



Building Industry Insurance Association Inc.
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(757) 420-3022 – Fax: (757) 512-5205
www.biiainsurance.com



Important Information Concerning Your BIIA Workers Compensation Coverage

- **LOSS CONTROL VISIT**

BIIA will be contacting you to set up an appointment for Safety & Loss Control Survey with Jackie Adkins, our Loss Control Consultant. **This Loss Control Visit is a mandatory requirement for continuing your coverage through BIIA.** Please make every effort to meet with Jackie.

- **AUDITS**

You are required to complete a physical audit at the expiration of the policy period. Failure to perform the audit will result in cancellation of the current policy, and a \$500 Audit Non-Compliance Fee. Your account may then be subject to collection fees, including attorney fees and court costs.

- **CLAIMS REPORTING**

Please be aware of the Virginia Workers Compensation code for employers:

65.2-902. Failure to make required reports; civil penalty.

A. Any employer who fails to make any report required by the Commission pursuant to this title shall be assessed a civil penalty of not more than \$500 for each failure. If the Commission determines that any such failure is willful, it shall assess a civil penalty of not less than \$500 and not more than \$5000. The civil penalty herein provided may be assessed by the Commission in an open hearing with the right of review and appeal as in other cases. In the event the employer has transmitted the report to the insurance carrier or third party administrator for transmission to the Commission, the insurance carrier or third party administrator failing to transmit the report shall be liable for the civil penalty.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION**A. The Policy**

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

**PART ONE
WORKERS COMPENSATION INSURANCE****A. How This Insurance Applies**

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other

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insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the

workers compensation law that apply to:

- a. benefits payable by this insurance;
 - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against

- such third party as a result of injury to your employee;
2. For care and loss of services; and
 3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
 4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you;
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901–950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171–8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331–1356a.), the Defense Base Act (42 USC Sections 1651–1654), the Federal Coal Mine Safety and Health Act (30 USC Sections 801–945), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51–60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801–1872) and under any other federal law awarding damages for violation of those laws or regulations issued there under, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

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F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE**OTHER STATES INSURANCE****A. How This Insurance Applies**

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR**YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal

papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE—PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

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PART SIX—CONDITIONS**A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

VIRGINIA AMENDATORY ENDORSEMENT

This endorsement applies only to the Virginia insurance provided by the policy because Virginia is shown in Item 3.A. of the Information Page.

For Virginia insurance, Part Six D. (Conditions—Cancellation) is replaced by:

1. Yours truly, may cancel this policy. You must mail or deliver advance written notice to us. You must provide written notice of your cancellation, including the date of and reasons for the cancellation, to the Workers Compensation Commission.
2. We may cancel this policy. We will provide you with 30 days notice of cancellation. We will provide the Workers Compensation Commission with immediate notice of such cancellation. This provision does not apply if you have obtained other insurance and that insurer has notified the Workers Compensation Commission that it is now providing your insurance.
3. In the event of cancellation by you or us, you must provide 30 days written notice of the cancellation to your covered employees.
4. We may nonrenew your policy. We will provide 30 days notice to you and to the Workers Compensation Commission of our decision to nonrenew. This provision does not apply if you have obtained other insurance and that insurer has notified the Workers Compensation Commission that it is now providing your insurance.
5. If you fail to pay the premium due on this policy, we may cancel the policy by providing 10 days notice to you and to the Workers Compensation Commission.

BIIA Privacy Practices

Protecting the privacy and confidentiality of information about our customers is very important to Building Industry Insurance Association (BIIA). Accordingly, we strive to comply with each of the following practices in everything we do:

We do not sell, rent, lease or otherwise disclose personal information of our customers for purposes unrelated to our product and services. The personal information of our customers is of paramount importance to us. Therefore, we provide this information only to our employees, agents and third parties as required to allow them to help us develop and provide our insurance.

We work to ensure information integrity and security. We use technology tools and design our business practices to help ensure that the personal information of our customers is properly gathered, stored and processed. We also work to maintain the security of, and internal and external access to, the personal information of our customers through the use of technology and our business practices.

We expect our service agents and employees to respect the personal information of our customers. BIIA has business policies and practices in place to help ensure that our employees and service agents carry out these practices and otherwise protect personal information about our customers. Both employees and service agents are subject to censure, dismissal, or termination for violation of these policies.

