

SHORT TITLE OF 1984 AMENDMENT

Section 1(a) of Pub. L. 98-426 provided that: "this Act [enacting section 942 of this title, amending this section, sections 902 to 910, 912 to 914, 917 to 919, 921 to 923, 928 to 935, 938 to 940, 944, and 948a of this title, and section 932 of Title 30, Mineral Lands and Mining, repealing sections 945 to 947 of this title, and enacting provisions set out as notes under this section and section 907 of this title] may be cited as the 'Longshore and Harbor Workers' Compensation Act Amendments of 1984'."

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92-576, §1, Oct. 27, 1972, 86 Stat. 1251, provided: "That this Act [enacting section 948a, amending sections 902, 903, 905 to 910, 912 to 914, 917, 919, 921, 921a, 923, 927, 928, 933, 935, 939, 940, and 944 of this title, and enacting and amending provisions set out as notes under this section and section 902 of this title] may be cited as the 'Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972'."

REFERENCES TO LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

Section 27(d)(2) of Pub. L. 98-426 provided that: "Reference in any other statute, regulation, order, or other document to the Longshoremen's and Harbor Workers' Compensation Act shall be deemed to refer to the Longshore and Harbor Workers' Compensation Act."

§ 902. Definitions

When used in this chapter—

(1) The term "person" means individual, partnership, corporation, or association.

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(3) 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 chapter;

(E) aquaculture workers;

(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;

(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;

if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.

(4) The term "employer" means 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).

(5) The term "carrier" means any person or fund authorized under section 932 of this title to insure under this chapter and includes self-insurers.

(6) The term "Secretary" means the Secretary of Labor.

(7) The term "deputy commissioner" means the deputy commissioner having jurisdiction in respect of an injury or death.

(8) The term "State" includes a Territory and the District of Columbia.

(9) The term "United States" when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof.

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 910(d)(2) of this title.

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

(13) The term "wages" means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the reasonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of title 26 (relating to employment taxes). The term wages does not include fringe benefits, including (but not limited to) employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee's or dependent's benefit, or any other employee's dependent entitlement.

(14) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless

wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" includes step-brothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child", "grandchild", "brother", and "sister" include only a person who is under eighteen years of age, or who, though eighteen years of age or over, is (1) wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or (2) a student as defined in paragraph (19) of this section.

(15) The term "parent" includes step-parents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) The terms "widow or widower" includes only the decedent's wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time.

(17) The terms "adoption" or "adopted" mean legal adoption prior to the time of the injury.

(18) The term "student" means a person regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof,

(B) a school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body.

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, or

(D) an additional type of educational or training institution as defined by the Secretary,

but not after he reaches the age of twenty-three or has completed four years of education beyond the high school level, except that, where his twenty-third birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed five months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed to be a student under this chapter during a pe-

riod of service in the Armed Forces of the United States.

(19) The term "national average weekly wage" means the national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls.

(20) The term "Board" shall mean the Benefits Review Board.

(21) Unless the context requires otherwise, the term "vessel" means any vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

(22) The singular includes the plural and the masculine includes the feminine and neuter.

(Mar. 4, 1927, ch. 509, § 2, 44 Stat. 1424; June 25, 1938, ch. 685, § 1, 52 Stat. 1164; Pub. L. 92-576, §§ 2(a), (b), 3, 5(b), 15(c), 18(b), 20(c)(1), Oct. 27, 1972, 86 Stat. 1251, 1253, 1262, 1263, 1265; Pub. L. 98-426, §§ 2, 5(a)(2), 27(a)(1), Sept. 28, 1984, 98 Stat. 1639, 1641, 1654.)

REFERENCES IN TEXT

The phrase "a student as defined in paragraph (19) of this section", referred to in par. (14), probably means a student as defined in paragraph (18) of this section.

AMENDMENTS

1984—Par. (3). Pub. L. 98-426, § 2(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net."

