



June 19, 1998

Notice No. 87

**NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AND OTHER INTERESTED PERSONS**

**SUBJECT: Insurance Requirements under the Longshore Act**

Section 32 of the Longshore Act, 33 U.S.C. §§ 901-949, requires covered employers to secure the payment of benefits under the Act by insuring with a company that is authorized by the U.S. Department of Labor.

Section 2(4) of the Act defines the term covered "employer" as

an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

Section 2(3) of the Act defines the term "employee" as

any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker . . . .

The Act provides for serious legal consequences in the event an employer fails to carry proper insurance coverage. Section 38(a) states, in relevant part, that

[a]ny employer required to secure the payment of compensation under this Act who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the President, Secretary, and Treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such President, Secretary, and Treasurer shall be severally personally liable, jointly with such corporation for any compensation or other benefit which may accrue under the said Act in respect to any injury which may occur to any employee of such corporation . . . .

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An uninsured employer may also be subject to civil suit by an injured employee or his legal representative pursuant to § 5 of the Act. Section 5(a) of the Act provides, in relevant part, that

[i]f an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed risk of his employment, or that the injury was due to the contributory negligence of the employee."

Section 38(b) of the Act states


[a]ny employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Act, and with intent to avoid the payment of compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty or imprisonment as well as jointly liable with such corporation for such fine.

This would apply to any covered employer which is uninsured and closes its business with the intent to avoid paying the benefits required by the Act.

If an employer wishes to avoid the risk of the penalties contained in § 38(a) of the Act, as well as the loss of the limited liability protection afforded by § 5(a), it must obtain insurance coverage in accordance with § 32 of the Act.

If anyone is aware of an employer who is operating without appropriate insurance please write to the following address:

U.S. Department of Labor  
ESA/OWCP/DLHWC, Room C-4315  
200 Constitution Avenue, NW  
Washington, D.C. 20210

  
JOSEPH F. OLIMPIO  
Director, Division of Longshore and  
Harbor Workers' Compensation