



Loyola Law School &
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Insurance and Waivers

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Division of Longshore & Harbor Workers' Compensation

Insurance

- The provisions of the Longshore and Harbor Workers' Compensation Act and its Regulations apply to the Defense Base Act
- 4(a) makes the employer
 - *Liable for the benefits*
 - *Obligated to secure the benefits*

Insurance

- 32(a) (1) provides for insurance by an authorized carrier
- 32(a) (2) provides for self-insurance

Insurance

- 5(a) Failure to secure payment allows employee either to collect compensation, or to sue employer for damages
- The defenses of “fellow servant”, “assumption of risk” and “contributory negligence” are not available

Insurance

- 38(a) The *corporation* and its *president, secretary and treasurer* are severally liable for a fine of \$10,000 and imprisonment for not more than one year.
- The *president, treasurer and secretary* are also severally liable jointly with the *company* for the benefits during the period it fails to secure compensation

Insurance

- Failure to report a claim carries a separate penalty of up to \$11,000.
- Failure to report a claim waives the time bar
- Failure to controvert a claim requires 10% additional compensation for each amount unpaid.

Insurance

- The Employer may be
 - Uninsured
 - Insured by an unauthorized carrier
 - Insured by an authorized carrier, but have no DBA endorsement
 - Operating under a waiver which is not effective

Insurance

- The Employer is responsible, not
 - The broker or agent
 - The government contracting officer
 - The insurance company
 - The attorney
 - The Department of Labor

Insurance

- **The Employer is also responsible for all**
 - **Subordinate contractors**
 - **Subcontractors**

Consequences

- There are both civil and criminal proceedings for which
 - The company
 - Its President, Treasurer and Secretary
- Each needs separate representation –
8 lawyers in all.
- The compensation case is now a \$50m
Lawsuit

Consequences

- **The contract was bid without the cost of DBA included.**
- **The premiums must be paid without reimbursement**

Consequences

- **And this may all be because of a subcontractor, or the subcontractor's subcontractor.**

Consequences

BROKERS

- You are compensated for providing cover
- You are at risk of an E & O claim if you do not

Waivers

The Secretary of Labor

- On the recommendation of
 - The head of
 - Any department or agency
- In the exercise of her 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

Waivers

- *Waivers are routinely granted when*
 - Submitted by the proper person
 - In the proper form
 - Subject to limits and conditions
- *Waivers apply to Guam for **all** employees including US nationals.*

Waivers

- Do not apply to
 - US Citizens
 - People hired in the US
 - Legal residents of the US

- Do not apply unless waived employees will receive compensation under local laws providing for workers' compensation for injuries, illness or death.

Waivers

- Each contractor must before commencing performance
- Provide and maintain
- For all waived employees
- Workers compensation insurance as required by the law of the place of the work
- With no exclusions e.g. for war hazards

Waivers

- If there is no local workers compensation law
 - Nationals are covered under DBA
- If a worker is NOT covered by another compensation act for any reason
 - Employers face penalties
 - Brokers face E & O claims

- If in doubt, **buy protection**