

LONGSHORE AND HARBOR WORKERS COMPENSATION ACT

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LHWCA AND STATE LAWS: HOW THEY WORK TOGETHER

When considering the coverage of employees by the LHWCA, theoretically there are three different groups they may fall into:

1. Situations where the employee is not considered to have a maritime position and they will be covered under the states Workers Compensation program if available.
2. The employee clearly holds a position within the maritime definition and will be covered under the LHWCA.
3. Group consists of employees who hold maritime positions but their job function is better suited to be filed under the Jones Act, a.k.a. Merchant Marine Act.



There was a land mark case heard in 1995, Chandris Inc vs. Latsis. This case set the precedent for what is actually considered a true maritime position to be covered by the LHWCA. The verdict of this case was that if a worker spends less than 30% of his or her time involved in the service of a vessel in navigation then they should not qualify as a sea man under the Jones Act and, depending upon their actual job functions, may be more aptly covered by the LHWCA or state governed Worker's Compensation. No matter what percentage of time you spend working in maritime related duties, your position should be covered under at least one of the two compensation insurances, LHWCA or Workers Compensation.

If you are ever in doubt about which compensation program you would file with in the event of an injury or contracting an occupational disease it is always best to first speak with your employer for clarification. Employers have to cover each employee under compensation insurance or file a waiver, so employers should have documentation stating how your position will be covered.

LONGSHORE & HARBOR WORKERS COMPENSATION ACT – OVERVIEW

The Longshore and Harbor Workers Compensation Act (LHWCA), administered by the Office of Workers' Compensation Programs (OWCP), Employment Standards Administration, U. S. Department of Labor, offers compensation and medical care to employees disabled from injuries that occur on the navigable waters of the United States, or in adjoining areas customarily used in loading, unloading, repairing, or building a vessel. The Act also offers benefits to dependents if the injury causes the employee's death. These benefits are paid by an insurance company or by an employer who is authorized by the OWCP to be self-insured. The term "injury" includes occupational disease arising out of employment.

<http://www.dol.gov/esa/owcp/dlhwc/LS-560pam.htm>

The Act covers employers, either full or part time employed, who employ workers for maritime work or in a maritime occupation and employees such as longshoremen and any harbor worker. The Act covers individuals who are actively employed in a position that carries main job responsibilities such as longshoring operations, and any harbor worker, including a ship-repairman, ship-building and ship-breaking. Some exclusions that may apply to the protected individuals of this act are employees/employers covered by a state's workers' compensation laws, individuals whose job responsibilities are to perform clerical, security and data processing work, individuals employed by a marina but are not actively engaged in construction of any kind, vendors of maritime facilities or temporary employees, Aquaculture workers, individuals employed to build, repair or dismantle any watercraft vessel under sixty-five feet in length, and small vessel workers who may be exempt by certification of the Secretary of Labor under certain conditions.

A Longshoreman is a person who loads and discharges cargo at a wharf or dock side; very similarly a Stevedore is a laborer who loads and unloads vessels in a port. A Shipbuilder is someone who is actively employed in the building of maritime vessels, a Ship Repairer is someone who is actively employed to make repairs to maritime vessels and a Ship Breaker is someone who is actively employed to dismantle maritime vessels. A Stevedore is an individual or firm that employs longshoremen (or dockers, dock workers or port workers) to load and unload vessels.

Medical Care provided by the Act includes all medical, surgical, hospital treatments and other medical supplies and services required to properly treat the employment related injury. The cost of travel and mileage to and from treatments is also covered by the Act. The injured employee/employer can choose a medical professional of his/her choice, as long as the medical professional they choose is authorized; any person can pick up a list of unauthorized providers at their local OWCP district office.

The basic compensations of LHWCA fall into four main categories: permanent total, temporary total, permanent partial or temporary partial. Each category is defined by the extent to which an employee can no longer perform their job responsibilities and for how long the injury will keep the employee from returning to their regular job responsibilities.

Permanent total means the employee is completely disabled and will never be able to perform their job responsibilities again, temporary total means the employee is temporarily unable to perform any of their job responsibilities, permanent partial means the employee will only be able to perform part of their job responsibilities for the remainder of their career, and temporary partial means the employee will temporarily be able to perform part of their job responsibilities.

