

LEGAL ASPECTS OF OCCUPATIONAL DISEASES

ALLYN D. KENDIS*

One of the little known phases of the law is that part which deals with the Ohio Workmen's Compensation Act, and, even less known, is a branch of that act dealing with occupational diseases. In fact, the Ohio Workmen's Compensation Act is a creature of statute, an outgrowth of industrial progress expressed in the form of social legislation in an attempt to take care of human casualties and harm produced by industrial and scientific progress.

Originally, both injuries and occupational diseases, occurring to employees, were left to the resources of the common law with the remedy of suits in negligence against their employers, and subject to the defenses of "fellow servant rule," "contributory negligence," and "assumption of risk." It was soon apparent to both the employer and employee that such a remedy was creating an injustice to both classes, for the primary cause of the harm was that of industrial hazards rather than that of any particular negligence of either class.

The first step toward modernization and change in the law, with a tendency to the creation of social legislation, occurred in Germany which was a highly industrial country. Subsequently, this was followed by laws passed in England with the same aim in mind as early as 1880.

Ohio, in 1890, attempted to follow in a like manner, with an act to protect railway employees, and in 1910 the Norris Act was passed, which gave further protection to employees in general. Also in 1910 the legislature of Ohio gave the Governor the power to appoint a committee to investigate and report out a bill to remedy injuries and occupational diseases arising out of and in the course of the employment. On June 15, 1911, the Workmen's Compensation Act of Ohio was approved and first took form. However, at that time it was an optional act, and on September 3, 1912, an amendment to the Ohio Constitution was passed which laid the basis for the legislation of 1913 forming the first compulsory Workmen's Compensation Act of Ohio and which was the forerunner of our present act.¹

Obviously, if we are to understand the legal aspects of the Workmen's Compensation Act of Ohio with reference to occupational disease, we must first look to the Ohio Constitution for our authority. Our Ohio Constitution provides that laws may be passed establishing a state fund created by compulsory contributions to provide compensation to workmen and their dependents, for death, injuries or occupational disease occasioned in the course of such workmen's employment.²

*Of the firm of Shapiro, Kendis, and Petro, Cleveland, Ohio; member of the Ohio Bar.

¹ See 103 Ohio Laws 72 (1913).

² Article II, § 35 of the OHIO CONSTITUTION provides: "For the purpose of

It was only natural that the constitutionality of this section was raised in the courts and in the early cases it was held to be an exercise of the police power of the State of Ohio and therefore was held to be constitutional.³

As the constitution provided, laws were passed in the creation of the Workmen's Compensation Act and in turn some of these were questioned as to their constitutionality and were found to be constitutional by the courts.⁴

For the purpose of this article it is more appropriate to take the act as it exists today to see what are the legal aspects of occupational diseases. It must be remembered that article II, section 35, distinguishes between "injuries" and "occupational disease" and the cases raised on this point so state.⁵

The act further states that it is to provide compensation to "workmen" and it is specifically spelled out that an employee, workman, or operative means "every person in the service of any person, firm, or private corporation, including any public service corporation, employing three or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written. . . ." Also included is every person in the service of the state, county, municipal corporation, village, etc.⁶

The only definition of an occupational disease is in Revised Code section 4123.68 which recites as follows:

Every employee who is disabled because of the contraction of an occupational disease as defined in this section, or the dependent of an employee whose death is caused by an occupational disease as defined in this section, is entitled to the

providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contributions thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries or occupational disease. . . ."

³ See State *ex rel.* Yapple v. Creamer, 85 Ohio St. 349, 97 N.E. 602 (1912), Syllabus: "The act entitled 'An act to create a state insurance fund for the benefit of injured, and the dependents of killed employees, etc.' 102 O. L. 524, is a valid exercise of legislative power not repugnant to the federal or state constitutions, or to any limitation contained in either."

