



## Ohio Revised Code

### Section 2307.89 Silicosis or mixed dust disease claim against premises owner.

Effective: September 10, 2012

Legislation: House Bill 487 - 129th General Assembly

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The following apply to all tort actions for silicosis or mixed dust disease claims brought against a premises owner to recover damages or other relief for exposure to silica or mixed dust on the premises owner's property:

(A) A premises owner is not liable for any injury to any individual resulting from silica or mixed dust exposure unless that individual's alleged exposure occurred while the individual was at the premises owner's property.

(B) If exposure to silica or mixed dust is alleged to have occurred before January 1, 1972, it is presumed that a premises owner knew that this state had adopted safe levels of exposure for silica or mixed dust and that products containing silica or mixed dust were used on its property only at levels below those safe levels of exposure. To rebut this presumption, the plaintiff must prove by a preponderance of the evidence that the premises owner knew or should have known that the levels of silica or mixed dust in the immediate breathing zone of the plaintiff regularly exceeded the threshold limit values adopted by this state and that the premises owner allowed that condition to persist.

(C)(1) A premises owner is presumed to be not liable for any injury to any invitee who was engaged to work with, install, or remove products containing silica or mixed dust on the premises owner's property if the invitee's employer held itself out as qualified to perform the work. To rebut this presumption, the plaintiff must demonstrate by a preponderance of the evidence that the premises owner had actual knowledge of the potential dangers of the products containing silica or mixed dust at the time of the alleged exposure that was superior to the knowledge of both the invitee and the invitee's employer.

(2) A premises owner that hired a contractor before January 1, 1972, to perform the type of work at the premises owner's property that the contractor was qualified to perform cannot be liable for any injury to any individual resulting from silica or mixed dust exposure caused by any of the



contractor's employees or agents on the premises owner's property unless the premises owner directed the activity that resulted in the injury or gave or denied permission for the critical acts that led to the individual's injury.

(3) If exposure to silica or mixed dust is alleged to have occurred after January 1, 1972, a premises owner is not liable for any injury to any individual resulting from that exposure caused by a contractor's employee or agent on the premises owner's property unless the plaintiff establishes the premises owner's intentional violation of an established safety standard that was in effect at the time of the exposure and that the alleged violation was in the plaintiff's breathing zone and was the proximate cause of the plaintiff's medical condition.

(D) As used in this section:

(1) "Threshold limit values" means the maximum allowable concentration of silica, or other dust, set forth in regulation 247 of the "regulations for the prevention and control of diseases resulting from exposure to toxic fumes, vapors, mists, gases, and dusts in order to preserve and protect the public health," as adopted by the former public health council of the department of health on January 1, 1947, and set forth by the industrial commission of Ohio in bulletin no. 203, "specific requirements and general safety standards of the industrial commission of Ohio for work shops and factories, chapter XV, ventilation and exhausts," effective January 3, 1955.

(2) "Established safety standard" means that, for the years after 1971, the concentration of silica or mixed dust in the breathing zone of the worker does not exceed the maximum allowable exposure limits for the eight-hour time-weighted average airborne concentration as promulgated by the occupational safety and health administration (OSHA) in effect at the time of the alleged exposure.

(3) "Employee" means an individual who performs labor or provides construction services pursuant to a construction contract, as defined in section 4123.79 of the Revised Code, or a remodeling or repair contract, whether written or oral, if at least ten of the following criteria apply:

(a) The individual is required to comply with instructions from the other contracting party regarding the manner or method of performing services.



- (b) The individual is required by the other contracting party to have particular training.
- (c) The individual's services are integrated into the regular functioning of the other contracting party.
- (d) The individual is required to perform the work personally.
- (e) The individual is hired, supervised, or paid by the other contracting party.
- (f) A continuing relationship exists between the individual and the other contracting party that contemplates continuing or recurring work even if the work is not full time.
- (g) The individual's hours of work are established by the other contracting party.
- (h) The individual is required to devote full time to the business of the other contracting party.
- (i) The individual is required to perform the work on the premises of the other contracting party.
- (j) The individual is required to follow the order of work set by the other contracting party.
- (k) The individual is required to make oral or written reports of progress to the other contracting party.
- (l) The individual is paid for services on a regular basis, including hourly, weekly, or monthly.
- (m) The individual's expenses are paid for by the other contracting party.
- (n) The individual's tools and materials are furnished by the other contracting party.
- (o) The individual is provided with the facilities used to perform services.
- (p) The individual does not realize a profit or suffer a loss as a result of the services provided.



(q) The individual is not performing services for a number of employers at the same time.

(r) The individual does not make the same services available to the general public.

(s) The other contracting party has a right to discharge the individual.

(t) The individual has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.