

Longshore & Harbor Workers' Compensation and Defense Base Act

By J. Carlos Fox, Esq.
 Chelsea Lalancette, Esq.
 Kimberly Wagner, Esq.
Law Offices of Bradford & Barthel, LLP



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
 New File Referrals: edocs@bradfordbarthel.com



Meet our Team

Kimberly Wagner, Esq
 Equity Partner, Managing Atty
 Ventura
kwagner@bradfordbarthel.com



J. Carlos Fox, Esq
 Associate Attorney-San Diego
jfox@bradfordbarthel.com



Chelsea Lalancette, Esq.
 Associate Attorney
clalancette@bradfordbarthel.com



Tahmeena Ahmed, Esq.
 Executive Managing Partner
tahmed@bradfordbarthel.com



Donald Barthel, Esq
 Founding Partner
dbarthel@bradfordbarthel.com



Tammey Welty
 Director, Training & Communications
twelty@bradfordbarthel.com



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
 New File Referrals: edocs@bradfordbarthel.com



Certificates

Sent via email

PowerPoint & Video

<https://bradfordbarthel.com/training/>

Blog Articles

bradfordbarthel.blogspot.com/

Next Live Webinar – 9/16/26

Strategic Settlements



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



3

NEW PODCAST!!!



LISTEN ON Spotify

Listen on
 amazon music

Listen on
 Apple Podcasts



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



4

Refer A Rating

B&B AMA Analysis & Rating Department

Rating referrals: ratings@bradfordbarthel.com

Phone: (916) 569-0790

Rating specialists make certain AMA Guides is properly applied and ensure our clients pay only the permanent disability owed.



Alex Sadek
Rating Specialist
asadek@bradfordbarthel.com



David Roman
Rating Specialist
droman@bradfordbarthel.com



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



5

What We Will Talk About Today

- ❖ What is the Longshore & Harbor Workers' Compensation Act?
- ❖ Who and what does it cover?
- ❖ What is the Jones Act?
- ❖ What is the Defense Base Act?
- ❖ How is it different from USL&H
- ❖ Who and what does it cover?



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



6

What is USL&H

USL&H is a federally mandated insurance that provides:

- ❖ Wage replacement
- ❖ Medical care
- ❖ Rehabilitation benefits to maritime workers' injured on the job



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



7

What is USL&H

It is governed by the US Department of Labor and applies to work on navigable waters and adjoining waterfront areas.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



8

Who needs USL&H Coverage



Qualifying for USL&H coverage depends on the **STATUS** (type of work) and the **SITUS** (where the work takes place)

- ❖ Occupations covered: Longshoreman, harbor workers, shipbuilders, ship-breakers, marine construction workers, specialized contractors such as welders, electricians, plumbers working on the docks



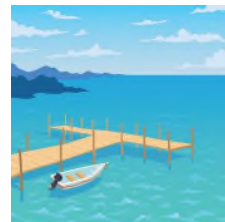
Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



9

Who needs USL&H Coverage

- ❖ Locations Covered: Navigable waters of the US as well as adjoining piers, docks, wharves, terminals and marine railways



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



10

Who needs USL&H Coverage

Workers' subject to USL&H are eligible for State Workers' Compensation benefits. When the LHWCA was enacted in 1927, Section 903(a) provided coverage if recovery "may not validly be provided by State workers' compensation law". Rather than barring state coverage, this wording reflected early constitutional limitations (*Southern Pacific Co. v. Jensen*) that prevented states from regulating injuries occurring on navigable waters.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



11

Who Needs USL&H Coverage

Over time, the U.S. Supreme Court established that where federal and state authority overlap (the "twilight zone"), state workers' compensation laws remain applicable:

- ❑ In *Sun Ship, Inc. v. Pennsylvania* (1980), the Supreme Court explicitly held that the LHWCA supplements rather than supplants state workers' compensation systems and-based maritime workers (such as longshoremen, harbor workers, and shipbuilders) can file for both state and federal workers' compensation benefits for the same injury



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



12

Difference between Standard WC

- ❖ Higher Benefits: USL&H provides higher compensation benefits and extensive medical benefits than most WC state acts
- ❖ Strict Penalties: Failing to carry USL&H insurance when legally required carries severe fines, stop orders and personal liability for employers



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



13

Concurrent Jurisdiction

- ❖ State Workers' Compensation Benefits are ALSO available for Longshore Cases, but NOT Defense Base Act cases
- ❖ The Longshore Claimant (not an Applicant in Longshore parlance) is not required to elect a remedy, and gets the best of both forums. *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715 (1980) (U.S. Supreme Court Landmark); *Sea-Land Service, Inc. v. Workers' Comp. Appeals Bd. (Lopez)*, 14 Cal. 4th 76 (1996) (California Supreme Court Landmark), *Continental Maritime of San Diego v. WCAB (Holloway)*, 60 Cal. Comp. Cases 491 (1995), *Hong Duong v. Workers' Compensation Appeals Board (NASSCO)*, 169 Cal. App. 3d 980 (1985)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



14

Difference between USL&H and Jones Act⁺



- ❖ Defense Bases Act, follows Longshore, but there is NO concurrent jurisdiction. *Devine v. Department of Labor*, 34 F.3d 845 (9th Cir. 1994) Federal Statutory Preemption

Jones Act: USL&H is often confused with the Jones Act. However, they cover different types of workers.

