

**Department of Labor
OWCP
Defense Base Act Seminar**

Insurance and Waivers

Insurance

- The provisions of the Longshore and Harbor Workers' Compensation Act and the Regulations issued there under apply to the Defense Base Act
- 4(a) makes the employer
 - Liable for the benefits
 - Obligated to secure the benefits
- 32(a) (1) provides for insurance by an authorized carrier
- 32(a) (2) provides for self-insurance

Insurance

- 5(a) Failure to secure payment allows employee either to collect compensation, or to sue employer for damages
- The defenses of “fellow servant”, “assumption of risk” and “contributory negligence” are not available
- 38(a) The corporation and its president, secretary and treasurer are severally liable for a fine of \$10,000 and imprisonment for not more than one year.
- The president, treasurer and secretary are also severally liable jointly with the company for the benefits during the period it fails to secure compensation

Insurance

- Failure to report a claim carries a separate penalty of up to \$11,000.
- Failure to report a claim waives the time bar
- Failure to controvert a claim requires 10% additional compensation for each amount unpaid.

Insurance

- The Employer must not be
 - Uninsured
 - Insured by an unauthorized carrier
 - Insured by an authorized carrier, but have no DBA endorsement
 - Operating under a waiver which is not effective

- The Employer is responsible, not
 - The broker or agent
 - The government contraction officer
 - The insurance company
 - The attorney
 - The Department of Labor

Reasons not to forget the DBA

Avoid explaining to your CEO

1. Why he spent the morning hanging about the criminal court
2. Why he needs his own lawyer as well as a company lawyer
3. Why he needs his own civil lawyer as well as a company lawyer to defend the civil suit
4. Why a compensation case is now a \$50m. Lawsuit
5. Why all this is happening because of a sub contractor
6. Why the contract was given at the low bid and he has to pay for the premiums without reimbursement
7. How he can explain this to the Treasurer and Secretary

Reasons not to forget the DBA

Brokers

1. Only one endorsement is needed for people flying from MS to LA for corporate orientation, then to TX for training then to VA for transfer to Jordan and then Iraq.
2. You are compensated for providing cover
3. You are at risk of an E & O claim if you do not

Waivers

- The Secretary of Labor
 - On the recommendation of
 - The head of
 - Any department or agency
 - In the exercise of her discretion, may
 - Waive the application of this section with respect to
 - Any contract, subcontract or subordinate contract
 - Work location under such contracts
 - Or classification of employees

Waivers

- Waivers are routinely granted when
 - Submitted by the proper person
 - In the proper form
 - Subject to limits and conditions

- Waivers apply to Guam to all employees including US nationals.

Waivers

- Do not apply to
 - US Citizens
 - People hired in the US
 - Legal residents of the US
- Do not apply unless waived employees will receive compensation under local laws providing for workers' compensation for injuries, illness or death.

Waivers

- Federal Agencies should insert in every contract and cause to be inserted in every subcontract and subsidiary contract
- That each contractor before commencing performance
- Provide and maintain
- For all waived employees
- Workers compensation insurance as required by the law of the place of the work
- With no exclusion for war hazards

Waivers

- If there is no local workers compensation law
 - Local and third country Nationals are covered under DBA
- If a worker is NOT covered by another compensation act for any reason
 - Employers face penalties
 - Brokers face E & O claims
- If in doubt, buy protection