

# Calculating Average Weekly Wage for Injured Overseas Contractors

Civilian workers who are injured while working overseas are compensated by The Defense Base Act. Here's how the benefits are calculated.

Need Professional Help? Talk to an Employment Rights Attorney.

Full Name



[Grauel Law Offices P.L.L.C.](#)

Concord, NH

Contact

## Other Articles by the Author

- [Workers Compensation Amounts for Workers Injured Overseas](#)
- [The "Zone of Special Danger" in Defense Base Act Cases](#)

The Defense Base Act (DBA), 42 USC 1651, provides workers' compensation coverage for civilian contractors working on U.S. military and public works contracts outside the continental United States. The DBA applies the Longshore and Harbor Workers' Compensation Act (Longshore Act), 33 USC 901, to these overseas locations where U.S. military or public works contractors operate.

## Compensation Offered

The primary benefit of the DBA/Longshore system, like any workers' compensation law, is to provide a partial wage substitute for workers who are unable to earn wages after an on-the-job injury at as high a rate as they did before they were hurt. Wages are paid at 2/3 of the difference between the Average Weekly Wage at the time of the injury and the post-injury wage, capped at \$1,295.20 for 2012.

For a worker who is totally disabled because of a work injury, this means that benefits are paid at 2/3 the average weekly wage during the period of total disability. Workers who return to work at reduced earnings, whether because of a reduction in hours or because they are forced into lower-paying work by their injuries, receive 2/3 of the difference between the pre- and post-injury wages.

## Calculation of "Average Weekly Wage"

Because the DBA/Longshore law is based on the Average Weekly Wage at the time of injury, calculation of accurate earnings as of the date of injury is important. The Longshore Act, section 10 (33 USC 910), provides the approach for calculating the Average Weekly Wage. In plain terms, the statute states that for compensation purposes, the wage in question is the employee's earning "at the time of injury."

## **Duration of Employment**

The next step is whether the injured worker has worked for "substantially the whole of the year" preceding the injury. The statute does not define what is "substantially the whole of the year." Injuries that happen soon after a worker starts working on an overseas contract can face the argument by employers that the Average Weekly Wage should be based not just on the higher, overseas earnings, but should include pre-injury stateside earnings.

These arguments have been rejected for various reasons, but injured workers should be careful not to let insurance companies argue their Average Weekly Wage down: Overseas work pays at a high rate because of the inconvenience, danger, and other factors that make overseas work less attractive than stateside work. If you have been injured on an overseas job, be sure to consult an attorney before accepting the insurance company's calculation of your benefits.

## **Implication of Limited Duration Contracts**

Employers and insurance companies have also argued that overseas contracts are of limited duration, and Average Weekly Wages should therefore be an average of both high-paying overseas work and lower-paying pre-injury stateside work. Courts have largely rejected this attempt to reduce benefits as well, finding that the purpose of workers' compensation is to compensate for lost wage earning capacity, and that the best measure of an injured worker's lost earnings is the contract wage itself. In addition, it would be speculation to conclude that an injured worker would have left overseas employment if he or she had not been injured.

Correct calculation of the Average Weekly Wage is essential to making sure that injured workers receive the benefits that the law provides. Employers and insurance carriers will sometimes try to argue that the short duration of overseas contracts, or the fact that an injury happens soon after arrival overseas, should justify basing benefits on wages lower than the worker was actually earning "at the time of the injury." Always consult an attorney who is familiar with the Defense Base Act/Longshore Act and overseas contracting if you have had an injury while working overseas.