

Occasional note

Lump sum compensation for asbestos related lung disease

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It is well known that sufferers with asbestos related lung disease may be able to claim Industrial Injuries Disablement Benefit (IIDB) and obtain common law compensation from former employers through the courts.^{1,2} The former is a tax free benefit paid weekly or monthly to patients with prescribed diseases—that is, interstitial asbestosis (D1), mesothelioma (D3), bilateral diffuse pleural thickening (D9), and lung cancer (D8) if this occurs in association with asbestosis or bilateral diffuse pleural thickening. Common law compensation may be obtainable for all these conditions but also in other situations such as lung cancer without interstitial asbestosis and some cases of asymptomatic pleural plaques.

It is much less well known that lump sum compensation may also be available from the Department of the Environment, Transport and the Regions under the Pneumoconiosis etc. (Workers Compensation) Act 1979 for the prescribed diseases listed above, as well as for byssinosis (D2). Although this has been available since 1979, it has not been discussed in several reviews.¹⁻⁷

The 1979 Compensation Scheme is designed for sufferers, or certain dependants of sufferers who have died, who do not have a realistic prospect of bringing a successful claim against a previous employer, either because the employer is no longer in business or it seems likely that it would be difficult to prove that the period of employment made a material contribution to the development of the disease.

Payment is not available to anyone who has already received damages or an out of court settlement from an employer. If a claimant starts a court action but it was withdrawn before the facts of the case were heard, a payment can still be considered. However, once a case has been heard payment cannot be made, even if the case was lost and no compensation was awarded. This is because the Act is intended to help those who have not had the chance of bringing an action against their employers responsible for the disease.

It is normally a requirement that the sufferer, or their dependant, is in receipt of IIDB from the Benefits Agency—that is, suffering from the conditions D1, D3, D8, or D9. However, to obtain this compensation it is necessary to apply separately to the Department of the Environment, Transport and the Regions, rather than to the Benefits Agency who deal with applications for IIDB. A time limit of one year for making a claim from the date that IIDB first became payable or the date the sufferer died is usually applied. It is therefore recommended that sufferers apply for this additional payment at the same time as applying for IIDB.

The payment is a one-off lump sum payment (tax free) which is calculated by taking the age of the patient at the time when the condition is first diagnosed by one of the Medical Boarding Centres who examine sufferers applying for IIDB, together with the patient's percentage of disability as assessed by that Board. For example, a patient aged

50 diagnosed in September 1997, assessed as having a 50% disability, would receive about £35 000 while someone of 70 with the same disability would receive about £5000. For a 20% disability the figures are about £20 000 and £3000 at similar ages. It is not necessary to have a separate medical examination to reassess the level of disability.

Part of the reason that this lump sum payment is not more widely known about is that only relatively recently have details been included in leaflets given out by The Benefits Agency to people enquiring about asbestos related disease—for example, Leaflet N1272 "If you have a disease because of working with asbestos in your job".

Benefits for asbestos related disease are complicated and it may be difficult for patients and their families to understand what they are entitled to. Considerable help is available from the Occupational and Environmental Diseases Association, a registered charity that provides a helpful information pack.

Useful addresses

Health & Safety Sponsorship Division,
Department of the Environment, Transport and the
Regions,
Zone 1B4,
Eland House,
Bressenden Place,
London SW1E 5DU
Telephone: Freephone 0800 279 2322

Occupational and Environmental Diseases Association,
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