



Defense Base Act insurance is federally mandated workers compensation coverage for U.S. government contractors working outside the continental United States. Defense Base Act is known as the "sole remedy" because it protects the employer from certain liability claims while also protecting the employee from work-related injuries, disabilities, and even provides death benefits. These U.S. Government-funded contracts require employers to purchase Defense Base Act insurance for all U.S. civilian contractors, third-country nationals, and local national, whether they are considered primary contractors or subcontractors for the U.S. government.

The United States Department of labor was established in March of 1913 by President William Howard Taft. The department's purpose was to promote and develop jobs, job safety, and enhance opportunities for the working American. As the Department of labor evolved over the years and the U.S. entered World War 1 in April of 1917, it was becoming apparent that in addition to all the other labor issues going on at that time, injured U.S. contractors working abroad were not covered under their state workers compensation program.

As time went on and as the United States was about to enter world war II, the 77th Congress enacted the Defense base Act on August 16, 1941. The Defense Base Act is an extension of the Longshore and Harbor Workers Compensation Act which also provides for Disability, death, rehabilitation, medical injuries, and funeral expenses are also covered under the Defense Base Act.

The United States Department of Labor oversees the Defense Base Act insurance program. However, the Longshore and Harbor Workers Compensation administrates the Defense Base Act, which is a division of The Office of Workers Compensation Program (OWCP). Congress enacted the Defense Base Act to provide workers compensation benefits to any U.S. government contractors working outside the continental United States. U.S. Federal Law mandates this coverage for any work being performed abroad regardless of whether the work is being performed on a U.S. military base or not.



- 1. Any employee working on a military base or reservation outside the U.S.**
- 2. Any employee engaged in U.S. government-funded public works business outside the U.S.**
- 3. Any employee engaged in a public works or military contract with a foreign government which has been deemed necessary to U.S. National Security.**
- 4. Those employees that provide services funded by the U.S. government outside the realm of regular military issue or channels.**
- 5. Any employees of any sub-contractors of the prime or letting contractor involved in a contract like numbers one through four above.**

Since being enacted in 1941, the Defense Base Act has expanded coverage over the years to include different types of jobs, government agencies, and employment activities. Court rulings, U.S. government expansions, and global events have increased the demand for contractors to support most U.S. efforts abroad.

Currently, Defense Base Act insurance covers a wide range of employment activities for private contractors working on any territories, possessions, or U.S. military bases outside the continental U.S. This also includes but is not limited to contractors working on public work contracts with the Department of State, Department of Defense, Department of Energy, Department of Education, NSA, FBI, CIA, or any other U.S. government agency. This would also include construction or service contracts that involve work related to national defense or any military activities conducted outside the United States of America. Defense Base Act is also required for any contractor work approved and funded by the U.S. government under the Foreign Assistance Act of 1961 which provides foreign assistance and aid to other countries

Providing aid is the primary function of the Foreign Assistance Act, however fostering worldwide goodwill and supporting global peace initiatives, combating extremism, global security, international development efforts, and providing humanitarian relief during times of crisis is a strategic, economic, and moral imperative for the United States which are all vital to U.S. national security and our foreign policy. The Defense Base Act also includes contracted work that includes the sale of military materials, equipment, and services to U.S. allies as long as the contract requires work outside the continental United States. It's important to note that the Defense Base Act covers these contractors for any injury or death occurring to any such employee during transportation to or from the place of employment, where the employer or the U.S. provides the transportation or the cost thereof.

Finally, if any of the U.S. departments or employment activities meet the descriptions mentioned above, and they have employees traveling and working abroad any such employee(s), whether they are U.S. nationals or residents, third-country nationals (non-U.S. employees hired to work in the host country) or local national hires must be covered under the Defense Base Act.



## What If I don't Have DBA?

Failing to secure Defense Base Act insurance from an authorized insurance carrier or not receiving proper authorization from the United States Department of labor to be self-insured could result in serious legal problems for that organization or company. Any employer who chooses to not purchase this federally mandated insurance coverage may be subject to criminal prosecution, imprisonment, and/or hefty legal fines and restitution. Private contractors and corporations can encounter even more legal problems if Defense Base Act insurance is not secured. The executive management team (President, Secretary, and Treasurer) of the corporations can be prosecuted individually and could be held personally and severely responsible, jointly with the corporation, for any compensation that should have been paid under the act in addition to any other benefits that would normally be payable according to the Office of Workers Compensation Program (OWCP).

Employers that are not properly insured may find themselves in a precarious situation because an injured employee can also elect to either claim compensation under the Defense Base Act or file suit against the employer under general tort law for certain damages and injuries which occurred as a result of working for the corporation. If such a lawsuit is filed, the employer may not be able to rely on customary tort defenses that they would typically have when a lawsuit is filed against them mainly (A) the employees' own contribution to the cause of the work-related injury or (B) negligence or dangerous activity that the employee engaged in which resulted or contributed to the employees' injury.

Certain sections of the defense base act spell out who is responsible for purchasing the coverage and the ramifications for not securing this federally mandated coverage. Specifically, section 4(a) which addresses the employer's potential liability if coverage is not secured and section 5(a) which speaks to the primary contractor relationship to any subcontractors and who is responsible for securing Defense Base Act insurance.

Section 38(a) covers specific charges if a contractor is found guilty of not securing Defense Base Act insurance and it also outlines the punishment, fines, and possible imprisonment for not complying with the act.