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*The Vision of the Department of Labor is to Protect, Improve, and Employ every person in the Virgin Islands Workforce.*

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**GARY MOLLOY**

**COMMISSIONER**

JUNE 17, 2024

**Virgin Islands Department of Labor Testimony  
Committee on Education and Workforce Development Meeting**

**June 17, 2024**

Good afternoon, Senator Marise C. James, Chairperson of the Committee on Education and Workforce Development, esteemed Senators, and our viewers and listeners. I am Gary Molloy, Commissioner of the Department of Labor, accompanied by Assistant Commissioner and Legal Counsel Nesha Christian-Hendrickson, Assistant Commissioner Jean Forde, and Rainia Thomas, Director of Workers' Compensation Administration.

Thank you for the opportunity to testify regarding Bill No. 35-0240. This Act proposes transferring the administration of the Government Insurance Fund (GIF) currently in the Department of Finance to the Workers' Compensation Administration which is a unit of the Virgin Islands Department of Labor. It also amends various sections of Title 24 Virgin Islands Code, Chapter 11. This amendment aims to enhance recovery for injuries or diseases arising in the course of their employment in the Virgin Islands under the Workers' Compensation Administration (WCA). Additionally, it seeks to ensure timely access to medical coverage, rehabilitation services, and disability compensation by combining the benefits and payment components of the WCA Program.

The WCA's primary goal is to minimize the adverse impact of such work-related incidents by providing fair and efficient public service for employers and employees. From October 2023 to the present WCA has paid out approximately \$1,756,026.60 to providers and injured workers. \$499, 980.69 in disability payments, \$1, 256,045.91 to providers, WCA, received a total of 416 claims from October 2023 to the present.

Currently, the Department of Labor's WCA division enforces the relevant laws as custodians of injured workers' records and processes claims for persons who are injured on the job. Presently, the Department of Finance's GIF division is the custodian of the Government Insurance Fund and processes the employer premiums. Claim payments, processed by the WCA, are then disbursed to providers and injured workers through the Department of Finance.

Recently the Workers' Compensation Administration Unit has implemented several changes in policy and procedures to bring about better efficiency. Notable recent improvements include that the Workers' Compensation Administration (WCA) division for the first time implemented a comprehensive Workers' Compensation Risk Management System. The division has replaced 96% of its manual procedures and is fully operating out of our automated insurance claims system (Ventiv Claims Premier).

The WCA was able to liquidate all our aged accounts, some as far back as the year 2001, for all our private medical providers and both our local hospitals. The division has also added Telephonic Nurse Case Management and Utilization Reviews to the program. The division held several employee workshops and provider meetings in the past five years. Our monthly employee workshops serve as a refresher course on the Workers' Compensation Law and the division's day-to-day procedures/operations. The provider meetings updated our providers on payment status, and we shared tools with them to assist in reconciling our payments.

Even with all the successful implementations and strides we have made in the last few years, the costs of both the medical and indemnity components of WCA continue to increase substantially. Medical benefits account for more than half of the total benefits paid in Workers' compensation claims. The increased cost and payments associated with facility services, physician charges, prescription drug costs, and improvements to technology have contributed greatly to the increase in medical payments per claim. For example, one provider's office visits last year were two hundred and forty-nine dollars (\$249.00), this year that same visit cost four hundred and forty-nine dollars and fifty-one cents (\$449.51), which is almost double the cost.

Nonetheless, the divisions' future looks promising. The integration of the GIF and the WCA division will correct the shortcomings of both divisions. With the combined units come several significant legislative changes that will help us meet our KPIs, and most importantly push forth and foster a fund that is solvent. The division is in the final stages of securing a Provider's Fee Schedule Agreement, which will standardize the cost of medical care and procedures in less than ninety days (90). We plan to continue fine-tuning our integrated processes, developing new procedures that will align with the system, and train our team. We want to move towards being able to print and disburse our payments. Another goal is to change the current narrative on the WCA program. We want to educate the public that our primary goal is to respond to workplace injuries with the best, most appropriate medical care at a reasonable cost, and to return employees to the workforce as soon as medically possible.

