

November 10, 1972

EACL

Notice to Insurance Carriers and Self-Insured Employers
Re. P. L. 92-576 (1972 LS/HWCA Amendments)

ALL OWCP DEPUTY COMMISSIONERS

Attached is an advance copy of a notice to insurance carriers authorized under the Longshoremen's Act and its extensions, and self-insured employers authorized under the Act and its extensions, advising them of the enactment of P. L. 92-576. The announcement is being printed for mailing during the week of November 13, and will be accompanied by a summary of the provisions of the amendments. Copies will be mailed to you at the time of printing.

JOHN E. STOCKER, Acting
Deputy Director, Office of
Workmen's Compensation Programs

Attachment

CC: ~~ESA REGIONAL ADMINISTRATORS~~
EAC (Official File)
EAC (White Copy)
Mr. Grunewald
Mr. Hall
Mr. Robertson
Mr. Levine
Mr. Cohen
Mr. Cuccia
Mr. Wolkow
Mr. Stocker
Mr. Wedemeyer

EACL:JESstocker/dkh 11/10/72

November 15, 1972

IMPORTANT NOTICE TO INSURANCE CARRIERS
AND SELF-INSURED EMPLOYERS

SUBJECT: Public Law 92-576, effective November 26, 1972,
amending the Longshoremen's and Harbor Workers'
Compensation Act, as extended, including the
District of Columbia Workmen's Compensation Act.

Gentlemen:

This is to advise all insurance carriers authorized to write workmen's compensation coverage under the Longshoremen's and Harbor Workers' Compensation Act or any of its extensions and to advise employers authorized to self-insure under the Act or any of its extensions of amendments to the Act by P. L. 92-576, enacted October 27, 1972, to be effective 30 days thereafter. The amendments make major changes in coverage of the Act and benefits provided for injury or death under all affected acts. They also significantly change certain administrative and appeal procedure. Finally, they provide that the Secretary of Labor shall annually assess insurance carriers and self-insured employers for payments to the special fund to provide one-half of increased payments to total disability and death benefit recipients who are on the rolls at the time the amendments are enacted.

We cannot at this time provide detailed interpretations of all changes effected by the new legislation which affect your responsibilities either as a compensation carrier or a self-insured employer. However, we are enclosing an unofficial summary of important changes in the law involving employer or carrier liability, and ask that you immediately bring the new benefit and procedural provisions to the attention of your workmen's compensation departments and field claims servicing representatives.

For further information or assistance, your field representatives may contact Deputy Commissioners in district offices of the Office of Workmen's Compensation Programs. As new procedures for administering the amended Act are developed, you will be advised.

The amendments provide for formal hearings under the Administrative Procedures Act. From now on such hearings will be conducted by Administrative Law Judges of the Department of Labor. Until further notice, Deputy Commissioners will forward any claims requiring hearing to the Office of Administrative Law Judges in Washington, D.C., advising all interested parties of such referral.

Regulations for administering the Act, now being revised to incorporate changes made by the amendments, will be published before 1973 in the Federal Register and included in Title 20 of the 1973 edition of the Code of Federal Regulations. When the regulations have been officially promulgated, you will be informed of changes made in district jurisdictions of the Office of Workmen's Compensation Programs and you will be advised of procedures for reporting new injuries and for transferring existing cases to that Deputy Commissioner who will service such cases after redistricting.

We shall be pleased to answer any questions regarding the new law that we now can. Please address your inquiries to:
Acting Director, Office of Workmen's Compensation Programs,
U. S. Department of Labor, Washington, D.C. 20211.

Sincerely,

HERBERT A. DOYLE, JR.
Acting Director, Office of
Workmen's Compensation Programs

Enclosure

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November 15, 1972

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Include your address, ZIP code, and file number on all correspondence

For further information or assistance, your field representatives may contact Deputy Commissioners in district offices of the Office of Workmen's Compensation Programs. As new procedures for administering the amended Act are developed, you will be advised.

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Sincerely,



HERBERT A. DOYLE, JR.
Acting Director, Office of
Workmen's Compensation Programs

Enclosure

Summary of Major Provisions of the
Longshoremen's and Harbor Workers' Compensation Act Amendments
of 1972 (P.L. 92-576)
Affecting Insurance Carriers and Self-Insured Employers

This summary covers only major changes in the Act brought about by the 1972 Amendments.