- ❖ The Jones Act protects the captain and crew members who spend at least 30% of their time/working hours on a specific vessel at sea
- ❖ They must perform duties directly related to the vessel's function or tasks
- ❖ USL&H covers land-based maritime and harbor workers who do not fall under the Jones Act



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



15

Difference between USL&H and Jones Act

- ❖ The USL&H maritime worker is not assigned to a specific ship



- ❖ If a worker is injured while engaged in maritime employment on a vessel in navigable waters of the US or adjoining land, they are eligible to pursue compensation under USL&H



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



16

Difference between USL&H and Jones Act

- ❖ The Jones Act aka the Merchant Marines Act of 1920, is a federal act that provides employee benefits similar to WC state acts to masters and crewmember of US flagged vessels
- ❖ State acts do not cover vessel crews. These employees can file suit against their Employer for negligence, the negligence of a co-employee or the unseaworthy conditions of a vessel under the Jones Act



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



17

Difference between USL&H and Jones Act

- ❖ Under the Jones Act, the maritime worker must *prove negligence and take their case to trial*
- ❖ USL&H is different as it is a form of WC. The injured worker does not need to go to civil trial to obtain benefits. They *do not need* to prove negligence



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



18

Difference between USL&H and Jones Act

- ❖ Excluded from USL&H: Office clerical workers, certain recreation/club employees, independent contractors, workers building recreational vessels under 65 feet
- ❖ Excluded from Jones Act: Owner of the vessel is not a covered class



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



19

Jones Act vs Longshore Act



- ❖ Jones Act is not usually an insured risk under standard Workers' Compensation Policies



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



20

Benefits under the Jones Act

Injured seaman are able to claim compensation for:

- ❖ Medical bills
- ❖ Lost wages
- ❖ Decreased earning capacity
- ❖ Non-economic losses such as physical pain, suffering and lost quality of life



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



21

Feature	Jones Act	Longshore Act (LHWCA)
Primary Beneficiary	Seamen / Crew Members (Captains, deckhands, engineers, fishermen).	Land-based Maritime Workers (Longshoremen, shipbuilders, harbor workers).
Fault Required?	Yes. Must prove employer negligence (even if slight).	No. Strict liability / No-fault system.
Types of Damages	Full Tort Damages: Pain and suffering, full lost past/future wages, loss of enjoyment of life, medical expenses.	Statutory Compensation: Capped disability indemnity (66⅔% of AWW) + medical benefits. No pain & suffering.
Companion Maritime Remedies	Seamen can also assert claims for Unseaworthiness (strict liability for unsafe vessel/gear) and Maintenance & Cure (no-fault room, board, and medical care).	Governed exclusively by LHWCA statutory schedules (or § 905(b) third-party vessel negligence actions).



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



22

USL&H Act Eligibility



Both tests must be passed independently of each other in order to establish eligibility to the ACT

- ❖ Status - Employment: Is it a covered type of work or job;
- ❖ Situs -Location: Did the injury occur in the right location?



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



23

USL&H STATUS test

The **status** test has to do with the nature of the work the employee performs for the employer.

- ❖ In order for an employee to be eligible for benefits under the LHWCA, “maritime” duties must comprise at least some of the employee’s work. This means that some significant part of the employee’s work has to have something to do with the water or marine transport.

There are several classes of employees who are almost always eligible for benefits under the LHWCA:

- ❖ longshoremen and other workers who assist in loading and unloading vessels
- ❖ ship repairers
- ❖ shipbuilders, and
- ❖ ship-breakers



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



24

USL&H STATUS Test

Drivers of trucks that take shipping containers away from ships—and the mechanics who repair those trucks—meet the **status** test because they contribute to the maritime nature of their employer's business.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



25

USL&H STATUS Test

The USL&H also specifically **excludes** other types of employees from coverage:

- ❖ shipbuilders who are employed to build recreational vessels smaller than 65 feet long
- ❖ marina employees who are not engaged in the construction, replacement, or expansion of the marina (except for routine maintenance)
- ❖ mechanics or repairers for recreational vessels
- ❖ aquaculture (i.e., fish farming) workers, and
- ❖ captains and crew members of vessels (on any type of boat or ship; these individuals are entitled to protection under a separate federal law called the Jones Act.)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



26

USL&H SITUS Test

- ❖ The second test for coverage under the USL&H is the **situs** test, which has to do with the location of the employee's work
- ❖ Only maritime employees who work on, near, or adjacent to navigable water are covered under the USL&H
- ❖ “On, near, or adjacent to navigable water” means on the water (i.e., on a ship or vessel, as long as the employee is not a crew member of the vessel) or very close to it
- ❖ People who work at least part of the time on piers, wharves, dry docks, terminals, or other areas customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel will generally meet the **situs** test



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



27

USL&H SITUS Test

If you are working more than about a mile or so away from either the water or the border of the shipyard or terminal, you're likely no longer working “on, near, or adjacent to navigable water” for purposes of the USL&H



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



28

Failure to Provide Insurance

Failure for an Employer to provide the proper coverage may result:

- ❖ Fines of not more than \$10,000 per claim
- ❖ Imprisonment for not more than one year
- ❖ Or both
- ❖ Loss of Corporate protection for the president, secretary or treasure resulting in personal liability for fines, imprisonment and benefit compensation to the injured employee



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



29

Benefits under USL&H

Workers who become disabled due to *occupational diseases* arising from maritime employment, including long-term exposure to hazardous materials, repetitive strain injuries and other job related health conditions specific to the maritime industry.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



30

Benefits under USL&H

The LHWCA provides several crucial benefits to support injured maritime workers and their families, helping to ease the burdens that follow a workplace injury:

- ❖ **Medical care for work-related injuries:** Covers all necessary treatment, including surgeries, medications, and rehabilitation.
- ❖ **Temporary total disability benefits:** Provides two-thirds of your average weekly wage if you're temporarily unable to work.
- ❖ **Permanent disability compensation:** Offers ongoing payments for permanent partial or total disabilities, based on severity.
- ❖ **Vocational rehabilitation services:** Assists with retraining and job placement if you can't return to your previous work.
- ❖ **Death benefits for surviving dependents:** Provides financial support and funeral expenses in the event of a work-related fatality.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



31

Benefits under USL&H

Under the USL&H, the injured maritime worker can seek compensation for:

- ❖ Medical expenses
- ❖ TTD benefits are two-thirds of AWW
- ❖ Permanent Partial Disability-66 2/3 per AWW
- ❖ Permanent Total Disability is 66 2/3 of the AWW



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



32

Benefits under USL&H



Benefits have a specific or scheduled amount weeks to be paid based on the disabled extremity injured or lost.

- ❖ Example: Arm lost, three hundred and twelve weeks at 66 2/3 AWW



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



33

Benefits under USL&H



Under the USL&H, an injured employee is entitled to have all of their:

- ❖ reasonable and necessary medical treatment paid for
- ❖ receive mileage and other reasonable transportation expenses (parking, tolls, etc.) for travel to and from the medical treatment

If it appears likely that the injured worker will not be able to return to their previous line of work, the USL&H also requires the Carrier/ TPA to provide vocational rehabilitation benefits to the worker



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



34

Filing a Claim under USL&H



- ❖ Filing a claim requires timely notice to the employer
LS-1 Request for Examination and/ or Treatment and submission of appropriate forms to the U.S. Department of Labor
- ❖ Detailed documentation, including medical records and witness statements, strengthens your case



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



35

Filing a Claim under USL&H



The USL&H Act requires an employee to **report a work-related injury within 30 days** of its occurrence

- ❖ The injury must be reported: LS-201 Notice of Employee's Injury or Death
- ❖ to the employer and to the federal Office of Workers' Compensation Programs (OWCP) (the office that administers the USL&H)
- ❖ Exceptions to 30-day reporting rule "occupational illness" (like a medical condition resulting from exposure to harmful chemicals in the workplace)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



36

Filing a Claim under USL&H

- ❖ The statute of limitations, which sets a **one-year (1)** deadline for filing a USL&H claim
- ❖ Occupational illness, **two years (2)** to file a USL&H claim, beginning from the date of knowledge or date you knew or should have known that your illness or injury was related to your employment



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



37

Filing a Claim under USL&H

- ❖ If the carrier/ TPA begins paying benefits according to the USL&H rules, there is nothing to do at that point
- ❖ If the carrier/ TPA has denied to pay benefits, or if the benefits aren't the proper amount, then the IW files a claim by filling out a Longshore claim form from the Federal Office of Workers' Compensation Programs (OWCP)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



