

industrial diseases

IN THE WORKPLACE



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ASBESTOS RELATED DISEASES

A BRIEF INSIGHT

Asbestos was commonly used as an insulating material because of its high resistance to heat. It is a very strong and flexible mineral. Asbestos use has been widespread within the shipbuilding industry, railway industry and by companies for use as insulation, for example on boilers or pipework. Asbestos can be blue, brown, grey or white in colour.

A person working with asbestos or near to asbestos may have been exposed to asbestos dust, and is potentially at a risk of developing an asbestos related condition.

Employers are generally only liable to pay compensation for periods of employment after June 1954. This is the date when employers ought to have been aware of the dangers of asbestos and ought to have protected employees.

OVERVIEW OF THE DISEASE

Asbestos exposure can cause Pleural Plaques, Diffuse Pleural Thickening, Asbestosis, Mesothelioma and Lung Cancer. Its effects can be fatal. The risk and severity of the disease increase depending on the level of exposure. One fibre can cause mesothelioma. Asbestosis is a dose related disease.

The diseases do not usually occur until 20 or so years after exposure to asbestos. In some cases, the diseases may not show until 50 years after exposure or as little as 10 years after.

POTENTIAL DIFFICULTIES RECOVERING COMPENSATION

In order to recover compensation, it is necessary to trace the employer who exposed you to asbestos and/or their insurers. In many cases, because of the length of time that has passed, it may be difficult to trace the insurers.

In addition their financial position may make it difficult to obtain compensation. It is not unusual for smaller building contractors or plumbers to go out of business years after someone has left the company, and indeed one of the largest manufacturers of asbestos in the UK, Turner & Newall are in administration. Proceedings are presently ongoing in this case to establish if they were properly insured.

Further difficulties exist because there is no compulsory insurance register. It can therefore be difficult to establish who the insurers are.

The Government have introduced the Pneumoconiosis (Workers) Compensation Act 1979 to enable sufferers of asbestos related diseases to recover compensation if employers are no longer trading, but certain criteria must be met. A sufferer must have been assessed by the Department of Social Security as having an asbestos related disease or it must be shown on the Death Certificate.

BARKER -V- SAINT GOBAIN PIPELINES PLC

The House of Lords have ruled that anyone exposed to asbestos dust with more than one employer, should be able to recover compensation.

More particularly, those suffering with mesothelioma can no longer recover full compensation from any one of their former employers even if they are able to show that the employment materially increased the risk of mesothelioma developing. Compensation must now be split between the employers on a time exposed basis.

For other types of asbestos conditions, any compensation awarded will be split between the employers on a time exposed basis.

INDUSTRIAL DEAFNESS

An employer will only usually be liable to pay compensation for periods of noisy employment after 1963.

It is necessary to prove that a hearing loss is linked to the exposure to noise and not caused by any other condition. This has to be done by way of medical evidence.

It is necessary to prove that the noise has been excessive and almost continuous. It is usual to prove that noise levels have been in excess of 85 to 90 db(A) for a claim to succeed.

Difficulties in claiming compensation arise if Hearing Protection has been provided. In most factory environments hearing protection has become compulsory and so the employers have discharged the duty they owe to their employees. In this case a court will not find

them negligent.

In addition, a claim must be brought within 3 years of the hearing loss being linked to the employment.

VIBRATION WHITE FINGER/CARPAL TUNNEL SYNDROME

A claim for compensation can be pursued for exposure to vibratory tools after the 1st January 1976. There are few exceptions to this rule.

The condition is often caused by the excessive use of vibratory tools such as jack hammers, grinders and other pneumatic equipment, although symptoms can affect 5% of the population who have not used them.

Symptoms include pins and needles, numbness, tingling and whiteness which can spread from the tips of the fingers. Symptoms are often worse in cold environments.

It is necessary to prove that the symptoms relate to tool use and that the employee has had to use them for excessive periods.

Exposure to vibratory tools usually has to be for 2 1/2 hours per normal shift although this can depend on the type and age of equipment used.

Sufferers may also suffer from Carpal Tunnel Syndrome, whose symptoms mimic those of vibration white finger.

CHRONIC BRONCHITIS/EMPHYSEMA

These conditions usually occur as a result of working in damp, dusty environments without the use of protective equipment. They are caused by a bacteria or virus.

Symptoms can include a prolonged cough or shortness of breath.

Medical evidence has to be obtained to show the condition has been caused by work.

OCCUPATIONAL ASTHMA

There are a wide variety of substances which can cause asthma.

In particular, this can affect workers in the farming industry; food processing industry and

plastic and rubber workers. Paint sprayers can also be affected.

Symptoms cause breathing difficulties and can lead to a sufferer becoming sensitive to other substances.

It is estimated that 10% of the population are affected by asthma, and the condition can be mistakenly attributed to employment.

REPETITIVE STRAIN INJURY

Upper Limb Disorder

This can be caused by performing the same task continually as a result of your employment. Tasks will be of a repetitive nature using your hands and arms.

Symptoms can include numbness, tingling, pain and inflammation within the hands, wrists or elbow joints.

Other Injuries

On occasion, repetitive work can cause injury to backs and necks. It is necessary to show that job rotation/variation would have reduced the risk of straining injuries.

TIME LIMITS

There are time limits to make a claim against a former employer.

Generally, you must issue court proceedings or negotiate settlement terms within 3 years from the date you knew or ought to have known that you had an employment related condition. In exceptional circumstances, this time limit can be extended.

It is necessary to consult a solicitor as quickly as possible in order that the claim can be investigated and pursued. Generally, once the 3 year period has passed, you will be barred from making a claim.

MEDICAL EVIDENCE

It is necessary in all types of claim to obtain independent medical evidence to prove that the condition complained of is employment related. There can be other causes which need to be ruled out.

EMPLOYER'S NEGLIGENCE

It is also necessary to show that your employer has breached his duty of care towards you. This normally involves proving that your employer has failed to protect you from the dangers and that he has exposed you to a foreseeable risk of injury.

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