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A Survey of the Statutes and Court Decisions
Respecting Occupational Disease from
Air Pollution

(For the confidential information of members. Not for
reproduction, wholly or in part.)

PITTSBURGH, PENNSYLVANIA
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CHAPTER II

RESUME OF WORKMEN'S COMPENSATION LAWS AS THEY AFFECT OCCUPATIONAL DISEASE

Section 1. States With No Compensation Acts:

Arkansas Mississippi

Section 2. States Having Compensation Acts Which Exclude Compensation For Occupational Disease, Either Expressly Or By Con- struction Of Court:

The following states, as the result of recent actions by
their respective legislatures with respect to occupational
diseases, can no longer be included under this section:

Delaware	Pennsylvania
Indiana	Washington
Michigan	

The complete list of states included in this section is now
as follows:

Alabama	New Hampshire
Arizona	New Mexico
Colorado	Oklahoma
Florida	Oregon
Georgia	South Carolina
Idaho	South Dakota
Iowa	Tennessee
Kansas	Texas
Louisiana	Utah
Maine	Vermont
Maryland	Virginia
Montana	Wyoming
Nevada	

For comment on each of the above states, see Bulletin No.
I, Supplement No. 1, page 2, et seq.

Section 3. States Having Workmen's Compensation Acts Which Include Compensation For Occupational Disease, Either Expressly Or By Construction Of Court:

This section is changed by adding the following states to
those included thereunder in Bulletin No. I, Supplement No. 1:

Delaware: "Injury" and "personal injury" include
disability or death resulting from any of
twelve enumerated occupational diseases.
Silicosis or other dust diseases are not
included in the list of compensable occu-
pational diseases.

Indiana: All occupational diseases are now com-
pensable under a new Workmen's Occu-
pational Disease Act separate and distinct
from the Workmen's Compensation Act.
The latter act applies only to accidental
injuries and not to a disease unless it
results from an injury by accident.

Michigan: The Workmen's Compensation Act now
provides compensation for disability or
death resulting from any one of thirty-
one enumerated occupational diseases
including stone worker's or grinder's
phthisis, silicosis, and pneumoconiosis.

Pennsylvania: By a new Occupational Disease Compens-
ation Act, effective January 1, 1938, sup-
plementing the existing Workmen's Com-
pensation Act, compensation is provided
for twelve enumerated occupational dis-
eases including silicosis or anthraco-sili-
cosis, and asbestosis.

Washington: Compensation is newly provided under
the Workmen's Compensation Act for dis-
ability or death resulting from any of
twenty-one enumerated occupational dis-
eases. Injury or death to any persons
employed in any industry where intense
dust prevails is included in the schedule.

Other Changes:

Nebraska: In addition to occupational diseases pecu-
liar to the smelting or metal refining
industries, occupational diseases peculiar
to the battery manufacturing industry
are now compensable.

Ohio: Silicosis has been added to the list of
twenty-one occupational diseases already
compensable under the Workmen's Com-
pensation Act.

The complete list of states to be found within this section, including the foregoing states, is as follows:

California	Nebraska
Connecticut	New Jersey
Delaware	New York
District of Columbia	North Carolina
Illinois	North Dakota
Indiana	Ohio
Kentucky	Pennsylvania
Massachusetts	Rhode Island
Michigan	Washington
Minnesota	West Virginia
Missouri	Wisconsin

For comments upon the states other than those newly added to this section or those in which changes have been made, as noted above, see Bulletin No. I, Supplement No. 1, page 6, et seq.

CHAPTER III

COMMON LAW RIGHTS AND LIABILITIES

Recent cases, decided since the completion of Bulletin No. I, Supplement No. 1, interpreting the common law as announced by the courts, as distinguished from court construction of statutory law, are included under the appropriate subheadings in the various chapters of this supplement.

CHAPTER XXII

MARYLAND

I. Workmen's Compensation Act.

4. Court Construction.

In *Beadle v. Bethlehem Steel Co.*, 193 A. 210 (Court of Appeals, May, 1937), compensation was denied where death resulted from heatstroke or prostration on the theory that no injury by accident was involved. The decedent, at the time of his death, was employed as a roller in a steel mill; the work he was doing was hard and exacting, and he was required to work where a great deal of heat was generated. The Court, however, pointed out that there was nothing extraordinary or unusual in his work on that day; that the heat given off was about as usual; and that the temperature outside was normal for that time of the year. There was no evidence that the heat was occasioned by an unusual or extraordinary condition of the employment not natural and ordinarily incident thereto.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature adjourned on April 5, 1937. Later it reconvened in special session from April 22 to May 6, 1937.

