

Mesothelioma – claiming compensation

Q I have mesothelioma, the fatal lung cancer related to asbestos. I have a claim against the Brigade but also against my previous employers who were a small lagging company which went bust years ago. I've heard that I can now only claim a proportion of my damages against the Brigade – is that right?

A It did look like that was going to be the case after the House of Lords decided in *Barker v Corus* that mesothelioma claims should be apportioned between defendants. That would have meant that victims would be under-compensated when one or more of the companies who exposed them had gone bust and their insurers could not be traced.

However, after successful lobbying by the unions and their lawyers, the government amended the Compensation Act that has recently been passed so that the pre-Barker position has been restored.

Although all reasonable inquiries still have to be made into other employers, so long as a claim can be established against one defendant, you should recover 100% of your damages.

Ill-health retirement

Q I applied for ill-health early retirement under the Firefighter's Pension Scheme but was refused, even though I have been off sick for a year, because the doctors decided that I was not permanently



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Answers to some frequently asked legal questions that members put to the FBU

unfit. Is there anything I can do about this?

A If the decision to which you are thinking of appealing is the initial decision made by the Brigade Medical Adviser, then there will be a further appeal possible to the Board of Medical Referees. You should ask

your union representative for assistance with that appeal.

Where you have already followed that route and have been refused a pension again, it is likely that application for judicial review is the only way forward. You need to seek legal advice through your union on that.

However, if the reason why you have been told that your condition is not yet likely to be permanent is that you have not yet explored all possible treatment options, you should seek to use your rights under the Grey Book, section 5, to try to ensure that your employers provide you with the best possible treatment, even if that is on a private basis, to give you the best available opportunity to return to work.

If that treatment is unsuccessful and you remain unfit for work, you will be able to return to your employers for a revised decision on your entitlement to an ill-health pension.

Pregnancy and sick leave

Q I am pregnant. Can I take sick leave?

A Yes, you should follow your employer's normal sickness reporting policy. You are entitled to any sick pay that your employer normally gives.

Your employer should record any pregnancy-related sick leave separately from other sick leave and it should not count towards your total sickness absence for disciplinary or redundancy purposes.

It is against the law for your employer to dismiss you or treat you less favourably because of your pregnancy or for having taken sick leave during your pregnancy.

Your employer can only 'trigger' your maternity leave if you are off sick for a pregnancy-related reason in the four weeks before your baby is due.

→ Write in with your legal problem to legalbeagle@fbu.org.uk and those of widest relevance to FBU members in the workplace will be selected and answered in future editions. With thanks to Thompsons solicitors.