

**UNITED STATES DEPARTMENT OF LABOR****Employment Standards Administration**

June 18, 2009

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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. §§ 1651-54 and the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-50. Implementing 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. ̄½ 28.305 and at ̄½ 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.

[Back to Top](#)**Coverage under the Defense Base Act**

The Defense Base Act covers the following employment activities:

- Working for private employers on U.S. military bases or on any lands used by the U.S. for military purposes outside of the United States, including those in U.S. Territories and possessions;
- Working on public work contracts with any U.S. government agency, including construction and service contracts in connection with national defense or with war activities outside the United States;
- Working on contracts approved and funded by the U.S. under the Foreign Assistance Act, generally providing for cash sale of military equipment, materials, and services to its allies, if the contract is performed outside of the United States;
- Working for 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.

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Insurance Requirements

Sections 1(a)(4) and (5) of the Defense Base Act, 42 U.S.C. §§ 1651(a)(4) - (5), provide that every contract coming within the purview of the Act:

"shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in such Public work under such contract the payment of compensation and other benefits under the provisions of this Act, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, "

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 either to secure insurance for the payment of workers' compensation benefits provided under the Act or to be permissibly self-insured. The OWCP is responsible for the authorization of insurance carriers and self-insurance of employers. For a list of the over 700 insurance carriers and self-insured employers currently authorized. Three major insurance carriers are currently providing Defense Base Act insurance coverage. They are ACE-USA, AIG, and CNA.

Section 4(a) of the Act requires every employer to be liable for, and 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.

Furthermore, 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.

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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 Department of Labor 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 pursuant to applicable local law.**

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Benefits under the Defense Base Act

The Defense Base Act provides 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. Compensation for total disability is 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 benefits are half of the employee's average weekly earnings to the surviving spouse or to one child, and two-thirds of earnings for two or more such survivors, up to the current maximum weekly rate. 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 the 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.

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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 and [district office addresses](#), check the official [Longshore website](#).

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. The [Form LS-202](#) may be filed electronically.

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 by way of 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 appealable to the Benefits Review Board, and thereafter to the U.S. District Court or to the U.S. Court of Appeals.

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Defense Base Act Seminars and Workshops

The OWCP National Office and district offices hold periodic seminars and workshops for industry groups as the need arises, or upon request. For information on upcoming events, check the official Longshore website.

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Resources and Useful Links

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Division of Longshore and Harbor Workers' Compensation (DLHWC)

Defense Base Act

[Public--No. 208--77th Congress Passed
August 16, 1941, as Amended]
S. 1642

An Act To provide compensation for disability or death to persons employed at military, air, and naval bases outside the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Compensation Authorized

(a) Places of employment.

Except as herein modified the provisions of the Longshoremen's and Harbor Workers' Compensation Act as amended, shall apply in respect to the injury or death of any employee engaged in any employment—

1. At any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or
2. Upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone; or
3. Upon any public work in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), if such employee is engaged in employment at such place under the contract of a contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) with the United States; but nothing in this paragraph shall be construed to apply to any employee of such a contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;
4. Under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1), (2), and (3) of this subdivision, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or

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on behalf of employees engaged in such Public work under such contract the payment of compensation and other benefits under the provisions of this Act, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

5. Under a contract approved and financed by the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract or subordinate contract with respect to such contract where such contract is to be performed outside the continental United States, under the Mutual Security Act of 1954 as amended (other than title II of chapter II thereof unless the Secretary of labor, upon the recommendation of the head of any department or other agency of the United States, determines a contract financed under a successor provision of any successor Act should be covered by this section), and not otherwise within the coverage of this section, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (A) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in work under such contract the payment of compensation and other benefits under the provisions of this Act, and (B) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;
6. Outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense; irrespective of the place where the injury or death occurs, and shall include any injury or death occurring to any such employee during transportation to or from his place of employment, where the employer or the United States provides the transportation or the cost thereof.

(b) Definitions.

As used in this section—

1. The term "public work" means any fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including but not limited to projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project;
2. The term "allies" means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;
3. The term "war activities" includes activities directly relating to military operations;
4. The term "continental United States" means the States and the District of Columbia.

(c) Liability as exclusive. The liability of an employer, contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) under this Act shall be exclusive and in place of all other liability of such employer, contractor, subcontractor, or subordinate contractor to his employees (and their dependents) coming within the purview of this Act, under the workmen's compensation law of any State, Territory, or other jurisdiction, irrespective of the place where the contractor hire of any such employee may have been made or entered into.

