



# WENK

## WHAT EMPLOYEES NEED TO KNOW



## DISCLAIMER

What Employees Need to Know (WENK) documents are not a substitute for the Virginia Workers' Compensation Act as found in title 65.2, in the Code of Virginia. They are also not a substitute for competent legal advice on matters relating to workers' compensation and employment law in Virginia. While every effort has been made to present the contents of the Act as accurately as possible, it should be noted that this document includes information, which may be subject to change as a result of future legislative action by the Virginia General Assembly. Case law rulings related to workers' compensation may also impact the contents and interpretation of the information contained in these bulletins. For a more complete resource on workers' compensation law, the reader is referred to the full text of the Virginia Workers' Compensation Act.



## WHAT EMPLOYEES NEED TO KNOW (WENK): FILING A WORKERS' COMPENSATION CLAIM

- Report any work related accident immediately to your supervisor.
- Your employer will complete the Employer's Report of Accident form which is to be filed with the Virginia Workers' Compensation Commission (VWCC). This is not a filing of a claim on the injured employee's behalf and does not protect his/her rights for lifetime medical benefits.
- After your employer files the first report, you will receive a booklet from the VWCC, which explains your rights and responsibilities under the Workers' Compensation Act. Read this carefully.
- As stated in the booklet you must file a claim within two years of the accident or injury date for lifetime medical benefits related to the injury.
- Filing a claim for lifetime medical benefits is optional but can only be accomplished by the injured employee filing a claim with the VWCC.
- The Virginia Risk Sharing Association is not the VWCC.
- A claim need only be a handwritten note to the VWCC requesting lifetime medical benefits.
- Include your name, your employer's name and the date of accident.
- Mail to the Virginia Workers' Compensation Commission at 333 E. Franklin Street, Richmond, Virginia 23219.
- The VWCC's telephone number is toll-free 1 (877) 664-2566. Their website is: [www.vwc.state.va.us](http://www.vwc.state.va.us).

If you do not file a claim within the two-year limit, benefits beyond the two-year period may be stopped.



## WHAT EMPLOYEES NEED TO KNOW (WENK): TIME LIMITS AFFECTING WC BENEFITS

**Filing a claim:** An employee has two years from the date of an accident to file a claim with the Virginia Workers' Compensation Commission (VWCC) for lost wages and or medical benefits. (See *Filing A Workers' Compensation Claim* – WENK bulletin.)

**Medical benefits:** When injuries/accidents involve either medical treatment only or lost time not exceeding the seven-day waiting period, the injured employee is not automatically entitled to lifetime medical benefits. The employee has two years from the accident date to request these benefits from the VWCC. If this request has not been made prior to the end of the two-year period, the employee's medical benefits cease at the two-year date.

**Change in condition:** When a claim is accepted as compensable, the VWCC enters an award – written notice that sets forth the terms and conditions of payment of compensation and medical benefits. The award is generally triggered by the employee signing an Agreement to Pay Benefits.

An award continues until there is a reason to modify it. This may be a change in the physical condition of the injured employee or a change in the conditions under which compensation was previously awarded, suspended or terminated.

For example, when an injured employee returns to work at regular or modified duty, loss wage benefits are terminated; however, the injured employee is entitled to lifetime medical benefits for any treatment related to the injury rendered or prescribed by the treating physician.

When an award is modified, the injured employee signs a Termination of Wage Loss Award, which provides the following information to an employee on time limitations:

1. An employee has two years from the last date compensation is paid under an award to make a claim for additional wage loss benefits. This can be accomplished by the employee signing a Supplemental Agreement to Pay Benefits or by filing a Claim for Benefits with the VWCC.
2. An employee has three years from the last date compensation is paid under an award to make a claim for permanent partial benefits (financial compensation for the functional loss of a body part).

**Occupational disease:** The employee must file a claim with the VWCC within two years after the diagnosis of a disease is first communicated (by the treating physician) to the employee or within five years from the last injurious exposure to the disease, whichever comes first.



