

44-5a17. Notice of disease and filing of claim; deemed waived, when. Written notice of an occupational disease shall be given to the employer by the employee or workman or someone on his behalf within ninety (90) days after disablement therefrom, and in the case of death from such an occupational disease, written notice of such death shall also be given to the employer within ninety (90) days thereafter. Failure to give either of such notices shall be deemed waived unless objection is made at a hearing on the claim prior to any award or decision thereon. Actual knowledge of such disablement, by the employer in whose employment the employee or workman was last injuriously exposed, or by the responsible superintendent or foreman in charge of the work, shall be deemed notice within the meaning of this section. If no claim for disability or death from an occupational disease be filed with the workmen's compensation director or served on the employer within one (1) year from the date of disablement or death, as the case may be, the right to compensation for such disease shall be forever barred: *Provided, however,* That the failure to file or serve a claim within the time limited herein shall be deemed waived unless objection to such failure be made at a hearing on such claim before any award or decision thereon.

Notice or claim shall be deemed waived in case of disability or death where the employer or insurance carrier makes compensation payments therefor, or, within the time above limited, the employer or his insurance carrier by his or its conduct leads the employee or workman or claimant reasonably to believe that notice or claim has been waived.

The time limit prescribed by this section shall not apply in the case of an employee whose disablement or death is or was caused by latent or delayed pathological conditions, changes or malignancies due to the occupational exposure to X-rays, radium, radioactive substances or machines, or ionizing radiation: *Provided, however,* That no claims shall be allowed unless a claim has been filed within one year after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment.

History: L. 1953, ch. 246, § 17; L. 1959, ch. 222, § 2; L. 1963, ch. 274, §2; June 30.