



# Construction Industry Update

## The Longshore and Harbor Workers Compensation Act (USL&H)

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Recently the Navy contacted our office, confused about whether its on-shore work at North Island was subject to USL&H coverage. Great confusion surrounds this issue. As a contractor performing work on or "near" coastal waters, it is very important to understand the background of USL&H and how it may affect your operations.

In 1972, the USL&H was amended, resulting in an extension of federal coverage landward. Under the amended law, workers engaged in loading, unloading, repairing, or building a vessel would be entitled to coverage under the USL&H. Injuries occurring in areas adjoining navigable waters, such as

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### History

In 1927, a new federal law, the U.S. Longshore and Harbor Workers Compensation Act was passed. (The Act was formerly known as the "LHWCA," but is more commonly known as the "USL&H.") In passing the new federal law, Congress intended to fill a void in workers compensation coverage. USL&H was intended to provide coverage for maritime workers, other than seamen, for whom no state workers compensation remedies were available.

Under a strict application of the original USL&H statute, maritime workers were covered only when injured upon navigable waters. Consequently, when maritime workers stepped onto land they stepped out of the coverage of the USL&H. Following decades of litigation, Congress addressed this jurisdictional quagmire.

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piers, wharfs, dry-dock terminals and marine railways were also included in the extended USL&H coverage.

## USL&H Coverage Today

In order to qualify for coverage under the USL&H, two criteria must be met. First, the injured worker must be a maritime employee as defined under the USL&H. This is the "status" requirement. Second, the injury must occur at a location under the jurisdiction of the USL&H. This is the "situs" requirement.

Whether the dual requirements for coverage have been met in any given case has been the subject of much interpretation and litigation. In the hands of a liberal court, the reach of the USL&H is bound to be extended.

For example, in one case the U.S. Supreme Court decided that the "maritime employment" requirement was met because the injured worker established that his injury occurred on actual naviga-

ble waters. The worker did not need to prove that his employment possessed a direct or substantial relation to navigation or commerce.

The benefits provided by the USL&H are based on wage loss and the worker's post-injury earning capacity. Under this federal system, the benefits tend to be more lucrative than scheduled state benefits. Therefore, an injured worker who has an option of filing under state or federal laws may be more inclined to pursue federal remedies. In some instances, such as cases arising in California, workers can pursue both state and federal remedies concurrently.

Because of these varying interpretations, it is difficult for an employer (or his/her insurance broker) to determine if, in fact, a USL&H exposure exists. This is compounded by the fact that if an employer fails to have USL&H coverage when a claim arises, the employer will be subject to a fine of up to \$10,000, or imprisonment of up to one year, or both. The fact that no exposures under the Act were anticipated is not an excuse for the failure to secure coverage under the Act or set up a proper self-insurance program.

## Conclusion

For employers with known USL&H exposures, the answer is simple: buy the coverage. But what about those employers that operate in the 'gray' area? How will they know if they need USL&H coverage?

We discussed this with a number of underwriters and experts, and the issue is not 'black and white.' Every situation needs to be evaluated on its merits.

A good 'Rule of Thumb' is this: *If an injured worker could be considered an 'Employee' (status) as defined by the Act, and if the injury might occur at a location under the jurisdiction of the Act (situs), then USL&H coverage should be purchased.*

When in doubt, you should discuss the issue with your insurance broker. ✨

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**Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.

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# Safety Incentive Programs

**“Safety Is Doing the Right Thing Even When Nobody Is Looking”**

*By Stuart Nakutin, AIC, WCCA, WCCP, CDMC*

Reduce losses, but how? As an option, you can provide an incentive program for employees to correct unsafe acts or to comply with general safety rules and regulations.

When it comes to motivating employees to work safely, many studies have shown that positive reinforcement is the most successful method. One of the best ways for an employer to positively motivate employees is the Safety Incentive Program. Safety incentive programs need not be complicated; in fact, some of the simplest have proven to be the most effective.

What interests people varies considerably, but a wide variety of injury and illness prevention promotional activities have been proven successful by employers who gained outstanding safety records with such activities.

Consider the following when you set up your program:

- **Most importantly**, safety has to be taken to the field, in your shop, on the jobsite so your employees see and think about safe work practices every day.
- **Good Behavior Rewards Program** – Catch your employees doing the right thing.
- **Special meetings** may be held to present awards, announce safety policies or prac-

tices, or discuss purchasing safety equipment. Hold contests for safety record improvement or safety poster design. Post safety displays, safety suggestions, and signs showing days worked without a lost-time accident.

- **Making these activities successful** means changing them to fit each individual situation. What stirs people to action varies considerably, and depends on their motives, emotions, attitudes, and background. When developing promotional activities, involve the workers. Everyone benefits if the activity interests them and helps you meet your injury and illness prevention goals.
- **Keep changing your promotional activities** to fit your needs. Even a good thing gets stale. Change or vary your promotional activities when interest lags. Later, you can rerun the more successful activities without reducing their impact.
- The **key to success** is in the implementation. Make sure the employees understand the rules as well as their potential gain. Emphasize that the program is designed to reward employees for working safely, not for refusing to report an injury. ✂

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