## **WHAT EMPLOYEES NEED TO KNOW (WENK): PANEL OF PHYSICIANS**

- The Virginia Workers' Compensation Act gives the employer the legal right to establish a panel (list) of physicians to treat an injured employee for work-related injuries/illness.
- The purpose of the panel is to refer injured employees to that physician best qualified to respond to the employee's needs.
- The panel allows the employer to utilize reputable physicians to provide timely, appropriate care to injured workers.
- Panels must include at least three physicians who do not have an economic interest in the others' practices.
- A panel is offered to an employee upon notification of a work-related injury or occupational disease.
- When a panel is presented, an injured employee is asked to sign and date an acknowledgement of receipt of the panel.
- Treatment by providers outside of the panel may be at the injured employee's expense.
- If the injured employee requests, the employer must let the employee know if each physician on the panel is eligible to receive payment under the employee's health care coverage.
- Emergency room treatment is covered if a true emergency exists. Once the emergency is over the employee will be presented with the panel and a physician must be selected from that panel.
- Failure of the employer to offer a proper panel allows the employee to select a treating physician of his/her own choice.



## WHAT EMPLOYEES NEED TO KNOW (WENK): MEDICAL PAYMENTS

Immediately upon receipt, an employee should forward all bills related to a workers' compensation claim to the Virginia Risk Sharing Association (VRSA). Submit bills even if you believe that they have already been mailed to VRSA. Often medical providers will indicate that the insurance carrier has been billed, when in fact they have not.

The employer should complete and provide the employee with a First-Fill Prescription Program card, if medication is prescribed. The employee may take this card to a participating network pharmacy and be provided a 7 to 10 day supply of medication at no cost. This authorization is valid for one time use only. **VRSA must authorize any additional medication prescribed beyond the first fill.**

Should an employee incur the cost for any medication, a receipt may be submitted to VRSA for reimbursement consideration. The receipt should include the name of the physician who prescribed the medication, the name of the medication, the date purchased and the cost.

An employee is eligible for reasonable and necessary transportation costs in connection with medical treatment. This includes going to the hospital, doctor appointments and physical therapy. The cost of mileage to and from a pharmacy is not reimbursable. For mileage reimbursement, provide the following:

- Name of injured employee
- VRSA claim number
- Date of accident
- Date of travel
- Physician or other medical provider name
- Round trip mileage

The Virginia Workers' Compensation Commission (VWCC) establishes the mileage reimbursement rate. For the current mileage rate, contact your VRSA representative at 1 (800) 963-6800 or visit the VWCC Web site at: [www.vwc.state.va.us](http://www.vwc.state.va.us).

VRSA pays medical bills within 30 days of receipt of an itemized billing and supporting medical documentation. With proper documentation, most bills are paid within two weeks of receipt.

As allowed by the Virginia Workers' Compensation Act and in accordance with contractual agreements medical bills are reduced to the prevailing community rate. The Workers' Compensation Act makes it illegal for a medical provider to bill an employee for any balance as a result of this reduction. To challenge the amount of the reimbursement, the medical provider must file for review by the VWCC. If an employee receives a balance billing, forward it to VRSA.



## WHAT EMPLOYEES NEED TO KNOW (WENK): AVERAGE WEEKLY WAGE

The average weekly wage is determined by totaling the employee's actual earnings, including over time, for the 52 weeks immediately preceding the injury and dividing by 52.

If the employee worked less than 52 weeks, the total actual earnings is divided by the number of weeks worked, unless the employee was only employed for a relatively short period. In this case, the earnings of a similarly employed individual can be used.

When overtime, varied work hours, non-salaried employee, etc., do not provide for the usual calculation, a wage chart must be completed to determine an accurate average weekly wage.

If the injured employee has a second or part time job that is similar, these wages will be included in the computation of the average weekly wage. If the injured employee performs two dissimilar jobs for the same employer, the wages from both job are combined when calculating the average weekly wage.

### Weekly compensation rate

The weekly compensation is  $66\frac{2}{3}$  percent of average weekly wage.

Example: \$10,400, gross annual earning, divided by 52 = \$200 average weekly wage

\$200.00 average weekly wage
<u>x.66667</u>
\$133.33 compensation rate

All workers' compensation benefits are non-taxable.

