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# Louisiana Workers Compensation

## Chapter 5

### *Occupational Disease*

An occupational disease is a medical condition related to employment that is not caused by a single event or occurrence (i.e., not caused by an accident). The Louisiana Workers' Compensation Act initially did not provide benefits for occupational diseases. Some medical conditions that develop overtime, however, clearly are related to employment and, therefore, should be compensable. In 1952, the Louisiana legislature recognized this omission and amended the Act to include some occupational diseases.

The original occupational disease statute only provided compensation for diseases specifically listed in the statute. An employee that contracted a disease not listed in the statute was not entitled to compensation, again, even if the disease was clearly related to employee. In 1975, the Louisiana legislature abandoned the list and enacted a statute that provided general coverage for occupational diseases.

### ***Definition of Occupational Disease***

La. R.S. 23:1031.1(B):

An occupational disease means only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease.

The statute uses the restrictive terms “characteristic of and peculiar to” the employee’s employment to limit recovery to cases in which the disease is caused by the conditions of employment. Louisiana courts generally have not applied these requirements strictly. If an employee can prove that a disease is related to employment, Louisiana courts generally award compensation, even if the disease is not necessarily peculiar to employment.

### ***Carpal Tunnel Syndrome as an Occupational Disease***

La. R.S. 23:1031.1(B):

Occupational Disease shall include injuries due to work-related carpal tunnel syndrome.

### ***Cumulative Trauma as Occupational Disease***

La. R.S. 23:1031.1(B):

Degenerative disc disease, spinal stenosis, arthritis of any type, mental illness, and heart-related or perivascular disease are specifically excluded from the classification of occupational disease for the purposes of this Section.

### ***Time for Filing the Occupational Disease Claim***

La. R.S. 23:1031.1(E):

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 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).

### ***Burden of Proof***

An employee is required to prove an occupational disease claim by a preponderance of the evidence. *Bryant v. Magnolia Garment Co., Inc.*, 307 So.2d 395 (La. App. 2d Cir. 1975); *Hymes v Monroe Mack Sales*, 28,768 (La. App. 3d Cir. 10/30/96), 682 So.2d 871. The diagnosis must be made by a medical expert. *Williams v. Public Grain Elevator of New Orleans*, 417 So.2d 398 (La. App. 4th Cir. 1982).

An occupational disease contracted by an employee who has been working for the employer for less than twelve months is presumed not to have been contracted in the course of and arising out of such employment. La. R.S. 23:1031.1(D). This presumption may be rebutted by the employee and the burden of proof is by a "preponderance of evidence." The Legislature in 2001 (Acts 2001 No. 1189) removed the higher burden of proof, "overwhelming preponderance of evidence," to avoid the tort exposure established by the Louisiana Supreme Court in *O'Regan v. Preferred*

Enterprises, 98-1602 (La. 3/17/00), 758 So.2d 124.

### ***Last Causative Employer Rule***

An employee's occupational disease may develop over many years, and employment with several successive employers may cause the occupational disease. The employee may recover workers' compensation benefits from any causative employer, i.e. any employer whose employment contributed to the employee's disease. Among causative employers, however, the last causative employer is fully responsible for the workers' compensation benefits owed to the employee. Gales v. Gold Bond Building Products, 443 So.2d 611 (La 1986). In other words, any prior causative employer that is required to pay workers' compensation benefits as a result of an occupational disease is entitled to reimbursement from the last causative employer. The "last causative employer" may not necessarily be the last chronological employer. Estave v. The McCarty Corp., 464 So2d 873 (La. App. 4<sup>th</sup> Cir. 1985).