

WORKERS' COMPENSATION

Virginia's Workers' Compensation System and Disease Presumptions, 2019

Deadline for insurers' claims decisions ► The General Assembly may wish to consider amending Title 65.2 of the Code of Virginia to require (i) workers' compensation insurers, including those employers who are self-insured, to make a determination as to whether a worker's injury or disease is accepted as compensable and notify the worker, as well as the Virginia Workers' Compensation Commission, of this decision within 30 days of receiving notice of the injury or disease, and (ii) VWC to enforce this requirement through monetary penalties imposed on insurers and self-insured employers for noncompliance. (Recommendation 7)

Timeliness of insurers' claims decisions ► The General Assembly may wish to consider including language in the Appropriation Act to direct the Virginia Workers' Compensation Commission to report annually on (i) the extent to which workers' compensation insurers, including those employers who are self-insured, are making compensability determinations and notifying workers of their decisions in a timely manner after receiving notice of work-related injuries and diseases and (ii) actions taken by VWC to ensure the timeliness of these decisions. The first report should be submitted by VWC to the House Appropriations and Senate Finance committees no later than June 30, 2022. (Recommendation 8)

Ombudsman office to assist unrepresented workers ► The General Assembly may wish to consider amending § 65.2-200 of the Code of Virginia to create an ombudsman office within the Virginia Workers' Compensation Commission, led by an attorney in good standing with the Virginia State Bar. The office should (i) provide timely and confidential educational information and assistance to unrepresented parties to help them understand their rights under the Workers' Compensation Act and the various processes available to them; (ii) carry out duties with impartiality and not provide legal advice; and (iii) maintain data on inquiries received, types of assistance requested, and actions taken. (Recommendation 12)

Notice of injured workers' right to appeal claims decisions ► The General Assembly may wish to consider amending the Code of Virginia to require workers' compensation insurers, including those employers who are self-insured, to include a notice in any letter denying workers' compensation benefits that the injured worker has a right to dispute the claim denial through the Virginia Workers' Compensation Commission (VWC). The notice should indicate (i) VWC's neutral role within the workers' compensation system to adjudicate disputed claims; (ii) the need to file a claim for benefits with VWC within the applicable statute of limitations; and (iii) contact information for VWC. (Recommendation 13)

Cumulative trauma injuries ► The General Assembly may wish to consider including language in the Appropriation Act to direct the Virginia Workers' Compensation Commission (VWC) to hire an independent and reputable national research organization with expertise in workers' compensation policy to (i) develop options for covering workers' cumulative trauma injuries through Virginia's workers' compensation system and (ii) summarize key policy considerations associated with modifying statute to cover cumulative trauma injuries. The research organization should take into consideration (i) the annual number of cumulative trauma injuries in Virginia and other states; (ii) other states' evidentiary requirements for claiming workers' compensation benefits for such injuries; (iii) necessary changes to Virginia's statutory provisions; and (iv) impacts on workers, employers, and insurers. VWC should ensure the proposed options and policy considerations are submitted to the House Appropriations and Senate Finance committees by November 30, 2020. (Recommendation 15)

Cumulative trauma injuries ► The General Assembly may wish to consider amending Title 65.2 of the Code of Virginia to make cumulative trauma injuries compensable under the Workers' Compensation Act. (Recommendation 16)

Medical fees reviews ► The General Assembly may wish to consider amending § 65.2-605.2 of the Code of Virginia to authorize and direct the Virginia Workers' Compensation Commission (VWC) to include in its existing biennial reviews of Virginia's workers' compensation medical costs a comparison of Virginia's medical fees to Medicare reimbursement rates for the same services in Virginia. (Recommendation 17)

Psychological injuries ► The General Assembly may wish to consider amending §65.2-101 of the Code of Virginia to specify that psychological injuries can be compensable even if the event causing the psychological injury could have been reasonably expected by the worker to have occurred as part of his or her job responsibilities. (Recommendation 18)

Review process for disease presumptions ► The General Assembly may wish to consider amending Title 65.2 of the Code of Virginia to establish a process for reviewing the scientific research on proposed new presumptions or modifications to existing presumptions under the Virginia's Workers' Compensation Act prior to legislative action, with consideration given to (i) the strength of the association between the occupation and the disease and the relevant hazards to which workers in the occupation are exposed; and (ii) the relevance, quality, and quantity of the literature and data available to determine the strength of evidence. (Recommendation 19)

Toxic exposure requirement for cancer presumption ► The General Assembly may wish to consider amending § 65.2-402.C of the Code of Virginia to provide that a firefighter may meet the toxic exposure requirement either by demonstrating (i) exposure to a toxic substance, as is currently required, or (ii) participation in responses to fire scenes, either during the fire or afterwards as part of clean-up or investigation. (Recommendation 20)

Disability requirement for presumptions ► The General Assembly may wish to consider amending § 65.2-402 of the Code of Virginia to clarify that, for the purposes of establishing the presumptions, (i) a total or partial disability may be demonstrated through wage loss, lost work time, or medical evidence and that (ii) workers seeking only medical benefits may demonstrate a total or partial disability solely through medical evidence. (Recommendation 21)

Length of service requirement for cancer presumptions ► The General Assembly may wish to consider amending § 65.2-402.C of the Code of Virginia to reduce the years of service requirement from 12 years. (Recommendation 22)

Length of service requirement for cancer presumptions ► The General Assembly may wish to consider amending § 65.2-402.C of the Code of Virginia to remove the word “continuous” from the years of service requirement. (Recommendation 23)

Cancer presumptions for firefighting OPTION ► The General Assembly could amend § 65.2-402 of the Code of Virginia to add brain and testicular cancers to the list of cancers that are presumed to have been caused by firefighting. (Option 1)

Cancer presumptions for firefighting OPTION ► The General Assembly could amend § 65.2-402 of the Code of Virginia to add colon cancer to the list of cancers that are presumed to have been caused by firefighting. (Option 2)

Cancer presumptions for firefighting OPTION ► The General Assembly could consider amending § 65.2-402 of the Code of Virginia to specify that the presumptions for breast, colon, ovarian, and pancreatic cancers covered by the statute shall not apply to workers’ compensation claims submitted after June 30, 2030. Prior to June 30, 2030, the General Assembly could direct an examination of the latest national research on the association between firefighting and these cancers. (Option 3)

Length of service requirement for cardiovascular disease presumptions OPTION ► The General Assembly could amend § 65.2-402 of the Code of Virginia to require that workers’ compensation claimants have completed a minimum number of years of service as a firefighter or police officer, including any time spent in required training, to claim the cardiovascular disease presumption. (Option 4)