⁴ See Jeffrey Mfg. Co. v. Blagg, 235 U.S. 571, *affirming*, 90 Ohio St. 376 (1914) (holding the act constitutional). See also DeTorio v. Industrial Comm'n, 135 Ohio St. 214, 20 N.E.2d 248 (1939); Slatmeyer v. Industrial Comm'n, 115 Ohio St. 654, 155 N.E. 484 (1926).

⁵ Johnson v. Industrial Comm'n, 164 Ohio St. 297, 130 N.E.2d 807 (1955); Industrial Comm'n v. Cross, 104 Ohio St. 561, 136 N.E. 283 (1922); Industrial Comm'n v. Brown, 92 Ohio St. 309, 110 N.E. 744 (1915).

⁶ OHIO REV. CODE § 4123.01 (1953).

compensation provided by sections 4123.55 to 4123.59, inclusive, and section 4123.66 of the Revised Code, subject to the modifications relating to occupational diseases contained in sections 4123.01 to 4123.94, inclusive, of the Revised Code. The following diseases shall be considered occupational diseases and compensable as such when contracted by an employee in the course of his employment in which such employee was engaged at any time within twelve months previous to the date of his disablement and due to the nature of any process described in this section. . . .

The cited sections above provide for the payment of temporary total compensation less the first seven days unless an employee is disabled in excess of five weeks and then the first week may be paid,⁷ and for the continuous payment of temporary total compensation for time lost not to exceed eight years or ten thousand dollars,⁸ whichever comes first. It also provides for the payment of permanent partial disability if a residual disability remains as the result of the occupational disease,⁹ with the exception of silicosis,¹⁰ and for the payment of permanent total compensation if such a condition results from an occupational disease.¹¹

Dependents of such employees are also provided for in the event that death is produced by such an occupational disease, all under the limits of the Workmen's Compensation Act.¹² An additional section provides for the payment by the Industrial Commission of the medical, nursing and hospital expenses incurred.¹³

Under the present form of the Ohio Workmen's Compensation Act, all occupational diseases are compensable in Ohio, although this was not always true.¹⁴ At first the only compensable diseases were those listed in this section of the Revised Code.¹⁵ Time and experience soon showed that it was necessary to include all occupational diseases for the proper protection of the employee and the employer; consequently subdivision (X), a carry-all provision which includes all diseases of any sort that arise out of and in the course of an employee's work, was passed.¹⁶

⁷ OHIO REV. CODE § 4123.55 (1953).

⁸ OHIO REV. CODE § 4123.56 (Baldwin Supp. 1958).

⁹ OHIO REV. CODE § 4123.57 (Baldwin Supp. 1958).

¹⁰ OHIO REV. CODE § 4123.68 (Baldwin Supp. 1958).

¹¹ OHIO REV. CODE § 4123.58 (Baldwin Supp. 1958).

¹² OHIO REV. CODE § 4123.59 (Baldwin Supp. 1958).

¹³ OHIO REV. CODE § 4123.66 (Baldwin Supp. 1958).

¹⁴ *Weill v. Taxicabs, Inc.*, 139 Ohio St. 198, 39 N.E.2d 148 (1942); *Triff v. National Bronze and Aluminum Corp.*, 135 Ohio St. 191, 20 N.E.2d 232 (1939).

¹⁵ OHIO REV. CODE § 4123.68 (Baldwin Supp. 1958); *Triff v. National Bronze and Aluminum Corp.*, *supra* note 14; *Industrial Comm'n v. Franken*, 126 Ohio St. 299, 185 N.E. 199 (1933).

¹⁶ OHIO REV. CODE § 4123.68(X) (Baldwin Supp. 1958).

The term "occupational disease" does not mean that all diseases of any kind or nature are included, for the cases have clearly held that there is a clear distinction between disease, and "occupational disease" as well as between "injury" and "occupational disease."¹⁷ It has further been held that the only occupational diseases that are compensable are those listed under the statute.¹⁸

For example, such conditions as "pneumonia,"¹⁹ "heart disease,"²⁰ "undulant fever,"²¹ "Bell's palsy"²² and "monoxide poisoning"²³ have been held not to be occupational diseases.

