

8200 Hampson Street, Suite 302

New Orleans, LA 70118

(504) 266-2024

frank@whiteley-law.com

**Louisiana Workers Compensation**

**Chapter 5**

**Occupational Disease**

An occupational disease is a medical condition related to employment 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 over time, 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, even if the disease was clearly related to employment. 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 diseases caused by the conditions of employment. Louisiana courts 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.

*See,* for example, Arrant v. Graphic Packaging Int'l, Inc., 2013-2878 (La. 05/05/15); 169 So. 3d 296, in which the Louisiana Supreme Court found that the words chosen by the legislature to define occupational disease are deliberately “broad and expansive.” The court defined an occupational disease as one in which there is a causal link between the particular disease or illness and the occupation. The court found “no requirement in the statute . . . that the nature of the disease or injury be unique to the particular trade or industry.”

Although the causes or condition do not have to be “peculiar” or “unique” to the occupation, courts have found that the condition must at least be “characteristic of” the occupation. See, for example, Lyle v. Brock Servs., LLC, 18-50 (La. App. 5 Cir. 07/31/18); 252 So. 3d 1010 (denying an occupational disease claim for mold exposure because mold exposure is not a characteristic of clerical work).

### ***Carpal Tunnel Syndrome may be an Occupational Disease***

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

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

### ***Some Cumulative Traumas are not Occupational Diseases***

###  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, 4l7 So.2d 398 (La. App. 4th Cir. l982).

 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.[[1]](#endnote-1) Consequently, the employee’s burden of proving an occupational disease contracted within the first twelve months of employment now is the same as the burden or proving any other occupational disease or accident.

***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 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. 4th Cir. 1985).

1. O’Regan held that an employee excluded from receiving worker’s compensation benefits because of the prior elevated burden of proof could pursue a tort claim against the employer. [↑](#endnote-ref-1)