, two claim representatives and a patient advocate (RN) are assigned to every Member. The "Team" provides guidance and assistance in both the prevention of injuries and handling of claims.

VRSA workers' compensation risk management services include:

- 24/7/35 Nurse Triage and Reporting Services
- Claim handled in a timely fashion and managed within the requirements of the Virginia Workers' Compensation Act (Best Practices)
- Experienced claim representatives that are specialized in handling claims for local governments
- Registered nurse on staff, who is a certified case manager (patient advocate) that specializes in occupational injuries and assist with coordinating return to work efforts and in creating return to work programs
- Strong loss prevention programs and risk management services to assist the employer in providing a safe work environment for all employees.
- First fill prescription service with no out-of-pocket cost to the injured employee. Comprehensive prescription drug program and pharmacy network for long-term and short-term needs
- Prompt payment of benefits and medical bills
- Timely compensability decisions
- Appropriate filing of required state forms

VRSA and your employer are making every effort to create a safe working environment and to minimize the danger of a work-related incident. However, if you suffer a work-related incident, VRSA will work with you, your employer and your physician towards a speedy recovery and a safe return to work.

Virginia Risk Sharing Association staff are available to assist at anytime. If you need assistance or have questions, you may contact us by calling toll free: 1-800-963-6800 or by dialing direct: 804-273-0038. We welcome any comments or suggestions.

## Filing a Workers' Compensation Claim

- ◆ Report **all** work related incidents immediately to your supervisor, regardless if you plan to seek medical treatment.
- ◆ Your employer will ensure a claim is filed with Virginia Risk Sharing Association (VRSA). VRSA will in turn report this claim electronically to the Virginia Workers' Compensation Commission (VWC). **This is not a filing of a claim on the employee's behalf and does not protect your rights under the Virginia Workers' Compensation Act.**
- ◆ Upon receipt of the claim, the VWC will mail you information, which explains your rights and responsibilities under the Virginia Workers' Compensation Act. Read this material carefully.
- ◆ As stated in this material you must file your own claim with the VWC within two (2) years of the accident or incident date to request lifetime medical benefits related to the claim.
- ◆ The employer filing a claim with VRSA does not constitute a filing of a claim by the employee with the VWC. Additionally, contacting CompCare On-Call (VRSA's nurse triage and reporting service) to report a claim and to receive triage advice does not constitute the filing of your claim with the VWC.
- ◆ Filing a claim for lifetime medical benefits is optional but can only be accomplished by the employee filing a claim with the VWC.
- ◆ Virginia Risk Sharing Association is not the Virginia Workers' Compensation Commission.
- ◆ A claim can be filed with the VWC online, by fax, in person, or by mail. A VWC Claim Form may be completed or a claim need only be a handwritten note sent to the Virginia Workers' Compensation Commission requesting lifetime medical benefits.
- ◆ Include your name, your employer's name and the date of accident/incident.
- ◆ The Virginia Workers' Compensation Commission contact information: The web address is [www.workcomp.virginia.gov](http://www.workcomp.virginia.gov) – 333 E. Franklin St., Richmond, Virginia 23219 – Toll free phone number 1-877-664-2566 – Fax number: 804-823-6956 (Claims Services Department)

**If you do not file a claim with the VWC within the two-year limit, benefits beyond the two-year period may be stopped.**

## Time Limitations Affect Workers' Compensation Benefits

**Filing a Claim:** An employee has **two (2) years** from the date of an accident to file a claim with the Virginia Workers' Compensation Commission for lost wages and or medical benefits. (See Filing a Workers' Compensation Claim – WENK bulletin.)

**Medical Benefits:** When injuries/accidents involve either medical treatment only or lost time not exceeding the seven-day waiting period, the injured employee is not automatically entitled to lifetime medical benefits. The employee has **two (2) years** from the accident date to request these benefits from the Virginia Workers' Compensation Commission (VWC). If this request has not been made prior to the end of the two-year period, the employee's medical benefits cease at the two-year date. However, effective 7/1/2019, the statute of limitations (SOL) is extended where medical treatment is paid by VRSA six months after the date of injury for compensable claims. The (SOL) is extended to 2 years from the last date of medical service that was paid by VRSA.

**Change in Condition:** When a claim is accepted as compensable the VWC enters an **Award**, which is a written notice that sets forth the terms and conditions of payment of compensation and medical benefits. The Award is generally triggered by the employee signing an **Award Agreement**.

An Award continues until there is a reason for modification. This may be a change in the physical condition of the injured employee or a change in the conditions under which compensation was previously awarded, suspended, or terminated.