The proposed legislation includes an increased length of time for the statute of limitations for medical care, waiting periods for disability benefits, employer responsibilities, payment timelines, investigation requirements, and provisions regarding employee reemployment and disability benefits.

Below are the sections that have been proposed for amendment and the justifications.

In all instances in this chapter, the designation of "Commissioner of Finance" will be stricken and replaced with "Commissioner of Labor." Additionally, all instances of the "Government Insurance Fund will be stricken and replaced with the "Workers' Compensation Trust Fund." Which will be administered by the Commissioner of Labor and housed within the Department of Labor.

The following definitions of "Board," "District Administrator" and "Fund Administrator" shall be stricken.

The following definitions shall be changed in all instances that the language appears in this chapter.

Firstly, by striking "Board of Workers' Compensation Administration" and replacing it with "Commissioner of Labor," in the title and in this section wherever it appears.

Secondly, "Director" means a person appointed by the Commissioner of Labor to handle the day-to-day operations of the Workers' Compensation Administration.

Reason for Amendment: All of the above changes help to clarify the combination of the two divisions and streamline the current process.

**251-** Section 251, of the Virgin Islands Code, shall be amended as follows:

In section 251, the definition section the “Waiting Period” means the time that must pass before Disability Benefits can be paid to an injured employee resulting from a personal injury or occupational disease arising out of and in the course of employment. The waiting period is counted as consecutive work/business days, not calendar days. The first day an employee becomes disabled triggers the start of the waiting period.

Also, in 251 we would propose to add the following “Maximum Medical improvement (MMI)” which describes when the covered illness is stabilized and is unlikely to improve with or without additional medical treatment.”

Additionally, in section 251 (j) we propose to add the language “ ...Use for the payment of medical procedures a fee schedule recognized in the local medical community not later than 90 days after the fee schedule has been established.”

**252-** Section 252(a), of the Virgin Islands Code is proposed to be amended as follows:

1. Every employer shall pay compensation as hereinafter specified for the disability or death of an employee resulting from personal injury or occupational disease out of and in the course of their employment, irrespective of fault as the cause of the injury or death.
2. ***There will be a five-day waiting period before disability benefits can be paid. If an employee is found eligible for payment on the 15<sup>th</sup> day, the compensation shall be retroactive to the first full day of disability.*** No compensation will be paid if the injury or death is caused solely by the willful misconduct of the employee or the willful intention of the employee to injure or kill himself or another or by the intoxication of the employee, in which case, the burden of proof shall be on the employer to show that the injury was so caused.

Reason for Amendment: The waiting period is counted as consecutive work/business days, not calendar days. The first day an employee becomes disabled triggers the start of the waiting period. Additionally, it will help maintain Fund solvency and define the extent of the injury prompting disability benefits.

**254a-** The Bill proposes to add the following language:

“(j) There is a four (4) year Statute of Limitations on medical care. If there has been no activity in a case for four (4) consecutive years, the case will be closed.

(k) In the event that there has been no activity on a claim for a period of six (6) months, that claim is inactive. The injured worker must submit a narrative medical report for the Director’s consideration in determining if the case will return to active status. A claim can remain in an inactive status for no more than four (4) years.”

Reason for Amendment: The bill seeks to limit fraud and discourage injuries unrelated to WCA.

**254c-(c)** The Bill proposes to add the following language: If a contracted or temporary employee is injured, that employee is eligible only for twenty-six (26) weeks of maximum temporary total disability benefits after the termination date of the employment. If the injury is determined to be catastrophic, that employee will be eligible for one hundred and twenty (120) weeks of disability benefits after the termination date of employment. Contracted and temporary employees are entitled to medical rehabilitation benefits pursuant to 254a.

