



## Ohio Revised Code

### Section 2307.87 Silicosis or mixed dust disease claim - filing of evidence of physical impairment - challenge - administrative dismissal.

Effective: September 1, 2004

Legislation: House Bill 342 - 125th General Assembly

---

(A) The plaintiff in any tort action who alleges a silicosis claim or a mixed dust disease claim shall file, within thirty days after filing the complaint or other initial pleading, a written report and supporting test results constituting prima-facie evidence of the exposed person's physical impairment that meets the minimum requirements specified in division (B), (C), or (D) of section 2307.85 or division (B), (C), or (D) of section 2307.86 of the Revised Code, whichever is applicable. The defendant in the case shall be afforded a reasonable opportunity, upon the defendant's motion, to challenge the adequacy of the proffered prima-facie evidence of the physical impairment for failure to comply with the minimum requirements specified in division (B), (C), or (D) of section 2307.85 or division (B), (C), or (D) of section 2307.86 of the Revised Code, whichever is applicable. The defendant has one hundred twenty days from the date the prima-facie evidence of the exposed person's physical impairment is proffered to challenge the adequacy of that prima-facie evidence. If the defendant makes that challenge and uses a physician to do so, the physician must meet the requirements specified in divisions (I)(1), (3), and (4) of section 2307.84 of the Revised Code.

(B) If the defendant challenges the adequacy of the prima-facie evidence of the exposed person's physical impairment as provided in division (A) of this section, the court shall determine from all of the evidence submitted whether the proffered prima-facie evidence meets the minimum requirements specified in division (B), (C), or (D) of section 2307.85 or division (B), (C), or (D) of section 2307.86 of the Revised Code, whichever is applicable. The court shall resolve the issue of whether the plaintiff has made the prima-facie showing required by any of those divisions as applicable, by applying the standard for resolving a motion for summary judgment.

(C) The court shall administratively dismiss the plaintiff's claim without prejudice upon a finding of failure to make the prima-facie showing required by division (B), (C), or (D) of section 2307.85 or division (B), (C), or (D) of section 2307.86 of the Revised Code, whichever is applicable. The court shall maintain its jurisdiction over any case that is administratively dismissed under this division. Any plaintiff whose case has been administratively dismissed under this division may move to



reinstate the plaintiff's case if the plaintiff makes a prima-facie showing that meets the minimum requirements specified in any of those divisions as applicable.

(D) This section applies only to tort actions that allege a silicosis claim or a mixed dust disease claim and that are filed on or after the effective date of this section.