It describes certain changes in (A) benefits, (B) administrative and appeal procedure, and (C) special fund administration.

Cited section numbers consistently refer to numeration of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 902) rather than to that of the 1972 Amendments (P.L.92-576). The term "Secretary," in each instance where used, refers to the U.S. Secretary of Labor.

A. Changes in Disability or Death Benefits:

1. Extension of coverage:

a. Employee. Section 2(3) of the Act is amended to extend the definition of a covered employee to include any employee engaged in maritime employment, any longshoreman or other person engaged in longshoring operations, and any harborworker.

b. Employer. Section 2(4) of the Act is amended to extend the definition of a covered employer to include an employer of such employees in maritime employment on any pier, wharf, terminal, building way, or marine railway adjoining navigable waters or any dry dock, or other adjoining area used in loading, unloading, repairing, or building a vessel.

c. Locus of injury. Section 3(a) of the Act is amended to extend coverage, in respect to disability or death of an employee, to include cases of injury occurring on any pier, wharf, terminal, building way, or marine railway adjoining navigable waters, or any other adjoining area used in loading, unloading, repairing, or building a vessel.

2. Student benefits. Section 2 of the Act is amended by changing the definition of a child eligible to receive death benefits:

a. Section 2(14) of the Act is amended to include persons who, though 18 years of age or older, are students as defined in new subsection 2(18).

(2)

b. New subsection 2(18) defines a "student" as a person studying full-time at specified institutions up to age 23, or completion of four years education beyond high school, whichever occurs first. Student status continues unless there is more than a 5-month break between school years or the Secretary finds that factors beyond the person's control prevent continuation of education for a longer period, but a person serving in the armed forces is not a student.

3. Reduced waiting period. Section 6(a) of the Act is amended to allow compensation from date of disability in cases where injury results in disability for more than 14 days.

4. Limits of disability compensation:

a. Determining compensation. Section 6 of the Act is amended to substitute a new method for determining maximum and minimum compensation (applicable to persons currently receiving compensation as well as those newly awarded compensation) based on the national average weekly wage:

(1) Compensation for disability shall not exceed specified increasing percentages (greater than 100 percent) of the applicable national average weekly wage for the next three years, and shall not exceed 200 percent of the applicable national average weekly wage thereafter.

(2) Compensation for total disability shall not be less than 50 percentum of the applicable national average weekly wage determined by the Secretary, except that if the employee's average weekly wages as computed under Section 10 are less than 50 percentum of such national average weekly wage, he shall receive his average weekly wages as compensation for total disability.

(3) Prior to October of each year, the Secretary shall determine the applicable national average weekly wage for the period beginning with October 1 of that year and ending with September 30 of the next year on the basis of data (for the three most recent calendar quarters prior to his determination) as to the average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls.

(4) Maximum and minimum compensation for a nonappropriated fund instrumentality employee shall be $66 \frac{2}{3}$ percent of the highest rate of basic pay in GS-12, and of the lowest rate of basic pay in GS-2, respectively.

b. Definition of national average weekly wage. Section 2 of the Act is amended by adding the definition of "national average weekly wage" as the national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls.

5. Compensation to survivors of deceased employees who had permanent partial disability:

a. Nonschedule award cases. Section 8(d) of the Act is amended to provide that, in cases of permanent partial disability under subdivision 8(c)(21), survivors of the claimant will be entitled to certain percentages of 1.5 times the weekly compensation of the deceased at the time of his death.

b. Schedule award cases. Section 8(d) of the Act is amended:

(1) To eliminate the requirements that children be under the age of 18 years and that the widower be dependent on his wife.

(2) To add a new provision that, if there is no surviving spouse or child, compensation which would be payable to other survivors listed in section 9(d) of the Act, using appropriate percentages contained in that section, shall be payable to such other survivors:

(a) If the aggregate amount to which all such other survivors is less than such unpaid compensation, the excess shall be divided among such survivors according to the amount otherwise payable to each.

(b) If there are no survivors, such unpaid compensation shall be paid to the special fund established under section 14 of the Act (See part C of this summary).

6. Compensation to survivors of deceased employees who had permanent total disability. Section 9 of the Act is amended to provide for payment of compensation to survivors of employees who die while receiving compensation for permanent total disability, even though death is from other causes.

