

## 2022-2023 Virginia Workers' Compensation at a Glance

### Permanent Disability Schedule VA Code §65.2-503(B)

Loss	Compensation Period
Thumb	60 weeks
1 <sup>st</sup> Finger - index	35 weeks
2 <sup>nd</sup> Finger - middle finger	30 weeks
3 <sup>rd</sup> Finger - ring finger	20 weeks
4 <sup>th</sup> Finger - pinky	15 weeks
1 <sup>st</sup> phalanx of thumb or any finger Loss of more than one phalanx of any digit is deemed the loss of the entire digit.	1/2 compensation for loss of entire digit
Great toe	30 weeks
Any other toe	10 weeks
1 <sup>st</sup> phalanx of any toe Loss of more than one phalanx of any digit is deemed the loss of the entire digit.	1/2 compensation for loss of entire toe
Hand	150 weeks
Arm	200 weeks
Foot	125 weeks
Leg	175 weeks
Eye	100 weeks
Hearing in one ear	50 weeks
Severe disfigurement	60 weeks maximum
Pneumoconiosis (asbestosis/silicosis)	
a. 1 <sup>st</sup> stage	50 weeks
b. 2 <sup>nd</sup> stage	100 weeks
c. 3 <sup>rd</sup> stage	300 weeks
Byssinosis	50 weeks

### Virginia Workers' Compensation Commission Contact Information

Main Address: 333 E. Franklin Street, Richmond, VA 23219

Customer Contact Center: (877) 664-2566

Clerk: (877) 664-2566

Claims Services Department: (877) 664-2566

EDI Quality Assurance: (877) 664-2566

Alternative Dispute Resolution: (804) 205-3139

### Minimum / Maximum Compensation Rates

Effective Date	Minimum Comp Rate	Maximum Comp Rate
7-1-22	\$322.50	\$1,290.00
7-1-21	\$298.75	\$1,195.00
7-1-20	\$284.25	\$1,137.00
7-1-19	\$275.50	\$1,102.00
7-1-18	\$270.50	\$1,082.00
7-1-17	\$260.75	\$1,043.00
7-1-16	\$249.00	\$996.00
7-1-15	\$243.75	\$975.00
7-1-14	\$241.75	\$967.00
7-1-13	\$238.75	\$955.00
7-1-12	\$233.75	\$935.00
7-1-11	\$226.25	\$905.00
7-1-10	\$221.25	\$885.00

Minimum comp rate applies only when 2/3 of AWW falls below that rate.  
If AWW is already below minimum rate, comp rate will equal AWW.

**Mileage reimbursement rate: \$.625 effective 7/1/22; \$.585 effective 4/1/22 - 6/30/22**

### Attorneys

**Central (Richmond): 901 Moorefield Park Dr. Suite 200 • Richmond, VA 23236**

Claire Cafritz Carr	(804) 521-6444	Claire.Carr@kpmllaw.com
Francie Georges	(804) 521-6469	Francie.Georges@kpmllaw.com
Rachel Riordan	(804) 521-6471	Rachel.Riordan@kpmllaw.com
Chris Wilson	(804) 521-6474	Christopher.Wilson@kpmllaw.com
Joe Smith	(804) 521-6473	Joseph.Smith@kpmllaw.com
Megan Wagner	(804) 521-6443	Megan.Wagner@kpmllaw.com

**Northern (Fairfax): 3950 University Dr. Suite 204 • Fairfax, VA 22030**

Jessica Gorman	(703) 691-3331	Jessica.Gorman@kpmllaw.com
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**Southwest (Roanoke): 2840 Electric Rd. Suite 111 • Roanoke, VA 24018**

Bob McAdam	(540) 776-3583	Robert.McAdam@kpmllaw.com
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**Eastern (Norfolk): 555 East Main St. Suite 1200 • Norfolk, VA 23510**

Claire Cafritz Carr	(804) 521-6444	Claire.Carr@kpmllaw.com
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### Time Periods and Deadlines

#### Claimant

- ◆ Notice of Accident - notice within 30 days of accident
- ◆ Notice of Occupational disease - notice within 60 days of diagnosis
- ◆ Supporting medical documentation - within 90 days of filing claim

#### Employer

- ◆ Employer's Accident Report - 10 days from notification of accident
- ◆ Waiting period - 7 days
- ◆ Recovery of waiting period - 21 days
- ◆ Payment of lump sum settlement - 44 days from approval
- ◆ Payment pursuant to award - 14 days

### Statutes of Limitation

**Injury by Accident** - 2 years from accident date; see tolling provisions in VA Code §65.2-602

**Change in Condition** - 24 months from date comp last paid under award

**Permanent Disability** - 36 months from date comp last paid under award

**Death** - 2 years from date of death, generally

#### Occupational Disease:

- ◆ 2 years from date diagnosis of work related disease communicated to claimant or 5 years from last exposure, whichever occurs first
- ◆ Pneumoconiosis - 3 years from date of diagnosis or 5 years from last exposure, whichever occurs first
- ◆ Byssinosis - 2 years from diagnosis or 7 years from last exposure, whichever occurs first
- ◆ Asbestosis - 2 years from diagnosis
- ◆ AIDS - 2 years after positive test

### Cost of Living Adjustments (COLA)

Effective Date	COLA %
10-1-22	7.40
10-1-21	1.40
10-1-20	2.30
10-1-19	1.85
10-1-18	2.15
10-1-17	2.05
10-1-16	0.55
10-1-15	0.55
10-1-14	1.50
10-1-13	1.70
10-1-12	3.10
10-1-11	1.60
10-1-10	3.05

- ◆ If accident occurs before July 1st, COLA is due October 1st of the same year
- ◆ If accident occurs after July 1st, no COLA is due until October 1st of the next year
- ◆ COLA benefits are NOT compensation within meaning of Act
- ◆ COLA does not apply to Temporary Partial Disability
- ◆ Eligibility: Where combined benefits for work comp and Social Security Disability benefit is less than 80% of the average monthly earnings

This sheet is intended to serve as a tool of convenience only and should not be construed as legal advice. Consult an attorney for legal advice pertaining to any specific legal issues or questions you may have.

