

(Pub. L. 110-417, [div. A], title VIII, § 843, Oct. 14, 2008, 122 Stat. 4540.)

REFERENCES IN TEXT

The Defense Base Act, referred to in section catchline and subsecs. (a) to (c), is act Aug. 16, 1941, ch. 357, 55 Stat. 622, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables.

CODIFICATION

Section was enacted as part of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, and not as part of the Defense Base Act which comprises this chapter.

CHAPTER 12—COMPENSATION FOR INJURY, DEATH, OR DETENTION OF EMPLOYEES OF CONTRACTORS WITH UNITED STATES OUTSIDE UNITED STATES

SUBCHAPTER I—COMPENSATION, REIMBURSEMENT, ETC., BY SECRETARY OF LABOR

Sec.

- 1701. Compensation for injury or death resulting from war-risk hazard.
- 1702. Application of Longshore and Harbor Workers' Compensation Act.
- 1703. "Contractor with the United States" defined.
- 1704. Reimbursement.
- 1705. Receipt of workmen's compensation benefits.
- 1706. Administration.

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

- 1711. Definitions.
- 1712. Disqualification from benefits.
- 1713. Fraud; penalties.
- 1714. Legal services.
- 1715. Finality of Secretary's decisions.
- 1716. Presumption of death or detention.
- 1717. Assignment of benefits; execution, levy, etc., against benefits.

REPEALS

Act June 30, 1953, ch. 176, § 6, 67 Stat. 135, repealed section 1(a)(13) of Joint Res. July 3, 1952, ch. 570, 66 Stat. 332, which, as amended by Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, provided for the continuation of this chapter until July 1, 1953.

Joint Res. July 3, 1952, ch. 570, § 6, 66 Stat. 334, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

SUBCHAPTER I—COMPENSATION, REIMBURSEMENT, ETC., BY SECRETARY OF LABOR

§ 1701. Compensation for injury or death resulting from war-risk hazard

(a) Persons covered

In case of injury or death resulting from injury—

- (1) to any person employed by a contractor with the United States, if such person in an employee specified in chapter 11 of this title, and no compensation is payable with respect to such injury or death under such chapter; or
- (2) to any person engaged by the United States under a contract for his personal services outside the continental United States; or

(3) to any person employed outside the continental United States as a civilian employee paid from nonappropriated funds administered by the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Store Ashore, Navy exchanges, Marine Corps exchanges, officers' and non-commissioned officers' open messes, enlisted men's clubs, service clubs, special service activities, or any other instrumentality of the United States under the jurisdiction of the Department of Defense and conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents; or

(4) to any person who is an employee specified in section 1651(a)(5) of this title, if no compensation is payable with respect to such injury or death under chapter 11 of this title or to any person engaged under a contract for his personal services outside the United States approved and financed by the United States under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States Government, determines a contract financed under a successor provision of any successor Act should be covered by this section); *Provided*, That in cases where the United States is not a formal party to contracts approved and financed under the Mutual Security Act of 1954, as amended, the Secretary, upon the recommendation of the head of any department or agency of the United States, may, in the exercise of his discretion, waive the application of the provisions of this subparagraph with respect to any such contracts, subcontracts, or subordinate contracts, work location under such contracts, subcontracts, or subordinate contracts, or classification of employees; or

(5) to any person employed or otherwise engaged for personal services outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense,

and such injury proximately results from a war-risk hazard, whether or not such person then actually was engaged in the course of his employment, the provisions of subchapter I of chapter 81 of title 5, as amended, and as modified by this chapter, shall apply with respect thereto in the same manner and to the same extent as if the person so employed were a civil employee of the United States and were injured while in the performance of his duty, and any compensation found to be due shall be paid from the compensation fund established pursuant to section 8147 of title 5. This subsection shall not be construed to include any person who would otherwise come within the purview of subchapter I of chapter 81 of title 5.