7. Elimination of limitation on compensation. Section 14(m) of the Act is repealed.

8. Right to and obligation for medical services. Section 7 of the Act is amended to provide that:

a. The employee must notify the employer within 10 days after first medical treatment and may choose his own physician from all those authorized by the Secretary.

b. If the employee is not able to choose, it is the duty of the employer to select a physician when immediate treatment is needed.

(4)

c. The Secretary takes action to assure himself of the quality of medical care given injured employees by:

(1) Actively supervising medical care, requiring periodic reports, determining necessity, character, and sufficiency of any medical aid and, on his own initiative or at employer request, ordering a change of physicians when desirable.

(2) Designating authorized physicians to render medical care.

(3) Having any claimant examined, obtaining physician reports estimating an employee's physical impairment, permitting any party to request review or reexamination, which shall be completed within two weeks from date ordered, and charging cost of such examination to employer or insurance carrier.

9. Disfigurement. Paragraph 20 of section 8(c) of the Act is amended to direct that compensation shall be awarded for serious disfigurement of the neck or other normally exposed areas likely to handicap the employee in securing or maintaining employment.

10. Injury following previous impairment. Section 8(f)(1) of the Act is amended to provide:

a. That payment for injuries to an employee who had a permanent disability shall be based on the average weekly wage of the employee at the time of injury. If an employee with a partial disability suffers a second injury and becomes totally and permanently disabled, but that total disability is not due solely to his second injury, the employer shall pay compensation as provided by the applicable schedule in section 8(c)(1)-(20) or up to 104 weeks, whichever is greater.

b. In the case of injuries not described in section 8(c)(1)-(20) which cause total permanent disability or death to an employee already partially disabled, that the employer shall pay compensation payments or death benefits for only 104 weeks in addition to benefits provided by 8(b) and(e).

c. In the case of a second injury, within the provisions of section 8(c)(1)-(20), which causes permanent partial disability but where such partial disability is not solely due to that injury but is greater than the injury which would have resulted from the second injury alone, that the employer shall pay compensation provided by section 8(c)(1)-(20) or 104 weeks, whichever is greater.

d. In the case of second injuries not described in section 8(c)(1)-(20) where such injuries cause permanent partial disability greater than that which would have resulted from the second injury alone, that the employer shall pay compensation for only 10 $\frac{1}{2}$ weeks in addition to compensation provided by section 8(b) and (e).

e. In all cases arising under section 8(f), after expiration of the payments provided for, that the remainder of any compensation due shall be paid out of the special fund provided for in section 44 (See part C of this summary).

f. Section 8(f)(2) of the Act, pertaining to payment of subsequent injury benefits, is stricken.

11. Compensation for death. Section 9 of the Act is amended:

a. To increase funeral expenses payable to \$1,000.00.

b. To increase the death benefit payable to these maximums:

(1) To the widow or widower, 50 percent of the deceased's average wages.

(2) For the support of each child, 16 $\frac{2}{3}$ percent of the deceased's average wages. If there is no widow or widower, 50 percent for the first child and 16 $\frac{2}{3}$ percent for each additional child up to 66 $\frac{2}{3}$ percent.

c. Section 9(d) of the Act is amended to allow death benefits to be paid for support of dependents who satisfy the definition of "dependent" in section 152 of the Internal Revenue Code of 1954, and to increase to 20 the percentage of the deceased's wages for the support of grandchildren, brothers and sisters, and those meeting the IRC definition.

d. Section 9(e) of the Act is amended to provide, in computing death benefits, that the average weekly wages of the deceased shall be considered to have been not less than the applicable national average weekly wage as prescribed in section 6(b) of the Act, but the total weekly benefits shall not exceed the average weekly wages of the deceased.

12. Determination of employee's average weekly wages:

a. New subsection 10(f) of the Act directs that, effective October 1 of each year, compensation or benefits payable for permanent total disability or death where injury occurred after October 27, 1972, be increased by the percentage of increase, if any, in the applicable national weekly wage over that of the previous year.

(6)

b. New subsection 10(g) of the Act provides that there shall be no reduction in compensation or death benefits, and that any adjustment of them under new subsection 10(f) of the Act shall be fixed at the nearest dollar in the amount of at least one dollar.

c. New subsection 10(h) of the Act provides for adjusting compensation or benefits for total permanent disability commencing, or death occurring, prior to October 27, 1972:

(1) Such adjustment shall be arrived at no later than 90 days after enactment of this subsection, by assuming that the national average weekly wage is the employee's average weekly wage and that the injury or death occurred on the day after such enactment date.

