

**Overview of
Workers' Compensation
in Virginia**

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Overview of Workers' Compensation in Virginia
Raymond L. Hogge, Jr.

TOPICS

- A. Coverage
- B. Injuries
- C. Diseases
- D. Disability and Benefits
- E. Recommendations for Employers

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A. Coverage

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A. Coverage

- **"Employer" includes** (Va. Code 65.2-101):
 - Any person; the Commonwealth and any political subdivision; any firm, association, or corporation; and any individual ... using the services of another for pay.
 - *If worker is volunteer not expecting pay, employer should confirm in writing.*
 - Any volunteer fire company or voluntary lifesaving or rescue squad **electing** to be included and maintaining coverage as an employer.
 - *Election should be in writing.*

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A. Coverage

- **"Employee" includes** (Va. Code 65.2-101):
 - Every person, including aliens and minors, in the service of another under any contract of hire or apprenticeship, written or implied, whether lawfully or unlawfully employed, *except* (i) one whose employment is not in the usual course of the trade, business, occupation or profession of the employer or (ii) as otherwise provided in the VWCA.
 - *If worker not intended to be employee, always obtain written acknowledgment of status of worker before work begins.*

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A. Coverage

- **"Employee" includes** (Va. Code 65.2-101):
 - Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of regional hazardous materials emergency response teams, volunteer members of community emergency response teams, and volunteer members of medical reserve corps.

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A. Coverage

- "Employee" includes (Va. Code 65.2-101):
 - Any sole proprietor, shareholder of a stock corporation having only 1 shareholder, member of a limited liability company having only 1 member, or all partners of a business electing to be included as employees under the workers' compensation coverage of such business if the insurer is notified of this election.
 - Notification of election should be in writing.
 - Important decision for any new business.

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A. Coverage

- "Employee" excludes (Va. Code 65.2-101):
 - Employees of any person, firm or private corporation that has regularly in service less than 3 employees in the same business within this Commonwealth, unless such employees and their employers voluntarily elect to be bound by VVCA. The focus is on the character of the business, not on the character of the employment relationship. The established number of persons used to carry out the mode of performing the work of the business is determinative.
 - See *Perry v. Delisle*, 46 Va. App. 57 (2005) (2-part analysis to be applied); *Uninsured Employers Fund v. Gabriel*, 272 Va. 659 (2006) (requirement that 3 employees be "regularly in service" in Virginia).

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A. Coverage

- "Employee" excludes (Va. Code 65.2-101):
 - Casual employees.
Employment "is causal when not permanent nor periodically regular, but occasional, or by chance and not in the usual course of the employer's trade or business."

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A. Coverage

▪ "Employee" excludes:

• **Volunteers.**

Volunteers provide services or labor without promise of compensation of any kind.

- Exception: Some public service volunteers, e.g., volunteer firefighters, are statutorily defined as employees. See Va. Code 65.2-101.

➤ *Always confirm volunteer status in writing before work begins.*

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A. Coverage

▪ "Employee" excludes (Va. Code 65.2-101):

- Non-compensated employees and non-compensated directors of corporations exempt from taxation pursuant to **Section 501 (c) (3)**.

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A. Coverage

▪ "Employee" excludes (Va. Code 65.2-101):

- Others listed in 65.2-101
 - Certain real estate agents
 - Taxicab drivers
 - Domestic servants
 - Others

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A. Coverage

- "Employee" excludes (Va. Code 65.2-101):
 - **Independent contractors.**
 - **Power of control** is most important factor in distinguishing employee from independent contractor.
 - Employer **can elect** to cover independent contractor if independent contractor and insurer agree.
 - *Independent contractor agreements help establish non-employee status.*

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A. Coverage

- **Statutory Employers and Statutory Employees** (Va. Code 65.2-302, 303, 304):
 - If Owner undertakes to perform work that is part of his trade, business, or occupation, and contracts with Contractor to perform some or all of that work, then Owner is deemed the Statutory Employer of the Subcontractor's employees.
 - If Contractor undertakes to perform work that is part of his trade, business, or occupation, and contracts with Subcontractor to perform some or all of that work, then Contractor is deemed the Statutory Employer of the Subcontractor's employees.

