

Work Related Illness



“Thank you to
everyone involved in my case.
I never dreamed of such an outcome and
you have made
such a long and difficult case
seem easy and bearable.”

Nigel, Irwin Mitchell Client

This booklet provides some guidance about the nature of work related illness, the support systems available and the legal rights of those who have suffered.

This information relates to the law and procedures in England and Wales. Please contact us if you need advice about the law and procedure in other legal jurisdictions.



positive steps

Discovering you have an illness that has been caused by the work you do or the environment you work in can be incredibly upsetting. Work related illnesses can take different forms and can be caused in a number of ways. Environmental risks include dust, fumes, chemicals, oil and similar substances, while particular working practices such as excessive periods spent using a computer keyboard or VDU can also cause problems.

Changes in industrial processes and health & safety laws are lowering the chances of getting some of the older forms of work related illnesses, but as our working practices change, new illnesses are coming to light.

Whatever your illness, if it was caused as a result of your working practice it can be classed as a work related illness. These can range from mildly debilitating to seriously disabling, and in some cases even death.

If you are suffering, the priority now is to ensure that your treatment and care are all focussed on providing you with everything you need to enjoy the best quality of life possible.

One issue that you will need to deal with as soon as possible is to seek advice on how the law might be used to help your progress.

Irwin Mitchell has a specialist Workplace Injury team who are experts in providing legal help and advice to people suffering from a work related illness. Looking at all the circumstances we will review your options, discuss them with you, answer your questions and outline the help you may be able to expect from us.

We take a personal as well as professional interest in your progress, and we see it as our responsibility to guide you through the legal process in clear and easy to follow stages. We will put your mind at ease, conduct your case smoothly and ensure you receive the compensation, care and ongoing assistance you are entitled to.

The law makes provisions to help people suffering from a work related illness, just like you, and it is vital that you take legal advice to ensure you receive all the assistance which you are entitled to. Our initial consultation is free and will give you an informed basis on which to make a decision.

Work related illness

What is a work related illness?

A work related illness is one that you have developed as a direct result of working. It might be that you have been exposed to a chemical or substance that has made you ill, or that the work your employer has expected you to do (such as using machinery) has had a harmful effect on your physical health.

Here are some examples of illnesses that might be work related:

- Respiratory diseases – such as asthma, chronic bronchitis, emphysema, pneumoconiosis and asbestosis.
- Cancers – various cancers can be caused by substances that you might use at work. The more common work-related cancers are lung cancer, skin cancer, bladder cancer and scrotal cancer.

- Repetitive Strain Injuries – such as trigger thumb, tenosynovitis and tennis elbow.
- Vibration Induced Injuries – such as vibration white finger and carpal tunnel syndrome.
- Hearing loss - industrial deafness, noise induced hearing loss and tinnitus.
- Skin diseases - such as dermatitis and ulcers.
- Stress related illnesses.

If you have developed an illness or physical problem that you think might be work related, you should seek expert medical advice as soon as possible. You can do this even if you have had the illness for a while.

You should go and see your own GP first and explain your concerns to them. However, be aware that they will not necessarily be an expert in work related illnesses. If you feel their diagnosis has not taken full account of your working situation, then ask to be referred to an occupational health specialist, who will be better equipped to assess your condition.

You may also be able to seek a second opinion through your work. Larger companies may have a work's doctor that you can go and see. If not, speak to your trade union Health and Safety representative, or your company's safety officer.

Speaking to these people might help you find out more about what may have caused your illness. Ask if they know of any other cases where other employees have suffered in a similar way to you. If they do, make a note of the details as these might be useful if you choose to pursue a compensation claim later on.

Another important step is to contact the Department for Work and Pensions and claim any relevant benefits that are available to you because of your work related illness. If they decide that you are entitled to these benefits then that will support your claim that your illness is indeed work related.



Your solicitor will be with you
every step of the way,
and will be on hand to
help and support
you through this difficult time.

Practical considerations

Many people who suffer work related illness require some form of care and support for the rest of their lives. We know that this sounds frightening but it may be necessary so that you can live comfortably. Your care plan should be tailor-made to suit your individual needs and requirements, and should be designed to fit in with your lifestyle as much as possible. You might not actually need hands-on physical care, but someone to help with everyday things so that you can live as safely and independently as possible.