Revised Code section 4123.68 lists the description of the various occupational diseases and the description of the process involved and we will attempt to list them in the same order as they appear in the statute.

A. The first disease is that of ANTHRAX, which is a disease that occurs from the handling of wool, hair, bristles, hides and skins. We will not attempt to set forth the significance of these diseases as they will be more fully explained in another article in this same Journal.²⁴

B. The disease of GLANDERS, is a disease that arises from the care of any equine animal suffering from glanders or in the handling of the carcass of such an animal.

C. LEAD POISONING is a condition of the body which comes from being in contact with any industrial process involving the use of lead or its preparations or compounds, such as in manufacturing of storage batteries or in the smelting process or other processes.

D. MERCURY POISONING is a condition that may arise from any industrial process involving the use of mercury or its preparations or compounds.

E. PHOSPHOROUS POISONING which is a condition that may arise from any industrial process involving the use of phosphorous or its preparations or compounds.

F. ARSENIC POISONING, arising from any industrial process involving the use of arsenic or its preparations or compounds.

G. Poisoning by BENZOL or by nitro-derivatives and amido-

¹⁷ Johnson v. Industrial Comm'n, *supra* note 5; Industrial Comm'n v. Franken, *supra* note 15; State *ex rel.* Lourin v. Industrial Comm'n, 67 Ohio App. 300, 35 N.E.2d 841, *aff'd*, 138 Ohio St. 618 (1941).

¹⁸ Industrial Comm'n v. Armacost, 129 Ohio St. 176, 194 N.E. 23 (1935); Industrial Comm'n v. Middleton, 126 Ohio St. 212, 184 N.E. 835 (1933); Industrial Comm'n v. Franken, *supra* note 15.

¹⁹ Johnson v. Industrial Comm'n, *supra* note 5; Youngstown Sheet and Tube Co. v. Redolphi, 13 Ohio L. Abs. 39 (1932).

²⁰ Industrial Comm'n v. Betleyoun, 31 Ohio App. 430, 166 N.E. 380 (1929).

²¹ Kumler v. Industrial Comm'n, 10 Ohio Op. 402, 26 Ohio L. Abs. 127 (1938).

²² Industrial Comm'n v. Middleton, *supra* note 18.

²³ Industrial Comm'n v. Tolsen, 37 Ohio App. 282, 174 N.E. 622 (1930) (Held, it was an injury.). See also Industrial Comm'n v. Palmer, 126 Ohio St. 251, 185 N.E. 66 (1933).

²⁴ Mancuso, *Medical Aspects of Occupational Diseases*, 19 OHIO ST. L.J. 612 (1958).

derivatives of benzol, (dinitro-benzol, anilin, and others) arising from any industrial process involving the use of benzol or nitro-derivatives or amido-derivatives of benzol or its preparations or compounds.

H. Poisoning by GASOLINE, BENZINE, NAPHTHA, or other volatile petroleum products, arising from any industrial process involving the use of gasoline, benzine, naphtha or other volatile petroleum products.

I. Poisoning from CARBON BISULPHIDE arising from any industrial process involving the use of carbon bisulphide or its preparations or compounds.

J. Poisoning by WOOD ALCOHOL arising from any industrial process involving the use of wood alcohol or its preparations.²⁵

K. Infection or inflammation of the skin on contact surfaces due to oils, cutting compounds or lubricants, dust, liquid, fumes, gases or vapors arising from any industrial process involving the handling or use of oils, cutting compounds or lubricants, or involving contact with dust, liquids, fumes, gases or vapors.²⁶

L. EPITHELIOM CANCER or ulceration of the skin or of the corneal surface of the eye due to and arising from the use of carbon, pitch, tar or tarry compounds or from the handling or industrial use of carbon, pitch, or tarry compounds.