Reason for Amendment: This addition is needed to codify the temporary total disability limits already in practice. This change also will assist in preventing fraudulent claims where employees would claim disability as a planned income replacement in the event of termination of employment.

Section (g) states: (g) Unless otherwise noted, temporary total disability income benefits shall be paid out for a period not to exceed one hundred and twenty (120) weeks; or upon reaching Maximum Medical Improvement (MMI); whichever occurs first.

Reason for Amendment: Section (g) was added to guarantee a codification of the rules and regulations of the code.

**265-**The Bill proposes to add the following language:

Title 24, Chapter 11, Section 265 is proposed to add section (b). 265 (b) will read as follows: Worker's Compensation Trust Fund will now serve as the payment of future vendors and providers. There is hereby created a Fund to be known as the "Workers' Compensation Trust Fund" (WCTF). The purpose of this fund is to insure employers against liabilities under this chapter and to assure the persons entitled thereto the compensation provided by this chapter. This Fund shall consist of all premiums received and paid into the Fund, of properties and securities acquired by the Fund, ten percent (10%) of all monies collected for traffic violations pursuant to 20 V.I.C., chapter 43, and of interest earned upon monies belonging to the Fund. The Fund shall be applicable to the payment of losses sustained on account of injuries and to the payment of expenses in the manner provided in this chapter. The fund must be available until expended. Furthermore, we would suggest that there be an assessment of a penalty per month for businesses that do not submit certificates to the Government upon commencement of their company.

Reason for Amendment: The purpose of the WCTF is to pay providers or vendors that provide services to Workers' Compensation for injured workers. Payment to the injured workers will also be paid through this fund. The Workers' Compensation Administration Fund will be administered by the Commissioner of Labor and housed within the Department of Labor.

**273-** Title 24, Chapter 11, Section 273

"Presently, the law states: January 1st to March 31st, provided that such employer submits the necessary reports to the Government Insurance Fund no later than February 28th and pays the premium due by March 31st. Every employer who has not filed the required reports and paid the premium due to which this section refers within the term herein fixed shall be considered an uninsured employer in (c) The annual premium prescribed by this chapter may be paid in two

installments. The first installment, which is payable on or before March 31st, shall consist of one-half or more of the annual premium plus any additional premium due. The remaining portion of the premium shall be paid on or before June 30th.”

And proposed to be replaced with this language:

- (a) The annual premium prescribed by this chapter may be paid in two installments. The first installment, payable on or before **December 31<sup>st</sup>**, shall consist of one-half or more of the annual premium plus any additional premium due. This will issue a policy for 6 months. The remainder of the premium shall be paid on or before **June 1<sup>st</sup>**, allowing a second policy to have coverage until December 31<sup>st</sup>.
- (b) A company can elect to pay the total premium by December 31<sup>st</sup>.
- (c) The actual number of employees a company has employed must be reported by September 30<sup>th</sup> of the current year.
- (d) Rate notices will be issued by November 15<sup>th</sup>.
- (e) Renewals shall begin on December 31<sup>st</sup> of the current year.

Reason for Amendment: To be able to reduce issues of non-payment we wanted to streamline the payment structure to align with the certificate which runs on a calendar year. This will also help to modernize the insured and uninsured process as it relates to coverage of employees, position titles, and the number of employees covered before a new coverage period begins.

**276-** Title 24, Chapter 11, Section 276 is proposed to be amended to state: That the statute of limitations shall be increased from “(4) four” to “(10) ten years” which will allow for greater recovery and compliance.

Reason for Amendment: This change is needed to expand the recovery period and assist in greater solvency for the Workers’ Compensation Trust Fund.

**277-** Title 24, Chapter 11, Section 277 is proposed to be amended to: Replace... “shall be fined not more than five hundred dollars (\$500.00) and replaced with five thousand dollars (\$5000.00)”.

Reason for Amendment: This will encourage compliance with the law.

