

# *Virginia Workers' Compensation Commission*

## ***Frequently Asked Insurance Questions for Employers***

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The information contained below is general in nature and is not intended and may not be considered as providing legal advice or advisory opinions. If you have legal questions we suggest that you seek legal advice. Answers to specific questions often vary depending on facts and information that may not be disclosed or be readily apparent.

### **1 Q: Am I required to obtain workers' compensation insurance?**

**A:** Virginia law requires that an employer who regularly employs more than two part-time or full-time employees carry workers' compensation. If a business hires subcontractors to perform the same trade, business or occupation, or to fulfill a contract, the subcontractor's employees are included when determining the total number of employees for coverage requirements. Executive officers also count as employees. If the total number of all employees is more than two, workers' compensation is required. Workers' compensation is mandatory for those employers who meet the requirements under the law.

### **2 Q: Does a sole proprietor with no employees need to carry workers' compensation insurance?**

**A:** No. A sole proprietor that has no employees and that does not hire subcontractors is not required by law to carry workers' compensation coverage. An individual that is not required by law to carry coverage can obtain it voluntarily.

### **3 Q: I am a sole proprietor with no employees; can I obtain an Exemption Form?**

**A:** The Commission does not provide an exemption or waiver form for an employer that is not required to carry coverage under the Act. Some states offer such a form but Virginia does not.

### **4 Q: How does an employer obtain insurance?**

**A:** There are several options for obtaining coverage:

- Purchase a policy from an insurance carrier licensed in Virginia
- Obtain approval from the Commission to be self-insured (must meet minimum requirements)
- Become a member of a licensed group self-insured association
- Enter into an agreement for Professional Employer Services with a PEO registered in Virginia

### **5 Q: Can I purchase insurance from the Commission?**

**A:** Insurance coverage is not available from the Commission. Coverage is available through an insurance agent or carrier. The two statewide insurance organizations maintain membership of most agents:

- The Independent Insurance Agents of Virginia, telephone 804-747-9300, website: [iiav.com](http://iiav.com)
- The Professional Insurance Agents Association of Virginia and the District of Columbia, telephone 804-264-2582, website: [piavadc.com](http://piavadc.com)

### **6 Q: How much does workers' compensation insurance cost?**

**A:** The cost of a workers' compensation policy is determined by three main factors: 1) the type of work performed (classification code), 2) payroll; and 3) experience or loss history. Workers' compensation insurance rates are higher for more hazardous industries and for business with more frequent claims. While rates are set by the Bureau of insurance each year, insurers can offer discounts or credits so premium can vary by insurer. The best way to obtain an accurate sense of policy cost is to contact an insurance agent or insurer and obtain one or more quotes.

**7 Q: How do I contact the Virginia State Fund?**

**A:** Virginia does not have a State Fund. Coverage is available through an insurance agent or carriers.

**8 Q: I am unable to obtain coverage from an insurance agent or carrier, what can I do?**

**A:** An employer that cannot obtain coverage in the voluntary market can contact the National Council on Compensation Insurance (NCCI) which manages Virginia's assigned risk market. Phone: 1-800-622-4123.

**9 Q: I only hire independent contractors, do I need coverage?**

**A:** Designating a worker as an "Independent Contractor" or paying them on a 1099 does not define a worker's employment status. Whether a person is an "employee" or not is governed by common law principles. A person is generally considered an employee if: 1) they are selected, 2) can be dismissed, 3) earn pay or wages, and 4) control is exercised over the means and method by which the work is performed. The last factor is given the greatest weight. If inquiry indicates that "control" is exercised over the worker, the worker should likely be counted as an employee for coverage purposes.

**10 Q: Are volunteers employees?**

**A:** Generally, volunteers that are not paid or compensated are not employees under the Virginia Workers' Compensation Act. However, should a business wish to cover a volunteer they can be endorsed onto a policy.

