



DATE:- THURSDAY, MAY 21, 2009

WAIVER NUMBER: 2009-05-02

WAIVER
Issued Under Section 1 (e) of The
DEFENSE BASE ACT

The Defense Base Act, codified at 42 U.S.C. 1651(e), permits the Secretary of Labor, in the exercise of her discretion, upon the recommendation of the head of any department or other agency of the United States, to waive the application of the Defense Base Act with respect to any contract, subcontract or subordinate contract, work location under such contracts, or classification of employees.

REQUESTING AGENCY

A waiver has been requested by the **DEPARTMENT OF THE AIR FORCE**

GENERAL WAIVER

This waiver applies to all contracts, sub-contracts or subordinate contracts, which are otherwise covered by the Defense Base Act, made by the Department or any Agency of the Department for work to be performed any location outside the United States.

CLASSIFICATION OF EMPLOYEES

All employees covered under **COMPULSORY WORKERS' COMPENSATION LAWS of SPAIN**

CONDITIONS OF WAIVER

1. This waiver excludes employees otherwise covered by the Act, but covered by this waiver, from all benefits and obligations under the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, if and only if:
 - a. they are not:
 - i. Citizens of the United States; or
 - ii. lawful residents of the United States;
 - and
 - b. they are covered by the **COMPULSORY WORKERS' COMPENSATION LAWS** named above, which apply to the country where:
 - i. the injury or death occurred; or
 - ii. the employee lives; or
 - iii. the contract of employment was made;
 - and
 - c. the employer has paid for insurance to cover his obligations under §1(b) above and was in all respects at the time of the injury, disease or death in conformance with all requirements of the relevant laws and regulations;
 - and
 - d. the employer produces evidence of insurance securing benefits under those laws.
2. This waiver excludes employers otherwise covered by the Act, in respect only of the employees defined under § 1. above, from all rights and obligations under the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and in particular from:
 - a. the exclusive liability provision under 42 U.S.C. 1651(c);
 - b. the obligation to secure payment of compensation under 33 U.S.C. 932(a)(1);
 - c. the penalties for failure to secure such payment under 33 U.S.C. 938(a);
 - d. the penalties for failure to report claims under 33 U.S.C. 930(a); and
 - e. the provisions of 33 U.S.C. 905(a).

3. The term "COMPULSORY WORKERS' COMPENSATION LAWS" means laws which provide at least for compulsory payment by an employer of compensation and medical benefits for an accidental injury (including occupational disease and death), arising out of or in the course of employment, to employees or their survivors without payment for or contribution to the cost of the insurance or benefits by the employee and without reduction for the employee's fault. The benefits must not cease if the employee is repatriated. The benefits for such injuries may not exclude any cause, including but not limited to injury or death resulting from war, hostilities, terrorist acts, or nuclear, biological, chemical or radiological exposure or contamination.

SEPARABILITY AND TERMINATION

If the applicability of this waiver to any employer or employee is held to be invalid, the applicability to other employers or employees shall not be affected thereby. On expiry, modification, termination, suspension or revocation of this waiver all rights or obligations incurred under it shall continue for all injuries arising prior to that date.

GRANT OF WAIVER AND EFFECTIVE DATE

A waiver is hereby granted to the requesting Department, in respect of the contract, location, classification of employees and subject to the conditions listed above for a period of five calendar years unless earlier modified, terminated, suspended or revoked. The waiver has effect from October 1, 2007.

**Issued by the Office of Workers' Compensation Programs
U.S. Department of Labor at Washington, D.C.,**

for



MICHAEL NISS, Director,
Division of Longshore and Harbor Workers' Compensation