The survey of occupational diseases in Maryland, commented upon in Bulletin No. 1, Supplement No. 1, page 40, has been completed. A copy of the published report, entitled Bulletin No. 236, "Evaluation of the Health Problems of a State," can be procured at a price of 15 cents from the Superintendent of Documents, Washington, D. C.

CHAPTER XXIII

MASSACHUSETTS

I. Workmen's Compensation Act.

No change

II. Other Statutes.

1. Labor and Industries.

A. Duties and Powers of the Department of Labor and Industries.

Chapter 249 of the Massachusetts Acts of 1937 amended Section 6, set out in full in Bulletin No. 1, part iv, page 179, by striking out the following words, beginning at line 12: "applicable to either employers or employees or both." The purpose of this amendment was to remove a difficulty caused by the words which were stricken which had been construed to limit the enforcement power of the Department of Labor and Industries over concerns doing business as partnerships. The Department of Labor and Industries, Division of Occupational Hygiene, informed us that there were cases, notoriously in the granite cutting industry, where a considerable number of persons were occupied in a single establishment and all stated to be partners in the business. They were therefore neither employers nor employees, and the department found its hands tied. The amendment remedied this objection.

Chapter 46 of the Resolves of 1937 requires the Department of Public Health and the Department of Labor and Industries, acting as a joint board, to investigate and study all aspects of occupational disease, with a view to determining methods, ways, and means of reducing or controlling the hazards or the likelihood of contracting such diseases. The joint board is to report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry the same into effect, by filing the same with the Clerk of the House of Representatives by the first Wednesday of December, 1937.

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature adjourned on May 29, 1937, and has not since reconvened. We are informed by the Department of Labor and Industries, Division of Occupational Hygiene, that no rules or regulations relating to dust hazards have been

ances authorized under subdivision (a) hereof may be made to the injured employee, or to the person or persons who have furnished such service, or who have advanced payment for same, as the commissioner may deem proper."

Wisconsin: Section 102.42(1) provides:

"The employer shall supply such medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members and appliances, or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, medicines and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, not to exceed the period for which indemnity is payable, and in case of his neglect or refusal seasonably to do so, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing the same."

From the foregoing, it is at once manifest that few provisions for treatment were drawn with occupational diseases in mind. Diseases have been made compensable in several states by court interpretations of the acts—which constantly refer to "injury" in the sense of traumatic injury. In other instances, disease was made compensable by brief amendment and without adequately revamping the act. As a result, it is difficult to apply the treatment provisions to occupational disease problems.

CHAPTER LIV

SUMMARY

The summary chapter has been completely rewritten, for the reader's convenience, to incorporate into the materials contained in the original chapter in the basic survey, the numerous changes which have occurred since the completion thereof. The chapter as it now appears gives a complete picture as of the time of writing and relieves the reader of the necessity of fitting additional material into the original chapter as it appeared in the basic survey.

No comprehensive summary of the foregoing chapters will be undertaken and the effort to make such summary would probably not assist materially in determining the question as to what are the rights of the employer and employee in the various states. Each state is a unit—a sovereign—and it handles the problems in its own way. Uniformity is lacking, although of course the statutes of many states are similar. The courts of the various states follow such precedents as appeal to them; consequently, on any important question, there is likely to be a divergence of opinion among the courts, and often the state courts fall into two or more groups, each group following a different theory with respect to the same legal problem. All of this demonstrates the necessity of studying the statutes and court decisions of each state to determine the status of the law in that state and also the impossibility of accurately tabulating and classifying the laws with respect to occupational disease hazards.

A few general observations, however, may be made.

Workmen's Compensation Acts have been passed in forty-six states. The Longshoremen's and Harbor Workers' Compensation Law enacted by Congress in 1927 and the Workmen's Compensation Law of the District of Columbia enacted in 1928 provide compensation with respect to employments within the District of Columbia and also with respect to disability or death resulting from injury occurring upon navigable waters of the United States, where such compensation is not provided by the state laws. These two acts, being identical as to coverage, are commonly referred to as the Workmen's Compensation Law of the District of Columbia.

There are no Workmen's Compensation Laws in Arkansas and Mississippi. The first state to pass a Workmen's Compensation Law was Wisconsin. That law became effective May 3, 1911. The last state was South Carolina, whose act became effective September 1, 1935. The State of Wisconsin

pioneered to a large extent; and occupational disease has been compensable in that state, by statutory enactment, since 1919.