(b) Missing persons considered as totally disabled

(1) Any person specified in subsection (a) of this section who—

- (A) is found to be missing from his place of employment, whether or not such person then

actually was engaged in the course of his employment, under circumstances supporting an inference that his absence is due to the belligerent action of a hostile force or person, or

(B) is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, or

(C) is not returned to his home or to the place where he was employed by reason of the failure of the United States or its contractor to furnish transportation,

until such time as he is returned to his home, to the place of his employment, or is able to be returned to the jurisdiction of the United States, shall, under such regulations as the Secretary may prescribe, be regarded solely for the purposes of this subsection as totally disabled, and the same benefits as are provided for such disability under this subchapter shall be credited to his account and be payable to him for the period of such absence or until his death is in fact established or can be legally presumed to have occurred: *Provided*, That if such person has dependents residing in the United States or its Territories or possessions (including the United States Naval Operating Base, Guantanamo Bay, Cuba, and the Canal Zone), the Secretary during the period of such absence may disburse a part of such compensation, accruing for such total disability, to such dependents, which shall be equal to the monthly benefits otherwise payable for death under this subchapter, and the balance of such compensation for total disability shall accrue and be payable to such person upon his return from such absence. Any payment made pursuant to this subsection shall not in any case be included in computing the maximum aggregate or total compensation payable for disability or death, as provided in section 1702(a) of this title: *Provided further*, That no such payment to such person or his dependent, on account of such absence, shall be made during any period such person or dependent, respectively, has received, or may be entitled to receive, any other payment from the United States, either directly or indirectly, because of such absence, unless such person or dependent refunds or renounces such other benefit or payment for the period claimed.

Benefits found to be due under this subsection shall be paid from the compensation fund established pursuant to section 8147 of title 5: *Provided*, That the determination of dependents, dependency, and amounts of payments to dependents shall be made in the manner specified in subchapter I of chapter 81 of title 5: *Provided further*, That claim for such detention benefits shall be filed in accordance with and subject to the limitation provisions of subchapter I of chapter 81 of title 5, as modified by section 1706(c) of this title: *And provided further*, That except in cases of fraud or willful misrepresentation, the Secretary may waive recovery of money erroneously paid under this subdivision whenever he finds that such recovery would be impracticable or would cause hardship to the beneficiary affected: *And provided further*, That where such a person is found to be missing from his place of employment whether or not such person then actually was engaged in the course of his employment, under circumstances sup-

porting an inference that his absence is due to the belligerent action of a hostile force or person or is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, the amount of benefits to be credited to the account of such person under this subsection, and for the purposes of this subsection only, shall be 100 per centum of the average weekly wages of such person, except that in computing such benefits such average weekly wages (a) shall not exceed the average weekly wages paid to civilian employees of the United States in the same or most similar occupation in the area nearest to the place of employment where such person was last employed, and (b) shall not exceed the average weekly wages of such absent person at the time such absence began; and 70 per centum of such average weekly wage so determined shall be disbursed to the dependent or dependents of such person, irrespective of the limitations of section 909 of title 33, but should there be more than one such dependent, the distribution of such 70 per centum shall be proportionate to the percentages allowed for dependents by section 909 of title 33, and if such manner of disbursement in any case would result in injustice or excessive allowance for a dependent, the Secretary may, in his discretion, modify such percentage or apportionment to meet the requirements of the case; and in such cases benefits for detention shall accrue from January 1, 1942, unless the beginning of absence occurred upon a later date in which event benefits shall accrue from such later date, and for the period of such absence shall be 100 per centum of the average weekly wages, determined as herein provided: *And provided further*, That compensation for disability under this subchapter (except under allowance for scheduled losses of members or functions of the body, within the purview of section 1702(a) of this title) shall not be paid in any case in respect to any period of time during which benefits for detention may accrue under this subchapter in the same case, and should a person entitled to benefits for detention also be entitled to workmen's compensation or similar benefits under any other law, agreement, or plan (except allowances for scheduled losses of members or functions of the body), where such other benefits are paid or to be paid directly or indirectly by the United States, the amount thereof accruing as to the period of absence shall be taken into account and the benefits credited to the account of the detained person reduced accordingly: *And provided further*, That where through mistake of fact, absence of proof of death, or error through lack of adequate information or otherwise, payments as for detention have in any case been erroneously made or credited, any resulting overpayment of detention benefits (the recovery of which is not waived as otherwise provided for in this section) shall be recouped by the Secretary in such manner as he shall determine from any unpaid accruals to the account of the detained person, and if such accruals are insufficient for such purpose, then from any allowance of compensation for injury or death in the same case (whether under this subchapter or under any other law, agreement, or plan, if the United States pays, or is obligated to pay, such benefits, directly or in-

