

## **AN OVERVIEW OF WORKERS' COMPENSATION LAW IN VIRGINIA**

The Virginia Workers' Compensation Act ("the Act") was enacted on March 21, 1918, and became effective on January 1, 1919. The Act was originally modeled on Indiana's statute.

The Act provides a no-fault remedy for workers who are injured in their employment. "No-fault" simply means that the injured worker does not have to prove that their work injury was someone else's fault in order to receive workers' compensation benefits for an on-the-job injury. The Workers' Compensation law represents a compromise in that an employer cannot generally defend against an accidental injury by arguing that the accident was the employee's fault, and the employee cannot sue the employer for money damages for such things as pain and suffering. The only recourse an employee has against his employer for a workers' compensation injury is through the workers' compensation system.

The Virginia Workers' Compensation Act was intended to provide wage loss benefits as well as coverage for medical expenses and permanent impairment benefits related to the compensable injury. The Virginia Workers' Compensation Commission administers the Act, and serves as an adjudicator when a dispute arises between the employee, insurance carrier or employer. When compensability of a work-related injury is established, the employer becomes liable for payment of the benefits provided in the Act. However, the worker must prove that the accident was compensable.

In theory, there should be no need for an employee to have to retain an attorney to pursue his claim for Workers' Compensation benefits. The workers' compensation system was originally designed not to be a battle between employer and employee, but rather provide a framework through which such claims were quickly and efficiently resolved. Unfortunately, that is no longer the case, and workers' compensation has become a rather specialized and litigated area of the law. The insurance carriers have lawyers representing them, and an injured worker should seriously consider retaining his own experienced lawyer.

Virtually anyone can afford to have a lawyer, since attorney's fees for injured workers' are regulated by the Virginia Workers' Compensation Commission, and are only paid on a "contingency" basis. This means that the injured worker will not pay an attorney fee unless and until benefits are recovered for him. There are no legal fees to pay up front.

An employee who has been injured on the job does not have to prove that any one was specifically at fault in the accident, or prove that the accident was his employer's fault. However, it is not enough to simply report an accident at work and expect that the accident will be covered. Being hurt at work, even while doing your job the way you should, is not enough to qualify for workers' compensation benefits. It should be, but it isn't. Two types of injuries are covered under the Act: accidental injuries and occupational diseases. To be a covered accident, the accident must occur at work, or during a work related function; the accident must be caused by a specific work activity, and must happen suddenly at a specific time. Injuries incurred gradually or from repetitive stress or traumas are not covered. An attorney should be consulted for an employee suffering from an occupational disease.

Whether an accident is compensable under the Act is often litigated, and insurance companies will frequently try to take recorded statements from injured workers' before they have had a chance to consult with an experienced attorney. There are many defenses that the insurance carrier or its lawyers can raise to a workers' compensation claim. Without an experienced attorney to represent them, the injured worker is often at a disadvantage against the insurance carrier and their lawyers.