For example, when an employee returns to work at regular or modified duty, loss wage benefits are terminated; however, the injured employee is entitled to lifetime medical benefits for any treatment related to the injury prescribed by the treating physician.

When an Award is modified the injured employee signs a **Termination of Wage Loss Award**. The following time limitations apply for additional/future loss wage benefits for compensable injuries:

1. An employee has **two (2) years** from the last date compensation is paid, to make a claim for additional wage loss benefits. If no compensation has been awarded, the employee has **two (2) years** from the date of the accident to make a claim. This can be accomplished by the employee signing an Award Agreement or by filing a Claim Form with the Commission.
2. An employee has **three (3) years** from the last date compensation is paid, to make a claim for permanent partial benefits (financial compensation for the functional loss of a body part). If no compensation has been awarded, the employee has **three (3) years** from the date of accident to make a claim.

**Occupational Disease:** The employee must file a claim with the Virginia Workers' Compensation Commission within **two (2) years** after the diagnosis of a disease is first communicated (by the treating physician) to the employee or within **five (5) years** from the last injurious exposure to the disease, whichever comes first.

## Panel of Physicians

- ◆ The Virginia Workers' Compensation Act gives the employer the legal right to establish a panel (list) of physicians to treat an employee for work-related injuries/illness.
- ◆ The purpose of the panel is to provide physicians best qualified to respond to the employee needs.
- ◆ The panel allows the employer to utilize reputable physicians to provide timely, appropriate care.
- ◆ Panels must include at least three (3) physicians who do not have an economic interest in the other practices.
- ◆ A panel is offered to an employee upon notification of a work-related injury or occupational disease.
- ◆ When a panel is presented, an injured employee is asked to sign and date an acknowledgement of receipt of the panel.
- ◆ The employee must select a physician from the panel in order for their treatment to be considered for payment under their workers' compensation claim.
- ◆ Treatment by providers outside of the panel will be at the employee's expense.
- ◆ If the employee requests, the employer must let the employee know if each physician on the panel is eligible to receive payment under the employee's health care coverage.
- ◆ Emergency room treatment is covered when a true emergency exists and the claim is compensable. Once emergency treatment is completed, the employee must select a physician from the panel for all follow-up and continued care.
- ◆ A good-faith effort to offer a panel is not sufficient. The employer must provide the employee with a copy of a valid panel of physicians.

## Prescriptions and Mileage Reimbursement

### Prescriptions

If medication is prescribed, the employer will provide the employee with a First fill Prescription letter/form. The employee may take this letter/form to a participating network pharmacy and will be provided a 10-day supply of medication at no cost. The network includes all major chains (CVS, Rite Aid, Wal-Mart, K-Mart, Target, etc.) as well as most of the medium and small local pharmacies. To view the pharmacy network or find a local pharmacy, visit our pharmacy provider's website at [www.Aliushealth.com](http://www.Aliushealth.com) Click on the 'Pharmacy Locator' tab.

This authorization is valid for **one time use only**. VRSA must authorize any additional medication prescribed beyond the first fill.

Should an employee incur the cost for any medication; a receipt may be submitted to VRSA for reimbursement consideration. The receipt should include the name of the physician who prescribed the medication, the name of the medication, the date purchased, and the cost.

### Mileage Reimbursement

An employee is eligible for reasonable and necessary mileage reimbursement in connection with medical treatment. This includes going to the hospital, doctor appointments, and physical therapy, etc. The cost of mileage to and from a pharmacy is not reimbursable. For mileage reimbursement complete and submit a Transportation/Travel Expense form to VRSA. This form is available on the VWC website ([www.workcomp.virginia.gov/forms/transportationtravel-expense-form](http://www.workcomp.virginia.gov/forms/transportationtravel-expense-form)). Or an employee may submit a written request to VRSA and provide the following:

- Name of injured employee
- VRSA claim number
- Date of accident
- Date of travel
- Physician or medical provider name
- Round trip mileage, which includes where leaving from and returning to (from home or work to medical provider & from medical provider home or work)

The VWC establishes the mileage reimbursement rate. For the current mileage rate contact your VRSA representative at 1-800-963-6800 or visit the VWC website at: [www.workcomp.virginia.gov/content/rates-min-max-benefits-cola-mileage](http://www.workcomp.virginia.gov/content/rates-min-max-benefits-cola-mileage)

## Medical Billing

Employees should advise all medical providers that their treatment is work-related and provide Virginia Risk Sharing Association's (VRSA) billing information:

VRSA  
P. O. Box 3239  
Glen Allen, VA 23058  
Toll Free Phone Number: 800-963-6800  
Direct Dial: 804-273-0038  
Fax: 804-273-0560

Also, your employer can provide you with a VRSA 'Medical First Report'; this form includes VRSA's address, telephone number, and fax number for billing purposes. This form is for the physician to complete and return to the employee to provide to their supervisor, so the employer is aware of the employee's return work capabilities or restrictions.

