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**WORKERS' COMPENSATION CLAIMS INFORMATION**

As a basic rule, any person employed or insured in the Commonwealth of Virginia may file a claim for workers' compensation benefits. Workers' compensation benefits are wage indemnity (500 weeks maximum; capped at \$1,343.00 per week effective 7/1/2023); medical treatment for as long as is necessary; and certain monetary benefits for impairments to extremities and the like. Mileage is paid at 65.5 cents per mile as of 1/1/2023.

The law requires any employer with three or more employees to carry workers' compensation insurance. An employer in violation of law is usually sued by the Commonwealth of Virginia for payments made by the Uninsured Employers Fund who covers uninsured injured or sick employees.

Notice of an injury must be given to an employer within 30 days of its occurrence. An illness such as an occupational disease must be reported within 60 days.

An injury must arise out of and in the course of the employment. The term "arise out of" refers to the time, place and circumstances under which the accident takes place (injuries growing out of risks peculiar to the nature of the work). The term "in the course of" refers to the time, place and circumstances under which the injury occurred (accident occurs in the course when it take place within the period of employment; location where the employee may reasonably be; and while he is reasonably fulfilling duties or engaged in incidental thereto).

**AS A GENERAL RULE**

- (a) Volunteers are not covered under Virginia Workers' Compensation Act.
- (b) Independent contractors are not covered under Virginia Workers' Compensation Act.
- (c) Injuries resulting from "overuse" or "cumulative trauma" are not covered under Virginia Workers' Compensation Act except for hearing loss and carpal tunnel syndrome.
- (d) Idiopathic conditions are not covered under Virginia Workers' Compensation Act except where effects of idiopathic condition places employee in a position increasing the dangerous effects of such a fall such as height, exposure to machinery, sharp corners or in a moving vehicle.

- (e) Diseases are not injuries and injuries cannot be converted into diseases. A disease caused by cumulative trauma or repetitive motion is not compensable except for hearing loss and carpal tunnel syndrome.
- (f) There are no exclusions under the Virginia Workers' Compensation Act for pre-existing conditions.
- (g) There is no prohibition on filing subsequent claims for injuries previously awarded lifetime medical care.
- (h) An otherwise compensable injury covers all medical conditions incidental thereto as well as all medical conditions arising therefrom.
- (i) An otherwise non-compensable injury or illness made worse by a compensable injury is compensable for its aggravation and all subsequent medical treatment.

### **GUIDELINES**

1. A claim for lifetime medical treatment and other incidental workers' compensation benefits must be filed with the Virginia Workers' Compensation Commission before the two (2)-year anniversary of the injury or all benefits with respect to the injury will be lost. As a general rule, there are no excuses for filing late.

Points: Voluntary payments of wage indemnity and medical expenses is not the acceptance of a claim.

An express positive statement of acceptance of a claim by an employer. Insurance carrier or claims adjuster is not the acceptance of a claim.

2. An award issued by the Virginia Workers' Compensation Commission is the only guarantee of continued uninterrupted wage indemnity benefits or medical treatment.
3. Most employers and workers' compensation carriers have established "panels of authorized treating physicians."
  - (a) An employer must provide the panel of physicians within a reasonable time after a work-related accident. Reasonable time varies; three (3) weeks to two (2) months after notice is not reasonable.
  - (b) Once selection of treating physician is made, by any method, employee cannot legally change therefrom unless an authorized referral by original treating physician; an emergency; or given permission by employer or Virginia Workers' Compensation Commission.

