

Work Place Injury in Virginia: Can You Sue Your Employer for Your Injury?

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The Virginia Workers' Compensation Law was adopted in 1918. The law provides compensation for lost wages and medical benefits. The common law right to sue the employer for the work place injuries in Virginia was abolished. However, the employer lost the right to defend the accident on the basis of the worker's contributory negligence or assumption of risk. Also, the worker did not have to prove the employer's negligence caused his injury. As noted by the Virginia Supreme Court in *Feitig v. Chalkey*, 185 Va. 96 (1946), the principles of the Virginia Workers' Compensation Law have been accepted by practically all of the States in the United States.

The principle restriction on recovery in a workers' compensation case is that you cannot recover "pain and suffering" as you can in a personal injury case. The principle benefit may be a speedier but smaller recovery without resorting to costly litigation.

Of course, if the injury results from the actions of a third party, the worker can file a personal injury action against the third party provided the third party is not a co-employee. The usual example of this is if the worker is driving a company vehicle which is negligently struck by a driver of another vehicle. In this situation, the worker would have a workers compensation claim against his employer and a personal injury claim against the driver of the other vehicle. Also, if the injury was caused by defective equipment, then the worker could sue the manufacturer of the machine and workers compensation would not be a bar to this kind of product liability lawsuit.

In my workers' compensation practice, potential clients often ask "Why can't I sue my employer for my injury?" The only response I can make is that the State of Virginia in 1918 like the other States in the United States at about this time decided that industry and labor were better served if employers were required to provide workers' compensation insurance as a cost of doing business rather than the worker having to rely on the uncertainty of personal injury lawsuits.

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