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B. Injuries

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B. Injuries

- An injury is compensable if it is one "by accident arising out of and in the course of the employment or occupational diseases." Va. Code 65.2-100.

- Important concepts:
 - "By accident"
 - "Arising out of ... the employment"
 - "Arising in the course of ... the employment"
 - "Occupational diseases"

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B. Injuries

- "By accident"

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B. Injuries

- "By accident"
 - An accident is an event happening without any human agency, or, if happening through a human agency, an event which, under the circumstances, is unusual and is **not expected** by the person to whom it happens.
 - Results from an unexpected **cause**
 - E.g., object falls on worker
 - or
 - Results in an unexpected **effect**
 - E.g., worker's disc ruptures

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B. Injuries

- "By accident"
 - Reasonably definite time required.
 - Not injury by accident if
 - a. gradual onset or
 - b. cumulative trauma
 - Exception: carpal tunnel syndrome
 - *In accident investigation, always gather evidence establishing whether there was an "accident"*

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B. Injuries

- "Arising out of ... the employment"

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B. Injuries

- "Arising out of ... the employment"
 - "Arising out of" refers to the origin or cause of the injury.
 - Causative danger must be "a contributing proximate cause" of the injury and must be "peculiar to the work and not common to the neighborhood." An injury does not arise out of the employment if it results from a hazard to which workmen would have been equally exposed apart from the employment.

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B. Injuries

- "Arising out of ... the employment"
 - Virginia follows the "actual risk test."
 - There must be actual causal connection between the employment and the injury; the mere fact it happened at work is not enough.
 - Virginia does not follow the "positional risk test."
 - Under the positional risk test followed by many states, injury arises out of the employment if the employment placed the worker in a position to be injured.
 - *Make sure your workers' compensation insurance claim agent is applying the actual risk test.*

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B. Injuries

- "Arising out of ... the employment"
 - **Multiple Possible Causes**
 - Virginia follows "more probably than not" rule for multiple cause situations.
 - Must be more probably than not that the work-related factor caused the injury.

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B. Injuries

- "Arising out of ... the employment"
 - **Two Causes**
 - When disability results from two causes, one work-related and one not work-related, then the injury is compensable if the employment was a **contributing factor**.

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B. Injuries

- "Arising out of ... the employment"
 - Unexplained injury - resulting in death
 - Deceased employee is entitled to presumption that death arose out the employment if
 - (1) he is found dead as a result of an accident at his workplace or nearby,
 - (2) his duties may have called him during the hours of his work, and
 - (3) there is no evidence offered to show what caused the death or to show that he was not engaged in the employer's business at the time.

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B. Injuries

- "Arising out of ... the employment"
 - Unexplained injury - not resulting in death
 - When the cause of an accident a worker survives is unexplained, such as where he does not remember what happened, the death presumption does not apply and the employee normally will not be able to prove the accident arose out of the employment.

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B. Injuries

- "Arising in the course of ... the employment"

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B. Injuries

- "Arising in the course of ... the employment"
 - In general:
 - In the course of employment refers to the **time, place and circumstances** under which the accident occurred. An accident occurs in the course of employment when
 - it takes place within the **period** of employment
 - at a place **where** the employee may be reasonably expected to be, and
 - while he is reasonably fulfilling the **duties** of his employment or is doing something which is reasonably incidental thereto.

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B. Injuries

- "Arising in the course of ... the employment"
 - **Intoxication**
 - If an employee is injured while in a state of intoxication so advanced that he is **incapable of engaging in his duties**, then his injuries are not within the scope of his employment and therefore do not arise in the course of his employment.
 - If an employee is injured while **continuing to perform his duties while intoxicated**, the intoxication rule does not apply and his injury may still arise in the course of his employment.

