



# GC Newsletter

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## **RISK AVOIDANCE – COMPLIANCE WITH THE DEFENSE BASE ACT (DBA)**

Federal law requires all U.S. government contractors and subcontractors to secure worker's compensation insurance for their employees working overseas. The Defense Base Act covers the following employment activities:

- Working for private employers on U.S. military bases or on any lands used by the U.S. for military purposes outside of the United States, including those U.S. Territories and possessions;
- Working on public work contracts with any U.S. government agency, including construction and service contracts in connection with national defense or with war activities outside the United States;
- Working on contracts approved and funded by the U.S. under the Foreign Assistance Act, generally providing for cash sale of military equipment, materials, and services to its allies, if the contract is performed outside of the United States;
- Working for American employers providing welfare or similar services outside of the United States for the benefit of the Armed Forces (e.g., the USO).

If any one of the above criteria is met, all employees engaged in such employment regardless of nationality, are covered under the Act.

The worker's compensation requirements for all overseas contracts are set out at FAR 28.305, Overseas workers' compensation and war-hazard insurance, FAR 52.228-3, Worker's Compensation Insurance (Defense Base Act), and FAR 52.228-4, Workers' Compensation and War-Hazard Insurance Overseas.

Section 38(a) of the DBA provides that an employer who fails to secure payment of compensation when required shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$11,000 or by imprisonment for not more than one year, or both. And if the employer is a corporation, the president, secretary, and treasurer shall be also severally liable for such fine and imprisonment.

Furthermore, if a corporation fails to secure the payment of compensation, the president, secretary, and treasurer shall be severally and personally liable, jointly with the corporation, for any compensation or other benefits payable under the Act in respect to any injury or death which may occur to any of its employees.

Are you covered? Now might be the time to obtain a copy of the Defense Base Act (<http://www.dol.gov/esa/owcp/dlhwc/dba.htm>) and call your insurance agent.



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