Which workers' compensation law applies?

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"Workers' compensation" is broadly considered the umbrella of claims employees can pursue when they're injured at work. Workers' compensation systems were established to provide medical care and income protection to employees who are injured or become ill from their job.

Until the early 1900s, injured workers had little if any rights in connection with a work injury. Only after the tragedy of the Triangle Shirtwaist Factory fire in 1911, which resulted in the death of 146 people in New York City, did states begin adopting workers' compensation schemes to protect workers.

Not all workers' compensation claims fall under a state's laws. Indeed, not all job-related injuries occur while in an employee's state of residence or within the United States. So, the question arises, what law applies?

All 50 states have now enacted laws relating to workers' compensation, with each state either creating a worker's compensation division or board under their state's department of labor. If accepted by an employer's workers' compensation insurance carrier, injured employees typically receive indemnity benefits at 2/3 of their weekly earnings, along with medical benefits, which can include medication and transportation costs to and from appointments. When a person mentions they have a workers' compensation claim, they're likely talking about a claim that falls under their state's laws.

However, not all workers' compensation claims fall under a state's laws. Indeed, not all job-related injuries occur while in an employee's state of residence or within the United States. So, the question arises, what law applies? That depends on the employee, who they work for, where they work, and the scope of the employer's workers' compensation insurance.

Foreign voluntary

Employees are sometimes called upon to travel outside the country for a work assignment. If that worker suffers a work-related injury while overseas, is their employer liable for workers' compensation benefits? The short answer is yes, but for what?

Foreign voluntary workers' compensation insurance provides coverage for an employer with employees working outside of the United States. Besides providing coverage to help pay for indemnity and medical benefits, most foreign voluntary workers' compensation policies also provide coverage for repatriation expenses, such as helicopter evacuations, emergency medical flights, and/or travel costs for accompanying spouses and/or children. These policies also provide coverage for endemic diseases, and if not automatically excluded, for war, terrorism and kidnapping.

Foreign voluntary policies can either be purchased as an endorsement to a company's workers' compensation policy or as a standalone policy. Coverage is voluntary but should be considered if a company has employees traveling outside of the country. The reason foreign voluntary coverage is necessary is because of the limited jurisdictional reach of state legislation.

Within the United States, one state is given the "full faith and credit" of its laws, so that if a worker living in Louisiana is injured while on temporary assignment in Mississippi, Louisiana's workers' compensation laws can be applied and enforced. The same is not true in foreign countries. Foreign voluntary coverage essentially expands coverage of state workers' compensation laws when otherwise no workers' compensation law might apply.

If the employer of an injured employee working overseas possesses a foreign voluntary workers' compensation policy, the company will likely be covered for any repatriation expenses it may need to assist the worker in returning home safely.

Federal workers' compensation — Office of Workers' Compensation Programs

Workers' compensation doesn't end at the state level. Employees who work for, or in conjunction with, the federal government are also entitled to workers' compensation benefits if they are injured on the job.

The United States Department of Labor, Office of Workers' Compensation Programs, administers four major disability compensation programs which provide wage replacement benefits, medical treatment, vocational rehabilitation, and other benefits to certain workers or their dependents who experience work-related injuries or occupational diseases. These programs include the

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Federal Employees Program, Energy Workers Program, Longshore Program, and Black Lung Program.

The Federal Employees Program adjudicates claims arising under the Federal Employees' Compensation Act ("FECA"). Some who qualify for benefits under FECA include civil officers or employees in any branch of the United States Government. *See* 5 U.S.C. § 8101(1)(A)-(G).

Enacted in October 2000, the Energy Workers Program adjudicates claims arising under the Energy Employees Occupational Illness Compensation Program Act ("EEOICPA"). Some who qualify for benefits under EEOICPA include employees of the Department of Energy, employees of atomic weapons employers, and employees of beryllium vendors. *See* 42 U.S.C. § 7384i.

The Longshore Program administers claims of land-based maritime workers for employment injuries and deaths, ensuring that workers' compensation benefits are provided promptly and properly either under the Longshore and Harbor Workers' Compensation Act ("LHWCA"). That program also oversees claims arising under the Defense Base Act ("DBA"), Non-Appropriated Fund Instrumentalities Act ("NAFIA"), and the Outer Continental Shelf Lands Act ("OCSLA"), which are jurisdictionally specific workers' compensation laws.

Those who qualify for benefits under the LHWCA include 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. *See* 33 U.S.C. § 902(3)(A)-(H).

The Defense Base Act is an extension to the LHWCA, and employees who qualify for benefits under the DBA include those who work at any military, air, or naval base, or upon any lands occupied or used by the United States for military or naval purposes outside of the continental United States. *See* 42 U.S.C. § 1651(1)(a).

Those who qualify for benefits under NAFIA include:

> civilian employees who are paid from non-appropriated funds of Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

See 10 U.S.C. § 1587(a)(1). Those who qualify for benefits under OCSLA include non-seamen who work on submerged lands under United States jurisdiction, which typically means workers involved in the exploration for or extraction of natural resources on the Outer Continental Shelf. *See* 43 U.S.C. § 1331(a).

The Division of Coal Mine Workers' Compensation, or "Black Lung" Program, administers claims filed under the Black Lung Benefits Act. The Act provides compensation to coal miners who are totally disabled by pneumoconiosis arising out of coal mine employment, and to survivors or coal miners whose deaths are attributable to the disease. The Act also provides eligible miners with medical coverage for the treatment of lung diseases related to pneumoconiosis.

Jones Act

While workers' compensation schemes provide benefits to employees injured on land, the Jones Act provides benefits to injured seamen. The Jones Act allows seamen to recover compensation for the loss of income or the money that they would've earned if they were at work. Injured seamen can also obtain compensation for past and future medical expenses as well as pain and suffering. A person is considered a seaman if they are more or less permanently assigned to work aboard a vessel in navigable waters. The rule of thumb is typically spending at least 30% of their work time aboard a vessel.

Under any compensation scheme, employers are obligated to inform employees of their legal rights if they are injured at work. This should guide the employee to determine whether they have a state worker's compensation claim (whether domestic or foreign voluntary), federal workers' compensation claim, or are a seaman under the Jones Act. Employers should ensure that they have obtained the proper workers' compensation insurance coverage and be knowledgeable as to what benefits employees are entitled to under each policy.

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