

major job is similar to that used to produce point-in-time estimates published in the 1984 edition of the **Statistical Abstract of the United States**. These point-in-time estimates of total employment are taken each quarter, then averaged to produce an annual figure. Coverage ratios for each of the primary coverage groups, such as nonprofit, State and local government, farm, and so forth, were also calculated using the Social Security Administration's 1-percent Continuous Work-History Sample data. These ratios, when applied to the CPS data published by the Department of Labor's Bureau of Labor Statistics, indicate that there were an "average" of 89.7 million covered workers in 1981 (90.1 percent of all workers).<sup>17</sup> Because the survey counts reflect only those persons who were in the labor force at the time of the survey, however, they exclude many seasonal and intermittent workers as well as those who were temporarily unemployed.

<sup>17</sup> See Bureau of the Census, **Statistical Abstract of the United States 1984** (104th edition), 1983, table 613, page 375.

## The 1984 Amendments to the Longshore and Harbor Workers' Compensation Act\*

The Longshore and Harbor Workers' Compensation Act provides workers' compensation for disabilities suffered by maritime workers in inland navigable waters. On September 28, 1984, President Reagan signed into law the 1984 amendments to the act (Public Law 98-426). The current amendments are intended to reduce excessive costs to employers incurred following the previous amendments, make clear those eligible for coverage, prevent improper claims and litigation, provide more protection to workers who develop work-related diseases after a protracted period, and curb the rising costs of the Special Fund to the Longshore and Harbor Workers' Compensation Act.

Before the 1984 legislation, the Longshoremen's and Harbor Workers' Act had most recently been amended in 1972 (Public Law 92-576). The 1972 amendments raised the maximum weekly benefit amount in stages from 1972 to 1975 and instituted an automatic escalator. The automatic feature kept the maximum weekly benefit amount at 200 percent of the national average wage so that most disabled workers would receive a

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benefit of two-thirds of their weekly earnings. Also, benefit and eligibility provisions were liberalized for survivor and other benefits. These changes all added to the costs of the program to employers. The 1972 amendments extended the jurisdiction of the longshore program to cover certain shoreside workers who were previously subject to constantly changing jurisdiction as they went between ship and shore. Some 500,000 workers are covered under this act. At the same time, the amendments placed limits on third-party suits<sup>1</sup> to reduce multiple liability by employers.

## The 1984 Amendments

### Coverage and Liability

The 1984 amendments exempt several groups from coverage: (1) Persons performing clerical, data processing, and other office work exclusively; (2) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet; (3) those employed by a marina but not engaged in construction work on the marina except for routine maintenance; (4) employees of suppliers, transporters, or vendors who are temporarily on the premises of a covered employer but not doing the usual work of that employer; (5) aquaculture workers; and (6) individuals employed to build, repair, or dismantle recreational vessels under 65 feet long. The exclusion of these categories is intended to make clear that coverage applies only to those whose work is closely involved with the movement and processing of ocean cargo. On the other hand, workers are exempt from the Longshore and Harbor Workers' Compensation Act only if they are within the jurisdiction of State workers' compensation laws.

The new law enacts a rule of exclusive liability so that shipbuilders and other employers who are liable to pay compensation under the Longshore Act are not also liable under another workers' compensation program or the Jones Act. Under the 1984 amendments, multiple liability is controlled, therefore reducing costs to employers.<sup>2</sup> The law provides rules governing contractor and subcontractor liability and immunity under the Longshore Act. One rule, for example, makes the obligation of a contractor to secure compensation for the employees of a subcontractor contingent on the failure of the subcontractor to secure compensation for its own employees. But, if the contractor does have to assume

<sup>1</sup> Third-party suits are those that the injured worker may file against a party other than the employer (because of an unsafe work place, defective equipment, or other conditions that may have caused the injury). In some instances, the third party could then recover its losses by bringing suit against the employer.

<sup>2</sup> The Jones Act enables merchant seamen who are injured to sue their employers for negligence. Such suits severely limit the three major defenses previously available to employers: the fellow servant rule, contributory negligence, and assumption of risk.

