

Answers to specific questions often vary depending on facts that may not be disclosed or be readily apparent. 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 if you need more than general information.

Am I required to obtain workers' compensation insurance?

Virginia law requires every employer who regularly employs three or more full-time or part-time employees to purchase and maintain workers' compensation insurance. Employers with fewer than three employees may voluntarily come under the Act.

How do I obtain workers' compensation insurance?

You may insure your liability as follows:

1. Purchase and maintain a workers' compensation policy from a company licensed in Virginia;
2. Apply to The Virginia Workers' Compensation Commission for approval as an independent self-insurer;
3. Become a member of a group self-insurance association licensed by the Virginia State Corporation commission; or
4. Enter into an agreement with a professional employer organization as provided in Section 65.2-801.A.4 of the Code of Virginia.

Can an employee exclude themselves from coverage?

Only an officer of a corporation and an appointed or elected Manager of an LLC may reject workers compensation coverage for accidents, but not for occupational diseases. To do so, officers must file a "Notice of Rejection" ([Rejection of Coverage](#) 16A) with the insurer **and** with the Commission. (Note: You must have a policy in which to exclude yourself from.) If the officers are paid regularly, they are nevertheless counted as employees to determine jurisdiction under the Act.

Does Virginia provide an exemption certificate? No.

Are volunteers employees?

Generally, volunteers are not employees under the Virginia Workers' Compensation Act. However, that does not preclude an insurance company from endorsing volunteers onto a workers' compensation policy in Virginia, providing the volunteer an opportunity to obtain a medical award if the injury is found to be a compensable injury under the Act.

Can a contractor require me to obtain coverage, even though I do not have three or more employees?

Yes. Since a statutory employer relationship exists for any particular job done through subcontractors, and since the insurance carrier does not have the right to inspect the employment records of the subcontractor, carriers have tended to assess a premium on the contractor for his or her subcontractors. To avoid this assessment, contractors may require their subcontractors to obtain workers' compensation insurance and furnish a certificate of insurance before beginning work.

I am an out of state employer who has obtained work in Virginia. Will my state's insurance cover the employees working in Virginia?

If the out of state employer has three or more direct or statutory employees working in Virginia it must obtain Virginia coverage. Please note that Virginia must be specifically listed under Section 3A of your workers' compensation policy. Virginia is a filing state and does not accept "Other States" or "All States" endorsements usually found under Section 3C of a policy. We suggest you speak with your agent to obtain additional information.

I am a Virginia company who has obtained work in another state. Will my Virginia insurance coverage cover the employees while out of state?

Inasmuch as the injured party may choose where he wishes to file his claim, if he files in Virginia, you should be familiar with our foreign injuries statute which 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.

We are a homeowners association in Virginia and from time to time hire contractors to perform maintenance and repairs on association common elements. Do we as an association need to consider obtaining workers' compensation insurance?

The need for a homeowner's association to have workers' compensation insurance will depend on the specific facts of each case. There is no clear cut answer as to whether all homeowner's associations need or do not need to acquire insurance, as the answer to this question is fact specific. Indeed, the law is not always clear, and there is no way for us to predict with certainty the ultimate outcome of any particular case. That being said, we suggest that you seek competent legal advice, and weigh the costs, risks, and benefits of having or not having insurance based upon that advice.

In general, the need to have insurance might depend on facts such as the corporate structure of the homeowner's association, and whether the association undertakes to perform its "trade, business or occupation" through direct or statutory employees. With certain exceptions, §65.2-101 defines "employee" to mean, inter alia, "every executive officer, including president, vice-president, secretary, treasurer or other officer elected or appointed in accordance with the charter and bylaws of a corporation .. ." Some decisions have held that it makes no difference whether the officer is compensated, or whether the corporation is even operating. Thus, non-compensated officers of the association might be deemed to be employees for purposes of requiring the association to have insurance, or for liability purposes. Likewise, depending on the facts, the employees or employees of subcontractors hired by the association or its manager to perform work might be held to be the employees of the association for insurance and liability purposes if it be found that these employees are performing the association's "trade, business, or occupation." That determination, again, is fact specific. There are other laws and facts that could also impact the decision in a particular case.

The Commission will adjudicate any actual case or controversy that is properly brought before it based upon the specific facts of that case and the applicable law. The Commission cannot give a yes or no answer to this question, except to suggest that you should consider acquiring insurance. In the unfortunate event that your association comes before the Commission either through our insurance enforcement efforts or due to a claim made by an injured employee, the Commission will adjudicate those cases based upon the evidence presented at that time.

We suggest you seek the advice of an attorney who can give advice after considering all the facts and circumstances of your particular situation.

I wish to dispute my audit, how do I do this?

The Virginia Bureau of Insurance ([Bureau of Insurance](#)) licenses, regulates, investigates and examines insurance companies, agencies and agents on behalf of the citizens of the Commonwealth of Virginia. Information pertaining to rules, rates, agents, regulated companies, and how to file a related complaint should be directed to the Bureau.

Virginia Bureau of Insurance

Street Address: Tyler Building, 1300 E. Main St., Richmond, Virginia 23219

Mailing Address: P.O. Box 1157 Richmond, Virginia 23218

Toll Free Phone: (Virginia Only) 1-800-552-7945 * TDD Phone: 804-371-9206

Ombudsman and Consumer Service Hotline Toll Free Phone: (Nationwide) 1-877-310-6560

BOI Main Phone: 804-371-9741*Agents Licensing Phone: 804-371-9631

Need additional information? Contact: bureauofinsurance@scc.virginia.gov