- (c) Once selection of authorized treating physician is made by employee, employer may not force a change in treating physician or thereafter offer a panel.
  - (d) Where employer denies a workers' compensation claim, employee is free to select own treating physician.
  - (e) Emergency medical treatment is covered, regardless of panel or choice of treating physician. It must be an emergency.
  - (f) An authorized treating physician makes the decisions regarding referrals to other specialties; diagnostic studies or second opinions. An employer or carrier has the right to seek an additional medical opinion limited to only one (1) per medical specialty without prior authorization by the Virginia Workers' Compensation Commission.
  - (g) An employee is entitled to a private examination and meeting with a physician. No one has a right to be present during such examinations or consultations.
4. Any authorized treating physician attending an injured employee must furnish, without charge, a copy of any medical report to the employer or carrier. A refusal to do so may relieve the employer or carrier from responsibility of the charges and require a change in treating physician.
  5. The liability of an employer or carrier for actual expenses is limited to charges as they prevail in the same community for similar treatment.
  6. Any health care provider rendering treatment to an injured or ill employee pursuing a claim for workers compensation benefits shall not initiate any debt collection activities until an award is made. Debt collection activities include threats to use a debt collection agency or attorney.
  7. No health care provider rendering treatment to an injured or ill employee covered under the Virginia Workers' Compensation Commission may balance bill.
  8. An attorney representing an employee in a completed workers' compensation claim may apply for a fee and a pro-rata assessment of costs if the representation successfully results in a recovery of fees for medical services awarded to an employee.



# COMMONWEALTH OF VIRGINIA

## *Public Safety/First Responder's Workers' Compensation Guidelines*

### 3 Major Rules Most Often Overlooked and Fatal to Virginia Workers' Compensation Claims

1. Report your injury to a supervisor no matter how minor it is.
  2. Seek medical treatment and provide an accurate description of the injury and how it occurred.
  3. File your claim with the Workers' Compensation Commission.
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# Claim Form

Access your claim online: [webfile.workcomp.virginia.gov](http://webfile.workcomp.virginia.gov)

Virginia Workers' Compensation Commission



Jurisdiction Claim Number (JCN)

Claim Administrator Number

## Injured Worker Information

## Employer Information

Name			Name of Company		
Address			Address		
City	State	Zip Code	City	State	Zip Code
Primary Phone	Gross Weekly Earnings		Employer's Phone		

## Injury

Date of Injury*	Where Injury Occurred (City or County)	Parts of Body Injured
How Injury Occurred		

**\*If claiming an occupational disease** (use separate claim form for Coal Workers' Pneumoconiosis):

Name of Occupational Disease	Date last worked for employer	Date doctor stated the disease was caused by work
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## Request for Benefits

**I need assistance obtaining the following benefits. If the benefits are denied, this form will serve as a hearing request.**

- Lifetime Medical Award (coverage for related medical expenses).
- Wage Loss Replacement (Temporary Total Disability - Completely out of work):  
From: \_\_\_\_\_ To: \_\_\_\_\_  continuing      From: \_\_\_\_\_ To: \_\_\_\_\_  continuing
- Wage Loss Replacement (Temporary Partial Disability - Partially out of work/light duty):  
From: \_\_\_\_\_ To: \_\_\_\_\_  continuing      From: \_\_\_\_\_ To: \_\_\_\_\_  continuing
- Compensation for Permanent Loss (Permanent Partial Disability):
  - Loss of use of a body part     Disfigurement/Scarring     Amputation     Hearing/Vision loss     Lung disease
- Payment/reimbursement for the following expenses (attach medical records, itemized bills, receipts, or mileage log):
  - Medical bills     Mileage/Transportation     Prescriptions
- Death benefits to dependents and/or funeral expenses.
- Other: \_\_\_\_\_

## Signature

I hereby file this claim to protect my right to benefits under the Virginia Workers' Compensation Act for the injury or disease described above.

SIGNATURE (Required)

PRINT

DATE



### Injury

When an individual has experienced an injury or an occupational disease in the workplace, it is important to give immediate notice to the employer about the injury. Employers are required to file a First Report of Injury (FROI) within ten (10) days of having knowledge of any injury.

### Ombudsman Office

Have questions about the Virginia Workers' Compensation Commission and no lawyer? Call the Ombuds Department at 833-448-1681, or email [ombuds@workcomp.virginia.gov](mailto:ombuds@workcomp.virginia.gov). We cannot give legal advice, but all conversations will be kept confidential.



### Claim Form

Pursuant to Va. Code §65.2-601, a claim for specific benefits must be filed within two (2) years from the date of injury. Even if the Claim Administrator is voluntarily paying benefits, rights are not protected unless there is an Award Order.