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B. Injuries

- "Arising in the course of ... the employment"
 - **Off-Duty Firefighters and Law Enforcement Officers**
 - Injury arises in the course of employment if, while in off-duty capacity or outside an assigned shift or work location, undertakes any law-enforcement or rescue activity. Va. Code 65.2-102(A).

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B. Injuries

- "Arising in the course of ... the employment"
- **Members of Virginia National Guard**
 - Injury deemed to arise in course of employment if occurs while in **travel** to designated place to report for military duty in response to military order. Va. Code 65.2-103 (2005 amendment).

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B. Injuries

- "Arising in the course of ... the employment"
- **First Responders in Off-Duty Capacity During State of Emergency**
 - Injury deemed to arise in course of employment if occurs while in **travel** to or from home or other location outside assigned shift or work location, to or from emergency shift or work location in response to a state-of-emergency order. Va. Code 65.2-104 (2005 amendment).

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B. Injuries

- "Arising in the course of ... the employment"
- **Coming and Going**
 - Generally, an injury does not arise in course of employment if the employee is going to or from his place of employment.

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B. Injuries

- "Arising in the course of ... the employment"

- **Coming and Going.**

An injury may arise in course of employment if the employee is going to or from his place of employment and if the means of transportation is provided by employer.

➤ *Think twice before letting your employee drive the company truck home.*

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B. Injuries

- "Arising in the course of ... the employment"

- **Coming and Going**

An injury may arise in course of employment if the employee is going to or from his place of employment and if the employer pays the employee for travel time.

➤ *Do not pay your employee for travel time unless you are willing to cover injuries he sustains during travel*

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B. Injuries

- "Arising in the course of ... the employment"

- **Coming and Going**

An injury may arise in course of employment if the employee is going to or from his place of employment and if the way used is the sole and exclusive way of ingress and egress.

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B. Injuries

- "Arising in the course of ... the employment"

- **Coming and Going**

An injury may arise in course of employment if the employee is going to or from his place of employment and if the way of ingress and egress is constructed by the employer.

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B. Injuries

- "Arising in the course of ... the employment"

- **Coming and Going**

An injury may arise in course of employment if the employee is going to or from his place of employment and if the employee on his way to or from work is still charged with some duty or task in connection with his employment.

➤ *Make it clear when the employee is, and is not, authorized to perform work-related activities. (This also is helpful in avoiding claims for overtime pay under the Fair Labor Standards Act.)*

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B. Injuries

- "Arising in the course of ... the employment"

- **Parking Lots**

Injuries sustained in parking lots may or may not be compensable, depending of the circumstances.

B. Injuries

▪ "Arising in the course of ... the employment"

• **Recreational Activities**

An employer can enlarge the course of employment by extending the scope of employment to embrace recreational and social events. When a worker is injured at a place where his employment requires him to be while engaged in an activity reasonably connected with or incidental to his or her employment, compensation is allowable, ... even if the injury occurs after the employee's actual employment labors are completed.

➤ *Always make it clear that attendance at a social event is not required.*

B. Injuries

▪ "Arising in the course of ... the employment"

• **Recreational Activities - Factors to Consider:**

- The extent to which the employer expects or requires the employees to attend;
- The degree to which the employer derives a benefit from the activity;
- The degree of sponsorship and participation by the employer;
- Whether the activity occurs on premises associated with the employment;
- When the activity occurs in relation to work;
- The frequency or period over which the activity has been conducted.

B. Injuries

▪ "Arising in the course of ... the employment"

• **Assaults Upon Employees**

➤ "In an assault case claimed to arise out of the employment, the necessary causal connection may be established if the evidence shows that the attack was directed against the claimant as an employee or because of the employment, for example, where an employee as part of his or her duties is required regularly to handle and carry large sums of money in cash to a bank."

