

In Virginia, Can You Get Lifetime Workers' Compensation Due to a Work Place Injury?

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In Virginia, the normal work place injury claim only allows you 500 weeks of compensation. Of course, in order to be paid this 500 weeks of compensation, you either have to show you are "totally disabled" or that you are "partially disabled" and cannot get a light duty job due to your "partial disability."

But what happens when you are still "totally disabled" and the 500 weeks expires? Virginia does allow some cases to go for payment of compensation for your lifetime. These fall into two areas. First, if your accident has caused an injury to the brain so severe as to render you unemployable, then you can receive lifetime compensation. Second, if your accident has caused the loss of both eyes, both legs, both arms, both hands, or any combination of two of the above, then you can receive lifetime compensation.

The Virginia Workers' Compensation has decided the injured worker does not have to show total loss of two members. It suffices to show a permanent ratable loss of use of two members and proof that the injured members cannot be used "gainfully" in employment. Thus, if one can show the work place accident caused a back injury which was so severe that it caused a permanent loss of use both legs, then one has a chance of obtaining lifetime compensation. This is an area that is fruitful for claims and litigation since back injuries are a very common type of injury. A doctor would have to be of the opinion that under the AMA Guide to Permanent Impairments the injured worker has suffered a ratable loss of each leg due to the work place injury. There is no bright line test regarding how high the rating has to be; however, the higher the rating the better chance the injured worker has to obtain lifetime compensation. For example, a back injury that caused more than a 40% loss of the use of both legs could stand a fair chance if there also was a good opinion that the injured worker's legs due to this loss could not be used in "gainful employment."

Of course, since the worker is asking for lifetime compensation, the workers' compensation insurance company will often fight these cases very vigorously. As a result, it often can come down to a battle of experts regarding (1) whether the back injury has caused a loss of use of the worker's legs; (2) what is the proper permanent ratable loss of the worker's legs; and (3) whether there is or is not some work the worker could do involving his injured legs (or arms). The Virginia Workers' Compensation will conduct a hearing and render a decision. If either party is unhappy with the result, then that decision can be appealed from the Hearing Deputy Commissioner to the Three Commissioners who run the Commission. Finally, after the Three Commissioners have made their ruling there is a further appeal to the Virginia Court of Appeals.

In my experience, there is a chance to win this type of case but it does entail having a very severe injury.

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