



COMMONWEALTH OF VIRGINIA  
VIRGINIA WORKERS' COMPENSATION COMMISSION  
1000 DMV DRIVE, RICHMOND VA 23220  
804-205-3586  
[www.vwc.state.va.us](http://www.vwc.state.va.us)

## **Workers' Compensation Information Sheet**

### **Workers' Compensation**

Virginia law requires that most employers carry workers' compensation insurance in order to cover their workers in the event of a work injury. Workers' compensation provides a tradeoff for both employers and employees. For the employer, it provides an exclusive remedy, shielding the employer from civil suit. For the injured worker, it provides prompt but limited benefits.

### **When is an Employer Required to Have Coverage?**

Virginia law requires that an employer who regularly employs three or more part-time or full-time employees carry Virginia workers' compensation coverage. If a business hires subcontractors to perform the same trade, business or occupation, or to fulfill a contract of the business, the subcontractor's employees are included in determining the total number of employees. For those employers required to have coverage, it is mandatory, there are no waivers and no exceptions.

### **Contractor and Subcontractor Issues**

Employers that hire subcontractors with employees have the coverage obligations listed above. This is true even if all subcontractors have their own coverage. A contractor should be aware that their insurance carrier can charge insurance premium for any subcontractor that is hired, even a sole proprietor with no employees, therefore a contractor should request and maintain proof of coverage for all subcontractors hired, and have available such proof available at audit time.

### **Who is an "Employee"?**

To properly count employees and determine if a business needs coverage it is important to know who counts as an employee. All of the following are considered employees:

- Corporate officers and LLC managers, even if they are not performing regular work or earning a regular salary
- Family members that perform work for the business
- Aliens
- Temporary, seasonal and part-time workers
- Minors
- Workers that perform work for churches, charities and non-profits

### **Independent Contractor vs. Employee**

Some business owners will designate a worker as "independent contractor" or pay them on a 1099. Under workers' compensation law, the designation and 1099 are not important. In the event a worker is injured, the facts of the work relationship are considered, particularly, 1) who controls how the work is performed, 2) can the worker be hired, 3) can they be fired, and 4) are wages paid for the work. If employer control is found, an "employee" relationship is established.

### **Does Virginia Have a Waiver Form for a Sole Proprietor?**

No. Virginia law does not lend itself to providing a waiver form for a sole proprietor.

### **How to Obtain Coverage**

In Virginia there are four means of insuring: 1) commercial coverage 2) self-insurance 3) group self-insurance, or 4) through a registered professional employer organization (PEO). Commercial coverage is available from an insurance agent or carrier. The two Virginia insurance organizations that maintain membership of most insurance agents in Virginia are listed below:

1. The Independent Insurance Agents of Virginia, telephone 804-747-9300
2. The Professional Insurance Agents Association of Virginia, telephone 804-264-2582

### **Proper Virginia Coverage**

Virginia requires proper coverage for work performed in Virginia. Out of state employers sometimes lack good Virginia coverage. For most out of state employers with a policy based outside Virginia, proper Virginia coverage can be accomplished by adding an endorsement on the existing policy. Virginia must be added to item 3A of the policy for the entity and FEIN (Federal employer ID) to be covered in Virginia. 3A of the policy lists the states where the business performs work and has "known exposure." Virginia 3C listing is not sufficient.

If the out of state employer's policy is with a carrier that is not licensed in Virginia, then the Virginia 3A endorsement cannot be added. Monopolistic state funds cannot cover Virginia. In the event Virginia endorsement cannot be added to a policy, the only way to properly insure is to obtain a Virginia workers' compensation policy with a Virginia licensed insurance carrier.

### **Employer Responsibilities**

- Review coverage requirements
- Carry proper workers' compensation coverage when required by law
- Report work injuries promptly to your insurance carrier using carrier's preferred method
- Post a Workers' Compensation Notice (VWC Form 1) in the workplace
- Be aware the cost of workers' compensation cannot be deducted from employee wages

### **How Much Does Workers' Compensation Insurance Cost?**

The cost varies depending on how hazardous work is in your industry. The three main factors that establish how workers' compensation premium is calculated are: 1)classification code (industry) 2)payroll; and 3)experience modifier, which is based on claim/loss history. A higher premium will be charged in a more hazardous industry, with higher payroll and when there are more claims.

### **How Can I Reduce the Cost of Workers' Compensation?**

Employers can take a variety of actions to reduce costs. Employers who are proactive with workplace safety and prevention have fewer work injuries, which can lower premium. Reporting work injuries promptly and offering prompt treatment can reduce claim costs. Providing transitional duty and return to work opportunities can also reduce claim costs.

### **Are There Penalties if an Employer is Uninsured?**

Yes. An employer that fails to insure for workers' compensation when required by law shall be assessed a civil penalty of up to \$5,000. per occurrence pursuant to § 65.2-805.

### **Insurance Underwriting Question and Disputes**

The Bureau of Insurance in State Corporation Commission regulates underwriting and can advise on such matters as rates, premium, classification codes and audits. You may contact the Bureau by phone at: (804) 371-9185 or by email at [bureauofinsurance@scc.virginia.gov](mailto:bureauofinsurance@scc.virginia.gov).



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1-877-664-2566  
Fax: 804-367-2239  
[www.workcomp.virginia.gov](http://www.workcomp.virginia.gov)

## Across State Lines Insurance Information

### Virginia Coverage Requirements

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 of the business, the subcontractor's employees are included in determining the total number of employees.

- An employer based outside of Virginia but performing work in Virginia through its own employees or through subcontractors, or regularly bringing workers into Virginia, must abide by Virginia workers' compensation coverage requirements.
- The workers do not need to reside in Virginia, the work need only be performed in Virginia.
- Coverage is required for an out of state business performing even temporary or seasonal work in Virginia.

### Proper Virginia Coverage

Virginia workers' compensation insurance coverage is required for work performed in Virginia. For many out of state employers with a workers' compensation insurance policy based outside Virginia, this can be accomplished with the addition of an endorsement on the existing policy. Virginia must be added to item 3A of the policy. 3A of the policy lists those states where the business performs work and therefore has "known exposure." Virginia listing under item 3C of the policy is not sufficient.

- Only a Virginia licensed carrier may write coverage in Virginia.

If the out of state employer's policy is with a carrier that is not licensed in Virginia, then the Virginia 3A endorsement cannot be added. Monopolistic state funds cannot cover Virginia. In the event Virginia endorsement cannot be added to a policy, the only other way to properly insure in Virginia is to obtain a Virginia workers' compensation insurance policy with a Virginia licensed workers' compensation carrier.

### No Reciprocity

Some states enter into reciprocal agreements with other states that allow employers with employees temporarily employed in another state to be exempt from the other state's Act under certain conditions and for a limited period of time. Virginia does not have a Reciprocal Agreement with any other state.