

**At What Point Must a Growing Company Purchase
and Maintain a Workers' Compensation Insurance Policy?**

By

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In Virginia, the Workers' Compensation Act (the "Act") is an employee's exclusive remedy against his employer for injuries sustained on the job. To protect an employer from the disastrous financial fallout from a compensable accident, the Act requires employers to obtain Worker's Compensation insurance. However, as a general rule, only those employers with three or more employees are subject to the Workers' Compensation Act, and are required to obtain Workers' Compensation Insurance.

Therefore, determining what workers constitute "employees" under the Act becomes extremely important, and the line of demarcation between employee and non-employee can be very nebulous. For instance, individuals properly classified as independent contractors under Virginia law do not constitute employees for the purposes of the Act. However, for the purposes of the Act, a contractor is deemed the employer of the employees of a subcontractor.

Or, corporate officers under the Act are treated as employees, but members of a limited liability company (LLC) are deemed owners of the company and are therefore not counted as employees. And if the LLC pays its manager a regular salary, then the manager is deemed an employee for purposes of qualifying under the Act.

The difficult determination of whether an individual qualifies an employee is not typically intuitive, but requires a careful understanding of the law, as well as a fact-specific analysis of the potential employee's role in the company.

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KYLE D. KORTE joined our firm in 2005. Kyle looks forward to growing his practice through work in business law, workers' compensation, creditors' rights, collections and litigation.

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