38

Filing a Claim under USL&H



- ❖ IW will send a cc of the Claim Form to the Office of Workers' Compensation Programs with the medical records that support their right to workers' compensation benefits
- ❖ The IW or the Employer/ carrier/ TPA can request an *informal conference*, where a Claims Professional will attempt to resolve any conflicts, and will issue a recommendation for the action on the claim
- ❖ If any party is not satisfied with the recommendation, they can ask for a *Hearing* before the Office of Administrative Law Judges



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



39

Filing a Claim Under USL&H



- ❖ Before the *Hearing*, each side is entitled to conduct pre-hearing investigation, or "discovery"
- ❖ Written questions or interrogatories may be sent to each other, request that the other side produce documents, and take depositions of the other side and of other witnesses
- ❖ The discovery period can last several months. When it is over, you are ready for the Hearing



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



40

Filing a Claim Under USL&H



If the claim hasn't been able to settle, a hearing will be held in front of a federal Administrative Law Judge. The issues to be decided at a USL&H hearing are:

- ❖ whether the employee suffered a work-related injury
- ❖ if the employee had a prior injury, whether the current injury was a new injury for which the current employer should be responsible, or an aggravation of an old injury, which might relieve the current employer from responsibility
- ❖ the employee's average weekly wage
- ❖ the extent of the employee's disability, and
- ❖ the reasonableness of the employee's medical treatment, and whether the insurer should pay the employee's medical bills



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



41

Filing a Claim Under USL&H

Claims are presumed compensable unless there is substantial evidence to the contrary. Examples:



- ❖ That the injury was due to intoxication of the injury worker
- ❖ The injury was caused by the willful intent of the injured employee to injure or kill himself or another



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



42

Filing a Claim under USL&H

Attorney's Fees and the USL&H

- ❖ If the Injured Workers' attorney prevails in getting the IW benefits, either by winning at the hearing or by settling the case, the attorney will usually submit a fee petition to the USL&H claims professional or to the ALJ, or both, depending on how far the claim has progressed
- ❖ If the Petition is approved (it typically is) the Insurer will be ordered to pay the attorney's fee directly to the attorney



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com

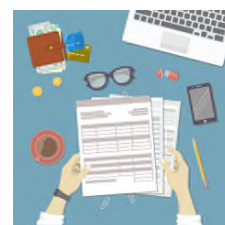


43

OWCP Longshore Program Forms

- ❖ Office of Workers Compensation Programs (OWCP) Forms (with the exception of LS-241 and LS - 242) may be electronically filled
- ❖ <https://www.dol.gov/agencies/owcp/dlhwc/lsforms>

- ❖ Once completed, upload forms to SEAPortal
- ❖ <https://seaportal.dol.gov/portal/>



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



44

Who Else is Covered Under The Longshore Act?

1. Outer Continental Shelf Lands Act (OCSLA)

- ❖ The primary remaining statutory extension of the LHWCA is the OCSLA (43 U.S.C. § 1333(b))
- ❖ **Who is covered:** Non-seamen working on fixed or semi-fixed structures located on the Outer Continental Shelf (typically beyond 3 nautical miles from the state coastline)
- ❖ **Key Qualifying Test:** The worker must be engaged in the exploration, development, removal, or transportation of natural resources from the submerged seabed

Examples of Covered Workers:

- ❖ Offshore oil rig and gas platform technicians
- ❖ Offshore wind turbine installation and maintenance crews
- ❖ Offshore pipe-laying personnel stationed on fixed platforms or artificial islands
- ❖ **Key Distinction:** Unlike seamen on drillships or mobile vessels (who fall under the Jones Act), workers on fixed platforms fall under the OCSLA and receive LHWCA benefits



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



45

Who Else is Covered Under The Longshore Act?

2. Specialized Non-Traditional Shore-Based & Maritime Workers

Under the core LHWCA statute itself, courts have extended coverage to non-traditional roles that satisfy both the status (maritime duties) and situs (on/near navigable waters) tests:

- ❖ **Bridge & Highway Construction Workers:** Construction workers, welders, and pile drivers working on bridges or piers over navigable waterways
- ❖ **Commercial Divers:** Divers conducting sub-surface hull repairs, structural inspections, or underwater demolition (provided they do not spend 30%+ of their working time attached to a specific vessel as a crew member)
- ❖ **Marine Terminal Clerks & Logistics Officers:** On-site port checkers, yard superintendents, and logistics personnel physically working inside port boundaries or intermodal container yards attached to maritime shipping terminals
- ❖ **Ship Dismantlers & Recyclers:** Workers involved in shipbreaking and scrap operations on or near water



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



46

Rate of Compensation under USL&H Act

The AWW used should reasonably represent the annual earning capacity of the employee