### Award Order

If the Claim Administrator accepts the claim, an Award Agreement is sent to the injured worker. Once signed by all parties, the Award Agreement must be filed with the Commission for entry of the Award Order. An Award Order protects the injured worker's rights to benefits.



### Alternative Dispute Resolution (ADR)

Mediation is a voluntary and confidential informal dispute resolution process where a neutral third party (mediator) facilitates communication to assist the parties in mediating an agreeable solution. The purpose of mediation is to identify issues, clarify misunderstandings, explore solutions and mediate an agreement. For further information, contact the ADR Department at 804-205-3139.



### Hearing

A hearing may be necessary to resolve disputed issues. A completed Claim Form and medical records\* to support the claim must be filed for this to occur. The primary objective is to hear and decide disputed claims and issues arising under the Virginia Workers' Compensation Act in a prompt, fair and impartial manner.

### \*Medical Records & Subpoenas

Copies of medical records may be obtained from the physician. However, if copies of medical records and/or bills cannot be obtained, a subpoena can be requested by sending the name and address of the medical provider to the Clerk of the Commission. A \$12 money order made payable to the Sheriff of the city or county where the medical provider is located must be included for each subpoena.

## Benefits Covered under the Virginia Workers' Compensation Act

- **Lifetime Medical** - payment for medical treatment/expenses for the injury or occupational disease, now and in the future.
- **Temporary Total Disability** - wage loss replacement while completely out of work. Must be medically authorized.
- **Temporary Partial Disability** - wage loss replacement while partially out of work, or working light duty. Must be medically authorized.
- **Permanent Partial Disability** - compensation for loss of use of a body part, amputation, disfigurement/bodily scarring, loss of hearing, loss of vision or lung disease. Must be medically supported.
- **Medical Expenses** - payment/reimbursement of medical bills, or out of pocket expenses, such as prescription and mileage/transportation. Must provide bills, receipts and/or mileage logs.
- **Death Benefits** - payment/reimbursement of funeral/transportation expenses or wage loss replacement for surviving spouse, children, or certain other dependents. Death Certificate, Marriage License and/or Birth Certificate(s) must be provided.
- **Other** - benefits not previously mentioned (vocational rehabilitation, specific medical treatment/procedure, panel of physicians, etc).





**SPECIAL INFORMATION**  
**ABOUT PART-TIME SIMILAR DUTY**

All public safety/first responders who are on light duty for a line of duty injury must be paid workers' compensation benefits for any part-time similar duty you are not permitted to work.

Rate of pay based on 52 week average of all part-time jobs prior to date of injury.

Any public safety/first responder injured at a part-time job should report all wages lost; including the full-time wages with the employing public safety. The part-time employer is responsible for all wages lost.

Example: EMS/Paramedic who works part-time at hospital emergency room.



# AUTOMOBILE LIABILITY AND CRUISERS: HOW MUCH IS ENOUGH?

*By Michael A. Kernbach, Esquire*



*This blue and gray cruiser accident occurred on February 14, 1992. The truck driver was speeding and the trooper was running stationary radar in Northern Virginia. It was a high-speed impact and the trooper was seriously injured.*

A modern law enforcement officer, theoretically, will spend the majority of his or her professional work life behind the wheel of an automobile. This not only includes the time incurred traveling to and from the patrol station, but also the many hours a uniformed

patrol officer would utilize a motor vehicle as well as the seasoned narcotics detective who may conduct a surveillance of a house from a van or motor vehicle for days on end. One of the most frequently asked questions by law enforcement officers in the Commonwealth of



... in the Commonwealth of Virginia, that full coverage which most people believe they have is simply not enough protection to insure you for your own mistakes or the mistakes of others.

Virginia is the relationship between automobile liability insurance coverage and motor vehicle accidents while performing their law enforcement duties.