Most medical providers submit bills directly to VRSA for payment. However, billing issues often occur with emergency room treatment/hospitals. Hospitals do not usually obtain information that treatment is work-related or obtain VRSA's billing information and the hospital will either bill the employee's group health carrier or bill the employee directly. When hospitals are aware treatment is work-related and are provided with VRSA's billing information, the hospitals will submit bills directly to VRSA, but the hospitals do not share VRSA's billing information with other medical providers that bill separately from the hospital, such as emergency room physicians, radiologists, lab, etc. Unfortunately, these situations result in employees being billed for medical treatment related to a workers' compensation claim. Below are guidelines for employees to follow when a bill related to a workers' compensation claim is received. Also, noted below are statutes under the Virginia Workers' Compensation Act that address billing practices that protect employees against debit collection.

- Immediately upon receipt forward all bills related to a compensable workers' compensation claims to VRSA. Submit bills even if it is believed that they have already been mailed to VRSA.
- Medical providers are required to submit itemized bills with required coding and supporting medical documentation in order to receive payment. Section 65.2-605.1 of the Virginia Workers' Compensation Act (Act) requires all medical bills not contested, denied, or considered incomplete be paid within 60 days of receipt. Medical providers must be notified within 45 days of receipt of a bill, if the bill is contested, denied, or incomplete. VRSA average turnaround time for paying medical bills is 14 days or less from receipt of an itemized bill with proper documentation.
- As allowed by the Act, medical bills are reduced to Virginia fee schedule rates. Section 65.2-714(D) of the Act makes it illegal for a medical provider to bill an employee for any balance as a result of this reduction. To challenge the amount of the reimbursement, the medical provider must file for review with the Virginia Workers' Compensation Commission (VWC). If an employee receives a balance billing, immediately forward the bill to VRSA. In addition to responding to the medical provider letting the provider know balance billing is illegal, VRSA will notify the VWC and they too will address this with the medical provider.
- A medical provider may not bill employees or refer work related debts for collection for any outstanding or disputed charge unless the charge is not compensable under the Act. This is addressed in Section 65.2-601.1 of Act

## Average Weekly Wage/Compensation Rate

### Average Weekly Wage

The average weekly wage is determined by totaling the employee's actual gross earnings, including overtime, for the 52 weeks immediately preceding the injury and dividing by 52.

If the employee worked less than 52 weeks, the total actual gross earnings is divided by the number of weeks the employee worked unless employed for only a relatively short period. In this case, the earnings of a similarly employed individual are used.

If the injured employee has a second or part time job that is similar employment to the job the employee was performing when injured, these wages will be included in the computation of the average weekly wage. If the injured employee performs two dissimilar jobs for the same employer, the wages from both jobs are combined when calculating the average weekly wage.

### Weekly Compensation Rate

The weekly compensation is 66 2/3 percent of the gross average weekly wage.

Example: \$41,600, gross annual earning, divided by 52 = \$800.00 Average Weekly Wage

\$800.00 Average Weekly Wage
<u>x.66667</u>
\$533.34 Compensation Rate

All workers' compensation benefits are non-taxable.

### Maximum and Minimum Compensation Rates

- Weekly benefits are subject to maximum and minimum rates.
- If an employee's compensation rate is greater than the maximum, the employee will receive the maximum.
- If an employee's compensation rate is less than the minimum, the employee is entitled to either their full average weekly wage or the minimum rate, whichever is less.
- For the current maximum and minimum compensation rates contact your VRSA representative at 1-800-963-6800 or visit the Virginia Workers' Compensation Commission (VWC) website at [www.workcomp.virginia.gov/content/rates-min-max-benefits-cola-mileage](http://www.workcomp.virginia.gov/content/rates-min-max-benefits-cola-mileage)

## Temporary Total and Temporary Partial Disability Benefits

### Waiting Period

An employee is not entitled to loss wage compensation for the first 7-days of disability; this is considered a waiting period. Weekends and holidays are included in the count and the dates of disability do not need to be consecutive. Loss wage compensation benefits are payable on the 8th day of disability.

If disabled for more than 21 days (need not be consecutive), the employee receives compensation for the 7-day waiting period.

