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The Longshore and Harbor Workers' Compensation Act (LHWCA): Overview of Workers' Compensation for Certain Private-Sector Maritime Workers

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Summary

The Longshore and Harbor Workers' Compensation Act (LHWCA) is a federal workers' compensation program that covers certain private-sector maritime workers. Firms that employ these workers are required to purchase workers' compensation or self-insure and are responsible for providing medical and disability benefits to covered workers who are injured or become ill on the job and survivors' benefits to the families of covered workers who die on the job. The LHWCA is administered by the Department of Labor (DOL), and all benefit costs are paid by employers and their insurance carriers. In 2017, more than $2 billion in LHWCA benefits were paid to beneficiaries.

Congress has extended the LHWCA provisions to cover workers outside of the maritime industry, such as overseas government contractors and civilian employees of military post exchanges. As part of the American Recovery and Reinvestment Act of 2009 (ARRA), persons who repair recreational vessels of any size were added to the LHWCA exemption list. In 2011, the DOL implemented this provision; since then, those regulations have proven controversial and numerous bills have been introduced to modify the regulatory definition to increase the number of workers exempted from the LHWCA.

The LHWCA pays for all medical care associated with a covered injury or illness. Disability benefits are based on a worker's pre-injury wage, and, unlike comparable state workers' compensation benefits, are adjusted annually to reflect national wage growth.

Covered workers with employment-related Coronavirus Disease 2019 (COVID-19) may be eligible for LHWCA benefits but may find it difficult to demonstrate a link between their employment and diagnoses. Section 2014 of H.R. 1319, the American Rescue Plan Act of 2021, as passed by the House of Representatives and considered in the Senate, would create a presumption of eligibility for LHWCA benefits for covered workers with COVID-19 and reimburse their employers or employers' insurance carriers for the costs of these benefits from the Employees' Compensation Fund. This legislation would appropriate from the general fund such sums as necessary to reimburse a new Longshore COVID-19 Fund for these reimbursements.

The provision creating a presumption of eligibility for LHWCA benefits for covered workers with COVID-19 was not included in the version of H.R. 1319 passed by the Senate.

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Introduction

The Longshore and Harbor Workers' Compensation Act (LHWCA) requires that private-sector firms provide workers' compensation coverage for their employees engaged in longshore, harbor, or other maritime occupations on or adjacent to the navigable waters of the United States.[1] Although the LHWCA program is administered by the Department of Labor (DOL), most benefits are paid either through private insurers or self-insured firms.

The LHWCA is a workers' compensation system and not a federal benefits program. Like other workers' compensation systems in the United States, the LHWCA ensures that all covered workers are provided medical and disability benefits in the event they are injured or become ill in the course of their employment, and it provides benefits to the survivors of covered workers who die on the job. In 2017, the LHWCA paid approximately $2.06 billion in cash and medical benefits to injured workers and the families of deceased workers.[2]

Workers' Compensation in the United States

Nearly all private- and public-sector workers in the United States are covered by some form of workers' compensation. The federal government has a limited role in workers' compensation and administers workers' compensation programs only for federal employees and several classes of private-sector workers, including longshore and harbor workers.[3] For most occupations, workers' compensation is mandated by state laws and administered by state agencies.

There is no federal mandate that states provide workers' compensation. However, every state and the District of Columbia has a workers' compensation system. There are no federal standards for state workers' compensation systems. However, all U.S. workers' compensation systems provide for limited wage replacement and full medical benefits for workers who are injured or become ill as a result of their work and survivors' benefits to the families of workers who die on the job.

Workers' compensation in the United States is a no-fault system that pays workers for employment-related injuries or illnesses without considering the culpability of any one party. In exchange for this no-fault protection and the guarantee of benefits in the event of an employment-related injury, illness, or death, workers give up their rights to bring actions against employers in the civil court system and give up their rights to seek damages for injuries and illnesses, including pain and suffering, outside of those provided by the workers' compensation laws.[4] Workers' compensation is mandatory in all states and the District of Columbia, with the exception of Texas. In Texas, employers may, under certain conditions, opt out of the workers' compensation system, but in doing so subject themselves to civil actions brought by injured employees.