➤ *To reduce workers' comp costs, take steps to protect employees from assaults.*

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B. Injuries

- "Arising in the course of ... the employment"
 - **Assaults Upon Employees**
 - An assault will not be compensable if it is "of a personal nature as it was not directed against the employee as part of the employment relationship and was in no way in furtherance of the employer's business."
 - *In conducting an investigation of an employee assault, always gather evidence of the motive of the attacker, e.g., whether the attacker knew and had animosity toward the victim.*

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B. Injuries

- **Affirmative Defenses Under Va. Code 65.2-306**
 - No compensation may be awarded for injury or death resulting from certain acts of the employee.
 - These are affirmative defenses on which the **employer bears the burden of proof.**
 - Rule 1.10 of the Rules of the Virginia Workers' Compensation Commission requires an employer to file with the Commission a **written notice** if the employer intends to assert any of these defenses.
 - The notice must be filed at least **15 days** before the hearing.

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B. Injuries

- **Affirmative Defenses Under Va. Code 65.2-306**

No compensation may be awarded for injury or death resulting from:

 - **The employee's willful misconduct or intentional self-inflicted injury.**
 - *In your investigation of an injury, always determine whether the injury was the result of employee misconduct, or self-inflicted.*
 - *Your employee handbook should describe what constitutes misconduct.*

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B. Injuries

- Affirmative Defenses Under Va. Code 65.2-306

No compensation may be awarded for injury or death resulting from:

- **The employee's attempt to injure another.**
 - *In your investigation of an injury, always determine whether the injury was the result of an altercation among employees or between the employee and a third party.*

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B. Injuries

- Affirmative Defenses Under Va. Code 65.2-306

No compensation may be awarded for injury or death resulting from:

- **The employee's intoxication.**
 - *Post-accident drug and alcohol testing should be conducted to determine whether intoxication may have led to the injury.*
 - *Your employee handbook should inform employees of your policies and procedures governing post-accident drug and alcohol testing.*

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B. Injuries

- Affirmative Defenses Under Va. Code 65.2-306

No compensation may be awarded for injury or death resulting from:

- **The employee's willful failure or refusal to use a safety appliance or perform a duty required by statute.**
 - *In your accident investigation, always determine whether required safety appliances were used and, if not, why not.*
 - *Always inform employees in writing of the safety appliances they are required to use, and require them to sign an acknowledgment that they will do so.*

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B. Injuries

- Affirmative Defenses Under Va. Code 65.2-306

No compensation may be awarded for injury or death resulting from:

- The employee's willful breach of any reasonable rule or regulation adopted by the employer and brought, prior to the accident, to the knowledge of the employee.
 - Your employee handbook should inform your employees of all workplace safety rules.
 - No employee should be permitted to begin work until he has acknowledged in writing that he has read, understands, and will obey those rules.

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B. Injuries

- Affirmative Defenses Under Va. Code 65.2-306

No compensation may be awarded for injury or death resulting from:

- The employee's use of a nonprescribed, controlled substance identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.
 - Post-accident drug and alcohol testing should be conducted to determine whether intoxication may have led to the injury.
 - Your employee handbook should inform employees of your policies and procedures governing post-accident drug and alcohol testing.

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C. Occupational Diseases

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C. Diseases

- "Occupational diseases" are compensable.
- Occupational Disease - Defined:
"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." Va. Code 65.2-400.

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C. Diseases

- Under Va. Code 65.2-400, a disease "arises out of" the employment only if:
 1. A direct causal connection between the conditions under which work is performed and the occupational disease;
and ...

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C. Diseases

- Under Va. Code 65.2-400, a disease "arises out of" the employment only if:
 2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
and ...

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C. Diseases

- Under Va. Code 65.2-400, a disease "arises out of" the employment **only if**:
 3. It can be fairly traced to the **employment** as the **proximate cause**;
and ...

