

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 513

An Act to amend and reenact §§ 65.2-406 and 65.2-504 of the Code of Virginia, relating to workers' compensation; coverage for pneumoconiosis.

[H 2477]

Approved March 24, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.2-406 and 65.2-504 of the Code of Virginia are amended and reenacted as follows:

§ 65.2-406. Limitation upon claim; diseases covered by limitation.

A. The right to compensation under this chapter shall be forever barred unless a claim is filed with the Commission within one of the following time periods:

1. For coal miners' pneumoconiosis, three years after a diagnosis of the disease, as category 1/0 or greater as classified under the *current* International Labour Office Classification of Radiographs of the Pneumoconiosis (1980), is first communicated to the employee or the legal representative of his estate or within five years from the date of the last injurious exposure in employment, whichever first occurs;

2. For byssinosis, two years after a diagnosis of the disease is first communicated to the employee or within seven years from the date of the last injurious exposure in employment, whichever first occurs;

3. For asbestosis, two years after a diagnosis of the disease is first communicated to the employee;

4. For symptomatic or asymptomatic infection with human immunodeficiency virus including acquired immunodeficiency syndrome, two years after a positive test for infection with human immunodeficiency virus;

5. For diseases directly attributable to the rescue and relief efforts at the Pentagon following the terrorist attack of September 11, 2001, two years after a diagnosis of the disease is first communicated to the employee; or

6. For all other occupational diseases, two years after a diagnosis of the disease is first communicated to the employee or within five years from the date of the last injurious exposure in employment, whichever first occurs.

B. If death results from an occupational disease within any of such periods, the right to compensation under this chapter shall be barred, unless a claim therefor is filed with the Commission within three years after such death. The limitations imposed by this section as amended shall be applicable to occupational diseases contracted before and after July 1, 1962, and § 65.2-601 shall not apply to pneumoconiosis. The limitation on time of filing will cover all occupational diseases except:

1. Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such as infrared;

2. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch, tar, soot, bitumen, anthracene, paraffin, mineral oil, or their compounds, products or residues;

3. Radium disability or disability due to exposure to radioactive substances and X-rays;

4. Ulceration due to chrome compound or to caustic chemical acids or alkalies and undulant fever caused by the industrial slaughtering and processing of livestock and handling of hides;

5. Mesothelioma due to exposure to asbestos; and

6. Angiosarcoma of the liver due to vinyl chloride exposure.

C. When a claim is made for benefits for a change of condition in an occupational disease, such as advance from one stage or category to another, a claim for change in condition must be filed with the Commission within three years from the date for which compensation was last paid for an earlier stage of the disease, except that a claim for benefits for a change in condition in asbestosis must be filed within two years from the date when diagnosis of the advanced stage is first communicated to the employee and no claim for benefits for an advanced stage of asbestosis shall be denied on the ground that there has been no subsequent accident. For a first or an advanced stage of asbestosis or mesothelioma, if the employee is still employed in the employment in which he was injuriously exposed, the weekly compensation rate shall be based upon the employee's weekly wage as of the date of communication of the first or advanced stage of the disease, as the case may be. If the employee is unemployed, or employed in another employment, the weekly compensation rate shall be based upon the average weekly wage of a person of the same or similar grade and character in the same class of employment in which the employee was injuriously exposed and preferably in the same locality or community on the date of communication to the employee of the advanced stage of the disease or mesothelioma. The weekly compensation rates herein provided shall be subject to the same maximums and minimums as provided in § 65.2-500.

§ 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 *the current* 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 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 *the current* 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 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 *the current* 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 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 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.

E. All members of any panel or committee required to interpret or classify a chest roentgenogram for purposes of diagnosing a coal worker's pneumoconiosis shall be B-readers approved by the National Institute for Occupational Safety and Health.