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[1] P.L. 69-803; 33 U.S.C. §§901 et seq.

[2] Elaine Weiss, Griffin Murphy, and Leslie I. Boden, *Workers' Compensation: Benefits, Costs, and Coverage*, National Academy of Social Insurance, (2017 Data), October 2019, p. 73, https://www.nasi.org/research/2019/report-workers%E2%80%99-compensation-benefits-costs-coverage-%E2%80%93-2017.

[3] The federal government provides workers' compensation for federal employees under the Federal Employees' Compensation Act [5 U.S.C. §§8101 et seq.] and also provides limited workers' compensation programs that cover specific illnesses contracted by coal miners under the Black Lung Benefits Act [30 U.S.C. §§901 et seq.], and workers involved in the development and testing of atomic weapons under the Energy Employees Occupational Illness Compensation Program Act [42 U.S.C. §§7384] and Radiation Exposure Compensation Act [42 U.S.C. §2210 note].

[4] Under Section 5(b) of the LHWCA [33 U.S.C. §905(b)], an injured person may bring a civil action under certain circumstances against the owner of a vessel that was the cause of his or her injury.

History of the LHWCA

Prior to the enactment of the LHWCA in 1927, longshore and harbor workers were not covered by any workers' compensation system. Although persons who worked entirely on land were covered by workers' compensation laws in those states that enacted such laws, pursuant to the Supreme Court's 1917 decision in *Southern Pacific Co. v. Jensen*, state workers' compensation systems did not have jurisdiction over persons working on the "navigable waters" of the United States because the Constitution granted the authority over "matters of admiralty and maritime jurisdiction" to the federal government.[5] The LHWCA created a federal workers' compensation program to cover these workers.[6] In 1972, the LHWCA zone of coverage was extended to include areas adjacent to navigable waters that are used for loading, unloading, repairing, or building vessels.[7]

Firms and Workers Covered by the LHWCA

Covered Firms

The LHWCA provisions apply to any private firm with any covered employees who work, full- or part-time, on the navigable waters of the United States, including in any of the following adjoining areas: piers; wharves; dry docks; terminals; building ways; marine railways; or other areas customarily used in the loading, unloading, repairing, or building of vessels.

Covered Workers

With the exception of workers excluded by statute (listed below), the LHWCA covers any maritime employee of a covered firm, including longshore workers (those who load and unload ships) and harbor workers (i.e., ship repairmen, ship builders, and ship breakers).

Workers Excluded by Statute

Sections 2(3) and 3(b) of the LHWCA exclude the following workers from coverage:[8]

- Workers covered by a state workers' compensation law, including
  - employees exclusively engaged in clerical, secretarial, security, or data processing work;
  - persons employed by a club, camp, recreational operation, museum, or retail outlet;
  - marina employees not engaged in the construction, replacement, or expansion of the marina;

[5] Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917). In its decision, the Court cited Art. 3 §2 of the Constitution, which extends the judicial authority of the United States to admiralty and maritime matters and Art. 1 §8 of the Constitution, which grants Congress the power to make all laws necessary and proper to execute the powers of the federal government as the basis for its decision.

[6] P.L. 69-803.

[7] Longshoreman's and Harbor Workers Compensation Act Amendments of 1972, P.L. 92-576.

[8] 33 U.S.C. §§902(3) and 903(b).

  - suppliers, transporters, and vendors doing business temporarily at the site of a covered employer;
  - aquaculture workers; and
  - employees who build any recreational vessel under 65 feet in length, or repair any recreational vessel, or dismantle any part of a recreational vessel in connection with the repair of the vessel.[9]
- Workers, whether covered or not covered by a state workers' compensation law, including
  - masters and crew members of vessels;[10]
  - persons engaged by the master of a vessel to unload any vessel under 18 tons net; and
  - employees of the federal government, or any state, local, or foreign government or any subdivision of such a government.