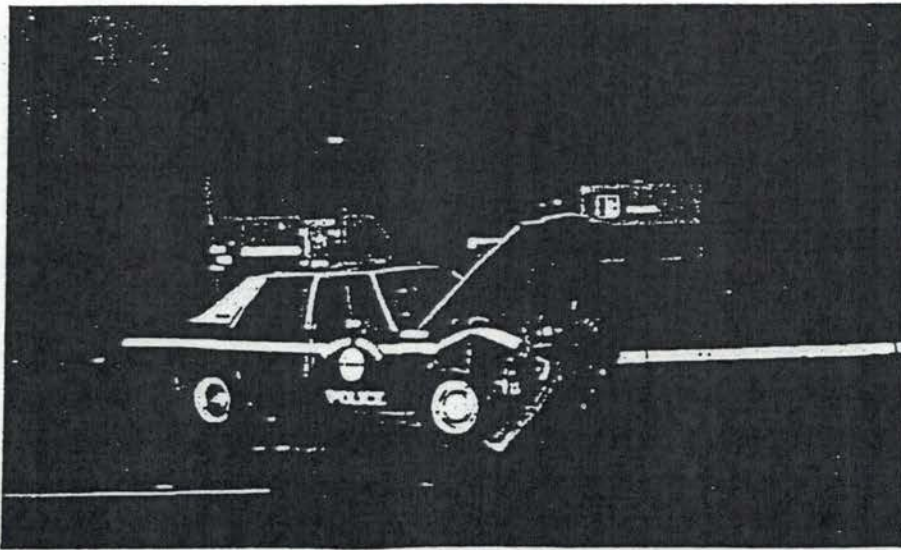
In the Commonwealth of Virginia, the most frequently misunderstood concept involving automobile liability insurance concerns the phrase "full coverage". Pursuant to Virginia Code §46.2-472 and §46.2-100, "full coverage" simply means that a motor vehicle has the basic liability limits which are required under the law. At this time, a motor vehicle in the Commonwealth of Virginia is required to carry a liability insurance policy which provides no less than \$25,000 in basic liability limits per person, not to exceed \$50,000 per accident, together with property damage liability limits of \$20,000. This is the basic liability policy which must be provided by any insurance com-

pany authorized to sell and deliver automobile liability policies in the Commonwealth of Virginia. It should be remembered, however, that automobile liability insurance is not mandatory in the Commonwealth of Virginia. Unlike many other states, Virginia does not require automobile liability insurance for motor vehicles. If a vehicle operated in the Commonwealth of Virginia does not carry liability insurance in the amounts specified by law, the owner must pay an "uninsured motorist's fee" to the Division of Motor Vehicles. Payment of the "uninsured motorist's fee" to the Division of Motor Vehicles is not a substitute for insurance coverage and provides no insurance protection whatsoever.

Two additional areas of automobile liability insurance are required to be offered in the Commonwealth of Vir-

ginia. Under Virginia Code §38.2-2206, no automobile liability policy written and delivered in the Commonwealth of Virginia may be offered unless it provides uninsured motorist's insurance coverage. That coverage must be in the same amounts as is required pursuant to Virginia Code §46.2-472. You may be charged a separate fee for this coverage, and if this coverage is rejected, it must be done in writing. Uninsured motorist's benefits also provides coverage for claims where the defendant who is responsible for the personal injuries arising out of a motor vehicle may not have sufficient liability insurance to satisfy a claim or judgment. As a basic principle, if both parties have the minimum liability insurance limits prescribed by law, there is no protection for underinsurance since both liability policies have exactly the identical liability limits. The significance of this will be demonstrated later.

Additionally, upon the request of any insured in the Commonwealth of Virginia, each liability company which issues and delivers automobile liability policies must offer provisions for payment of medical expenses and loss of income benefits. Currently, medical payments coverage is offered in increments of \$2,000, however, a liability insurance company may offer medical payments insurance in any amount the policy holder and liability company agree on. Medical payments coverage is "no-fault" in the sense that they provide compensation for reimbursement of medical expenses without regard to issues of liability or fault. Only those medical expenses which are deemed reasonable and necessary for medical, chiropractic, hospital, dental, surgical, ambulance, prosthetic and rehabilitation services or funeral expenses are generally recognized. The statute requires payment of reasonable and necessary medical expenses incurred within three (3) years of the date of the injury. Medical expense coverage, however, is not available for medical expenses which are the subject of a workers' compensation claim in the Commonwealth of Virginia. The significance of this will be demonstrated later.



