

**Your Right to
Workers' Compensation
Benefits**

Provided as a public service by:

Ritchie
LAW FIRM P.L.C.

Serving Virginia & West Virginia

INTRODUCTION

The purpose of this brochure is to provide basic information to help you grapple with on-the-job injury claims. This brochure provides a general explanation of the Virginia Workers' Compensation Act, the benefits provided and some of your rights and obligations. It is not intended to substitute for professional legal advice.

When serious injuries occur, you will have your hands full dealing with dozens of problems only you can handle. You will need a lawyer to protect your claim and assure you get the compensation you deserve. This brochure should give you an idea of what you will face, the steps you may need to take to protect your interests, and how to select an attorney.

WHO IS COVERED?

You are covered by the Workers' Compensation Act if your injury or occupational disease "arose out of and in the course of your employment" and your employer regularly employs 3 or more full or part-time employees. If you are a farm laborer, your employer must have more than 2 full-time employees regularly in service.

Injury or death by accident

To be covered, an industrial injury or death by accident must "arise" out of and in the course of your employment and must take place while you were performing work for your employer at the place where you were assigned to work. Generally, an accident occurs at a particular time and place and is not the result of cumulative activity.

Occupational Disease

An occupational disease usually develops over time. Medical evidence must show that the disease was caused by the duties of your employment and that it did not result from conditions or activities to which you were exposed outside your employment.

Injuries Covered

Any injury, occupational disease, or death which occurs "out of and in the course of employment" is covered by the law. It does not matter who was at fault in the accident.

Covered injuries include broken bones, muscle strains, back and neck problems, loss of strength and/or flexibility, heart problems, diseases related to your employment, and others.

INJURED ON THE JOB

If you are injured by an accident or contract an occupational disease:

Report your Injury

As soon as possible, **give written** notice to your supervisor or someone in a supervisory position. In the notice explain when and how the accident or occupational disease occurred.

If the employer does not have actual notice of your injury (as might be the case where your supervisor approved you going to the hospital for x-rays), failure to give notice to your employer within 30 days from the date of your accident or 60 days from the date your occupational disease was diagnosed by a doctor may affect your right to benefits.

☛ ***Report your injury to any statutory employer***

If you work for a subcontractor, you should promptly give written notice of your accident or occupational disease to your direct employer and the general contractor. The time limitations above also apply to notice to your statutory employer.

☛ ***Report all accidents***

Report all accidents even if the injury seems minor. A small injury can develop into a serious problem.

***GETTING
COMPENSATION
FOR YOUR INJURIES***

In Virginia, workers' compensation claims must be preserved by filing a claim with the Virginia Workers' Compensation Commission within two years of injury or when your occupational disease is diagnosed and communicated to you by a physician, or the claim will be barred.

☛ ***File a claim***

Many workers' compensation claims are settled without filing the claim, but filing the claim may be necessary to protect your rights. You should consult a lawyer to determine how much time you have left before it is necessary to file a claim.

☛ ***What legal compensation is allowed?***

In Virginia, workers' compensation is a program which functions to replace income lost by a worker who is injured on the job. It helps restore earning capacity and often helps return the worker to productive employment.

☛ ***Do I need a lawyer?***

If your injury or illness is serious or if it affects your arms, legs, neck or back you should talk to a lawyer about your claim. People who handle their own claims often make innocent, but terrible mistakes. If you have any questions or doubts, seek the advice of an attorney experienced in workers' compensation law.

The sooner you seek the advice of a lawyer, the better. Early investigation can make the difference between winning and losing a case, and advice from an experienced attorney can help you through the most difficult times ahead. Most workers' compensation attorneys represent clients on a "contingent fee basis." This means they are paid a fee only if they win your claim and you collect.

If you have a serious injury, it is important that you hire a lawyer experienced in handling injury cases. Most lawyers will be interested in representing you if they think you have a good case. It is important to know how to make the right choice.