You might also need to make alterations or have specialist equipment fitted to your house in order to carry on living there. Your medical team will give you advice on what will be best for you.

Compensation can be a lifeline that will help you support yourself, make changes to your house and maintain the level of medical care that you need.

Looking at the legal issues

If you are suffering from a work related illness, seek legal advice as soon as possible. Even if you don't know whether you are entitled to claim compensation, speak to a solicitor and find out what your legal rights are.

In cases like yours, a solicitor will need to prove that your employer was at least partly to blame for your illness, even if you might have been partly to blame yourself. They will also need to prove that your illness is related to your work.

As well as straightforward legal advice, your solicitor can also assist you in other areas too, including:

- Advice on employment.
- What debts might arise because you are off work, and how to handle them.
- Advice on benefit rights.
- How to deal with outside agencies.

Your solicitor will be with you every step of the way, and will be on hand to help and support you through this difficult time.

Time limits

There are time limits for pursuing compensation claims. If court proceedings regarding your claim are not started within 3 years of when you either knew or suspected that you had a work related illness, the courts are likely to say that your claim is out of time. However, don't worry as there may be circumstances that mean you can still pursue your claim outside of the 3-year time limit. The sooner you start proceedings, the better chance you will have of convincing the court to set aside the statutory limit.



Choosing the right solicitor

Dealing with a work related illness is difficult enough without having to worry about the legal side of things as well. That's why you need a solicitor who understands your situation, sympathises with the difficulties you are facing, and knows how to handle things effectively.

When it comes to choosing a solicitor, it's important that you opt for someone who is experienced in work related illness cases. Very few solicitors specialise in this area so it is crucial that you find one that really knows what they're doing and can understand exactly what you want.

There are a number of questions you can ask which will help you find out more about your potential solicitor:

- How many work related illness cases have they handled in the past 12 months?
- What is the biggest claim they have ever settled?
- How many cases of this type have they or their firm taken to court in the last 5 years?
- What were the results?
- Will members of the Personal Injury Panel be involved in handling or supervising your claim?

Their answers should indicate whether or not they are an expert in this field.

Irwin Mitchell are specialists in cases of work related illness and we understand how vulnerable being in this position can make you feel.

Our Workplace Injury team is nationally recognised as leading experts in work related illness compensation claims. We know what we're talking about so rest assured you'll be in the best possible hands. Our award winning approach will mean that you're supported and kept informed.

Going through the legal process can be confusing, and can seem very daunting on top of everything else you're dealing with. We understand your anxiety and our team will work with you in a sensitive and sympathetic way.

And remember your first consultation with Irwin Mitchell is totally free, no matter how long it takes.



Irwin Mitchell are specialists in
workplace injury illness claims and
understand how vulnerable this situation
can make you feel. That's why we are
committed to protecting your
rights.

Legal costs

If you're worried about legal costs then don't be. Your initial consultation is completely FREE, during which we'll work with you to assess whether your claim is worth pursuing. If you do decide to go ahead, we'll advise you on the best way to fund your claim.

Legal Aid no longer exists, but there are other options for you to consider:

Irwin Mitchell's 'No Cost to You' scheme

This is now the option of choice for most clients who have developed a work related illness. The scheme basically means:

- If you win you keep 100% of your compensation.
- If you lose, you pay nothing.

It's simple, straightforward and means that you are under no extra financial pressure.

Legal expenses insurance

We will check if you have any insurance policies that will cover your legal costs.

Trade Union legal assistance

Your legal costs may be covered if you are the member of a Trade Union. We will discuss the possibility of seeking trade union support and the potential assistance available to you.

If this sounds confusing, don't worry, we'll go through all the options with you and help you work out which one will be the best for you and your situation.



Compensation – more detail

Once your solicitor has decided they can prove that your illness is work related and that your employer was at fault, you can pursue a claim for compensation.

In the first instance, your solicitor will need to instruct an occupational illnesses specialist to examine and assess you. The specialist will prepare a report containing their opinions on whether your illness is work related, and what the long-term effects of your illness are likely to be.

Your solicitor will then work on proving that your employer was at fault. There are a number of ways in which they can do this. They may decide to cite one of the laws specifically designed to prevent work related illnesses from occurring, such as the COSHH Regulations (a set of laws regarding the Control of Substances Hazardous to Health). If your employer has not conformed to these regulations, this is a breach of statutory duty.

