



Virginia Department of Planning and Budget **Economic Impact Analysis**

16 VAC 30-50 Rules of the Virginia Workers' Compensation Commission
Virginia Workers' Compensation Commission
Town Hall Action/Stage: 6257 / 10023
September 19, 2023

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The Virginia Workers' Compensation Commission (Commission) proposes numerous amendments to 16 VAC 30-50 *Rules of the Virginia Workers' Compensation Commission* (regulation). The proposed changes that are likely to have an impact are described below.

Background

This regulation provides procedures to identify and resolve disputed issues concerning injured workers claims for benefits through informal dispute resolution or a hearing.

The following are proposed amendments that are likely to have an impact:

Rule 1. Prehearing Procedures

Under the current regulation, if the employer's application for a hearing is rejected, the Commission informs the parties of the reason or reasons for rejection and compensation is to be reinstated immediately. If the employer's application for a hearing is accepted, the current

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

regulation does not require the Commission to provide reasons. The Commission proposes to add the following text: “the commission shall inform the parties of the reason or reasons for the acceptance.”

The current regulation states that “A proposed compromise settlement shall be submitted to the commission in the form of a petition setting forth:” followed by a list of items. The Commission proposes to add “A statement on the claimant's Medicare status” to the list.

The Commission proposes to eliminate the current requirement that the claimant notarize the affidavit attesting the claimant's understanding of and voluntary compliance with the terms of the settlement, and instead state that the affidavit is “sworn under penalty of perjury.”

The current regulation states that “Answers under oath to each interrogatory are to be filed within 21 days after service.” (Interrogatories are written questions, which are formally put to one party in a case by another party and which must be answered.) The Commission proposes to add “, unless otherwise agreed by the parties.”

The Commission proposes to add to the regulation that:

No motion outside of a live evidentiary hearing shall be filed with the commission for any purpose unless the moving party or their counsel has made a reasonable effort to confer and resolve the matter with the opposing party. Any motion filed shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without commission action.

Further, The Commission proposes to add that:

Such motion shall be in writing and the commission shall give the opposing side three business days to respond before ruling on the motion, except for those motions to compel initial discovery responses, or, unless on the face of the motion, it appears that exigent or emergency circumstances call for an earlier decision.

Rule 2. Hearing procedures

For when it appears that there is no material fact in dispute as to any contested issue, the current regulation states that “the parties shall be given 20 days to submit written statements and evidence.... For good cause shown additional time may be allowed.” The Commission proposes to reduce 20 days to 15 days.

Rule 4. Filing documents²

The current and proposed regulation state that “All agreements as to payment of compensation shall be reduced to writing by the employer and promptly filed with the commission.” The Commission proposes to add that:³

If an agreement is offered to a claimant by the carrier and it is signed and returned unchanged to the carrier within 14 days, then the carrier must either reject the agreement in writing or sign and file the agreement with the commission within 14 days of its receipt or be subject to the penalties from § 65.2-701 (B) of the Code of Virginia.

Estimated Benefits and Costs*Rule 1. Prehearing Procedures*

The proposal to require that the Commission inform the parties of the reason or reasons for the acceptance of the employer's application for a hearing could be useful information for the involved parties. According to the Commission, it would only require a small amount of its staff attorneys' time, and no new staff would be required. Thus, the benefits likely exceed the cost.

As stated above, the Commission proposes to add “A statement on the claimant's Medicare status” to the list of items to be included in the proposed compromise settlement petition. According to the Commission, this is currently required later in the process. By including the requirement here, it would speed up the process in that it would not have to be requested later and the time spent waiting to receive it later would be saved. There is no apparent cost to requesting the information at this point rather than later.

The proposal to eliminate the current requirement that the claimant notarize the affidavit attesting to the claimant's understanding of and voluntary compliance with the terms of the settlement would save the claimant the time and effort of obtaining notarization. The Commission believes that notarization is not necessary.

As stated above, the current regulation requires answers under oath to each interrogatory within 21 days. The Commission believes that allowing more than 21 days if agreed by the

² In the current regulation, the section called “Filing documents” is Rule 3.

³ Code of Virginia § 65.2-701 (B) states that: “An employer or insurance carrier which fails to file a memorandum of such agreement with the Commission within fourteen calendar days of the date of its complete written execution as indicated thereon may be subject to a fine not to exceed \$1,000 and to any other appropriate sanctions of the Commission.”

parties would likely reduce litigation. If all parties agree to allowing more than 21 days for a specific interrogatory, then there would appear to be no cost. Thus, this proposed change would likely produce a net benefit.

The Commission believes that requiring that “Any motion filed shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without commission action” may increase the likelihood that the issue is resolved without going to the Commission. To the extent that this proposed requirement would increase the likelihood that some disputes would be resolved without going to the Commission, it would be beneficial.

According to the Commission, the proposed requirement that the opposing side be given three business days to respond before a ruling on the motion is designed to prevent judges from making quick decisions without hearing from both sides.

Rule 2. Hearing procedures

Concerning the proposal to reduce from 20 days to 15 days the amount of time that the parties have to submit written statements and evidence when there are no material facts in dispute as to any contested issue, the Commission believes that 15 days is more than sufficient in most cases. The Commission believes that at times some parties use up to 20 days when they have no genuine need. The current and proposed text do indicate that “For good cause shown additional time may be allowed.” Thus, to the extent that additional time is granted when there is genuine need, this proposed amendment should provide a net benefit in that it may speed up the process.

Rule 4. Filing documents

Code of Virginia § 65.2-701 (B) requires insurance carriers to file written agreements among the parties with the Commission within 14 calendar days of the date of its complete written execution. It further indicates that the carrier may be subject to a fine not to exceed \$1,000 and to any other appropriate sanctions of the Commission if it fails to meet this requirement. The Commission believes the proposed new regulatory text concerning this issue would help it enforce the statutory requirement.

Businesses and Other Entities Affected

The proposed amendments potentially affect injured workers who make compensation claims (23,509 in 2022), their employers (8,810 in 2022), insurance carriers (507 in 2022), and the Commission.⁴

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. No entity appears to encounter an increase in net cost or reduction in net revenue from the proposed amendments overall. Thus, no adverse impact is indicated.

Small Businesses⁶ Affected:⁷

The proposed amendments do not appear to adversely affect small businesses.

Localities⁸ Affected⁹

The proposed amendments are unlikely to disproportionately affect any particular localities or affect costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

⁴ Data source: Virginia Workers' Compensation Commission

⁵ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁶ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁷ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁸ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Effects on the Use and Value of Private Property

The proposed amendments appear unlikely to substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.