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C. Diseases

- Under Va. Code 65.2-400, a disease "arises out of" the employment **only if**:
 4. It is neither
 - a disease to which an employee **may have had substantial exposure outside of the employment**,
 - nor
 - any condition of the **neck, back or spinal column**;and ...

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C. Diseases

- Under Va. Code 65.2-400, a disease "arises out of" the employment **only if**:
 5. It is **incidental to the character of the business** and **not independent** of the relation of employer and employee;
and ...

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C. Diseases

- Under Va. Code 65.2-400, a disease "arises out of" the employment **only if**:
 6. It had its **origin** in a **risk connected with the employment** and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

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C. Diseases

- **Hearing Loss**
Hearing loss is not an occupational disease; it is an ordinary disease of life. Va. Code 65.2-400.

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C. Diseases

- **Carpal Tunnel Syndrome**
Carpal Tunnel Syndrome is not an occupational disease; it is an ordinary disease of life. Va. Code 65.2-400.

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C. Diseases

- Ordinary Diseases of Life

Va. Code 65.2-401: An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease if each of the following elements is established by clear and convincing evidence, (not a mere probability):

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C. Diseases

- Ordinary Diseases of Life - Compensability

Va. Code 65.2-401: An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease if each of the following elements is established by clear and convincing evidence, (not a mere probability):

(1) That the disease exists and arose out of and in the course of employment and did not result from causes outside of the employment,
and

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C. Diseases

- Ordinary Diseases of Life - Compensability

Va. Code 65.2-401: An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease if each of the following elements is established by clear and convincing evidence, (not a mere probability):

(2) That one of the following exists:

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C. Diseases

- Ordinary Diseases of Life - Compensability
Va. Code 65.2-401: An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease if each of the following elements is established by clear and convincing evidence, (not a mere probability):
(2) That one of the following exists:
a. It follows as an incident of occupational disease as defined in this title; or ...

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C. Diseases

- Ordinary Diseases of Life - Compensability
Va. Code 65.2-401: An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease if each of the following elements is established by clear and convincing evidence, (not a mere probability):
(2) That one of the following exists:
b. It is an infectious or contagious disease contracted in the course of one's employment in a hospital or sanitarium or laboratory or nursing home, or while otherwise engaged in the direct delivery of health care, or in the course of employment as emergency rescue personnel and those volunteer emergency rescue personnel; or ...

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C. Diseases

- Ordinary Diseases of Life - Compensability
Va. Code 65.2-401: An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease if each of the following elements is established by clear and convincing evidence, (not a mere probability):
(2) That one of the following exists:
c. It is characteristic of the employment and was caused by conditions peculiar to such employment.

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C. Diseases

- Presumptions

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C. Diseases

- Presumptions

Va. Code 65.2-402(A): **Respiratory diseases** that cause (i) the death of **volunteer or salaried firefighters** or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such **firefighters** or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by VWCA unless such presumption is overcome by a preponderance of competent evidence to the contrary.

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C. Diseases

- Presumptions

Va. Code 65.2-402(B): **Hypertension or heart disease** causing the death of, or any health condition or impairment resulting in total or partial disability of the following employees are presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary:

- Salaried or volunteer firefighters;
- Members of county, city or town police departments;
- Sheriffs and deputy sheriffs;
- Others specified in 65.2-402(B).

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C. Diseases

• Presumptions

Va. Code 65.2-402(C): **Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer** causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried **firefighter** (and others specified in statute) having completed twelve years of continuous service who has a contact with a **toxic substance** encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by VWCA, unless such presumption is overcome by a preponderance of competent evidence to the contrary.

