



JUGE NAPOLITANO

GUILBEAU RULI FRIEMAN APLC

QUICK GUIDE TO LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

SIGNIFICANT FORMS

LS-202 – Employer's First Report of Injury or Occupational Illness

- a. File within 10 days of injury (lost time)/death
- b. Do not file if medical only
- c. File with OWCP in New York, NY
- d. Possible (maximum) \$24,441 fine if not filed, discretionary

LS-207 – Notice of Controversion of Right to Compensation

- a. File within 28 days of date of injury or suspension of compensation

LS-208 – Notice of Payment

- a. File same day payment initial payment made or change in compensation paid
- b. File within 16 days after compensation stopped/suspended
- c. Fine if final Form LS-208 filed late, non-discretionary

LS-18 – Pre-Hearing Statement (when claim is referred for formal hearing)

LS-801 – Waiver of Service by Registered or Certified Mail for Employers and/or Insurance Carriers – to receive electronic Service of Orders issued by the OALJ/OWCP

JURISDICTION

LHWCA

- Must satisfy status (type of work being performed) and situs (geographic inquiry)

- If over navigable water and not a Jones Act seaman, then status/situs deemed satisfied unless transient or fortuitous

- If on land:

- (a) must evaluate whether employee engaged in maritime employment (e.g., ship repair, loading, unloading, any activity reasonably related to the above) – status inquiry
- (b) must evaluate whether injury occurred on an adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used for loading, unloading, repairing, dismantling, or building a vessel – situs inquiry

Exclusions:

- (a) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;
- (b) Individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;
- (c) Individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);
- (d) Individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer whose employees are employed in maritime employment, and (iii) are not engaged in work normally performed by employees of that employer under the LHWCA;
- (e) Aquaculture workers;
- (f) Individuals employed to build any recreational vessel under 65-feet in length, or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;
- (g) **Master or member of a crew of any vessel;**
- (h) Any person engaged by a master to load or unload or repair any small vessel under 18 tons net.

Assuming that workers covered in clauses (a) through (f) are covered by a state workers' compensation statute.

OCSLA

Employee must establish a significant causal link between the injury that he suffered and his employer's on-Outer Continental Shelf operations conducted for the purpose of extracting natural resources from the Outer Continental Shelf.

STATUTE OF LIMITATIONS

Section 912 – Notice of injury/death within 30 days, but not

applicable if reported late **and** no prejudice to employer/carrier

Section 913 – Claim for indemnity benefits filed within 1 year of

injury/death or 1 year from last voluntary payment of benefits, **but only** if Form LS-202 filed

Medical benefits – never lapse

AVERAGE WEEKLY WAGE (AWW)

Section 910(a) - If injured employee 5- or 6-day per week worker

who has worked “substantially the whole of the year” (generally over 35 weeks, but not defined by statute)

- Divide amount earned by days worked, multiply by
300 (6-day worker) or 260 (5-day worker), divide by 52

Section 910(b) -If injured worker has not worked “substantially

whole of the year” but is a 5- or 6-day per week worker, use similarly situated employee’s wages

- Same calculation as above

Section 910(c)- If Sections 910(a) and (b) do not apply - - “equitable”
provision

- ALJ may use discretion in arriving at fair AWW

- Review earnings from all employment, possibly over several years

MINIMUM/MAXIMUM COMPENSATION RATES

PERIOD	NAWW	MAX	MIN	PERCENT INCREASE
10/01/2020 – 09/30/2021	\$816.35	\$1,632.70	\$408.18	4.65%
10/01/2019 – 09/30/2020	\$780.04	\$1,560.08	\$390.02	3.26%
10/01/2018 – 09/30/2019	\$755.38	\$1,510.76	\$377.69	2.65%
10/01/2017 – 09/30/2018	\$735.89	\$1,471.78	\$367.94	2.46%
10/01/2016 – 09/30/2017	\$718.24	\$1,436.48	\$359.12	2.17%
10/01/2015 – 09/30/2016	\$703.00	\$1,406.00	\$351.50	2.10%
10/01/2014 – 09/30/2015	\$688.51	\$1,377.02	\$344.26	2.25%
10/01/2013 – 09/30/2014	\$673.34	\$1,346.68	\$336.67	1.62%
10/01/2012 – 09/30/2013	\$662.59	\$1,325.18	\$331.30	2.31%
10/01/2011 – 09/30/2012	\$647.60	\$1,295.20	\$323.80	3.05%
10/01/2010 – 09/30/2011	\$628.42	\$1,256.84	\$314.21	2.63%
10/01/2009 – 09/30/2010	\$612.33	\$1,224.66	\$306.17	2.00%
10/01/2008 – 09/30/2009	\$600.31	\$1,200.62	\$300.16	3.47%
10/01/2007 – 09/30/2008	\$580.18	\$1,160.36	\$290.09	4.12%
10/01/2006 – 09/30/2007	\$557.22	\$1,114.44	\$278.61	3.80%
10/01/2005 – 09/30/2006	\$536.82	\$1,073.64	\$268.41	2.53%
10/01/2004 – 09/30/2005	\$523.58	\$1,047.16	\$261.79	1.59%
10/01/2003 – 09/30/2004	\$515.39	\$1,030.78	\$257.70	3.44%