This wreck involving a Fairfax County Police Department cruiser occurred on January 22, 1990. It was a high-speed head-on collision with a drunk driver at an intersection. The drunk driver was killed and the officer was critically injured.

The final area of automobile liability insurance which may be encountered by a professional law enforcement officer is an umbrella policy. The primary purpose of an umbrella policy is to provide coverage in excess of other valid and collectable insurance. An umbrella policy may provide uninsured motorist's coverage. However, insurers issuing such policies are not required to offer, provide or make available in these policies uninsured or underinsured motor vehicle coverage pursuant to Virginia Code §38.2-2206 (J). As a consequence, most automobile umbrella policies do not include uninsured motorists or underinsured motor vehicle coverage. Umbrella policies are very popular with major trucking companies as well as self-insurers. Most modern trucking companies carry primary liability limits of between \$1,000,000 and \$5,000,000 per accident with umbrella policies to \$20,000,000 or \$30,000,000 per accident.

The law of automobile liability insurance is simply too complex and lengthy a topic to discuss in an article such as this. It should be painfully obvious from a brief review of what is required in the Commonwealth of Virginia that full coverage which most people believe they have is simply not enough protection to insure you for your own mistakes or the mistakes of others. It becomes even more painfully obvious that the modern law enforcement officer is at particular risk due to the large number of hours involved in the operation of a motor vehicle or subject to the dangers of other inattentive drivers. There are literally thousands and thousands of motor vehicle owners in the Commonwealth of Virginia who profess to be fully insured and who reside in \$200,000 homes and operate \$50,000 motor vehicles, but, have only basic liability limits. All it takes is one motor vehicle accident based on an inattentive roll through a stop sign and you may be financially wiped out as result of the damage you might do to another.

As a general rule, you should carry liability limits, along with uninsured motorist's coverage, for limits no less than that which is adequate to protect your own personal assets as well as retire-



*On December 17, 1993, this blue and gray wrecked in a high-speed impact while chasing a drunk driver. The drunk driver was killed and the trooper critically injured. In sad irony, the red ribbon (against drunk driving) still flies from the antenna.*

ment savings. For instance, a basic rule of thumb should be that in the Northern Virginia area, you should carry at least \$300,000 in bodily injury protection per person and \$500,000 of bodily injury protection per accident, together with an equal amount in uninsured motorist's coverage. That should provide sufficient and adequate protection for most of the dangers which might be encountered on the road. Medical payments coverage should be no less than \$10,000 per insured vehicle and if you want extra special protection, purchase an umbrella liability policy which will provide you with an additional \$1,000,000 in liability coverage. If this umbrella liability policy provides uninsured motorist's benefits, so much the better.

If you think you should stop reading this article because you cannot afford these liability limits in your own automobile liability policy, you may be very surprised to see how little this additional coverage costs in the Commonwealth of Virginia. The primary cost to a motorist in the Commonwealth of Virginia is always based on the basic liability policy which is required to be offered in the Commonwealth of Virginia. Increasing the liability limits adds very little in overall

costs to the policy.

Suppose you have increased the limits which we have recommended. Now what? Let us assume you are a uniformed state trooper standing in an intersection directing traffic. While standing in the middle of the intersection, an individual accidentally hits you with their motor vehicle breaking both your legs.

If the individual who has struck you has only the basic liability limits, the total amount of compensation available to you on this liability policy is only \$25,000, no matter how high your medical bills are or how much you incur in lost wages. If this individual does not have any liability insurance, you would be permitted under >

you may be very surprised to see how little this additional coverage costs in the Commonwealth of Virginia.

the law to make a claim under your own automobile liability policy which you have on your personal motor vehicle. If you have taken our advice, you will have sufficient liability insurance coverage to satisfy any claim or judgment. If you have failed to review and increase your liability limits, you may find yourself seriously short changed in any settlement. If this accident occurs in an off-duty capacity, you might very well exhaust your sick leave or be forced to go off the payroll if you would be out of work for an extended period of time. Again, if you have not carried sufficient liability limits, you will simply be unable to collect any additional money unless the defendant has personal assets to satisfy any judgment. He could prevent this by filing for bankruptcy and you would be left without any compensation whatsoever.