**11 Q: Can I exempt an employee from my policy?**

**A:** Workers' compensation is statutory, that means it is required by law, therefore an employer cannot exclude an individual employee or employees from a policy, by waiver or by any other means. For an employer that is required to carry coverage all employees are covered and cannot be exempted. The only employees that can "reject" coverage are executive officers and LLC managers because the law provides a means for them to affirmatively reject coverage should they choose to do so. In order to reject coverage the business must have valid coverage and the officer or manager must file a Rejection of Coverage form with the Commission for approval and must also file a copy with the insurer.

**12 Q: Are corporate officers exempt from coverage?**

**A:** No. Under Virginia law executive officers (corporate officers) and LLC managers are defined as employees. An executive officer is defined by the law as the president, vice-president, secretary, treasurer or other officer elected or appointed in accordance with the charter and bylaws, and the LLC manager elected or appointed in accordance with the articles of organization or operating agreement of a LLC. Such individuals are employees even if they do not perform regular work for the business or earn a regular salary. The only exception is a noncompensated officer of a tax exempt 501 (c)(3) corporation.

**13 Q: We are a Virginia business with four LLC members and no employees. Are LLC members exempt from coverage requirements?**

**A:** Under Virginia law, a limited liability company (LLC) Manager is identified as an employee and a member of a LLC having only one member is not covered under the Act unless they specifically notify the insurer of their election to be covered. The statute is silent as to multiple members. It is important, therefore, to ask additional questions if there are multiple members to determine if any member performs work for the business and receives compensation as an employee. If a member performs work and receives pay as an employee, separate from their member duties, then they should be counted as an employee. A member may have two roles, one as a member and another as an employee.

**14 Q: We received notice that our policy cancelled. We have new coverage. What do you need from me?**

**A:** If you obtained new coverage please send proof of coverage consisting of either the binder, the Declaration Page or the Information Page to the Commission by mail (VWC, 100 DMV Dr, Richmond VA, 23220), by Fax (804-367-2239) or by email to: [vwcinsurance@workcomp.virginia.gov](mailto:vwcinsurance@workcomp.virginia.gov). We do not accept Certificates of Insurance as proof of coverage as they do not contain sufficient information.

**15 Q: Is my occupational accident policy sufficient in place of a workers' compensation policy?**

**A:** If you are an employer that is required by law to carry workers' compensation then no other form of insurance can substitute for workers' compensation.

**16 Q: We are a business based outside Virginia and only performing work in Virginia temporarily. Do we need coverage? I understand that our state has reciprocity with many states.**

**A:** Virginia law requires Virginia workers' compensation coverage for work performed or subcontracted in Virginia, even if it is temporary work. Virginia does not have reciprocity with any other state.

**17 Q: We are based outside Virginia and we have coverage but we received a notice from the Commission that our coverage is insufficient. What does this mean?**

**A:** If you valid coverage outside Virginia you likely do not have proper Virginia coverage. Virginia must be listed in Item 3A of the policy which is for known exposure. Virginia listing in Item 3C of the policy is not sufficient for work in Virginia. If your carrier is not licensed in Virginia then a separate policy with a Virginia licensed insurance carrier is required.

**18 Q: I am a Virginia company that has obtained work in another state. Will my Virginia insurance cover the employees while out of state?**

**A:** In the event a worker is injured in another state the injured party may have a choice of where they may file a claim. You should check with the workers' compensation commission of the other jurisdiction to determine if your policy is sufficient to meet their coverage requirements. In the event one of your workers wishes to make a Virginia claim, the foreign injury statute states as follows:

§ 65.2-508. Foreign injuries.

A. When an accident happens while the employee is employed elsewhere than in this Commonwealth which would entitle him or his dependents to compensation if it had happened in this Commonwealth, the employee or his dependents shall be entitled to compensation, if:

1. The contract of employment was made in this Commonwealth; and
2. The employer's place of business is in this Commonwealth;

provided the contract of employment was not expressly for service exclusively outside of the Commonwealth.

