

Jones Act Exemption Passed by Congress!

So What Does That Mean for Your Business?

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It only took us about 10 years, but we finally managed to get the Shellfish Aquaculture Improvement Act passed through Congress! So what does the act say and what does it mean for our members?

The text of the amendment adopted in Public Law 117-263 and executed in the United States Code is short and sweet.

§30104 [of title 46, United States Code]. Personal injury to or death of seamen

(a) In General.-A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

(b) Limitation on Recovery by Aquaculture Workers.

(1) In general.-For purposes of subsection (a), the term "seaman" does not include an individual who-

(A) is an aquaculture worker if State workers' compensation is available to such individual; and

(B) was, at the time of injury, engaged in aquaculture in a place where such individual had lawful access.

(2) Aquaculture worker defined.-In this subsection, the term "aquaculture worker" means an individual who-

(A) is employed by a commercial enterprise that is involved in the controlled cultivation and harvest of aquatic plants and animals, including-

(i) the cleaning, processing, or canning of fish and fish products;

(ii) the cultivation and harvesting of shellfish; and

(iii) the controlled growing and harvesting of other aquatic species;

(B) does not hold a license issued under section 7101(c); and

(C) is not required to hold a merchant mariner credential under part F of subtitle II.

Translated from legalese it says: if you are an aquaculture worker and you are eligible for state workers compensation insurance in your state, then you are not a "seaman" under the Jones Act (unless you are a licensed captain, in which case you are still a seaman).

A Jones Act seaman is someone who spends 30% or more of their job “in service of a vessel.” If a seaman is injured at work, the Merchant Marine Act of 1916 (known as the Jones Act) allows that worker to sue his or her employer for “maintenance and cure.” The employer’s liability for that injury can be unlimited, with jury awards in these lawsuits often running to millions of dollars, enough to put most shellfish farmers out of business.

Most of the Jones Act is designed to promote domestic shipbuilding and puts large tariffs on non-U.S.-flagged ships carrying goods between states. The Jones Act dictates how much U.S. steel must be used in a U.S.-flagged vessel, and the percentage of Americans working on the vessel. A little-known provision of the act provides compensation for injured workers who travel on the high seas from state to state or even internationally. It was unclear how those workers could be covered under state workers compensation programs, so the act created a means for them to recover health care costs and lost wages from their employers.

Now that aquaculture workers are exempt from the Jones Act, employers no longer need to buy expensive Jones Act insurance for their employees (unless they are licensed captains). Instead, they will need to pay into their state’s Workers Compensation Plan. Employers will no longer have to fear crippling unlimited liability lawsuits, and employees will not have to hire lawyers to sue their employers for health care when they get injured on the job. In states where Workers Compensation rates are very high the employers may end up paying more to insure an employee, but at least the employers won’t have to fear a catastrophic unlimited liability lawsuit.

Notes and Links

Public Law 117-263, section 11502, Limitation on recovery for certain injuries incurred in aquaculture activities: www.congress.gov/117/plaws/publ263/PLAW-117publ263.pdf

Section 30104 of Title 46 of the U.S. Code (46 USC 30104: Personal injury to or death of seamen) as maintained by the Office of Law Revision Counsel. It shows the amendment adopted in Public Law 117-263 executed in the United States Code:

[uscode.house.gov/view.xhtml?req=\(title:46%20section:30104%20edition:prelim\)%20OR%20\(granule%20id:USC-prelim-title46-section30104\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:46%20section:30104%20edition:prelim)%20OR%20(granule%20id:USC-prelim-title46-section30104)&f=treesort&edition=prelim&num=0&jumpTo=true)