M. COMPRESSED AIR ILLNESS arising from any industrial process carried on in compressed air and to which the employee would be subjected.

N. CARBON DIOXIDE POISONING arising from an industrial process involving the evolution or resulting from the escape of carbon dioxide.

O. BRASS OR ZINC POISONING arising from any industrial process involving the manufacture, founding or refining of brass or the melting or smelting of zinc.

P. MANGANESE DIOXIDE POISONING arising from any process involving the grinding or milling of manganese dioxide or the escape of manganese dioxide dust.

Q. RADIUM POISONING arising from the industrial process involving the use of radium and other radioactive substances in luminous paint.

R. TENOSYNOVITIS AND PREPATELLAR BURSITIS. Primarily tenosynovitis is characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibrations, or prepatellar bursitis due to continued pressure.

S. CHROME ULCERATION of the skin or nasal passages arising

²⁵ See State *ex rel.* Industrial Comm'n v. Holt, 134 Ohio St. 25, 15 N.E.2d 543 (1938).

²⁶ See 1922 Ohio Atty. Gen. Ops. 202. The term "skin" according to the above section, as used in the common ordinary and general sense, is the outer covering of the body as distinguished from mucous membrane lining the passages connected with the alimentary and respiratory organs.

from any industrial process involving the use of or direct contact with chromic acid or bichromates of ammonium, potassium, or sodium or their preparations.

T. POTASSIUM CYANIDE POISONING arising from any industrial process involving the use of or direct contact with potassium cyanide.

U. SULPHUR DIOXIDE POISONING arising from any industrial process in which sulphur dioxide gas is evolved by the expansion of liquid sulphur dioxide.²⁷

V. BERYLLIOSIS. Berylliosis means a disease of the lungs caused by breathing beryllium in the form of dust or fumes, producing characteristic changes in the lungs and demonstrated by x-ray examination or by autopsy.

This disease is more limited according to the law than any of those previously outlined and is subject to the following conditions:

1. It must be found to be a disease of the lungs.
2. Evidence of the disease must be demonstrated by x-ray or by means of an autopsy finding.
3. The employee must show exposure to the fumes and/or the dust of beryllium or its compounds in the employment in the State of Ohio, preceding his disablement.
4. Disability or death must commence within eight years of the date of last exposure.
5. If death from the disease follows continuous total disability, which disability occurred within eight years of the last exposure, then the requirement of death within eight years after the last exposure, will not apply.
6. All cases must be referred to the silicosis referees, (a board of qualified doctors) for their recommendations before any compensation can be paid to the employee under any of the classes of compensation, such as temporary total, temporary partial, permanent partial or permanent total compensation. Also all death cases must be so referred before any payment of a death award to dependents can be made.
7. Every applicant requesting compensation is required to submit to an examination of x-rays if requested by the Industrial Commission and his refusal to do so gives the Industrial Commission the power to declare that the applicant has forfeited his right to compensation.
8. The Industrial Commission can require an autopsy in the event of death, and failure to co-operate on behalf of the dependents can give the Industrial Commission the power to declare that the applicant or applicants have forfeited their right to compensation benefits by their refusal.

²⁷ Industrial Comm'n v. Polcen, 121 Ohio St. 377, 169 N.E. 305 (1929), involving question of occupational disease or injury.

W. SILICOSIS. Silicosis means a disease of the lungs caused by breathing in silica dust (silicon dioxide) producing fibrous nodules distributed throughout the lungs and demonstrated by x-ray examination or by autopsy.

