

Document: O.C.G.A. § 34-9-281

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Official Code of Georgia Annotated TITLE 34 Labor and Industrial Relations (Chs. 1 – 15) CHAPTER 9 Workers' Compensation (Arts. 1 – 12) Article 8 Compensation for Occupational Disease (Pts. 1 – 3) PART 1 General Provisions (§§ 34-9-280 – 34-9-292)

34-9-281. Prerequisites to compensation for occupational disease.

(a) Where the employer and employee are subject to this chapter, the disablement or death of an employee resulting from an occupational disease shall be treated as the occurrence of an injury by accident; and the employee or, in the case of his or her death, the employee's dependents shall be entitled to compensation as provided by this chapter. The practice and procedure prescribed in this chapter shall apply to all the proceedings under this article except as otherwise provided.

(b) Except as otherwise provided in this Code section, an employer shall be liable for compensation under this article only where:

(1) The disease arose out of and in the course of the employment in which the employee was engaged under such employer, was contracted while the employee was so engaged, and has resulted from a hazard characteristic of the employment in excess of the hazards of such disease attending employment in general; and

(2) The claim for disablement is filed within one year after the date the employee knew or, in the exercise of reasonable diligence, should have known of the disablement and its relationship to the employment; but in no event shall the claim for disablement be filed in excess of seven years after the last injurious exposure to the hazard of such disease in such employment; provided, however, that an employee with asbestosis or mesothelioma related to exposure to asbestos shall have one year from the date of first disablement after diagnosis of such disease to file a claim for disablement. In cases of death where the cause of action was not barred during the employee's life, the claim must be filed within one year of the date of death.

History

Code 1933, § 114-801, enacted by Ga. L. 1946, p. 103; Ga. L. 1963, p. 141, § 17; Ga. L. 1982, p. 3, § 34; Ga. L. 1982, p. 2485, §§ 3, 9; Ga. L. 1983, p. 3, § 25; Ga. L. 1987, p. 1474, § 2; Ga. L. 1991, p. 1586, § 1; Ga. L. 2004, p. 631, § 34.

▼ Annotations

Notes

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, a comma was inserted following "provided" in the first sentence of paragraph (b)(2).

Editor's notes.

Ga. L. 1987, p. 1474, § 17, not codified by the General Assembly, provided that that Act would apply to any occupational disease not previously diagnosed before July 1, 1987.

Ga. L. 1991, p. 1586, § 2, not codified by the General Assembly, provides that this amendment shall not operate to revive any claim barred prior to July 1, 1991.

JUDICIAL DECISIONS

General Consideration

Statute of Limitations

General Consideration

Occupational disease deemed injury by accident. —

This section provided that the disablement or death of an employee resulting from an occupational disease shall be treated as the happening of an injury by accident. *Yates v. United States Rubber Co.*, 100 Ga. App. 583, 112 S.E.2d 182, 1959 Ga. App. LEXIS 669 (1959).

Action for injury arising from employment barred. —

Action for a current or future physical injury by accident due to occupational disease or otherwise (caused by ingestion of or exposure to asbestos fibers) and arising out of the scope of employment is barred by the exclusivity provisions of the workers' compensation law (see now O.C.G.A. § 34-9-1 et seq.). *Johnson v. Hames Contracting, Inc.*, 208 Ga. App. 664, 431 S.E.2d 455, 1993 Ga. App. LEXIS 536 (1993).

Statute of Limitations

Retroactive operation of statute of limitations is constitutional. —

Legislature may revive a workers' compensation claim which would have been barred by a previous limitation period by enacting a new statute of limitation, without violating the constitutional prohibition against retroactive laws in Ga. Const. 1983, Art. I, § I, Par. X. *Canton Textile Mills, Inc. v. Lathem*, 253 Ga. 102, 317 S.E.2d 189, 1984 Ga. LEXIS 824, cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231, 1984 U.S. LEXIS 4033 (1984).

Section controls over § 34-9-82. —

There was ample evidence to support the determination that the claimant's pneumoconiosis was an occupational disease; therefore, the specific statute of limitation applicable to occupational diseases as set forth in O.C.G.A. § 34-9-281(b)(2) should control, instead of the statute generally applicable to compensable injuries found in O.C.G.A. § 34-9-82(a). *American Int'l Adjusting Co. v. Davis*, 202 Ga. App. 276, 414 S.E.2d 292, 1991 Ga. App. LEXIS 1748 (1991).

Date of accident in silicosis case is date that disablement commences. *Patterson v. Employer's Mut. Liab. Ins. Co.*, 99 Ga. App. 325, 108 S.E.2d 146, 1959 Ga. App. LEXIS 847 (1959).