All four categories will be determined by a physician and the physician will make their recommendation for the extent of the disability suffered by the employee. Permanent and temporary total disability compensation is two thirds of the employee's weekly average pay; the maximum amount to be paid is determined every October 1 and applies through September 30 of the following year and is subject to a maximum adjustment of 5%. Permanent partial disability is based on the amount of use of that particular body part required by the employee's position, in other words the wage earning capacity loss due to the disability suffered. For example, the loss of a foot is eligible for 205 weeks of compensation. Temporary partial disability is eligible for two thirds of the weekly salary earned before the injury occurred.

In the unfortunate event that the injury causes death to the employee, death benefits can be paid to the widow, dependent children under the age of 18, and any other immediate family member (brother, sister, parent, grandparent) who is dependent upon the deceased. A widow is paid 50% of the weekly wage of the deceased for life or until remarried. If the widow remarries, they will receive a lump sum payment of two years wages. If the deceased has any children under the age of 18 then an additional 16 2/3% will be paid for all children combined. If there is no widow and only children then 50% of the weekly wage will be paid to a single child or in the event of more than



one child under 18, 66 2/3% of the weekly wage will be paid to the surviving children. An exception can be filed for any child under the age of 23 who is enrolled in secondary education courses. Compensation may continue indefinitely for any child who is not of sound mind or judgment due to mental or physical disabilities of their own. When awarding death benefits, the average weekly wage of the deceased shall not be considered to have been less than the National Average Weekly Wage (NAWW) effective at the time of death. The total survivor payable benefits in death cases will be the lesser of either the average weekly wage of the deceased or 200% of the NAWW.

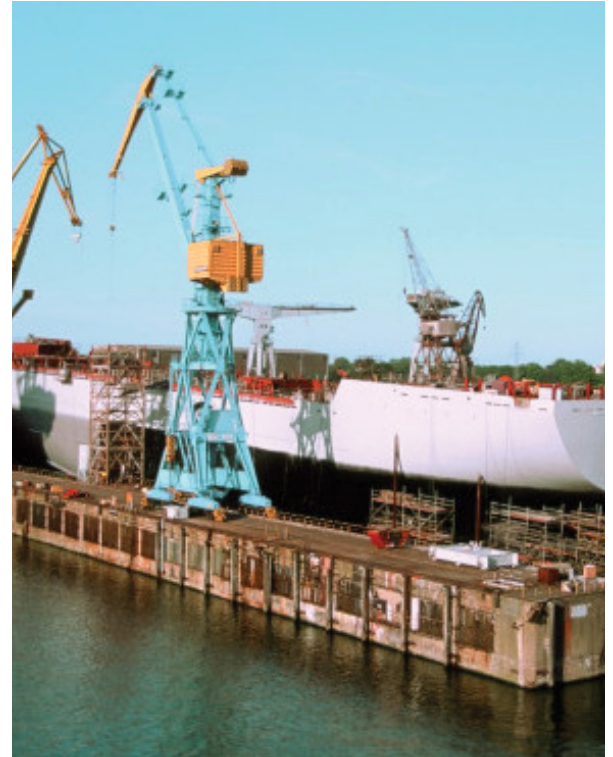
According to the US Department of Labor the NAWW the payout schedule for beginning October 01, 2004 through September 30, 2009 is as follows:

Time Period	NAWW	Maximum	Minimum	% Increase
10/01/08-09/30/09	\$600.31	\$1200.62	\$300.16	3.47%
10/01/07-09/30/08	\$580.18	\$1160.36	\$290.09	4.12%
10/01/06-09/30/07	\$557.22	\$1114.44	\$278.61	3.80%
10/01/05-09/30/06	\$536.82	\$1073.64	\$268.41	2.53%
10/01/04-09/30/05	\$523.58	\$1047.16	\$261.79	1.59%



WORKERS COMPENSATION VS. LHWCA

For the most part, both Longshore Harbor Workers Compensation Act and Workers Compensation are very similar but there are a few differences worth noting. Both compensation programs offer for the injured party to see a medical professional of their choice, both offer temporary and permanent disability compensation, both offer death benefits to the surviving dependants and both benefits are determined, largely, by the average weekly wage prior to the injury. One of the largest counter points between the two compensation programs is that Workers Compensation is a no fault program, meaning that it does not matter if the injury occurred due to negligence on part of the employer, malice from co-worker or negligence of your own. No matter the circumstances, Workers Compensation will still pay you the same benefits offered to everyone else. Because Workers Compensation is a no fault benefit program, most states have barred any third party suits against employers for negligence or any other person who may have fault in the accident. If a suit is filed under the LHWCA, the claimant is also free to file a third party claim against any other persons who hold fault in the accident.



