

**60-4901. Silica and asbestos claims act; definitions.** As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "AMA guides to the evaluation of permanent impairment" means the American medical association's guides to the evaluation of permanent impairment as in effect on March 1, 2006.

(b) "Asbestos" means all minerals defined as asbestos in 29 C.F.R. § 1910, as in effect on March 1, 2006.

(c) "Asbestos claim" means any claim for damages, losses, indemnification, contribution or other relief arising out of, based on, or in anyway related to inhalation of, exposure to, ingestion of, or contact with asbestos. Asbestos claim also includes a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child or other relative of that person, for injury, including mental or emotional injury, death or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos.

(d) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(e) "Board-certified" means the physician is currently certified by one of the medical specialty boards approved by either the American board of medical specialties or the American osteopathic board of osteopathic specialties.

(f) "Board-certified gastroenterologist" means a physician who is board-certified in the specialty of internal medicine and in the subspecialty of gastroenterology.

(g) "Board-certified internist" means a physician who is board-certified in the specialty of internal medicine.

(h) "Board-certified occupational medicine specialist" means a physician who is board-certified in the specialty of preventive medicine and the subspecialty of occupational medicine.

(i) "Board-certified oncologist" means a physician who is board-certified in the specialty of internal medicine and in the subspecialty of medical oncology.

(j) "Board-certified pathologist" means a physician who is board-certified in the specialty of pathology.

(k) "Board-certified pulmonary specialist" means a physician who is board-certified in the specialty of internal medicine and in the subspecialty of pulmonary medicine.

(l) "Board-certified radiologist" means a physician who is board-certified in the specialty of radiology.

(m) "Board-certified rheumatologist" means a physician who is board-certified in the specialty of internal medicine and in the subspecialty of rheumatology.

(n) "Civil action" means all suits or claims of a civil nature in a state or federal court, whether cognizable as cases at law or in equity or admiralty. The term "civil action" does not include any civil action:

(1) Relating to workers' compensation;

(2) alleging any claim or demand made against a trust established pursuant to subsection (g) of 11 U.S.C. section 524(g); or

(3) alleging any claim or demand made against a trust established pursuant to a plan of reorganization confirmed under chapter 11 of the United States bankruptcy code.

(o) "Competent medical authority" means a physician who is medically competent to provide a diagnosis for purposes of constituting prima facie evidence of an exposed person's physical impairment that meets the requirements specified in K.S.A. 2016 Supp. 60-4902 or 60-4903, and amendments thereto, and who meets the following requirements:

(1) The physician is a board-certified internist, pulmonary specialist, rheumatologist, oncologist, pathologist, gastroenterologist, radiologist or occupational medicine specialist.

(2) The physician has or had a doctor-patient relationship with the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of the treating physician, or in the case of a board-certified radiologist, has reviewed x-rays of the exposed person at the request of the treating physician.

(3) As the basis for the diagnosis, the physician has not relied, in whole or in part, on the report or opinion of any doctor, clinic, laboratory or testing company that performed an examination, test or screening of the claimant's medical condition:

(A) Has been found in violation of any law, regulation, licensing requirement or medical code of practice of the state in which that examination, test or screening was conducted; or

(B) that required the claimant to agree to retain the legal services of the law firm sponsoring the examination, test or screening.

(4) The physician spends not more than 50% of the physician's professional practice time in providing consulting or expert services in connection with actual or potential civil actions, and the physician's medical group, professional corporation, clinic or other affiliated group earns not more than 20% of its revenues from providing those services.

(p) "Employee" means an individual who performs labor or provides construction services pursuant to a construction contract as defined in K.S.A. 16-121, and amendments thereto.

(q) "Established safety standard" means, that for the years after 1971, the concentration of silica or mixed dust in the breathing zone of the workers does not exceed the maximum allowable exposure limits for the eight-hour-time weighted average airborne concentration as promulgated by the occupational safety and health administration (OSHA) in effect at the time of the alleged exposure.

(r) "Exposed person" means a person whose exposure to:

(1) Silica is the basis for a silica claim; or

(2) asbestos is the basis for an asbestos claim.

(s) "FEV-1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(t) "FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(u) "ILO scale" means the system for the classification of chest x-rays set forth in the international labour office's guidelines for the use of ILO international classification of radiographs of pneumoconioses as in effect on March 1, 2006.

(v) "Lung cancer" means a malignant tumor in which the primary site of origin of the cancer is inside the lungs and does not include mesothelioma.

(w) "Mesothelioma" means a malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium, which has been diagnosed by a board-certified pathologist using standardized and accepted criteria of microscopic morphology or appropriate staining techniques.