The disease of silicosis is also limited by statute and is subject to a number of conditions and requirements before any compensation can be awarded to any worker afflicted with it. These conditions, in general, are as follows:

1. An employee, making application for compensation, must show exposure to silicon dioxide arising out of employment for periods amounting to at least three years, some portion of which has been after October 12, 1945.
2. Compensation can only be paid in the event that the employee is temporarily and totally disabled or permanently and totally disabled, and then compensation is paid under the regulations of Revised Code sections 4123.56, .58, and .59.²⁸
3. All applications for payment of compensation based on silicosis, must be filed within eight years from the date of last exposure, and within one year after total disability began or such further period as does not exceed six months after diagnosis by a licensed physician.²⁹
4. All applications for compensation, based on the death of an employee due to silicosis, must be filed within six months after date of death or be forever barred.
5. The Industrial Commission has the power to refuse to pay compensation to an employee or his dependents based on failure of the employee to truthfully state to his employer, upon the employer's request, his previous employment, the nature, place and duration.
6. Every applicant must be examined by the Silicosis Referees, which is a board of three doctors, two of whom are specialists in lung conditions and one of whom is a specialist

²⁸ There is no provision for payment of partial disability of any kind for this disease, either in the form of temporary partial or permanent partial disability as there is for the other listed occupational diseases. As to the constitutionality of this section, see State *ex rel.* Yuska v. Industrial Comm'n, 144 Ohio St. 187, 58 N.E.2d 214 (1949). See also State *ex rel.* Bevis v. Blake, 159 Ohio St. 491, 112 N.E.2d 663 (1953); State *ex rel.* Bevis v. Coffinbury, 151 Ohio St. 293, 85 N.E.2d 519 (1949).

²⁹ State *ex rel.* Raymond v. Industrial Comm'n, 140 Ohio St. 233, 42 N.E.2d 992 (1942). See 1950 Ohio Atty Gen. Ops. 1889. See also State *ex rel.* Bessler v. Industrial Comm'n, 157 Ohio St. 297, 105 N.E.2d 264 (1952); State *ex rel.* Venys v. Industrial Comm'n, 153 Ohio St. 238, 91 N.E.2d 7 (1950); State *ex rel.* Efford v. Industrial Comm'n, 151 Ohio St. 109, 84 N.E.2d 493 (1949).

- in x-rays, which board is required to examine the applicant and make a recommendation.³⁰
7. All silicosis cases must be referred to this board of Silicosis Referees for examination and recommendation as to the degree of disability.
 8. All applicants must submit to this examination and the taking of x-rays if requested to do so by the Industrial Commission and a refusal gives the Industrial Commission the power to declare the applicants' benefits forfeited.³¹
 9. Dependents of such employee, who, on request of the Industrial Commission, refuse to consent to an autopsy where it is deemed necessary by the Industrial Commission gives the Industrial Commission the power to declare the dependents' right to benefits forfeited.

At one time the statute provided that claims for silicosis had to be filed within two years from the date of last exposure, and then the law was changed to eight years. The question arose as to whether the applicant or his dependent was given the advantage of the extension of the eight-year period. This particular question is no longer in issue as all applicants now have the benefit of filing within eight years of the last exposure.³²

Additional benefits for employees who contract the disease of silicosis, which are not afforded to the other occupational diseases, are provided by means of payment of compensation for a change in occupation, and also a provision for payment of two-thirds of the loss of wages not to exceed twenty-five dollars per week, if such a change should produce a loss in wages.³³ Under this provision of the occupational disease act, it is provided that if within three months before or after a change of occupation, an employee makes application for a finding and the Silicosis Referees find that such an employee has silicosis and that a change of such employee's occupation is medically advisable in order to decrease substantially further exposure to silica dust, and the employee does so change his occupation, he is entitled to the payment of compen-

³⁰ State *ex rel.* Fulton Foundry v. Industrial Comm'n, 78 Ohio L. Abs. 538 (Franklin County Ct. App. 1957), states in syllabus two:

"The mandate of Sect. 4123.10 R. C. requiring that a medical advisor shall examine a claimant in order to determine the existence of an occupational disease, has been met as regards one claiming to have contracted the occupational disease of silicosis within the course of and arising out of his employment when the silicosis referees, the claimant living 300 miles away and unable to travel to the locale of the examination, order and receive x-rays which they examine along with other evidence in their files, since under the statutes, the disease is to be determined by x-ray examination."

