



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

GARY MOLLOY

COMMISSIONER

MAY 16, 2024

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

May 16, 2024

Good morning, Senator Marise C. James, Chairperson of the Committee on Education and Workforce Development, esteemed Senators, and our viewers and listeners. I'm 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.

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 \$1,311,143.49 to providers and injured workers. \$457,004.75 in disability payments, \$854,138.74 to providers, WCA, paid out four hundred and sixteen (416) claims.

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 Division 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 assistance 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 in a worker's compensation claim. 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 transfer 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 rectify our audit deficiencies, help us meet our KPIs, and most importantly push forth and foster a fund that is solvent. The WCA division continues to work on securing a Provider's Fee Schedule Agreement, which would 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.

There are notable differences between the original bill and the current legislative proposal. These include repealed sections, a statute of limitations for medical care, waiting periods for disability benefits, employer responsibilities, payment timelines, investigation requirements, reserve account creation, provisions regarding employee reemployment and disability benefits, and audit structures. The Department of Labor maintains that the Bill as originally proposed is the best version of this legislation. In preparation for this hearing, both WCA and GIF completed a comprehensive review of Title 24 Chapter 11 of the Virgin Islands Code and made proposed changes that would streamline our policies and procedures.

The original Bill as proposed includes section 265. This section would allow for the creation of a new account. This fund would begin with a reserve in the amount of six (6) million dollars. Thereby providing a safety net for future workers' compensation needs. This fund would be created by surplus collections. The funds would only be used for payments to providers or injured workers.

In the original proposal, sections- 250, 251a, 251b, 251c, 252, 254a, 254c, 265, 266, 271, 272, 273, 276, 277, 279, 285, and 286 have been amended.

Below are the sections delineated and the justification.

In section **250**- in all instances in this chapter, the designation of "Commissioner of Finance" will be stricken and replaced with "Commissioner of Labor." Thereby created a Fund to be known as the "Workers' Compensation Administration Fund." The Workers' Compensation Administration Fund will be administered by the Commissioner of Labor and housed within the Department of Labor. The Commissioner of Labor will be the custodian of the Workers' Compensation Fund. The Bill proposed by the Legislature does not include this section.

251a- The original bill repeals Section 251a entirely. This is mirrored in both Bills.

251b- In all instances in this section, the designation of “Commissioner of Finance” will be stricken and replaced with “Commissioner of Labor.” This language is not identical to what was proposed in the original bill. We stand on the language above.

The reasoning behind the changes in 251a and 251b is that currently there is no need for a Workers’ Compensation Board, the Director of WCA can perform the functions formerly assigned to the WCA Board.

251c-The original Bill proposes to review and update the law as needed, as well as incorporate and align with industry changes instead of what the law currently states “every five (5) years.” This is mirrored in both Bills.

252- Section 252(a), of the Virgin Islands Code shall 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 15th 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.

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 GIF solvency and define the extent of the injury prompting disability benefits.

This language is not identical to what was originally proposed. We stand on the language above that includes a waiting period.

254a- The original 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 consecutive years, the case will be closed. This is mirrored in both Bills.

(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.”

The original Bill seeks to limit fraud and discourage injuries unrelated to WCA. The difference between the two Bills is the use of the word Director instead of Administrator. VIDOL stands by the language originally proposed. It is VIDOL’s position that the Director of WCA would be better equipped than an administrator.

254c- In the originally proposed Bill, two sections were added.

(c) In the event that 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.

The reference to Section 245(b) shall be amended to refer to 254(b). This was a typographical error. This is reflected in both bills.

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.

Additionally, Section (g) was added to guarantee a codification of the rules and regulations of the code. 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. This is reflected in both bills.

265- Title 24, Chapter 11, Section 265 is Government Insurance Fund is amended to add subsection (a) to add the ‘Workers’ Compensation Trust Fund.’ The Workers’ Compensation Fund shall be created as a reserve account to assist in the payment to providers or vendors that provide services to Worker’s Compensation injured workers. This reserve account shall be initially funded with six million dollars.

Title 24, Chapter 11, Section 265 is amended to add section (b). 265 (b) will read as follows: Each Government Insurance Fund collects roughly nine (9) million, and any surplus of this amount shall be held in the Workers’ Compensation Fund for the payment of future vendors and providers. VIDOL stands by the language originally proposed.

266- In the original Bill this section was requested to be deleted in its entirety by the GIF. Parts 2-4 have been proposed to be removed because the fund reserve of six (6) million is being offered in another section, making this section duplicitous. This is reflected in both Bills.

271- In the original Bill this section change was requested to be altered by GIF. The section which speaks to an experience rating, instead. The Proposal is to have employers become experienced after three (3) years. This language does not appear in the Legislature version of the Bill. We stand by the language in the original proposal.