The LHWCA provides entitlement to the employee for reasonable and necessary medical treatment, supplies and services related to the injury and reimbursement of travel costs related to treatment. If you are temporarily disabled you are eligible for two thirds of your average weekly wage earned prior to becoming disabled or unable to perform your job functions. Under the LHWCA, as of October 01, 2008, the maximum compensation rate is \$1,200.62 per week and the minimum compensation rate is \$300.16 per week. Temporary disability benefits can be paid out to injured employees for up to five years. If you are permanently disabled, you are no longer able to perform any type of employment for an indefinite period of time. Under the LHWCA, you would be entitled to a yearly cost of living increase, up to 5% per year, while you are receiving total disability compensation. If you suffer permanent partial disability, this means you are unable to perform any kind of work for an indefinite period of time and you will have to find a suitable alternative to the employment you held before becoming injured. In these cases the Department of Labor will provide Vocational services to assist you. Permanent Partial Disability claims are paid on either a loss of earning capacity or on the basis of a scheduled award; the determining factor will be the anatomical part of your body that is disabled or injured.

The Specific Loss Benefits, or Scheduled Benefits, provides for a limited term payments in cases where any employee suffers a permanent loss of use of parts of the body. These awards can be paid even if you are able to return to your previously held position at the time of your injury. Scheduled awards can include the permanent loss of use of certain limbs, bodily functions, hearing and vision. Typically, the doctor over seeing your injury will determine the percentage of loss you will suffer due to the injury. Specific loss claims are entitled to compensation in the amount of two thirds of your average weekly wage for the number of weeks set forth in the Specific Loss Chart below:

Scheduled Award:

Loss of:	Weeks of Compensation:
Hand	244 weeks
Arm	312 weeks
Foot	205 weeks
Leg	288 weeks
Eye	160 weeks
Thumb	75 weeks
Index Finger	46 weeks
Middle Finger	30 weeks
Ring Finger	15 weeks
Little Finger	15 weeks
Great Toe	38 weeks
Other Toes	16 weeks
Hearing Loss-Both Ears	200 weeks
Hearing Loss-One Ear	52 weeks



Although it sounds easy enough to handle an LHWCA claim on your own, much like a Jones Act claim there are many variations in the acts that may provide you a larger compensation settlement that only an experienced maritime attorney may be aware of. For the protection of your livelihood, family, and future working capabilities you should at least allow a qualified maritime attorney review your case before you proceed with your claim. You should also be aware that in many cases if you choose to file a Workers Compensation claim before you file a LHWCA or Jones Act claim, you may well forfeit all rights to any other compensation under the acts.

LHWCA VS. JONES ACT

If you are an injured maritime worker you, typically, have three different options to choose from when considering filing for compensation due to your injuries; Workers Compensation, The Longshore and Harbor Workers Compensation Act (LHWCA) and the Jones Act.

Because of the many similarities but the huge difference in final settlements of the claims, it is highly recommended to consult a qualified and experience maritime attorney before you take any action after your injury.

The largest difference between the LHWCA and the Jones Act is whether or not the injured party has to prove negligence. Under the Jones Act, a person must prove that either the owner of the vessel, employer or a co-worker in some way caused an accident to happen that resulted in their injury. According to the provisions set forth by the LHWCA, an injured employee will be covered regardless of fault; unless of course the injured party purposefully caused his/her own injury or if he/she left out any medical conditions when applying for the position that may have affected the final decision to hire him/her.

The claims filed under each act are administered by different authorities. All claims filed under the LHWCA are handles by the United States Department of Labor and the territory offices placed throughout the country. Depending on where your accident or injury occurred, you may be filing your claim in any one of the twelve offices. You can find a list of territories and office contact information on the Department of Labor website, www.dol.gov. All claims filed under the Jones Act must be litigated through the court system. There are no offices or administrators that handle the everyday dealings of the Jones Act and any claims filed.

LHWCA FAQ'S

1. As an employer, how do I know if I have to purchase Longshore coverage?

LHWCA coverage can be complicated. The determining factors include the nature of the employment and the location of the employment. Due to the minute details that will ultimately determine whether or not you have to provide LHWCA, it is best to speak with your local District Director and get their opinion.



2. How do I know if my employer provides LHWCA for my position?

You can always check with you local District Longshore Office but the easiest route would be to ask your employer and discuss any concerns you may have at that point with them.

