

WHITT & DEL BUENO

E-NEWSLETTER

July 31, 2019

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Changes to Virginia Code § 65.2-602: Key Points

Changes to Virginia Code § 65.2-602 recently took effect on July 1, 2019, and included some significant changes regarding how the statute of limitations to file an initial claim for benefits might be tolled. Here are the key points:

- Applies to injuries occurring on or after July 1, 2019.
- Employer must have received notice of the accident per Virginia Code § 65.2-600.
- If the employer fails to file the FROI in the time allotted by Virginia Code § 65.2-900, the statute of limitations is tolled for the duration of the failure to file the FROI (prejudice no longer required).
- Statute of limitations is reset if the employer has paid TTD, TPD, or “wages” or furnished medical treatment more than six months after the accident. The statute of limitations starts anew as of the date of last payment of TTD, TPD, or “wages” or the date of service of medical treatment.
- This section does not apply to payments made after the statute of limitations has already passed.
- If more than one tolling provision applies, the one that tolls the statute of limitations the longest applies.

VA. CODE § 65.2-602 PRACTICE POINT

- ★ If the claimant has not filed an initial claim for benefits, stop voluntarily paying indemnity and medical benefits four to five months after the work accident unless specific circumstances would make it more beneficial to continue those payments.

REMINDER

Please be mindful that all communication with nurse case managers and vocational rehabilitation counselors may be produced to a claimant’s attorney pursuant to discovery requests or a subpoena *duces tecum*.

Recent appellate opinion redefining the definition of injury ***Handel v. City of Alexandria*, 70 Va. App. 349, 827 S.E.2d 384 (2019)**

In our opinion, the *Handel* decision marked a significant departure from established case law regarding what evidence is needed to prove a compensable injury. Traditionally, the Commission and courts have ruled that a claimant needs to prove a sudden, obvious mechanical or structural change to the body in order to prove a compensable injury. This is typically required for each injury claimed.

In *Handel*, the Court of Appeals held that the claimant need only prove *one* sudden, obvious mechanical or structural change that occurs as a result of a work accident. For all other claimed body parts, the claimant only needs to prove an “injury.” Thus, theoretically, if an accident caused a scratch on the claimant’s hand (mechanical or structural change), a mere slight increase in back pain (without a mechanical or structural change) caused by the accident will be compensable. Causation would become the sole defense to these types of claims.

Handel’s employer has appealed this case to the Supreme Court of Virginia. Our firm filed an *amicus curiae* petition for appeal on behalf of several parties in support of the employer’s appeal. We will continue to monitor the appeal.