The compensation acts are compulsory as to private employers in fifteen states and the District of Columbia and they are elective as to private employers in thirty-one states. A monopolistic state fund, out of which compensation is paid, is maintained in seven states, to-wit: Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia, and Wyoming; but, in two of those states (Ohio and West Virginia), the employer may, by proving financial responsibility, carry his own risk with limited contribution to the state fund for the expense of administration. In eleven states, a state fund is maintained, but the employer is not required to avail himself of its privileges and may provide compensation otherwise. In twenty-eight states, there is no provision for a state compensation fund. The administration of the compensation acts is vested in a commissioner, board, or single commissioner in forty states and the District of Columbia. In six states, the acts are administered by the local courts.

The guiding principle in the early acts was the awarding of compensation for accidental injury, meaning thereby traumatic injury. In these years, the importance of disability due to occupational disease was not generally recognized. It, however, became increasingly apparent that "injury" might be suffered gradually, and that the result of such gradual breaking down of the strength and resistance of the employee was more serious in many instances than traumatic injury. Courts therefore, in some states, wrestled with the problem of construing "injury" so as to include disease and bring disease within the compensation acts. An outstanding example of such court effort appears in the Maryland decision rendered in 1925 in the case of *Victory Sparkler & Specialty Co. v. Francks*. The court held in that case that phosphorus poisoning resulting from exposure, over a period of years, came within the term "accidental injury" because the injury was suffered by chance, that is, not foreseen or anticipated by the injured person, and found that the condition resulted from the negligence of the employer. By this reasoning, the court held that the particular disability was compensable, although it held it not to be an occupational disease. It was merely an "accidental injury." The result seems to be that, in Maryland, a diseased condition is compensable if caused by the negligence of the employer.

Leaving Maryland in a class by itself, it is found that occupational disease is compensable, to some extent, in twenty-

one states and the District of Columbia. They are: California, Connecticut, Delaware, Illinois, Kentucky, Indiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, West Virginia, Washington, and Wisconsin. In five of this group, to-wit: Delaware, Minnesota, Nebraska, New Jersey, and Rhode Island, silicosis is not included among the compensable diseases. In West Virginia, silicosis is the only occupational disease made compensable. In Idaho, although compensation is provided for only accidental injury or death, the term "accidental" has been given a liberal construction and might arguably include occupational diseases.

In the next preceding chapter, we have discussed, at some length, the matter of physical examination and functioning of medical boards in connection with occupational disease. As there pointed out, only eight states, to-wit: Kentucky, Massachusetts, Michigan, New York, North Carolina, Ohio, Pennsylvania, and West Virginia, have created what may fairly be called "medical boards," while New Jersey and Rhode Island provide for better than the ordinary type of medical examination, but do not have provisions for medical boards.

The labor laws and factory inspection laws of the various states recognize the legal obligation to provide a safe place to work, and ordinarily the matter of ventilation is featured. Failure to comply with these laws results in liability of the employer, and frequently authorizes the assessment of penalties. The mining laws approach uniformity as to the quantity of fresh air required and as to the mechanical equipment required in connection with ventilation. An effort has been made in this survey to cite the mining laws so that they can readily be found and to give the substance of them, but, in most instances, it has been impossible to quote the laws verbatim.

Administrative rulings and safety rules have been adopted by numerous administrative bodies, and, in each state, an effort has been made to quote the substance of such rules or to state what administrative body made the rulings and how they can be procured where they are too voluminous to quote or digest.

The common law liability for occupational disease is at once important and difficult to state concisely. In many states, there appears to have been no occasion for the courts to decide whether or not the right exists, at common law, to

recover for occupational disease due to the negligence of the employer. In other states, where the right existed, it has been materially modified by the passage of Workmen's Compensation Acts. In three states, it has been held that such common law right to recover for occupational disease never did exist. At best, nothing more than a rough classification can be made of the states of the Union with respect to the common law right to recover for occupational disease. We are making such rough classification, but with the emphatic caution that the law of each state must be carefully studied, and that lawyers might well differ as to where any particular state belongs in such classification.

First, the states in which the courts have held that no such common law right of recovery exists: They are Illinois, Michigan, and Ohio. North Dakota also probably falls within this group, not because the common law right never existed there, but because, if it ever existed, it has been completely superseded by the Workmen's Compensation Act. In that respect, the law of North Dakota is rather unique. In many instances, the compensation acts provide that the remedies given thereunder are exclusive; but they also provide that, if the employer does not comply with the act, the employee may pursue such remedy as he has at common law and the employer is, in such action, denied the common law defenses of assumed risk, fellow servant rule, and contributory negligence. Under such circumstances, it manifestly remains important to know whether any common law right of recovery exists in favor of the employee against such employer who has not complied with the act. In North Dakota however, the courts have held that the Workmen's Compensation Act is mandatory and exclusive; that an employer failing to comply with the act does not thereby become liable to a common law action but is liable to an action for compensation, as provided in the act, to which action lack of negligence is not a defense and which action is the sole and exclusive remedy of the employee. It may be said therefore that there is no common law right of action for occupational disease in North Dakota. The employee has only such rights as are given by the Workmen's Compensation Act. Occupational disease is compensable under that Act.

