

Benefits Under the Defense Base Act

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U.S. Department of Labor
Office of Workers' Compensation (OWCP)
Division of Longshore and Harbor Workers' Compensation (DLHWC)

LHWCA and extensions:

- **Longshore and Harbor Workers' Compensation Act (LHWCA)**
33 U.S.C. §901 *et seq.*;
- **Outer Continental Shelf Lands Act (OCSLA)**
43 U.S.C. § 1331 *et. seq.*;
- **Non-Appropriated Funds Instrumentality Act (NAFIA)**
5 U.S.C. § 8171 *et. seq.*;
- **Defense Base Act (DBA)**
42 U.S.C. § 1651 *et. seq.*; and
- **War Hazards Compensation Act (WHCA)**
42 U.S.C. § 1701 *et. seq.*

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<http://www.dol.gov/esa/owcp/dlhwc/lstable.htm>

What is Covered? Benefits Under the DBA

Resource:

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

- **Disability Compensation**
- **Medical Treatment**
- **Death Benefits**
- **Vocational Rehabilitation**

Medical Benefits

Reference: 33 U.S.C. §907

- **Medical treatment by a physician of the employee's choice**
- **Medical care must be related to the employment injury or illness**
- **Medical treatment is payable for as long as the injury or illness requires**
- **Opinion of treating physician is entitled to greater weight over employer/carrier examination**

Compensation Types

- **What are the types of disability?**
Temporary Total Disability (TTD), Temporary Partial Disability (TPD), Permanent Total Disability (PTD), Permanent Partial Disability (PPD). PPD can be scheduled or unscheduled.
 - **Temporary Total Disability (TTD)**
 $\frac{2}{3}$ of the Average Weekly Wage (AWW)
e.g. AWW = \$1500
TTD = \$1500 x $\frac{2}{3}$ = \$1000
 - **Temporary Partial Disability (TPD)**
Compensation for Loss of Wage Earning Capacity (LWEC)
 $\frac{2}{3}$ of employee's loss of wages
e.g. Earnings prior to injury = \$1500
Earnings after injury = $\frac{\$ 500}{\$1000}$
- TPD = \$1000 x $\frac{2}{3}$ = \$666.67 per week**

Compensation Types – cont.

- **Permanent Total Disability**
 - **Compensation rate is $\frac{2}{3}$ of the AWW**
- **Permanent Partial Disability**
 - **$\frac{2}{3}$ of employee's loss of earning capacity, or**
 - **Total disability for a defined number of weeks for a percentage of permanent impairment of a scheduled body part under Section 8(c)(1)-(20).**

Death Benefits

- **Burial Expenses of up to \$3,000.**
- **50% of AWW for the surviving spouse, or if no spouse, for one surviving child.**
- **16²/₃% of AWW for one or more surviving children, shared equally, in addition to the 50% for spouse and one child.**
- **Child benefit is paid up to age 18, student benefit through age 23 if in school full-time.**

Average Weekly Wage

- **Determination of AWW is based upon “average annual earnings” divided by 52 weeks.**
- **Preferred method is Section 910(a), which uses claimant’s actual earnings for year prior to injury if claimant is a 5- or 6-day worker and has worked “substantially” the whole of the year.**
- **Alternatively, Section 910(b) uses earnings of a similarly situated worker.**
- **The last alternative is Section 910(c), which is the “catch-all” provision.**
- **Compensation rate is calculated by multiplying AWW by 66²/₃% (or ²/₃).**

Compensation Rate

- **Compensation is subject to a Maximum Compensation Rate, which is adjusted annually.**
- **Maximum Rate = \$1,073.64 per week effective 10/1/05**
- **There is no Minimum Compensation Rate under the DBA**

Annual Adjustment

- **Permanent total disability and death benefits are subject to annual adjustment (increase) based on U.S. national average weekly earnings as reported by the Bureau of Labor Statistics.**
- **Annual adjustments are applied on October 1 of each year.**

Lifetime Payments

Permanent disability is payable as long as disability continues. Spousal death benefit is payable for life, unless remarried.

EXAMPLE:

A 40 year old earning \$1500/week can expect to receive permanent total disability benefits over his 35 year life expectancy:

$\frac{2}{3}(\$1,500) \times 52 \text{ weeks} \times 35 \text{ years} = \$1,820,000$, not including cost of living adjustments

Widow(er)'s benefits

- **If the same employee had been killed, his 30 year old widow and 2 infant children will receive over the life of the claim in excess of \$2,000,000, not including annual adjustments.**
- **Widow @ \$750 x 52 weeks x 45 years
= \$1,755,000**
- **Children @ \$250 x 52 weeks x 21 years
= \$273,000**

Commutation

- **Permanent disability and death benefits payable to aliens and non-US citizens residing outside the US may be commuted.**
- **Commutated benefit is equal to one half of the present value of future compensation, paid in one lump sum.**

Vocational Rehabilitation Benefits

- Vocational Rehabilitation services for permanently disabled employees unable to return to employment without assistance.
- Services can include placement with previous employer in a modified position, placement with a new employer, or retraining.
- Currently rehabilitation services are only available to those permanently disabled employees residing in the United States.
- Cost of vocational rehabilitation is paid for by the U.S. Department of Labor, although claimant may be entitled to Temporary Total Disability during retraining.

QUESTIONS?