What if the state trooper directing traffic was deliberately run over by a criminal? In the Commonwealth of Virginia, if the injury results from the operation of a stolen motor vehicle or the result of a criminal or intentional act, there is absolutely no liability insurance coverage available to the operator of the motor vehicle. While he may go to jail for causing the injuries to you, that would be little consolation to you if you are out of work for a year. It would be even worse if this happened in an off-duty incident. Fortunately, the intentional criminal conduct of the defendant or the fact that he was driving a stolen motor vehicle can not prevent you from filing a claim under your own personal liability policy. Again, if you have taken our advice, you will have protected yourself from accidental injuries as well as intentional criminal conduct involving the operation of a motor vehicle.

One final thought, the Commonwealth of Virginia is self-insured pursuant to §2.1-526.6.C. At a minimum, they are required to offer no less than \$25,000 in uninsured motorist's coverage to any state employee who is injured as a result of an automobile accident. That coverage may not be available until all other sources of insurance have been exhausted. The Commonwealth of Virginia may also receive a credit for any workers' compensation

benefits which were paid. It is too risky to believe you will be adequately protected by your employer. Workers' Compensation Benefits in the Commonwealth of Virginia are totally inadequate for compensating the seriously injured state trooper. They provide only five hundred (500) weeks of basic wage indemnity payments and related medical expenses. Again, there is no requirement for health insurance to be paid under a workers' compensation claim and you may find yourself unemployed or even discharged if you can not return to your work as a state trooper within a reasonable period of time.

In conclusion, it is your responsibility to adequately protect yourself and your family from the mistakes of others or your own mistakes while operating a motor vehicle. You must protect your own personal assets from a simple mistake which might result in serious personal injury to another individual in the Commonwealth of Virginia. If you routinely operate a police vehicle as part of your job duties, your chances of being involved in a serious motor vehicle accident are greatly increased. The likelihood of you being involved in an accident with a criminal or uninsured motorist is very high. If you have not taken the steps to protect yourself by purchasing adequate liability insurance for motor vehicle accidents, you may find yourself financially devastated as a result of a career ending injury. Workers' Compensation Benefits and Disability Plans currently offered by the Commonwealth of Virginia are wholly inadequate to protect your financial future. The time to review your automobile liability policy is now and contact your insurance agent as soon as possible to protect your financial future. □

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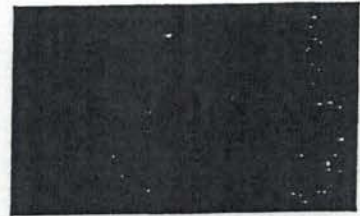
*The author, Michael A. Kernbach, is a personal injury and workers' compensation attorney practicing in Fairfax, Virginia. He is a veteran of the Metro-Dade Police Department in Miami, Florida and has been engaged in the practice of representing state troopers for many years in matters involving personal injury and workers' compensation benefits. He can be contacted at 10680 Main Street, Suite 140, Fairfax, Virginia 22030; (703) 273-0888.*



## *Southeast* **FAMILY MEDICAL CENTER**

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EQUIPMENT COMPANY

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## **POINTS TO CONSIDER**

1. Under §65.2-402, presumptive diseases for respiratory illnesses have no waiting time to take effect.
2. Under §65.2-402, presumptive diseases for hypertension and heart disease have a 5 year waiting time to take effect.
3. Under §65.2-402, presumptive diseases for leukemia, pancreatic cancer, prostate cancer, rectal cancer, throat cancer, ovarian cancer, breast cancer, colon cancer, brain cancer, testicular cancer, bladder cancer and thyroid cancer have a 5 year waiting time to take effect.
4. COVID-19 is no longer covered as a presumptive disease as of December 31, 2022.
5. Under §65.2-406, presumptive cancers listed under §65.2-402 must be filed within 2 years of diagnosis or within 10 years from the date of last injurious exposure in employment, whichever first occurs.