



## **DEFENSE BASE ACT**

### **WORKERS' COMPENSATION FOR EMPLOYEES OF U.S. GOVERNMENT CONTRACTORS WORKING OVERSEAS**

Federal law requires all U.S. government contractors and subcontractors to secure workers' compensation insurance for their employees working overseas. The related statutes include:

- • The Defense Base Act: **42 U.S.C. 1651, et seq.**
- • The Longshore and Harbor Workers' Compensation Act: **33 U.S.C. 901, et seq.**

*(Regulations can be found at **20 C.F.R. Parts 701, 702, 703 and 704.**)*

- • The Federal Acquisition Regulation (FAR) also sets out the workers' compensation insurance requirements for all overseas contracts at **48 C.F.R. 28.305**, and at **52-228-3** and **52-228-4**.
- • The U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP), Division of Longshore and Harbor Workers' Compensation, administers the Defense Base Act, ensuring that workers' compensation benefits are provided for covered employees promptly and correctly.

#### **Coverage under the Defense Base Act**

The Defense Base Act, (**42 U.S.C. 1651, et seq.**), covers the following employees and employment activities:

- • Civilians of private contractors employed outside of the United States on U.S. military bases or on any lands used by the U.S. for military purposes, including those in U.S. Territories and possessions;
- • Public works contracts with any U.S. government agency, including construction and services contracts in connection with national defense or with war activities outside the United States;

- • Contracts approved and funded by the U.S. under the Mutual Security Act of 1954, as amended, generally providing for cash sale of military equipment, materials, and services to its allies, if the contract is to be performed outside of the United States;

- • Employees of American employers providing welfare or similar services outside of the United States for the benefit of the Armed Forces, e.g. the USO.

*If any one of the above criteria is met, all employees engaged in such employment, regardless of nationality, are covered under the Act.*

**(et seq means "and subsequent sections")**

### **Insurance Requirements**

The Defense Base Act (**DBA**) adopts the provisions of the Longshore and Harbor Workers' Compensation Act (**LHWCA**) with but a few exceptions. The insurance requirements for the DBA are identical to those found in the LHWCA.

**Section 32(a)** of the Longshore Act requires every employer to either secure insurance for the payment of workers' compensation benefits provided under the Act or be permissibly self-insured. The **OWCP** is responsible for the authorization of insurance carriers and self-insurance of employers

**Section 4(a)** of the Act requires every employer to be liable for, and be required to secure the payment of, disability, medical, and death benefits to its employees in the event of injury or death. **If a subcontractor fails to secure the payment of compensation, the contractor will be liable for and be required to secure the payment of such benefits.**

**Section 5(a)** of the Act provides that "a contractor shall be deemed the employer of a subcontractor's employees ... if the subcontractor fails to secure the payment of compensation...."

**Section 5(a)** also provides that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his survivors in case death results from the injury, may elect to sue the employer for tort damages on account of such injury or death. In such action the defendant may not

plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee.

**Section 38(a)** provides that an employer who fails to secure the payment of compensation when required shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than one year, or both. And if the employer is a corporation, the president, secretary, and treasurer shall be also severally liable for such fine and imprisonment.

Also, if a corporation fails to secure the payment of compensation, the president, secretary, and treasurer shall be severally and personally liable, jointly with the corporation, for any compensation or other benefits payable under the Act in respect to any injury or death which may occur to any of its employees.

#### **Defense Base Act Waivers**

Upon the written request of the head of any department or other agency of the United States, the Secretary of Labor may waive the application of the Defense Base Act with respect to any contract, work location, or class of employees. The request for waiver must be made by the government agency to the Department of Labor (DOL), OWCP. It is DOL policy that the waiver does not apply to citizens or legal residents of the U.S. or to employees hired in the U.S. Once granted, the waiver is only valid if alternative workers' compensation benefits are provided to the waived employees coincide with local law.

#### **Benefits under the Defense Base Act**

The Defense Base Act provides for disability, medical, and death benefits to covered employees injured or killed in the course of employment, whether or not the injury or death occurred during work hours. Total disability benefit is paid at two-thirds of the employee's average weekly earnings, up to a current maximum of \$1,030.78 per week. Compensation also is payable for partial loss of earnings. Death benefit to the spouse is paid at 50% of the employee's average weekly earnings, and to the children at 16 2/3%. Permanent total disability and death benefits may be payable for life, and are

subject to annual cost of living adjustments. There is no minimum compensation rate.

Permanent disability and death benefits payable to aliens and non-U.S. residents may be commuted by payment of half of present value of future compensation, as determined by the OWCP district director.

The injured employee is entitled to medical treatment by a physician of his/her choice, as the injury may require. Medical benefits may not be commuted.

(Below is just FYI)

### **Procedures for Reporting Injuries and Filing Claims**

**Two OWCP** district offices have primary responsibility for injuries arising under the Defense Base Act: The **New York district office and the Honolulu district office.**

- • For jurisdictional boundaries, see <http://www.dol.gov/esa/contacts/owcp/ny/distof~1.htm>.
- • For district office addresses, see <http://www.dol.gov/esa/owcp/dlhwc/lcontac.htm>.

The employer should notify its insurance carrier, or if it is self-insured the claims administrator, as soon as it has knowledge of an injury. Medical treatment if needed should be authorized immediately. An Employer's First Report of Injury, Form LS-202, must be filed with the OWCP district office having jurisdiction within 10 days of the injury, if it causes loss of one or more work shifts. Additional forms and notices, as well as medical reports, should be filed with the OWCP as regulations require.

A written claim for benefits must be filed in the office of the OWCP district director within one year of the injury or within one year from the last payment of compensation, whichever is later.

The **OWCP** district office monitors the payment of compensation and medical care to ensure compliance with the provisions of the Act. Its staff provides technical assistance to employers, insurance carriers, and benefit claimants for the prompt delivery of benefits. In case of claims disputes, **OWCP** claims examiners conduct informal conferences to help the parties resolve their disputes via

mutual agreement or compromise without formal litigation. The district director has authority to approve settlements and issue compensation awards in undisputed claims.

If the parties are unable to resolve their disputes informally, they may request the referral of the claim to the Office of Administrative Law Judges for formal hearing. Decisions of the administrative law judge are appeal able to the **Benefits Review Board**, and thereafter to the U.S. District Court or to the U.S. Court of Appeals.

### **Useful Links**

**OWCP/Longshore Website** <http://www.dol.gov/esa/owcp/dlhwc/lstable.htm>

**OWCP/Longshore Contacts** <http://www.dol.gov/esa/owcp/dlhwc/lcontact.htm>

### **District Offices with DBA jurisdiction**

<http://www.dol.gov/esa/contacts/owcp/ny/distof~1.htm>

### **Copy of the Defense Base Act**

<http://www.dol.gov/esa/owcp/dlhwc/dba.htm>

**Copy of the Longshore Act** <http://www.dol.gov/esa/regs/compliance/owcp/lhwca.htm>

### **Copy of the Longshore Regulations at 20 C.F.R. Parts 701 to 704.**

[http://www.dol.gov/dol/allcfr/Title\\_20/Chapter\\_VI.htm](http://www.dol.gov/dol/allcfr/Title_20/Chapter_VI.htm)

### **Copy of the Longshore Procedure Manual**

<http://www.dol.gov/esa/owcp/dlhwc/lspm/pmtoc.htm>

**Longshore Forms** <http://www.dol.gov/esa/owcp/dlhwc/lforms.htm>

### **Maximum Compensation Rate and Annual Adjustment Table**

<http://www.dol.gov/esa/owcp/dlhwc/NAWWinfo.htm>

