



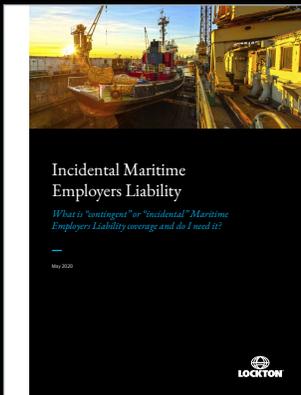
The Defense Base Act

*Who needs it, who does it cover, and
how does it apply?*



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Previously we wrote about both the scope of the U.S. Longshore and Harbor Workers Compensation Act (the Act) and Incidental Maritime Employers Liability coverage. We discussed when an employer may need to purchase these coverages. We now wish to provide a high-level summary of the Defense Base Act. This document has been prepared to assist employers in understanding when and how they can recognize and address the risk of incurring penalties for not securing proper coverage when acting under the scope of the Defense Base Act.



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History of the Defense Base Act

The Defense Base Act (DBA) was enacted by Congress in August of 1941 as an extension to the Longshore and Harbor Workers Compensation Act 33 U.S.C. §§901-950 (LHWCA). Its purpose being to provide for the medical treatment and compensation of persons employed on American military bases injured in the scope and course of employment. In 1942, coverage was extended to public works contractors working outside of the United States with the enactment of the War Hazards Compensation Act.

However it wasn't until 1958 that the DBA saw its most significant amendments. It was then that coverage was extended to:

1. Non-citizens;
2. Persons working on projects funded under the Mutual Security Act of 1954; and to,
3. Persons working to provide morale and welfare services (example – The American Red Cross).

The DBA is administered by 11 district offices located throughout the United States, the U.S. Department of Labor, the Office of Workers' Compensation Programs (OWCP), and the Division of Longshore and Harbor Workers' Compensation (DLHWC).

The Defense Base Act is an extension to the Federal Workers' Compensation Act. It has a specific exclusivity provision in which employer's or insurance carrier's DBA liability "shall be exclusive and in place of all other liability."



To whom does the Defense Base Act apply?

The following criteria determines whether an individual qualifies under the DBA:

- Work 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;
- Work 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;
- Work on contracts approved and funded by the U.S. under the **Foreign Assistance Act**, which also provides for cash sale of military equipment, materials, and services to its allies, if the contract is performed outside of the United States;
- Work performed outside of the U.S. by an American employer providing **“Welfare”** or similar type of service for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense – is covered under the DBA. An example of welfare type of service or morale projects for the benefit of the Armed Forces would be the United Service Organizations (USO), the American Red Cross, or The Salvation Army.

Employees – whether U.S. or local nationals – of any subcontractors would also qualify under the DBA.

What is covered by the Defense Base Act?

The DBA provides what is equivalent to Workers' Compensation in the event civilian employees are injured or killed in the course of their work. Essentially, the Defense Base Act program was created to provide Workers' Compensation protection for categories of workers who were outside the jurisdiction of State or Federal Workers' Compensation systems. It does this by extending the Longshore and Harbor Workers Compensation Act to covered workers.

4 BASIC BENEFITS UNDER THE DBA



Disability and medical benefits coverage

The Defense Base Act provides disability and medical benefits to employees injured in the course of or arising from employment. Death benefits are provided to eligible survivors of employees killed in the course of employment or who died of causes arising from employment.

Benefits under the DBA are payable regardless of nationality. Compensation for total disability is two-thirds of the employee's average weekly earnings, up to a current maximum weekly rate. Compensation is also payable for partial loss of earnings. Permanent total disability and death benefits are subject to annual cost of living adjustments and there are special payment provisions for aliens and non-U.S. residents.

Under the DBA, employees are entitled to receive care from an overseas or U.S. physician of their choice, but they need to ask their employer to authorize treatment from that physician first, except in the event of an emergency. Cost of medical transportation and/or repatriation for medical care (if necessary) is the responsibility of the DBA insurance carrier.

Who is responsible for complying with the Defense Base Act?

