WENK

What Employees Need to Know

VML INSURANCE PROGRAMS

Virginia's Local Government Specialists™

Introduction

VML Insurance Programs introduces WENK – What Employees Need to Know.

WENK is a one-page, easy-to-read bulletin on a single workers' compensation topic designed to educate employees on the Virginia Workers' Compensation Act.

Members are encouraged to duplicate and distribute the information to their employees when they have been injured on the job.

Disclaimer

These bulletins are 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 these bulletins. 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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VMLIP Team

Your Employer is a member of the Virginia Municipal League Insurance Program (VMLIP). VMLIP is a non-profit organization of Virginia local political subdivisions providing workers' compensation coverage to more than 85,000 employees.

A *"Team"* of VMLIP 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.

VMLIP 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 who specialize in handling claims for local governments
- Registered nurses on staff, who are certified case managers (patient advocates) that specialize in occupational injuries and assist with coordinating return to work efforts and in creating return to work programs
- Strong loss prevention programs and safety service 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 and short term needs
- Prompt payment of benefits and medical bills
- Timely compensability decisions
- Appropriate filing of required state forms

VMLIP and your Employer are making every effort to create a safe working environment and to minimize the danger of a work-related injury. However, if you are injured on the job, VMLIP will work with you, your Employer and your Physician towards a speedy recovery and a safe return to work.

The VML Insurance Programs staff is available to assistant at anytime. If you need assistance or have questions, contact us. You can reach us at 1-800-963-6800. 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 VML Insurance Programs (VMLIP). VMLIP will in turn report this claim electronically to the Virginia Workers' Compensation Commission (VWCC). **This is not a filing of a claim on the injured employee's behalf and does not protect your rights for lifetime medical benefits.**

- Upon receipt of the claim, the VWCC will mail you brochure, which explains your rights and responsibilities under the Virginia Workers' Compensation Act. Read this material carefully.

- As stated in the brochure you must file your own claim with the VWCC within two (2) years of the accident or injury date for lifetime medical benefits related to the injury.

- The employer filing a claim with VMLIP does not constitute a filing of a claim by the employee with the VWCC. Additionally, contacting NT24 (VMLIP'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 VWCC.

- Filing a claim for lifetime medical benefits is optional but can only be accomplished by the injured employee filing a claim with the VWCC.

- VML Insurance Programs is not the Virginia Workers' Compensation Commission.

- A claim can be filed with the VWCC online or by mail. A VWCC Claim for Benefits 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.

- The Virginia Workers' Compensation Commission contact information: The web address is www.vwc.state.va.us – 1000 DMV Drive, Richmond, Virginia 23220 – Toll free phone number 1-877-664-2566.

If you do not file a claim with the VWCC 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 (VWCC). 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.

Change in Condition: When a claim is accepted as compensable the VWCC 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 **Agreement to Pay Benefits**.

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 injured 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 rendered or prescribed by the treating physician.

When an Award is modified the injured employee signs a **Termination of Wage Loss Award**, which provides the following information to an employee on time limitations:

1. An employee has **two (2) years** from the last date compensation is paid under an Award, to make a claim for additional wage loss benefits. This can be accomplished by the employee signing a Supplemental Agreement to Pay Benefits or by filing a Claim for Benefits with the Commission.

2. An employee has **three (3) years** from the last date compensation is paid under an Award, to make a claim for permanent partial benefits (financial compensation for the functional loss of a body part).

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 injured employee for work-related injuries/illness.
- The purpose of the panel is to refer injured employees to that physician best qualified to respond to the employee's needs.
- The panel allows the employer to utilize reputable physicians to provide timely, appropriate care to injured workers.
- Panels must include at least three (3) physicians who do not have an economic interest in the others 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 injured employee's expense.
- If the injured 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, if a true emergency exists. Once the emergency is over the employee will be presented the panel and a physician must be selected from that panel for continued care.

Medical Payments

Immediately upon receipt an employee should forward all bills related to a workers' compensation claim to VML Insurance Programs (VMLIP). Submit bills even if you believe that they have already been mailed to VMLIP. Often medical providers will indicate that the insurance carrier has been billed, when in fact they have not.

If medication is prescribed, the employer will complete and provide the employee with an Instant Coverage Workers' Compensation Prescription Program authorization form. The employee may take this authorization to a participating network pharmacy and will be provided a 7 to 10 day supply of medication at no cost. This authorization is valid for one time use only. VMLIP 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 VMLIP 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.