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this obligation, then the contractor is immune to third-party suits by employees of the subcontractor. (The 1984 amendments also established procedures for distributing the proceeds of a successful third-party suit by the worker.)

## **Benefit Changes**

A number of restrictions on medical service providers were established to reduce abuse. For example, the Department of Labor now may debar medical providers from practice in longshore cases and may order a change in physician where charges have exceeded customary levels. The amendments also clarify certain aspects of hearing-loss cases, such as degree of loss.

Public Law 98-426 placed several restrictions on cash benefits for disabled workers and for survivors of disabled workers. First, a cap previously imposed on the statutory maximum weekly benefit amount for disabled workers will now also be applied for survivors: 200 percent of the national average weekly wage. Second, benefits will now be payable to survivors of beneficiaries with permanent total disabilities only when the death is due to the injury for which the disability benefit was received. Previously, survivor benefits were payable regardless of the cause of death. Third, automatic increases in benefits for disability or death continue to be calculated as equal to the increase in the national average wage, but are now subject to a 5-percent annual ceiling.

The 1984 amendments also confirmed a Supreme Court decision that, in the calculation of benefit amounts, a worker's wage is to be defined as cash wages at the time of injury, including equivalent amounts for meals, lodging, and other perquisites withheld for tax, but excluding employee benefits such as employer contributions to retirement, and health and welfare insurance. Before the Supreme Court decision, some awards had been granted with benefits computed on wages that included the value of employee benefits.

The major enhancement of workers' benefit rights enacted in the 1984 Longshore amendments was the provision broadening benefit eligibility for disability as a result of occupational disease. The new law specifically provides that a claim can be filed after a work-related disease becomes manifest rather than within a specified time after the last exposure to injurious elements on the job. An employee or survivor can now provide notice of the disease to the employer up to 1 year after the time the employee or survivor becomes aware (or reasonably could have been expected to become aware) that the worker's disease was related to exposure at the work place. A claim for compensation may be filed within 2 years of knowing the relationship of the disease to the employee's work.

Further, benefits are payable even if the disease does

not become manifest until after the worker retires. In this situation, the benefit is provided for an impairment (rather than for wage replacement) and so is paid as a permanent partial disability benefit. If the disabling condition occurs during the first year of retirement, the benefit is computed on the basis of the worker's wage in the year before retirement or, if appropriate, the worker's most recent wage level before any decrease in wages attributable to the effects of the disease. If the condition occurs more than a year after retirement, the national average weekly wage at the time of injury is used. The new legislation also increases the allowable funeral expense payment from \$1,000 to \$3,000, and the maximum disfigurement benefit rises from \$3,500 to \$7,500.

## **The Special Fund and Administrative Changes**

The longshore program includes a Special Fund that is used to pay benefits for disabilities that in part are made worse due to the existence of an earlier injury. This fund, like similar funds under State laws, thus encourages employers to hire previously disabled workers by removing any liability attributable to the earlier injury from the current employer. It is also used to pay for cost-of-living increases granted to some beneficiaries under the Longshore Act.

Under the 1984 amendments, steps were taken to curb rising costs experienced by the Special Fund due to its improper use by employers. Special Fund assessments on employers as a percentage of Longshore Act benefit payments had risen from 5.7 percent in 1973 to 11.5 percent in 1982. The amendments adopted a new assessment formula for financing the fund. To discourage excessive fund use, the formula for determining the employer's payment takes into account the amount of fund cases attributable to each employer or insurer. In addition, employers must request relief under the Special Fund before the Labor Department considers the claim.

A number of changes were also made to improve the efficiency of operating the longshore program. One amendment requires that when parties agree on a claim settlement, the responsible Labor Department official is to approve the settlement within 30 days unless it is found to be inadequate or procured by duress. If the official disapproves a settlement, a written statement of the reasons is to be issued within 30 days. If the parties are represented by counsel, agreements are automatically deemed to be approved unless the Labor Department official specifically disapproves the request within 30 days. Another amendment adds staff to expedite processing the backlog of cases and increases the Benefits Review Board from three to five members.