

Civil Compensation Claims and Radon Risk in Irish State Buildings

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The State Claims Agency has identified the exposure of employees and other users of State buildings as a potential significant source of future litigation.

The State Claims Agency (SCA) is a body established under law to manage personal injury and property damage claims taken against the Irish State. In addition, the State Claims Agency has a brief to advise and assist State authorities on measures to be taken to prevent the occurrence, or to reduce the incidents of claims.

To date, the main focus of the State Claims Agency has been in identifying hazards, which have a significant risk of causing illness or injury that could lead to mass litigation or to a significant number of high value claims (known as macro risks). The potential exposure of occupants of State buildings to radon gas was identified as a macro risk.

Under Irish Common Law, employers have a duty of care towards their employees. Where there is a breach of this duty by the employer resulting in illness or injury to an employee, and this negligence is proven, the employee is entitled to compensation.

The State Claims Agency postulated a civil action involving a State employee, with dependants, who was a non-smoker, had worked in a State building in a high risk, radon area and who contracted lung cancer. If the State, as the employer, did not taken reasonable measures to identify quantify and deal with the radon risk and, in addition, where expert testimony stated that the lung cancer was caused by radon exposure, then the State would have a real difficulty in successfully defending this case. Where an employee was successful in taking a case for negligence and where there were dependants involved, general damages could be estimated at current compensation levels of €150,000 to €200,000 with special damages between €1.5 to €2m.

There are over 100,000 regular occupants of State buildings including employees, school children, prisoners etc. If the Irish State failed to measure and remediate where necessary, it was estimated that a minimum of 50 to 100 persons could be negligently exposed to high levels of radon resulting in illness and a civil action in the next 10-15 years.

The State Claims Agency formally recommended to all State authorities to initiate a program of measurement of Radon in buildings occupied by them and to carry out any necessary remedial measures.

The State Claims Agency hosted a joint seminar with the Radiological Protection Institute of Ireland (RPII) to encourage positive action in this area. The criminal and common law case for pro-actively managing radon was set out. In addition, based on information about the location of State buildings and occupants, the RPII radon map, the SCA estimated the projected number of buildings in high radon areas. From this it was possible to estimate the likely number of buildings that might require remediation. It was shown that the estimated cost of the remediation of all State buildings was likely to be less than one future claim for compensation of an employee, or other occupant, for contracting lung cancer, resulting from exposure to radon.