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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 re-
production, wholly or in part.)

PITTSBURGH, PENNSYLVANIA

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FOREWORD

In Legal Series, Bulletin No. 1, Parts i to vii inclusive, Air Hygiene Foundation of America presented to its members the report of its Legal Committee, in which were summarized the statutes and court decisions of all states in the United States with respect to industrial diseases and the rights and liabilities growing out of air pollution hazards in industry. The preparation of that report required a number of months' work, and it was completed in September, 1936. At the request of the Foundation, the Legal Committee has prepared this supplemental report which is designed to bring its previous report down to March 1, 1937. This supplemental report, as was the original report, was prepared by Henry A. Middleton, a member of the law firm of Williams, Eversman & Morgan, of Toledo, Ohio.

This report will be known as Legal Series, Bulletin No. 1, Supplement No. 1, and will be available to members for their confidential information and use.

H. B. MELLER,
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March 1, 1937

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CHAPTER I

SCOPE AND PURPOSE OF SURVEY

The basic survey of statutory and case law with respect to the rights and liabilities growing out of dust hazards and air pollution in industry was completed in September, 1936, and was published by Air Hygiene Foundation of America as Legal Series, Bulletin No. 1, Parts i to vii inclusive. Since completion of that report, many court decisions have been rendered and important legislation has been considered by several state legislatures. The purpose of this report is to supplement the basic survey and bring it down to date. It is manifest that the task of procuring information from all of the states with respect to pending legislation requires a very considerable amount of time and that it is difficult to correlate this information as of one particular day. The information may, however, be considered as substantially correct as of the date of this supplemental report, which is March 1, 1937.

In compiling this report, we have followed the same chapter numbers and headings as were used in the basic survey, which was published as Legal Series, Bulletin No. 1, Parts i to vii.

CHAPTER II

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

The tabulation which appears in Chapter II of the basic survey was prepared approximately a year ago. A sufficient number of changes in the laws of the various states have occurred in that time to make it desirable that this chapter be reprinted in its entirety with a considerable number of corrections. As of present date, the corresponding chapter in the basic survey should be disregarded and this chapter should be considered as substituted therefor, in its entirety.

This tabulation is not submitted as a sufficiently exhaustive treatment of the subject, and reference must be made to the chapters covering the individual states, both in the basic survey and in this supplement, for complete information.

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 Construction of Court:

Alabama: Expressly excludes disease unless the disease shall result proximately from the accident.

Arizona: Does not include a disease unless resulting from an injury by accident.

Colorado: Allows compensation "where the injury or death is proximately caused by accident arising out of and in the course of his employment." This would exclude occupational diseases, except any such cases as are proximately caused by accident.

Delaware: "Shall not include a disease or infection except as it shall result from the injury when reasonably treated." Injury, as used in the Act, means injury by accident.

Florida: Includes such diseases or infections as result from such injury by accident.

Georgia: "Shall not include a disease in any form except as it results naturally or unavoidably from the accident."

Idaho: "Shall not include a disease except as it shall result from the injury." Injury must be the result of an accident, but the courts have very liberally construed "accidental injury" and have gone very far in holding disease to be the result of "accidental injury" and therefore compensable.

Indiana: "Shall not include a disease in any form except as it shall result from the injury." Injury must be the result of accident.

Iowa: "Shall not include a disease unless it shall result from the injury." No requirement that the injury must result from accident but there is obiter dictum to the effect that occupational diseases are not compensable under the Act.

Kansas: Covers "personal injury by accident" only.

Louisiana: Only covers injuries by violence to the physical structure of the body and such diseases or infections as naturally result therefrom. Occupational diseases are excluded, except as above. Accident must be an unexpected, unforeseen event happening suddenly and violently, with or without fault, and producing at the time objective symptoms of an injury.

Maine: "Personal injuries by accident" are compensable. Diseases are excluded by court construction, except such cases as are caused by accident.

Maryland: "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment, and such disease or infection as may naturally or unavoidably result therefrom."

The courts of Maryland have placed unusual constructions upon "accidental injury" and the chapter of this report on Maryland law must be consulted.

