

Longshoreman Liability Lurks Beyond the Coasts

Do you recognize “longshoremen” on the employee lists of your corporate clients? Most insurance agents are familiar with workers’ compensation insurance, but many don’t know how the U.S. Longshoreman Act applies and when customers need this additional coverage. What is a longshoreman, anyway? Just because your agency is not near the ocean doesn’t mean you can ignore this act.

The Longshore and Harbor Workers’ Compensation Act (LHWCA) was passed by Congress in 1927 following a Supreme Court decision holding that federal maritime jurisdiction was supreme and thus prohibited state workers’ compensation laws from covering accidents occurring on the navigable waters of the United States. The LHWCA has been expanded by amendment and is currently administered by the U.S. Department of Labor’s Office of Workers’ Compensation Programs.

Like state workers’ compensation programs, workers covered by the LHWCA who are injured in the course of employment give up their right to sue in civil court in exchange for the right to collect rehabilitation services, medical benefits, lost wages, disability and death benefits without having to prove their employer was at fault.


The act covers injuries on the navigable waters of the United States or adjoining areas to longshore workers and others involved in longshore operations. This includes land-based workers who are employed to load and unload vessels, as well as harbor workers such as those who repair, build or dismantle ships.

Employers whose employees meet the qualifications for coverage may not be covered by their state workers’ compensation coverage if an employee is injured. Thus, many employers need insurance for both exposures. LHWCA coverage can be added by endorsement to the standard workers’ compensation and employers’ liability insurance policy. Even employers with no known longshore exposure may wish to attach an endorsement on an “if any” basis, and an appropriate premium can be charged during the annual audit process. Doing so will help the employer avoid penalties or uncovered claims should an unexpected LHWCA injury occur.

Similar endorsements can be obtained for the Defense Base Act coverage (covering federal government contractors outside the continental U.S. in Alaska or Hawaii), Outer Continental Shelf Lands Act coverage (covering employees of private industry who are conducting operations on the outer continental shelf of the United States) and Non-appropriated Fund Instrumentalities Act coverage (covering certain civilian employees of the Armed Forces, such as those working at post exchanges).

An endorsement can also be obtained for coverage under the Jones Act. Unlike the LHWCA, the Jones Act is not analogous to state workers’ compensation. Instead, it provides a personal injury negligence remedy for masters or members of a crew of a vessel who, as mentioned above, are excluded by the LHWCA.

The U.S. Department of Labor’s Office of Workers’ Compensation Programs advises that the best way to know whether an employer needs LHWCA insurance is to talk directly to the nearest Longshore District Office, as the requirements vary and depend on specific worksite and employment factors and vary from state to state. There are 12 district offices, each responsible for a different region of the country, spread mostly along the east and west coasts, with two in the Gulf of Mexico and one in Hawaii.

Agencies with any commercial client base should at least have some familiarity with the LHWCA so that they can navigate these difficult issues. 

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Who Makes the Cut?

Certain types of workers are specifically excluded by the Longshore and Harbor Workers’ Compensation Act (LHWCA), regardless of whether they are injured on navigable waters or adjoining areas. These include masters or members of a crew, any officer or employee of the United States or of any state or foreign government and anyone engaged by a master to load, unload or repair any vessel smaller than 18 tons. Certain other types of employees (i.e. clerical, secretarial, security, data processing) also may be excluded by the LHWCA if they are covered by a state workers’ compensation law. Employers whose employees qualify for LHWCA coverage are required to either purchase LHWCA coverage from a commercial carrier that is authorized by the Department of Labor or obtain authorization from the department to self-insure. Employers that fail to secure coverage from authorized carriers or obtain authorization to self-insure are subject to significant penalties, including fines and even imprisonment.

—J.N.