### Temporary Total Disability Benefits

When an employee is totally disabled from work, the employee is entitled to **temporary total benefits** equal to 66 2/3 percent of the employee's gross average weekly wage. (See Average Weekly Wage/Compensation Rate - WENK Bulletin).

Example:           \$800.00 Gross pre-injury average weekly wage  
                          x.66667  
                          \$533.34 Temporary total compensation rate

In general, these benefits are payable only if the treating / panel physician authorizes the disability.

These benefits are non-taxable and subject to a combined maximum of 500 weeks of indemnity benefits.

### Temporary Partial Disability Benefits

When an injured employee has a decreased average weekly wage after returning to work in a modified, light duty, or part-time job, the employee is entitled to **temporary partial benefits**.

Compensation is based on 66 2/3 percent of the difference between the gross average weekly wage at the time of the work-related accident and after the accident.

Example:           \$800.00 Gross pre-injury average weekly wage  
                          \$400.00 Gross post-injury average weekly wage  
                          \$400.00 Difference  
                          x.66667  
                          \$266.67 Temporary partial compensation rate

In general, these benefits are payable only if the employee still has restrictions prescribed by the authorized attending / panel physician.

If there is a medical release to the pre-injury position or full duty, no lost wage benefits are due, whether the employee is earning his pre-injury wage or not.

As the employee receives salary increases, the temporary partial benefits are reduced accordingly.

These benefits are non-taxable and subject to a maximum of 500 weeks combined indemnity benefits; or are payable until the employee is earning his pre-injury gross average weekly wage, whichever comes first.

## Permanent Partial and Permanent Total Disability Benefits

### Permanent Partial Disability Benefits

When there is loss of a member by amputation or permanent loss of use to a ratable body part, the employee may be entitled to compensation for the functional loss. The Virginia Workers' Compensation Commission (VWC) assigns a value to the loss of extremities, loss of sight, hearing loss, and severely marked disfigurement/scarring, in terms of a number of weeks of compensation for the permanent loss of the body part.

Permanent partial benefits are based on the percentage of functional loss of the body part. The rate of compensation for permanent partial disability is calculated at  $66 \frac{2}{3}$  percent of the gross average weekly wage at the time of the injury. The percentage of loss is usually determined by medical evaluation; however, the VWC will often make this determination for severely marked disfigurement.

Example:	10% Loss of use rating to an injured leg.
175	Total weeks for the total loss of a leg as allowed by the VA WC Act
<u>x 10%</u>	Permanent partial rating
17.5	Weeks

The employee would receive  $66 \frac{2}{3}$  percent of their gross average weekly wage for  $17 \frac{1}{2}$  weeks.

- ◆ Benefits are payable after an employee reaches maximum medical improvement.
- ◆ Benefits are not payable while an employee is receiving temporary total disability benefits.
- ◆ Benefits are payable concurrently with temporary partial benefits
- ◆ Benefits are non-taxable and subject to a combined maximum of 500 weeks of indemnity benefits
- ◆ Permanent partial disability ratings are not provided for the neck, back or whole person.

### Permanent Total Disability Benefits

These non-taxable benefits entitle an employee to **lifetime** loss wage compensation benefits.

For an employee to receive permanent total disability benefits, the employee must meet one of the following criteria:

1. Loss of use or loss of; both hands, both feet, both legs, sight in both eyes, or any two of these in the same accident or compensable consequence of an injury sustained in the original accident.
2. Injuries resulting in total paralysis.
3. Severe brain injury which renders an employee permanently unemployable in gainful employment.

In determining the extent of loss or loss of use of each member, the ability of the employee to use the affected member to engage, to a substantial degree, in any gainful employment must be considered.

## Death Benefits and Cost of Living (COLA)

### Death Benefits

When an employee's death is the result of a compensable work-related incident the employee's dependent(s) are entitled to a maximum 500 weeks of compensation benefits at 66 2/3 percent of the employee's average weekly gross earnings.

Benefits continue to the widow/widower for the maximum 500 weeks unless he/she should remarry or expire.

Benefits for dependent children continue until age 18, or 23 if enrolled in school as a full-time student.

A \$10,000.00 maximum is provided for funeral expenses and \$1,000.00 maximum for body transportation.

### Cost of Living Adjustment (COLA)

Cost of living adjustments are applicable on Awards for temporary total, permanent total, or death benefits. The employee/dependent(s) must request an adjustment and produce evidence regarding the status of his/her social security benefits.

The COLA percentage increase is determined annually by the Virginia General Assembly and is effective on October 1.

