

Disease Update: Briefing Notes

Hand Arm Vibration Syndrome (HAVS):

The Control of Vibration Regulations 2005: from 6th July 2010, these Regulations will apply to all machinery issued to an employee before 6th July 2007. Therefore, the employer's duties will shortly extend across all machinery in the workplace, not just new machinery installed or issued since 2007.

Under these Regulations, the following statutory obligations are imposed on employers:

1. Reg 5 – where employees are exposed to a risk from vibration, an employer must carry out a risk assessment and identify the measures needed to reduce the risk
2. Reg 6 – every employer shall ensure that the risk of vibration is eliminated at source or, where that is not practicable, the risk is reduced to as low a level as reasonably practicable.
3. Reg 7 – if the risk assessment identifies a risk from vibration, the employer must place the employee under regular health surveillance.
4. Reg 8 – the employer has a duty to provide sufficient instruction, information and training to its employees as to the risks and health affects of exposure to vibration.

Control of Substances Hazardous to Health:

Many workers are unwittingly being exposed to hazardous substances through breathing in fumes at their workplaces. Fumes from noxious chemicals can cause a variety of diseases including bladder cancer, lung disease and damage to internal organs. Hazardous substance exposure claims are some of the most complex and challenging cases to pursue. Not only is it necessary to prove that the employer is liable for the exposure, but also that the exposure caused or made a material contribution to the development of the disease. It is particularly important to ensure that a specialist Solicitor is instructed in these cases. This will ensure that all the evidence necessary to support the case is gathered, so that the case is brought to a successful conclusion.

Claims under these Regulations can involve exposure to chemical substances, fumes, dust or biological substances. Knowledge about the dangers of different chemicals is constantly changing and developing. It is important to bear in mind that exposure to vapours, fumes and dust from work processes can cause long-term adverse health problems, with the consequences of exposure sometimes not seen for many years.

Deafness:

Until the Noise at Work Regulations came into force in 1990, employers generally assumed that they could expose their employees to noise levels in excess of 85 decibels (dB) without fear of facing compensation claims from those who suffered damage to their hearing as a result of exposure to noise at work. The Court of Appeal recently ruled in the case of *Baker v Quantum Clothing Ltd* that employers are liable for damage to workers' hearing where they are exposed to noise levels between 85dB and 90dB before the implementation of the Noise at Work Regulations.

The Judgment will have binding effects on other claims against factory employers whose employees have been exposed to excessive noise or fumes and chemicals since 1961 and who have developed medical conditions over a long period of time. Other claims for conditions that take a long time to develop, such as hand/arm vibration syndrome, could also benefit from this Judgment. Liability upon an employer may be from an earlier date than previously allowed through Court Judgments if a breach of s29 of the Factories Act 1961 can be established.



Asbestos:

The GMB and Thompsons are actively involved in a number of campaigns to try and protect the rights of victims of asbestos related disease. Earlier this year, following a sustained campaign, the Government overturned the ruling that allowed benefits payments to be deducted from payments received under the Turner and Newalls Asbestos Trust. This now ensures that any monies received by victims from the Trust will be paid in its entirety to them, and the Government will not claw back any benefits against these awards.

The campaign to restore the right of victims to receive compensation for pleural plaques continues. The Private Members' Bill restoring compensation for plaques was passed by the House of Commons. However, it is highly unlikely this will ever become law. The Government have been consulting on other schemes, but no announcements or proposals have yet been formally set out. The Scottish Parliament did reintroduce the right to compensation for plaques victims, but the insurers have taken the matter to Judicial Review to try and overturn the law. This will delay matters by another 2 – 3 years.

Campaigns to establish an Employers' Liability Insurance Bureau (ELIB) and a National Centre for Asbestos Related Disease (NCARD) also continue.

The "trigger issue" litigation has now proceeded to appeal stage, and the appeal was heard in November 2009. A decision is expected the New Year. This could potentially have far-reaching consequences for all long-tail disease claims.

The issue of continuing asbestos exposure has recently been highlighted. There have been an increasing number of cases involving exposure in schools. More needs to be done by employers to comply with their duties under the Control of Asbestos Regulations 2006, to ensure that future generations are properly protected from the threat of asbestos.

Further Information:

For further information, or to be kept up to date with the most recent developments in Health and Safety law, Thompsons' Health and Safety News provides a twice-yearly round-up of all the important developments in the law, and provides comment on how these developments may affect your members. To receive a copy of Health and Safety News via email, please provide your email details to gilliankealing@thompsons.law.co.uk.

For specific advice on one of the specialist areas of law dealt with above, please feel free to contact our Heads of Disease in the Leeds office, whose contact details are listed below.

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Helen Tomlin; December 2009

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