

# U. S. Department of Labor

Office of Workers' Compensation Programs  
Division of Longshore and  
Harbor Workers' Compensation  
200 Constitution Avenue, Room C-4319  
Washington, DC 20210



April 19, 2018

Dear Stakeholders:

The Office of Workers' Compensation Programs has published a final rule that implements the Longshore and Harbor Workers' Compensation Act's maximum and minimum compensation provisions as outlined in Sections 6 and 9 of the Act. The rule also addresses the Act's section 10(f) annual adjustment provision. Because of your interest in the Longshore program, I wanted to notify you of this publication and provide you with a summary of the changes as well as some background about why these new rules were necessary.

The National Average Weekly Wage has historically risen from year to year, and this determination affects the maximum and minimum compensation rates under Section 6. Questions regarding which fiscal year's maximum wage applied in various situations led to litigation. These questions have now largely been resolved through decisions of the courts of appeals and the Supreme Court. To provide clarity for the parties and forestall any further litigation, the rule implements the Act's maximum and minimum compensation provisions in line with those court decisions. Specifically, the rule:

- prescribes which maximum compensation rates apply to any particular injury by implementing the Supreme Court's interpretation of the "newly awarded" phrase (*i.e.*, compensation is "newly awarded" when the employee first becomes disabled) and the interpretation of the "currently receiving" phrase adopted by two courts of appeals (*i.e.*, "currently receiving" means the date the employee is entitled to compensation);
- addresses the related question of how the Act's minimum compensation provisions apply; and
- outlines the relationship between Section 6's maximum and minimum compensation rates and Section 10(f)'s annual adjustment provision.

I feel that these rules will provide a comprehensive regulatory scheme to facilitate timely and accurate payment of compensation to injured workers. The final rule was published in the *Federal Register* on April 19, 2018; it will be effective on May 21, 2018. You may access it on the *Federal Register's* website directly or through the links provided on our website at <https://www.dol.gov/owcp/dlhwc>.

Sincerely,

DOUGLAS C. FITZGERALD  
Director, Division of  
Longshore and Harbor Workers' Compensation