



5 QUESTIONS ABOUT LONGSHORE CLAIMS YOU'RE AFRAID TO ASK

LEGAL DISCLAIMER

Views expressed here do not constitute legal advice. The information contained herein is for general guidance of matter only and not for the purpose of providing legal advice. Discussion of insurance policy language is descriptive only. Every policy has different policy language. Coverage afforded under any insurance policy issued is subject to individual policy terms and conditions. Please refer to your policy for the actual language.

Courtesy of AmWINS Group, Inc.

ABOUT THE AUTHOR

Will Scheffler joined The American Equity Underwriters, Inc. in 1998 and serves as Senior Vice President, Director of Claims. His insurance experience began in 1993 with FARA and continued with the ALMA branch (now AEU) in 1998. He has been a speaker at Loyola Law School's Annual Longshore Conference, U.S. Department of Labor seminars, and ALMA conferences. Will is licensed as an adjuster in Maine, Alabama, and Louisiana and is a licensed Qualified Manager in California. He serves on the Advisory Board for Loyola's Annual Longshore Conference. Will received his bachelor's degree from Louisiana State University and earned the CPCU and AIC designations from The Institutes.



The complicated nature of claims filed under the United States Longshore and Harbor Workers' Compensation Act (LHWCA, or Longshore Act) can create confusion and frustration among employers. In this article, the Director of Claims at [The American Equity Underwriters](#) (AEU) addresses some of the more sensitive questions related to fighting or denying claims. AEU, an operating company within AmWINS Underwriting, has decades of experience in the maritime industry and is the leading specialist in USL&H insurance coverage.

WHAT IS THE LONGSHORE ACT?

According to the United States Department of Labor, "the Longshore Act is a federal law that provides for the payment of compensation, medical care, and vocational rehabilitation services to employees disabled from on the job injuries that occur on the navigable waters of the United States, or in adjoining areas customarily used in the loading, unloading, repairing, or building of a vessel. The Act covers employees in traditional maritime occupations such as longshore workers, ship-repairers, shipbuilders or ship-breakers, and harbor construction workers."¹

1. CAN I TERMINATE AN EMPLOYEE FOR FILING MULTIPLE WORKERS' COMPENSATION CLAIMS OR EVEN ONE CLAIM?

Absolutely not. This would be a clear violation of Section 948(a) of the Longshore Act, which reads:

"It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this chapter."

The Department of Labor recently updated the fine associated with violations, as follows:

*"Any employer who violates this section, and has penalties assessed for such violation after January 23, 2019, shall be liable for a penalty of not less than **\$2,402** or more than **\$12,007** to be paid (by the employer alone, and not by a carrier) to the district director for deposit in the special fund described in section 44 of the Act, 33 U.S.C. 944; and shall restore the employee to his or her employment along with all wages lost due to the discrimination, unless the employee has ceased to be qualified to perform the duties of employment."*

2. IF AN INJURED WORKER TESTED POSITIVE FOR ILLEGAL DRUGS AND WAS FIRED AS A RESULT, WHY WASN'T HIS WORKERS' COMPENSATION CLAIM DENIED?

For longshore claims, your USL&H provider must abide by the laws and regulations surrounding the Longshore Act. Section 20 of the Act indicates, "it shall be presumed, in the absence of substantial evidence to the contrary... (c) that the injury was not occasioned solely by the intoxication of the injured employee."

(continued on next page)

(continued from previous page)

In other words, your USL&H provider must show that no other factors contributed to the accident/injury – and do so with **substantial evidence**. This is a very difficult burden for employers and carriers to overcome, but your carrier's claims professionals should have a strategy in place for how to most effectively and efficiently manage claims where alcohol or drugs were involved.

Employers sometimes confuse their grounds for termination based on breaking company policy with the ability to deny a claim. They are separate and grounds for termination is not grounds for claim denial.

3. WHY CAN'T WE FIGHT MORE CLAIMS IN COURT?

Only claims with conflicts are fought in court. Possible conflicts include the amount of compensation, causation, conflicting medical opinion or the ability to work, among other issues. It is important to note that litigating cases is expensive, and the law and courts favor the employee. Therefore, the best approach is to reduce the number of conflicts and focus on those that not only have the biggest impact on the claim's value, but where there is also a good chance for a decision to be made in favor of the employer/carrier.

The downside of trying cases is that if the claimant prevails, the employer/carrier is required to pay not only their own defense costs, but that of the claimant as well. Claimant attorneys do not receive a contingency fee, such as a percentage of the client's award. Finally, keep in mind that when a claim is tried, the outcome is now in someone else's hands.

Most claims are filed by honest people who have been legitimately injured, and we work hard to restore normalcy to their lives. These claims resolve naturally.

4. IS THE CLAIM WORTH THAT MUCH? CAN WE SETTLE FOR A LOWER VALUE?

All settlements of Longshore claims must be approved for adequacy by the Office of Workers' Compensation Programs (OWCP) or by an Administrative Law Judge (ALJ). The OWCP and the Department of Labor will work to protect the claimant's interest, even if he or she is represented by an attorney, to ensure that the employer/carrier is providing a fair settlement and paying all benefits that are due.

In cases where Medicare's interests need to be protected, claims may be subjected to another level of scrutiny. If the OWCP or ALJ finds that the settlement is not adequate, then a deficiency order is given with reasoning, and the parties can continue to work towards approval.

5. THIS CLAIMANT ISN'T A CITIZEN. DOES THIS MEAN WE SHOULD DENY BENEFITS?

No, this is not a viable defense in Longshore claims. Otherwise, employers could potentially be incentivized to hire undocumented workers and not be responsible for benefits should a worker become injured. Even if the employee has provided false identification, he or she is still entitled to benefits for the work-related injury.

With these sensitive questions answered, navigating the claims process under the Longshore Act should become smooth(er) sailing. For additional industry insights on trends in safety and claims handling, recent court cases, and observations on all things longshore, visit AEU's blog, the [Longshore Insider](#). To register to receive updates from the Longshore Insider, [click here](#).

SOURCES

¹ U.S. Department of Labor, Office of Workers' Compensation Programs. Longshore and Harbor Workers' Compensation Act Frequently Asked Questions. <https://www.dol.gov/owcp/dlhwc/FAQ/lsfaqs.htm>