directly), but only to the extent of the amount of such compensation benefits payable for the particular period of such overpayment, and in cases of erroneous payments of compensation for injury or death, made through mistake of fact, whether under this subchapter or under any other law, agreement, or plan (if the United States is obligated to pay such compensation, directly or indirectly), the Secretary is authorized to recoup from any unpaid benefits for detention, the amount of any overpayment thus arising; and any amounts recovered under this section shall be covered into such compensation fund, and for the foregoing purposes the Secretary shall have a right of lien, intervention, and recovery in any claim or proceeding for compensation.

(2) Upon application by such person, or someone on his behalf, the Secretary may, under such regulations as he may prescribe, furnish transportation or the cost thereof (including reimbursement) to any such person from the point where his release from custody by a hostile force or person is effected, to his home, the place of his employment, or other place within the jurisdiction of the United States; but no transportation, or the cost thereof, shall be furnished under this paragraph where such person is furnished such transportation, or the cost thereof, under any agreement with his employer or under any other provision of law.

(3) In the case of death of any such person, if his death occurred away from his home, the body of such person shall, in the discretion of the Secretary, and if so desired by his next of kin, near relative, or legal representative, be embalmed and transported in a hermetically sealed casket or other appropriate container to the home of such person or to such other place as may be designated by such next of kin, near relative, or legal representative. No expense shall be incurred under this paragraph by the Secretary in any case where death takes place after repatriation, unless such death proximately results from a war-risk hazard.

(4) Such benefits for detention, transportation expenses of repatriated persons, and expenses of embalming, providing sealed or other appropriate container, and transportation of the body, and attendants (if required), as approved by the Secretary, shall be paid out of the compensation fund established under section 8147 of title 5.

(c) Persons not citizens or residents of United States

Compensation for permanent total or permanent partial disability or for death payable under this section to persons who are not citizens of the United States and who are not residents of the United States or Canada, shall be in the same amount as provided for residents; except that dependents in any foreign country shall be limited to surviving wife or husband and child or children, or if there be no surviving wife or husband or child or children, to surviving father or mother whom such person has supported, either wholly or in part, for the period of one year immediately prior to the date of the injury; and except that the Secretary, at his option, may commute all future installments of compensation to be paid to such persons by pay-

ing to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

(d) Persons excepted from coverage

The provisions of this section shall not apply in the case of any person (1) whose residence is at or in the vicinity of the place of his employment, and (2) who is not living there solely by virtue of the exigencies of his employment, unless his injury or death resulting from injury occurs or his detention begins while in the course of his employment, or (3) who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States.

