

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

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.
6. First phalanx of the thumb or any finger....	one-half compensation for loss of entire thumb or finger.

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	not exceeding

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54	compensated by this section.....	60 weeks.
55	17. Pneumoconiosis, including but not limited	
56	to silicosis and asbestosis, medically	
57	determined to be in the	
58	a. First stage.....	50 weeks.
59	b. Second stage.....	100 weeks.
60	c. Third stage.....	300 weeks.
61	18. Byssinosis.....	50 weeks.

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

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

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

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

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

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

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

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

85 § 65.2-504. Compensation for disability from coal worker's pneumoconiosis; insurance of coal
86 operator.

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

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

94 2. For second stage coal worker's pneumoconiosis medically determined from radiographic evidence
95 and classified under International Labour Office Classification of Radiographs of the Pneumoconioses
96 (1980) where there is no present impairment for work, 66 2/3 percent of the average weekly ~~wages~~
97 ~~wage as defined in § 65.2-101~~ for 100 weeks, up to 100 percent of the average weekly wage of the
98 Commonwealth as defined in § 65.2-500.

99 3. For third stage coal worker's pneumoconiosis medically determined from radiographic evidence
100 and classified under International Labour Office Classification of Radiographs of the Pneumoconioses
101 (1980) and involving progressive massive fibrosis or medically classified as being A, B or C under the
102 International Labour Office (hereafter referred to as I.L.O.) classifications but where there is no apparent
103 impairment for work, 66 2/3 percent of the average weekly ~~wages~~ ~~wage as defined in § 65.2-101~~, for
104 300 weeks, up to 100 percent of the average weekly wage of the Commonwealth as defined in
105 § 65.2-500.

106 4. For coal worker's pneumoconiosis medically determined to be A, B or C under the I.L.O.
107 classifications or which involves progressive massive fibrosis, or for any stage of coal worker's
108 pneumoconiosis when it is accompanied by sufficient pulmonary function loss as shown by approved
109 medical tests and standards to render an employee totally unable to do manual labor in a dusty
110 environment and the employee is instructed by competent medical authority not to attempt to do work in
111 any mine or dusty environment and if he is in fact not working, it shall be deemed that he has a
112 permanent disability and he shall receive 66 2/3 percent of his average weekly ~~wages~~ ~~wage as defined in~~
113 ~~§ 65.2-101~~ during the three years prior to the date of filing of the claim, up to 100 percent of the

114 average weekly wage of the Commonwealth as defined in § 65.2-500 for his lifetime without limit as to
115 the total amount.

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

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

124 D. In the event that any coal operator wishes to insure himself under standard workers' compensation
125 insurance rather than be self-insured against the risks and liabilities imposed by this section or by
126 § 65.2-513, any such insurance issued in this Commonwealth covering such risks shall be rated
127 separately for premium purposes and shall not affect workers' compensation rates for any other
128 employers not exposed to such risks.