

TIME LIMITS IN PERSONAL INJURY* CASES

Introduction

The Statute of Limitations Act 1957 (as amended) stipulates that a person only has a certain period of time within which to bring a claim for injuries and/or losses. For injuries and losses caused by negligence, nuisance or breach of duty, a person will have two years less one day from the date of knowledge of the injury/loss within which to pursue a claim. For injuries and losses caused by assault or breach of contract, a person will have six years within which to pursue a claim for the injury/loss. Once this time period has expired, the claim is considered to be statute barred, i.e. out of time. While a person may have two years or six years to bring a claim for injuries/losses, depending on the cause of such injury/loss, it is advisable that any claim is brought sooner rather than later. The reason being is that it will be much easier for a solicitor to gather the appropriate evidence in the immediate aftermath of the incident. In addition, if there is an unreasonable delay in bringing the case, the respondent may seek to have the claim dismissed.

Calculating the time limits

As set out above, the two year or six-year time limit will start from the date of knowledge of the injury. Section 2 of the Statute of Limitations (Amendment) Act 1991 sets out that *a person's date of knowledge are references to the date on which he first had knowledge of the following facts: -*

- A. *That the person alleged to have been injured had been injured,*
- B. *That the injury in question was significant,*
- C. *That the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty,*
- D. *The identity of the defendant,*
- E. *If it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;*

The date of knowledge is easily identifiable in a case such as an accident at work where an employee suffers an injury to his hand

because of no safety guard on a machine. However, the date of knowledge might be more difficult to identify in a case for a repetitive strain injury caused by a negligent work practice over a period of time. In such cases, the date of knowledge will commence when a person first became aware of symptoms of the injury.

Time limits for personal injury cases are different for cases involving children. A child can bring a personal injuries claim within two years from the date on which he/she turns 18 years of age. Alternatively, an adult can bring the personal injuries claim for the child after the accident has occurred. The latter course of action is preferable as it is more likely that stronger evidence can be obtained in the immediate aftermath of the accident as opposed to when the child reaches the age of majority.

When does time stop running?

The introduction of the Personal Injuries Assessment Board and the associated legislation provided for a very generous application of the time limits for bringing a personal injuries case and how this time limit is calculated. Below is a brief summary of this calculation: -

- Time is stopped once the Personal Injuries Assessment Board acknowledge receipt of the completed application form and medical report.
- Time continues to remain on hold until six months after the claim has come out of the Personal Injuries Assessment Board, i.e. a period of six months from the date of the legal document known as the authorisation.
- Time will start to run again after the expiration of six months after the claim has come out of the Personal Injuries Assessment Board, i.e. six months from the date of the legal document known as the authorisation.
- The remainder of the two-year period will run until the court proceedings have been issued out of the relevant court office.

Different rules will apply for stopping the time period running in personal injuries cases caused by medical negligence. These cases will not be submitted to the Personal Injuries Assessment Board and the time period will only stop running once court proceedings have been issued out of the relevant court office.

Can the time period be extended?

There are certain limited circumstances where the time period can be extended to avoid injustice: -

- Cases involving fraud or mistake;
- Cases where the plaintiff is under a disability;
- Cases involving misdiagnosis of illness.

Contact us

If you would like to speak to us about a personal injury suffered as a result of medical care, medical treatment, an accident or a dangerous or repetitive work practice, contact us today and a member of our team will arrange a consultation for you.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor. In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**