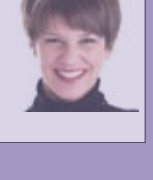
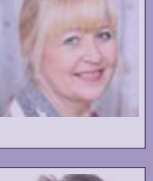
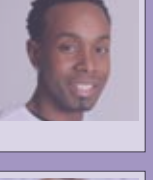
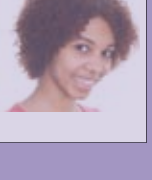
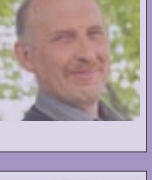
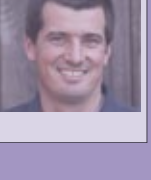
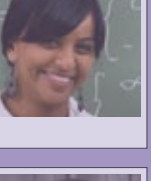
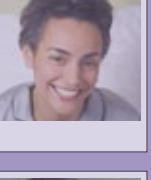
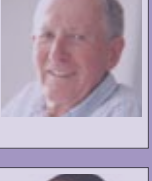
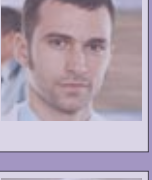
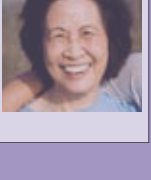
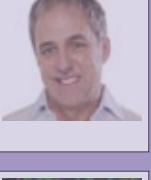
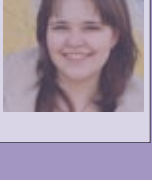
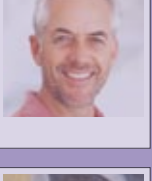
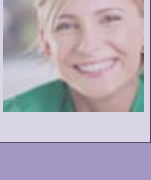
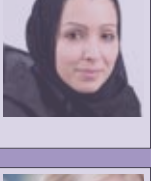
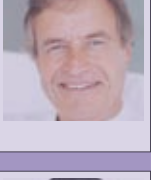
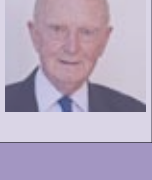
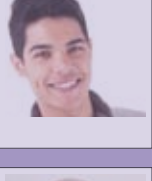
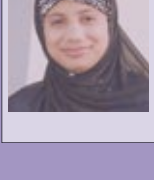
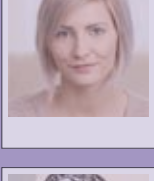
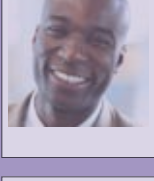


# MWR Solicitors

A legal guide



# HEALTH & SAFETY: Industrial diseases



# CONTENTS

Time Limits	4
Foreseeable Risk of Injury	4
Asbestos-Related Disease	4
- A Brief Insight	4
- Overview	5
- Pleural Plaques	5
- Potential Difficulties Recovering Compensation	5
- Mesothelioma	6
Compensation Act 2006	6
Industrial Deafness	7
Vibration White Finger/Carpal Tunnel Syndrome	8
Chronic Bronchitis/Emphysema	8
Occupational Asthma	9
Occupational Dermatitis	9
Repetitive Strain Injury	10
Exacerbation/Aggravation of Injury	10

## **TIME LIMITS**

In a claim arising from an accident, court proceedings must be issued usually within 3 years of the accident. In a claim where a condition has come on over a period of time, the position is less straightforward. The 3-year "limitation period" still applies, but it starts from when the Claimant knew or ought to have known that he was suffering from a condition caused by his work.

The courts consider the question of knowledge objectively and largely without reference to the Claimant's own state of mind. The question is whether a reasonable person in the Claimant's circumstances would have had sufficient knowledge to start the limitation period.

This area of law is very complex and each case will be decided based on its own facts. Needless to say, the earlier a County Court action is issued, the better chance it has of avoiding arguments that it is out of time.

## **FORESEEABLE RISK OF INJURY**

It is usual for an employee to have to prove that the employer has exposed him to a foreseeable risk of injury and failed to take action to avoid that injury.

## **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. It can also be found in artex or within ceilings or walls as a fireproof. It is common in old buildings. 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. This usually happens when the asbestos is disturbed.