A "**toxic substance**" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

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C. Diseases

• Presumptions

Va. Code 65.2-402(D): These presumptions **apply only if** persons entitled to invoke them have, **if requested by the employer**, undergone pre-employment physical examinations that

- (1) were conducted prior to the making of any VWCA claims that rely on such presumptions;
- (2) were performed by physicians whose qualifications are as prescribed by the employer;
- (3) included such appropriate laboratory and other diagnostic studies as the employer may have prescribed; and
- (4) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

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C. Diseases

• Presumptions

Va. Code 65.2-402(G): These presumptions do not apply to:

- Volunteer lifesaving and rescue squad members;
- Volunteer law-enforcement chaplains;
- Auxiliary and reserve deputy sheriffs;
- Auxiliary and reserve police.

D. Disability and Benefits

D. Disability and Benefits

- **Lifetime Medical Benefits**
 - Medical expenses for conditions caused by the accident or occupational disease are payable for **as long as necessary**, provided a claim was filed by the employee within the required time period.

D. Disability and Benefits

- Lifetime Medical Benefits
 - **Physicians**
 - The employee must select a doctor from a **panel of 3 physicians** provided by the employer/carrier.
 - If a panel is not offered after notice of the accident, the employee may seek treatment from **any physician**.
 - The treating physician may **refer** the employee to other doctors.
 - Once treatment begins, the physician cannot be **changed** without approval of the employer or carrier, or after a hearing by the Commission.

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D. Disability and Benefits

- Lifetime Medical Benefits
 - **Medical bills** should be sent to the insurance carrier for payment.

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D. Disability and Benefits

- Lifetime Medical Benefits
 - The employee must **cooperate** with medical treatment or the weekly benefits may be suspended.

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D. Disability and Benefits

- **Wage replacement for temporary total or temporary partial disability (Va. Code 65.2-502)**
 - While temporarily unable to perform any work, an employee is entitled to **2/3** of his or her gross **average weekly wage** up to a set **maximum** weekly limit. Va. Code 65.2-500, 65.2-518.

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D. Disability and Benefits

- Wage replacement for temporary total or temporary partial disability (Va. Code 65.2-502)
 - There must be **7 days** of disability before benefits are payable.
 - If disabled for more than **3 weeks**, the employee receives payment for the first 7 days.

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D. Disability and Benefits

- Wage replacement for temporary total or temporary partial disability (Va. Code 65.2-502)
 - Benefits cannot exceed **500 weeks**, unless the worker is **totally and permanently** disabled.

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D. Disability and Benefits

- Wage replacement for temporary total or temporary partial disability (Va. Code 65.2-502)
 - If the injured worker cannot return to regular work and is given a **light duty** job ("selective employment") at a lower wage, benefits are 2/3 of the **difference** between the pre-injury wage and the current pay up to the maximum weekly limit.

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D. Disability and Benefits

- Wage replacement for temporary total or temporary partial disability (Va. Code 65.2-502)
 - Workers who are released to light duty work must prove that they are making **reasonable efforts to market their work capacity** (i.e., actively looking for a light duty job), even if they expect to return to their regular job.

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D. Disability and Benefits

- **Wage replacement for permanent total disability (Va. Code 65.2-503)**
 - **Lifetime** wage benefits may be payable if a worker
 - Loses the use of both hands, arms, feet, legs, eyes, or any two, as a result of the same accident; or
 - Is totally paralyzed; or
 - Is unemployable due to from a severe brain injury.

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D. Disability and Benefits

- **Indemnity payment for permanent partial impairment (Va. Code 65.2-503)**
 - Scheduled benefits are payable for permanent:
 - Loss of use of a body part such as an arm, leg, finger, or eye;
 - Loss of vision;
 - Hearing loss;
 - Disfigurement.

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D. Disability and Benefits

- Indemnity payment for permanent partial impairment (Va. Code 65.2-503)
 - Benefits are for a specific number of weeks depending on the **percentage** of loss of use.
 - Employee must establish the impairment rating.

