Loyola Law School &
U. S. Department of Labor
OWCP
DBA Conference
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Insurance and Waivers

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Insurance

- The provisions of the Longshore and Harbor Workers’ Compensation Act and its Regulations apply to the Defense Base Act

- 4(a) makes the employer
  - Liable for the benefits
  - Obliged to secure the benefits
Insurance

- 32(a) (1) provides for insurance by an authorized carrier
- 32(a) (2) provides for self-insurance
Insurance

- 5(a) Failure to secure payment allows employee either to collect compensation, or to sue employer for damages

- The defenses of “fellow servant”, “assumption of risk” and “contributory negligence” are not available
Insurance

- 38(a) The corporation and its president, secretary and treasurer are severally liable for a fine of $10,000 and imprisonment for not more than one year.

- The president, treasurer and secretary are also severally liable jointly with the company for the benefits during the period it fails to secure compensation.
Insurance

- Failure to report a claim carries a separate penalty of up to $11,000.
- Failure to report a claim waives the time bar
- Failure to controvert a claim requires 10% additional compensation for each amount unpaid.
Insurance

- The Employer may be
  - Uninsured
  - Insured by an unauthorized carrier
  - Insured by an authorized carrier, but have no DBA endorsement
  - Operating under a waiver which is not effective
Insurance

- The Employer is responsible, not
  - The broker or agent
  - The government contracting officer
  - The insurance company
  - The attorney
  - The Department of Labor
Insurance

- The Employer is also responsible for all
  - Subordinate contractors
  - Subcontractors
Consequences

- There are both civil and criminal proceedings for which
  - The company
  - Its President, Treasurer and Secretary
- Each needs separate representation – 8 lawyers in all.
- The compensation case is now a $50m Lawsuit
Consequences

- The contract was bid without the cost of DBA included.
- The premiums must be paid without reimbursement
And this may all be because of a subcontractor, or the subcontractor’s subcontractor.
Consequences

BROKERS

- You are compensated for providing cover
- You are at risk of an E & O claim if you do not
Waivers

The Secretary of Labor

- On the recommendation of
  - The head of
  - Any department or agency
- In the exercise of her discretion, may
- Waive the application of this section with respect to
  - Any contract, subcontract or subordinate contract
  - Work location under such contracts
  - Or classification of employees
Waivers

- Waivers are routinely granted when
  - Submitted by the proper person
  - In the proper form
  - Subject to limits and conditions

- Waivers apply to Guam for all employees including US nationals.
**Waivers**

- Do not apply to
  - US Citizens
  - People hired in the US
  - Legal residents of the US

- Do not apply unless waived employees will receive compensation under local laws providing for workers’ compensation for injuries, illness, or death.
Waivers

- Each contractor must before commencing performance
- Provide and maintain
- For all waived employees
- Workers compensation insurance as required by the law of the place of the work
- With no exclusions e.g. for war hazards
Waivers

- If there is no local workers compensation law
  - Nationals are covered under DBA
- If a worker is NOT covered by another compensation act for any reason
  - Employers face penalties
  - Brokers face E & O claims

- If in doubt, **buy protection**