

# ATTENTION:

**Contractors / Subcontractors / Employers**

## **New procedure with WORKERS' COMPENSATION COMMISSION**

Your Certificate of Worker's Compensation Insurance (**Form 61A**) **MUST BE SUBMITTED ANNUALLY** even if you are not required to carry Worker's Comp Insurance. At some time in the future, it may be required that you submit it **DIRECTLY to VA Worker's Compensation Commission.**

Currently, you can file it by:

- Using the online link for the Virginia Worker's Comp Commission here (and on our website): <https://webfile.workcomp.virginia.gov/portal/vwc-portal/Form61A> to file it directly with the VA WCC. If you are unable to open the link in your current browser, try using Google Chrome. A YouTube instructional video on how to complete and file the Form 61A is available at -- <https://youtu.be/axr43dC2gMw>. If completed & submitted online to the WCC, you will immediately receive an "Insurance Acknowledgment" of compliance. You need to "save" or "download & print" that email of "Insurance Acknowledgment" and send it to the Frederick County Commissioner's office.
- Alternatively, an online link to file the form directly with the Commissioner's office as well as a link to the printable version of the form are accessible on our website at [www.fcva.us/biztax](http://www.fcva.us/biztax).

The Insurance Acknowledgment you receive from the WCC or the completed printable form must be sent:

- by fax to: 540-667-6487 OR
- by email to: [lmiller@fcva.us](mailto:lmiller@fcva.us) OR
- by mail to:

Leighann Miller  
Frederick County Commissioner of the Revenue's Office  
PO Box 552  
Winchester, VA 22604-0552

**If filing directly with the WCC, you must provide a copy of your "Insurance Acknowledgment" from the WCC to the County Commissioner of the Revenue in order to receive your original or renewed business license.**

To contact WCC—

by email: [vwcinsurance@workcomp.virginia.gov](mailto:vwcinsurance@workcomp.virginia.gov)

by phone: 804-205-3586



COMMONWEALTH OF VIRGINIA  
 VIRGINIA WORKERS' COMPENSATION COMMISSION  
 1000 DMV DRIVE, RICHMOND VA 23220  
 1-804-205-3586  
 1-877-664-2566  
 Fax: 804-367-2239  
[www.workcomp.virginia.gov](http://www.workcomp.virginia.gov)

**Workers' Compensation Information for Contractors and Subcontractors**

**Virginia Coverage Requirements**

Virginia law requires that an employer who regularly employs three or more 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.

Employee is broadly defined in workers' compensation. A corporate officer is an employee. "Employee" also includes part-time, full-time and seasonal workers, minors, aliens and working family members.

**Contractor Liability**

The legal requirement that a contractor bears potential workers' compensation liability for a subcontractor's employees is from the Statutory Employer law, § 65.2-302. This requirement applies to subcontractors that perform the same trade, business or occupation as the contractor or to fulfill a contract obligation of the contractor. Example: A homebuilding contractor that subcontracts the house electrical must count the employees of the electrical subcontractor because a house requires electrical.

A simple mathematical guide for determining whether a contractor is required to have coverage is for the contractor to add the sum total of all direct employees (the contractor's employees) plus all indirect employees (the subcontractor's employees). If the contractor has one employee and hires two subcontractors, with one employee each, the math would look like this:

Contractor's employee + Subcontractor 1's employee + Subcontractor 2's employee

$$1 + 1 + 1 = 3 \text{ employees}$$

The contractor above would be required to have coverage under the law. Contractor liability does not extend to the individual subcontractor or to sole proprietors with no employees, only to the subcontractor's employees. The contractor is required to have coverage even if one or all of the subcontractors have their own coverage. The contractor should gather and maintain proof of coverage for all subcontractors that it hires and it should not be charged premium for those with coverage.

**Voluntary Coverage**

Since a potential statutory employer relationship exists for any job done through subcontractors, some contractors will require that all subcontractors that they work with carry their own coverage, even sole proprietors and other subcontractors that are not required by law to carry coverage. This is because the contractor can be charged additional premium if the subcontractor's coverage is not present. Coverage is available to a business voluntarily, even when it is not required by law.



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

## *Virginia Workers' Compensation Commission*

### *Frequently Asked Insurance Questions for Employers*

---

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. Answers to specific questions often vary depending on facts and information that may not be disclosed or be readily apparent.

**Q: Am I required to obtain workers' compensation insurance?**

**A:** 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, the subcontractor's employees are included when determining the total number of employees for coverage requirements. Executive officers also count as employees. If the total number of all employees is more than two, workers' compensation is required. Workers' compensation is mandatory for those employers who meet the requirements under the law.

**Q: Does a sole proprietor with no employees need to carry workers' compensation insurance?**

**A:** No. A sole proprietor that has no employees and that does not hire subcontractors is not required by law to carry workers' compensation coverage. An individual that is not required by law to carry coverage can obtain it voluntarily.