Employers are generally 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

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 usually increases depending on the level of exposure (the amount of asbestos itself and the period of time), although a single asbestos fibre can cause mesothelioma.

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.

## PLEURAL PLAQUES

Pleural plaques are areas of fibrosis usually present on the lungs. They are symptomless. Pleural plaques indicate exposure to asbestos even at low levels. It can develop into a more severe asbestos condition.

Historically, the courts have awarded compensation for pleural plaques but in a case heard in the House of Lords in 2007, it was held that because the condition causes no symptoms, it is not something for which compensation can be paid in law.

The Scottish parliament has already overturned this ruling by legislating to ensure that victims receive appropriate compensation. Pressure is being applied to our government for similar measures, but so far without success.

## POTENTIAL DIFFICULTIES IN RECOVERING COMPENSATION

In order to recover compensation, it is necessary to trace the relevant employer where exposure to asbestos occurred and/or their insurers. In many cases, because of the length of time that has passed, it can be very difficult to trace the insurers.

It is not unusual for smaller building contractors or plumbers to go out of business, and indeed one of the largest manufacturers of asbestos in the UK, Turner & Newall is in administration. Proceedings are presently ongoing to establish if they were properly insured. Some insurance companies have also gone out of business and although their liabilities may be covered by a scheme, the cover would not be complete so there would not only be huge delays in obtaining anything at all, but damages and costs would not be met in full.

Without a 'live' company with funds, or any insurance to meet a claim, there is little point in pursuing the matter since even if the claim is successful, there will be no money available to pay damages and costs.

Other problems can arise depending on the specific terms of an employer's insurance policy. Some actually exclude mesothelioma and so would be of no use even if traced.

To cover cases where employers are no longer trading, the government introduced the Pneumoconiosis (Workers) Compensation Act 1979. This introduced a scheme to enable those suffering asbestos-related conditions to recover compensation from a government fund, subject to certain criteria, including receiving an award by the DWP of benefits or evidence on the death certificate.

## **MESOTHELIOMA**

In 2006, the House of Lords overturned decades of settled law when it decided that where a person suffering from mesothelioma after exposure to asbestos had more than one liable employer, the employers should pay compensation on a time-exposed basis. There was a loud outcry at this.

Mesothelioma can be caused by exposure to only one single fibre of asbestos. Whilst in practice, exposure is likely to involve much higher doses than this, it is impossible to ascertain the exact fibre which lead to the condition, or for which employer that exposure took place. The time-exposed approach left victims under-compensated where one or more employers could not be found.

## **COMPENSATION ACT 2006**

Parliament rectified the approach to mesothelioma claims in the Compensation Act 2006. This act allows victims of mesothelioma to receive compensation from any one responsible employer as quickly and as easily as possible. The employer will then be able to claim back contributions from other employers, if traced.

For all other asbestos conditions, each employer contributes on a time exposed basis. If one employer cannot be traced, then the compensation would be reduced for that period.

## INDUSTRIAL DEAFNESS

Employers are generally liable to pay compensation for periods of employment after 1963, when the courts have decided that the link between noise at work and deafness was sufficiently well-known to impose a duty of care upon employers.

The onset of deafness must usually occur within 2 years of exposure to noise for there to be a link between the deafness and the noise at work.

Expert evidence from an ENT (ear, nose and throat) surgeon will be required to prove that the hearing problem is related to workplace noise, but it is also necessary to prove that the noise itself was excessive. The levels of noise deemed excessive vary depending upon the year exposure took place.

The question as to whether noise is regarded as excessive depends on the actions of an employer and the date of exposure, since the "guilty noise levels" have been lowered over time. The current applicable law can be found in the "Control of Noise at Work Regulations 2005".

Where daily noise levels for an individual exceed the "first action level", an employer should carry out a noise assessment and reduce the risk of damage to hearing to the lowest level reasonably practicable, for example by introducing hearing protection and/or ear protection zones. Where daily exposure levels exceed the "second action level" the employer's duty is to reduce the noise at source, so far as is reasonably practicable. The employer also has a duty to provide training, warnings and information about the dangers of working in noise.