(x) "Nonmalignant condition" means a condition, other than a diagnosed cancer, that is caused or may be caused by either of the following, whichever is applicable:

(1) Silica; or

(2) asbestos.

(y) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies and that there is no other more likely explanation for the presence of the fibrosis.

(z) "Pathological evidence of silicosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of round silica nodules and birefringent crystals or other demonstration of crystal structures consistent with silica in the lung parenchyma (well-organized concentric whorls of collagen surrounded by inflammatory cells) and that there is no other more likely explanation for the presence of the fibrosis.

(aa) "Predicted lower limit of normal" means the calculated standard convention lying at the fifth percentile, below the upper 95% of the reference population, based on factors including, but not limited to, age, height and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's guides to the evaluation of permanent impairment.

(bb) "Premises owner" means a person who owns, in whole or in part, leases, rents, maintains or controls privately owned any land or body of water, or any buildings and structures on those lands or bodies of water, and all privately owned and state-owned lands or bodies of water leased to a private person, firm or organization, including any buildings and structures on those lands, ways or waters.

(cc) "Radiological evidence of asbestosis" means:

(1) An ILO quality one or two chest x-ray, read by a competent medical authority who regularly reviews x-rays in the ordinary course of practice, that shows small, irregular opacities of s, t or u, graded at least 1/1 on the ILO scale; or

(2) a computed tomography scan or high-resolution computed tomography scan read by a competent medical authority showing evidence of asbestosis.

(dd) "Radiological evidence of diffuse pleural thickening" means:

- (1) An ILO quality one or two chest x-ray, read by a competent medical authority who regularly reviews x-rays in the ordinary course of practice, that shows bilateral pleural thickening of at least B2 on the ILO scale and blunting of at least one costophrenic angle; or
- (2) a computed tomography scan or high-resolution computed tomography scan read by a competent medical authority showing evidence of diffuse pleural thickening.
- (ee) "Radiological evidence of silicosis" means:
- (1) An ILO quality one or two chest x-ray, read by a competent medical authority who regularly reviews x-rays in the ordinary course of practice, that shows bilateral small rounded opacities (p, q or r) in the upper lung fields of at least 1/1 on the ILO scale; or
- (2) a computed tomography scan or high-resolution computed tomography scan read by a competent medical authority showing evidence of silicosis.
- (ff) "Regular basis" means more than an isolated or sporadic basis.
- (gg) "Silica" means a respirable crystalline form of silicon dioxide, including, but not limited to, alpha quartz, cristobalite and trypidite. The term "silica" also includes a mixture of dusts composed of silica and one or more other fibrogenic dusts capable of inducing pulmonary fibrosis if inhaled in sufficient quantity.
- (hh) "Silica claim" means any claim for damages, losses, indemnification, contribution or other relief arising out of, based on, or in any way related to inhalation of, exposure to, or contact with silica. Silica claim also includes a claim made by or on behalf of any person who has been exposed to silica, or any representative, spouse, parent, child or other relative of that person, for injury, including mental or emotional injury, death or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to silica.
- (ii) "Silicosis" means an interstitial lung disease caused by the pulmonary response to inhaled silica.
- (jj) "Substantial contributing factor" means:
- (1) Exposure to silica or asbestos is the proximate cause of the physical impairment alleged in the silica or asbestos claim; and
- (2) a competent medical authority has determined with a reasonable degree of medical probability that the exposure to silica or asbestos is the proximate cause of the physical impairment.
- (kk) "Substantial occupational exposure to silica" means employment in an industry and an occupation in which the exposed person did any of the following for a substantial portion of a normal work year for such occupation:
- (1) Handled silica;
- (2) fabricated silica-containing products so that the person was exposed to silica in the fabrication process;
- (3) altered, repaired or otherwise worked with a silica-containing product in a manner that exposed the person on a regular basis to silica;
- (4) worked in close proximity to other workers engaged in any of the activities described in paragraphs (1), (2) or (3) of this subsection in a manner that exposed the person on a regular basis to silica.
- (ll) "Total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration.
- (mm) "Veterans' benefit program" means any program for benefits in connection with military service administered by the veterans' administration under title 38 of the United States Code as in effect on the effective date of this act.
- (nn) "Workers' compensation law" means a law respecting a program administered by a state or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries. The term includes the longshore and harbor workers' compensation act, 33 U.S.C. § 901-944, 948-950, and chapter 81 of Title 5, U.S.C., the federal employees compensation act, but does not include the act of April 22, 1908, 45 U.S.C. § 51 et seq., popularly referred to as the "Federal Employers' Liability Act."

**History:** L. 2006, ch. 196, § 1; July 1.