In two states, we would say that the common law right of recovery is extremely doubtful. They are Connecticut and Texas. In Connecticut occupational diseases including silicosis are compensable; in Texas occupational diseases are not compensable.

The common law right to recover for occupational disease caused by the negligence of the employer probably exists, although there is some doubt, in the following fifteen states: Arkansas, Delaware, Georgia, Indiana, Iowa, Maine, Maryland, Massachusetts, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Virginia, and Washington. Disregarding Maryland, commented upon in a prior paragraph of this chapter, occupational diseases are not compensable in eight of the above states: Arkansas, Georgia, Iowa, Maine, Oklahoma, Oregon, Tennessee and Virginia. In Delaware, Indiana, Massachusetts, Pennsylvania (by act effective January 1, 1938), Rhode Island, and Washington occupational diseases are compensable; four of these states, Indiana, Massachusetts, Pennsylvania, and Washington, provide compensation for dust diseases.

That such right does exist, seems well settled with respect to another group of thirteen states, to-wit: Alabama, California, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, and West Virginia. It should be noted that compensation is provided for occupational diseases in all of this group except five states, to-wit: Alabama, Kansas, Louisiana, Mississippi, and New Hampshire. Of the remaining eight states providing compensation for occupational diseases, five states, California, Kentucky, Missouri, New York, and West Virginia, provide compensation for silicosis or allied diseases.

In the remaining fourteen states and the District of Columbia, to-wit: Arizona, Colorado, Florida, Idaho, Montana, Nevada, New Mexico, North Carolina, South Carolina, South Dakota, Utah, Vermont, Wisconsin, and Wyoming, no court decisions which decide the question as to whether or not such common law right exists can be found. It should again be noted that occupational diseases are compensable in only three of this group, to-wit: District of Columbia, North Carolina, and Wisconsin. Silicosis is one of the compensable diseases in this group.

Another matter of particular interest and deserving of comment is the effort being made in numerous states to attack the problems created by and arising out of dust hazards in the industries within their own confines.

Since the completion of the basic survey in September, 1936, new occupational disease legislation has been passed in seven states, to-wit: Delaware, Indiana, Michigan, Nebraska, Ohio, Pennsylvania, and Washington. In Ohio and Nebraska the legislation supplemented existing occupational disease legis-

lation, while in the remainder the legislation was the first of its kind passed in the state. Silicosis is covered in all of the group except Delaware and Nebraska.

Occupational disease legislation was introduced but either failed to pass, remained in committee, or was vetoed in nine additional states, to-wit: Georgia, Idaho, Kansas, Maine, Minnesota, Montana, New Jersey, Rhode Island, and Tennessee. In all of this group except Minnesota and New Jersey the acts, if they had passed, would have made occupational diseases compensable for the first time. In Minnesota and New Jersey occupational diseases resulting from inhalation of dusts in the course of employment would have been added to the list of occupational diseases already compensable.

New and amending safety rule legislation was passed by the 1937 legislatures in seven states, to-wit: Arkansas, Florida, Georgia, Illinois, Indiana, Montana, and Pennsylvania.

Changes in safety codes affecting employers having dust hazards in their employments were made in Connecticut, Minnesota, New York, and Vermont. Changes are contemplated in the near future in Illinois, Massachusetts, Minnesota, North Carolina, Pennsylvania, and Washington.

Resolutions were passed by the 1937 legislatures of Arkansas, Massachusetts, Montana, and Oregon to investigate and report on occupational diseases. In New Hampshire a resolution was passed to continue a study being made of occupational diseases. In Texas the Division of Industrial Hygiene of the State Board of Health is now conducting a survey to find potential health hazards in mining, quarrying, construction, and manufacturing industries. The survey of granite quarries and stone cutting establishments being carried on in Rhode Island has been curtailed for the time being.

Reports on occupational disease hazards have recently been completed in California, Maryland, New Hampshire, North Carolina, and Vermont. A report is now being prepared in Virginia and will be available in the near future with regard to dust hazards in certain industries in that state.

In conclusion, we may say that the making of this survey has been a pleasant, though difficult, task and that the manifest effort on the part of legislatures, commissions, and courts to solve the rather recent disease problems arising out of industry should be a matter of great satisfaction to employers and employees alike.

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