2009 Amendment to the LHWCA

Section 803 of the American Recovery and Reinvestment Act of 2009 (ARRA) modified one of the excluded classes of workers under the LHWCA by adding additional exclusions for persons who work on recreational vessels over 65 feet in length.[11] Prior to the amendment, Section 2(3)(F) of the LHWCA read as follows:

> (3) The term "employee" means…but such term does not include…
>
> (F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length.

This section, as amended, reads as follows (with additions in italics):

> (3) The term "employee" means…but such term does not include…
>
> (F) individuals employed to build any recreational vessel under sixty-five feet in length, *or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel.*[12]

By granting an exemption from the LHWCA to persons engaged in the repair of any recreation vessel, regardless of its size, this amendment limits the scope of the LHWCA and increases the types of workers excluded from coverage.

[9] This provision was amended by Section 803 of the American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5.

[10] Masters and crew members of private vessels on the navigable waters of the United States are not covered by any workers' compensation laws. They can, however, bring civil actions against their employers under the Merchant Marine Act of 1920 [46 U.S.C. §§30104 et seq.], commonly referred to as the Jones Act. Civil service mariners working on government-owned ships, such as those of the Military Sealift Command, are federal employees and are covered by the Federal Employees' Compensation Act.

[11] P.L. 111-5.

[12] 33 U.S.C. §902(3)(F).

2011 DOL Regulations Defining Recreational Vessel

In 2011, the DOL promulgated implementing regulations for the new recreational vessel provision provided by Section 803 of ARRA.[13] These regulations provided definitions of recreational vessel for the purposes of the determination of LHWCA coverage. These definitions are based on the classification of vessels used by the U.S. Coast Guard (USCG) and provided in statute and regulation.

General Definition

Specifically, under these current DOL regulations, a vessel *is considered a recreational vessel* if the vessel is

- being manufactured or operated mainly for pleasure or
- leased, rented, or chartered to another person for his or her pleasure.[14]

Definition for Vessel Being Built or Repaired Under Warranty

In addition, for a vessel being built or repaired under warranty by its manufacturer or builder, the vessel *is considered a recreational vessel* if it appears based on its design and construction to be intended for recreational uses.[15] The manufacturer or builder bears the burden under this regulation to establish that the vessel is a recreational vessel.

Definition for Vessel Being Repaired or Dismantled

For a vessel being repaired, dismantled for repair, or dismantled at the end of its life (ship breaking), the vessel is *not considered a recreational vessel* if it was operating, more than infrequently, in one of the following categories provided in the *U.S. Code*:

- "passenger vessel" (46 U.S.C. §2101(22));
- "small passenger vessel" (46 U.S.C. §2101(35));
- "uninspected passenger vessel" (46 U.S.C. §2101(42));
- vessel routinely engaged in "commercial service" (46 U.S.C. §2101(5)); or
- vessel that routinely carries "passengers for hire" (46 U.S.C. §2101(21a)).[16]

A vessel being repaired, dismantled for repair, or dismantled at the end of its life *is considered a recreational vessel* if the vessel is a public vessel owned, or bareboat chartered, by the federal government or a state or local government and shares elements of design and construction with traditional recreational vessels and is not used for military or commercial purposes.[17]

[13] Department of Labor, "Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels," 76 *Federal Register* 82128, December 30, 2011.

[14] 20 C.F.R. §701.501(a).

[15] 20 C.F.R. §701.501(b)(1).

[16] 20 C.F.R. §701.501(b)(2).

[17] 20 C.F.R. §701.501(b)(3). In a bareboat the charter, the vessel, but not the crew, is chartered.

Legislation to Change the DOL's Definition of Recreational Vessel

Since the promulgation of the DOL's 2011 rules providing regulatory definitions of recreational vessels for the purposes of the LHWCA, numerous bills have been introduced that would, if enacted, remove the existing regulatory definitions for a vessel being repaired, dismantled for repair, or dismantled at the end of its life so that the USCG categories of vessels provided in Section 2101 of Title 46 of the *United States Code* would no longer be used in the classification of such a vessel under the LHWCA.[18] This legislation would expand the types of recreational vessels. Because persons who work on recreational vessels are not covered by the LHWCA, the legislation would allow employers to purchase workers' compensation for these workers under state laws rather than the LHWCA, which, due to the more generous benefits frequently offered by the LHWCA and the limited number of providers, may be more expensive.

