

WORKERS' COMPENSATION AND DISEASE PRESUMPTIONS

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

RECOMMENDATIONS

Timeliness of insurers' compensability 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)

Right to dispute insurers' denial of workers' compensation benefits ► 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)

Making cumulative trauma compensable ► 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)

Comparing medical fees with Medicare reimbursement rates ► 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)

Scientific review of proposed 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)

Disease presumption eligibility ► 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)

POLICY OPTION

Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

Sunset date for certain disease presumptions ► 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)