- If a **Contractor** or its Subs are working under a contract for Public Works and the contract is approved and financed under the Foreign Assistance Act of 1961; OR if work is performed outside the United States – DBA coverages is required under Federal Acquisition Regulation (FAR) 48 CFR 28:309
- Federal Acquisition Regulation (FAR) at 48 CFR 52.228 3&4 requires solicitations and contracts include the requirement for DBA insurance, where applicable



Key things employers should consider

As of this writing, the current fine for failure to provide Defense Base Act insurance coverage is \$11,000 and imprisonment for not more than one year. The Corporation and its President, Secretary and Treasurer are severally liable. They are also severally liable jointly with the Company for the benefits during the period it fails to secure insurance. In this light, employers should:

- Secure DBA insurance prior to deploying employees overseas.
- Post Notice to Employees, Form LS-241
- Keep employees informed about DBA benefits and how to report a work-related injury.
- Immediately notify the insurance carrier of the employee injury or death.
- Make certain your DBA coverage is Insured by an Authorized Defense Base Act Carrier.
- Employers must not be operating under a waiver which is not effective.

Waiver under the Defense Base Act

DBA waivers release the contracting agencies and contractors from the requirement to purchase DBA insurance for foreign workers.

The Secretary of Labor may waive application of the Defense Base Act with respect to any contract, work location, or class of employees upon the written request of the head of any department or other agency of the United States. The waiver is only valid if alternative workers' compensation benefits are provided to the waived employees pursuant to applicable local law.

For waived employees, the contractor must provide workers' compensation coverage against the risk of work injury or death or ensure that adequate coverage is provided by the host or home country of the employee. The insurance coverage must also include liability for war-hazard injuries, death, capture, or detention of the employee and compensate their beneficiaries in the event of death. Waivers do not apply to citizens or legal residents of the U.S. or to employees hired in the U.S. Currently, there are 43 active geographic waivers in place with the United States.

TWO TYPES OF WAIVERS – CONTRACT SPECIFIC AND GEOGRAPHIC

Contract specific waivers	Geographic waivers
<p>A contract specific waiver is due to the contractor being adequately “self-insured” or having purchased workers’ compensation insurance with coverage equivalent to that provided by DBA and War Hazards Act.</p>	<p>A geographic waiver is based on the host country having an adequate workers’ compensation system which provides coverage for the local national employees or foreign workers performing work on an applicable contract in that country.</p>

How are claims filed and/or injuries reported?

Like a traditional workers’ compensation claim, employees will need to file with their supervisor or employer as soon as they become injured. Once the employer has been notified, they are required to file form LS-202 with the Office of Workers’ Compensation Programs within 10 days.

DBA claims must be filed within one year of the date of injury or the last payment of compensation, whichever is later. For claims involving occupational injury, the deadline for filing is two years from the date the employee is aware of the connection between the illness and the employment.

Frequently asked questions about the Defense Base Act

<u>QUESTIONS</u>	<u>ANSWERS</u>
What other insurances might someone consider in tandem with the Defense Base Act?	There are additional insurance programs that complement the DBA, such as Business Travel Accident, Life Insurance (with war) and Kidnap & Ransom which can be obtained separately by endorsement from certain markets where available.
When is the Defense Base Act not applicable?	DBA does not apply to the injury or death of (1) a federal employee (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.
To whom does the Defense Base Act apply?	It applies to all paid workers associated with the contract including Third-Country Nationals and Local Nationals. Importantly, benefits under the DBA are payable regardless of nationality. Employers should secure insurance for all their employees working outside the United States under a U.S. government contract, including U.S. citizens and residents, host country nationals (locals), and third country nationals (hired from another country to perform work in the host country).
Are deductibles applicable to the Defense Base Act as in Workers' Compensation?	DBA policies are without deductibles and are considered "Guaranteed Cost".

About the authors

The Lockton Texas Series Marine practice has been on the forefront of working with associated businesses and carriers involved with the Defense Base Act. For more information or inquiries if this coverage could be applicable to your business or client, please reach out to Danelle Heathman, Cat Pittet or any of our Marine Practice Associates who will be happy to assist you.



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