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, submit a written request to VMLIP and provide the following:

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

The Virginia Workers' Compensation Commission (VWCC) establishes the mileage reimbursement rate. For the current mileage rate contact your VMLIP representative at 1-800 -963-6800 or visit the VWCC website at www.vwc.state.va.us

VMLIP pays medical bills within 30 days of receipt of an itemized billing and supporting medical documentation. With proper documentation, most bills are paid within two weeks of receipt.

As allowed by the Virginia Workers' Compensation Act and in accordance with contractual agreements medical bills are reduced to the prevailing community rate.

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 VWCC. If an employee receives a balance billing, forward it immediately to VMLIP.

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: $10,400, gross annual earning, divided by 52 = $200.00 Average Weekly Wage

$200.00 Average Weekly Wage
x.66667
$133.33 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 only 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 VML Insurance (VMLIP) representative at 1-800-963-6800 or visit the Virginia Workers' Compensation Commission (VWCC) website at www.vwc.state.va.us

Temporary Total and Temporary Partial Disability Benefits

Waiting Period

An employee is not entitled to loss wage compensation for the first 7-days waiting period (need not be consecutive) of incapacity resulting from a work-related injury. Loss wage compensation begins 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:	$200.00	Gross pre-injury average weekly wage
	x.66667	
	$133.33	Temporary total compensation rate

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 accident and after the accident.

Example:	$200.00	Gross pre-injury average weekly wage
	$150.00	Gross post-injury average weekly wage
	$ 50.00	Difference
	x.66667	
	$ 33.33	Temporary partial compensation rate

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, no 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 the maximum 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 of a member, the employee is entitled to compensation for the functional loss. The Virginia Workers' Compensation Commission (VWCC) assigns a value to each member, in terms of a number of weeks of compensation for the loss of the whole member.

Permanent partial benefits are based on the percentage of functional loss of the member. The rate of compensation for permanent partial disability is calculated at 66 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 VWCC will occasionally make this determination for disfigurement.

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

The employee would receive 66 2/3 of their gross average weekly wage for 17 1/2 weeks.

- Benefits are payable after an employee reaches maximum medical improvement.
- Benefits are not payable until an employee returns to gainful employment
- 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.
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 work-related incident the employee's dependent(s) are entitled to a maximum 500 weeks of compensation benefits at 66 2/3 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 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 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, a deduction is made for the monthly amounts paid for Medicare.

Injury by Accident

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

To be covered 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 (date and time of day)
- Be connected to the accident (tripped over an open drawer and twisted an ankle)

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 by the treating physician 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

- VML Insurance Programs will pay for all necessary, related and reasonable testing for employees exposed to blood or bodily fluid as a result of an “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). 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/Lung/Cancer Presumption

The Presumption, presumes that disability from heart disease, lung disease and seven 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 sworn law enforcement officer of a city, county or town
- A salaried firefighter
- A covered volunteer firefighter

Medical Requirements

- Hypertension
- Heart disease
- Respiratory disease (firefighter)
- Throat, rectal, pancreatic, prostate, ovarian, breast cancer or leukemia (firefighter)

Statutory Requirements

- There must be disability from work
- For cancer the employee must have:
  - 12 years of continuous service
  - Contact with a toxic substance encountered in the line of duty

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 and a **belief** that their condition is work related.

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. If there are limited or no non-work related factors, the claim is accepted.

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
  - ♦ 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 make a determination of 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 Sworn law enforcement officer of a county, city, or town

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 and 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 is 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.

Vocational Rehabilitation

When an injured employee that has an open indemnity award with the Virginia Workers' Compensation (VWCC) 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 (VWCC) is the governing body with jurisdiction over all claims filed under the Virginia Workers' Compensation Act. The VWCC 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 VWCC. Employees complete a Claim for Benefits application 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 application.

The 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 VWCC website at www.vwc.state.va.us or call 1-877-664-2566.

Legal Counsel

Use of Counsel

When a workers' compensation claim is disputed, VML Insurance Programs (VMLIP) as the insurance administrator is required by statute to use legal counsel to represent them 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, VMLIP 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 (VWCC) 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 VWCC controls attorney fees to protect employees from entering into fee agreements which may significantly reduce the amount of benefits. The VWCC does not control the attorney fees paid by VMLIP.

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 VWCC 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.