



DEFENSE BASE ACT (DBA)

FREQUENTLY ASKED QUESTIONS (FAQ)

May 2005

1. What is the Defense Base Act (DBA)?
2. Who is covered under the DBA?
3. What does "public work" mean?
4. Is work performed pursuant to a grant covered under the DBA?
5. Who administers the DBA?
6. Where should new claims arising out of Iraq and Afghanistan be filed?
7. What types of benefits are available under the DBA?
8. Are there any payment provisions specific to aliens and non-U.S. residents?
9. What should I do if I get injured at work?
10. How do I obtain medical treatment for my injuries?
11. How do I obtain compensation for my disability?
12. How do I give notice of my injury to my employer?
13. How do I file a claim for compensation based on my injury?
14. How do I obtain death benefits?
15. What should an employer do upon notice of an employee's injury?
16. What services do the OWCP district offices provide?
17. What if the parties to the claim are unable to resolve their dispute(s) informally?
18. How do I contact the OWCP district office?
19. What are the insurance requirements under the DBA?
20. Who is authorized to write DBA coverage?
21. Must an employer acquire DBA coverage for foreign nationals?
22. What if an employer fails to secure payment of compensation as required by the DBA?
23. Does the Department of Labor regulate DBA insurance premium rates?
24. What is a waiver?
25. How does one obtain a waiver?
26. Can an employer voluntarily provide DBA benefits even if a waiver is in place?
27. What is the employer posting requirement under the DBA?
28. Why is the Form LS-241 or LS-242 not available for download from the internet?
29. Where can I obtain Longshore forms?

1. What is the Defense Base Act (DBA)?

The DBA is an extension of the Longshore and Harbor Workers' Compensation Act (LHWCA) which provides disability compensation and medical benefits to employees and death benefits to eligible survivors of employees of U.S. government contractors who perform work overseas. With a few exceptions, the DBA incorporates the provisions of the LHWCA.

2. Who is covered under the DBA?

The Defense Base Act covers the following employment activities:

- Work for private employers on U.S. military bases or on any lands used by the U.S. for military purposes outside of the United States, including those in U.S. Territories and possessions;
- Work on public work contracts with any U.S. government agency, including construction and service contracts in connection with national defense or with war activities outside the United States;
- Work on contracts approved and funded by the U.S. under the Foreign Assistance Act, which among other things provides for cash sale of military equipment, materials, and services to its allies, if the contract is performed outside of the United States;
- Work for American employers providing welfare or similar services outside the United States for the benefit of the Armed Services, e.g. the United Service Organizations (USO).

If any one of the above criteria is met, all employees engaged in such employment, regardless of nationality (including U.S. citizens and residents, host country nationals (local hires), and third country nationals (individuals hired from another country to work in the host country)), are covered under the Act.

3. What does “public work” mean?

“Public work” is defined in the Act as any fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies. However, “public work” is not limited to construction. It includes any project or operation under service contracts and projects in connection with the national defense or with war activities.

4. Is work performed pursuant to a grant covered under the DBA?

Although this issue has been addressed by a court of law in only one instance, the Department of Labor has adopted a position consistent with the decision of the U.S. Court of Appeals for the Second Circuit in University of Rochester v. Hartman (Vishniac), 618 F.2d 170 (2nd Cir. 1980), that work performed pursuant to a grant is not covered under the DBA.

5. Who administers the DBA?

The U. S. Department of Labor, Office of Workers’ Compensation Programs (OWCP), Division of Longshore and Harbor Workers’ Compensation (DLHWC), administers the DBA through eleven district offices located throughout the United States.

6. Where should new Defense Base Act claims be filed?

Defense Base Act claims should be filed in the Longshore District Office responsible for the geographic area where the injury or death occurred. The geographic boundaries of the District Offices can be viewed at <http://www.dol.gov/esa/owcp/dlhwc/dbajurisdictions.htm>.

For example, a claim arising out of injuries sustained in **Iraq** and **Afghanistan** should be filed with the New York Longshore District Office, Post Office Box 249, 201 Varick Street, Room 740, New York, NY 10014, telephone (646)264-3010, fax (646) 264-3002. A claim for an injury or death which occurred in **Europe**, **Africa**, or **Central** and **South America** should also be filed in New York..

Claims based on **Vietnam** era Agent Orange exposure should be filed in the Honolulu District Office, U.S. Department of Labor, ESA/OWCP/DLHWC, 300 Ala Moana Blvd., Room 5-135, Post Office Box 50209, Honolulu, HI 96850, telephone (808) 541-1983, fax (808) 541-1758.