### Maximum and minimum compensation rates

- Weekly benefits are subject to maximum and minimum rates.
- If an employee's compensation rate is greater than the maximum, the employee will receive only the maximum.
- If an employee's compensation rate is less than the minimum, the employee is entitled to either their full average weekly wage or the minimum rate, whichever is lesser.
- For the current maximum and minimum compensation rates, contact your VRSA representative at 1 (800) 963-6800 or visit the VWCC Web site at: [www.vwc.state.va.us](http://www.vwc.state.va.us).



## WHAT EMPLOYEES NEED TO KNOW (WENK): TEMPORARY TOTAL AND TEMPORARY PARTIAL DISABILITY BENEFITS

### Waiting period

An employee is not entitled to loss wage compensation for the first seven days of incapacity resulting from a work-related injury. Loss wage compensation begins on the eighth day of disability.

If disabled for more than 21 days (need not be consecutive), the employee receives compensation for the 7-day waiting period.

### Temporary Total disability benefits

The employee above is entitled to temporary total benefits equal to 66 2/3 percent of the employee's gross average weekly wage. (See *Average Weekly Wage/Compensation Rate*).

Example:      \$200 gross pre-injury average weekly wage  
                    x.66667  
                    \$133.33 temporary total compensation rate

These benefits are non-taxable subject to a maximum of 500 weeks.

### Temporary Partial disability benefits

When an injured employee has a decreased average weekly wage after returning to work in a modified, light duty or part-time job, the employee is entitled to temporary partial benefits.

Compensation is based on 66 2/3 percent of the difference between the average weekly wage at the time of the accident and after the accident.

Example:      \$200.00 gross pre-injury average weekly wage  
                    \$150.00 gross post-injury average weekly wage  
                    \$ 50.00 difference  
                    x.66667  
                    \$ 33.33 temporary partial compensation rate

These benefits are payable only if the employee still has restrictions by the attending physician.

If there is a medical release to the pre-injury position, no benefits are due, whether the employee is earning his pre-injury wage or not.

As the employee receives salary increases, the temporary partial benefits are reduced accordingly. These benefits are non-taxable subject to the maximum of 500 weeks, or until the employee is earning his pre-injury average weekly wage, whichever comes first.





## WHAT EMPLOYEES NEED TO KNOW (WENK): PERMANENT PARTIAL AND PERMANENT TOTAL DISABILITY BENEFITS

### Permanent Partial disability benefits

When there is loss of a member by amputation or permanent loss of use of a member, the employee is entitled to compensation for the functional loss. The Virginia Workers' Compensation Commission (VWCC) assigns a value to each member, in terms of a number of weeks of compensation for the loss of the whole member.

Permanent partial benefits are based on the percentage of functional loss of the member. The rate of compensation for permanent partial disability is calculated at 66 2/3 percent of the gross average weekly wage at the time of the injury. The percentage of loss is usually determined by medical evaluation; however, the VWCC will occasionally make this determination.

Example:      10 percent loss of use rating to an injured leg.  
                  175 total weeks for loss of whole leg as allowed by the Virginia Workers'  
                  Compensation Act  
                  x 10 percent permanent partial rating  
                  17.5 weeks

The employee would receive 66 2/3 of their average weekly wage for 17 1/2 weeks.

- Benefits are payable after an employee reaches maximum medical improvement.
- Permanent partial disability ratings are not provided for the neck, back or whole person.

### Permanent Total disability benefits

For an employee to receive permanent total disability benefits, the employee must meet one of the following criteria:

1. Loss of use or loss of both hands, both feet, both legs, both eyes, or any two of these in the same accident.
2. Injuries resulting in total paralysis.
3. Severe brain injury which renders an employee permanently unemployable in gainful employment.

In determining the extent of loss or loss of use of each member, the ability of the employee to use the affected member to engage, to a substantial degree, in any gainful employment must be considered.

These non-taxable benefits entitle an employee to lifetime loss wage compensation benefits.



## **WHAT EMPLOYEES NEED TO KNOW (WENK): DEATH BENEFITS AND COST OF LIVING ADJUSTMENTS**

### **Death benefits**

When an employee is killed in a work-related accident the employee's dependent(s) are entitled to a maximum 500 weeks of compensation benefits at  $66 \frac{2}{3}$  of the employee's average weekly gross earnings.

