



Understanding Occupational Disease Claims Under The New Jersey Workers' Compensation Act



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Most people think that a claim for worker's compensation benefits arises out of a traumatic injury that occurs as a result of an accident on the job. While many workers' compensation claims are based on work-related accidents, the New Jersey Workers' Compensation Act also allows benefits to workers who sustain an "occupational disease".

What Are "Occupational Disease Claims"?

Occupational disease claims are allowed under N.J.S.A. 34:15-31, which provides benefits for injuries caused by repetitive activity or exposures over a period of days, months, or even years. Occupational disease claims have a four (4) part burden of proof, which the injured employee must meet in order to be eligible for workers' compensation benefits.

What Is the Employee's Burden of Proof?

An employee who seeks benefits due to an occupational disease must be able to establish that (1) her claim

occurred during the course of work, (2) the disease arose out of her work, (3) the disease is the result of "causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment," and (4) that the contribution of work to the disease is "in a material degree."

What Types of Work Conditions May Cause "Occupational Diseases"?

Exposure to airborne toxins in the workplace, which may result in injury to an employee's lungs, is one of many types of "occupational diseases." Often, employees such as nurses, home health aides, and teachers, sustain occupational diseases as a result of repetitive use of a body system that is required for their profession. Jobs which require repeated lifting, bending, squatting, speaking in a raised voice or speaking for hours at a time, may result in an occupational disease.

What is the Statute of Limitations for "Occupational Disease" Claims?

Occupational disease claims may be difficult to prove, as they place a strict burden of proof upon the employee. Also, occupational disease claims "must be filed within two (2) years after the date on which the claimant first knew the nature of the disability and its relation to the employment." N.J.S.A.34:15-34.

How Does an Employee Initiate an "Occupational Disease" Claim?

Just as in a traumatic injury situation, an employee who believes she may have an occupational disease claim must notify her employer of her medical condition, that she believes it is related to her job, and request medical evaluation from a medical provider of the employer's choice. If the employer refuses to refer the employee to a physician, then the employee may seek out her own medical treatment, and must notify both her employer and her employer's workers' compensation insurance carrier that treatment is being sought. If the employer or its insurer authorizes no treatment, the employee may be personally responsible to pay for her treatment.

Is It Necessary to Retain an Attorney to Pursue an "Occupational Disease" Claim?

Although legal representation is not required, it is particularly recommended in a situation where her employer does not authorize the employee's need for medical treatment. An attorney will be able to assist the employee in determining whether she has sufficient evidence to prove that her claim is compensable as an "occupational disease." Because every situation is different, and relies heavily on the individual employee's medical history and treatment records, "occupational disease" claims require a thorough analysis.

Once a formal Workers' Compensation Claim is filed with the New Jersey Department of Labor, the claim is monitored by a Judge of the Workers' Compensation Court. Legal fees are determined by the Workers' Compensation Judge, and are only awarded if the employee is awarded benefits. If fees are awarded, both the claimant and the employer pay a portion of the claimant's attorney's fees.

What Benefits Is a Successful Claimant Entitled to Receive?

An employee who successfully presents an occupational disease claim is entitled to necessary and reason-

able medical treatment for the disease, temporary disability benefits for the period under which the employee is undergoing medical treatment and is unable to work, and permanent partial disability benefits, and in some extreme cases, permanent total disability benefits.

Please feel to contact Sharon Ferrucci of Basile & Testa at (856) 691-2300. A consultation about your Occupational Disease case is free.



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Sharon A. Ferrucci, Esq., has recently joined the firm of Basile & Testa, and handles a variety of legal matters, including workers' compensation and Social Security Disability claims. She was born in Vineland, N.J., and graduated from Vineland High School in 1975. Thereafter, she obtained a Bachelor's Degree at Boston College, and a Juris Doctor at Temple University School of Law. She is currently a member of the New Jersey State Bar Association, Camden County Bar Association, and Cumberland County Bar Association. In addition to working with the Basile & Testa firm, Ms. Ferrucci serves as a New Jersey Superior Court approved Arbitrator, and a Rule 1:40 mediator, and handles both court-referred and private arbitrations and mediations in a variety of legal matters.