***How do I
find the right
lawyer for me?***

As a first requirement, your lawyer should be a specialist whose practice primarily handles injury cases. A lawyer who routinely handles criminal cases, divorces, wills, and other legal matters may not have the depth of experience needed to maximize your recovery. You should seek a lawyer experienced in handling workers' compensation and accident and injury law. Perhaps the easiest way to determine whether an attorney has the experience needed is to verify that he/she is certified by the National Board of Trial Advocacy. Board certified attorneys have to meet rigorous requirements involving trial experience, ethics and legal knowledge.

***Can I
determine what
my claim is
worth?***

It's not easy, and if you are handling your own claim you will probably be dealing with an insurance adjuster who is more experienced than you. The adjuster's goal is to minimize the amount paid to you, so take anything said with a grain of salt.

If you have been receiving weekly benefits for a substantial amount of time cash settlement may be an appropriate option, however, there are serious issues to consider as to future benefits and social security benefits. An attorney specializing in Workers' Compensation can help you address these issues.

MEDICAL TREATMENT

Who chooses my doctor?

After receiving notice of your industrial accident or occupational disease, your employer **is required** to give you a list of at least 3 doctors. You are required to select a treating doctor from this list. You may choose your own treating doctor if your employer does not give you a list. Do not allow your employer to force you to go to the "company doctor." Insist on the "list."

Your employer has to pay for services provided by the treating doctor, at the direction of the treating doctor, or by any specialist to whom the treating doctor refers you.

Your employer does not have to pay for medical care which is not authorized or which is not required by your industrial accident or occupational disease.

What should I tell my doctor about my accident and injuries?

The doctors who treat you will know you were involved in an accident, and will not generally ask for much detail. However, you should be careful not to overstate what happened.

You should give the doctor as much detail as possible about what happened to your body in the accident including things such as portions

of your body that were struck, location of bruises, areas of soreness, whether you lost consciousness, and problems with vision or memory. You should also be prepared to describe the kind of pain you experience, including the location of the pain; whether it is sharp or dull; whether it involves burning, tingling, or numbness; how long it lasts; what kinds of activities seem to aggravate the pain; and whether medication helps.

Finally, it is most important your doctor know your first priority is getting better, and you will do whatever is necessary to make a complete recovery.

In an emergency, treatment may be obtained at a hospital, emergency room or other emergency care facility. As soon as possible after the emergency treatment, you must notify your employer of the accident and treatment.

Other medical options

You may, at your own expense, consult a doctor of your choice for another opinion or for evaluation.

Your employer, or its insurance carrier, may ask you to submit to a physical or mental medical examination. You are required to keep this appointment. This appointment is for evaluation only and you are not required to accept treatment from this doctor.

No employer may obtain more than one examination per medical specialty (i.e. orthopaedics, neurology, etc.) without authorization from the Workers' Compensation Commission.

***Refusal of
medical treatment***

Your compensation payments may be suspended if you fail to attend any scheduled medical appointment or if you fail to accept treatment from a treating doctor.

***Changing a
treating doctor***

If you are dissatisfied with your medical treatment you may ask your employer or its insurance carrier to authorize a change in treating doctors. If they do not agree, you may ask for a hearing before the Virginia Workers' Compensation Commission to determine if there should be a change in doctors.

If you change doctors without permission, the employer or its carrier does not have to pay for your treatment.

***How to keep
your health care
providers from
suing you***

If you file a claim with the Workers' Compensation Commission for your injury, your health care providers must refrain from attempting to collect on your medical bills until an award is made on your claim. You should inform them from the outset that it is a workers' compensation claim.

***WHAT
BENEFITS
ARE
AVAILABLE?***

Workers' compensation provides several types of benefits.

Compensation is based on **your average weekly wage** which should be determined as soon as possible after your accident or disability. It is based on your gross earnings before the accident or disease and includes overtime and other benefits provided by your employer such as meals, uniform, car or housing.

***Medical
Care***

Your employer **must** pay for all reasonable and necessary medical costs for your industrial accident or occupational disease for as long as necessary. This will include all medical treatment, surgical procedures, prescriptions, medical supplies or equipment which are related to your injury and prescribed by your doctor. This will include future medical expenses related to your injury. This coverage is for life.

***Temporary
Total Disability
Benefits***

If you have a work-related disability which prevents you from performing any work, you are eligible for temporary total disability benefits.

