

CHAPTER 85A

OCCUPATIONAL DISEASE COMPENSATION

Referred to in §8A.457, 8A.512, 84A.5, 85.3, 85.20, 85.21, 85.22, 85.26, 85.27, 85.34, 85.35, 85.38, 85.49, 85.60, 85.61, 86.8, 86.9, 86.13, 86.17, 86.18, 86.19, 86.24, 86.29, 86.39, 86.44, 87.1, 87.2, 87.11, 87.13, 87.14A, 87.21, 87.22, 331.324, 515B.5, 582.1A, 622.10, 627.13, 669.14, 729.6

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85A.1 Short title.

This chapter shall be known and referred to as the “*Iowa Occupational Disease Law*”.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.1]

85A.2 Employers included.

All employers as defined by the workers’ compensation law of Iowa and who are engaged in any business or industrial process hereinafter designated and described are employers within the provisions of this chapter and shall be subject thereto.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.2]

85A.3 Employees covered.

All employees as defined by the workers’ compensation law of Iowa employed in any business or industrial process hereinafter designated and described and who in the course of their employment are exposed to an occupational disease as herein defined are subject to the provisions of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.3]

85A.4 Disablement defined.

Disablement as that term is used in this chapter is the event or condition where an employee becomes actually incapacitated from performing the employee’s work or from earning equal wages in other suitable employment because of an occupational disease as defined in this chapter in the last occupation in which such employee is injuriously exposed to the hazards of such disease.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.4]

85A.5 Compensation payable.

All employees subject to the provisions of this chapter who shall become disabled from injurious exposure to an occupational disease herein designated and defined within the conditions, limitations and requirements provided herein, shall receive compensation, reasonable surgical, medical, osteopathic, chiropractic, physical rehabilitation, nursing and hospital services and supplies therefor, and burial expenses as provided in the workers’ compensation law of Iowa except as otherwise provided in this chapter.

If, however, an employee incurs an occupational disease for which the employee would be entitled to receive compensation if the employee were disabled as provided herein, but

is able to continue in employment and requires medical treatment for said disease, then the employee shall receive reasonable medical services therefor.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.5]

85A.6 Dependents — defined.

Dependents of a deceased employee whose death has been caused by an occupational disease as herein defined and under the provisions, conditions and limitations of this chapter shall be those persons defined as dependents under the workers' compensation law of Iowa and such dependents shall receive compensation benefits as provided by said law.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.6]

85A.7 Limitations and exceptions.

The provisions of this chapter providing payment of workers' compensation on account of occupational disease as defined and set out in this chapter, shall be subject to the following limitations and exceptions:

1. No compensation shall be payable if the employee, at the time of entering the employment of the employer in writing falsely represented to said employer that the employee had not been previously disabled, laid off or compensated, or lost time by reason of an occupational disease.

2. No compensation for death because of an occupational disease shall be payable to any person whose relationship to the deceased employee arose subsequent to the beginning of the first compensable disability, except only after-born children of a marriage existing at the beginning of such disability.

3. When such occupational disease causes the death of an employee and there are no dependents entitled to compensation, then the employer shall pay the medical, hospital and burial expenses as is provided by the workers' compensation law, and shall also pay to the treasurer of the state for the use and benefit of the second injury compensation fund such amount as is required by the second injury compensation law.

4. Where such occupational disease is aggravated by any other disease or infirmity not of itself compensable, or where disability or death results from any other cause not of itself compensable but is aggravated, prolonged or accelerated by such an occupational disease, and disability results such as to be compensable under the provisions of this chapter, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease was the sole cause of the disability or death, as such occupational disease bears to all the causes of such disability or death. Such reduction or limitation in compensation shall be effected by reducing either the number of weekly payments or the amount of such payments as the workers' compensation commissioner may determine is for the best interests of the claimant or claimants.

