

**§ 97-61.6. Hearing after third examination and report; compensation for disability and death from asbestosis or silicosis.**

After receipt by the employer and employee of the advisory medical committee's third report, the Industrial Commission, unless it has approved an agreement between the employee and employer, shall set a final hearing in the cause, at which it shall receive all competent evidence bearing on the cause, and shall make a final disposition of the case, determining what compensation, if any, the employee is entitled to receive in addition to the 104 weeks already received.

Where the incapacity for work resulting from asbestosis or silicosis is found to be total, the employer shall pay, or cause to be paid, to the injured employee during such total disability a weekly compensation in accordance with G.S. 97-29.

When the incapacity for work resulting from asbestosis or silicosis is partial, the employer shall pay, or cause to be paid, to the affected employee, a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between his average weekly wages at the time of his last injurious exposure, and the average weekly wages which he is able to earn thereafter, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, a week, and provided that the total compensation so paid shall not exceed a period of 196 weeks, in addition to the 104 weeks for which the employee has already been compensated.

Provided, however, should death result from asbestosis or silicosis within two years from the date of last exposure, or should death result from asbestosis or silicosis, or from a secondary infection or diseases developing from asbestosis or silicosis within 350 weeks from the date of last exposure and while the employee is entitled to compensation for disablement due to asbestosis or silicosis, either partial or total, then in either of these events, the employer shall pay, or cause to be paid compensation in accordance with G.S. 97-38.

Provided further that if the employee has asbestosis or silicosis and dies from any other cause, the employer shall pay, or cause to be paid by one of the methods set forth in G.S. 97-38 compensation for any remaining portion of the 104 weeks specified in G.S. 97-61.5 for which the employee has not previously been paid compensation, and in addition shall pay compensation for such number of weeks as the percentage of disability of the employee bears to 196 weeks. If the employee was totally disabled as a result of asbestosis or silicosis, compensation shall be paid for any remaining portion of the 104 weeks specified in G.S. 97-61.5 for which the employee has not previously been paid compensation, and in addition shall be paid for an additional 300 weeks. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c. 1354; 1957, c. 1271; 1963, c. 604, s. 7; 1965, c. 907; 1967, c. 84, s. 8; 1969, c. 143, s. 7; 1971, c. 281, s. 6; c. 631; 1973, c. 515, s. 7; c. 759, s. 6; c. 1308, ss. 6, 7; 1979, c. 246; 1981, c. 276, s. 1.)