Par. (6). Pub. L. 98-426, § 27(a)(1), substituted "The term 'Secretary' means the Secretary of Labor" for "The term 'commission' means the United States Employees' Compensation Commission".

Par. (10). Pub. L. 98-426, § 2(b), inserted "; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 910(d)(2) of this title".

Par. (13). Pub. L. 98-426, § 2(c), amended par. (13) generally. Prior to amendment, par. (13) read as follows: "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer".

Par. (21). Pub. L. 98-426, § 5(a)(2), substituted "Unless the context requires otherwise, the" for "The".

1972—Par. (3). Pub. L. 92-576, § 2(a), defined "employee" to mean any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker and substituted "or" for "nor" before "any person engaged by the master".

Par. (4). Pub. L. 92-576, § 2(b), defined "employer" to include an employer any of whose employees are employed in maritime employment 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.

Par. (14). Pub. L. 92-576, §3(b), defined “child, grandchild, brother, and sister” to include a student as defined in par. (19) of this section.

Par. (16). Pub. L. 92-576, §20(c)(1), consolidated provisions of former par. (16) definition of “widow” and former par. (17) definition of “widower” in one definition of “widow or widower”; and in redefining “widower”, substituted provision for decedent’s husband living with or dependent upon wife for support at time of her death, for prior provision for decedent’s husband living with and dependent upon wife for support at time of her death, and included decedent’s husband living apart from wife for justifiable cause or by reason of her desertion at time of her death.

Par. (17). Pub. L. 92-576, §20(c)(1), redesignated former par. (18) definition of “adoption” or “adopted” as par. (17). Former par. (17) definition of “widower” incorporated in par. (16).

Par. (18). Pub. L. 92-576, §§3(a), 20(c)(1), added par. (19) definition of “student” and redesignated such par. (19) as par. (18). Former par. (18) definition of “adoption” or “adopted” redesignated par. (17).

Par. (19). Pub. L. 92-576, §§5(b), 20(c)(1), added par. (20) definition of “national average weekly wage” and redesignated such par. (20) as par. (19). Former par. (19) definition of “student” redesignated par. (18).

Par. (20). Pub. L. 92-576, §§15(c), 20(c)(1), added par. (21) definition of “Board” and redesignated such par. (21) as par. (20). Former par. (20) definition of “national average weekly wage” redesignated par. (19).

Par. (21). Pub. L. 92-576, §§18(b), 20(c)(1), added par. (22) definition of “vessel” and redesignated such par. (22) as par. (21). Former par. (21) definition of “Board” redesignated par. (20).

Par. (22). Pub. L. 92-576, §§3(a), 5(b), 15(c), 18(b), 20(c)(1), redesignated former par. (19) definition of “singular” as pars. (20), (21), (22), (23), and (22) again. Former par. (22) definition of “vessel” redesignated par. (21).

1938—Par. (14). Act June 25, 1938, included within definition of child, “a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury” and within definition of child, grandchild, brother, and sister “persons who though eighteen years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 2(a) and 5(a)(2) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, amendment by section 2(b) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending as of such date, and amendment by sections 2(c) and 27(a)(1) of Pub. L. 98-426 effective Sept. 28, 1984, see section 28(a), (c), (e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 20(c)(3) of Pub. L. 92-576 provided that: “The amendments made by this subsection [amending this section and section 909 of this title] shall apply only with respect to deaths or injuries occurring after the enactment of this Act, [Oct. 27, 1972].”

Section 22 of Pub. L. 92-576 provided that: “The amendments made by this Act [see Short Title note set out under section 901 of this title] shall become effective thirty days after the date of enactment of this Act [Oct. 27, 1972].”

TRANSFER OF FUNCTIONS

Prior to the amendment of this chapter by Pub. L. 98-426 the word “Secretary” meaning the Secretary of Labor had been substituted for the word “commission”

meaning the United States Employees’ Compensation 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.