

The New Longshore Recreational Vessel Rule

How It Affects You

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Office of Workers'
Compensation Programs
DLHWC

Overview

- The Recreational Vessel Exception prior to 2/17/09
- The Recreational Vessel Exception after 2/17/09
- What is a “Recreational Vessel”?
- Decision Tree: Are My Employees Covered?
- Effective Date of the New Recreational Vessel Exception – Date of Injury
- Q & A

Longshore Act Coverage Prior to 2/17/09

- Longshore Act Coverage under the 1972 Amendments:
 1. **Status** – Employee must be in Maritime Employment
 2. **Situs** – Injury must be on Navigable Waters or Adjoining Areas
- Longshore Act Exclusion under the 1984 Amendments:
 1. **Status** -- Individuals employed to build, repair, or dismantle any **recreational vessel under sixty-five feet** in length are excluded from coverage, if they are subject to coverage under a State workers' compensation law .
 2. **Situs** -- Unchanged.

The 2009 Longshore Amendment

- 1984 Amendment to the Longshore Act :

*“The term “employee” does not include **individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length”;***

- 2009 (ARRA) Amendment to the Longshore Act:

*“The term “employee” does not include **individuals employed to build 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.**”*

Recreational Vessel Exception After 2/17/09

- The “**Under 65 feet**” requirement was eliminated for those who repair recreational vessels.
 1. **Status** – Individuals employed to build recreational vessels **under 65 feet** in length are **excluded** from coverage if they are subject to coverage under a State workers’ compensation law;

Status - Individuals employed to repair, or dismantle for repair, **any recreational vessel** are **excluded** from coverage, if they are subject to coverage under a State workers’ compensation law.

Status - Individuals employed to build recreational vessels **over 65 feet** in length, or to dismantle any recreational vessel for scrap, are **covered**.
 2. **Situs** - Unchanged.

What's in the New Longshore Recreational Vessel Rule?

1. **Definition of Recreational Vessel** – Adopts the US Coast Guard's Definition (20 C.F.R. 701.501)
 - **Basic Definition:** *“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.”*
 - Excludes passenger vessels, small passenger vessels, uninspected passenger vessels, vessels routinely engaged in commercial service, and vessels that routinely carry passengers for hire, all as defined by Coast Guard administered statutes.

New Longshore Recreational Vessel Rule

- 2. Boat Manufacturers and Builders may consider their vessels “recreational” *only if* the vessels appear intended for ultimate recreational use by their design and construction.**

NOTE: The manufacturer or builder bears burden of establishing its vessels are recreational.

What's in the New Longshore Recreational Vessel Rule?

3. **Public vessels** used by federal, state, and municipal government agencies for public purposes – are considered recreational vessels if designed and constructed like traditional recreational vessels.
4. **Recreational Vessels** used by their owners for infrequent commercial use remain recreational for purposes of the Act's exclusion.
5. Clarifies **the effective date** of the Amendment – look to the Date of Injury as the controlling date.

Are My Employees Covered?

Situs Decision Tree

Situs – Is your job site located on

1. Navigable Waters of the U.S., or
 2. Adjoining pier, wharf, dry dock, terminal, building way, marine railway, or
 3. Other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel.
- If you answer **NO** to **all three** of the above questions, your employees are **not covered** under the Longshore Act.
 - If you answer **YES** to one or more of the above questions, proceed to the **Status** questions.

Situs Test – Is the Job Site...

On Navigable Waters of the U.S.?

Yes-go to Status

No – Next Q



In a structure adjoining Navigable Waters (pier, etc.)?

Yes-go to Status

No – Next Q



In an adjoining area to Navigable Waters?

Yes-go to Status

No (3x) NOT Covered

Are My Employees Covered? Status Decision Tree

Status – do you have one or more employees who:

1. Repair, dismantle, or build **Commercial Vessels** of any length?
 2. Build **Recreational Vessels over 65 feet in length?**
 3. Work interchangeably on the repair or dismantling for repair of **both Commercial and Recreational Vessels** of any size?
 4. Work on the **dismantling for scrap** of Commercial or Recreational Vessel of any length?
 5. Work on the **conversion** of an existing Commercial Vessel to Recreational Use, or vice versa?
- If you answer **YES** to **any** of the above, your employees are probably covered under the Longshore Act.

Are My Employees Covered? State Workers' Comp Coverage

- If the work your employees perform falls under the new Longshore Recreational Vessel Exception, make sure you have coverage under State workers' compensation law.
- If you do not have State workers' compensation coverage, the Recreational Vessel Exception does not apply.

Status Test – Do you have employees that...

Repair, Dismantle, or Build Commercial Vessels?

Yes – Likely Covered

No – Next Q



Build Recreational Vessels over 65 Feet?

Yes – Likely Covered

No – Next Q



Work on Both Commercial or Recreational Vessels?

Yes – Likely Covered

No – Next Q

Status Test cont. Do you have Employees that....

Dismantle for Scrap Commercial or Recreational Vessels?

Yes – Likely Covered

No – Next Q



Convert Commercial Vessels to Recreational Vessels or Vice Versa?

Yes – Likely Covered

No (and all above) NOT Covered



Do you have State Workman's Comp Insurance Coverage?

Yes – Exemption Can Apply

No – Rec Exemption Cannot apply

Effective Date of the New Recreational Vessel Exception

- The New Rule applies if the Date of Injury (DOI) is on or after February 17, 2009.
- The Date of Injury (DOI) may be different depending on the type of injury involved

What Date of Injury To Use?

- **Traumatic Injuries** -- the DOI is the date the accident occurs, even if the worker is not disabled until many days later.
- **Cumulative Trauma Injuries** -- result from job-related stresses and strains on the body sustained over a period of time. The **DOI** is any date on which a workplace trauma worsens the condition.

What Date of Injury To Use?

- **Hearing Loss Injuries** -- The **DOI** is the date the worker was exposed to the harmful workplace noise.
- **Occupational Disease Injuries** -- The **DOI** is the date the individual was exposed to the harmful workplace substance or condition.

What Date of Injury To Use?

- **Death** -- The **DOI** for a death benefit claim is the date of the workplace incident that caused or contributed to the worker's death, even if time passes between the incident and the time of death.
- **Special Note on Last Covered Employment** – An employee who suffered a cumulative trauma, hearing loss, or occupational disease injury resulting from harmful workplace exposure or condition in **covered employment prior to February 17, 2009** may be entitled benefits under the Act.

Need More Info?

Visit the Longshore Website

- Home Page: <http://www.dol.gov/owcp/dlhwc/>
- Recreational Vessel Page:
<http://www.dol.gov/owcp/dlhwc/lsnewregulation.htm>
- The Statute:
<http://www.dol.gov/owcp/dlhwc/lhwca.htm>

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