These benefits are equal to two-thirds of your **average weekly wage**, up to the maximum set by law. Benefits may continue for a total of 500 weeks.

***The waiting
period***

You are eligible for time-loss benefits after 7 calendar days of disability. The 7-day waiting period begins the day you first lose time from work due to your injury or disease. If your disability continues for more than 21 calendar days, you will receive payment for the first 7 days.

***Temporary
Partial
Disability***

If you recover from your work-related disability to the point that you can return to light or part-time work but because of your injury you have a wage loss, you are eligible for temporary partial disability benefits.

These benefits are equal to two-thirds of your wage loss, up to a maximum set by law. Benefits may continue for 500 weeks from the date of accident.

***Permanent
Partial
Disability***

If you sustain a permanent loss of or loss of use of a body part, you are eligible for permanent partial disability benefits. This benefit is available for injuries to certain specified body parts such as fingers, arms, legs and eyes. This benefit is

not available for injuries to your back, neck or for general body disability.

Wage loss has no bearing on this benefit, and you can be fully employed or completely disabled and still be eligible. Benefits may be received when your injury reaches maximum medical improvement and are based on a formula set by law. You may receive this benefit at the same time you receive benefits for temporary partial disability.

If you are still disabled after full payment for your permanent partial disability, you may qualify for additional compensation for work incapacity.

Additional Benefits

To receive additional benefits, you should file an application with the Virginia Workers' Compensation Commission. If you file for additional benefits within 1 year from the date for which you last received compensation you must show that you are unable to perform your pre-injury job. If you file after 1 year, but within 2 years from the date you last received compensation, you must show a change in your physical condition from when you received permanent partial disability benefits.

Total and Permanent Disability

You may qualify for lifetime compensation benefits if you lose both hands, arms, feet,

legs, eyes or the use of any two in the same accident or if you are totally paralyzed or suffer a severe brain injury that makes you permanently unemployable in any gainful employment.

Death Benefits

If an employee dies as a result of a compensable industrial accident or occupational disease, the spouse, children under 18, children under 23 enrolled full-time in an accredited educational institution, and other persons dependent on the employee's earnings for support may be entitled to compensation and payment of burial expenses up to the maximum set by law.

Cost of Living Adjustment (COLA)

If you are receiving benefits for temporary total disability, death benefits or permanent total disability, you are eligible for the yearly "cost of living increase." You must request this supplement. Go to any Social Security office and request a paper stating that you are not receiving any Social Security benefits. Send this paper to the workers' compensation insurance company with a written request for your cost of living adjustments and mail a copy to the Virginia Workers' Compensation Commission.

This supplement is determined by the Workers' Compensation Commission and is based on the Consumer Price Index. This benefit is payable as of October 1 each year.

Travel Expenses

You are entitled to be reimbursed for travel expenses for going to and from all medical providers and for all job searches. You should keep an itemized account and periodically mail the expenses to your insurance company.

Medical Bills

You should mail any unpaid medical bills which were incurred by you for treatment for your on-the job injury or disease to the insurance company. The employer/insurance company is liable to pay for all medical bills related to your treatment for a job injury. Medical expenses and related services are covered for life.

***VOCATIONAL
REHABILITATION
SERVICES***

An employer is required to provide vocational rehabilitation to help injured employees return to suitable gainful employment. This may include vocational evaluation, job placement, and training.

Vocational rehabilitation must take into account the employee's pre-injury job, wage classification, age, aptitude and level of education, the likelihood of success in the new vocation and the relative costs and benefits to be derived from such services.

If an employee is medically released to perform light work the insurance carrier may try to place the employee in a light-duty position. If an employee is seriously injured, rehabilitation training, to teach the employee to do some other type of work, may be attempted. Training of this kind may be conducted by the Virginia Department of Rehabilitative Services or by the insurance carrier.

An employee must cooperate with vocational rehabilitation. An employee who does not may lose compensation unless the Virginia Workers' Compensation Commission rules the refusal was justified. An employee or employer may ask the Virginia Workers' Compensation to determine whether vocational rehabilitative services are appropriate.

