

Noise at work

Your legal rights to protection from injury due to noise at work



An overview

No lesser body than the World Health Organisation has described noise-induced hearing loss as "the most prevalent irreversible industrial disease." It is a major issue, with more than 13 million EU workers suffering hearing problems caused by excessive workplace noise. The law and the Courts have been slow to react to the problem, but none the less, the last few years have seen many thousands of successful claims for compensation.

The history of noise at work and its legal regulation

For legal purposes, the date from which industry is deemed to have widespread knowledge of the damage noise at work can cause is 1963. There are two reasons for this: a publication called *Noise and the Worker* was published in that year. The second stems from the 1984 landmark legal judgement made in the case of *Thompson v Smith Ship Repairers*.

In that case, because of *Noise and the Worker's* publication and other information available at the time, the Judge decided that by 1963 employers ought to have been aware of the damaging effects of noise on the hearing of their employees.

Noise specific laws

Until 1989 there was only one law to protect workers from excessive noise. The Factories Acts 1959 (and 1961) gave employers the responsibility to make the workplace safe as far as reasonably practicable. Successive cases have made the Courts accept that exposing workers to high noise levels is a breach of the Factories Acts' rules.

So individuals exposed to high levels of noise in the workplace from 1963 until 1996 (when the Factories Act 1961 was repealed), can claim compensation for damage to hearing as a result of such excessive noise under the Factories Act.

Additional protection

The 1989 Noise at Work Regulations came into force on 1st January 1990. These regulations are significant because they were the first to deal specifically with the issue of noise at work, and set down hard and fast limits for noise exposure – 85dBA and 90dBA.

As a result, employers had to perform noise assessments in places where sound levels were a problem. They were also obliged to take action to reduce noise to the lowest possible levels, by improving machinery or providing hearing protection, for instance.

This also included measures such as identifying and clearly marking any dangerous areas as Ear Protection Zones, and giving workers information on the risks of noise to their hearing.

Therefore if the employer can be shown to have not taken the steps detailed in the 1989 Act, anyone who has been exposed to excessive noise (levels above 85dB on a "daily dose" basis) from 1990 can make claim against their employer for damage to their hearing.

Wider protection in many more workplaces

From 6 April 2006 the Noise at Work Regulations were updated by the Control of Noise at Work Regulations 2005. The new regulations cover noise in the workplace in the music and entertainment sectors, as well as industry as a whole. They also set new levels when identifying what level of noise is excessive – reducing these to 85dB and 80dB where they used to be 90dB and 85dB.

The employer's responsibility to take steps to protect employees' hearing in noisy environments has generally been increased by these regulations. The long-term effect is likely to be a reduction in noise-related injuries, but of course the results of exposure over years before this protection was introduced will still see many claims being successfully made in future.

Deafness and tinnitus

The physical and emotional impacts – Noise-induced hearing loss does not usually take rapid effect. Long-term exposure often brings problems only after many years, and sufferers may well be in their retirement before significant hearing problems arise.

This long slow development of symptoms means that many people put their problems down to general aging and 'wear and tear', rather than making a link with their work many years before. The aging process can indeed add to hearing problems, making them more noticeable and eventually driving people to seek medical attention.

The sad fact is, hearing loss is generally irreversible; hearing aids are usually the only way to 'treat' the condition.



"Even 40 years ago, it is highly likely that your employer would – or should – have known of their responsibility to protect you from excessive noise."

Noticing symptoms

The first symptoms of hearing loss can be things like missing parts of conversation, or not being able to hear conversation where there is background noise. Many people complain of having to turn the television up loud, or that their partners think they are being ignored. A hearing loss progresses, the effects become more significant and sometimes are very distressing.

Tinnitus

The medical condition known as tinnitus can be a result of damage caused by excessive noise. Sufferers say it creates the sound of buzzing in ones ears. To begin with, this may be intermittent, but in bad cases the buzzing is constant, to the extent that sleeping is difficult. Tinnitus can even have emotional impacts, such as anxiety or depression.

There is no cure for tinnitus, but very bad cases can be helped to some degree by using a 'masking' device. This does not remove the buzzing sound, but it does help lessen its intensity. Many individuals find tinnitus affects their enjoyment of hobbies and leisure activities. The constant noise can make reading difficult or impossible, and listening to music is obviously affected.

Are you affected by damage to your hearing caused by noise? If you suspect your hearing is damaged, your first course of action should be to visit your GP.

Speak to your doctor about your worries and ask for a hearing test, by either your GP or by an Ear Nose and Throat Specialist at your hospital. If your doctor or specialist finds you have suffered hearing loss, and that it could be related to your work, it is well worth seeking legal advice about the possibilities of claiming compensation. Be sure to choose a lawyer with specialist expertise in this area.

The proven fact is that it is possible to win compensation for noise-induced hearing loss and tinnitus, as well as in some cases the cost of hearing aids for the future. Don't forget that most employers have been aware of the dangers for more than 40 years, so it is highly likely that your employer would – or should – have known of their responsibility to protect you from excessive noise.

Pursuing a claim for compensation

In deafness cases there are five main hurdles to clear in order to win compensation:

1. Bringing a claim within three years from the date you became aware of the onset of symptoms and either thought or ought to have thought they were due to work.
2. Establishing you are suffering from noise induced hearing loss and/or tinnitus. This can be confirmed by a report from a medical expert.
3. Once proven, the condition must be shown to have been caused by exposure to a particular noise source i.e. particular employment. This will require evidence of the nature of exposure to noise in the workplace, including witness statements and also documentary evidence which should be in the possession of the employers.
4. You must show that your employer at the time of exposure could have foreseen that you might suffer from noise induced hearing loss or an associated condition.

5. Finally, your employer's negligence in protecting you from the noise has to be established. Most employers have only recently begun to warn their employees of the dangers of noise exposure, and to provide them with suitable, serviceable hearing protection.

Who do you claim against?

It is likely that you may have been exposed to excessive noise with more than one employer if you have always remained in the same type of industry, or carrying out the same type of work.

If this is the case you may have a claim against more than one employer.

If the company or companies you need to claim against have gone out of business, this is not necessarily a problem. It is possible to apply to the Companies' Court to restore names of firms to the register, so that actions can be pursued against the companies' insurers, even though the businesses themselves no longer exist.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:



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