Injuries, which occur after July 1, are not eligible for a COLA increase for the year of injury.

For an employee/dependent(s) to be eligible for COLA; the combination of the workers' compensation benefits and social security benefits must be less than 80% of the pre-injury average monthly earnings.

When determining the monthly combined disability received by an employee/dependent(s), a deduction is made for the monthly amounts paid for Medicare.

For the current COLA rates contact your VRSA representative at 1-800-963-6800 or visit the Virginia Workers' Compensation Commission (VWC) website at [www.workcomp.virginia.gov/content/rates-min-max-benefits-cola-mileage](http://www.workcomp.virginia.gov/content/rates-min-max-benefits-cola-mileage)

## Injury by Accident, Arising Out Of, and In the Course of Employment

All injuries/incidents that occur on the job are **not** compensable under the Virginia Workers' Compensation Act.

To be compensable an injury must:

1. be an **injury by accident**
2. **arise out of** the employment, and
3. occur **in the course** of the employment

### ***What is an injury by accident?***

An **accident** is an event, which occurs and is not expected by the person to whom it happens.

The injury must:

- Involve an “obvious sudden mechanical or structural change in the body” (a broken arm, twisted ankle)
- Be identified with a specific movement made or action taken, or a specific incident or event (lifting a table, carrying a box)
- Take place at a reasonably definite time (“can be temporally fixed with reasonable accuracy”)
- Be connected to the accident (tripped over an open drawer and twisted an ankle)

An injury by accident is an “identifiable incident or sudden precipitating event [that results] in an obvious sudden mechanical or structural change in the body” (Morris v Morris – 1989, Supreme Court). The “causative event”, “must be a specific occurrence that can be temporally fixed with reasonable accuracy” (Sclafani v. City of Charlottesville – 2021, Supreme Court).

Injuries sustained at an unknown time are **not** injuries by accident.

Injuries resulting from repetitive trauma, continuing mental or physical stress, or other cumulative events are not injuries by accident and are not covered by the Virginia Workers' Compensation Act.

### ***What is arising out of?***

**Arising out of** refers to the time, place and circumstances under which the accident takes place. There must be some connection between the accident and a risk or hazard connected with the employment. It must be shown that due to the employment, the employee has been exposed to a hazard over and above those to which the public is exposed. Risks to which all persons are equally exposed not peculiar to the employment, are not covered by the Virginia Workers' Compensation Act (such as insect bites).

### ***What is in the course of?***

**In the course of** refers to time, place and circumstances under which the injury occurred. An accident occurs in the course of employment when it takes place within the period of the employment, at a place where the employee may reasonably be and while the employee is reasonably fulfilling duties of his employment or doing something related to employment.

## Occupational Diseases

An occupational disease is a **disease** arising out of and in the course of employment, but **not** an **ordinary disease of life** to which the general public is exposed outside of the employment. A condition must be a disease to receive benefits under the Virginia Workers' Compensation Act.

The following requirements must be met for a disease to be considered compensable:

- An employee must prove that it is more likely than not that the disease arose out of and in the course of the employment and not from causes outside of the employment.
- The employment must be the proximate cause of the disease.
- The disease must be caused by conditions peculiar to the employment.
- The disease is not a condition of the **neck, back or spinal column**.

An ordinary disease of life **aggravated** by the work environment is **not** compensable.

**Carpal Tunnel Syndrome and Hearing Loss** can be a compensable ordinary disease of life if all of the above requirements are met. This is true even if these conditions are caused by cumulative trauma.

An employee must file a claim for an occupational disease within 2 years after diagnosis of a disease is first communicated either by the treating physician or other recognized mechanism to the employee or within 5 years from the last injurious exposure to the disease, whichever comes first.

The first **communication of the diagnosis** of an occupational disease to the employee is considered the "date of accident" for compensation benefits.

Reasonable and necessary medical benefits begin 15 days prior to the date of accident.

**Peculiar to the employment** means conditions unique to the employment, not conditions to which the general public is exposed.

**Injurious exposure** means exposure to hazards on the job, which causes a disease.

Coverage of an occupational disease is the responsibility of the employer where the employee was last exposed.