### **Available Benefits**

Note: Combined benefits below *may not exceed 500 weeks* except for cases which qualify for lifetime indemnity benefits for Permanent Total Disability under VA Code §65.2-503(C)

Temporary Total Disability (TTD) VA Code §65.2-500

- ◆ maximum of 500 weeks; 66 ⅔% of Average Weekly Wage (AWW)

Temporary Partial Disability (TPD) VA Code §65.2-502

- ◆ maximum of 500 weeks; 66 ⅔% of difference between pre & post injury AWW

Permanent Partial Disability (PPD) VA Code §65.2-503(B)

- ◆ maximum as set forth in schedule; 66 ⅔% of AWW

Permanent Total Disability (PTD) VA Code §65.2-503(C)

- ◆ no maximum – lifetime benefits; 66 ⅔% of AWW; available when:
  - loss of any two members in same accident, including hands, arms, feet, legs, eyes
  - injury resulting in total paralysis
  - brain injury so severe as to render employee permanently unemployable

Medical Benefits VA Code §65.2-603

- ◆ no maximum; available for as long as necessary
- ◆ home modifications up to \$42,000

Death Benefits to dependents VA Code §65.2-512, -515

- ◆ when death occurs within 9 years of accident
- ◆ 500 weeks for beneficiaries presumed wholly dependent; 66 ⅔% of Employee's AWW
  - spouse living with employee at time of death
  - child under 18 years old
  - child under 23 years old if full time student
  - child over 18 years old who is incapacitated
- ◆ 400 weeks for most other beneficiaries
- ◆ burial expenses up to \$10,000; transportation up to \$1,000

### **Injury by Accident**

1) an identifiable incident; 2) that occurs at some reasonably definite time; 3) an obvious sudden mechanical or structural change in the body; 4) a causal connection between the incident and the bodily change.

#### **Must "Arise Out of Employment"**

Definition: When there is a causal connection between the conditions under which the work is required to be performed and the resulting injury.

Test: Whether injury followed as a natural incident of the work and a result of the exposure occasioned by the nature of the employment.

#### **Must occur "In the Course of Employment"**

Accident takes place within the period of employment at a place where, from the nature of the work, the employee may be reasonably fulfilling the duties of his or her employment or is doing something that is reasonably incidental to the employment.

### **Occupational Disease: VA Code §65.2-400**

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 employment

- ◆ must be direct casual connection between disease and work
- ◆ disease was natural incident of work and result of exposure caused by work
- ◆ can be fairly traced to employment as proximate cause
- ◆ no substantial exposure to employee outside of employment
- ◆ not a condition of the neck, back or spinal column
- ◆ disease had origin in risk connected with employment
- ◆ hearing loss and carpal tunnel syndrome are ordinary diseases of life but can still be compensable

### **Average Weekly Wage Calculation: VA Code §65.2-101**

- ◆ Divide gross earnings from 52 weeks prior to DOL by 52, or by number of weeks worked, if less than 52
- ◆ Do not count periods where over 7 days of work were missed consecutively
- ◆ If less than 6 week work history, use wages of similarly situated worker
- ◆ Earnings should include value of perquisites such as tips, per diem, meals, board, vacation pay and overtime
- ◆ Wages from second job can be added to current employment if duties are "substantially similar"

### **Termination of Open Award**

- ◆ Insurer may NOT unilaterally terminate any award!
- ◆ Must file agreement form or Employer's Application (Form 5A)
- ◆ Benefits are to be paid through the following dates:
  - ◆ **Return to work** - pay through date of return
  - ◆ **Release to full duty work** - pay through date of filing
  - ◆ **Release to light duty work** - cannot terminate yet; start vocational rehabilitation or accommodate restrictions.
  - ◆ **Refusal of selective employment/medical treatment/IME** - pay through date of refusal or 14 days before filing, whichever is later
  - ◆ **Failure to cooperate with voc rehab** - pay through date of filing
  - ◆ **All other Changes in Condition** - payment through date of filing
- ◆ Must file within 2 years from date comp last paid pursuant to Award



**Claire Cafritz Carr**

(804) 521-6444

Claire.Carr@kpmlaw.com



**Francie Georges**

(804) 521-6469

Francie.Georges@kpmlaw.com



**Jessica Gorman**

(703) 691-3331

Jessica.Gorman@kpmlaw.com



**Bob McAdam**

(540) 776-3583

Robert.McAdam@kpmlaw.com



**Rachel Riordan**

(804) 521-6471

Rachel.Riordan@kpmlaw.com



**Joe Smith**

(804) 521-6473

Joseph.Smith@kpmlaw.com



**Megan Wagner**

(804) 521-6443

Megan.Wagner@kpmlaw.com



**Chris Wilson**

(804) 521-6474

Christopher.Wilson@kpmlaw.com