PRIVACY NOTICE

BIIA and our agents provide this notice to let you know about the current privacy practices of BIIA. **You do not need to do anything in response to this notice. This notice is merely to inform you about how we safeguard your information.**

Collection of Information

As part of BIIA's normal underwriting and operating procedures, BIIA (and our service agents acting on our behalf) need to obtain information to determine an individual/company's eligibility for our product and to perform our insurance functions. BIIA may collect nonpublic personal financial information about BIIA's customers, including:

- Information from our customers (including names, addresses, and financial information).
- Information about the customers' transactions with BIIA (including claims and payment information).
- Information from consumer reporting agencies (including creditworthiness and credit history); insurance support organizations such as the Central Index Bureau (including claims histories); and a claimant's health care providers, employee(s) salary information.

Disclosure of Information

BIIA may disclose the nonpublic personal financial information we collect, as described above, as well as information about your transactions with us (such as your policy coverage, premiums, and payment history) to our service agents or other third parties who perform services or functions on our behalf. We may also disclose the nonpublic personal financial information we collect to other third parties as authorized by you or as required or permitted by law.

Our service agents will make disclosures of our customers' nonpublic personal financial information only while acting on BIIA's behalf and, furthermore, will make such disclosures only as BIIA itself is permitted to make.

Neither BIIA nor our service agents will use or share with other parties any nonpublic personal financial information about BIIA customer for any purpose other than disclosures for the performance of insurance functions by BIIA or on our behalf, disclosures that are permitted or required by law, or disclosures that the customer has authorized.

Neither BIIA nor our service agents will further disclose any nonpublic personal information about a former customer of BIIA other than as may be required or permitted by law.

Confidentiality and Security

BIIA and our service agents will safeguard, according to strict standards of security and confidentiality, any information we collect, receive or maintain about BIIA's customers. BIIA maintains administrative, technical, and physical safeguards to ensure the security and confidentiality of our customers' information and records, to protect against anticipated threats or hazards to such records, and to protect against unauthorized access to or use of such information or records.

Internally, BIIA limits access to our customers' information to only those employees who need access to the information to perform their job functions. Employees who misuse information are subject to disciplinary actions. Externally, we do not disclose customer information to any third parties unless we have previously informed the customer of the disclosure, have been authorized to do so by the customer, or are required or permitted to make the disclosure by law or our regulators.

IMPORTANT INFORMATION TO POLICY HOLDERS

In the event you need to contact someone about this policy for any reason, please contact your agent. If you have additional questions, you may contact the insurance company issuing this policy at the following address and telephone number:

Customer Relations Department
Building Industry Insurance Association, Inc.
2117 Smith Avenue
Chesapeake, Virginia 23320
757-420-3022

If you have been unable to contact or obtain satisfaction from the company or the agent, you may contact the Virginia Bureau of Insurance at:

Property and Casualty Division
Bureau of Insurance
P. O. Box 1157
Richmond, Virginia 23209
1-804-371-9965

Written correspondence is preferable so that a record of your inquiry can be maintained. When contacting your agent, company or the Bureau of Insurance have your policy number available.

Thank You

We would like to take the opportunity to thank you for placing business with Building Industry Insurance Association, Inc.

Our General Liability and Worker's Compensation programs are successful because of you.

Let us know how we can better serve you.

NOTICE TO EMPLOYERS REGARDING OBLIGATIONS UNDER THE VIRGINIA WORKERS' COMPENSATION ACT

Employers Guide

Virginia law requires every employer who regularly employs three or more full-time or part-time employees to purchase and maintain workers' compensation insurance. Employers with fewer than three employees may voluntarily come under the Act.

METHODS OF INSURING LIABILITY

1. Purchase and maintain a workers' compensation policy from a company licensed in Virginia;
2. Apply to the Virginia Workers' Compensation Commission for approval as an independent self-insurer;
3. Become a member of a group self-insurance association licensed by the Virginia State Corporation Commission; or
4. Enter into an agreement with a professional employer organization as provided in Section 65.2-801.A.4 of the Code of Virginia.