In the 115th Congress, Section 3509 of H.R. 2810, the National Defense Authorization Act for 2018 (NDAA), as initially passed by the House of Representatives on July 14, 2017, contained this legislative provision. This provision was not included in the Senate version of the bill or in the final NDAA enacted into law.[19]

Extensions of Coverage Under the LHWCA

The LHWCA has been amended four times to extend coverage to occupations outside the original scope of the law. In 1928, coverage was extended to *employees of the District of Columbia*.[20] The provision was repealed, effective for all injuries occurring on or after July 26, 1982, with the enactment by the District of Columbia government of the District of Columbia Workers' Compensation Act of 1982.[21] Benefits for injuries that occurred prior to July 26, 1982, continue to be paid under the LHWCA.

Coverage was extended to *overseas military and public works contractors* in 1941 with the enactment of the Defense Base Act.[22] In 1952, coverage was extended to *civilian employees of nonappropriated fund instrumentalities of the armed forces*, such as service clubs and post exchanges.[23] Coverage was extended in 1953 to *employees working on the Outer Continental Shelf in the exploration and the development of natural resources*, such as workers on offshore oil platforms.[24]

Insurance and Financing

Employers required by the LHWCA to provide workers' compensation coverage to their employees may either purchase private insurance or self-insure. The DOL is responsible for authorizing insurance carriers to provide coverage under the LHWCA program and for authorizing companies to self-insure. However, the DOL does not set or regulate insurance premiums. These insurance arrangements are the primary means of providing LHWCA benefits

[18] See for example H.R. 2354 in the 115th Congress.

[19] P.L. 115-91.

[20] District of Columbia Workmen's Compensation Act of 1928, P.L. 70-419.

[21] D.C. Code §§36-501 et seq.

[22] P.L. 77-208.

[23] Nonappropriated Fund Instrumentalities Act, P.L. 82-397.

[24] Outer Continental Shelf Lands Act, P.L. 83-212.

to injured, sick, and deceased workers and their families. General revenue is not used to pay any LHWCA benefits.

Special Fund

The DOL operates the Special Fund to provide LHWCA benefits in cases in which the responsible employer or insurance carrier cannot pay or in which benefits must be paid for a second injury under Section 8(f) of the LHWCA.[25] The Special Fund is financed through an annual assessment charged to employers and insurance carriers based on the previous year's claims, payments required when an employee dies without any survivors, disability payments due to an employee without survivors after his or her death, and penalties and fines assessed for noncompliance with LHWCA program rules.

Administrative Costs

The administrative costs associated with the LHWCA are largely provided by general revenue. General revenue is used to pay for most oversight functions associated with the LHWCA and the processing of LHWCA claims. General revenue is also used to pay legal and investigative costs associated with the DOL Office of the Solicitor and Office of the Inspector General. Revenue from the Special Fund is used to finance oversight activities related to the Special Fund and the program's vocational rehabilitation activities.

LHWCA Benefits

The LHWCA provides medical benefits for covered injuries and illnesses and disability benefits to partially cover wages lost due to covered injuries or illnesses, and it provides survivors' benefits to the families of workers who die on the job.

Medical Benefits

The LHWCA provides medical benefits to fully cover the cost of any medical treatment associated with a covered injury or illness. These medical benefits are provided without any deductibles, copayments, or costs paid by the injured worker. Prescription drugs and medical procedures are fully covered, as are costs associated with travelling to and from medical appointments. A covered worker may select his or her own treating physician, provided the physician has not been debarred from the LHWCA program for violating program rules.