***MAKING A CLAIM
FOR WORKERS'
COMPENSATION
BENEFITS***

You must protect your claim for workers' compensation benefits.

It is your responsibility to notify the Workers' Compensation Commission of your claim and your responsibility to file your claim within the time limitations.

Time limitations vary depending on the type of benefit. You should consult with an attorney if you are uncertain about the statute of limitations for your claims or call the Virginia Workers' Compensation Commission at 877/664-2566 or 804/367-8600 or write the Claims Division at 1000 DMV Drive, Richmond, Virginia, 23220.

If you have a claim for workers' compensation benefits, you should tell your employer as soon as possible. Your employer should notify the Virginia Workers' Compensation Commission within 10 days and notify its insurance carrier.

DEALING WITH THE INSURANCE COMPANIES

You will be contacted by a representative of the insurance carrier or your employer if it is self-insured. The adjuster is investigating your claim for your employer to determine if it will pay your claim. The adjuster will want to know how you were injured or how you got your occupational disease, who your doctors are, your wages and how long you have been disabled.

The adjuster may take a written statement from you about your claim. You should read

this statement carefully and make sure you understand the questions and answers before signing it. Always make the adjuster send you a copy of your statement for your signature to be certain it is accurate.

*Should I try
to deal with the
insurance company
myself?*

Claims adjusters work for insurance companies and must act for their interests. It's that simple. If you have serious injuries, there is too much at risk to go forward without professional help.

The insurance companies have lawyers protecting their interests, you need the same protection.

REMEMBER:

YOU MUST FILE A CLAIM IN WRITING WITH THE VIRGINIA WORKERS' COMPENSATION COMMISSION OR HAVE AN AWARD ENTERED WITHIN THE TIME LIMITATIONS FOR FILING YOUR CLAIM OR IT MAY BE FORFEITED.

YOU MUST FILE YOUR CLAIM WITH THE WORKERS' COMPENSATION COMMISSION WITHIN THE TIME LIMITATIONS EVEN IF YOUR EMPLOYER FILED AN ACCIDENT REPORT.

YOU MUST FILE YOUR CLAIM WITH THE WORKERS' COMPENSATION COMMISSION EVEN IF YOU RECEIVED PAYMENT OF WEEKLY COMPENSATION BENEFITS, SALARY OR MEDICAL EXPENSES.

IF YOUR CLAIM IS ACCEPTED

If the insurance carrier accepts your claim, you may be asked to sign a form called a **Memorandum of Agreement**. This form states that you were injured on the job or disabled by an occupational disease, lists any period of disability and has other information about your claim. Make sure all information is correct. The carrier is not required to send you the Agreement within any particular time.

After you and the carrier have signed the **Memorandum of Agreement** it must be sent to the Workers' Compensation Commission for an Award to be entered based on the information in the Agreement. The Award requires the carrier to pay your benefits. If the insurance carrier is going to send the **Memorandum of Agreement** to the Workers' Compensation Commission, you must be certain that it does this. An award should be entered by the Workers' Compensation Commission immediately after the **Memorandum of Agreement** is filed, and you should receive a copy.

Timeliness of Payments

If you are not already receiving benefits, your compensation payment should be received within 2 weeks from the date of the Award.

Penalty for Late Payment

You should receive payments on a regular basis, usually weekly or biweekly. If a payment is more than 2 weeks late you should contact the carrier. You should also contact the Workers' Compensation Commission and request that a 20% penalty be assessed and added to the total amount due.

IF YOUR CLAIM IS DENIED

If your claim is denied or if you are receiving benefits but have not been sent a **Memorandum of Agreement**, you must file an application for hearing with the Workers' Compensation Commission, within the time limitations.

Hearings

Hearings before a Deputy Commissioner or Commissioner will be conducted at a hearing site in the city or county where you were injured or in the adjoining city or county. You are not required to have an attorney although most claimants do. Your employer and its insurance carrier will be represented by an attorney.

The person hearing the case is an administrative law officer who evaluates the evidence presented by the parties. The hearing officer cannot help you prepare or present your case, although the hearing officer may question witnesses during the hearing.