- ❖ Documents that may be considered to calculate the AWW include the employment contract, W-2 tax forms, payroll documents and Social Security records
- ❖ In computing wages overseas, allowances generally include: foreign housing, cost of living adjustments, completion awards/bonus, vacation or holiday pay, overtime, and per diem so long as it is not duplicative of other allowances provided



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



47

Feature / Category	California Workers' Compensation	Federal Longshore Act (LHWCA)
Primary Scope	Most non-maritime employees working in California.	Maritime workers (dockers, harbor workers, shipbuilders) on or adjacent to navigable waters.
Temporary Disability (TD)	Rate: $66\frac{2}{3}\%$ of Average Weekly Wage (AWW). Cap: Subject to state statutory max (e.g., ~\$1,600+/wk adjusted annually). Duration Limit: Generally capped at 104 weeks within a 5-year window.	Rate: $66\frac{2}{3}\%$ of Average Weekly Wage (AWW). Cap: Capped at 200% of the National AWW (significantly higher cap). Duration Limit: No hard time limit; paid as long as disability persists.
Permanent Partial Disability (PPD)	Evaluated using AMA Guides (5th Ed) impairment ratings adjusted for age, occupation, and future earning capacity. Paid out over fixed weekly installments.	Evaluated via a Scheduled Award (statutory weeks for limbs/eyes/ears) or Unscheduled Award (based on loss of wage-earning capacity).
Medical Care & Doctor Choice	Treatment is restricted to the employer's Medical Provider Network (MPN). Treatment must meet state Utilization Review (UR) guidelines.	Worker has the free initial choice of treating physician. No rigid MPN requirement, though treatment must still be reasonable and necessary.
Death Benefits	Fixed statutory benefit tiers based solely on the number of total/partial dependents.	Percentage of wage (50% for surviving spouse; $66\frac{2}{3}\%$ if spouse + children) paid until remarriage/adulthood. Includes annual Cost of Living Adjustments (COLA).



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



48

Settlement Method & Resolution- State Act vs USL&H Act

Both systems allow parties to resolve claims permanently through administrative settlement agreements, but the procedural rules and oversight differ

1. California Workers' Compensation Settlements

Compromise and Release (C&R):

- ❖ **How it works:** A full, lump-sum buyout that completely closes the claim, including all rights to future medical treatment
- ❖ **Best for:** Injured workers who prefer a single payout and want to handle their own future healthcare (or use personal health insurance/Medicare Set- Aside)
- ❖ **Approval:** Must be approved by a Workers' Compensation Judge (WCJ) to ensure fairness



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



49

Settlement Methods & Resolution-State Act vs USL&H Act

Stipulation with Request for Award (Stips):



- ❖ **How it works:** The parties agree on the percentage of permanent disability. The indemnity portion is paid out over time, while future medical care remains open and covered by the insurer for the specific injury
- ❖ **Best for:** Workers who need ongoing, long-term medical care that would be too costly or risky to fund out-of-pocket



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



50

Settlement Methods & Resolution-State Act vs USL&H Act

Overlapping Jurisdiction Note:

- ❖ Some maritime workers (e.g., shore-based harbor workers in California) may technically meet the coverage requirements for **both** California state workers' comp and the Federal Longshore Act. In such *concurrent jurisdiction* cases, workers can file under both, but the employer gets a credit for state benefits paid against federal obligations so there is no double recovery



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



51

Settlement Methods & Resolution- State Act vs USL&H Act

2. Federal Longshore Act (LHWCA) Settlements Section 8(i) Settlement (33 U.S.C. § 908(i)):

- ❖ **How it works:** The primary mechanism for settling a Longshore claim. It allows a complete, final discharge of the employer's and carrier's liability for disability compensation, survivor benefits, and/or future medical care in exchange for a agreed lump sum
- ❖ **Partial vs. Full 8(i):** Parties can choose to settle only indemnity (leaving medical benefits open) or execute a full buyout (closing both indemnity and medical)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



52

Settlement Methods & Resolution- State Act vs ULS&H Act



- ❖ **Approval:** Submitted to the Office of Workers' Compensation Programs (OWCP) District Director or an Administrative Law Judge (ALJ)
- ❖ **30-Day Rule:** If both parties are represented by counsel, a Section 8(i) settlement application is **automatically deemed approved** after 30 days unless specifically disapproved in writing by the District Director/ALJ for being inadequate or procuring fraud/duress
- ❖ **Finality:** Once approved, a Section 8(i) settlement **cannot be reopened or modified** under Section 22 due to a change in medical condition



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



53

Requirements for Defense Base Act

Mandatory Coverage:

- ❖ Contractors must purchase DBA insurance from a Department of Labor (DoL)-authorized insurance carrier before starting work, or obtain authorization to self-insure