As well as having to abide by specific laws, your employer also has a duty to all of their employees to make sure the workplace is safe. This includes the environment you work in, the way in which you work and the substances you work with. This duty is part of 'common law'. If they have not fulfilled this responsibility, the court will find them to be negligent.

To establish whether any of these laws have been broken, your solicitor will need to carry out a detailed investigation and will have to examine:

- Your work history.
- Expert medical reports.
- Any relevant evidence from other employees, including any formal complaints that have been made.
- Documents from your employer detailing substances used, working practices and methods and working conditions.
- Records from the Health and Safety Executive (HSE) or Environmental Health Department giving evidence of any previous problems or complaints.

If your claim is successful, you will be awarded compensation. This payment is meant to put you in the same financial position you would have been in if you hadn't developed a work related illness.

People who make a claim as a result of suffering from a work related illness are usually compensated for two main things. Firstly, for the pain and suffering they have gone through because of the illness and secondly, for the impact that their illness has on their everyday lives.

Within these categories, there are a whole range of things you can claim for, such as:

- Loss of earnings.
- Medical care and support.
- Help maintaining your house and garden.
- Any extra transport needs you might have as a result of your disability.
- Costs for making any changes to your house.

In general, compensation for work related illness is awarded as a single final settlement. However, it is possible to receive a 'provisional damages' award, which means that you can go back to court and claim further compensation if your illness gets worse.

Money matters

Legal cases like yours can last more than a year, however, if your solicitor can prove that your employer was at fault, it is possible that you will be able to claim some of the money before your final settlement has been awarded. These are known as 'interim payments'. As you already know, it's likely that you will experience extra costs as a result of your illness, for things like physiotherapy, equipment and changes to your house, as well as needing cash to pay for other bills, which you may not be able to afford if you're not working. These interim payments are intended to help you deal with these extra expenses without getting into financial difficulty.

Some insurance companies will make a voluntary interim payment early on in your case; but some may not agree to do so. If this happens, your solicitor will need to apply for a court order so that interim payments will be made. You will need to keep your solicitor updated about your financial situation so that they know whether to apply for interim payments.

If you are awarded a large sum of money, it is important to remember that it is meant to support you for the foreseeable future, if not for the rest of your life. Calculating annual medical costs, keeping your house maintained for your new needs, as well as making sure you cover all your day-to-day living expenses can be pretty challenging. That's why Irwin Mitchell offer Investment Management advice, to help people just like you. Through this service we can assist you in organising your daily finances, such as paying bills, as well as helping you with long-term investments to make sure you are financially secure for the future.

If, because of your illness, you are not able to look after yourself, including managing your own finances, the Court of Protection may well become involved. In these cases, our Trust team will work closely with them to make sure that payments are made available quickly to replace any income you might have lost and to pay for care support etc. The team will make sure that your funds are dealt with professionally and effectively to ensure your financial stability on an ongoing basis.



We're nationally recognised as
leading experts in workplace illness
claims

compensation claims.

We know what we're talking about

so rest assured you'll be in

the best possible hands.

The stages of your claim

In most cases, work related illness claims are settled before they get to court, though some will go this far.

By this point in the process, your solicitor will have assessed your case. They will then make a claim against the relevant person or body, and their insurance company will become involved. Remember, it is a legal requirement that employers have to be insured for any claims made against them by their employees. So it is the insurance company, not your employer, who will have to meet the costs of any compensation you are awarded.

The next step is that your solicitor will investigate your case thoroughly. They will gather together witness statements, health and safety reports and any other relevant information concerning your working conditions and working practices. It is possible that during their investigations they might uncover details of similar incidents that can be used as further evidence in your case. They may also obtain evidence from independent experts, such as environmental consultants, health and safety professionals and occupational illness specialists.

It is likely that you will be asked to attend a medical examination so that your illness can be assessed. The medical examiner will also consider any future effects your illness is likely to have on your life. The insurance company may ask that you are also examined by a doctor of their choosing too. Don't worry - this is perfectly normal practice.

In the end, the insurance company will decide how they want to proceed. This can go one of two ways. They will either choose to make you a financial offer to settle your case out of court, or they will not. If they don't make you an offer, this is not unusual and you should not be worried. Many claims which are turned down by insurance companies go on to succeed in court.