Limitations on actions for disablement from silicosis. —

In order to be compensable, disablement from silicosis must occur within three years from the date of the last hazardous exposure of the employee in the course of employment and the employee has one year thereafter in which to file the employee's claim. *Free v. Associated Indem. Corp.*, 78 Ga. App. 839, 52 S.E.2d 325, 1949 Ga. App. LEXIS 993 (1949); *Patterson v. Employer's Mut. Liab. Ins. Co.*, 99 Ga. App. 325, 108 S.E.2d 146, 1959 Ga. App. LEXIS 847 (1959).

Silicosis being a disease which develops slowly and which cannot be immediately detected, the General Assembly no doubt intended by the three-year clause in the statute not only to give the disease ample time from the last hazardous exposure in which to develop, but also to give the employee ample time in which to discover that the illness which renders the employee unable to work is silicosis. *Free v. Associated Indem. Corp.*, 78 Ga. App. 839, 52 S.E.2d 325, 1949 Ga. App. LEXIS 993 (1949).

When the claimant was disabled when claimant quit work, but did not know of claimant's disablement, nor if claimant's disablement was the result of silicosis, claimant had three years after claimant's last exposure to determine claimant's disability, and 30 additional days to so notify claimant's employer of the claim. *Patterson v. Employer's Mut. Liab. Ins. Co.*, 99 Ga. App. 325, 108 S.E.2d 146, 1959 Ga. App. LEXIS 847 (1959).

Since an employee has one year after disablement occurs in a silicosis case to file a claim, and since to be compensable disablement due to silicosis must result within three years after the last injurious exposure to the hazard of such disease during employment, it necessarily follows that under no circumstances may a claim for workers' compensation in a silicosis case be filed more than four years after the termination of employment. *Vaughn v. Coal Operators Cas. Co.*, 106 Ga. App. 129, 126 S.E.2d 428, 1962 Ga. App. LEXIS 645 (1962).

Statute runs when employee had knowledge. —

Focus of the statute is on the employee's knowledge, not when the employer had notice. *American Int'l Adjusting Co. v. Davis*, 202 Ga. App. 276, 414 S.E.2d 292, 1991 Ga. App. LEXIS 1748 (1991).

Byssinosis claims. —

Employer and insurer had no vested right in the former statute of limitations defense for byssinosis claims regardless of whether the viability of that former defense was or was not previously adjudicated. *Williams v. Crompton Highland Mills, Inc.*, 190 Ga. App. 621, 379 S.E.2d 622, 1989 Ga. App. LEXIS 390 (1989).

Asbestosis claim was not time-barred. —

Workers' compensation claim for an employee's total, permanent disability caused by pulmonary fibrosis and asbestosis was not time-barred by O.C.G.A. § 34-9-281(b)(2) although there was evidence that the employee's doctors suspected a causal connection between asbestos exposure

and the employee's respiratory illness more than a decade before the claim was filed because evidence supported the finding that the employee did not learn of these suspicions until the asbestosis was diagnosed; the claim was timely whether the limitations period began to run when the employee first learned of the causal connection or when the employee was diagnosed with asbestosis because the claim was filed less than a year after both events. Putzel Elec. Contrs. v. Jones, 282 Ga. App. 539, 639 S.E.2d 540, 2006 Ga. App. LEXIS 1456 (2006).

Research References & Practice Aids

Cross references.

Time limitations for filing claims under chapter generally, § 34-9-82.

Law reviews.

For article, "Occupational Diseases Under the Georgia Workmen's Compensation Act," see 8 Mercer L. Rev. 333 (1957).

For note, "Dust in the Wind: Revisiting Georgia's Refusal to Extend Liability to Employers in Take-Home Asbestos Litigation," see 53 Ga. L. Rev. 1169 (2019).

RESEARCH REFERENCES

Am. Jur. 2d.

82 Am. Jur. 2d, Workers' Compensation, § 290 et seq.

C.J.S.

100A C.J.S., Workers' Compensation, § 1158.

ALR.

Constitutionality of statute requiring protection against occupational or industrial diseases and accidents with respect to definiteness and completeness, 99 A.L.R. 613.

Workmen's compensation as covering disease contracted by employee while on street or in traveling, 141 A.L.R. 806.

When limitations period begins to run as to claim for disability benefits for contracting of disease under Workers' Compensation or Occupational Diseases Act, 86 A.L.R.5th 295.

Hierarchy Notes:

O.C.G.A. Title 34

O.C.G.A. Title 34, Ch. 9

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