Vocational Rehabilitation

Covered workers are entitled to vocational rehabilitation services provided under the LHWCA. Vocational rehabilitation services are designed to assist the covered worker in returning to employment. There is no cost to the covered worker for vocational rehabilitation and workers

[25] 33 U.S.C. §908(f). A second injury is covered by Section 8(f) if an employee who was previously partially disabled on the job incurs a subsequent injury that renders him or her totally disabled. The use of special funds for second injuries is designed to lessen the risks associated with hiring partially disabled employees who may become totally disabled from injuries that would not normally totally disable other employees. Recently, states have been closing their second injury funds, in part because of the employment discrimination protections provided by the Americans with Disabilities Act [42 U.S.C. §§12101 et seq.] and difficulties in administering and financing the funds. For additional information on second injury funds, see Robert K. Briscoe and Robert J. Mayer, "The Rise and Fall of Second Injury Funds," *Risk and Insurance*, vol. 18, no. 11 (2007).

actively participating in a rehabilitation program are entitled to an additional benefit of $25 per week. All costs associated with vocational rehabilitation under the LHWCA are paid out of the Special Fund. Vocational rehabilitation services may be provided by public or private rehabilitation agencies.

Disability Benefits

The LHWCA provides disability benefits to covered workers to partially cover wages lost due to the inability to work because of a covered injury or illness. The amount of disability benefits is based on the worker's pre-disability wage, subject to maximum and minimum benefits based on the National Average Weekly Wage (NAWW) as determined by the DOL. The NAWW is updated October 1 of each year and is based on average wages across the United States for the three calendar quarters ending on June 30 of that year. The minimum weekly benefit that can be paid to a covered employee is equal to 50% of the NAWW and the maximum weekly benefit that can be paid is equal to 200% of the NAWW.[26]

Disability benefits under the LHWCA, like all workers' compensation benefits, are not subject to federal income taxes.[27] Unlike most state workers' compensation benefits, however, LHWCA benefits are adjusted based on wage inflation rather than price inflation. Benefits are adjusted annually each October 1 to reflect the change in the NAWW from the previous year, up to a maximum increase of 5%.

Total Disability Benefits

The LHWCA provides benefits in cases of total disability. Under the LHWCA, a worker is considered totally disabled if he or she is unable to earn his or her pre-injury wage because of a covered injury or illness. In addition, a worker is also considered totally disabled if he or she loses both hands, arms, feet, legs, or eyes, or any two of these body systems, such as the loss of one arm and one leg. Total disability benefits under the LHWCA are equal to two-thirds of the covered worker's wage at the time of the injury or illness. Total disability benefits continue until the worker is no longer totally disabled or dies.

Partial Disability Benefits

If a covered worker is able to partially return to work or return to work at a wage level less than his or her wage at the time of injury, then he or she is considered partially disabled. In cases of temporary partial disability, the LHWCA benefit is equal to two-thirds of the difference between the workers' pre-injury wage and his or her current earning capacity or actual earnings.

Permanent Partial Disability Benefits

Section 8(c) of the LHWCA provides a schedule of benefits to be paid in cases of permanent partial disability (PPD), such as the loss of a limb.[28] The benefit schedule provides the number of weeks of compensation, at two-thirds of the pre-injury wage, for each type of PPD. For example,

[26] For additional information on the NAWW, see the website of the DOL at http://www.dol.gov/owcp/dlhwc/NAWWinfo.htm.

[27] For additional information on the exclusion from federal income taxes of workers' compensation benefits, see U.S. Congress, Senate Committee on the Budget, *Tax Expenditures: Compendium of Background Material on Individual Provisions*, committee print, prepared by Congressional Research Service, 114th Cong., 2nd sess., December 2016, S. Prt. 114-31 (Washington: GPO, 2017), pp. 921-926.

[28] 33 U.S.C. §908(c).

the LHWCA schedule provides that a worker who loses an arm is entitled to 312 weeks of compensation. Benefits in cases not listed on the schedule are paid at two-thirds of the difference between the pre-injury wage and current earning capacity for the duration of the disability. Schedule benefits for PPD are paid regardless of the current work status or earnings capacity of the employee. Thus, an employee with a PPD can fully return to work and earn his or her wage in addition to the PPD compensation. A copy of the LHWCA PPD schedule can be found in the **Appendix** to this report.

