

Summary: Virginia's Workers' Compensation System and Disease Presumptions

WHAT WE FOUND

Claims are generally handled in a timely and fair manner

Disputes between employers/insurers and workers involving workers' compensation claims are adjudicated by the Virginia Workers' Compensation Commission (VWC) in a timely manner, and workers' and employers' attorneys are generally satisfied with the timeliness and fairness of VWC's handling of disputed claims. However, VWC could take steps to improve the timeliness of hearings held in the Fairfax office and deputy commissioners' issuance of opinions.

Delays in the claims process sometimes occur before claims reach VWC, while workers' compensation insurers are deciding whether a claim is compensable. Responsiveness of insurers was noted as the second most common challenge experienced by firefighters who had filed a workers' compensation claim during the past five years. Virginia is one of only a few states that does not require insurers to make claims decisions within a statutorily specified timeframe.

Workers are not well informed about the process to file claims or their rights to dispute compensability decisions made by insurers

Workers are sometimes confused about how to access and navigate Virginia's workers' compensation system. Workers have an insufficient understanding of the process to file for workers' compensation benefits and the role that VWC plays in resolving disputes between workers and their employers. The information that VWC provides to workers about their rights and responsibilities in the workers' compensation system is (1) scattered across VWC's website, (2) not well organized within each document, (3) unclear, and (4) incomplete. Moreover, employers and their workers' compensation insurers do not consistently provide information to workers about their rights to dispute initial compensability decisions.

WHY WE DID THIS STUDY

In December 2018, the Joint Legislative Audit and Review Commission (JLARC) directed staff to conduct a review of Virginia's workers' compensation system and use of disease presumptions. Specifically, staff were directed to assess whether workers' compensation claims were reviewed and processed promptly and fairly (including as part of VWC's dispute resolution process), assess the measures in place to minimize the potential for fraud and abuse in the system, and determine whether Virginia's disease presumptions are appropriate and whether the level of evidence required to claim or rebut them is reasonable and appropriate.

ABOUT WORKERS' COMPENSATION

The workers' compensation system is intended to protect workers from the economic burden of work-related injuries or diseases. When Virginia workers are unable to work because they have been injured on the job or have contracted a work-related disease, they may receive partial wage replacement, known as "indemnity benefits," coverage of associated medical costs, and/or coverage of vocational rehabilitation expenses. Workers can also seek compensation for certain diseases considered "presumptive diseases," which the General Assembly has decided must be presumed to have developed through employment unless an employer can provide compelling evidence to rebut the connection.

Workers' lack of awareness about workers' compensation procedures can jeopardize their ability to fully pursue and potentially receive compensation for their work-related injuries. For example, over 200 firefighters with a work-related injury or disease reported that they were unaware of their right to dispute a denial by their employer's insurer to VWC. Additionally, a number of firefighters who had been diagnosed with cancer or cardiovascular disease told JLARC staff they thought they had filed a claim with VWC because they reported their injury to their employer. This misperception could prevent them from fully pursuing and potentially receiving workers' compensation benefits.

Virginia is the only state in which employers are not obligated to compensate workers for work-related cumulative trauma injuries

In contrast to the 49 other states, Virginia does not provide a remedy through the workers' compensation system for injuries due to repetitive work activities, such as lifting boxes over several weeks (also known as "cumulative trauma injuries"). As a result, Virginia workers are required to bear the costs associated with cumulative trauma injuries, even when they arise out of and in the course of employment.

Employer costs have been cited by multiple stakeholders as the primary reason why Virginia's workers' compensation system does not cover cumulative trauma injuries. However, it does not appear that cumulative trauma injuries are a major cost driver of workers' compensation premiums in other states.

Employers in Virginia pay comparatively high medical costs for workers' compensation claims

The cost of medical services paid by insurers to treat injuries or diseases appears to be comparatively high. Medical fee schedules that were put into place in 2018 to provide greater cost certainty for insurers appear to have somewhat reduced costs, but at least some reimbursement rates in Virginia's medical fee schedules appear to be high compared with other states.

Best available scientific evidence indicates that existing and proposed cancer presumptions are appropriate

Disease presumptions are intended to relieve workers in certain occupations of the need to prove a causal connection between their work and their disease. A key premise of disease presumptions is that a plausible connection exists between a presumptive disease and the workers' occupation, but evidence to prove a connection is difficult or impossible to obtain.