INFORMATION ABOUT CERTAIN BUSINESS ENTITIES

1. Sole proprietors and partners are considered owners of businesses and are not covered by workers' compensation. However, sole proprietors and partners may elect to obtain coverage for workers' compensation liability by purchasing insurance.
2. Members of a limited liability company (LLC) are considered to be owners of a company and are not covered by workers' compensation unless specifically covered by an insurance policy or either elected or appointed as a manager. The manager of an LLC is treated as a corporate officer under the Act.
3. A corporation's officers may choose to reject workers' compensation coverage for accidents, but not for occupational diseases. To do so, officers must file a "Notice of Rejection" with the insurer and with the Commission. If the officers are paid regularly, they are nevertheless counted as employees to determine jurisdiction under the Act.

Note: For non-profit corporations under §501(c)(3) of Title 26 of the U.S. Code, unpaid officers are not considered employees. Unpaid officers need not formally reject coverage and are not counted as employees in determining jurisdiction under the Act.

EMPLOYER DUTIES TO EMPLOYEES AND TO THE COMMISSION

1. Post in a prominent place a notice of workers' compensation benefits (VWC Form 1) that substantially resembles the notice produced by the Virginia Workers' Compensation Commission. Copies may be obtained by writing to the Commission, 1000 DMV Drive, Richmond, Virginia 23220. Posting of this notice is required by Commission Rule 7.2.
2. Ensure that every accident is reported to the insurance carrier on the "Employer's Accident Report" (VWC Form No. 3). The carrier will then report the accident to the Commission in the proper format. (Note that the Employer's Accident Report is also accepted by OSHA as a supplemental report to the basic OSHA log.)
3. After receiving notice of an accident or occupational disease, provide the employee with a panel of at least three physicians, who are not affiliated with each other, from which to select a treating

physician. If the employer does not provide a panel, the employee may elect to receive treatment from any healthcare provider.

In an emergency, the employee may be treated at a hospital, emergency room, or other emergency care facility. The employer should provide a panel of doctors as soon as possible after the emergency treatment.

(Note that a sole proprietor or partner who elects coverage must notify the insurance carrier who will provide the panel of treating physicians.)

4. Give employees a thirty-day notice if your workers' compensation insurance is cancelled or not renewed.
5. An insurance agent can assist an employer to obtain coverage under the Virginia Workers' Compensation Plan. If a workers' compensation policy is not readily available in the regular or voluntary market, contact the National Council on Compensation Insurance (NCCI) at (561) 893-1000 for additional assistance in obtaining coverage. NCCI administers the Virginia Workers' Compensation Plan.
6. Employers who refuse or neglect to obtain workers' compensation insurance can be fined up to \$5,000.00. Continuing failure to obtain this insurance can result in an order prohibiting an employer from conducting business. Employees of uninsured employers may bring suit against the employers for damages resulting from their injuries.
7. Professional Employer Organizations (PEOs): PEOs doing business in Virginia must register with the Commission pursuant to Virginia Code § 65.2-803.1

WHO IS COVERED BY THE VIRGINIA WORKERS' COMPENSATION ACT?

As a general rule, employers with three or more employees in Virginia are subject to the Workers' Compensation Act. Almost everyone working for another under a contract of hire or in an apprenticeship is considered an employee, including minors and including aliens regardless as to whether they are lawfully in the United States. However, the Act provides for certain special situations detailed below.

The following are generally considered employees:

- Apprentices and trainees, as long as the training relates to their jobs.
- Part-time employees and working family members.
- Members of the Virginia National Guard, Virginia State Defense Force, and US Defense Corps of Virginia.
- Officers and employees of state and local governments, including police, firefighters, sheriffs, deputies, commissioners of tax and revenue, Commonwealth's attorneys, circuit court clerks and their employees.
- Volunteer police, rescue workers, and firefighters if:
 1. coverage is extended to them by the governing body of the locality in which they work, or
 2. the volunteer unit itself elects to provide for workers' compensation coverage.
- Officers of corporations.

Corporate officers can reject coverage for accidents. They cannot reject coverage for occupational diseases. If corporate officers are not paid salary or wages on a regular basis at an agreed upon amount and they reject coverage under this title pursuant to §65.2-300, they are no longer counted as employees for jurisdictional purposes.

- Employees of an independent contractor or sub-contractor who are doing the same kind of work as

those who are contracting for the work.

- Sole proprietors, partners, and others who have elected to be covered by the Workers' Compensation Act.