272-(c) The original Bill proposes that any employer who has been covered by the Government Insurance Fund at the end of the preceding year shall be covered during the period of January 1st to December 31st of each year.

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.

The justification for this change is that the Government became aware that there were discrepancies when businesses filed reports with GIF versus payment. 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 streamline the insured and uninsured process as it relates to coverage of Employees, position titles, and number of employees covered before a new coverage period begins. This language does not appear in the Legislature version of the Bill. We stand by the language in the original proposal.

273- In the original Bill the following was deleted:

“(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 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 31st**, 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 1st**, allowing a second policy to have coverage until December 31st.
- (b) A company can elect to pay the total premium by December 31st.
- (c) The actual number of employees a company has employed must be reported by September 30th of the current year.
- (d) Rate notices will be issued by November 15th.
- (e) Renewals shall begin on December 31st of the current year.

The justification for this is that there were discrepancies when businesses filed reports with GIF versus payment. 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 streamline 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. VIDOL stands by the language initially proposed. The language proposed by the legislature speaks to June 15th.

276- In the original Bill this section change was requested to be changed by GIF. Increasing the time period from (4) four to (10) ten years will allow for greater recovery and compliance.

277- In the initial Bill this section change was requested to be changed by GIF. We became aware that there were discrepancies when businesses filed reports with GIF versus payment. This will encourage compliance with the law and also provide a flexible fee schedule.

279- This change was requested by GIF. Leaving out the amount provides greater flexibility.

285- In the original proposed bill, the following language was added: “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.”

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. VIDOL stands by the language that was initially proposed.

286- Title 24, Chapter 11, Section 286, of the Virgin Islands Code, shall be amended 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.

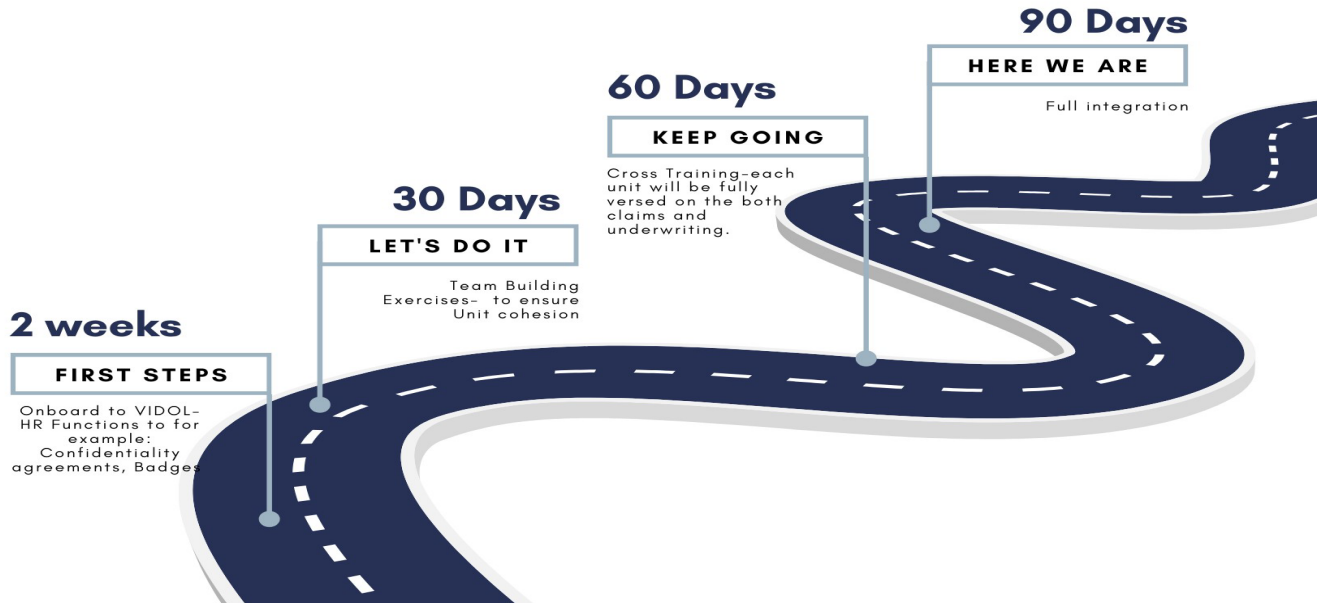
Reason for Amendment: the failure to provide the requested information results in the delay of payments to the injured employee. VIDOL stands by the language originally proposed.

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.

Here is the timeline that VIDOL is proposing:

WCA & GIF Integration



In conclusion, I would like to extend my gratitude to the VIDOL team and my colleagues for providing background and informing us of our suggestions regarding this Bill. I would also like to thank the Bryan/Roach Administration for their continued support. I am prepared to address any questions you may have regarding this crucial matter.