According to epidemiologists at Johns Hopkins University's Bloomberg School of Public Health, who conducted a systematic review of the existing scientific research related to Virginia's disease presumptions, research is mixed on the extent of a causal

connection between firefighting and the 10 existing and proposed cancer presumptions. Although mixed, the existing research is sufficient to support a plausible connection between firefighting and the cancers currently included as presumptive diseases in the Code of Virginia. A plausible connection also exists between firefighting and three cancers that House Bill 1804 (2019) proposed adding to Virginia's statute: colon, testicular, and brain cancer. Among these three, the evidence of a link between firefighting and colon cancer is the least strong but still plausible according to epidemiological research.

Requirements to establish cancer presumptions are unreasonably burdensome and not supported by science

Most disputed cancer claims from 2009 to 2018 resulted in firefighters not receiving benefits, primarily because firefighters failed to prove their exposure to the specific carcinogen that caused their cancer (a requirement in existing case law) or failed to meet the presumption's disability requirement. The application of these two statutory requirements—to prove contact with a toxic substance that caused a firefighter's cancer and to prove a period of disability—is unreasonably burdensome and possibly counter to legislative intent.

According to Johns Hopkins University researchers, it is unreasonable to require firefighters to document exposure to carcinogens that cause their particular cancer, because doing so is difficult or impossible with existing technology and is cost prohibitive. Additionally, requiring a firefighter to identify a single carcinogen that is known to cause his or her type of cancer appears counter to the purpose of the presumption, which is to relieve firefighters of the need to prove that their occupation caused the disease.

The application of the disability requirement has been problematic because, in some cases, a firefighter's cancer was not presumed to be caused by work simply because the worker did not have a period of wage loss. Whether a firefighter loses wages because of his or her disease does not appear to be relevant to whether his or her employment caused the disease.

Virginia's cancer presumption statute also requires firefighters to serve 12 or more years of continuous service in the occupation, but the basis for this service requirement is unclear and does not align with research on cancer among firefighters. Johns Hopkins University researchers identified scientific evidence that some exposure durations shorter than 12 years can lead to increased cancer risk. Virginia's 12-year requirement is one of the longest service requirements to claim a cancer presumption among states.

Cardiovascular disease presumption is difficult, but not impossible, for employers to rebut

Rebuttal requirements for Virginia's cardiovascular disease presumption are more difficult to meet than those of some states. However, workers' compensation is intended to favor injured workers, and presumptions are not supposed to be easy to rebut. Moreover, Virginia's cardiovascular disease presumption is not impossible to rebut—23 percent of cardiovascular disease cases decided by VWC between 2009 and 2018 were successfully rebutted by employers.

Risk of cardiovascular disease increases with years of service

Scientific evidence supports that public safety workers' risk of work-related cardiovascular disease increases over time. Unlike Virginia, other states have a years of service requirement for public safety workers to benefit from a cardiovascular disease presumption. Establishing a years of service requirement would be consistent with epidemiological research, put Virginia more in line with other states' practices, and help ensure that employers and workers' compensation insurers do not pay for the costs of non-work-related diseases.

Virginia should pursue improvements to the existing system before considering an alternative benefit program

Since 2017, several states have created disease benefit programs for firefighters, in place of workers' compensation programs, to address employer and worker frustrations with disease presumption statutes. Creating such a program in Virginia may not be necessary at this time. Implementing this report's recommendations to address shortcomings in the current system could be considered before pursuing such a wholesale change.

RECOMMENDATIONS

Legislative action

- Establish a timeframe in statute for insurers to make initial compensability determinations on injuries and diseases reported to them and require VWC to monitor compliance with the requirement and impose financial penalties for noncompliance.
- Require workers' compensation insurers, including employers who are self-insured, to notify injured workers about their right to dispute insurers' denials of workers' compensation benefits.
- Expand coverage to allow cumulative trauma injuries to be compensable.
- Authorize and direct VWC to include as part of its biennial reviews of workers' compensation medical costs a comparison of Virginia's medical fees to Medicare reimbursement rates.

- Modify the cancer presumption to allow firefighters to meet the toxic exposure requirement through evidence that they responded to fires.
- Clarify that the disability requirement for claiming a disease presumption can be met through medical evidence.
- Reduce the years of service requirement for the cancer presumption.

Executive action

- Hire at least one additional deputy commissioner to be assigned to the Fairfax office.
- Review and revise all written materials for communicating with and informing workers, employers, and insurers to ensure that information is accurate and clear and develop a comprehensive guide for injured workers explaining their rights and the role of VWC.
- Notify, as soon as practicable, all injured workers who have not yet submitted a claim for benefits about their right to dispute insurers' denials and the need to file a claim directly with VWC within the statute of limitations to preserve their right to benefits.

Policy options

- Add brain, colon, and testicular cancers to the list of cancers presumed to be caused by firefighting.
- Add a years of service requirement to the cardiovascular disease presumption.

The complete list of recommendations and policy options is available on page vii.

