

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 520

An Act to amend and reenact §§ 65.2-503 and 65.2-504 of the Code of Virginia, relating to workers' compensation for disability from coal worker's pneumoconiosis; defining average weekly wage.

[H 410]

Approved April 6, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.2-503 and 65.2-504 of the Code of Virginia are amended and reenacted as follows:

§ 65.2-503. Permanent loss.

A. Compensation for permanent partial and permanent total loss and disfigurement shall be awarded as provided in this section.

B. The following losses shall be compensated for the period specified at the rate of 66 2/3 percent of the average weekly wage *as defined in § 65.2-101*:

Loss	Compensation Period
1. Thumb.....	60 weeks.
2. First finger (index finger).....	35 weeks.
3. Second finger.....	30 weeks.
4. Third finger.....	20 weeks.
5. Fourth finger (little finger).....	15 weeks.

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6. First phalanx of the thumb or any finger....	one-half compensation for loss of entire thumb or finger.
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The loss of more than one phalanx of a thumb or finger is deemed the loss of the entire thumb or finger. Amounts received for loss of more than one finger shall not exceed compensation provided for the loss of a hand.

7. Great toe.....	30 weeks.
8. A toe other than a great toe.....	10 weeks.
9. First phalanx of any toe.....	one-half compensation for loss of entire toe.

The loss of more than one phalanx of a toe is deemed the loss of the entire toe.

10. Hand.....	150 weeks.
11. Arm.....	200 weeks.
12. Foot.....	125 weeks.
13. Leg.....	175 weeks.
14. Permanent total loss of the vision of an eye.....	100 weeks.
15. Permanent total loss of hearing of an ear...	50 weeks.

16. Severely marked disfigurement of the body resulting from an injury not otherwise compensated by this section.....	not exceeding 60 weeks.
17. Pneumoconiosis, including but not limited to silicosis and asbestosis, medically determined to be in the	
a. First stage.....	50 weeks.
b. Second stage.....	100 weeks.
c. Third stage.....	300 weeks.
18. Byssinosis.....	50 weeks.

C. Compensation shall be awarded pursuant to § 65.2-500 for permanent and total incapacity when there is:

1. Loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof in the same accident;

2. Injury for all practical purposes resulting in total paralysis, as determined by the Commission based on medical evidence; or

3. Injury to the brain which is so severe as to render the employee permanently unemployable in gainful employment.

D. In construing this section, the permanent loss of the use of a member shall be equivalent to the loss of such member, and for the permanent partial loss or loss of use of a member, compensation may be proportionately awarded. Compensation shall also be awarded proportionately for partial loss of vision or hearing.

E. Except as provided in subsection C, the weekly compensation payments referred to in this section shall be subject to the same limitations as to maximum and minimum as set out in § 65.2-500.

1. Compensation awarded pursuant to this section shall be payable after payments for temporary total incapacity pursuant to § 65.2-500.

2. Compensation pursuant to this section may be paid simultaneously with payments for partial incapacity pursuant to § 65.2-502. Where compensation pursuant to this section is paid simultaneously with payments for partial incapacity pursuant to § 65.2-502, each combined payment shall count as two weeks against the total maximum allowable period of 500 weeks.

§ 65.2-504. Compensation for disability from coal worker's pneumoconiosis; insurance of coal operator.

A. An employee eligible for an award for coal worker's pneumoconiosis benefits shall be compensated according to the following schedule:

1. For first stage coal worker's pneumoconiosis medically determined from radiographic evidence and classified under International Labour Office Classification of Radiographs of the Pneumoconioses (1980) where there is no present impairment for work, 66 2/3 percent of the average weekly wage ~~during the three years prior to the filing date as defined in § 65.2-101~~, for fifty weeks, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500.

2. For second stage coal worker's pneumoconiosis medically determined from radiographic evidence and classified under International Labour Office Classification of Radiographs of the Pneumoconioses (1980) where there is no present impairment for work, 66 2/3 percent of the average weekly ~~wages~~ *wage as defined in § 65.2-101* for 100 weeks, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500.

3. For third stage coal worker's pneumoconiosis medically determined from radiographic evidence and classified under International Labour Office Classification of Radiographs of the Pneumoconioses (1980) and involving progressive massive fibrosis or medically classified as being A, B or C under the International Labour Office (hereafter referred to as I.L.O.) classifications but where there is no apparent impairment for work, 66 2/3 percent of the average weekly ~~wages~~ *wage as defined in § 65.2-101*, for 300 weeks, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500.

4. For coal worker's pneumoconiosis medically determined to be A, B or C under the I.L.O. classifications or which involves progressive massive fibrosis, or for any stage of coal worker's pneumoconiosis when it is accompanied by sufficient pulmonary function loss as shown by approved medical tests and standards to render an employee totally unable to do manual labor in a dusty environment and the employee is instructed by competent medical authority not to attempt to do work in any mine or dusty environment and if he is in fact not working, it shall be deemed that he has a permanent disability and he shall receive 66 2/3 percent of his average weekly ~~wages~~ *wage as defined in § 65.2-101* during the three years prior to the date of filing of the claim, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500 for his lifetime without limit as to

the total amount.

B. In any case where partial disability as mentioned in subsection A of this section later results in total disability, the employer shall receive credit on any permanent disability payments by being allowed to deduct 25 percent of each weekly payment until payments for partial disability hereunder have been fully accounted for.

C. In any case where there is a question of whether a claimant with pneumoconiosis is suffering from coal worker's pneumoconiosis or from some other type of pneumoconiosis such as silicosis, it shall be conclusively presumed that he is suffering from coal worker's pneumoconiosis if he has had injurious exposure to coal dust.

D. In the event that any coal operator wishes to insure himself under standard workers' compensation insurance rather than be self-insured against the risks and liabilities imposed by this section or by § 65.2-513, any such insurance issued in this Commonwealth covering such risks shall be rated separately for premium purposes and shall not affect workers' compensation rates for any other employers not exposed to such risks.