**279-** Title 24, Chapter 11, Section 279 is proposed to add the following language: “The Commissioner shall assess and collect fines in the same manner as premiums are assessed and collected against any employer who fails to keep accurate and true records, or willfully misrepresents the amount of the difference between the premium paid and the premiums that should have been paid.”

Reason for Amendment: This will encourage compliance with the law

**285-** The following language is proposed:

“In the event an employee is terminated for just cause, no disability benefits shall be issued”.

See below:

(2) "... or that the employer had terminated the employment after the accident for just cause. **In the event an employee is terminated for just cause, no disability benefits shall be issued.** No employee rehired under this section may be subsequently dismissed without just cause."

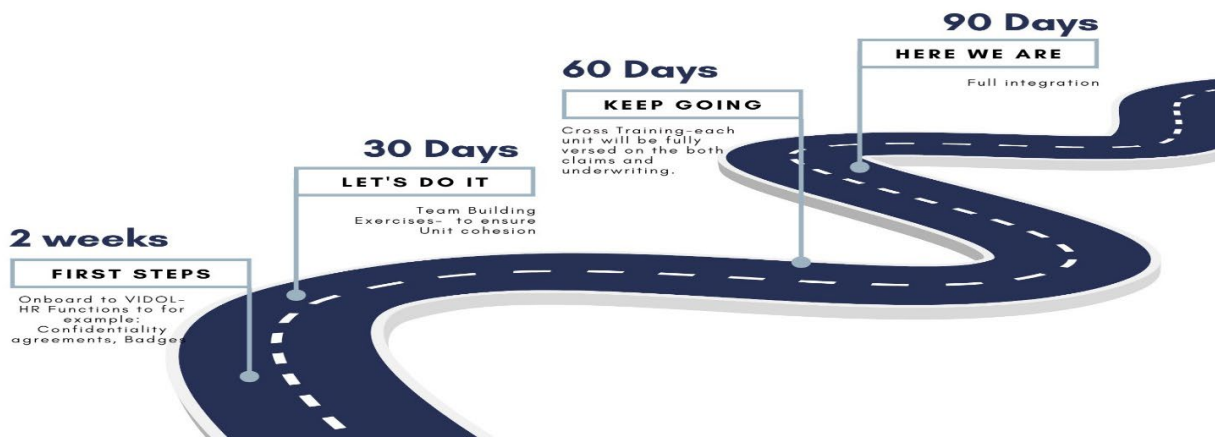
Reason for Amendment: This language prevents fraudulent claims where employees would claim disability as a planned income replacement in the event of termination of employment or corrective action by an employer.

286-Title 24, Chapter 11, Section 286, of the Virgin Islands Code, is proposed to be added as follows:

(d) The Director of WCA shall impose a fine of \$250.00 per failure to respond to a payroll inquiry. Employers that fail to respond within ten (10) working days will be recommended to the Commissioner of Licensing and Consumer Affairs for the suspension of their business license until the payroll inquiry has been completed.

Reason for Amendment: the failure to provide the requested payroll information results in the delay of payments to the injured employee.

## WCA & GIF Integration



Here is the timeline that VIDOL is proposing:

To prepare for this combination VIDOL has had preliminary conversations with the Unions, however, a full conversation will occur before the integration of units.

We would like to emphasize all employees' rights and salaries as derived from their Union Contracts from the GIF will remain the same upon the integration of that unit into the WCA. Those who come from the GIF will be in the Underwriting unit once combined with the Department of Labor. However, management reserves the right to organize, and assign based on the needs of the administration of the WCA.

In conclusion, I would like to extend my gratitude to the VIDOL team, the DOF team, especially the Government Insurance Fund unit, the Office of Management and Budget, the Division of Personnel, the Office of Collective Bargaining, and the Office of the Governor for providing background, guidance, and suggestions regarding this Bill. My Team and I am prepared to address any questions you may have regarding this crucial matter.