



COMMONWEALTH OF VIRGINIA
VIRGINIA WORKERS' COMPENSATION COMMISSION
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IMPORTANT NOTICE FOR EMPLOYERS
Civil Penalty When Uninsured for Workers' Compensation
Significantly Increased - Effective Date July 1, 2014

—Uninsured employers shall be assessed a civil penalty, subject to a maximum of \$250 per day of noncompliance and subject to a maximum civil penalty of \$50,000.—

The 2014 General Assembly approved an increase in the civil penalty imposed when an employer required to insure under the Workers' Compensation Act fails to insure. An employer is required by state law to insure in Virginia when they regularly employ **more than two part-time** (or full-time) **employees**. A business that hires subcontractors or other business to assist them in their trade or to fulfill a contract **must count the subcontractor's employees** as well as their own employees in determining total employees for coverage requirements. For a contractor whose work varies, the Commission looks to the "established mode" of performing work. A contractor that hires one or more subcontractors with employees to accomplish their business is required to carry workers' compensation insurance.

Workers' compensation coverage requirements are complex, but focus on the number of employees. It is important to be aware that an "employee" is defined broadly under the Act and includes every person in the service of another under any contract of hire, written or implied. "Employee" includes statutory employees (subcontractor's employees), corporate officers, minors, undocumented workers, working family members, apprentices, temporary and seasonal employees. A business that doesn't count all of its employees may not realize it is required to carry coverage.

Employers should also be aware, designating a worker as an "independent contractor" does not necessarily mean they are not an employee. Workers' compensation looks to whether the business exerts control over the manner and means of how the work is performed. In the event of a claim, the facts of the work circumstances will determine if the individual is covered for workers' compensation, regardless of payment on a 1099 designation.

The Virginia Workers' Compensation Commission encourages employers to check their coverage, avoid coverage gaps, urges uninsured employers and new businesses to familiarize themselves with workers' compensation insurance coverage requirements, obtain coverage when required, be compliant and avoid a penalty. Workers' compensation is **mandatory coverage**. It is required by state law, and no other form of insurance may substitute. Failure to have coverage due to lack of knowledge is not a valid excuse for failure to insure.

The law change amends section 65.2-805 of the Workers' Compensation Act which addresses the civil penalty for employer failure to insure. Such employer shall be assessed a civil penalty of not more than **\$250 per day for each day of noncompliance**, subject to a **maximum penalty of \$50,000**, plus **collection costs**. The amendment was approved March 7, 2014 and is effective on July 1, 2014.

This notice provides only a summary of workers' compensation coverage requirements and the law change and is not intended to be a substitute for or to be considered legal advice. Workers' compensation information is available at: www.workcomp.virginia.gov. For specific coverage questions, please contact the Insurance Department of the Commission by e-mail at vwcinsurance@workcomp.virginia.gov or by phone at (804) 205-3586.