

Commission throughout this chapter even when not expressly so directed by statute in view of the transfer of the functions of the commission first to the Federal Security Administrator by Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, and later to the Secretary of Labor by Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271. Where such substitution had thus been made the statutory substitution of terms by Pub. L. 98-426 required no change in text.

### § 903. Coverage

#### (a) Disability or death; injuries occurring upon navigable waters of United States

Except as otherwise provided in this section, compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring 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, dismantling, or building a vessel).

#### (b) Governmental officers and employees

No compensation shall be payable in respect of the disability or death of an officer or employee of the United States, or any agency thereof, or of any State or foreign government, or any subdivision thereof.

#### (c) Intoxication; willful intention to kill

No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

#### (d) Small vessels

(1) No compensation shall be payable to an employee employed at a facility of an employer if, as certified by the Secretary, the facility is engaged in the business of building, repairing, or dismantling exclusively small vessels (as defined in paragraph (3) of this subsection), unless the injury occurs while upon the navigable waters of the United States or while upon any adjoining pier, wharf, dock, facility over land for launching vessels, or facility over land for hauling, lifting, or drydocking vessels.

(2) Notwithstanding paragraph (1), compensation shall be payable to an employee—

(A) who is employed at a facility which is used in the business of building, repairing, or dismantling small vessels if such facility receives Federal maritime subsidies; or

(B) if the employee is not subject to coverage under a State workers' compensation law.

(3) For purposes of this subsection, a small vessel means—

(A) a commercial barge which is under 900 lightship displacement tons; or

(B) a commercial tugboat, towboat, crew boat, supply boat, fishing vessel, or other work vessel which is under 1,600 tons gross as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title.

#### (e) Credit for benefits paid under other laws

Notwithstanding any other provision of law, any amounts paid to an employee for the same

injury, disability, or death for which benefits are claimed under this chapter pursuant to any other workers' compensation law or section 30104 of title 46 shall be credited against any liability imposed by this chapter.

(Mar. 4, 1927, ch. 509, § 3, 44 Stat. 1426; Pub. L. 92-576, §§ 2(c), 21, Oct. 27, 1972, 86 Stat. 1251, 1265; Pub. L. 98-426, § 3, Sept. 28, 1984, 98 Stat. 1640; Pub. L. 104-324, title VII, § 703, Oct. 19, 1996, 110 Stat. 3933.)

#### CODIFICATION

In subsec. (e), "section 30104 of title 46" substituted for "section 20 of the Act of March 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. 688) (relating to recovery for injury to or death of seamen)" on authority of Pub. L. 109-304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 30104 of Title 46, Shipping.

#### AMENDMENTS

1996—Subsec. (d)(3)(B). Pub. L. 104-324 inserted before period at end "as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title".

1984—Subsec. (a). Pub. L. 98-426, § 3(a), inserted introductory language relating to exceptions provided for elsewhere in this section, redesignated existing par. (1) as subsec. (b), and struck out existing par. (2) which had excepted from coverage masters and crew members or persons engaged by such masters or crew members to load, unload, or repair vessels under 18 tons net.

Subsec. (b). Pub. L. 98-426, § 3(a), redesignated as subsec. (b) provisions formerly set out in subsec. (a)(2). Former subsec. (b) redesignated (c).

Subsecs. (c) to (e). Pub. L. 98-426, § 3(a), (b), redesignated former subsec. (b) as (c) and added subsecs. (d) and (e).

1972—Subsec. (a). Pub. L. 92-576, § 2(c), substituted provisions respecting coverage of injuries occurring upon 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, for prior provisions respecting coverage of such injuries upon navigable waters and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.

Subsec. (a)(1). Pub. L. 92-576, § 21, substituted "or" for "nor" before "any person engaged by the master".

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 3(a) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, and amendment by section 3(b) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after Sept. 28, 1984, and to claims pending on that date, see section 28(a), (c) of Pub. L. 98-426, set out as a note under section 901 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

#### DISTRICT OF COLUMBIA

The Longshoremen's and Harbor Workers' Compensation Act [this chapter] was made applicable in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, by act May 17, 1928, ch. 612, 45 Stat. 600, as amended.

### § 904. Liability for compensation

(a) Every employer shall be liable for and shall secure the payment to his employees of the com-

pensation payable under sections 907, 908, and 909 of this title. In the case of an employer who is a subcontractor, only if such subcontractor fails to secure the payment of compensation shall the contractor be liable for and be required to secure the payment of compensation. A subcontractor shall not be deemed to have failed to secure the payment of compensation if the contractor has provided insurance for such compensation for the benefit of the subcontractor.

(b) Compensation shall be payable irrespective of fault as a cause for the injury.

(Mar. 4, 1927, ch. 509, § 4, 44 Stat. 1426; Pub. L. 98-426, § 4(a), Sept. 28, 1984, 98 Stat. 1641.)

#### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908, and 909 of this title. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after Sept. 28, 1984, and to claims pending on that date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

### § 905. Exclusiveness of liability

#### (a) Employer liability; failure of employer to secure payment of compensation

The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the chapter, 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 the risk of his employment, or that the injury was due to the contributory negligence of the employee. For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 904 of this title.

#### (b) Negligence of vessel

In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages di-

rectly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.

#### (c) Outer Continental Shelf

In the event that the negligence of a vessel causes injury to a person entitled to receive benefits under this Act by virtue of section 1333 of title 43, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel in accordance with the provisions of subsection (b) of this section. Nothing contained in subsection (b) of this section shall preclude the enforcement according to its terms of any reciprocal indemnity provision whereby the employer of a person entitled to receive benefits under this chapter by virtue of section 1333 of title 43 and the vessel agree to defend and indemnify the other for cost of defense and loss or liability for damages arising out of or resulting from death or bodily injury to their employees.

(Mar. 4, 1927, ch. 509, § 5, 44 Stat. 1426; Pub. L. 92-576, § 18(a), Oct. 27, 1972, 86 Stat. 1263; Pub. L. 98-426, §§ 4(b), 5(a)(1), (b), Sept. 28, 1984, 98 Stat. 1641.)

#### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426, § 4(b), inserted at end "For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 904 of this title."

Subsec. (b). Pub. L. 98-426, § 5(a)(1), substituted "If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer" for "If such person was employed by the vessel to provide ship building or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing ship building or repair services to the vessel".

Subsec. (c). Pub. L. 98-426, § 5(b), added subsec. (c).

1972—Pub. L. 92-576 designated existing provisions as subsec. (a), substituted "the chapter" for "this chapter", and added subsec. (b).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 4(b) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to