(d) Definition of contractor. As used in this section, the term "contractor" means any individual, partnership, corporation, or association, and includes any trustee, receiver, assignee, successor, or personal representative thereof, and the rights, obligations, liability, and duties of the employer under such longshoremen's and Harbor Workers' Compensation Act shall be applicable to such contractor.

(e) Contracts within section; waiver of application of section.

The liability under this Act of a contractor, subcontractor, or subordinate contractor engaged in public work under subparagraphs (3) and (4), subdivision (a) of this section, and the conditions set forth therein, shall become applicable to contracts and subcontracts heretofore entered into but not completed at the time of the approval of this Act, and the liability under this Act of a contractor, subcontractor, or subordinate contractor engaged in performance of contracts, subcontracts, or subordinate contracts specified in subparagraph (5), subdivision (a) of this section, and the conditions set forth therein, shall hereafter be applicable to the remaining terms of such contracts, subcontracts, and subordinate contracts entered into prior to but not completed on the date of enactment of any successor Act to the Mutual Security Act of 1954, as amended, and contracting officers of the United States are authorized to make such modifications and amendments of existing contracts as may be necessary to bring such contracts into conformity with the provisions of this Act. No right shall arise in any employee or his dependent under subparagraphs (3) and (4) of subdivision (a) of this section, prior to two months after the approval of this Act, and the liability under this Act of a contractor, subcontractor, or subordinate contractor engaged in performance of contracts, subcontracts, or subordinate contracts specified in subparagraph (5), subdivision (a) of this section, and the conditions set forth therein, shall hereafter be applicable to the remaining terms of such contracts, subcontracts, and subordinate contracts entered into prior to but not completed on the date of enactment of any successor Act to the Mutual Security Act of 1954, as amended, and contracting officers of the United States are authorized to make such modifications and amendments of existing contracts as may be necessary to bring such contracts into conformity with the provisions of this Act. No right shall arise in any employee or his dependent under subparagraphs (3) and (4) of subdivision (a) of this section, prior to two months after the approval of this Act. Upon the recommendation of the head of any department, or other agency of the United States, the Secretary of Labor, in the exercise of his discretion, may waive the application of this section with respect to any contract, subcontract, or subordinate contract, work location under such contracts or classification of employees. Upon recommendation, of any employer referred to in paragraph (6) of subsection (a) of this section the Secretary of Labor may waive the application of this section to any employee or class of employees of such employer, or to any place of employment of such an employee or class of employees.

(f) Liability to prisoners of war and protected persons.

The liability under this Act of a contractor, subcontractor, or subordinate contractor engaged in public work under paragraphs (1), (2), (3), and (4), of subsection (a) of this section or in any work under subparagraph (5) of subsection (a) of this section does not apply with respect to any person who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States.

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Section 2. Computation Of Benefits: Application To Aliens And Nonnationals

(a) The minimum limit on weekly compensation for disability, established by section 6(b), and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 9(e) of the Longshoremen's and Harbor Workers' Compensation Act, shall not apply in computing compensation and death benefits under this Act.

(b) Compensation for permanent total or permanent partial disability under section 8 (c) of the Longshoremen's and Harbor Workers' Compensation Act, or for death under this Act to aliens and nonnationals of the United States not residents of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported either wholly or in part, for a period of one year immediately prior to the date of the injury, and except that the Secretary of Labor may, at his opinion or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

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Section 3. Compensation Districts: Judicial Proceedings

(a) The Secretary of Labor is authorized to extend compensation districts established under the Longshoremen's and Harbor Workers' Compensation Act, or to establish new compensation districts, to include any area to which this Act applies; and to assign to each such district one or more deputy commissioner as the Secretary may deem necessary.

(b) Judicial proceedings provided under sections 18 and 21 of the Longshoremen's and Harbor Workers' Compensation Act in respect to a compensation order made pursuant to this Act shall be instituted in the United States district court of the judicial district wherein is located the office of the deputy commissioner whose compensation order is involved if his office is located in a judicial district and if not so located, such judicial proceedings shall be instituted in the judicial district nearest the base at which the injury or death occurs.

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Section 4. Persons Excluded From Benefits

This Act shall not apply in respect to the injury or death of (1) an employee subject to the provisions of the Federal Employees' Compensation Act; (2) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, or profession of the employer; and (3) a master or member of a crew of any vessel.

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Section 5. This Act May Be Cited As The "Defense Base Act"

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