

Longshore & Harbor Workers' Compensation USDOL District 1

David Groeneveld
District Director

District 1 Office

- Office Address:

U.S. Department of Labor

ESA / OWCP / DLHWC

JFK Federal Building, Room E-260

Boston, MA 02203

Office Phone: 617-624-6750

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Area of Coverage in District 1

- Connecticut
- Maine
- Massachusetts
- New Hampshire
- Rhode Island
- Vermont
- Defense Base Act Jurisdiction: East of the 75th degree west longitude, Newfoundland, Greenland

Mission / Objectives

- Administer the LHWCA and its extensions (e.g. Defense Base Act; Non-appropriated Fund Instrumentalities Act...)
- Insure the provisions of the Act regarding benefits for injured employees are properly applied
- Promptly and impartially assist in resolution of disputes which may arise
- Refer cases for formal hearing when a dispute subject to hearing cannot be informally resolved

District 1

Staff Organization

- District Director
- Intake Clerk / Conference Coordinator
- Claims Examiners (4):
 - Paul Graycar 01-26
 - Ramon Iglesias 27-52
 - Christopher Piper 53-78
 - William Gallagher 79-00
- Claims Assistants (2)
- Mail & File Clerk (1)
- Vocational Rehabilitation Specialist (1)

Synopsis of Law

- The Longshore & Harbor Workers' Compensation Act and its extensions, provide medical benefits, compensation for lost wages, and rehabilitation services to employees who are injured during the course of employment or contract an occupational disease related to employment. Survivor benefits also are provided if the work-related injury causes the employee's death.

Covered Employment

- LSHWCA Amendments of 1984, Section 2 (3) defines 'employee' under the Act:
 - .Employee means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker

Exclusions Under Sec 2 (3)

- Term 'employee' does **not** include-
 - .Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;
 - .Individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;
 - .Individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance) continued.....

Continued exclusions....

- Individuals who are employed by suppliers transporters, or vendors; are temporarily doing business on the premises of an employer; and are not engaged in work normally performed by employees of that employer under this Act
- Aquaculture workers
- Individuals employed to build, repair, or dismantle any recreational vessel under 65 feet in length
- A master or member of a crew of any vessel
- Any person engaged by a master to load or unload or repair any small vessel under 18 tons net

Which office does a claim get filed in?

- A: In the District Office having jurisdiction where injury occurred, irregardless of employee's home address or employer's business address
- Once a claim is filed, case can be transferred when a formal request for transfer is made by the claimant, his/her survivors (dependents), or counsel... most usually done when claimant has moved.

Some of the More Commonly Utilized Forms in Longshore

- LS 18 Pre-Hearing Statement
- LS 200 Report of Earnings
- LS 201 Notice-Employee's Injury / Death
- LS 202 Employer's First Report of Injury or Occupational Illness
- LS 203 Employee's Claim for Comp
- LS 206 Payment of Comp w/o Award
- LS 207 Notice of Controversion
- LS 208 Notice of Final Payment of Comp
- LS 262 Claim for Death Benefits

LS 208 form – Notice of Final Payment or Suspension of Compensation Payments

- Must be filed by the employer/carrier with the District Office within 16 days after comp has been stopped or interrupted
- Reference: Sec 14(g) of the Act
- Penalties attach for failure to submit in a timely manner
- Cumulative form listing all compensation payments actually made
- It is **not** a form to list what should be paid, but rather what has been paid

Disability Compensation

- *Disability* = inability to earn the same wages earned at the time of injury. Compensation is payable for disabilities that are permanent total, temporary total, permanent partial, or temporary partial.

Continued.....

- *Temporary Partial:* Claimant has suffered a reduced wage earning capacity which is not expected to be permanent.
- *Temporary Total:* Employee is totally disabled for employment, but on a temporary basis

Continued....

- *Permanent Partial*: Injured worker has suffered a loss partial in character but permanent in nature. There are 2 types:
 - Scheduled: Partial loss or loss of use of an extremity, phalange, hearing or vision
 - Non-scheduled: In cases where the injury does not fall within the schedule.
- *Permanent Total*: Claimant is permanently and totally unable to return to his/her pre-injury employment.

Presumptions

- Section 20 of the Act provides that in any proceeding for the enforcement of a claim for compensation under the Act, it is **PRESUMED**, in the absence of **SUBSTANTIAL** evidence to the contrary, that the..
 - claim comes within the provisions of the Act
 - sufficient notice of such claim has been given
 - injury wasn't occasioned solely by the intoxication of the injured employee
 - injury was not occasioned by the willful intention of the injured employee to kill himself or another

LS 202 – First Report of Injury Form

- Reference is Sec 30 (a)
- Filing of form by employer is **not** an admission of liability – only a reporting requirement when an injury is claimed
- Required even if employer controverts claim
- Filed within 10 days when the injury causes loss of one or more shifts of work, or there is a death, or from the date employer has knowledge of a disease or infection in respect of such injury
- Penalties are associated with failure to submit in a timely manner

Independent Medical Exams

- Our general procedure is that when a joint request of the parties is received, the District Office will initiate the process of scheduling an *Independent* medical examination
- The DD may order an ‘impartial med exam’ under Sect 7 (e) LHWCA, which provides that impartial medical exams may be utilized in any case in which medical questions are in conflict..

Payment of Compensation

- Sec 14(a) Compensation is to be paid periodically, promptly and directly to the person entitled to such, unless liability is controverted.
- Sect 14(b) Comp is due on the 14th day after employer has knowledge of the injury and paid thereafter
- Sect 14 (c) On making 1st payment, employer / carrier shall file the LS 206 (Payment of comp without award

Continued....

- Sect 14(d) If employer / carrier controverts the claim on or before the 14th day, they must have filed with the DD the LS207 (Notice of Controversion)
- Sect 14(e) Installments of comp paid without an award not paid within 14 days of the date on which they become due, are subject to a 10% penalty, paid to the claimant.
- Sect 14(f) Comp due by Order which are not paid within 10 days of the date due, is subject to a 20% penalty, paid to the claimant.

Special Fund – Sec 8(f)

- Where liability for permanent disability, either partial or total, and/or death benefits is reallocated from the employer to the Special Fund
- 8(f) created to avoid discrimination against disabled workers
- Three criteria: (1) Existence of a pre-existing *permanent* disability, (2) that such disability was *manifest* to the employer, and (3) disability due to the last injury is *materially and substantially greater because of the pre-existing permanent disability*.

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- CFR 702.321 (b) A request for 8(f) relief should be made as soon as the permanency of the claimant's condition becomes known or is an issue in dispute.
- Failure to submit a fully documented application by the necessary date establishes an absolute defense to the liability of the Special Fund
- Medical benefits & funeral expenses remain the responsibility of the employer / carrier if 8(f) relief is granted

Keeper of the Records

- File records used by the Office of Administrative Law Judges and Benefits Review Board, are returned to this District Office for District 1 cases. We are the keeper of the record.

Service of OALJ Orders

- Compensation Orders of the District Director and Orders from the Office of Administrative Law Judges are filed and served by this District Office for cases in District 1.
- Such documents are sent certified mail to the parties in a case

For More Information

- District Director David Groeneveld
Phone: 617-624-6607
groeneveld.david@dol.gov
- The USDOL web-site for the Office of Workers' Compensation Programs, Longshore and Harbor, can be reached from:
 - www.dol.gov/esa
 - For general information
 - For listing of authorized self-insureds and carriers