Benefits continue to the widow/widower for the maximum 500 weeks unless he/she should remarry.

Benefits for dependent children continue until age 18, or 23 if enrolled in school as a full time student.

A \$10,000 maximum is provided for funeral expenses and \$1,000 maximum for body transportation.

### **Cost of Living Adjustments (COLA)**

Cost of Living Adjustments (COLA) are applicable on awards for temporary total, permanent total or death benefits. The employee/dependent must request an adjustment and produce evidence regarding the status of his/her social security disability benefits.

The COLA percentage increase is determined annually by the Virginia General Assembly and is effective on October 1.

Injuries, which occur after July 1, are not eligible for a COLA increase for the year of injury. For an employee/dependent to be eligible for COLA, the combination of the workers' compensation benefits and social security benefits must be less than 80 percent of the pre-injury average monthly earnings. When determining the monthly combined disability received by an employee/dependent, a deduction may be made for the monthly amounts paid for Medicare.



## **WHAT EMPLOYEES NEED TO KNOW (WENK): INJURY BY ACCIDENT**

All injuries that occur on the job are not covered by the Virginia Workers' Compensation Act. To be covered an injury must:

1. Be an injury by accident;
2. Arise out of the employment; and
3. Occur in the course of the employment.

### **What is an injury by accident?**

An accident is an event, which occurs and is not expected by the person to whom it happens.

The injury must:

- Involve an obvious sudden mechanical or structural change in the body, such as a broken arm or twisted ankle;
- Be identified with a specific movement made or action taken, or a specific incident or event, lifting a table, carrying a box;
- Take place at a reasonably definite time, (date and time of day); and
- Be connected to the accident, i.e. tripped over an open drawer and twisted an ankle.

Injuries sustained at an unknown time are not injuries by accident.

Injuries resulting from repetitive trauma, continuing mental or physical stress, or other cumulative events are not injuries by accident and are not covered by the Virginia Workers' Compensation Act.

### **What is arising out of?**

Arising out of refers to the time, place and circumstances under which the accident takes place. There must be some connection between the accident and a risk or hazard connected with the employment. It must be shown that due to the employment, the employee has been exposed to a hazard over and above those to which the public is exposed. Risks to which all persons are equally exposed not peculiar to the employment are not covered by the Virginia Workers' Compensation Act (such as insect bites).

### **What is in the course of?**

In the course of refers to time, place and circumstances under which the injury occurred. An accident occurs in the course of employment when it takes place within the period of the employment, at a place where the employee may reasonably be and while the employee is reasonably fulfilling duties of his employment or doing something related to employment.



## WHAT EMPLOYEES NEED TO KNOW (WENK): OCCUPATIONAL DISEASES

An occupational disease is one 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 the employment.

A condition must be a disease to receive benefits under the Virginia Workers' Compensation Act. The following requirements must be met for a disease to be considered compensable:

- An employee must prove that it is more likely than not that the disease arose out of and in the course of the employment and not from causes outside of the employment.
- The employment must be the proximate cause of the disease.
- The disease must be caused by conditions peculiar to the employment.
- The disease is not a condition of the neck, back or spinal column.

An ordinary disease of life aggravated by the work environment is not compensable.

Effective July 1, 1997, Carpal Tunnel Syndrome and Hearing Loss have been treated as ordinary diseases of life compensable if all of the above requirements are met. This is true even if these conditions are caused by cumulative trauma.

An employee must file a claim for an occupational disease within two years after diagnosis of a disease is first communicated (by the treating physician) to the employee or within five years from the last injurious exposure to the disease, whichever comes first.

The first communication of the diagnosis of an occupational disease to the employee is considered the "date of accident" for compensation benefits.

Reasonable and necessary medical benefits begin 15 days prior to the date of accident. Peculiar to the employment means conditions unique to the employment, not conditions to which the general public is exposed.

Injurious exposure means exposure to hazards on the job, which causes a disease. Coverage of an occupational disease is the responsibility of the employer where the employee was last exposed.