Hearing Procedure

It is extremely important that you are prepared to present all your evidence at the hearing since there will be no opportunity to do so later if the case is appealed.

Before the hearing, you may request the Workers' Compensation Commission to issue a subpoena for a witness to appear at the hearing. You must provide the name and address of the witness. If you want the Workers' Compensation Commission to send the subpoena to the Sheriff for service you must enclose with your request a check made out to the Sheriff of the city or county where each witness lives.

You will also need to obtain medical reports from the doctors and hospitals who treated you. Copies of these reports must be submitted to the Workers' Compensation Commission and to the insurance carrier. These reports should be requested from the doctors or hospitals as far in advance of the hearing as possible.

Claimant's Evidence

If the hearing is on your application, you will be required to present all relevant evidence to prove your claim. After you have presented your evidence the employer and carrier will present their evidence.

At the hearing you will be required to testify under oath as to all aspects of your claim such as how you were injured, when and to whom

you gave notice, the names of medical providers, your earnings at the time of injury, any attempts to find light duty work and any earnings since your injury or disease.

Witnesses who were present at the time of your accident or who have first-hand information about your accident can testify for you. If your claim is based on an occupational disease you may want witnesses who can describe the work that caused the disease.

If you are claiming wage loss benefits, you must submit medical reports which prove your industrial accident or disease caused your disability. It usually is not necessary to have doctors testify because medical reports are received into evidence.

Your testimony, and the testimony of your witnesses, is subject to cross-examination by the attorney representing your employer and its carrier.

The employer's evidence

Your employer and its carrier will always be represented by an attorney at the hearing. After you present your evidence, the employer will present its witnesses to testify as to what they know about your claim. You can cross-examine any witness for the employer.

***The hearing
decision***

After hearing all the testimony and reviewing the evidence in the record, the hearing officer, usually in about 3 weeks, will send a written decision to the parties. If you are represented by an attorney, the decision is sent to your attorney.

***Review
Procedure***

Any party who does not agree with the hearing decision may appeal for a Review before the Workers' Compensation Commission. If sent by regular mail or by facsimile transmission (fax) the appeal must be received by the Workers' Compensation Commission within 20 days from the date stamped on the first page of the hearing opinion. An appeal request sent by certified mail must be mailed within 20 days.

If your appeal is not sent within this time, you will not be given a Review before the Workers' Compensation Commission.

***RETURN OR
RELEASE
TO PRE-INJURY
WORK***

If you are receiving benefits directed by an **Award** and you return to work or your doctor reports you can return to regular work, the insurance carrier will send you an **Agreed Statement of Fact**. This form states that you were able to return to work or did return to work on a certain day.

You should sign the form only if you agree with the information on it. After both parties have signed, it must be sent to the Workers' Compensation Commission and your Award for benefits will be changed or ended.

Your employer does not have to offer you a job or find work for you after you have been released to return to regular work by your doctor.

If you do not sign the **Agreed Statement of Fact**, the insurance carrier will most likely file an application for a hearing on a change in condition. The hearing is similar to that described in the Hearing section of this brochure except the carrier will have the burden to present evidence first to prove its case.

Return or release to light-duty

If you are released by your doctor to light duty work, you must accept work offered by or found with the help of the employer, which meets your medical restrictions even if the job pays less than your pre-injury work.

You must also cooperate with the carrier's attempts to locate work within your medical restrictions.

Failure to Cooperate

Failure to accept an appropriate job or to cooperate with job search efforts will result in suspension or termination of your benefits.

If you are receiving compensation directed by an Award and return to light-duty work that pays less than your pre-injury wage, you are entitled to a new Award for two-thirds of the actual wage loss up to a maximum set by law.

You may be asked by the carrier to sign an **Agreed Statement of Fact** identifying your light-duty status so the appropriate **Award** can be entered.

Your Duty to Find Work Within Your Restrictions

If you are not under an Award and are applying for benefits, either by an initial application or by a change in condition and have been released to light-duty work, you must prove you have made a valid attempt to find work within your medical restrictions.