³¹ See note 30, *supra*.

³² For some interesting decisions on this point see State *ex rel.* Bessler v. Industrial Comm'n, *supra* note 29; State *ex rel.* Venys v. Industrial Comm'n, *supra* note 29; State *ex rel.* Efford v. Industrial Comm'n, *supra* note 29.

³³ OHIO REV. CODE § 4123.57 (Baldwin Supp. 1958).

sation for such a change of occupation for a period of thirty weeks at the rate of forty dollars and twenty-five cents per week commencing as of the date of such discontinuance or change.

The payment of these benefits are subject to certain restrictions. Only one such change will be allowed under the occupational disease law. Further, it is provided that payment will cease if the employment changed to is not one that will substantially lessen the employee's exposure to silica dust. If the employee, while being paid for change of occupation, becomes totally disabled, it is provided that payment for change of his occupation will cease.

All medical expenses incurred are provided for under Revised Code section 4123.68 or section 4123.57 and the power to recommend therapeutic treatment is also given to the Silicosis Board of Referees without detracting from the rights afforded to the employee generally under Revised Code section 4123.68, which is the section for occupational diseases.

X. ALL OTHER OCCUPATIONAL DISEASES. These are defined as diseases that are peculiar to a particular industrial process or occupation and to which an employee is not ordinarily subjected or exposed outside of or away from his employment.

An attempt to separate this carry-all section of the occupational disease act is made by a further provision of the act with reference to dust and respiratory ailments in the following terms:

All conditions, restrictions, limitations, and other provisions of this section, with reference to the payment of compensation or benefits on account of silicosis, shall be applicable to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposures to dusts, except berylliosis.³⁴

Certain other provisions, with reference to occupational diseases, are part of the Workmen's Compensation Act although as a rule they are little known, either to the layman or to the practicing lawyer. One of these sections provides that there shall be no appeal to court on any occupational disease in the event of an adverse decision by the Industrial Commission.³⁵ Another provision gives the Industrial Commission the power to refuse to pay compensation to any employee where it is found

³⁴ OHIO REV. CODE § 4123.68(X) (Baldwin Supp. 1958).

³⁵ OHIO REV. CODE § 4123.69 (1953); State *ex rel.* Jonak v. Beall, 136 Ohio St. 213, 24 N.E.2d 826 (1940); State *ex rel.* Industrial Comm'n v. Holt, *supra* note 25; Industrial Comm'n v. Monroe, 111 Ohio St. 812, 146 N.E. 213 (1924). See State *ex rel.* Fulton Foundry v. Industrial Comm'n, *supra* note 30. The court stated in syllabus one:

"Since there may be no appeal from an order of the Industrial Commission finding that a claimant has contracted the occupational disease of silicosis, within the course of and arising out of his employment, mandamus is the proper remedy to have such order vacated and set aside, and this relief may be granted if there has been an abuse of discretion or failure to comply with the law."

that the employee has fraudulently concealed the fact that he was already afflicted with an occupational disease and tries to predicate a new claim thereon.³⁶

In order to protect further both the employee and the employer, definite provisions have been passed requiring every physician in the State of Ohio who attends and believes that a patient is suffering from an occupational disease to perform the following acts:

1. To report the same within 48 hours to the Industrial Commission.
2. To give the name and address and occupation of the patient.
3. To give the name and address of the business where the patient was employed.
4. To state the nature of the disease.
5. To give the name and address of the employer of the patient.
6. Such other information as the Industrial Commission requires.

In the event that the physician complies with the law, the Industrial Commission is given twenty-four hours in which to notify the employer and the employee and send them a copy of the physician's report. For failure of the physician to comply with these provisions of the law, the Industrial Commission is empowered to invoke the penal section of the Workmen's Compensation Act.³⁷

One of the benefits afforded to employers in an attempt to have them comply with the compulsory workmen's compensation laws is the granting of immunity to such employers from responding in damages for injuries or occupational diseases occurring in the course of employment if coverage is taken and premiums maintained.