B. However, if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this title.

**19 Q: Does Virginia offer a workers' compensation insurance discount for a Drug Free workplace?**

**A:** Yes, insurers are required by law to provide a premium discount of up to 5% to employers that institute and maintain a drug-free workplace program. Each insurer must establish their own discount criteria.

**20 Q: Does Virginia offer a workers' compensation insurance discount for a workplace safety program?**

**A:** There is no provision of the Virginia Workers' Compensation Act nor any program of the Commission that provides an insurance discount for a workplace safety program, however, an insurer may offer a credit or discounting for an employer's workplace safety program or for workplace safety efforts.

**21 Q: I am hiring nursing aides to care for my ailing mother in my home. Do I need workers' compensation to cover the nursing aides?**

**A:** No, domestic employment is one type of employment for which workers' compensation is not required. The household or homeowner is not required by law to obtain coverage for one or more workers that perform work for the care, comfort and convenience of members of the household. There is no numerical limit to the number of domestic employees you may have performing work for you, your household or your household members. A business, however, that performs work in people's homes does not have the right to claim the domestic employment exception.

**22 Q: We were audited and now we are being charged audit premium for two independent contractors we hired last year. Can the insurer do this?**

**A:** An employer is billed at policy inception based on estimated exposure. The insurer often conducts an audit at policy period end (commonly one year) to determine actual exposure. In the event a business hires an independent contractor or subcontractor, they represent exposure to the insurer, thus the employer should obtain proof of coverage from all independent contractors or subcontractors hired. For those with valid proof of coverage provided at audit the employer should not be charged premium. If there is no proof of coverage or it is not valid the insurer can charge audit premium for that additional exposure.

**23 Q: Is there some way that I can verify the coverage of the subcontractors that I hire?**

**A:** There is an Insurance Coverage Search tool available on the Commission's website which allows the public to search for employer coverage by business name or by Federal Employer Identification number. The insurance coverage search tool is available at: <https://www.ewccv.com/cvs/>. Please keep in mind that this search tool covers only commercial insurance coverage and does not display self-insured employers. You may also call the Insurance Department of the Commission at 804 205-3586 to ask us to check for coverage.

**24 Q: We have been notified that our classification codes changed and our insurance premium went up significantly. How can I contest this?**

**A:** Workers' compensation insurance is under dual regulation in Virginia, as in most states. For matters that pertain to class codes and underwriting the best source for information is the Bureau of Insurance in State Corporation Commission. E-mail: [bureauofinsurance@scc.virginia.gov](mailto:bureauofinsurance@scc.virginia.gov) or Phone: 804-371-9185.

**25 Q: The cost of my workers' compensation insurance went up recently. Can I deduct a portion of the cost of my workers' compensation from my employees' wages?**

**A:** No. It is not lawful for any employer to deduct any part of the cost of workers' compensation insurance from an employee's wages or to request any contribution. An employer that violates this provision of the law is subject to a fine of up to \$100 for each offense and is required to refund the employee any amount deducted or contributed.

**26 Q: My insurance carrier would not renew my policy. Now they want me to participate in an audit and are requesting all kinds of information. Do I have to cooperate?**

**A:** You are required to cooperate with the audit. With workers' compensation insurance, an insurance carrier is only able to estimate exposure at the beginning of the policy period. It is therefore common practice when the policy year ends for the insurance carrier to conduct an audit to determine actual exposure over the policy year. The insurance carrier can also charge audit premium if through audit they determine exposure was higher than originally estimated.

**27 Q: Is there a monetary penalty for an employer that does not have proper coverage?**

**A:** Yes. Pursuant to § 65.2-805, an employer that fails to insure when required under the Act shall be assessed a civil penalty of up to \$250 per day for each day uninsured, subject to a maximum civil penalty of \$50,000.00 plus costs.

For questions that are not addressed above, please contact the Insurance Department of the Commission by phone or by email:

**Phone:** (804) 205-3586; or

**Email:** [vwcinsurance@workcomp.virginia.gov](mailto:vwcinsurance@workcomp.virginia.gov)