

The ABC's of the DBA

Our Goals for Today

- Explain the DBA in broad terms
- Ensure you understand the requirements and implications of the DBA
- Stress the fact that the DBA is going to get more emphasis than ever due to the DoD's position and the U.S.'s ongoing overseas commitments
- Identify where DBA fits in your overall insurance program
- Answer your questions
 - We can answer your firm-specific questions offline

What is the Defense Base Act

- Created in 1941, the Act was initially built to protect workers on US bases overseas, but over the years was amended to include non-military projects. Most contracts with the US government overseas will require Defense Base Act coverage
- It is an extension of the Longshore and Harbor Workers' Compensation Act providing disability and medical benefits to employees of U.S. government contractors who perform work overseas
- Makes the employer liable for the benefits and obliged to secure the benefits

Who is insured under the DBA

- Private employers on U.S. Military bases or on any lands used by the U.S. for military purposes
- Public work contracts with any U.S. government agency
- Work on contracts under the Foreign Assistance Act (usually USAID or the like)
- Work for American employers providing services for the benefit of the Armed Services (e.g. the USO)
- In all employment activities mentioned the work must take place **OUTSIDE OF THE UNITED STATES**

Other Important Points

- All employees that meet the criteria outlined on the previous slide regardless of nationality (local hires and third country nationals) are covered
- There is no exemption from the Act for:
 - Short trips
 - Not a defense contractor, but meeting on a base
 - Overseeing, not working
 - CEO
- The Act is administered by the U.S. DOL, Office of Workers' Compensation Programs

Who is Responsible for Insurance

- Employers are responsible for buying insurance regardless of where you are on the contracting chain from prime to subordinate subcontractor
- Who is not responsible
 - Contracting agency
 - Contracting Officer
 - Department of Labor
 - State Assigned Risk Pool
 - Broker or Agent

Two Unique Contracts

- Some agencies arrange for a single source contract for DBA
- Multiple Contracts
 - Some employers have different contracts with different agencies
 - There could be an instance where an employee is covered under multiple insurance policies for a single incident

Waivers

- Getting a waiver from having to buy DBA coverage can be a tricky proposition
 - Needs to be sent from the Labor Advisor of the Agency requesting it. The contractor, broker, or contractor should not send it
 - If you assume or are told there is a waiver from coverage, beware as you are still responsible for obligations under the Act
 - Typically waivers are requested due to the fact that workers are covered by another national program or provincial workers compensation act that is as broad or broader than the DBA

The Hammer

- If a contractor fails to purchase DBA cover or secure payment for a DBA claim:
 - Employee can collect compensation or sue employer for damages
 - The normal defenses of fellow servant, assumption of risk, and contributory negligence are not available
 - The corporation and its president, secretary, and treasurer are severally liable for a fine of \$10,000 and up to a year in jail. There are both civil and criminal proceedings. Each needs representation meaning 8 lawyers now have work
 - DoD reiterated the importance of DBA in 2003 memorandum with two wars going on and DBA claims on the rise

Are There Actual DBA Claims?

- Yes
- 51,575 DBA claims since 2001 including 1910 deaths
- Can you guess the five countries with the most claims?
 - Iraq, Afghanistan, Kuwait, Nation Pending, Puerto Rico
- 5 surprising places
 - Luxembourg, Jamaica, Greenland, Fiji, Sweden
- 158 countries have been the home of a DBA claim since 2001

What Companies Generate the Claims?

- Service Employees International
- EG&G
- CSA
- Dyncorp
- Prime Projects
- L-3
- Titan
- 1377 different companies have had a DBA claim since 2001

Who is Approved to Sell DBA Coverage?

- Over 100 carriers are approved to sell DBA coverage in the US
- Biggest writers of DBA Coverage
 - AIG, ACE, CNA, Zurich, and Chubb
- Issues to consider
 - International and DBA expertise
 - Overseas personnel
 - Reputation of carrier
 - Claims philosophy
 - Where are you doing work

What to do in event of a claim

- Call your broker or agent
 - They need to be reported to the Longshore District Office responsible for the geographic area where the injury occurred
 - Iraq, Afghanistan, Europe, Africa, Central and South America are filed in New York, NY
- Why is this important
 - Failure to report a claim carries a separate penalty of up to \$11,000; waives the time bar; and there is a 10% additional compensation penalty
 - 3/14/30 reporting unless it is a disease or hearing loss

Benefits that are paid in a Claim

- Benefits are more generous than your standard workers' compensation case
 - Each year the department of labor establishes a minimum and maximum rate per week. The minimum is 50% of the national average weekly wage and the maximum is 200% of the national average weekly wage
 - This number is targeted now at a maximum \$1030.78. For comparison, Maryland, a very high wage state has a maximum payout of \$920. This does not seem like much until you have a serious injury
 - Depending on the state, death claims be much more expensive than a US comp case

Other Quirks of the DBA

- Partial disability benefits are always far higher than traditional state plans
- “Working hour only” coverage associated with US comp plans run into two DBA provisions
 - Zone of Special Danger; Reasonable Recreation Doctrine
 - War Hazards Compensation Act
 - Carriers can seek reimbursement from the government
 - Decided by Administrative Law Judge (ALJ’s)

Where Mistakes are Made

- Self Insure Exposure
- You are insured by an unauthorized carrier
- Insured by an authorized carrier, but have no DBA endorsement
- Operating under a waiver which is not effective
- Operating under a contract where you assume coverage will be found

Other Issues to Consider

- DBA claims can be highly emotional claims with the possible vast benefit level differences
- The DBA should be written in conjunction with AD&D, K&R, Foreign Liability, Foreign Voluntary Workers' Compensation, Professional/E&O, Property of others, Floater, etc. These policies work in concert with the various exposures that a typical defense contractor faces and are usually inexpensive, can be built into your contracts, and are required by the contract
- If you purchase DBA, the DOL expects you to post notice LS-241 or LS-242. The insurance company should supply the poster

Takeaways

- DBA will continue to be a primary remedy for contractors working on overseas contracts for the US government
- DBA claims do happen
- DBA needs to be one part of a comprehensive international program
- Fines and penalties for non-compliance are stiff
- DBA law will continue to evolve

Thank You



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