Disability After Retirement

If a worker has an illness that was caused by his or her covered employment but did not manifest itself until after his or her retirement, then he or she is entitled to disability benefits equal to two-thirds of the NAWW multiplied by the percentage of his or her impairment. The percentage of impairment is determined using the current edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*), or another professionally recognized source if the condition is not listed in the AMA *Guides.*[29]

Survivors' Benefits

The LHWCA provides cash benefits to the surviving spouses and minor children of workers killed on the job. Benefits for a surviving spouse end when the spouse remarries or dies and benefits for surviving children continue until the children reach the age of 18, age 23 if a full-time student, or for the life a child with a disability.[30]

A surviving spouse with no eligible children is entitled to one-half of the deceased worker's wage at the time of death under the LHWCA. A surviving spouse with one or more eligible children is entitled to two-thirds of the deceased worker's wage at the time of death. Once all children become ineligible for benefits because of their ages, the surviving spouse's benefit is reduced to the level of a spouse without any eligible children.

If an eligible spouse becomes ineligible for benefits because of death or remarriage, or if there is no surviving spouse, benefits are still paid to any surviving children. Under the LHWCA, a single surviving eligible child is entitled to one-half of the deceased worker's wage at the time of death, and two or more surviving children are eligible for a combined two-thirds of the wage at the time of death.

The survivors of a covered worker killed on the job are entitled under the LHWCA to a cash payment to provide for the burial and funeral of the deceased. The burial and funeral allowance is capped by Section 9(a) of the LHWCA at $3,000, and this cap not adjusted to reflect changes in prices or wages.[31]

If a covered worker who is receiving scheduled PPD benefits dies of a cause unrelated to his or her illness or injury, then the balance of any remaining PPD benefits is paid to his or her survivors. If a covered worker who dies on the job leaves no survivors, his or her employer or the employer's insurance carrier is required to pay $5,000 into the Special Fund.

[29] For additional information on the AMA *Guides*, see *Guides to the Evaluation of Permanent Impairment*, ed. Robert D. Rondinelli, 6th ed. (Chicago: American Medical Association, 2008); and Steven Babitsky and James J. Mangraviti, Jr., *Understanding the AMA Guides in Workers' Compensation*, 4th ed. (Austin, TX: Aspen Publishers, 2008).

[30] A surviving spouse is entitled to a lump-sum payment equal to two-years of benefits upon remarriage.

[31] 33 U.S.C. §909(a).

LHWCA Claims Process

Although the responsibility for the payment of benefits under the LHWCA rests with the employer or the employer's insurance company, decisions on benefit eligibility and the amount of benefits are made by the DOL. Upon the report of an injury, illness, or death, the LHWCA claims process begins. If the employer or insurance carrier does not controvert the claim, then arrangements are made by the DOL for the claim to be paid.

If, however, the employer controverts any part of the claim, then the DOL sets up an informal conference, either in person or by phone, between the employer or insurance carrier and worker with the goal of resolving any disputes over the claim. If this informal conference fails to resolve all outstanding disputes, then a formal hearing before a DOL administrative law judge (ALJ) is scheduled. If the employer or insurance carrier or the worker is dissatisfied with the decision of the ALJ, then this decision may be appealed to the Benefits Review Board (BRB). The BRB is made up of five members appointed by the Secretary of Labor. Either party dissatisfied with the decision of the BRB may file a petition with the U.S. Court of Appeals for the circuit in which the injury occurred praying that the BRB's decision be set aside or modified.

If an employer or insurance carrier fails to pay compensation in accordance with a final decision on a claim, the covered worker or the DOL may request that the U.S. District Court order that payment be made.