7. What types of benefits are available under the DBA?

The Defense Base Act provides disability and medical benefits to covered employees injured in the course of employment and death benefits to eligible survivors of employees killed in the course of employment. Compensation for total disability is two-thirds of the employee's average weekly earnings, up to a current maximum of **\$1,114.44** per week. Compensation is also payable for partial loss of earnings.

Death benefits are paid at the rate of one-half of the employee's average weekly earnings to a surviving spouse or one child, or two-thirds of average weekly earnings for two or more eligible survivors up to the current maximum rate of **\$1,114.44** per week. The Defense Base Act also incorporates the LHWCA's provision for payment of reasonable funeral expenses not exceeding \$3,000.00.

Permanent total disability and death benefits may be payable for life, and are subject to annual cost of living adjustments. The LHWCA minimum benefits rate, however, does not apply to DBA claims.

The injured employee is also entitled to medical treatment by a physician of his/her choice, as the injury may require.

8. Are there any payment provisions that are specific to aliens and non-U.S. residents?

Yes. There are two such provisions:

- a) Cases involving aliens and non-U.S. residents can be resolved by commuting benefits paid for permanent disability and death. In such cases, a one-time lump sum payment may be issued by the employer/carrier representing half of the present value of future compensation as determined by the OWCP district director. Medical benefits may not be commuted.
- b) Death benefits may be paid only to the surviving spouse or child or children, or if no surviving spouse or child or children, to dependent parents.

9. What should I do if I get injured at work?

You should notify your employer immediately. If you need medical treatment, ask your employer to authorize treatment by a doctor of your choice.

10. How do I obtain medical treatment for my injuries?

If you need medical treatment for your work injury, ask your employer to authorize treatment by a doctor of your choice. If it is an emergency or if you are unable to contact your employer, go to the nearest hospital or physician, but be sure to let your employer know as soon as possible.

11. How do I obtain compensation for my disability?

If you are disabled more than 3 days, contact your employer or the insurance company for payment of compensation, which is payable 14 days after your employer has knowledge of injury.

12. How do I give notice of my injury to my employer?

Give written notice of your injury to your employer on Form LS-201 (Notice of Employee's Injury or Death) within 30 days. Additional time is provided for certain hearing loss and occupational disease claims.

13. How do I file a claim for compensation based on my injury?

File a written claim for compensation with the OWCP district office having jurisdiction of your claim on Form LS-203 (Employee's Claim for Compensation) within one year after the date of injury or last payment of compensation, whichever is later. The time for filing claims in certain occupational disease cases has been extended to two years.

14. How do I obtain death benefits?

Give written notice of the employee's death to the employer on Form LS-201 (Notice of Employee's Injury or Death) within 30 days. File a written claim for compensation on Form LS-262 (Claim for Death Benefits) with the OWCP district office having jurisdiction of your claim within one year after the date of the employee's death.

15. What should an employer do upon notice of an employee's injury?

The employer should notify its insurance carrier or, if it is self insured, its claims administrator, as soon as it has knowledge of an injury. Medical treatment, if needed, should be authorized immediately. An

Employer's First Report of Injury, Form LS-202, must be filed with the OWCP district office having jurisdiction within 10 days of the injury if it causes loss of one or more work shifts. The Form LS-202 may be filed electronically. For information and instructions, go to <http://www.dol.gov/esa/owcp/dlhwc/lforms.htm>.

Additional forms and notices, as well as medical reports, should be filed with the OWCP as regulations require.

16. What services do the OWCP district offices provide?

The OWCP district office monitors the payment of compensation and medical care to ensure compliance with the provisions of the Act. The district office staff also provides technical assistance to employers, insurance carriers, and claimants for the prompt delivery of benefits. In case of claim disputes, district office claims examiners conduct informal conferences to help the parties resolve their disputes by way of mutual agreement or compromise without formal litigation. The district director has authority to approve settlements and issue compensation awards in undisputed claims.

17. What if the parties to the claim are unable to resolve their dispute(s) informally?

If the parties are unable to resolve their dispute(s) informally, they may request referral of the claim to the Office of Administrative Law Judges (OALJ) for formal hearing. Decisions rendered by the administrative law judge may be appealed to the Benefits Review Board and thereafter, depending on where the claim is administered, to the U.S. District Court or to the U.S. Court of Appeals.

18. How do I contact the OWCP district office?

The DBA jurisdictional boundaries and the corresponding district office contact information can be viewed at <http://www.dol.gov/esa/owcp/dlhwc/dbajurisdictions.htm>. The contact information for other Longshore district offices can be viewed at <http://www.dol.gov/esa/owcp/dlhwc/lcontac.htm>.

