

WHO IS COVERED?

The Longshore and Harbor Workers' Compensation Act provides medical and wage benefits to employees whose work is maritime in nature and is performed on or near navigable waters of the United States.

Injured employees must meet BOTH of the two tests to be covered under the Act:

Situs

The location where the accident occurred must be on, over, adjacent to, or otherwise near navigable water. The situs may include "any adjoining pier, wharf, dry dock, terminal, building way, marine railway or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel". Situs has also been found a few miles from navigable water when that was the only suitable land for the Longshore employer's purpose.

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Status

The status test is the work the employee performs and is established in the "**definition of employee**" on the next page. |▶

Note that unlike State Workers' Compensation, corporate officers cannot be excluded from Longshore coverage if they perform Longshore duties.

LONGSHORE ACT

DEFINITION OF AN EMPLOYEE

Section 902 Definitions

The term “employee” means 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, but such term does not include:

- (A) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;
- (B) Individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;
- (C) Individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);
- (D) Individuals who
 - (i) Are employed by suppliers, transporters or vendors,
 - (ii) Are temporarily doing business on the premises of an employer described in paragraph (4) and
 - (iii) Are not engaged in work normally performed by employees of that employer under this Act;
- (E) Aquaculture workers;
- (F) Individuals employed to build, ~~repair, or dismantle~~ any recreational vessel under sixty-five feet in length **or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;**
- (G) A master or member of a crew of any vessel; or
- (H) Any person engaged by a master to load or unload or repair any small vessel under eighteen tons net



or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;

If individuals described in clauses (A) through (F) above are subject to coverage under a State Workers’ Compensation law.

Type of Vessel	Repair/Service	Build/Construct/Manufacture
Recreational <65ft	State WC	State WC
Recreational >65ft	State WC	Longshore
Commercial	Longshore	Longshore



LONGSHORE ACT

DEFINITION OF A LONGSHORE VESSEL

January 30th 2012

Recreational Vessel Regulations Longshore



What is NOT a Longshore vessel? USC definitions

	Passenger Vessel >100tons	Small Pass Vessel <100tons	Uninspected >100tons	Uninspected <100tons	Combined
Carry Passengers *	>12	>6	>12	>6	ALL*
Skipped Charter	>12	>6	>12	<6	ALL
Bareboat Charter	>12	>12	n/a	n/a	>12
Submersible*	ALL	ALL	n/a	n/a	ALL
Ferry	ALL	ALL	n/a	n/a	ALL

§ 701.501 What is a recreational vessel?

- (a) Recreational vessel means a vessel—
- (1) Being manufactured or operated primarily for pleasure; or
 - (2) Leased, rented, or chartered to another for the latter's pleasure.
- (BUT ONLY IF BAREBOAT AND UNDER 12 PASSENGERS)**

Recreational – Exempt from Longshore

- Bareboat Charters 12 or less passengers
- Passenger vessels and Submersibles with no “passengers for hire” **(but NOT ferry’s)**
- 100% pleasure use.
- Federal State or Local Government Vessels
- Not more than “infrequent” commercial use

Commercial Vessels - subject to Longshore

- ALL Ferry
- ALL Skipped Charter
- ALL Passenger carrying vessels and Submersibles with at least one passenger for hire
- Bareboat charter over 12 people
- Commercial Use & Military Vessels

LONGSHORE ACT

DEFINITION OF A LONGSHORE VESSEL



January 30th 2012

Recreational Vessel Regulations Longshore

A vessel being repaired, dismantled for repair, or dismantled at the end of its life is not a recreational vessel if the vessel had been operating, around the time of its repair or dismantling, in one or more of the following categories on more than an infrequent basis—

(A) “**Passenger Vessel**” as defined by 46 U.S.C. 2101(22);

(22) "Passenger vessel" means a vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

- (A) Carrying more than 12 passengers, including at least one passenger for hire
- (B) that is chartered and carrying more than 12 passengers;
- (C) that is a submersible vessel carrying at least one passenger for hire; or
- (D) that is a ferry carrying a passenger.

(B) “**Small Passenger Vessel**” as defined by 46 U.S.C. 2101(35);

(35) "Small passenger vessel" means a wing-in-ground craft, regardless of tonnage, carrying at least one passenger for hire, and a vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title--

- (A) Carrying more than 6 passengers, including at least one passenger for hire;
- (B) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers;
- (C) that is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers;
- (D) that is a submersible vessel carrying at least one passenger for hire
- (E) that is a ferry carrying more than 6 passengers.

(C) “**Uninspected Passenger Vessel**” as defined by 46 U.S.C. 2101(42);

(42) "Uninspected passenger vessel" means an uninspected vessel

- (A) of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title--
 - (i) carrying not more than 12 passengers, including at least one passenger for hire; or
 - (ii) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; and
- (B) of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title--
 - (i) carrying not more than 6 passengers, including at least one passenger for hire; or
 - (ii) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 6 passengers.

(D) Vessel routinely engaged in “commercial service” as defined by 46 U.S.C. 2101(5); or

(E) Vessel that routinely carries “passengers for hire” as defined by 46 U.S.C. 2101(21a).

(1) “Repair” means any repair of a vessel including installations, painting and maintenance work. Repair does not include alterations or conversions that render the vessel a non-recreational vessel under § 701.501.

For example, a worker who installs equipment on a private yacht to convert it to a passenger-carrying whale-watching vessel is not employed to “repair” a recreational vessel. Repair also does not include alterations or conversions that render a non-recreational vessel recreational under § 701.501.

SAMPLE NOTICE TO EMPLOYERS

Longshore and Harbor Workers' Compensation Act

You, as an Employer, may be liable under the Longshore and Harbor Workers' Compensation Act (contained in Title 33 of the United States Code 901) for the payment of benefits to your worker injured in the course of his employment, if that worker:

- is your employee, or an employee of an independent contractor or subcontractor of yours that has no insurance for its liability under the Longshore Act; and
- works on navigable waters of the United States in a port, shipyard, boatyard, dock, harbor, pier, or other area adjoining navigable waters;
- and performs any of the following types of work:



1. Builds, repairs, dismantles, services or performs any other work on commercial vessels or on any equipment on commercial or government vessels of any size; or
2. Builds recreational vessels over 65 feet in length; or
3. Repair/Services Charter or other Commercial Vessels
4. Constructs, repairs, replaces or expands a marina, dock, residential dock, harbor, sea wall, drawbridge or similar facility; or works on a bridge from a barge on navigable water.

If your company employs such workers or hires uninsured subcontractors with such workers, you need insurance to secure payment of Longshore benefits. Coverage can be provided under a Longshore and Harbor Workers' Compensation Act Coverage Endorsement to be attached to your standard Workers' Compensation insurance policy.

Warning: Employers (including corporate officers personally) that are subject to the Longshore and Harbor Workers' Compensation Act who fail to secure the payment of benefits thereunder, either by obtaining insurance or becoming authorized as a self-insurer by the U.S. Secretary of Labor, may be liable to the federal government for penalties or subject to criminal charges. In addition, the employer (and corporate officers) may be sued by the insured employee, or his representative, for unlimited damages for which the employer may be uninsured.

This is a summary of the coverage requirements of the Longshore Act, and is general in scope. Specific detailed information may be found in the Longshore and Harbor Workers' Compensation Act. Information regarding the Longshore and Harbor Workers' Compensation Act, including a link to the statute itself, can be found online