

What is The Longshore and Harbor Workers' Compensation Act? (LHWCA)

The LHWCA is a federal law requiring maritime employers to pay benefits to employees who suffer on the job injuries or diseases. The Act covers longshoremen, shipbreakers, shipbuilders, ship repairmen, and harbor workers. It does not cover a master or members of a crew.

What benefits are provided under the LHWCA?

The Act provides for time loss payments, medical and vocational expenses, and permanent disability compensation.

Does my accident have to be the result of my employer's fault?

Absolutely not. LHWCA is a "no fault" system which means that as long as your injury or disease arises out of your employment, you are entitled to benefits.

Do I have to sue my employer to obtain benefits?

No. In fact, if your injury is covered by the LHWCA, you are prohibited from suing your employer or one of your co-workers, even if it was their fault that caused your injury. However, if someone other than your employer or a co-worker caused your injury you may sue that person (or company) for damages.

Does my injury or illness have to be caused by my work?

No. In fact, your injury or illness is covered by the LHWCA if your work contributed in any way to the injury or illness. Even in the case of a preexisting condition, if your work activity contributes to aggravating or worsening that condition in any way, you are entitled to LHWCA benefits.

How do I obtain benefits if I was hurt on the job?

You must file a claim with your employer or its insurer. While the law does not require you to use any specific form to file a claim, your employer should supply you with the standard "LS-201 Form."

Is there a time limit for filing claims?

Yes. You must file written notice of your injury within thirty days. If you have an occupational disease, you must file notice with your employer within one year of the date you know or have reason to know that your disease is related to your employment. There are exceptions to these requirements and you should consult an attorney if you have any questions.

Who should I report my injury to?

You should report your injury to your immediate supervisor or to whomever your employer may have designated to receive claims.

My claim was filed under the State of Oregon Compensation Act. What should I do?

If your claim qualifies, you should file it under the LHWCA because it pays superior benefits in most cases. If your claim is improperly filed under the State Act, but within the time limits of the LHWCA, it will be considered timely. If you have any questions about whether your claim qualifies, you should consult an attorney.

If I am not able to work, how will I survive financially while my claim is pending?

You're entitled to payments of 2/3 your average weekly wage (based on the 52 weeks prior to your injury and within a minimum/maximum range set by the LHWCA). If your earnings in the preceding 52 weeks were not representative of your earning capacity, the LHWCA provides other methods for determining your compensation.

How can I change doctors?

After you have selected a treating physician, you can only change doctors with the approval of the LHWCA insurer. However, your treating physician may refer you to any other physician for evaluation and treatment.

What if I am not able to go back to my regular work?

Your doctor may request rehabilitation services, during which your compensation will usually be continued.

What if I can't earn as much after my injury as I earned before?

Under the LHWCA, permanent disability is broken down into two categories: scheduled and unscheduled. If you have scheduled disability, you will receive a standardized award specific to your physical impairment. If you have unscheduled disability, you will receive an award, payable over the remainder of your life, which represents the difference between your ability to earn prior to your injury and after your injury.

What must I do if my claim has been denied?

You must request the intervention of the deputy commissioner of labor in your region.

Do I need a lawyer?

The LHWCA can become very complicated if your claim has been denied or you are entitled to permanent disability. You can have a lawyer represent you without paying attorney fees out of your own pocket. Lawyers who represent injured workers under the LHWCA are paid based on an hourly rate for the work they perform and the fees are contingent. That means the lawyer gets paid only if the worker obtains more benefits than the worker had before the lawyer became involved.

Can I be fired if I file a claim?

No. It is a violation of federal law to discriminate against a worker for filing a LHWCA claim. It is also a violation of state and federal law to fire a worker because a worker has a disability.