19. What are the insurance requirements under the DBA?

The insurance requirements under the DBA are identical to those found in the LHWCA. The Longshore Act requires every employer (including contractors and subcontractors) either to secure insurance for the payment of workers' compensation benefits provided under the Act or to be permissibly self-insured. If a subcontractor fails to secure the payment of compensation, the contractor will be liable and will be required to secure the payment of such benefits.

20. Who is authorized to write DBA coverage?

The OWCP is responsible for the authorization of insurance carriers and self-insurance of employers. Over one hundred insurance carriers have been authorized to write Defense Base Act coverage. For a list of the currently authorized insurance carriers, see <http://www.dol.gov/esa/owcp/dlhwc/lcarrier.htm>.

Currently three major insurance carriers provide most of the Defense Base Act insurance coverage. They are ACE USA Companies, American International Group (AIG) Companies, and CNA.

21. Must an employer acquire DBA coverage for foreign nationals?

Yes. Benefits under the DBA are payable regardless of nationality. Therefore, employers should secure insurance coverage for all of their employees working outside the United States under a U.S. government contract, including U.S. citizens and residents, host country nationals (local hires), and third country nationals (hired from another country to perform work in the host country).

22. What if an employer fails to secure payment of compensation as required by the DBA?

If an employer fails to secure payment of compensation, an injured employee, or his/her survivors in case of death, may elect to sue the employer for tort damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee.

In addition, an employer who fails to secure the payment of compensation when required shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than one year, or both. If the employer is a corporation, the president, secretary, and treasurer shall also be severally liable for such fine and imprisonment. These three corporate officers shall also be personally liable, jointly and severally with the corporation, for any compensation or other benefit payable under the Act with respect to the injury or death of any of its employees.

23. Does the Department of Labor regulate DBA insurance premium rates?

The Department of Labor has no authority to regulate insurance premium rates. All authorized carriers are regulated by the states in which they operate.

24. What is a waiver?

The Secretary of Labor may waive application of the Defense Base Act with respect to any contract, work location, or class of employees upon the written request of the head of any department or other agency of the United States. It is Department of Labor policy that waivers do not apply to citizens or legal residents of the U.S. or to employees hired in the U.S. In addition, once granted, the waiver is only valid if alternative workers' compensation benefits are provided to the waived employees pursuant to applicable local law. If there are no local workers' compensation laws, the waiver has no effect and local and foreign nationals working under a U.S. contract are covered under the DBA.

25. How does one obtain a waiver?

The request for waiver must be made in writing on Form BEC 565, Request for Waiver – Defense Base Act, by the head of a department or agency of the United States government. The Form BEC 565 and other pertinent information should be submitted to the Director, OWCP, U.S. Department of Labor, ESA/OWCP, Division of Longshore and Harbor Workers' Compensation, 200 Constitution Avenue NW, Rm C-4315, Washington, DC 20210.

Copies of the Form BEC 565 may be obtained in writing from the Director, Division of Longshore and Harbor Workers' Compensation, at the same address, by email DLHWC-Public@dol.gov, or by calling the Longshore National Office at (202) 693-0038.

26. Can an employer voluntarily provide DBA benefits even if a waiver is in place?

Yes. There is no prohibition against providing DBA coverage for waived employees.

27. What is the employer's posting requirement under the DBA?

The DBA incorporates the LHWCA's provision that every employer who has secured compensation under the Act must keep posted in a conspicuous place in and about its place of business typewritten or printed notice on Forms LS-241 (Notice to Employees) or LS-242 (Notice to Employees for Self-Insured Employers). Such notice must also contain the name and address of the employer representative to whom notice of injury is given, and the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

28. Why is the Form LS-241 or Form LS 242 not available for download from the internet?

The Forms LS-241, Notice to Employees and LS-242, Notice to Employees (for Self-Insured Employers), are controlled forms and are not available to the general public. The employer receives the LS-241 from its insurance carrier upon confirmation of insurance coverage or renewal. The self-insured employer receives the Form LS-242 from the OWCP upon confirmation of its self-insurance authorization. For further information, contact the OWCP Longshore National Office at (202)693-0038 or DLHWC-Public@dol.gov.

29. Where can I obtain Longshore forms?

Some Longshore forms can be accessed electronically at <http://www.dol.gov/esa/owcp/dlhwc/lforms.htm>. Forms are also available at any Longshore district office. To request a form, or for additional information and assistance on how to complete the forms, you may also contact the district office having jurisdiction over your claim. See <http://www.dol.gov/esa/owcp/dlhwc/lcontac.htm>.