## Exposure Claims

- ◆ Virginia Risk Sharing Association will pay for all necessary, related and reasonable testing for employees exposed to blood or bodily fluid as a result of a compensable “injury by accident”.
- ◆ An injury by accident is an “identifiable incident or sudden precipitating event [that results] in an obvious sudden mechanical or structural change in the body” (Morris v Morris – 1989, Supreme Court). The “causative event”, “must be a specific occurrence that can be temporally fixed with reasonable accuracy” (Sclafani v. City of Charlottesville – 2021, Supreme Court). An example of an “injury by accident” is needle stick or a bite.
- ◆ Preventative care procedures are reviewed on a case-by-case basis for necessity as it relates to the specific injury.
- ◆ Payment for testing does not automatically ensure that a claim for an occupational disease is compensable in the event that the employee tests positive for a disease immediately following an injury or in the future.
- ◆ If an employee is exposed to blood or bodily fluid and an “injury by accident” did not occur, the tests are not paid by workers’ compensation for these individuals. However, it is required that this testing be paid for by the employer under the OSHA Blood borne Pathogen Standard. All exposures should immediately be reported to your employer.
- ◆ If diagnosed with a disease, the employee has the right to make a claim under the occupational disease/ordinary disease of life portion of the Virginia Workers’ Compensation Act.
- ◆ An employee must file a claim for an occupational disease within 2 years after a diagnosis of a disease is first communicated to the employee or within 5 years from the last injurious exposure to the disease, whichever comes first.
- ◆ Specific requirements must be met for a disease to be considered compensable under the Workers’ Compensation Act. Such as:
  - An employee has the burden of proving by a preponderance of the evidence (more likely than not) that the disease is occupationally related and that it arose out of and in the course of the employment and not from causes outside of the employment.
  - The employment must be the proximate cause of the disease.
  - The disease must be caused by conditions peculiar to the employment (unique to the conditions in which the employee actually works, not the normal working conditions to which other workers, in the same occupation, are exposed).

## Heart/Hypertension/Lung/Cancer Presumption

The Presumption, presumes that disability from heart disease, hypertension, respiratory (lung) disease and specifically listed types of cancer for certain public safety personnel are occupational diseases, suffered in the line of duty, **unless** the employer can prove by preponderance of the evidence **both** 1.) There is a non-work-related cause of the disease **and** 2.) The employee's disease is not caused by the employment. The employer is not required to exclude the employment as a cause of the disease but must prove the employment is not a proximate cause. The presumption eliminates the need for the employee to prove a causal connection between their employment and the disabling illness.

### Public Safety Personnel Covered Under the Presumption Statute

- A salaried sworn law enforcement officer of a city, county or town
- A salaried firefighter
- A covered volunteer firefighter
- Other types of public safety employee (see Va. Code § 65.2-402 for a detailed list)

### Medical Requirements

- Hypertension
- Heart disease
- Respiratory disease (firefighter)
- Throat, rectal, pancreatic, prostate, ovarian, breast, leukemia, colon, brain, testicular, bladder and thyroid cancer. For colon, brain, or testicular cancer the diagnoses must be on or after July 1, 2020 for the presumption to apply. For bladder and thyroid cancer, the diagnosis must be on or after July 1, 2023. (firefighter)

### Statutory Requirements

- There must be disability from work
- Must have completed 5 years of service
- Must have requisite disease

### Time Limitations for Filing a Presumption Claim

Under the occupational disease portion of the Act, an employee must file a claim within:

- 2 years after a diagnosis of an occupational disease is first communicated to the employee, **or**
- Within 5 years from the last injurious exposure to the disease, whichever comes first.

In the absence of a "communication" by a physician, the statute **begins** to run when an employee has been **diagnosed** with a covered disease, has **knowledge** of the presumption or a **belief** that their condition is work related.

- Effective 7/1/2022, the cancer statute of limitations was amended to 10 years from the last injurious exposure to the disease or 2 years after a diagnosis of an occupational disease is first communicated to the employee, whichever comes first **and** an overall age limit of 65 years old was added, after which cancer presumption claims are barred regardless of exposure or diagnosis/communication dates.

### Evaluation of Presumption Claims

If the employee has met the requirements of the Virginia Workers' Compensation Act, medical records are used to determine if the claim is compensable.

## Heart/Hypertension/Lung/Cancer Presumption

Claims may be denied for the following reasons:

- The claim does not meet the requirements under the Act such as:
  - ◆ Diagnosed with a disease not covered under the Act
  - ◆ No disability resulting from the disease
  - ◆ Not a covered employee
  - ◆ Disease was congenital
  - ◆ Diagnosed with a congenital condition
  - ◆ Medical evidence proves the disease pre-existed the employment
  - ◆ Statute of limitations has run
- We are unable to gather sufficient medical information to determine compensability.
- Specific non-work-related causes or risk factors are present, such as:

Family History	High Blood Pressure
Tobacco Use	Physical Inactivity
High Cholesterol	Obesity
Diabetes	Personal Stress

## Infectious Disease Presumption

The Infectious Disease Presumption Statute adopted in July 2002, presumes disability, health conditions, impairment, or death from a documented exposure to blood or body fluids to certain infectious diseases for certain public safety personnel are occupational diseases suffered in the line of duty, unless the employer can prove by preponderance of the evidence to the contrary. The presumption eliminates the need for the employee to prove a causal connection between their employment and the illness.