Job Search

Examples of the kinds of efforts you should consider are: registering with the Virginia Employment Commission, regularly searching the help wanted advertisements and making applications for appropriate jobs.

Change in Condition

There are some situations in which you may ask for a hearing on change in condition. For example, suppose you were disabled from work due to an industrial accident or occupational disease, received benefits and then returned to work. If you became disabled again from the original accident or disease and the insurance carrier did not agree that you were entitled to additional compensation, you could ask for a hearing on change in condition.

Although you have 2 years from the last date for which you received compensation to file your application, you should file your change in condition application as soon as possible after you are disabled because you cannot be awarded compensation for more than 90 days before your application was filed.

The hearing procedure is similar to that described in the Hearing section of this guide. If your doctor determined you cannot perform your job but can perform other kinds of work, you must prove you made a valid attempt to find work within your medical restrictions.

Your Obligations

As an injured worker, you have certain responsibilities. Among the most important are:

1. You must notify your employer and statutory employer as soon as possible of a work-related accident or disease.
2. Keep appointments with your doctor and follow treatment plans.
3. Keep appointments for independent medical examinations.
4. Cooperate fully with persons who are helping you find employment. Cooperation includes attending appointments with employers, as well as taking other actions aimed at finding you appropriate work. Cooperation does not mean you have to reveal personal financial information to a rehabilitation worker.
5. Notify your employer and its insurance carrier if you return to employment or if you have an increase in earnings while you are receiving compensation benefits.
6. Report your current residential address and report any address changes to the Workers' Compensation Commission.
7. Attend scheduled hearings.
8. Attend depositions and answer interrogatory questions when directed by the Virginia Workers' Compensation Commission.

Your benefits may be jeopardized if you fail to meet these responsibilities.

CONCLUSION

Every reasonable effort has been made to ensure that the information presented here is correct. It is impossible to address every conceivable fact situation in a brochure. No brochure can teach the legal analysis sometimes required in accident cases. Laws change and specific situations may require the application of a different rule of law. For this reason, you should consult an attorney if you have questions not answered here and to confirm your chosen course of action is correct.

Each case is different and different facts may yield a result you would never expect from reading this brochure. The information in this brochure cannot replace the careful consideration of personal factors and changes in the law which may apply to your legal problem. While this information may help you, do not rely on it as the final answer to a legal question.

Roger Ritchie is certified by the National Board of Trial Advocacy for his experience representing injured persons in personal injury cases. Fewer than 1% of Virginia and West Virginia lawyers have this important certification. Also, at the Law Offices of Ritchie Law Firm P.L.C., our staff has years of experience working with Virginia's complex workers' compensation law.

Specializing in

ACCIDENT & INJURY LAW

Services We Provide

If you have been injured or have lost a loved one in an accident of any kind, we would like to help you. There is no charge or obligation to talk with us. We're paid a fee only when your claim is won and you collect.

Automobile Accidents

Some attorneys charge you for all the funds they collect for you including your car damage claim and others. When our clients need our help, we assist them in collecting their own group medical insurance benefits, automobile medical payments, car damage and rental car claims. We never charge a fee for this additional service.

Wrongful Death

Surviving family members usually have a right to a substantial recovery. Damages may include funeral expenses, medical bills, the value of the deceased's life, and loss of services, including the money likely to have been earned during his or her lifetime.

Defective and Harmful Products

We help people harmed by dangerous and poorly designed or manufactured products.

Other Accidents and Injuries

- * Pedestrian
- * Motorcycle
- * Slip & Fall
- * Injuries on Property
- * Medical Malpractice
- * Railroad Accidents
- * Construction Accidents
- * Insurance Claims
- * All other Accidents
Involving Injury or
Loss of Life

Please give us a call if you have any questions or legal needs.

Ask for our personal injury brochure.

Ritchie

LAW FIRM P.L.C.

Accident and Injury Law Centers, P.C.

Charlottesville.....	434-979-6123
Harrisonburg	540-433-6124
Martinsburg, WV	304-263-6124
Staunton	540-886-6124
Winchester	540-722-6125
Toll Free For All Offices	1-800-277-6124

24 Hour Emergency Service