

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

Defense Base Act
History and Purpose of The Act

- 1. Passed in 1942 amended later**
- 2. To cover overseas civilian workers**
- 3. On government contracts**
- 4. Whether US or foreign nationals**

Milestones in the History of the Act

- 1941 Act passed to protect workers on lend-lease military bases.
- 12/2/1942 War Hazards Act passed
 - DBA amended to cover employees outside the US
 - Payment for injuries due to war risk
 - Reimbursement to carriers
 - Benefits for captured contractor employees

Milestones in the History of the Act

- 1953 World War II references altered to national defense.
- 1958 Includes welfare or morale organizations
 - Defines “public work” to include fixed and moveable projects and
 - » Service projects
 - Eliminates exclusion of non-citizens
- Mutual Security Act extends DBA cover to employees working abroad under contracts financed by the MSA

Milestones in the History of the Act

- 1958 Clarifies that service contracts, even those which do not directly provide for “construction, alteration, removal or repair”, are included in the definition of public work.

Warning

- Our office can only offer general information about the administration of the Act, and our responses to questions from the public should not be construed as legal opinion or advice.
- “It is not our choice how the courts will decide”.

The Six Gates to Cover

1. Any defense base acquired from any foreign government
2. Lands occupied or used by the US for military purposes outside the continental US
3. Public work in any Territory or possession under a contract with the US
4. Public work outside the US not covered under (3)
5. Contract outside the US approved and financed by the US.
6. Welfare or similar services outside the US for troops authorized by DOD.

The Gates

Employment at any defense base acquired by the United States from any foreign government after January 1, 1940

The Gates

Lands occupied or used by the US for military purposes outside the continental US

The Gates

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The Gates

Public Work has been judicially broken down as

1. Related to fixed improvements , or any projects fixed or not for public use to the US or its allies involving construction, alteration, removal or repair
2. Projects or operations under service contracts
 1. In connection with national defense & war activities
 2. Specific category projects
 - Dredging, harbor improvements, dams, roadways and housing
3. Ancillary and Preparatory work for these.

The Gates

Work under 1 above must be

- construction or alteration and
- For the public use of the US or its allies

Work under 2 and 3 need not involve construction but

- Must be related to national defense, war activities or a public use of the US.

Exceptions

- Grants

There is a difference between a contract and a grant

There is a difference between cover based
on location and
on employment

Grants for work on locations not used for military
purposes are not covered.

Exceptions

- Employed exclusively in furnishing materials or supplies under his contract.

- Exclusively employed.

Cover

- Cover under the contract attaches when the employee becomes an employee,
- So compensation arises from employment status without regard to where the injury occurred.
- An injury in the US may therefore be compensable.

Cover

- Cover applies to employees
- There is no exclusion for directors or officers
- There is no exclusion for companies with a minimum number of employees
- If the sub-contractor has no insurance, the contractor is responsible
- “Independent contractors” may well be covered
- If the injured party is not an employee, the employer may be liable in tort

Cover

- Cover applies when the injury is in the course and scope of employment
- Because of the special nature of DBA cover for US employees, course and scope is broadly interpreted
- Under the “zone of special danger” rules injuries during the period of employment but not related to job duties may be covered.

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.

The Defense Base Act

1. Is not limited to defense or bases
2. Applies to employees not just US nationals
3. Applies subcontractors at any level or degree of separation
4. Applies to foreign companies hiring third county nationals
5. Applies regardless of the employment contract
6. Applies regardless of length of employment
7. Applies to corporate officers
8. Applies to contracts administered by foreign governments

The Defense Base Act

9. Applies to contracts if the prime contractor, the administrator and employees are all foreign nationals
10. Cannot be waived by agencies on grounds of cost
11. Cannot be waived if there is no local workers' compensation act
12. Cannot be waived on grounds of country of origin of worker
13. Does not include the Longshore Act minimum compensation rate
14. Applies to injuries occurring within the US

The Defense Base Act

15. Is the employer's exclusive liability and the employee's exclusive remedy
16. Applies to injuries during employment not just on the job
17. Has constant unanswered questions. These include
 1. Independent contractors
 2. Grants v. contracts
 3. Supply contracts
 4. Religious workers