

# **Recommendations and Options: Virginia's Workers' Compensation System and Disease Presumptions**

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## **RECOMMENDATION 1**

The Virginia Workers' Compensation Commission should appoint at least one additional deputy commissioner assigned to handle hearings and mediations for the Fairfax office. (Chapter 2)

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## **RECOMMENDATION 2**

The Virginia Workers' Compensation Commission should ensure that its chief deputy commissioner issues guidance to deputy commissioners that communicates that they have discretion to prioritize the order in which they write their opinions so that they can maximize the number of opinions issued within 21 days. (Chapter 2)

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## **RECOMMENDATION 3**

The Virginia Workers' Compensation Commission should (i) modify its electronic reporting capabilities to calculate the number of days that each deputy commissioner has taken to issue opinions after the record close date; (ii) generate quarterly reports that will identify any deputy commissioners who have taken longer than the 21-day goal to issue a majority of their opinions; (iii) require the chief deputy commissioner to work with deputy commissioners to develop strategies to improve the timeliness with which these deputy commissioners issue opinions; and (iv) require the chief deputy commissioner to report annually to the full Commission on the timeliness with which deputy commissioners are issuing their opinions. (Chapter 2)

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## **RECOMMENDATION 4**

The Virginia Workers' Compensation Commission should expand the number of time slots available for full and final mediation by allowing staff attorneys to conduct full and final mediations in cases where neutral facilitation is selected by the parties. (Chapter 2)

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## **RECOMMENDATION 5**

The Virginia Workers' Compensation Commission should no longer refer to issue mediation (or issue facilitation) those dispute types that are infrequently resolved through issue mediation. (Chapter 2)

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## **RECOMMENDATION 6**

The Virginia Workers' Compensation Commission should assign at least one deputy commissioner to the Fairfax office who is certified to conduct mediations. (Chapter 2)

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### **RECOMMENDATION 7**

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. (Chapter 2)

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### **RECOMMENDATION 8**

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. (Chapter 2)

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### **RECOMMENDATION 9**

The Virginia Workers' Compensation Commission should provide interpreters for mediations upon request. (Chapter 3)

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### **RECOMMENDATION 10**

The Virginia Workers' Compensation Commission (VWC) should develop a comprehensive and easy-to-understand guide for injured workers, publish this guide online, and provide this guide to all Virginia workers who are reported to have been injured at work. At a minimum, the guide should include information on the rights of Virginia workers under the Workers' Compensation Act, the role of VWC in Virginia's workers' compensation system, the process for filing a claim and resolving disputes, services available at VWC, and how injured workers can find an attorney to represent them. (Chapter 3)

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### **RECOMMENDATION 11**

The Virginia Workers' Compensation Commission (VWC) should review by January 1, 2021 all of its written and online materials for communicating with and informing workers, employers, and insurers, to ensure that all materials are as clear, accurate, comprehensive, and accessible as possible. (Chapter 3)

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### **RECOMMENDATION 12**

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. (Chapter 3)

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### **RECOMMENDATION 13**

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. (Chapter 3)

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### **RECOMMENDATION 14**

The Virginia Workers' Compensation Commission (VWC) should send a notice to all injured workers for whom it has received a First Report of Injury, but who have not yet submitted a claim for benefits to VWC and are still within the applicable statute of limitations, which explains (i) the rights of injured workers to dispute an insurer's denial of workers' compensation benefits with VWC; (ii) the existence and role of VWC in Virginia's workers' compensation system; and (iii) the importance of filing a claim with VWC within the statute of limitations to protect the worker's right to benefits. This notice should be sent to all applicable injured workers as soon as possible, but no later than January 31, 2020. (Chapter 3)

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### **RECOMMENDATION 15**

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. (Chapter 3)

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**RECOMMENDATION 16**

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. (Chapter 3)

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**RECOMMENDATION 17**

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. (Chapter 3)

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**RECOMMENDATION 18**

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. (Chapter 4)

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**RECOMMENDATION 19**

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. (Chapter 4)

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**RECOMMENDATION 20**

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. (Chapter 5)

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**RECOMMENDATION 21**

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. (Chapter 5)

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**RECOMMENDATION 22**

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. (Chapter 5)

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**RECOMMENDATION 23**

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. (Chapter 5)

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**RECOMMENDATION 24**

The Auditor of Public Accounts (APA) should conduct an audit to (i) determine the frequency and magnitude of errors in calculating and paying wage replacement benefits for workers' compensation and the Virginia Sickness and Disability Program; (ii) assess the extent to which these errors are ultimately corrected; and (iii) identify opportunities to better coordinate payments between these two programs. (Chapter 6)

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**RECOMMENDATION 25**

The Department of Human Resource Management and the Virginia Retirement System should convene a stakeholder group composed of staff from the Department of Accounts and payroll and human resources staff from various state agencies to improve training and resources to be provided to state agencies for appropriately calculating the benefits that should be paid to workers eligible for workers' compensation benefits and Virginia Sickness and Disability Program benefits. (Chapter 6)

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**OPTION 1**

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. (Chapter 4)

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**OPTION 2**

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. (Chapter 4)

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**OPTION 3**

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. (Chapter 4)

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**OPTION 4**

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. (Chapter 4)

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