5. No compensation shall be allowed or payable for any disease or death intentionally self-inflicted by the employee or due to the employee's intoxication, or due to the employee being a narcotic drug addict, or the employee's commission of a misdemeanor or felony, refusal to use a safety appliance or health protective, refusal to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work, or failure or refusal to perform or obey any statutory duty. The burden of establishing any such ground shall rest upon the employer.

6. No compensation shall be payable or allowed in any case where the last injurious exposure to the hazards of such occupational disease occurred prior to the effective date of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.7]

98 Acts, ch 1061, §11

85A.8 Occupational disease defined.

Occupational diseases shall be only those diseases which arise out of and in the course of the employee's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the

character of the business, occupation or process in which the employee was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which an employee has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.8]

Referred to in §85.61

85A.9 Repealed by 73 Acts, ch 144, § 30.

85A.10 Last exposure — employer liable.

If compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of the disease, is liable for the compensation. The notice of injury and claim for compensation shall be given and made to the employer as required under this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.10]

86 Acts, ch 1101, §1

85A.11 Diagnosis for brucellosis.

1. When any employee is clinically diagnosed as having brucellosis (undulant fever), it shall not be considered that the employee has the disease unless the clinical diagnosis is confirmed by:

a. A positive blood culture for brucella organisms, or

b. A positive agglutination test which must be verified by not less than two successive positive agglutination tests, each of which tests shall be positive in a titer of one to one hundred sixty or higher. Said subsequent agglutination tests must be made of specimens taken not less than seven nor more than ten days after each preceding test.

2. The specimens for the tests required herein must be taken by a licensed practicing physician or osteopathic physician, and immediately delivered to the state hygienic laboratory of the Iowa department of public health at Iowa City, and each such specimen shall be in a container upon which is plainly printed the name and address of the subject, the date when the specimen was taken, the name and address of the subject's employer and a certificate by the physician or osteopathic physician that the physician took the specimen from the named subject on the date stated over the physician's signature and address.

3. The state hygienic laboratory shall immediately make the test and upon completion thereof it shall send a report of the result of such test to the physician or osteopathic physician from whom the specimen was received and also to the employer.

4. In the event of a dispute as to whether the employee has brucellosis, the matter shall be determined as any other disputed case.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.11]

2008 Acts, ch 1032, §201; 2010 Acts, ch 1069, §9

85A.12 Disablement or death following exposure — limitations.

An employer shall not be liable for any compensation for an occupational disease unless such disease shall be due to the nature of an employment in which the hazards of such disease actually exist, and which hazards are characteristic thereof and peculiar to the trade, occupation, process, or employment, and such disease actually arises out of the employment, and unless disablement or death results within three years in case of pneumoconiosis, or within one year in case of any other occupational disease, after the last injurious exposure to such disease in such employment, or in case of death, unless death follows continuous disability from such disease commencing within the period above limited for which compensation has been paid or awarded or timely claim made as provided by this chapter and results within seven years after such exposure.

In any case where disablement or death was caused by latent or delayed pathological conditions, blood, or other tissue changes or malignancies due to occupational exposure to X

rays, radium, radioactive substances or machines, or ionizing radiation, the employer shall not be liable for any compensation unless claim is filed within ninety days after disablement or death or after the employee had knowledge or in the exercise of reasonable diligence should have known the disablement was caused by overexposure to ionizing radiation or radioactive substances, and its relation to employment.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.12]

85A.13 Provisions relating to pneumoconiosis.

1. *Pneumoconiosis defined.* Whenever used in this chapter, “*pneumoconiosis*” shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of dust particles.

2. *Presumptions.* In the absence of conclusive evidence in favor of the claim, disability or death from pneumoconiosis shall be presumed not to be due to the nature of any occupation within the provisions of this chapter unless during the ten years immediately preceding the disablement of the employee who has been exposed to the inhalation of dust particles over a period of not less than five years, two years of which shall have been in employment in this state.