Applicability:

- ❖ Applies to contracts for construction, services, or support for military bases, U.S.-occupied lands, or foreign development projects funded by the U.S. (e.g., Foreign Assistance Act projects)

Employee Scope:

- ❖ Covers any worker employed on the contract, including U.S. citizens, residents, local hires, and third-country nationals



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



54

Defense Base Act



- ❖ The Defense Base Act (DBA) is a federal workers' compensation law that protects civilian employees working outside the United States under U.S. government contracts
- ❖ It is a no-fault system providing medical treatment, disability compensation, and death benefits for job-related injuries, illnesses, or deaths



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



55

Defense Base Act

Employer Requirements

- ❖ Under the law, federal contractors and subcontractors must secure DBA insurance for all applicable employees
- ❖ Failing to carry this coverage can result in severe penalties, including fines, imprisonment, and personal liability for the



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



56

Defense Base Act

- ❖ The Defense Base Act is an extension of the USL&H act and has adopted the provisions, all claims forms, processing and paperwork is handled through the US Dept of Labor
- ❖ However, the two ACTS apply to completely different groups of people



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



57

Defense Base Act

- ❖ Again, USL&H covers maritime workers injured on or near navigable US waters; longshoremen, harbor workers, dockworkers
- ❖ Defense Base Act (DBA) covers civilian US government contractors working overseas on US military bases or under public work/ national defense contracts



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



58

Defense Base Act

- ❖ The Defense Base Act was established in 1941 to cover workers on military bases outside the United States



- ❖ Defense Base Act can be found at:

<https://www.dol.gov/agencies/owcp/dlhwc/dba>



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



59

Defense Base Act

Employer Requirements

- ❖ Under the law, federal contractors and subcontractors must secure DBA insurance for all applicable employees
- ❖ Failing to carry this coverage can result in severe penalties, including fines, imprisonment, and personal liability for the



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



60

Defense Base Act



Who is Covered?

- ❖ The DBA broadly applies to civilian contractors and their employees working outside of the continental U.S. This includes:
- ❖ **Military bases:** Work on U.S. military bases or lands used for military purposes
- ❖ **Public works:** Contracts for building infrastructure like roads, harbors, dams, or schools
- ❖ **National security & foreign aid:** Contracts with U.S. agencies (such as USAID) involving foreign assistance or national security



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



61

Defense Base Act

- ❖ Insurance is mandatory for all U.S. government contractors and subcontractors performing work outside the U.S. on military bases, public works projects, or projects funded by the U.S. government
- ❖ It covers employees of all nationalities—including U.S. citizens, host-country, and third-country nationals.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



62

Requirements for Defense Base Act

Subcontractors:

- ❖ Prime contractors are responsible for ensuring all subcontractors also secure DBA coverage

Duration:

- ❖ Coverage must be maintained throughout the entire life of the contract

Waivers:

- ❖ If a waiver is granted by the Department of Labor (DoL) for local foreign workers, the contractor must still provide workers' compensation benefits in accordance with the laws of the country where the work is performed



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



63

Defense Base Act Benefits

Defense Base Act serves as an extension of the USL&H and provides several key benefits:

- ❖ **Medical Expenses:** Covers all necessary medical treatment and care for work-related injuries
- ❖ **Disability Compensation:** TTD and PTD benefits are payable at 2/3 of the employee's average weekly earnings up to a current max weekly rate. All are subject to Department of Labor caps. PTD adjusted in Oct each year
- ❖ **Death Benefits:** Provides 1/2 of the employee's average weekly wages to the surviving spouse and one child, 2/3's for two or more survivors up to current max weekly rates. If no surviving spouse, child, benefits paid to parents.
- ❖ **Funeral** expenses up to \$3000
- ❖ **Vocational Rehabilitation:** Offers assistance in returning to work if the injury results in lasting disabilities. VR services are only available to those PTD injured workers residing in the USA



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



64

DBA Claims Reporting



Procedures for Reporting Injuries and Filing Claims

- ❖ The employer should notify its insurance carrier, or if it is self-insured the claims administrator, as soon as it has knowledge of an injury
- ❖ Medical treatment if needed should be authorized immediately. An **Employer's First Report of Injury, Form LS-202**, must be filed with the OWCP within 10 days of the injury, if it causes loss of one or more work shifts
- ❖ Notice should be sent to DLHWC's Central Case Create site below by one of three methods - preferably by using electronic submission through the **SEAPortal**