If hearing protection is supplied, along with information and instructions in its use, then the employee has a duty to use it as directed.

The level of noise reach the action levels at the following levels:

	1990 to 2005	2005 on
<b>First action level</b>	85 dba	80 dba
<b>Second action level</b>	90 dba	85 dba

If an employer fails to comply with his duties when noise reaches action levels, this will normally amount to a breach.

## 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 vibratory tools.

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

For symptoms to appear, exposure to vibratory tools would usually be for a minimum of 2½ hours per shift although this can depend on the type and age of equipment used.

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

In all cases, medical evidence is necessary to prove that the symptoms relate to the use of vibratory work equipment for excessive periods and are not due to another cause.

## CHRONIC BRONCHITIS/EMPHYSEMA

These conditions usually occur as a result of working in dusty environments without the use of protective equipment.

Symptoms can include a prolonged cough or shortness of breath, leading to a respiratory disability.

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

Cigarette smoking is the major cause of this.

## OCCUPATIONAL ASTHMA

There are a wide variety of substances which can cause asthma, but some of these are known to arise in the workplace, in particular in farming, baking, food processing, paint, plastic and rubber work. For example, the alpha amylase found in flour dust is known to cause asthma if inhaled in sufficient quantities over time, and it is known that some types of glue and paint contain isocyanates, which also cause asthma and related conditions.

Workplaces are governed by various Regulations including the Control of Substances Hazardous to Health Regulations 1999.

Once hazardous substances are known and have been identified by the employer, action needs to be taken to prevent employee exposure entirely. If prevention is not reasonably practicable the employer must consider other measures to control exposure to employees.

Asthma can vary in severity, from a condition which clears up when the employee is removed from the source of the problem, to an ongoing permanent sensitisation requiring the use of inhalers for an indefinite period.

However, as for all personal injury claims, medical evidence is needed in order to confirm that the cause of the condition is the working environment rather than for example, a natural disposition, or sensitisation from any other non-negligent source.

## OCCUPATIONAL DERMATITIS

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

In particular, this can affect employees in the food processing industry, those handling oils, nickel, tin or other allergens.

Symptoms can cause the skin to become chapped, broken and sore. It can lead to the sufferer becoming sensitive to other substances.

Medical evidence is required to show that the condition has been caused by the workplace, rather than another source or even a natural disposition.

## REPETITIVE STRAIN INJURY

Some medical experts do not believe there is such a condition as "repetitive strain injury". Sometimes the problem can be referred to instead as a "work-related upper limb disorder". There are a number of different conditions which may fall into this category, including Carpal Tunnel Syndrome, epicondylitis, tenosynovitis, golfers elbow and tennis elbow. Back and neck injuries may also arise from repetitive work.

The condition usually arises as a result of an employee carrying out work of a repetitive nature, carrying out the same task day in/day out. This usually involves stretching, reaching and/or lifting repeatedly using the arms.

Employers are under a duty to avoid the risk to the health and safety of their workers unless it is not reasonably practicable to do so, pursuant to the Manual Handling Operations Regulations 1992. In that case, they must carry out a risk assessment and reduce the risk to the lowest level which is reasonably practicable. Employers can avoid liability if they have taken all reasonable precautions to avoid an injury, such as rotating jobs.

As ever, a "causal link" between the repetitive work and the injury must be demonstrated by a medical report from an appropriate expert.

## EXACERBATION/AGGRAVATION OF INJURIES

If an employer can prove that there was no foreseeable risk of injury to the employee from the type of work carried out, they can usually avoid liability.

However, once they become aware that an individual employee has suffered health problems, they have a duty to take action to avoid further injury.

If they fail to do so and the employee suffers again in the future, then the employer can be liable for an exacerbation or aggravation of the injury.

## OUR SERVICES

Accident claims  
Employment law  
Wills & Probate  
Conveyancing  
Family law

## CONTACT US

MWR Solicitors  
No.6 Cannon Street  
Preston  
PR1 3PY

Telephone: 01772 254201  
Fax: 01772 202976  
[www.mwrlaw.com](http://www.mwrlaw.com)