### **Public Safety Personnel covered Under the Presumption Statute**

- A salaried firefighter
- A covered volunteer firefighter
- A paramedic
- An emergency medical technician
- A salaried sworn law enforcement officer of a county, city, or town
- Other types of public safety employees (see Va. Code § 65.2-402.1 for a detailed list)

### **Medical Requirements**

- Hepatitis (A, B, non-A, non-B and C)
- Meningococcal Meningitis
- Tuberculosis
- HIV (type I or type II)

### **Time Limitations for Filing a Presumption Claims**

Under the occupational disease portion of the Virginia Workers' Compensation Act, an employee must file a claim within:

- 2 years after a diagnosis of an occupational disease is first communicated to the employee, **or**
- Within 5 years from the last injurious exposure to the disease, whichever comes first.

In the absence of a "communication" by a physician, the statute begins to run when an employee has been diagnosed with a covered disease, has knowledge of the presumption or a belief that their condition is work related.

### **Documentation and other Requirements**

Persons covered who test positive for one of these diseases, but has not incurred disability, is entitled to make a claim for medical benefits, which includes an annual medical examination, medical treatment and prophylactic medications.

If a vaccine or other form of immunization or prophylaxis exist or becomes available, the employee may be required to undergo the treatment unless the treating physician advises in writing the immunization or prophylaxis would pose a significant risk to the employee's health. Absent such written document, the refusal by the employee disqualifies them from the benefit of the presumption.

## Post-Traumatic Stress Disorder – Anxiety and Depressive Disorders

Post-traumatic stress disorder (PTSD) statute for law enforcement officers, firefighters, and EMS personnel adopted in July 2020, provides limited workers' compensation benefits to qualifying public safety officers that meet certain requirements that suffer a "qualifying event" (defined in the statute) on or after July 1, 2020. This statute was amended to include anxiety disorder and depressive disorders for qualifying events occurring on or after July 1, 2023. This statute does not create a presumption of compensability for public safety officers.

### Public Service Personnel covered Under the Statute

- Salaried firefighters
- Salaried emergency medical services personnel
- Salaried sworn law-enforcement officers of a county, city or town
- Covered volunteer firefighters
- Covered volunteer medical services

### Qualifying Event – " means an Incident or exposure occurring in the line of duty on or after July 1, 2020 or on or after July 1, 2023 for anxiety and depressive disorder:

- Resulting in serious bodily injury or death to any person or persons
- Involving a minor who has been injured, killed, abused, or exploited
- Involving an immediate threat to life of the claimant or another individual
- Involving mass casualties; or
- Responding to crime scenes for investigation." (This is a qualifying event for PTSD only, this is **not** a qualifying event for anxiety or depressive disorder)

### Requirements

- Mental health professional diagnosed the covered condition as a result of the qualifying event
- The condition resulted from the public safety officer acting in the line of duty, and the firefighter complied with OSHA standards
- The "qualifying event" was the primary cause of the condition
- The condition did not result from any disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action of the public safety officer

### Benefit Limitation

- 52 weeks maximum benefits from the date of diagnosis
- No medical benefits or indemnity benefits awarded beyond 4 years from the date of the qualifying event
- The work comp indemnity benefits, combined with "other benefits" (including Social Security, retirement, long-term and short-term disability), shall not exceed the average weekly wage

### By January 1, 2021 Employers must:

- Make peer support available to public safety officers and refer public safety officers seeking mental health care services to a mental health professional
- Provide resilience and self-care technique training in basic fire training programs conducted

## Vocational Rehabilitation

When an injured employee that has an open indemnity award with the Virginia Workers' Compensation (VWC) is unable to return to their pre-injury position because of permanent physical restrictions placed on them as a result of their workers' compensation injury and their employer is unable to accommodate the permanent physical restrictions, then a certified vocational rehabilitation counselor may be assigned to assist the injured employee in securing gainful employment.

Vocational placement efforts are not required until an employee is medically released to work by his/her treating physician.