Applications for compensation under the occupational disease law are subject, under Revised Code section 4123.85, to the following statute of limitations for filing:

In all cases of occupational disease, or death resulting from occupational disease, claims for compensation shall be forever barred unless, within six months after the disability due to the disease began, or within six months after death occurred, application is made to the Industrial Commission, or to the employer in the event such employer has elected to pay compensation direct, except in such cases as are provided for in division (D) of section 4123.59 of the Revised Code.³⁸

³⁶ OHIO REV. CODE § 4123.70 (1953).

³⁷ OHIO REV. CODE § 4123.71 (1953), for requirement of physician to report. See OHIO REV. CODE § 4123.99 (Baldwin Supp. 1958) for the penal sections of Workmen's Compensation Act.

³⁸ State *ex rel.* Willis v. Industrial Comm'n, 78 Ohio L. Abs. 354 (Franklin County Ct. App. 1958). The syllabus states:

"Section 4123.85 R. C. provides that in all cases of occupational disease or death

It should be noticed that although this section provides for notice to be given to an employer who has been given the privilege of carrying his own insurance or is known as a self-insurer or section-22 employer, this section does not also apply to a non-complying or non-conforming employer also known as a section-27 employer. Under the latter case, an application can be filed with the Industrial Commission within the six months period.³⁹

Now looking at this from the other viewpoint, once a case is accepted by the Industrial Commission and recognized as an occupational disease, the Industrial Commission then has continuing jurisdiction over that case for a period of ten years from the date of last payment of compensation or benefits under the Workmen's Compensation Act of Ohio.⁴⁰

It should be mentioned that an even less known section of the Workmen's Compensation Act is that portion providing for Civil Defense and Public Work Relief employees. Under the Civil Defense section nothing is specifically set forth as to occupational disease, except that these employees are employees of the state and for the purpose of the Workmen's Compensation Act as set forth in Revised Code sections 4123.01 to .94, which inclusion also takes into consideration Revised Code section 4123.68, the occupational disease section.

The Public Work Relief Act, however, does not even mention these sections of the Revised Code on workmen's compensation, and in general, makes no provision whatsoever for occupational diseases.

Although the statutes of the State of Ohio specifically set forth what is defined as an occupational disease, it has been held that generally, an occupational disease is a disease contracted in the natural and ordinary course of employment by a person engaged in a particular calling or occupation, which disease, from common experience, is known to be a usual and customary incident to such calling or occupation.⁴¹

It will be interesting to note how the present occupational disease law will work in the future with new developments arising from industry and the new hazards arising therefrom. Those that can be viewed

resulting from occupational disease, claims for compensation shall be forever barred, unless application is made to the Industrial Commission within six months after the disability due to the disease began, or within six months after death occurred, and the fact that claimant failed to file his claim within such six-month period, due to the failure of his physicians to diagnose his condition as due to arsenic poison, within that period of time, does not change the application of the law and it cannot be said that the Industrial Commission committed a gross abuse of discretion or deprived claimant any clear legal right in holding that it had no jurisdiction to entertain his application."

³⁹ State *ex rel.* Polaski v. Industrial Comm'n, 123 Ohio St. 86, 174 N.E. 11 (1930).

⁴⁰ OHIO REV. CODE § 4123.52 (1953). State *ex rel.* Timken Roller Bearing Co v. Industrial Comm'n, 136 Ohio St. 148, 24 N.E.2d 448 (1939).

⁴¹ Industrial Comm'n v. Roth, 98 Ohio St. 34, 120 N.E. 172 (1918).

in the near future will be the effects of radiation on employees from new industries using new and different chemical constituents, and new diseases that may develop from the use of new chemicals being used as substitutes for now known components in ordinary manufacturing processes, or new diseases which may arise from new and different types of fuels to be used in the future.

However, insofar as laws can be made, the legislature of the State of Ohio has tried to cover all contingencies with a definite degree of success.