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



65

DBA Claims Reporting



- ❖ Online through the SEAPortal (preferred method)
(<https://seaportal.dol.gov/portal/>)
- ❖ By Mail: OWCP/DFELHWC, 400 West Bay Street, Room 63A, Box 28, Jacksonville, FL 32202
- ❖ Additional forms and notices, as well as medical reports, should be filed with the OWCP as regulations require
- ❖ A written claim for benefits must be filed with OWCP within **one year of the injury or within one year from the last payment of compensation, whichever is later**



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



66

DBA Claims Reporting



- ❖ The OWCP district office monitors the payment of compensation and medical care to ensure compliance with the provisions of the Act
- ❖ Its staff provides technical assistance to employers, insurance carriers, and benefit claimants for the prompt delivery of benefits
- ❖ Their staff cannot provide legal advice to the injured worker to to claim professionals
- ❖ In case of claims disputes, OWCP claims examiners conduct informal conferences to help the parties resolve their disputes by way of mutual agreement or compromise without formal litigation
- ❖ The district director has authority to approve settlements and issue compensation awards in undisputed claims



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



67

DBA Claims Reporting

- ❖ If the parties are unable to resolve their disputes informally, they may request the referral of the claim to the Office of Administrative Law Judges for formal hearing
- ❖ Decisions of the administrative law judge are appealable to the Benefits Review Board, and thereafter to the U.S. District Court or to the U.S. Court of Appeals



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



68

DBA Claims Reporting



Medical Benefits

- ❖ The injured employee is entitled to select a physician of their choice to treat for the effects of the injury
- ❖ They must ask their employer for a **Form LS-1 (Request for Examination and/or Treatment)** which authorizes medical treatment
- ❖ All treatment must be related to the employment injury or illness and is payable for as long as the injury or illness requires



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



69

DBA Disability Benefits



Disability Benefits

- ❖ Temporary Total Temporary
- ❖ Partial Permanent Total with annual increases
Permanent Partial – Based upon wage loss (unscheduled)
- ❖ Based upon percent of loss of use of specified body part (scheduled)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



70

DBA Disability Benefits

Minimum and Maximum

- ❖ There is no minimum Compensation Rate under the DBA
- ❖ Compensation Rate, which is adjusted annually
- ❖ Current maximum as of 10/01/08 = \$1,200.62 per week



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



71

DBA Disability Benefits

Benefit Type [, , , ,]	Payout / Limits	Details
Medical Treatment	100% of medical costs	Full coverage for all injury-related medical and surgical care, plus travel expenses.
Temporary Disability (TTD/TPD)	66.67% of pre-injury AWW	Paid while recovering; maximum limit is capped at \$2,082.70 per week.
Permanent Disability (PTD)	66.67% of pre-injury AWW	Paid for the duration of the disability, even for lifetime injuries.
Permanent Partial (Scheduled)	66.67% of pre-injury AWW	Set limits for loss of specific body parts (e.g., 312 weeks for an arm, 205 weeks for a foot).
Death Benefits (Spouse)	50% of deceased AWW	Payable to the surviving spouse for life, or until remarriage (where a 2-year lump sum payout applies).
Death Benefits (Children)	+16.67% per child	Additional benefit up to the statutory maximum. Child benefits run to age 18, or age 23 if enrolled full-time in college.
Funeral Expenses	Up to \$3,000	Maximum amount allowable for funeral/burial costs.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



72

Filing for DBA Benefits

- ❖ If the injured worker is disabled more than 3 days, payments are to be issued 14 days from the date the Employer first has knowledge of your loss in wages
- ❖ The first payment is not overdue until 14 days after that date. This provides the carrier 28 days to issue the first payment
- ❖ Thereafter, payments should be paid in bi-weekly payments
- ❖ If the employer or insurance carrier disputes liability for benefits and files a **Form LS-207 (Notice of Controversion)**



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



73

Filing for DBA Benefits



- ❖ The injured employee may file a notice of injury claim by filing **Form LS-201 (Notice of Employee's Injury or Death)** within 30 days. More time is provided by claims such as hearing loss and occupational disease claims



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



74

Filing for DBA Benefits

- ❖ Injured employee may file a written claim for compensation by filing **Form LS-203 (Employee's Claim for Compensation)** within one (1) year after the date of the injury or last payment of compensation, whichever is later
- ❖ Time for filing in occupational disease cases is within two (2) years after the employee or eligible survivor is aware of the relationship between the disease, death or disability and his/ her employment



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



75

Filing for DBA Benefits

- ❖ File for death benefits to the employer by completing the **Form LS-201 (Notice of Employee's Injury or Death)** within thirty (30) days
- ❖ File a written claim for compensation on **Form LS-262 (Claim for Death Benefits)** within one (1) year after the date of the employee's death



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



76

Filing for DBA Benefits



When the employer receives these notices, they will (should) immediately authorize medical treatment and report the claims to their insurance carrier/ TPA and file forms via SEAPportal or mail to OWCP within 10 days of the injury if it causes loss of one or more work shifts.