3. What benefits does the LHWCA provide?

The LHWCA provides benefits and compensation to injured workers including, but are not limited to, medical care, lost weekly wages compensation, compensation for permanent injuries, vocational rehabilitation services and death benefits.

4. I need to apply for benefits, where can the Longshore forms be found?

All of the forms are available on the www.dol.gov website. If there is a form you need but cannot find online you should contact your district office. Several forms are also available to be completed and submitted online as well for your convenience.

5. Is there assistance available to employees to help with Longshore claims?

Yes, you can visit your district office. The staff members are all experienced in the handling of the claims and will be happy to assist you in the completion of your forms and the handling of your claim.

6. My employer has refused to pay my benefits, what can I do?

You should speak to someone in your local District Longshore office. Their primary role is to help employees and employers settle any disputes that may arise when a claim is filed.

7. I have filed a claim, how long should I wait before I receive compensation?

If you have filed a claim, you should receive your first benefits within 14 days of filing your claim, unless the employer or its insurer files a notice of controversy. If this is the case the local District office will act as a mediator between the employee and employer/insuring agent. If you have not received your benefits nor have you heard any response from the employer or it's insuring agent within 14 days of filing your claim, you should contact your District office immediately.

LHWCA CLAIM FORMS AND EXPLANATIONS OF EACH FORM

The LHWCA has provided many necessary and useful forms on their website. Below you will find a complete list with a detailed explanation of each form and if any additional computer programs are necessary to view to form.

1. Request for Examination and/or Treatment

<http://www.dol.gov/esa/owcp/dlhwc/ls-1.pdf>

This form has two parts. The first part is to be completed by the employer authorizing treatments of an employee under the LWHCA. The second part is to be completed by the physician who gives medical treatment to the employee. This form has to be mailed in for submission and requires Adobe Reader to open online.

2. Digital Certificate Authorization

<http://www.dol.gov/esa/owcp/dlhwc/ls-18.pdf>

This is a three step process in which the employee requests a pre-hearing statement, is either approved or denied authorization to his/her certificate and is then able to retrieve their certificate if approved. This process can be completed online or the form can be opened with Adobe Reader.

3. The Approval of Compromise of Third Person Action

<http://www.dol.gov/esa/owcp/dlhwc/ls-33.pdf>

This form simply states the employer, employee, insuring agency and the monetary value of the claim. This form requires Adobe Reader to open online.

4. Report of Earnings

<http://www.dol.gov/esa/owcp/dlhwc/ls-200.pdf>

This form is to be completed by the employee declaring any monetary earnings made while receiving LWHCA compensation. This form requires Adobe Reader to open online.

5. Notice of Employees Injury or Death

<http://www.dol.gov/esa/owcp/dlhwc/ls-201.pdf>

The information provided in this form will be used to determine entitlement of LWHCA benefits to any injured employee or the spouse of an employee whose injury resulted in death. This form requires Adobe Reader to open online.



6. Employees First Report of Injury or Occupational Illness

<http://www.dol.gov/esa/owcp/dlhwc/ls-202.pdf>

This is a three step process in which the employee reports his/her injury or occupational illness. This process can be completed online or the form can be opened with Adobe Reader.

7. Employees Claim for Compensation

<http://www.dol.gov/esa/owcp/dlhwc/ls-203.pdf>

This form is to be completed by the employee requesting compensation for injury, death or occupational disease as a direct result of their employment. In the case of an injury this form must be filed within one (1) year of the date in which the employee was aware of the correlation between the injury and their employment.

In the case of hearing loss this form must be filed within one year of the employee receiving an audiogram along with sufficient documentation stating their hearing is in fact impaired. In the case of an occupational disease this form must be filed within two (2) years of the date that the employee was made aware of the correlation of the disease and their employment. This form requires Adobe Reader to open.

8. Attending Physician's Supplementary Report

<http://www.dol.gov/esa/owcp/dlhwc/ls-204.pdf>

This report is to be completed by the attending physician about every thirty (30) days to the District Director and the insuring agent or a self insured employee. This form should also be completed by the attending physician upon medical discharge of patient. This form requires Adobe Reader to open online.

9. Physician's Report on Impairment of Vision

<http://www.dol.gov/esa/owcp/dlhwc/ls-205.pdf>

This report is to be completed by an Ophthalmologist and the information recorded will be used to determine the entitlement of benefits or compensation for any work related vision loss. This form requires Adobe Reader to open online.