(2) No employee or survivor shall receive less than that to which he was entitled on such enactment date. However, in cases where such compensation or benefits were awarded at less than the maximum rate provided at the time of the injury, the adjustment shall be arrived at by assuming that the employee's average weekly wage is equal to what it was at the time of the injury, increased by the percentage of increase in the national average weekly wage between the year of the injury and the first day of the first month following enactment of this subsection.

(3) In cases where the injury occurred before 1947, the Secretary shall determine the amount by which the employee's average weekly wage is deemed to have increased for the pre-1947 period.

(4) Half the adjustment shall be paid out of the special fund (See part C of this summary) and half from appropriations.

(5) Compensation and benefits so adjusted shall continue to be adjusted each year under new subsections 10(f) and (g).

B. Changes in Administrative and Appeal Procedure:

13. Time period for giving notice. Sections 12(a) and 13(a) of the Act are amended to provide in applicable cases that time periods within which notice of injury or death must be given and claim for disability or death must be filed shall not begin to run until the employee or beneficiary is (or should be) aware of the relationship between the injury or death and the employment.

14. Qualified hearing examiners. Section 19(d) of the Act is amended so that a hearing on a claim, ordered by a deputy commissioner, must be conducted by a hearing examiner (Administrative Law Judge) qualified under section 3105 of Title 5, U.S.C., and in accordance with the adjudication provisions in section 554, chapter 5, Title 5, (Administrative Procedures Act).

15. Review Procedure. For section 21(b) of the Act, two new subsections are substituted to set up a Benefits Review Board, appointed by the Secretary, with jurisdiction over decisions on claims raising substantial questions of fact or law, and with authority to order stays of payment pending final decision in such proceedings:

a. A stay will not be granted unless irreparable injury to the employer or carrier would otherwise ensue.

b. The Board's findings of fact in a decision under review by the Board will be conclusive if supported by substantial evidence in the record considered as a whole.

c. Review of final orders of the Board may be obtained by filing within 60 days in the U. S. Court of Appeals for the circuit in which the injury occurred.

16. Agreed Settlements. Section 8(i) of the Act is amended to give authority:

a. To the deputy commissioner to approve agreed settlements of the interested parties, whenever he determines it is for the best interests of the employee entitled to compensation.

b. To the Secretary to approve agreed settlements discharging the liability of the employer for medical benefits, whenever he determines it is for the best interests of the injured employee entitled to medical benefits.

17. Employer liability in third-party compromise. Section 33(g) of the Act is amended to direct, where an employee has compromised with a third party for an amount less than that to which he would have been entitled under the Act, that written approval consenting to the compromise be obtained from both the employer and his carrier, no later than the time of such compromise, on a form provided by the Secretary and filed within 30 days in the office of the appropriate deputy commissioner.

18. Fees for Services. Section 28 of the Act is amended to provide:

a. In applicable cases, that an attorney's fee may be awarded against the employer or carrier.

b. That an employer or carrier against whom an attorney's fee is awarded may be further assessed costs, fees, and mileage for claimant's witnesses.

19. Discrimination against employees who bring proceedings. New section 49 of the Act provides that any employer shall be liable to a penalty of not less than \$100 nor more than \$1,000 if the employer

(8)

or his agent discharges or otherwise discriminates against an employee's employment for his claiming compensation or testifying:

a. An employee so discriminated against shall be restored to employment and compensated by the employer for wage loss, so long as he remains qualified to perform the duties of his employment.

b. Only the employer, not his carrier, shall be liable for such penalties and payments.

c. Any insurance policy provision shall be void that undertakes to relieve the employer from liability for such penalties and payments.

C. Changes in Special Fund Administration. Section 441 of the Act is amended:

20. To increase the sum which an employer must pay into the special fund, when an employee's death results from injury and there are no survivors entitled to compensation, to \$5,000.

21. To oblige carriers and self-insurers to contribute each year to the expenses of payments from the special fund in accordance with a formula determined by the Secretary and based on the carrier's or self-insurer's proportion of payments on risks covered by the Act during the previous year in relation to the total of such payments made by all carriers and self-insurers.

22. To oblige each carrier and self-insurer to make, keep and preserve records, to make reports, and to provide such additional information as regulations or orders of the Secretary may prescribe.

23. To give power to the Secretary to investigate and gather data from each carrier and self-insurer and to subpoena witnesses and documents.