A comprehensive interview is arranged between the injured employee and the rehabilitation counselor to gather the following information:

- complete employment history
- educational history
- employee's vocational interest
- employee's transferable skills

The rehabilitation counselor assists the injured employee with writing resumes and interviewing skills.

After transferable skills are determined and coordinated with realistic interests of the injured employee, job search begins.

Rehabilitation counselors must locate potential employers and confirm that a position within the employee's capacity is available prior to having an employee contact that potential employer.

Job search continues until a position is secured that accommodates the injured employee's permanent physical restrictions and is within his/her skill level.

The Virginia Workers' Compensation Act requires an employee to cooperate with reasonable vocational placement efforts. Cooperation with vocational efforts includes:

- Keeping appointments with the rehabilitation counselor and potential employers
- Participating or following up on bona fide job leads
- Appropriate presentation at job interviews
- Acceptance of gainful employment within an employee's permanent physical restrictions

If an employee does not cooperate with return-to-work efforts, compensation benefits can be suspended. Benefits may be resumed if the employee makes a good faith effort to secure gainful employment and meet with the vocational counselor.

## Virginia Workers' Compensation Commission Hearings and Appeals

The Virginia Workers' Compensation Commission (VWC) is the governing body with jurisdiction over all claims filed under the Virginia Workers' Compensation Act. The VWC is comprised of two levels—Deputy Commissioners and the Full Commission. There are over 20 Deputy Commissioners who hear cases in different regions of Virginia; three Commissioners sit on the Full Commission that meets in Richmond.

When a claim is disputed, either party (employee or employer) may request a hearing before the VWC. Employees complete a Claim Form and employers complete an Employer's Application for Hearing. Each party will receive a copy of the other party's filing. Medical evidence supporting the injury must be attached to the form/application.

The form/application is referred for a decision on-the-record (written) or by evidentiary hearing. For an evidentiary hearing, a date will be set for both parties to appear for oral arguments before a Deputy Commissioner. If a hearing date is set, the location will be near where the employee resides. A Deputy Commissioner will decide the case and a written opinion will be mailed to both parties.

If either party is dissatisfied with the Deputy Commissioner's opinion, the case may be appealed to the Full Commission within thirty days of the decision. **No new** evidence can be presented at the appeal. The parties file brief written statements to support their positions. Occasionally oral argument is granted.

If either party is dissatisfied with the Full Commission opinion, an appeal can be made to the Virginia Court of Appeals within thirty days of the decision. The Court of Appeals can refuse the case in which instance the Full Commission opinion will stand or remand it back to the Commission for a rehearing. Oral arguments are generally granted.

In rare cases, the Virginia Supreme Court will accept an appeal from the Court of Appeals. The Supreme Court has the right to reject any case. Appeals will be accepted only if the case involves a substantial constitutional question or is of significant precedential value.

It can take several months to receive a hearing at the Deputy Commissioner level and an additional two to four months for the Full Commission, with six to nine months to reach the Court of Appeals. Scheduling of hearings vary depending on the number of cases pending, cancellation/continuations and others.

An expedited hearing docket is available when a denial of benefits will cause an injured employee to incur severe economic hardship. For rules and regulations or to request an expedited hearing visit the VWC website at [www.workcomp.virginia.gov](http://www.workcomp.virginia.gov) or call 1-877-664-2566.

## Legal Counsel

### Use of Counsel

When a workers' compensation claim is disputed, Virginia Risk Sharing Association (VRSA) as the insurance administrator is required by statute to use legal counsel to represent us during any litigation/hearing process.

However, employees are not subject to the same law. Employees may retain an attorney during the claims process. Not being represented (pro se) does not jeopardize an employee's claim for benefits. An employee can choose at any point during the claim process to obtain an attorney.

### Conversations with Employee

When an employee is represented by an attorney, VRSA representatives are not allowed to have any conversations with that employee without the permission of the employee's attorney. In addition, an employer is not allowed to discuss an employee's claim with that employee when represented.

### Attorney Fees

The employee is responsible for paying his/her attorney fees. The Virginia Workers' Commission (VWC) establishes the fees when an Award or Order is entered. Usually the attorney fee is deducted from the employee's lost wage benefits if awarded and paid directly to the attorney. The VWC controls attorney fees to protect employees from entering into fee agreements which may significantly reduce the amount of benefits. The VWC does not control the attorney fees paid by VRSA.

If an employee's claim is denied or an employee is not awarded lost wage benefits, then the employee is responsible for paying the attorney directly.

The VWC has exclusive jurisdiction over all disputes concerning such fees or charges and may order the repayment of the amount of any fee, which has already been paid, that it determines to be excessive.