LHWCA and COVID-19

Covered workers who contract Coronavirus Disease 2019 (COVID-19) in the course of their employment may be eligible for LHWCA benefits. However, due to the nature of COVID-19 transmission, including the lack of complete understanding about how SARS-CoV-2, the virus that causes COVID-19, is transmitted by asymptomatic individuals and how long the virus can remain viable on a variety of surfaces, there is concern that demonstrating a link between employment and COVID-19 could prove difficult for some employees, preventing them from receiving LHWCA benefits.

Legislation in the 116th and 117th Congresses to Create a Presumption of Eligibility for COVID-19 Cases

Legislation in the 116th Congress: H.R. 6800, the HEROES Act

In the 116th Congress, H.R. 6800, the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act), included a provision that would have created a presumption of LHWCA eligibility for covered workers who have COVID-19 or are unable to work because of COVID-19. The costs of providing benefits determined in accordance with this presumption would have been reimbursed by the Special Fund if the employer was in compliance with applicable guidelines and standards issued by the Occupational Safety and Health Administration (OSHA) and other federal, state, and local authorities. This provision was included in the version of H.R. 6800 that passed the House, but no provision establishing a presumption of LHWCA eligibility for COVID-19 became law in the 116th Congress.

Legislation in the 117th Congress: H.R. 1319, the American Rescue Plan Act of 2021

Section 2104 of H.R. 1319, the American Rescue Plan Act of 2021, as passed by the House of Representatives, would create a presumption of LHWCA eligibility for covered employees with COVID-19.[32] This provision was not included in the version of H.R. 1319 passed by the Senate.

The presumption in the provision passed by the House would apply to any person working in covered employment at any time between January 27, 2020, and January 27, 2023, who meets one of the following conditions:

- at any time between January 27, 2020, and January 27, 2023, the employee was diagnosed with COVID-19; or
- at any time between January 27, 2020, and January 27, 2023, the employee was ordered not to work by the employer or a federal, state, or local agency because of exposure or the risk of exposure to persons diagnosed with COVID-19 in the workplace.

Reimbursement of Employers and Insurers

An employer or employer's insurance carrier that pays LHWCA benefits provided by the provision passed by the House could be reimbursed from the Longshore COVID-19 Fund created in the bill for the cost of those benefits and reasonable expenses related to the claim. To receive the reimbursement, an employer would have to be in compliance with all applicable guidelines and standards related to the prevention of COVID-19 in the workplace, including guidelines and standards issued by OSHA. For an insurance carrier to receive the reimbursement, the carrier would have to be providing insurance for an employer that meets all applicable COVID-19 prevention guidelines and standards and the carrier would be prohibited from adjusting the experience rating or premiums charged to an employer because of COVID-19 claims subject to this reimbursement. The legislation passed by the House would appropriate from the general fund such sums as necessary to reimburse the Longshore COVID-19 Fund for COVID-19 reimbursements.

Limitation on Reimbursement

The authorization to reimburse employers and insurers for the costs of LHWCA benefits paid based on determinations of eligibility in accordance with the COVID-19 presumption would end on September 30, 2030. After that date, LHWCA benefits based on the COVID-19 presumption would continue to be paid by the responsible employers or insurers without the opportunity for the employers or insurers to be reimbursed for these benefit costs.

[32] Pursuant to H.Res. 176, this section was redesignated as Section 2103 after passage by the House.

Appendix. Benefits Schedule for LHWCA PPD

Table A-1. Scheduled Benefits for Permanent Partial Disability Under the Longshore and Harbor Workers' Compensation Act

Injury	Maximum Duration of Benefits in Weeks
Loss of arm	312
Loss of leg	288
Loss of hand	244
Loss of foot	205
Loss of eye	160
Loss of thumb	75
Loss of first finger	46
Loss of second finger	30
Loss of third finger	25
Loss of fourth finger	15
Loss of great toe	38
Loss of toe other than great toe	16
Loss of hearing in one ear	52
Loss of hearing in both ears	200
Disfigurement	One-time payment of $7,500

Source: 33 U.S.C. §908(c).

Notes: The loss of use of a body system is paid the same as the complete loss of the system. Benefits for a partial loss of a system are paid for a percentage of the maximum duration equal to the percentage of loss.

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