

## INDUSTRIAL ACCIDENTS AND DISEASES

### CAN I SUE MY EMPLOYER IF I HAVE AN ACCIDENT AT WORK?

Employers owe to their employees a general **DUTY OF CARE**. That means that employers have to ensure that they provide a safe working environment for their employees as far as is reasonably possible. In addition, in certain circumstances the employer also has a duty imposed by statute or regulation. If the employer breaches his duty of care and the employee contracts a disease or sustains an injury as a result, the employer may have to pay the employee compensation.

### HOW DO I PROVE THERE HAS BEEN A BREACH OF THE DUTY OF CARE?

If the employer does not admit the breach, it will normally be necessary to obtain **INDEPENDENT EXPERT EVIDENCE** on the subject eg. a report from a consulting engineer. An employer cannot be held responsible if, for example, an employee has not followed safety procedures laid down by the employer and that is why the accident has occurred. In other cases the accident may just be an unfortunate incident which the employer could not have prevented even if all reasonable care had been taken. If however the employer has not exercised reasonable care the employer may be **NEGLIGENT**.

There are also certain laws made by **STATUTE** or **REGULATION** requiring employers to comply with certain standards. If a relevant statute or regulation has been breached and an employee has sustained an injury as a result, the employer will be liable to pay compensation, even if the employer was not in any other way negligent. This is known as a **BREACH OF STATUTORY DUTY**. Again, expert evidence may be required to prove the breach.

### WILL I LOSE MY JOB IF I SUE MY EMPLOYER?

Strictly speaking the fact that an employee is making a claim should not in any way affect the employee in his/her work but in some cases employees do feel that they have been unfairly treated in work because they have made a claim. This however happens in a minority of cases and normally an employee can seek compensation from an employer through court action with no adverse effects. An employee will have some protection through the employment legislation and if you have any doubts you should discuss the matter with your solicitor.

### WHAT ABOUT COMPENSATION FOR INDUSTRIAL DISEASES?

In these types of cases it is again necessary to prove that the employer was **NEGLIGENT** or there has been a **BREACH OF STATUTORY DUTY**. Whether or not an employer can be held responsible for an employee contracting an industrial disease will depend on a number of factors, one of which will be what was actually known about the dangers of a particular substance during the course of the employee's employment. For example, the dangers of asbestos have been widely known for decades and an employer would be negligent if employees were exposed to this substance without proper steps having been taken to minimise the risks. However when asbestos was first used the dangers were not known and therefore employers could not be held responsible for employees who contracted asbestosis before the dangers became known.

There are now accepted "dates of knowledge within the industry" in respect of many such risks of dangerous substances.

A further problem in these cases is proving the link between the disease and the substances to which the employee was exposed to during his/her employment. For example, certain cancers may be due to exposure to certain chemicals, but may also be caused by smoking and it can sometimes be difficult to establish the necessary link. This is

known as the **CAUSATION** element. It is up to the Claimant to prove the case on the **BALANCE OF PROBABILITIES** i.e. it is more likely than not that the disease is due to exposure to substances in the course of employment.

It will be necessary to prove which particular employer was responsible. If the Claimant has had various jobs over the years, it is often necessary to bring proceedings against more than one employer. When you first consult a Solicitor it is helpful if you have prepared a list of all jobs which you have had since leaving school, the dates of your employment with each employer, the names and addresses of all employers and the sort of work which you carried out.

### WHAT ARE THE MOST COMMON TYPES OF INDUSTRIAL DISEASES?

Some examples are:-

**ASBESTOSIS CLAIMS** - where the employee has contracted asbestosis as a result of exposure to asbestos in the course of employment.

**INDUSTRIAL DEAFNESS CLAIMS** - where the employee has become deaf or partially deaf as a result of exposure to high levels of noise in the course of employment.

**RSI (REPETITIVE STRAIN INJURY) CLAIMS** - where the employee has sustained an injury due to having carried out the same repetitive task over a period of time in the course of employment (eg at a keyboard).

**MUCOUS MEMBRANE DISEASE** - a disorder of the nasal passages often caused by the fumes from welding.

**VIBRATION WHITE FINGER** - caused by use of vibrating machinery resulting in bleaching of the finger and poor blood circulation to the hands.

### WHAT CAN I CLAIM FOR?

The employee (or Claimant in the case) can make a claim for various categories of **DAMAGES** (compensation) some of which are set out below.

1. Damages for pain, suffering and continuing disability.
2. Past and future loss of earnings.
3. Damages for "prejudice on the labour market".
4. Past and future expenses eg. travel expenses, prescription charges, cost of nursing care and/or home help and in severe cases the cost of adapting the home.

Make and keep a list of all expenses incurred together with any supporting receipts.

It is also important to note that if the Claimant has received any state benefits as a result of the injury

occurring, including statutory sick pay, some or all of the benefits paid to the Claimant may have to be repaid to the **COMPENSATION RECOVERY UNIT (CRU)** out of any damages. This rule is to prevent a Claimant being doubly compensated if he/she has had benefits which wouldn't have been paid had it not been for the accident.

### FUNDING

- Check your household insurance policies to see if you have legal expenses cover.
- Some Solicitors may consider a no win - no fee arrangement (**CONDITIONAL FEE AGREEMENTS**). see our Fact Sheet on Conditional Fee Agreements.

### ARE THERE ANY TIME LIMITS?

YES. Proceedings must be **LODGED WITH THE COURT** within **THREE YEARS** of the accident occurring. In relation to industrial disease cases this can be more complicated and the three years will start to run from the date the employee contracts the disease or, if later, the date from which the employee realised or **SHOULD HAVE REALISED** that the disease has been contracted as a result of exposure to chemicals or a system of working in the course of employment. The rules are complex to apply. If in any doubt you should consult a Solicitor as soon as possible as if proceedings are not brought within the three years the claim will be out of time or **STATUTE BARRED**.

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