3. *Pneumoconiosis complicated with other diseases.* In case of disability or death from pneumoconiosis complicated with tuberculosis of the lungs, compensation shall be payable as for uncomplicated pneumoconiosis, provided, however, that the pneumoconiosis was an essential factor in causing such disability or death. In case of disability or death from pneumoconiosis complicated with any other disease, or from any other disease complicated with pneumoconiosis, the compensation shall be reduced as herein provided.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.13]

84 Acts, ch 1053, §1

85A.14 Restriction on liability.

No compensation shall be payable under this chapter for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of injury under the workers’ compensation law.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.14]

85A.15 Employers limit of liability.

Payments of compensation and compliance with other provisions herein by the employer or the employer’s insurance carrier in accordance with the findings and orders of the workers’ compensation commissioner or the court in judicial review proceedings, shall discharge such employer from any and all further obligation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.15]

98 Acts, ch 1061, §11

85A.16 Reference to compensation law.

The provisions of the workers’ compensation law, so far as applicable, and not inconsistent herewith, shall apply in cases of compensable occupational diseases as specified and defined herein.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.16]

85A.17 Disability.

Compensation payable under this chapter for temporary disability, permanent total disability or permanent partial disability, shall be such amounts as are provided under the workers’ compensation law.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.17]

Referred to in §96.7(2a), 96.23

85A.18 Notice of disability or death — filing of claims.

Except as herein otherwise provided, procedure with respect to notice of disability or death, as to the filing of claims and determination of claims shall be the same as in cases of injury

or death arising out of and in the course of employment under the workers' compensation law. Written notice shall be given to the employer of an occupational disease by the employee within ninety days after the first distinct manifestation thereof, and in the case of death from such an occupational disease, written notice of such claim shall also be given to the employer within ninety days thereafter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.18]

85A.19 Autopsy.

Upon the filing of a claim for compensation for death from an occupational disease where an autopsy is necessary in order to accurately and scientifically ascertain and determine the cause of death, such autopsy shall be ordered by the workers' compensation commissioner and shall be made under the supervision of the medical examiner of the county in which death occurs or in any county where the body of such employee may be taken.

The workers' compensation commissioner may designate a duly licensed physician to perform or attend such autopsy and to certify the findings thereon. Such findings shall be filed in the office of the workers' compensation commissioner. The workers' compensation commissioner may also exercise such authority on the commissioner's own motion or on application made to the commissioner at any time, upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any occupational disease. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit such autopsy when so ordered and no compensation shall be payable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.19]
98 Acts, ch 1061, §11

85A.20 Investigation.

The workers' compensation commissioner may designate the industrial hygiene physician of the Iowa department of public health and two physicians selected by the dean of the university of Iowa college of medicine, from the staff of the college, who shall be qualified to diagnose and report on occupational diseases. For the purpose of investigating occupational diseases, the physicians shall have the use, without charge, of all necessary laboratory and other facilities of the university of Iowa college of medicine and of the university hospital at the state university of Iowa, and of the Iowa department of public health in performing the physicians' duties.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.20]
86 Acts, ch 1245, §905; 98 Acts, ch 1061, §11; 2001 Acts, ch 74, §1; 2002 Acts, ch 1119, §9
Referred to in §85A.21, 85A.22, 85A.23, 85A.24, 85A.25

85A.21 Controversial medical questions.

Controversial medical questions may be referred by the workers' compensation commissioner to the physicians designated in section 85A.20 for investigation and report to the workers' compensation commissioner when agreed to by the parties or on the commissioner's own motion. No award shall be made in any case where controversial medical questions have been referred to the physicians until the physicians have duly investigated the case and made a report with respect to all such medical questions. The date of disablement, if in dispute, shall be deemed a medical question.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.21]
86 Acts, ch 1245, §906; 98 Acts, ch 1061, §11

85A.22 Examination of employee by physicians.