## WHAT EMPLOYEES NEED TO KNOW (WENK): VOCATIONAL REHABILITATION

When an injured employee is unable to return to their pre-injury position because of permanent physical restrictions placed on them as a result of their workers' compensation injury and their employer is unable to accommodate the permanent physical restrictions, then a certified vocational rehabilitation counselor is assigned to assist the injured employee in securing gainful employment.

Vocational placement efforts are not required until an employee is medically released to work by his/her treating physician.

A comprehensive interview is arranged between the injured employee and the rehabilitation counselor to gather the following information:

- Complete employment history
- Educational history
- Employee's vocational interest
- Employee's transferable skills

The rehabilitation counselor assists the injured employee with writing resumes and interviewing skills.

After transferable skills are determined and coordinated with realistic interests of the injured employee, job search begins.

Rehabilitation counselors must locate potential employers and confirm that a position within the employee's capacity is available prior to having an employee contact that potential employer.

Job search continues until a position is secured that accommodates the injured employee's permanent physical restrictions and is within his/her skill level.

The Workers' Compensation Act requires an employee to cooperate with reasonable vocational placement efforts. Cooperation with vocational efforts includes:

- Keeping appointments with the rehabilitation counselor and potential employers
- Participating or following up on bona fide job leads
- Appropriate presentation at job interviews
- Acceptance of gainful employment within an employee's permanent physical restrictions

If an employee does not cooperate with return to work efforts, compensation benefits can be suspended. Benefits are resumed if the employee makes a good faith effort to secure gainful employment and meet with the vocational counselor.



## WHAT EMPLOYEES NEED TO KNOW (WENK): EXPOSURE CLAIMS

- The Virginia Risk Sharing Association will pay for all necessary, related and reasonable testing for employees exposed to blood or bodily fluid as a result of an “injury by accident.”
- An injury by accident is an “identifiable incident or sudden precipitating event [that results] in an obvious sudden mechanical or structural change in the body” (Morris v Morris – 1989, Supreme Court). An example of an “injury by accident” is a needle stick or bite.
- Preventative care procedures are reviewed on a case by case basis for necessity as it relates to the specific injury.
- Payment for testing does not automatically ensure that a claim for an occupational disease is compensable in the event that the employee tests positive for a disease immediately following an injury or in the future.
- If an employee is exposed to blood or bodily fluid and an “injury by accident” did not occur, the tests are not paid by workers’ compensation for these individuals. However, it is required that this testing be paid for by the employer under the OSHA Bloodborne Pathogen Standard.
- All exposures should immediately be reported to your employer.
- If diagnosed with a disease, the employee has the right to make a claim under the occupational disease/ordinary disease of life portion of the Virginia Workers’ Compensation Act.
- An employee must file a claim for an occupational disease within two years after a diagnosis of a disease is first communicated to the employee or within five years from the last injurious exposure to the disease, whichever comes first.
- Specific requirements must be met for a disease to be considered compensable under the Workers’ Compensation Act. Such as:
  - An employee has the burden of proving by a preponderance of the evidence (more likely than not) that the disease is occupationally related and that it arose out of and in the course of the employment and not from causes outside of the employment.
  - The employment must be the proximate cause of the disease.
  - The disease must be caused by conditions peculiar to the employment (unique to the conditions in which the employee actually works, not the normal working conditions to which other workers, in the same occupation, are exposed).



## WHAT EMPLOYEES NEED TO KNOW (WENK): HEART/LUNG/CANCER PRESUMPTION

The Heart/Lung/Cancer Presumption, adopted in 1975, presumes that disability from heart disease, lung disease and seven types of cancer for certain public safety personnel are occupational diseases suffered in the line of duty, unless the employer can prove by preponderance of the evidence both 1) there is a non-work related cause of the disease, and 2) the employee's disease is not caused by the employment.

The employer is not required to exclude the employment as a cause of the disease but must prove the employment is not a proximate cause. The presumption eliminates the need for the employee to prove a causal connection between their employment and the disabling illness.

