

Review of Workers' Compensation

Authorized by the Joint Legislative Audit and Review Commission on December 10, 2018

WHEREAS, the Virginia Workers' Compensation Act (hereinafter referred to as "the Act") was enacted in 1918 to balance the interests of injured workers, employers, insurers, and other stakeholders in the spirit of the "compensation bargain" between employers and employees; and

WHEREAS, under the "compensation bargain" and the Act, in exchange for agreeing not to sue employers in tort via common law for workplace injuries, employees were guaranteed a no-fault system of wage replacement and medical treatment for injuries they might sustain due to their employment; and

WHEREAS, the Virginia Workers' Compensation Commission administers the workers' compensation program in Virginia and oversees the resolution of claims in accordance with the Act through mediation and hearings; and

WHEREAS, the Virginia Workers' Compensation Commission received more than 48,000 claims, and docketed nearly 12,000 cases for adjudication in 2017; and

WHEREAS, in most cases, in order to receive benefits under the Act, employees are required to prove by a preponderance of the evidence that they were injured and that they suffered the injury during and in the scope of the employment; and

WHEREAS, exceptions were created in the Act over the years to allow the presumption that certain conditions and diseases occur as a result of certain types of employment, unless these presumptions are overcome by a preponderance of evidence to the contrary; and

WHEREAS, at the time these presumptions were enacted, employees were having a difficult time proving claims for these particular types of conditions and diseases due to limitations in medical science, and there have been significant advancements in medical knowledge, diagnostic technology, and in exposure prevention since these presumptions were enacted; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission (JLARC) that staff be directed to review the operation and performance of the Virginia workers' compensation system and use of presumptions. In conducting its study, staff shall assess (i) whether claims are reviewed and processed promptly and fairly; (ii) whether the dispute resolution process is timely, effective, and equitable toward all parties; (iii) whether appropriate measures are in place to minimize the potential for fraud and abuse; (iv) whether Virginia's disease presumptions are appropriate and how they compare to presumptions established in other states; (v) whether the level of evidence required to claim or rebut a disease presumption is reasonable and appropriate; and (vi) whether workers' compensation benefits are appropriately coordinated with other benefits available to injured workers. JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including the Workers' Compensation Commission, local governments, the Virginia Association of Counties, the Virginia Association of Counties Risk Pool, the Virginia Municipal League, the Virginia Municipal League Insurance Programs, public safety and firefighter stakeholder groups, and private employers of firefighters shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of state agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia, including all documents related to all claims adjudicated or otherwise resolved by the Workers' Compensation Commission. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.