(Dec. 2, 1942, ch. 668, title I, §101, 56 Stat. 1028; Dec. 23, 1943, ch. 380, title I, 57 Stat. 626; Aug. 7, 1946, ch. 805, §1, 60 Stat. 899; June 30, 1953, ch. 176, §§2, 3, 67 Stat. 135; Pub. L. 85-477, ch. V, §502(g), June 30, 1958, 72 Stat. 273; Pub. L. 85-608, title I, §§101, 104, title IV, §401, Aug. 8, 1958, 72 Stat. 536, 537, 539; Pub. L. 86-70, §42(a), June 25, 1959, 73 Stat. 151; Pub. L. 87-195, pt. IV, §702, Sept. 4, 1961, 75 Stat. 463; Pub. L. 98-426, §27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Mutual Security Act of 1954, referred to in subsec. (a)(4), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§2-11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85-141, 71 Stat. 355; June 30, 1958, Pub. L. 85-477, ch. 1, §§101-103, ch. II, §§201-205, ch. III, §301, ch. IV, §401, ch. V, §501, 72 Stat. 261; July 24, 1959, Pub. L. 86-108, §2, ch. 1, §101, ch. II, §§201-205(a)-(i), (k)-(n), ch. III, §301, ch. IV, §401(a)-(k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86-472, chs. I-V, 74 Stat. 134, which was principally classified to chapter 24 (§1750 et seq.) of Title 22, Foreign Relations and Intercourse, and which was repealed by acts July 18, 1956, ch. 627, §8(m), 70 Stat. 559; Aug. 14, 1957, Pub. L. 85-141, §§2(e), 3, 4(b), 11(d), 71 Stat. 356; July 24, 1959, Pub. L. 86-108, ch. II, §205(j), ch. IV, §401(1), 73 Stat. 250; May 14, 1960, Pub. L. 86-472, ch. II, §§203(d), 204(k), 74 Stat. 138; Sept. 4, 1961, Pub. L. 87-195, pt. III, §642(a)(2), 75 Stat. 460; June 30, 1976, Pub. L. 94-329, title II, §212(b)(1), 90 Stat. 745; Apr. 4, 1996, Pub. L. 104-127, title II, §228, 110 Stat. 963, except for sections 1754, 1783, 1796, 1853, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

Title II of chapter II of the Mutual Security Act of 1954, referred to in subsec. (a)(4), which was classified generally to sections 1870 to 1876 of Title 22, was repealed by Pub. L. 87-195, Pt. III, §642(a)(2), Sept. 4, 1961, 75 Stat. 460.

For definition of Canal Zone, referred to in subsec. (b), see section 3602(b) of Title 22.

CODIFICATION

In subsecs. (a) and (b), "subchapter I of chapter 81 of title 5" and "section 8147 of title 5" substituted for references to act September 7, 1916, as amended, and section 35 of that Act, respectively, on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, the act of September 7, 1916, known as the Federal Employees' Compensation Act, was classified to chapter 15 of Title 5.

Reference to Philippine Islands in subsec. (b)(1) omitted as obsolete in view of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352, recognizing independence of Philippines and withdrawing and surrendering all rights of possession, supervision, jurisdiction, con-

trol, or sovereignty now existing and exercised by United States in and over territory and people of Philippines. See note set out under section 1394 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-426 substituted references to sections of the Longshore and Harbor Workers' Compensation Act for sections of the Longshoremen's and Harbor Workers' Compensation Act, which references have been translated to sections of title 33, thus requiring no change in text.

1961—Subsec. (a)(4). Pub. L. 87-195 extended coverage in those cases where the Secretary of Labor, upon the recommendation of the head of any department or other agency of the U.S. Government, determines a contract financed under a successor provision of any successor act to the Mutual Security Act of 1954 should be covered by this section.

1959—Subsec. (a). Pub. L. 86-70 struck out "or in Alaska or the Canal Zone" after "continental United States" in pars. (2), (3) and (5).

1958—Subsec. (a)(2). Pub. L. 85-608, §101(a), substituted "outside the continental United States or in Alaska or the Canal Zone" for "outside the United States or in Hawaii, Alaska, Puerto Rico, or the Virgin Islands".

Subsec. (a)(3). Pub. L. 85-608, §101(b), substituted provisions relating to injuries to civilian employees outside the continental United States or in Alaska or the Canal Zone paid from nonappropriated funds and who are employed in connection with activities conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents for provisions which related to injuries to persons employed as civilian employees of post exchanges or ship-service stores outside the United States or in Hawaii, Alaska, Puerto Rico, or the Virgin Islands.

Subsec. (a)(4). Pub. L. 85-477 added par. (4).

Subsec. (a)(5). Pub. L. 85-608, §101(c), added par. (5).

Subsec. (b). Pub. L. 85-608, §104, substituted "a hostile force or person" for "an enemy" in four places and for "the enemy".

Subsec. (c). Pub. L. 85-608, §401, reenacted subsec. (c) and also repealed section 2 of act June 30, 1953, which had previously repealed subsec. (c).