- **Public safety personnel covered under the presumption statute:** A sworn law enforcement officer of a city, county or town; a salaried firefighter; or a covered volunteer firefighter.
- **Medical requirements:** Hypertension; heart disease; respiratory disease (firefighter); or throat, rectal, pancreatic, prostate, ovarian, breast cancer or leukemia (firefighter).
- **Statutory requirements:**
  - There must be disability from work
  - For cancer, the employee must have:
    - 12 years of continuous service; and
    - Contact with a toxic substance encountered in the line of duty
- **Time limitations for filing a presumption claim:** Under the occupational disease portion of the act, an employee must file a claim within:
  - Two years after a diagnosis of an occupational disease is first communicated to the employee; or
  - Within five years from the last injurious exposure to the disease, whichever comes first.

In the absence of a "communication" by a physician, the statute begins to run when an employee has been diagnosed with a covered disease, has knowledge of the presumption, and believes that their condition is work related.

- **Evaluation of presumption claims:** If the employee has met the requirements of the act, medical records are used to determine if the claim is compensable. If there are limited or no non-work related factors, the claim is accepted. Claims may be denied for the following reasons:
  - They do not meet the requirements under the act such as:
    - Diagnosed with a disease not covered under the act
    - No disability resulting from the disease
    - Not a covered employee
    - Diagnosed with a congenital condition
    - Medical evidence proves the disease pre-existed the employment
    - Statute of limitations has run
  - We are unable to gather sufficient medical information to make a determination of compensability.
  - Specific non-work related causes or risk factors are present, such as: Family history of high blood pressure; tobacco use physical inactivity; high cholesterol obesity; diabetes; or personal stress.



## **WHAT EMPLOYEES NEED TO KNOW (WENK): INFECTIOUS DISEASE PRESUMPTION**

The Infectious Disease Presumption Statute adopted in July 2002 presumes disability, health conditions, impairment, or death from a documented exposure to blood or body fluids to certain infectious diseases for certain public safety personnel are occupational diseases suffered in the line of duty, unless the employer can prove by preponderance of the evidence to the contrary.

The presumption eliminates the need for the employee to prove a causal connection between their employment and the illness.

### **Public safety personnel covered under the Infectious Disease Presumption**

- A salaried firefighter
- A covered volunteer firefighter
- A paramedic
- An emergency medical technician
- A sworn law enforcement officer of a county, city, or town

### **Medical requirements**

- Hepatitis (A, B, non-A, non-B and C)
- Meningococcal Meningitis
- Tuberculosis
- HIV (type I or type II)

### **Time limitations for filing a presumption claim**

Under the occupational disease portion of the act, an employee must file a claim within:

- Two years after a diagnosis of an occupational disease is first communicated to the employee; or
- Within five years from the last injurious exposure to the disease, whichever comes first.

In the absence of a “communication” by a physician, the statute begins to run when an employee has been diagnosed with a covered disease, has knowledge of the presumption and a belief that their condition is work related.

### **Documentation and other requirements**

A covered employee who tests positive for one of these diseases, but has not incurred disability, is entitled to make a claim for medical benefits, which includes an annual medical examination, medical treatment and prophylactic medications.

If a vaccine or other form of immunization or prophylaxis exists or becomes available, the employee is required to undergo the treatment unless the treating physician advises, in writing, the immunization or prophylaxis would pose a significant risk to the employee’s health. Absent such written document, the refusal by the employee disqualifies them from the benefit of the presumption.





## **WHAT EMPLOYEES NEED TO KNOW (WENK): VIRGINIA WORKERS' COMPENSATION COMMISSION HEARINGS AND APPEALS**

The Virginia Workers' Compensation Commission (VWCC) is the governing body with jurisdiction over all claims filed under the Virginia Workers' Compensation Act. The VWCC is comprised of two levels – deputy commissioners and the full commission. There are more than 20 deputy commissioners who hear cases in different regions of Virginia; three commissioners sit on the full commission that meets in Richmond.

When a claim is disputed, either party (employee or employer) may request a hearing before the VWCC. Employees complete a Claim for Benefits application and employers complete an Employer's Application for Hearing. Each party will receive a copy of the other party's filing. Medical evidence supporting the injury must be attached to the application.

The application is referred for a decision on the record (written) or a hearing. A hearing date will be set for both parties to appear for oral argument before a deputy commissioner. If a hearing date is set the location will be near where the employee resides. A deputy commissioner will decide the case and a written opinion will be mailed to both parties.