TYPES OF BENEFITS

- (1) Temporary total benefits – cannot perform any work; 66 2/3% of AWW
- (2) Temporary partial benefits – 66 2/3% difference between AWW and earning capacity; limit of 5 years
- (3) Permanent partial disability benefits
 - a. Scheduled benefits (Section 908(c)(1)-(13))
 - (1) Arm – 312 weeks
 - (2) Leg – 288 weeks
 - (3) Hand – 244 weeks
 - (4) Foot – 205 weeks
 - (5) Eye – 160 weeks
 - (6) Thumb – 75 weeks
 - (7) First finger – 46 weeks
 - (8) Great toe – 38 weeks
 - (9) Second finger – 30 weeks
 - (10) Third finger – 25 weeks
 - (11) Toe other than great toe – 16 weeks
 - (12) Fourth finger – 15 weeks
 - (13) Loss of hearing
 - (a) One ear – 52 weeks
 - (b) Two ears – 200 weeks
 - (19) Partial loss – percentage impairment multiplied by total weeks available
 - (20) Disfigurement – Up to \$7,500.00 for serious disfigurement of the face, head, or neck, or of other normally exposed areas likely to handicap the employee in securing/ maintaining employment
 - b. Loss of wage earning capacity (Section 908(c)(22))
 - 66 2/3% difference between AWW and post-injury wage earning Capacity
 - No annual adjustment
- (4) Permanent total disability benefits
 - 66 2/3% of AWW for duration of disability (typically life)
 - Annual adjustments every October 1
 - May seek modification pursuant to Section 922 if change of economic or physical condition

DEATH BENEFITS

- \$3,000.00 – Funeral expenses
- Widow/widower and no children – 50% of AWW for life; if remarries, lump sum in the amount of 104 weeks of benefits
- Widow/widower and 1 child – 50% of AWW to widow/widower, and 16 2/3% of AWW to child
- Widow/widower and 2 or more children – 50% of AWW to widow/widower, and children share 16 2/3% of AWW equally
- No widow/widower and 1 child – 50% of AWW, increased by a total of 16 2/3% if one or more additional children, to be shared equally, until 18 years of age or up to 23 years of age if enrolled in accredited school/university
- Annual adjustment every October 1

MEDICAL BENEFITS (Section 907)

- No statute of limitations
- Reasonable and necessary medical treatment related to the injury or consequences resulting from the related medical treatment (*e.g.*, injury incurred in therapy)
- Entitled to one choice of physician per specialty; no change in choice of physician generally unless physician/claimant move, physician retires, physician refuses to treat
- Employer/Carrier entitled to second medical opinion (SMO) in any

- specialty; may have Claimant examined as often as reasonable
- May request independent medical examination (IME) from the District Director to resolve conflict between treating and examining physicians; not binding on parties or ALJ
- Medical expenses to be paid pursuant to the OWCP Fee Schedule

SPECIAL FUND (Section 908(f))

Must meet three criteria for relief from Special Fund. If qualify, Employer/Carrier pay 104 weeks of permanent indemnity benefits, and then the Special Fund pays the indemnity benefits. Employer/Carrier remain responsible for medical expenses.

- (1) Must have pre-existing permanent partial disability.
- (2) Employer must have actual or constructive (*i.e.*, medical records existed documenting injury) knowledge of the pre-existing permanent partial disability.
- (3) The pre-existing permanent partial disability must combine with the current injury to create a materially and substantially greater degree of disability than caused by the current work injury alone.

SETTLEMENTS (Section 908(i))

- Must be approved either by the District Director or the ALJ.

- Must meet/contain certain criteria:

- (a) Provide a statement of the injury, provide the Form LS-202, and comment on whether employer had notice
- (b) Confirm that insurance procured by the employer or employer is self-insured
- (c) Provide amounts paid in indemnity and amounts paid in medical expenses for current and prior 3 years
- (d) Summarize all related medical treatment and comment on whether the employee has a collateral source for payment of medical expenses
- (e) Provide date of birth and current work status
- (f) Confirm that employee has reached MMI or when MMI is anticipated, and review applicable work restrictions
- (g) Review vocational rehabilitation
- (h) Describe the terms and conditions of the settlement with particularity
- (i) Comment on the employee's Medicare status
- (j) Demonstrate the adequacy of the settlement (usually a mathematical exercise comparing the settlement amount to the present day value of future exposure)
- (k) Confirm that the settlement was not procured under duress.

If claimant is represented, the settlement must be approved or a deficiency notice must be issued within 30 days of receipt of the settlement agreement or the settlement is deemed automatically approved.

THIRD-PARTY LAWSUITS

Employee must obtain the express, written consent of employer/carrier on a Form LS-33 prior to settling his third-party lawsuit. If no written consent obtained, employee forfeits his right to benefits under the LHWCA.

Employer/Carrier permitted to file intervention, or to file lawsuit if none filed by the claimant. Lien is not reduced for employer or employee fault or for attorney fees. Analyze whether a contract requires waiver of subrogation.

DEPARTMENT OF LABOR WEBSITE: www.dol.gov (look under "Agencies" for Office of Workers' Compensation Programs or Office of Administrative Law Judges)

QUESTIONS? Contact us at (504)831-7270 to discuss any questions or the practical application of the above.

PENALTIES

Section 914(e) – 10% penalty for all indemnity benefits payable without an award which are not paid within 14 days of the date benefits become due. Filing Form LS-207 interrupts accrual of penalty.

Section 914(f) – 20% penalty for all indemnity benefits payable under the terms of an award (*i.e.*, Decision and Order, Compensation Order after settlement)

PROCEDURE

OWCP – Informal level where issues are considered and resolution is attempted. Claims Examiner conducts informal conference and issues recommendations. **Must** raise Section 912 and Section 913 defenses and Section 908(f) or waived.

OALJ – Formal litigation, including discovery and formal hearing (trial)

WAITING PERIOD (Section 906(a))

No compensation paid for the first 3 days of disability, but medicals are due. If injury results in disability of more than 14 days, then compensation due from the date of injury.

AFFIRMATIVE DEFENSES

No compensation is payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.