Subsec. (d). Pub. L. 85-608, §101(d), substituted provisions making section inapplicable to persons who are prisoners of war or protected persons and who are detained or utilized by the United States for provisions which made section inapplicable to persons who are not citizens of the United States and who suffered an injury, disability, death, or detention by the enemy subsequent to June 30, 1953.

1953—Subsec. (c). Act June 30, 1953, §2, repealed subsec. (c) which provided for amount of compensation payable to noncitizens and nonresidents for permanent total or permanent partial disability or death, limited eligible dependents and permitted Secretary to commute future installments of compensation.

Subsec. (d). Act June 30, 1953, §3, added cl. (3).

1946—Act Aug. 7, 1946, made benefits payable for detention uniform from date of capture rather than at a reduced rate for 2 years as was the case formerly, prevented dual payments without impairing compensation rights for disability which continues after repatriation, and provided for adjustments of overpayments made under a mistake of facts.

1943—Subsec. (b)(1). Act Dec. 23, 1943, inserted fourth proviso in second paragraph.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-70 effective June 25, 1959, see section 47(g) of Pub. L. 86-70, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-608 effective June 30, 1958, see section 402 of Pub. L. 85-608, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1943 AMENDMENT

Act Dec. 23, 1943, ch. 380, title I, 57 Stat. 627, provided in part that: "The amendment in paragraph (a) [amending this section] shall become effective the first day of the month next following the approval of this Act [Dec. 23, 1943]."

EFFECTIVE DATE

Act Dec. 2, 1942, ch. 668, title I, §107, 56 Stat. 1033, provided that: "This title [enacting this subchapter] shall take effect as of December 7, 1941."

RETROACTIVE EFFECT OF 1946 AMENDMENT; REVIEW OF CASES

Act Aug. 7, 1946, ch. 805, §2, 60 Stat. 899, provided for application of section 1 of act Aug. 7, 1946, amending this section, in all cases coming within the purview of subsec. (b) of this section, retrospectively to Jan. 1, 1942; and for review by the United States Employees' Compensation Commission of any case affected by such provisions, to make the adjustment of benefits which they require, and to make payments where the detained person has died since adjudication, to his legal representative.

SHORT TITLE

Section 208 of act Dec. 2, 1942, as added by Pub. L. 85-608, §105, provided that: "Titles I and II of this Act [enacting subchapters I and II of this chapter] may be cited as the 'War Hazards Compensation Act'."

REPEALS

Pub. L. 87-195, pt. IV, §702, Sept. 4, 1961, 75 Stat. 463, cited as a credit to this section, was repealed by Pub. L. 87-565, pt. IV, §401, Aug. 1, 1962, 76 Stat. 263, except in so far as section 702 affected this section.

Act June 30, 1953, ch. 176, §6, 67 Stat. 135, repealed act July 3, 1952, ch. 570, §1(a)(13), 66 Stat. 331, which defined terms "enemy", "allies", "national war effort", and "war effort".

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

INCREASE IN COMPENSATION FOR INJURIES AND DEATH FROM INJURIES SUSTAINED BEFORE JULY 1, 1946

Pub. L. 87-380, Oct. 4, 1961, 75 Stat. 809, increased the monthly disability and death compensation payable pursuant to subsec. (a) of this section with respect to injuries or deaths resulting from injury sustained prior to July 1, 1946, by 15 per centum, effective only with respect to disability and death compensation payable for periods commencing on and after Oct. 4, 1961.

§1702. Application of Longshore and Harbor Workers' Compensation Act

(a) In the administration of the provisions of subchapter I of chapter 81 of title 5 with respect to cases coming within the purview of section 1701 of this title, the scale of compensation benefits and the provisions for determining the amount of compensation and the payment thereof as provided in sections 908 and 909 of title 33, so far as the provisions of said sections can be applied under the terms and conditions set forth therein shall be payable in lieu of the benefits, except medical benefits, provided under subchapter I of chapter 81 of title 5: *Provided*, That the total compensation payable under this sub-