The physicians designated in section 85A.20, upon reference to them by the workers' compensation commissioner of a claim for occupational disease, shall notify the claimant or claimants and the employer or the employer's insurance carrier to appear before the physicians at a time and place stated in the notice. If the employee is alive, the employee shall appear before the physicians at the time and place specified to submit to such clinical and x-ray examinations as the physicians may require. The claimant and the employer

shall each be entitled, at the claimant's or employer's own expense, to have present at all examinations conducted by the physicians, a physician admitted to practice in the state, who shall be given every reasonable opportunity for participating in all examinations. If a physician admitted to practice in the state certifies that the employee is physically unable to appear at the time and place specified, the physicians shall, on notice to the parties, change the time and place of examination to another time and place as may reasonably facilitate the examination of the employee. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee refuses to submit to such examination.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.22]

86 Acts, ch 1245, §907; 98 Acts, ch 1061, §11

85A.23 Report — date of disablement.

The physicians designated in section 85A.20 shall, as soon as practicable after the physicians have completed consideration of the case, report in writing the findings and conclusions on every medical question in controversy. If the date of disablement is controverted and cannot be fixed exactly, the physicians shall fix the most probable date in light of all the circumstances of the case. The physicians shall also include in the report the name and address of the physician or physicians, if any, who appeared before the physicians and the medical reports and X rays, if any, which were considered by the physicians.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.23]

86 Acts, ch 1245, §908

85A.24 Findings and report.

The physicians designated in section 85A.20 shall file the report in triplicate with the workers' compensation commissioner who shall mail or deliver a certified copy of the report to the claimant and to the employer. The report shall become a part of the record of the case. The workers' compensation commissioner shall make the decision or award in the case based upon the entire record. The report of the physicians in any case may be returned by the commissioner to the physicians for reconsideration and further report. The physicians shall not be prohibited from testifying before the workers' compensation commissioner, board of arbitration, or any other person, commission, or court as to the results of the examination or the condition of any employee examined.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.24]

86 Acts, ch 1245, §909; 98 Acts, ch 1061, §11

85A.25 Existing diseases barred.

There shall be no liability for the payment of compensation under the provisions of this chapter to any person who on October 1, 1947, is suffering with an occupational disease. An employer may at the employer's own expense require the employer's employees to submit to a physical examination prior to October 1, 1947, and in the case of new employees employed after July 4, 1947, within ninety days of the commencement of the employment of such new employees, for the purpose of determining whether any such person is affected with or has an occupational disease. In the event it is determined by such examination that any employee is suffering from or is affected with an occupational disease, the employer may require the employee to waive in writing any claim for compensation under the provisions of this chapter on account thereof as a condition to continuing in the employment of the employer.

In cases of dispute as to the existence of the disease the controversy may be referred to the workers' compensation commissioner who shall decide the matter and who may, upon the commissioner's own motion or by agreement of the parties, submit the controverted question to the physicians designated in section 85A.20 for investigation and report, and the physicians shall immediately proceed with the investigation and with the examination of the employee and forthwith make the report to the workers' compensation commissioner. The examination shall be made and the investigation conducted in the same manner as is provided in this chapter as to other controverted medical questions. The workers' compensation commissioner shall then make the decision on the matter, and the decision

shall have the same force and effect and be subject to all the other provisions of law applicable the same as any other decision of the workers' compensation commissioner.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.25]

86 Acts, ch 1245, §910; 98 Acts, ch 1061, §11

85A.26 Insurance contracts.

No policy of insurance in effect at the time of the enactment of this chapter covering the liability of an employer under the workers' compensation law, shall be construed to cover the liability of such employer under this chapter for any occupational disease unless such liability is expressly accepted by the insurance carrier issuing such policy and is endorsed thereon. The insurance or security in force to cover compensation liability under this chapter shall be separate and distinct from the insurance or security under the workers' compensation law and any insurance contract covering liability under either this chapter or the workers' compensation law need not cover any liability under the other.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.26]

85A.27 Administration.

The workers' compensation commissioner shall have jurisdiction over the operation and administration of the compensation provisions of this chapter and said commissioner shall perform all of the duties imposed upon the commissioner by this chapter and such further duties as may hereafter be imposed by law.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.27]

98 Acts, ch 1061, §11