10. Payment of Compensation without Award

<http://www.dol.gov/esa/owcp/dlhwc/ls-206.pdf>

This process can be completed online or can be opened with Adobe Reader.



11. Notice of Controversion of Right to Compensation

<http://www.dol.gov/esa/owcp/dlhwc/lis-207.pdf>

This process can be completed online or can be opened with Adobe Reader.

12. Notice of Final Payment or Suspension of Compensation Payments

<http://www.dol.gov/esa/owcp/dlhwc/lis-208.pdf>

This form is to be completed by the insuring agent detailing the payments made and the reason of final payment or suspension of payments may be occurring. This process can be completed online or the form can be opened with Adobe Reader.

13. Claim for Death Benefits

<http://www.dol.gov/esa/owcp/dlhwc/lis-262.pdf>

This form must be completed within one year of the employee's death and a separate form must be completed for each eligible recipient of the death benefits. This form requires Adobe Reader to open.

14. Certification for Funeral Expenses

<http://www.dol.gov/esa/owcp/dlhwc/lis-265.pdf>

This form requires Adobe Reader to open.

15. Application for Continuation of Death Benefits for Student

<http://www.dol.gov/esa/owcp/dlhwc/lis-266.pdf>

This form must be completed partially by the person applying (or their guardian) and by an official of the college or secondary education facility the applicant is attending. This form requires Adobe Reader to open.





16. Claimant's Statement

<http://www.dol.gov/esa/owcp/dlhwc/LS-267.pdf>

This is a form that any person's receiving death benefits must complete. This form requires Adobe Reader to open.

17. Application for Self Insurance Instructions

<http://www.dol.gov/esa/owcp/dlhwc/LS-271.pdf>

This form is to be completed by any Employer who wishes to be self insured through the LHWCA. This form requires Adobe Reader to open.

18. Application to Write Longshore Insurance (Carriers)

<http://www.dol.gov/esa/owcp/dlhwc/LS-272.pdf>

This form is to be completed by any Insurance Agent who wishes to have the rights to write LHWCA policies. This form requires Adobe Reader to open.

19. Report of Injury Experience of Insurance Carrier or Self Insured Employer

<http://www.dol.gov/esa/owcp/dlhwc/LS-274.pdf>

This form is used to determine to amount of the security deposit required to become a self insured employer. This form requires Adobe Reader to open.

20. Agreement and Undertaking (Insurance Carrier)

<http://www.dol.gov/esa/owcp/dlhwc/LS-275ic.pdf>

This form is required for all insurance carriers to ensure their prompt payment of compensation, benefits, etc in accordance with the LHWCA. This form requires Adobe Reader to open.

21. Agreement and Undertaking (Self Insured Employers)

<http://www.dol.gov/esa/owcp/dlhwc/LS-275si.pdf>

This form is required for all self insured employers to ensure their prompt payment of compensation, benefits, etc in accordance with the LHWCA. This form requires Adobe Reader to open.

22. Application for Security Deposit Determination

<http://www.dol.gov/esa/owcp/dlhwc/LS-276.pdf>

This form must be completed on an annual basis by any insuring agent. This form requires Adobe Reader to open.

23. Request for Earning Information

<http://www.dol.gov/esa/owcp/dlhwc/ls-426.pdf>

This is a document sent by the US Department of Labor to any individual who is receiving benefits through the LHWCA. This form requires Adobe Reader to open.

24. Work Capacity Evaluation (Psychiatric/Psychology Conditions)

<http://www.dol.gov/esa/owcp/dfec/regs/compliance/OWCP-5a.pdf>

This form must be completed by a licensed Psychiatrist or Psychologist. This process can be completed online or the form can be opened with Adobe Reader.

25. Work Conditions Evaluation (Cardiovascular/Pulmonary Conditions)

<http://www.dol.gov/esa/owcp/dfec/regs/compliance/OWCP-5b.pdf>

This form must be completed by a licensed Cardiovascular or Pulmonary Specialist. This process can be completed online or the form can be opened with Adobe Reader.

26. Work Conditions Evaluation (Musculoskeletal Conditions)

<http://www.dol.gov/esa/owcp/dfec/regs/compliance/OWCP-5c.pdf>

This form must be completed by a licensed Musculoskeletal Specialist. This process can be completed online or the form can be opened with Adobe Reader.