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D. Disability and Benefits

- Indemnity payment for permanent partial impairment (Va. Code 65.2-503)
 - Does not include the **back, neck or body** as a whole.
 - But **back injuries** can result in loss of use of scheduled members such as arms or legs supporting an award of permanent partial disability benefits.

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D. Disability and Benefits

- Indemnity payment for permanent partial impairment (Va. Code 65.2-503)
 - The worker can receive these benefits while working if **maximum medical improvement** has been reached.

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D. Disability and Benefits

▪ **Death Benefits**

- A surviving spouse, children under 18, children under 23 enrolled full time in an accredited educational institution, parents in destitute circumstances, or other qualifying dependents may be entitled to wage loss benefits.
- Death benefits include funeral expenses not to exceed \$10,000 and transportation cost of \$1,000.

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D. Disability and Benefits

▪ **Cost of living increases**

- A worker receiving temporary total, permanent total, or death benefits is entitled to cost of living increases effective October 1 of each year if the date of the accident is prior to July 1 of that year and if the combination of compensation and Social Security benefits are less than 80% of the pre-injury earnings.
- Cost of living increases must be specifically requested by the worker.

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D. Disability and Benefits

▪ **Vocational rehabilitation**

E. Recommendations for Employers

E. Recommendations for Employers

- **Workers' Comp Bar**
 - The Virginia Workers' Compensation Act provides the exclusive remedy for workers who sustain covered injuries
 - Injured worker cannot sue employer if VWCA applies.
 - If injured worker would have grounds to sue employer for negligence or other tort, employer should think twice before denying compensability of claim.

E. Recommendations for Employers

- **Coordinate all relevant functional units of employer**
 - Worker's department or unit
 - Human Resources / Personnel Department
 - Risk Management Department
 - EEO Compliance Department
 - In-house counsel

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E. Recommendations for Employers

- Coordinate with the Worker's Comp Carrier
 - Always immediately notify the carrier of any reportable injury.
 - Carrier usually files required First Report of Accident with Virginia Workers' Compensation Commission
 - Do not take any action without first consulting the carrier's claim representative.
 - Communicate with the carrier's claim representative about the case at least monthly.

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E. Recommendations for Employers

- Stay in contact with the injured employee.
 - Speak with injured employee.
 - No less than weekly in most circumstances.
 - Never less than monthly.

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E. Recommendations for Employers

- Stay in contact with the injured employee's physician
 - Under workers' comp, employer and carrier are entitled to speak with treating physicians and review medical records.

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E. Recommendations for Employers

- Get the employee back to work, even if light duty, ASAP.
 - The likelihood that a worker will recover from his injury and return to work decreases with each day he is out on workers' comp leave.
 - The "permanent vacation."

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E. Recommendations for Employers

- Actual Risk v. Positional Risk
 - Employer should assess all claims using Virginia's actual risk test, which is stricter than positional risk test followed by some other states.

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E. Recommendations for Employers

- Consider overlap of VWCA with
 - Americans with Disabilities Act
 - ADA "disability" is different than workers' comp disability

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E. Recommendations for Employers

- Consider overlap of VWCA with
 - Family and Medical Leave Act.
 - FMLA "serious health condition" may or may not be work-related.

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E. Recommendations for Employers

- Consider overlap of VWCA with
 - OSHA / VOSH
 - Adherence to OSHA / VOSH safety standards can improve safety and reduce risk of workplace injuries.

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E. Recommendations for Employers

- Consider overlap of VWCA with
 - Longshore and Harbor Workers' Compensation Act
 - Concurrent jurisdiction with Virginia Workers' Compensation Act.

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F. Recommendations for Employers

- Assess and improve employer safety and health measures
 - Safety equipment
 - Safety training (workers / supervisors)
 - Accident and injury reporting
 - Accident and injury investigation
 - Management of injured workers
 - Written safety rules
 - Employee handbook policies and procedures

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For additional resources
for Virginia employers, visit

www.VirginiaLaborLaw.com
