

NAVIGATING MARINE WORKERS COMPENSATION

Second Edition Addendum

UPDATE: Longshore Reform 2009

Thursday, September 15, 2011

The long awaited amendment of the Longshore Act became law on February 17, 2009 as part of the American Recovery and Reinvestment Act with President Obama's signature. The change in the wording of the Act is shown below.

So who will this effect and how will it work?

IT WILL HAVE NO EFFECT ON:

- Boat manufactures and builders.
- Repairers of commercial vessels of any length.
- Marine Contractors, dock builders, dredgers, etc.
- Those who do not carry State Act Workers Compensation.

SO WHO WILL BENEFIT?

- A group of employers who repair recreational vessels over 65 ft. They will move their exposure from Longshore to State act immediately.

ISSUES:

- To protect the amended exclusion this group must still purchase State Act Workers Compensation – do not rely on officer exclusions. The Longshore law is quite specific – the exclusion only applies to employees IF State Act Workers Compensation coverage is provided.
- Even though the new exclusion is now in effect, do not run ahead and cancel the Longshore policy:
 - An employee can still allege eligibility under Longshore and without Longshore insurance; you have no one to defend you.
 - Any work, however incidental, on commercial vessels OF ANY SIZE remains Longshore.
 - Any work building or manufacturing recreational vessels over 65ft remains Longshore.

REDUCED PREMIUMS:

- The purpose of this change has always been to stimulate growth by reducing the cost to the recreational marine repairer. In general, it will not be necessary to cancel current policies or wait until renewal in order to receive the full effect of these changes. Most companies will allow the midterm change of payrolls to reflect this change in the law. We will be designing and providing a form shortly to make this new calculation as easy as possible. We will send a link to this form as soon as available. Dependant on your current Longshore payroll and the time remaining on the current policy, this return could be substantial – so do not wait – act now!

If you have any questions, please send them to ASK@LIGMarine.com and we will respond as soon as we can.

Ian Greenway

Ian R. Greenway
President

Longshore Act Section 803

(F) individuals employed to build, ~~repair, or dismantle~~ any recreational vessel under sixty-five 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;***

LONGSHORE REFORM MATRIX

Thursday, September 15, 2011

Type of Vessel	Repair/Service	Build/Construct /Manufacture
Recreational <65ft	State WC ²	State WC ²
Recreational >65ft	State WC ²	Longshore
Commercial ¹	Longshore	Longshore

- *A Commercial Vessel INCLUDES for the purpose of the Longshore act, all of the following:
 - USCG or other government agency vessel
 - Sea Tow or other similar "assist" boats
 - Head, Excursion, Sightseeing boats
 - Shrimp Boats and similar operations.
 - Water Taxi
 - County or city owned vessels
 - Private security patrol vessel
 - Cargo or passenger vessels
- To qualify for the exclusion under Longshore, State W.C. coverage MUST be provided to ALL employees regardless of number. Officer Exclusions will not suffice.
- The box in yellow is the only one that changed as of Feb 17th 2009.

LONGSHORE REFORM FAQ's

- Who does this change affect?
 - The LONGSHORE Matrix shows the current exception. The box highlighted in yellow is the only one that changed as part of the reform just passed.
- How will this affect my current LONGSHORE premiums?
 - This will vary by state, but for example in Florida it will result in a reduction of the current LONGSHORE premium by approximately 55% for those people affected by this change for the period from Feb. 17th 2009 to your natural policy expiry.
- How do I get this reduction now?
 - Different carriers and agents will have different methods but for LIG, complete the LONGSHORE Reform Worksheet and send it via your agent to LIG. We will then process the return which will be used to reduce or eliminate future payments under your policy.
- How do officer exemptions effect this change?
 - If Officers who do any marine work on ANY vessel of any size attempt to use the officer exemption under various state act law, then they lose the exclusion under LONGSHORE and are then required to carry LONGSHORE Coverage . Revoke those exemptions in order to protect the LONGSHORE exclusion for recreational boat repair.
- What about officers who do EXCLUSIVELY Clerical or Sales Work?
 - They can use normal state act exclusions and filings.
- How do I revoke an officer exclusion?
 - Download and complete the revocation form for your state, For Florida it's a DWC-250-R File this with the state AND send a copy to your insurance agent to ask them have the officer ADDED back to the policy. You may be asked to sign a NO LOSS LETTER by certain carriers for that officer.
- Do I still need LONGSHORE coverage?
 - We recommend that you do. Please see No Longshore Coverage?
- What About people signed on as "crew"
 - True crew should be covered under the vessels P&I insurance, but case law holds that a crewman must spend at least 30% of their time in service of a particular vessel or identifiable fleet of vessels, so someone signed on for a week or two to perform repair/maintenance work will never escape the need to buy the proper coverage for them.
- What Constitutes Manufacturing/Building?
 - This change in the act is so new there are no definitive answers here, but the best opinions we could find tell us that the function goes with the vessel. In other words if the vessel is a new build or conversion then all work for that vessel is considered manufacturing/building. Conversely if the vessel is being repaired all work on that vessel is considered repair, even if it include fabricating some parts or components.
- Is a Sole Proprietor Exempt for Longshore?
 - Whilst in theory a Sole Proprietor is exempt from Longshore, they are no longer considered a Sole Proprietor "as soon as they work at the direction of another" This means that working in or for a yard, the Sole Proprietor has the same coverage issues as all other businesses