If either party is dissatisfied with the deputy commissioner opinion, the case may be appealed to the full VWCC within 20 days of the decision. No new evidence can be presented at the appeal. The parties file brief written statements to support their positions. Occasionally oral argument is granted.

If either party is dissatisfied with the full VWCC opinion, an appeal can be made to the Virginia Court of Appeals within 30 days of the decision. The Court of Appeals can refuse the case in which instance the full VWCC opinion will stand, or remand it back to the VWCC for a rehearing. Oral arguments are generally granted.

In rare cases, the Virginia Supreme Court will accept an appeal from the Court of Appeals. The Supreme Court has the right to reject any case. Appeals will be accepted only if the case involves a substantial constitutional question or is of significant precedential value.

It can take several months to receive a hearing at the deputy commissioner level and an additional two to four months for the full VWCC, with six to nine months to reach the Court of Appeals. Scheduling of hearings vary depending on the number of cases pending, cancellation/continuations and others.

An expedited hearing docket is available when a denial of benefits will cause an injured employee to incur severe economic hardship. For rules and regulations or to request an expedited hearing visit the VWCC Web site at [www.vwc.state.va.us](http://www.vwc.state.va.us) or call 1 (877) 664-2566.



## **WHAT EMPLOYEES NEED TO KNOW (WENK): USE OF LEGAL COUNSEL**

When a workers' compensation claim is disputed, The Virginia Risk Sharing Association (VRSA), as insurance administrator, is required by statute to use legal counsel to represent them during any litigation/hearing process.

However, employees are not subject to the same law. Employees may retain an attorney during the claims process. Not being represented (pro se) does not jeopardize an employee's claim for benefits. An employee can choose at any point during the claim process to obtain an attorney.

### **Conversations with employee**

When an employee is represented by an attorney, VRSA representatives are not allowed to have any conversations with that employee without the permission of the employee's attorney. In addition, an employer is not allowed to discuss an employee's claim with that employee when represented.

### **Attorney fees**

The employee is responsible for paying his/her attorney fees. The Virginia Workers' Compensation Commission (VWCC) establishes the fees when an award or order is entered. Usually the attorney fee is deducted from the employee's lost wage benefits if awarded and paid directly to the attorney. The VWCC controls attorney fees to protect employees from entering into fee agreements which may significantly reduce the amount of benefits. The VWCC does not control the attorney fees paid by VRSA.

If an employee's claim is denied or an employee is not awarded lost wage benefits, then the employee is responsible for paying the attorney directly.

The VWCC has exclusive jurisdiction over all disputes concerning such fees or charges and may order the repayment of the amount of any fee, which has already been paid, that it determines to be excessive.



## **WHAT EMPLOYEES NEED TO KNOW (WENK): VIRGINIA RETIREMENT SYSTEM (VRS) WORK-RELATED DISABILITY RETIREMENT**

The Virginia Retirement System (VRS) and workers' compensation are two separate benefit programs; however, when a work-related injury/illness is sustained, these two programs may overlap.

To qualify for VRS work-related disability an employee must:

- Have a disability from a work-related injury or illness that is covered under the Virginia Workers' Compensation Act;
- Be functionally disabled from performing his or her job duties; and
- File an application with VRS while still on the employer's payroll or within 90 days of termination of employment or 24 months of leave without pay.

No minimum service requirements or maximum age limits apply.

The employee must apply for Social Security Disability and the guaranteed monthly benefit is offset by any Social Security benefits, if approved.

VRS benefits are also offset by workers' compensation benefits, during the period these benefits are received.

VRS monthly guaranteed benefits are not taxable.

If an employee is released to their pre-injury duty or light/modified duty but refuses to return to work, their workers' compensation benefits cease. In this instance, VRS benefits will continue to be offset as if workers' compensation benefits were continuing.

VRS has the legal authority to recall disability retirees once per calendar year.

Employees may be denied VRS work-related disability even though they are receiving workers' compensation.

The information outlined is a basic overview of the VRS work-related disability program. All application requirements and benefits are not outlined here. VRS has published a four-page fact sheet which provides a more detailed explanation. For a copy or further information, contact VRS at 1 (888) 827-3847 or (804) 649-8059.