If the insurers do not offer to settle your claim, it may be because they couldn't reach an agreement with your solicitor about compensation. As your legal representative and an expert in these situations, your solicitor will advise you about the pros and cons of any offers that are made.

The idea of actually going to court is often enough to persuade the insurance company to sit down with your solicitor and try to resolve your claim. However, if no agreement can be reached, your case will then go to court.

If this happens, don't be worried. Work related illness cases are usually very complicated, and various experts will need to get involved. The court is also likely to request detailed documentation going back many years from your employer, about their approved working practices and any hazardous chemicals that may have caused your illness. Don't be put off by this as it means your case will be thoroughly investigated, but it will take time.

Prevention is better

There are a number of precautions you can take to avoid a work related illness in the first place.

- Ask either your employer or your health and safety representative for a copy of the company's COSHH assessment. They are legally required to carry out a full survey of all hazards at work and you are perfectly within your rights as an employee to ask to see this. It should give you an idea of what steps your employer is taking to protect your health.
- Ask for the data sheets or any other information your employer may have about any hazardous chemicals you are using. They should be able to provide this for you.
- Report any worries or concerns you may have to your employer. It is better if you can do this in writing, and that it is signed and dated. You should also send a copy to your health and safety representative. Make sure you keep a copy for yourself too.
- If your concerns are serious, report them to the Health and Safety Executive and/or the Environmental Health Department.
- Speak to your employer directly. If you are not comfortable doing this then prepare a list of questions and ask your health and safety representative to speak to your employer instead. You should ask the following things:
 - What protective equipment or clothing will your employer provide you with to keep you safe?
 - Have they considered using alternative, less hazardous substances?
 - Can the way in which you work be changed in order to avoid any exposure to hazardous substances?
 - What protective equipment or clothing will your employer provide you with to keep you safe?
- How are they going to medically supervise employees involved with the substance or process in question?
- Will they be monitoring your working atmosphere for dust and/or fumes, and will the results of any monitoring be made available for employees?

Appendix A

Useful contact organisations

British Lung Foundation

73-75 Goswell Road
London
EC1V 7ER
Tel: 08458 50 50 20
Email: Use enquiry form online
Web: www.britishlungfoundation.com

British Safety Council

70 Chancellors Road
Hammersmith
London
W6 9RS
Tel: 020 8741 1231
Fax: 020 8741 4555
Email: mail@britsafe.org
Web: www.britishsafetycouncil.co.uk

Chemical Hazards Communication Society (CHCS)

PO Box 222
Lymington
SO42 7GY
Tel: 07000 790337
Fax: 07000 790338
Mobile & Messaging: 07880 723330
Email chcs@chcs.org.uk
Web: www.chcs.org.uk

Greater Manchester Hazards

Windrush Millennium Centre
70 Alexandra Road
Manchester
M16 7WD
Tel: 0161 636 7557
Email: mail@gmhazards.org.uk
Web: www.gmhazards.org.uk

London Hazards Centre

Hampstead Town Hall Centre
213 Haverstock Hill
London
NW3 4QP
Tel: 020 7794 5999
Fax: 020 7794 4702
Email mail@lhc.org.uk
Web: www.lhc.org.uk

Asthma UK

Summit House
70 Wilson Street
London
EC2A 2DB
Tel: 020 7786 4900
Fax: 020 7256 6075
Email: info@asthma.org.uk
Web: www.asthma.org.uk

OEDA (Occupational & Environmental Diseases Association)

P.O. Box 26
Enfield
Middlesex
EN1 2NT
Tel: 020 8360 8490
Web: www.oeda.demon.co.uk

Sheffield Occupational Health Advisory Service (SOHAS)

3rd Floor Queens Building
55 Queen Street
Sheffield
S1 2DX
Tel: 0114 275 5760
Fax: 0114 249 1883
Email: sohas@sohas.co.uk
Web: www.sohas.co.uk

Appendix B

Useful reading

Hazards Magazine

PO Box 4042

Sheffield

S8 2DG

Tel: 0114 201 4265

Web: www.hazards.org

TUC Weekly Health and Safety E

Bulletin: Risks

www.tuc.org.uk/h_and_s/index.cfm

telephone

08000 23 22 33

irwinmitchell.com/personalinjury

Text CLAIM to 61993 and someone will call you back

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Quay Street
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