The following are generally not considered employees:

- Individuals who are properly classified as independent contractors under Virginia law (unless they specifically and formally choose to be included in their own workers' compensation insurance policy).
- Elected state and local officials (unless coverage is extended to them by the governing board of the governmental entity through a duly adopted ordinance). -- Taxi cab and executive sedan drivers if they are excluded from taxation under the Federal Unemployment Tax Act.
- Licensed real estate people who are contractually identified as independent contractors, who earn substantially all their income from commissions, and who are not treated as employees for federal income tax purposes.
- Casual workers.
- Domestic workers.
- Farm workers, unless the employer regularly has more than two full-time employees.
- Railroad workers working for common carriers involved in interstate or foreign commerce.
- Noncompensated employees, officers, and directors of non-profit corporations.
- Employees of federal instrumentalities.
- Employees of businesses that regularly employ fewer than three employees.

Note that these lists are only general guides. A determination of the status of employee is difficult and is a frequently litigated issue.

GUIDELINES FOR CONTRACTORS AND SUBCONTRACTORS

Warning: Neither the Workers' Compensation Commission nor the State Corporation Commission can provide legal advice on individual contractor/subcontractor situations. The status of an independent contractor, a subcontractor, and an employee must be determined based upon the facts of each case. The following are general guidelines only.

1. a formal election of coverage has been made; or
2. a written agreement has been reached among the independent contractor, the employer, and the insurance carrier that coverage will be provided.
2. Employees versus independent contractors: The Workers' Compensation Act defines an employee as a person under written or implied contract of hire "except one whose employment is not in the usual course of the trade, business, occupation or profession of the employer."

In distinguishing between an employee and an independent contractor, some important considerations are (1) the right to hire, (2) the power to dismiss, (3) the obligation to pay wages, and (4) the power to control.

3. Independent contractors are not automatically eligible for workers' compensation: An independent contractor, who is generally a sole proprietor or partner, is not entitled to workers' compensation benefits unless:
4. Employees of contractors are often eligible for workers' compensation: The regular employees of the independent contractor, however, are entitled to workers' compensation benefits so long as the independent contractor employs three or more employees.
5. Statutory employers: When a sole proprietor, partnership, or corporation contracts to perform work or

provide services that are part of the same trade, business, or occupation of the employer, a contractor/subcontractor relationship is established. The contractor becomes the statutory employer of the employees of the subcontractor.

When the statutory employer is subject to the Virginia Workers' Compensation Act by virtue of having three or more direct employees or employees of subcontractors, the statutory employer or its insurance carrier becomes liable for the payment of workers' compensation benefits to the injured employees of the subcontractor. This is true whether the subcontractor fails to carry workers' compensation insurance as required by law, or is not required to have workers' compensation insurance.

6. Effects on statutory employer: The subcontractor's employees are considered employees of the contractor both for liability, and for determining whether the general contractor has three or more employees and must therefore provide workers' compensation coverage under Virginia law.
7. Effects on subcontractors: Since a potential statutory employer relationship exists for any particular job done through subcontractors, and since the insurance carrier does not have the right to inspect the employment records of the subcontractor, carriers have tended to assess a premium on the employer for his or her subcontractors. Potential statutory employers have often responded by requiring a subcontractor to provide proof of workers' compensation insurance coverage, or by having a percentage of the contract cost withheld to offset the potential cost of insurance premiums.

The fact that a contractor withholds a percentage of the contract cost does not afford any coverage to the subcontractor.

VIRGINIA WORKERS' COMPENSATION COMMISSION

WORKERS' COMPENSATION

REQUIREMENTS FOR EMPLOYERS IN VIRGINIA

This informational brochure is provided pursuant to Virginia Code § 65.2-800. It is not intended and may not be considered as providing legal advice or advisory opinions. If you have legal questions regarding the information provided, please contact an attorney.

For more details you should consult the Virginia Workers' Compensation Act, Title 65.2 of the Code of Virginia. The Act is available on the Commission's web site at www.vwc.state.va.us, at local public libraries and can be purchased by writing to the Comptroller, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220.

Questions about insurance underwriting issues, such as premiums charged by an insurance company, or classification, should be directed to the Bureau of Insurance of the State Corporation Commission (Consumer Services Section, PO Box 1157, Richmond, VA 23209).

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