- Michigan:** Covers "personal injuries arising out of and in the course of his employment." Occupational diseases are excluded by court construction, except where such is result of an accident.
- Montana:** "Injury refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of some disease." Occupational diseases are thereby excluded.
- Nevada:** Compensation is provided for "personal injuries by accident." Disease is not mentioned and is therefore excluded.
- New Hampshire:** "Personal injury by accident" is compensable. Disease is not mentioned and is therefore excluded, except possibly such cases as are caused by accident.
- New Mexico:** "Personal injury by accident" is compensable. Occupational diseases are not covered.
- Oklahoma:** "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such diseases or infection as may naturally result therefrom.
- Oregon:** "Personal injuries by accident caused by violent or external means," are compensable. Diseases are not mentioned and are therefore excluded, except such cases as may be caused by accident due to violent or external means.
- Pennsylvania:** Injury means only violence to the physical structure of the body, and such disease or infection as naturally results therefrom. By construction occupational disease is excluded.

- South Carolina:** "Shall not include a disease in any form, except where it results naturally or unavoidably from an accident."
- South Dakota:** "Shall not include a disease in any form, except as it shall result from the injury."
- Tennessee:** "Shall not include a disease in any form, except as it shall result from the injury."
- Texas:** "Injury in course of employment" is compensable. "Injury shall be construed to mean damage or harm to the physical structure of the body and such diseases or infections as naturally result therefrom." Courts have declared the injury must be accidental.
- Utah:** "Personal injury by accident" is compensable, and "shall not include a disease except as it shall result from the injury."
- Vermont:** "Personal injury by accident" is compensable, and "shall not include a disease except as it shall result from the injury."
- Virginia:** "Shall not include a disease in any form except where it results naturally and unavoidably from the accident."
- Washington:** "Personal injuries" are compensable. "Injury" means a sudden and tangible happening of a traumatic nature. Diseases are not mentioned and are therefore excluded, except such physical condition as results from injury of a traumatic nature.
- Wyoming:** Personal injuries sustained in enumerated extra hazardous employments are compensable. The terms "injury" and "personal injury" shall not include a disease except as it shall directly result from an injury incurred in the course of employment.

Section 3. States Having Workmen's Compensation Acts Which Include Compensation for Occupational Disease, Either Expressly Or by Construction of Court:

California: Injury includes "any injury or diseases arising out of the employment, including injuries to artificial members." Silicosis is compensable by court construction.

Connecticut: Includes occupational diseases as defined. "The words 'occupational disease' shall mean a disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of the employment as such." Silicosis is compensable by court construction.

District of Columbia: Injury includes "such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury * * *." No decision involving silicosis, but it would undoubtedly be compensable under the Act.

Illinois: Occupational disease is not compensable under the Workmen's Compensation Act. Silicosis and some other dust diseases were not compensable under the old Occupational Disease Act, which was effective until October 1, 1936. Under the new Occupational Disease Act, effective October 1, 1936, all occupational diseases, including silicosis are compensable.

Kentucky: " * * * personal injury by accident as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident, nor shall they include the results of a preexisting disease, but shall include injuries or death due to the inhalation in mines of noxious gases or smoke commonly known as 'bad air', and also shall include the injuries or death due to the inhalation of any kind of gas.

* * * and any employers and their employees engaged in the operation of glass manufacturing plants, quarries, sand mines or in the manufacture, treating or handling of sand may, with respect to the disease of silicosis caused by inhalation of silica dust, in like manner voluntarily subject themselves thereto as to such disease."

Massachusetts: Disability resulting from occupational diseases is compensable in Massachusetts by court interpretation. This is because of a provision in the Act for making a claim for compensation, alleging that an injury is due to an occupational disease, and also because there is no requirement that an injury result from an accident in order to be compensable. The only requirement is that it be a personal injury arising out of and in the course of employment.

Minnesota: Disability resulting from any of the twenty-three occupational diseases enumerated in the Act is compensable. Silicosis is not included in this list.

Missouri: The terms "injury" and "personal injury" "shall in no case, except as hereinafter provided, be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, * * *. Nothing in this chapter contained shall be construed to deprive employees of their rights under the laws of this state pertaining to occupational diseases, unless the employer shall file with the commission a written notice that he elects to bring himself with respect to occupational disease within the provision of this act. * * *." This makes it possible for the employer by election to bring occupational disease under the Act.

Nebraska: Occupational diseases peculiar to the smelting or metal refining industries are compensable. The statute specifically excludes all others.

