

NOISE INDUCED HEARING LOSS ("INDUSTRIAL DEAFNESS") CLAIMS

Introduction

Claims in respect of Noise Induced Hearing Loss (NIHL), commonly called "Industrial Deafness" may need to be referred to a number of insurers. This is since the exposure to noise will have occurred over a period of time, and each insurer will only be responsible for injury caused during the period of time that they were on cover.

Similarly, insurers of previous employers of the claimant may need to be contacted. A solicitor will normally write to all known employers, where their client may have had an exposure to noise during the course of that employment. The employers' identities are usually obtained by referring to National Insurance records, which provide details of relevant employers split by tax year.

Generally, the last insurer on risk for each employing company will conduct the investigation and will liaise with the previous employer's liability insurers where appropriate. It is important that the identity of as many prior insurers of an employing company as possible be obtained. If there are any gaps in the established coverage periods, the employing company may be liable for any injury caused by exposure to noise during that period of time.

You are now under a legal obligation to retain all Employer's Liability Insurance certificates for a period of at least 40 years, to aid the identification of previous insurers. Similarly, if you take over or merge with another company, you should retain all certificates for that company for the same time period.

Although much of the information that will need to be provided is similar to information requested in other Employer's Liability claims, it is unlikely that there will be specific accident book entries, first aider's reports etc.

The insurer will need to investigate whether there is (or was) any evidence of exposure to excessive noise during the course of the claimant's employment, and will also need to consider any medical evidence that is available.

There is a presumption that, prior to 1964, an employer had no knowledge of the dangers of exposure to noise. Only employment periods from 1964 onwards are considered, when an industrial deafness claim is submitted.

Statutory Limitation Period

As with all injury claims, there is a limit to the amount of time that a claimant has in which to make a claim for NIHL. A claimant must make a formal claim within three years of becoming aware that his hearing has become impaired as a result of exposure to excessive noise. If he fails to make a claim within that time period, a court will not normally consider the matter, unless there are exceptional circumstances surrounding the delay.

Information that Insurers Commonly Require

As with all claims, a defendant will need to submit certain documentation to the claimant, even if such documentation may harm his defence. In practice, the documentation will normally be submitted via the handling Employer's Liability insurer.

Examples of information and documentation that the insurer will need may include:

- Employer's Liability Report Form.
- Name, address and telephone number of a contact at the insured company, in the event that the insurers wish to carry out enquires.
- The employee's inclusive dates of employment.
- Details of the claimant's occupation and the areas that they would have worked in, together with any noise surveys carried out. If the employee worked in different occupations/areas of the company during the course of his employment, all information pertinent to the different exposures should be supplied.
- Any risk assessments carried out to comply with regulations 4 and 5 of The Noise at Work Regulations 1989.
- Details of any hearing protections supplied and evidence to prove this. Evidence will also be needed to show that their wearing was enforced.
- Manufacturers' literature in respect of all ear protection made available to the claimant to comply with Regulation 8 of the Noise at Work Regulations 1989.
- All documents provided to the employee for the provision of information to comply with Regulation 11 of the Noise at Work Regulations 1989.
- Minutes of relevant Health & Safety Meetings.
- Any other documentation laid down in the Pre-Action Personal Injury Protocol Standard Disclosure Lists.

The wearing of hearing protections became compulsory on 1st January 1990, in view of the provisions of the Noise at Work Regulations Act, 1989. You may be required to prove that you have enforced these regulations. It is not a sufficient defence to merely say that hearing protections were available. Many insurers recommend that you make failure to utilise protections supplied a serious disciplinary offence.

The most important aspect of claims defence is record keeping. You must keep proof of the availability of ear defenders and of the enforcement of their wearing, and evidence of the level of noise to which employees are exposed. Without this, your insurers may not be able to successfully defend a claim.

This sheet has been produced for your general guidance only. It is not intended as an exhaustive document. For advice on individual matters or further information, please contact H W Wood Limited for assistance.