

September 22, 2004

Notice No. 118

NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE
LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AND OTHER
INTERESTED PERSONS

SUBJECT: Maximum and Minimum Compensation Rates Under the
Longshore Act, Effective October 1, 2004; Adjustments of
Permanent Total Disability and Death Cases

Section 6(b)(3) of the Longshore and Harbor Workers' Compensation Act provides that prior to October 1 of each year, based on the national average weekly wage for the three calendar quarters ending June 30 of that year, the Secretary of Labor shall determine the national average weekly wage (NAWW) to be applicable for the 12-month period beginning October 1. It has been determined that the applicable NAWW for the period beginning October 1, 2004, and ending September 30, 2005, is \$523.58.

Minimum and Maximum Rates

Section 6(b)(1) provides that the maximum rate of compensation under this Act shall not exceed 200 percent of the national average weekly wage. Therefore, the maximum compensation rate for total disability and death is \$1,047.16 (200 percent of \$523.58). Compensation for disability subject to this maximum should be paid at 66 2/3 percent of the employee's average weekly wage, as determined under Section 10, subject to the limitation of \$1,047.16.

The minimum compensation rate payable for disability incurred after October 1, 2004 is \$261.79 per week, which is 50 percent of the NAWW. However, if an employee's average weekly wage is less than this amount, he or she receives his or her entire average weekly wage as compensation for total disability.

In computing death benefits covered by this period, the average weekly wage of the deceased employee shall not be less than \$523.58 per week. In addition, under the provisions of the 1984 Amendments, the total weekly death benefits shall not exceed the lesser of (1) average weekly wages of the deceased or (2) 200 percent of the NAWW. The 200 percent maximum benefit is \$1,047.16 per week, and is applicable to cases in which the death occurs during the period October 1, 2004 through September 30, 2005,

except for District of Columbia Compensation Act (DCCA)¹ cases which are not subject to the 1984 amendments.

The above noted maximum and minimum rates for disability and death also apply to employees covered by the Nonappropriated Fund Instrumentalities Act (NFIA). The minimum rate does not apply to employees covered by the Defense Base Act.

Annual Adjustments

Under Section 10(f) and 10(h) of the amended Act, compensation or death benefits payable for permanent total disability or death cases which were incurred prior to October 1, 2004, are to be increased by the lesser of (1) a percentage equal to the percentage by which the applicable national average weekly wage for the period beginning October 1, 2004, exceeds the applicable national average weekly wage for the preceding period, or (2) 5 percent. (DCCA cases are always subject to the percentage increase in the NAWW without regard to the 5 percent limitation.) The percentage increase in the NAWW is 1.59 percent. As this figure is less than 5 percent, compensation is to be increased by 1.59 percent effective October 1, 2004.

Field or district offices of insurance carriers or self-insured employers paying benefits under the Longshore and Harbor Workers' Compensation Act and related Acts (DCCA, Defense Base Act, Outer Continental Shelf Lands Act, and Nonappropriated Fund Instrumentalities Act) will soon receive specific instructions from OWCP district offices and/or from the District of Columbia Government for making the adjustments on Section 10(f) and 10(h) cases, and should begin paying at the new benefit levels as soon as possible.

In case of questions about implementing these mandatory adjustments, any district office or the OWCP National Office, Longshore Division (Telephone: (202) 693-0038) may be contacted. For DCCA cases, contact the D.C. Government, Department of Employment Services (Telephone: (202) 671-1000).

MICHAEL NISS
Director, Division of
Longshore and Harbor
Workers' Compensation

¹ District of Columbia Compensation Act of 1928 which is applicable only to injuries which occurred prior to July 26, 1982.