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Louisiana Workers Compensation

Chapter 15

Prescription

TIME LINE FOR FILING (R.S. 23:1209)

A. Indemnity Benefits

If no benefits have been paid, a claimant has one year from the date of injury or death to file a claim for weekly indemnity benefits. If indemnity benefits have been paid, a claimant has one year from the time the last payment was made to file a claim for temporary total, permanent total or permanent partial disability benefits. If indemnity benefits have been paid, a claim for supplemental earnings benefits prescribes after three years from the last payment of indemnity benefits. [R.S. 23:1209]

B. Medical Benefits

If no medical benefits have been paid, a claim for medical benefits must be filed within one year of the date of injury or death. However, if medical benefits have been paid, a claimant has three years from the date of last payment to file a claim for additional medical benefits. [R.S. 23:1209]. The voluntary payment of a medical bill after the passage of the three-year prescriptive period may result in starting the time limit running anew for another three-year period. Crochet v. Charles Holston, Inc., 2002 1257 (La. App. 3d Cir. 06/12/03), 847 So2d 775.

C. Indemnity and Medical Benefits – Separate Prescription Periods

The time limits established for making a claim for indemnity or medical benefits are separate and the payment of one type of benefit will not interrupt the running of prescription on the other.

D. Developmental Injuries

When an injury does not result at the time of, or develop immediately after the accident, the claimant has one year from the time the injury develops to file a claim for compensation, but in no event does the claimant have more than three years from the date of the accident to file a claim. [R.S. 23:1209(3)]. For the purposes of this statute, an injury develops when it becomes clear that the employee can no longer perform employment duties in a satisfactory manner. Winford v. Conerly Corp., 04-1278 (La. 3/11/05), 897 So.2d 560. An employee who suffers a work-related injury that is immediately apparent, but only later develops into a disability, has a developmental injury for prescription purposes. Id.

In the case of a developmental injury, when proceedings have been initiated after two years from the date of the work accident (but within three years from the date of the work accident), the employee may be entitled to temporary total disability benefits for a period not to exceed six months and the payment of such temporary total disability benefits shall not interrupt prescription as to any other benefit as provided in R.S. 23:1221. [R.S. 23:1209(4)].

E. Interruption of Prescription

The filing of a tort suit against the employer will interrupt prescription for the workers' compensation claim. Isaac v. Lathan, 2001 2639 (La. App. 1st Cir. 11/08/02), 836 So2d 191.] The filing of a tort suit against any third party will interrupt prescription for the workers' compensation claim. Gatlin v. Cox Communications, Inc., 02-32 (La. App. 5th Cir. 04/30/02), 818 So2d 801.] However, the interruption will not occur if the third party is found not to be liable in the tort action. Washington v. Falco S&D, Inc., 99-1034, 99-1033 (La. App. 1st Cir. 5/12/00), 762 So2d 689.

The Louisiana Supreme Court has held that the filing of a workers' compensation claim against the employer will interrupt the prescription for the employee's tort suit against the employer. Parker v. Southern American Insurance Company, 590 So2d 55 (La. 1991)]. The Supreme Court has also held that the filing of a workers' compensation claim within a year of the date of accident will interrupt prescription for a tort suit against any third party, but the voluntary payment of workers' compensation benefits will not act as an interruption of the tort claim. Gary v. Camden Fire Insurance Company, 96-CC-0055 (La. 7/2/96) 676 So2d 553.

Time for Filing the Occupational Disease Claim

La. R.S. 23:1031.1(E), regarding an employee's claim for benefits as a result of an occupational disease, provides that:

All claims for disability arising from an occupational disease are barred unless the employee files a claim as provided in this Chapter within one year of the date that:

- (a) the disease manifested itself.
- (b) the employee is disabled from working as a result of the disease.
- (c) the employee knows or has reasonable grounds to believe that the disease is occupationally related.

The prescriptive period for disability arising from an occupational disease does not begin until all three criteria are met. Thornell v. Payne and Keller, Inc., 442 So.2d 536 (La. App. 1st Cir. 1983); Naquin v. Johnson Mansville Sales Corporation, 456 So.2d 665 (La. App. 5th Cir. 1984); Austin v. Howard Discount Stores, Inc., 569 So.2d 659 (La. App. 2d Cir.1990).

La. R.S. 23:1031.1(F), regarding dependents' claim for death benefits as a result of an occupational disease, provides that:

All claims for death arising from an occupational disease are barred unless the dependent or dependents as set out herein file a claim as provided in this Chapter within one year of the date of death of such employee or within one year of the date the claimant has reasonable grounds to believe that the death resulted from an occupational disease.