**Q: I am a sole proprietor with no employees; can I obtain an Exemption Form?**

**A:** The Commission does not provide an exemption or waiver form for an employer that is not required to carry coverage under the Act. Some states offer such a form but Virginia does not.

**Q: How does an employer obtain insurance?**

**A:** There are several options for obtaining coverage:

- Purchase a policy from an insurance carrier licensed in Virginia
- Obtain approval from the Commission to be self-insured (must meet minimum requirements)
- Become a member of a licensed group self-insured association
- Enter into an agreement for Professional Employer Services with a PEO registered in Virginia

**Q: Can I purchase insurance from the Commission?**

**A:** Insurance coverage is not available from the Commission. Coverage is available through an insurance agent or carrier. The two statewide insurance organizations maintain membership of most agents:

- The Independent Insurance Agents of Virginia, telephone 804-747-9300, website: [iav.com](http://iav.com)
- The Professional Insurance Agents Association of Virginia and the District of Columbia, telephone 804-264-2582, website: [plavadc.com](http://plavadc.com)

**Q: How much does workers' compensation insurance cost?**

**A:** The cost of a workers' compensation policy is determined by three main factors: 1) the type of work performed (classification code), 2) payroll, and 3) experience or loss history. Workers' compensation insurance rates are higher for more hazardous industries and for business with more frequent claims. While rates are set by the Bureau of Insurance each year, insurers can offer discounts or credits so premium can vary by insurer. The best way to obtain an accurate sense of policy cost is to contact an agent or insurer and obtain one or more quotes.

**Q: How do I contact the Virginia State Fund?**

**A:** Virginia does not have a State Fund. Coverage is available through insurance agents or carriers

**Q:** I am unable to obtain coverage from an insurance agent or carrier, what can I do?

**A:** An employer that cannot obtain coverage in the voluntary market can contact the National Council on Compensation Insurance (NCCI) which manages Virginia's assigned risk market. Phone: 1-800-622-4123.

**Q:** I only hire independent contractors, do I need coverage?

**A:** Designating a worker as an "Independent Contractor" or paying them on a 1099 does not define a worker's employment status. Whether a person is an "employee" or not is governed by common law principles. A person is generally considered an employee if: 1) they are selected, 2) can be dismissed, 3) earn pay or wages, and 4) control is exercised over the means and method by which the work is performed. The last factor is given the greatest weight. If inquiry indicates that "control" is exercised over the worker, the worker should likely be counted as an employee for coverage purposes.

**Q:** Are volunteers employees?

**A:** Generally, volunteers that are not paid or compensated are not employees under the Virginia Workers' Compensation Act. However, should a business wish to cover a volunteer they can be endorsed onto a policy.

**Q:** Can I exempt an employee from my policy?

**A:** Workers' compensation is statutory, that means it is required by law, therefore an employer cannot exclude an individual employee or employees from a policy, by waiver or by any other means. For an employer that is required to carry coverage all employees are covered and cannot be exempted. The only employees that can "reject" coverage are executive officers and LLC managers because the law provides a means for them to affirmatively reject coverage should they choose to do so. In order to reject coverage the business must have valid coverage and the officer or manager must file a Rejection of Coverage form with the Commission for approval and must also file a copy with the insurer.

**Q:** Are corporate officers exempt from coverage?

**A:** No. Under Virginia law executive officers (corporate officers) and LLC managers are defined as employees. An executive officer is defined by the law as the president, vice-president, secretary, treasurer or other officer elected or appointed in accordance with the charter and bylaws, and the LLC manager elected or appointed in accordance with the articles of organization or operating agreement of a LLC. Such individuals are employees even if they do not perform regular work for the business or earn a regular salary. The only exception is a noncompensated officer of a tax exempt 501 (c)(3) corporation.

**Q:** We are a Virginia business with four LLC members and no employees. Are LLC members exempt from coverage requirements?

**A:** Under Virginia law, a limited liability company (LLC) Manager is identified as an employee and a member of a LLC having only one member is not covered under the Act unless they notify the insurer of such election. The statute is silent as to multiple members. It is important, therefore, to ask questions to determine if any member performs work for the business as an employee. If so they should be counted as employee. If the business has more than two employees, then coverage is required.

**Q:** We received notice that our policy cancelled. We have new coverage. What do you need from me?

**A:** If you obtained new coverage please send proof of coverage consisting of the binder, Declaration Page or Information Page to the Commission by mail (VWC, 100 DMV Dr, Richmond VA, 23220), Fax (804-367-2239) or email ([vwcinsurance@workcomp.virginia.gov](mailto:vwcinsurance@workcomp.virginia.gov)). We do not

**Q:** Is my occupational accident policy sufficient in place of a workers' compensation policy?

**A: If you are an employer that is required by law to carry workers' compensation then no other form of insurance can substitute for workers' compensation.**

**Q: We are a business based outside Virginia and only performing work in Virginia temporarily. Do we need coverage? I understand that our state has reciprocity with many states.**