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



77

DBA Dispute process



- ❖ If the parties are unable to resolve their dispute(s) informally, they may request referral of the claim to the Office of Administrative Law Judges (OALJ) for formal hearing
- ❖ Decisions rendered by the ALJ may be appealed to the Benefits Review Board (BRB) and thereafter, depending on where the claim is administered, to the U.S. District Court or to the U.S. Court of Appeals



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



78

DBA Claim Forms

The following forms are the primary Defense Base Act forms in the DBA claims process.

- ❖ The LS-201 notifies your employer of your injury and must be submitted within 30 days of the incident
- ❖ The OWCP-5a, 5b, and 5c are medical reporting forms completed by your treating physician to document your injury, treatment, and work capacity. All three are available in both English and Spanish
- ❖ The DOL website is the best source for the most current versions, as forms are updated periodically and filing an outdated version can delay your claim. <https://www.dol.gov/agencies/owcp/dlhwc/lforms>



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



79

USL&H and DBA Claims Forms

- ❖ LS-201 – Notice of Employee’s Injury or Death
- ❖ OWCP-5a – Work Capacity Evaluation Psychiatric/Psychological Conditions (English)
- ❖ OWCP-5a – Evaluación de la capacidad de trabajo Condiciones psiquiátricas / psicológicas (Español)
- ❖ OWCP-5b – Work Capacity Evaluation Cardiovascular/Pulmonary Conditions (English)
- ❖ OWCP-5b – Evaluación de la capacidad de trabajo Condiciones cardiovasculares / pulmonares (Español)
- ❖ OWCP-5c – Work Capacity Evaluation for Musculoskeletal Conditions (English)
- ❖ OWCP-5c – Evaluación de la capacidad de trabajo Condiciones músculo esqueléticas (Español)



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



80

Critical Distinctions to Keep in Mind

- 1. Appropriated vs. Non-Appropriated Funds:** Civilian military employees paid via *appropriated federal funds* (e.g., federal civil service workers at the Department of Defense) are **not** covered by the LHWCA or NAFIA. They fall under the Federal Employees' Compensation Act (FECA). NAFIA (Non-Appropriated Fund Instrumentalities Act) strictly covers workers whose pay originates from revenue-generating entities (like PX sales or MWR fees)
- 2. Contractor vs. MWR Direct-Hire:** If a worker is employed directly by the military MWR (Morale, Welfare & Recreation department), they are covered under NAFIA. However, if the DoD hires an outside private company to manage an overseas base facility, those private employees fall under the Defense Base Act



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



81

Feature / Criteria	Longshore Act (LHWCA)	Defense Base Act (DBA)	MWR Employees (NAFIA)
Primary Target Group	Maritime & harbor workers in domestic U.S. waters.	Civilian employees of U.S. defense contractors working overseas.	Civilian non-appropriated fund (NAFI) workers on military bases.
Geographic Location	On, near, or adjacent to navigable U.S. waters.	Overseas / Foreign territory (outside continental U.S.).	U.S. military bases domestically and U.S. territories worldwide.
Employer Type	Private maritime companies, shipyards, stevedoring firms.	Private government contractors and sub-contractors.	Non-Appropriated Fund Instrumentalities (US Military Exchanges/MWR).
Key Coverage Test	Status + Situs Test: Must be maritime work done in a maritime location.	Contract / Base Test: Must be tied to a U.S. government contract overseas.	Employment Status Test: Must be a civilian employee of a qualified NAFI entity.
"Zone of Danger" Application	No. Injury must occur strictly within the course and scope of employment.	Yes. Off-duty injuries overseas can often be covered if the environment poses heightened risks.	No. standard "course and scope of employment" rules generally apply.
Benefit Structure Base	Baseline LHWCA benefit formulas and maximum caps apply.	Based on LHWCA framework, but waives minimum rate requirements for foreign workers.	Uses the LHWCA benefit structure and administration.
Administering Body	USDOL Office of Workers' Compensation Programs (OWCP).	USDOL Office of Workers' Compensation Programs (OWCP).	USDOL Office of Workers' Compensation Programs (OWCP).



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



82

Kimberly Wagner, Esq.
Equity Partner/ Managing Attorney- Ventura
kwagner@bradfordbarthel.com
805) 677-4808

J. Carlos Fox, Esq.
Associate Attorney- San Diego
jfox@bradfordbarthel.com
619) 641-7942

Chelsea M. Lalancette
Associate Attorney- Fresno
clalancette@bradfordbarthel.com
559) 442-3692



Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com
New File Referrals: edocs@bradfordbarthel.com



83