New Jersey: The Act covers only eleven diseases which are specifically enumerated. Silicosis is not so enumerated.

New York: Compensation is payable for 27 enumerated occupational diseases if acquired in the occupation set opposite the particular disease in the schedule. By amendment effective September 1, 1935, group 28 was added, extending coverage to "any and all occupational diseases." By further amendment, effective June 6, 1936, silicosis and other dust diseases were removed from group 28 and made compensable under a separate chapter.

North Carolina: The schedule enumerates 25 compensable occupational diseases, including asbestosis and silicosis.

North Dakota: The term "injury" includes, in addition to any injury by accident, any disease proximately caused by the employment.

Ohio: The Act covers 21 enumerated diseases. The list does not include silicosis, asbestosis or other dust diseases.

Rhode Island: Prior to September 15, 1936, the Act provided compensation for nothing but "personal injury sustained by accident." As of that date, an amendment became effective making 31 groups of diseases compensable. Silicosis, asbestosis and other dust diseases are not included.

West Virginia: Disability or death caused by silicosis is compensable at the election of the employer, subject to certain limitations. No other occupational diseases are covered by the Act.

Wisconsin:

Injury is mental or physical harm to an employee caused by accident or disease. Silicosis and other dust diseases are compensable by court interpretation.

CHAPTER XXII

MARYLAND

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 6th of this year and, at the time of writing, is still in session. We are informed by the State Industrial Accident Commission that no bills are pending which would expressly make dust diseases compensable under the Workmen's Compensation Act or which prescribe precautions to be taken by employers with respect to dust hazards in their employments.

Employers are required by the State Industrial Accident Commission to observe certain safety codes and regulations. Such codes and regulations contain specific requirements in relation to smoke, gas, fumes, and dusts generated in employments. Copies thereof may be obtained by communication addressed to the Commission at Baltimore, Maryland.

A survey was recently conducted by the State Department of Health in conjunction with the United States Public Health Service, the office of the Commissioner of Labor and Statistics of Maryland, and the Baltimore City Health Department at the request of the Maryland Commission for the Study of Occupational Diseases. The survey was made for the purpose of assisting this Commission in preparing a report, with recommendations for the control of occupational diseases, for the Legislature, which is now in session. Special consideration was given to potential occupational disease hazards involved in the various types of industry carried on in this state. The records have been tabulated and the report on the findings is now being prepared. The report has not yet been released, but we are informed by the State Department of Health that it will probably be available shortly through the United States Public Health Service.

The Commission for the Study of Occupational Diseases has informed us that its report will be submitted to the Governor during the week of March 9th, and will recommend the enactment of legislation for the prevention and compensation for occupational diseases in Maryland.

CHAPTER XXIII

MASSACHUSETTS

I. Workmen's Compensation Act.

1. Statutes.

There is no change to date in the statutes, but attention is called to a bill now pending and which is discussed in Sec. IV of this chapter.

4. Court Construction.

In *Wnukowski's Case*, 5 N. E. (2d) 3 (S. Ct., Nov., 1936), following a long line of Massachusetts cases, it was held that disability or death resulting from the inhalation of dust in the course of employment is compensable under the Workmen's Compensation Act. The deceased herein constantly inhaled lime, rust, and soap dust over fifteen years' employment in defendant's plant.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

1. Pending Legislations.

The Legislature is now in regular session, having convened January 6, 1937. We are informed by the Division of Occupational Hygiene of the Department of Labor and Industries that only one bill is now pending in the Legislature which would specifically affect either the control or compensability of silica dust hazards. That bill is House Bill No. 1257 and provides that the Department of Industrial Accidents may, upon application therefor, and after investigation, issue to any employer in the foundry business a certificate of compliance with its rules and regulations relative to the installation and operation of suitable devices for the prevention of silicosis and may at any time, for cause, suspend or revoke such certificate. "Silicosis" is defined, for the purpose of the section, as "that form of pneumoconiosis caused by the inhalation of siliceous dust other than that of asbestos." The bill also makes provision for the handling of rejected risks by insurance companies subject to the provisions of the act. A hearing on the bill was set for February 18, 1937.

2. Rules and Regulations.

No rules or regulations relating to the granite dust hazard have actually been adopted as yet. We are informed, however,