**A: Virginia law requires Virginia workers' compensation coverage for work performed or subcontracted in Virginia, even if it is temporary work. Virginia does not have reciprocity with any other state.**

**Q: We are based outside Virginia and we have coverage but we received a notice from the Commission that our coverage is insufficient. What does this mean?**

**A: If you valid coverage outside Virginia you likely do not have proper Virginia coverage. Virginia must be listed in Item 3A of the policy which is for known exposure. Virginia listing in Item 3C of the policy is not sufficient for work in Virginia. If your carrier is not licensed in Virginia then a separate policy with a Virginia licensed insurance carrier is required.**

**Q: I am a Virginia company that has obtained work in another state. Will my Virginia insurance cover the employees while out of state?**

**A: In the event a worker is injured in another state the injured party may have a choice of where they may file a claim. You should check with the workers' compensation commission of the other jurisdiction to determine if your policy is sufficient to meet their coverage requirements. In the event one of your workers wishes to make a Virginia claim, the foreign injury statute 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.**

**Q: Does Virginia offer a workers' compensation insurance discount for a Drug Free workplace?**

**A: Yes, insurers are required by law to provide a premium discount of up to 5% to employers that institute and maintain a drug-free workplace program. Each insurer must establish discount criteria.**

**Q: Does Virginia offer a workers' compensation insurance discount for a workplace safety program?**

**A: There is no provision of the Virginia Workers' Compensation Act nor any program of the Commission that provides an insurance discount for a workplace safety program, however, an insurer may offer a credit or discounting for an employer's workplace safety program or for workplace safety efforts.**

**Q: I am hiring nursing aides to care for my sick mother in my home. Do I need workers' compensation to cover them?**

**A: No, domestic employment is one type of employment for which workers' compensation is not required. The household or homeowner is not required to obtain coverage for one or more workers that perform work for the care, comfort and convenience of members of the household. There is no numerical limit to the number of domestic employees you may have performing work for you or your household. A business, however, that performs work in people's homes does not have the right to claim the domestic employment exception.**

**Q: We were audited and now we are being charged audit premium for two independent contractors we hired last year. Can the insurer do this?**

**A:** An employer is billed at policy inception based on estimated exposure. The insurer often conducts an audit at policy period end (commonly one year) to determine actual exposure. In the event a business hires an independent contractor or subcontractor, they represent exposure to the insurer, thus the employer should obtain proof of coverage from all independent contractors or subcontractors hired. For those with valid proof of coverage provided at audit the employer should not be charged premium. If there is no proof of coverage or it is not valid the insurer can charge audit premium for that additional exposure.

**Q: Is there some way that I can verify the coverage of the subcontractors that I hire?**

**A:** There is an Insurance Coverage Search tool available on the Commission's website which allows the public to search for employer coverage by business name or by Federal Employer Identification number. The insurance coverage search tool is available at: <https://www.ewccv.com/cvs/> You may also call the Insurance Department of the Commission at 804 205-3586 to ask us to check for coverage.

**Q: We have been notified that our classification codes changed and our insurance premium went up significantly. How can I contest this?**

**A:** Workers' compensation insurance is under dual regulation in Virginia, as in most states. For matters that pertain to class codes and underwriting the best source for information is the Bureau of Insurance in State Corporation Commission. E-mail: [bureauofinsurance@scc.virginia.gov](mailto:bureauofinsurance@scc.virginia.gov) or Phone: 804-371-9185.

**Q: We are a homeowners association in Virginia and have received recent advice from a board member that we need coverage. We have no employees. Why do we need coverage?**

**A:** I do not have sufficient information to know if your homeowners association (HOA) is required to carry coverage. If any board members are executive officers then they must be counted as employees. Also, if the HOA hires one or more subcontractors with employees to perform work required of the HOA (such as lawn care) then the HOA would be required under the law to count the subcontractor's employees when counting employees to determine coverage requirements. If the total of the HOA's own employees plus subcontractor's employees is more than two, then coverage is required. If a subcontractor has coverage the HOA should obtain proof of their coverage and should not be charged premium for a subcontractor with coverage, but this does not alter the HOA's coverage requirement.

**Q: My workers' compensation went up recently. Can I deduct a portion of the cost of my workers' compensation from my employees' wages?**

**A:** No. It is not lawful for any employer to deduct any part of the cost of workers' compensation insurance from an employee's wages or to request any contribution. An employer that violates this provision of the law is subject to a fine of up to \$100 for each offense and to refund the employee any amount deducted or contributed.

**Q: Is there a monetary penalty for an employer that does not have proper coverage?**

**A:** Yes. Pursuant to § 65.2-805, an employer that fails to insure when required under the Act shall be assessed a civil penalty of not less than \$500 nor more than \$5,000 for each instance of noncompliance, in addition to other penalties applicable under the title.

For questions that are not addressed above please contact the Insurance Department of the Commission by phone or by email:

Phone: (804) 205-3586; or

Email: [vwinsurance@workcomp.virginia.gov](mailto:vwinsurance@workcomp.virginia.gov)