

ployment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and shipbreaker and substituted “or” for “nor” before “any person engaged by the master”.

Par. (4). Pub. L. 92-576, §2(b), defined “employer” to include an employer any of whose employees are employed in maritime employment upon the navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel.

Par. (14). Pub. L. 92-576, §3(b), defined “child, grandchild, brother, and sister” to include a student as defined in par. (19) of this section.

Par. (16). Pub. L. 92-576, §20(c)(1), consolidated provisions of former par. (16) definition of “widow” and former par. (17) definition of “widower” in one definition of “widow or widower”; and in redefining “widower”, substituted provision for decedent’s husband living with or dependent upon wife for support at time of her death, for prior provision for decedent’s husband living with and dependent upon wife for support at time of her death, and included decedent’s husband living apart from wife for justifiable cause or by reason of her desertion at time of her death.

Par. (17). Pub. L. 92-576, §20(c)(1), redesignated former par. (18) definition of “adoption” or “adopted” as par. (17). Former par. (17) definition of “widower” incorporated in par. (16).

Par. (18). Pub. L. 92-576, §§3(a), 20(c)(1), added par. (19) definition of “student” and redesignated such par. (19) as par. (18). Former par. (18) definition of “adoption” or “adopted” redesignated par. (17).

Par. (19). Pub. L. 92-576, §§5(b), 20(c)(1), added par. (20) definition of “national average weekly wage” and redesignated such par. (20) as par. (19). Former par. (19) definition of “student” redesignated par. (18).

Par. (20). Pub. L. 92-576, §§15(c), 20(c)(1), added par. (21) definition of “Board” and redesignated such par. (21) as par. (20). Former par. (20) definition of “national average weekly wage” redesignated par. (19).

Par. (21). Pub. L. 92-576, §§18(b), 20(c)(1), added par. (22) definition of “vessel” and redesignated such par. (22) as par. (21). Former par. (21) definition of “Board” redesignated par. (20).

Par. (22). Pub. L. 92-576, §§3(a), 5(b), 15(c), 18(b), 20(c)(1), redesignated former par. (19) definition of “singular” as pars. (20), (21), (22), (23), and (22) again. Former par. (22) definition of “vessel” redesignated par. (21).

1938—Par. (14). Act June 25, 1938, included within definition of child, “a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury” and within definition of child, grandchild, brother, and sister “persons who though eighteen years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 2(a) and 5(a)(2) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, amendment by section 2(b) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending as of such date, and amendment by sections 2(c) and 27(a)(1) of Pub. L. 98-426 effective Sept. 28, 1984, see section 28(a), (c), (e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-576, §20(c)(3), Oct. 27, 1972, 86 Stat. 1265, provided that: “The amendments made by this subsection [amending this section and section 909 of this title] shall apply only with respect to deaths or injuries occurring after the enactment of this Act, [Oct. 27, 1972].”

Pub. L. 92-576, §22, Oct. 27, 1972, 86 Stat. 1265, provided that: “The amendments made by this Act [see Short Title note set out under section 901 of this title] shall become effective thirty days after the date of enactment of this Act [Oct. 27, 1972].”

TRANSFER OF FUNCTIONS

Prior to the amendment of this chapter by Pub. L. 98-426 the word “Secretary” meaning the Secretary of Labor had been substituted for the word “commission” meaning the United States Employees’ Compensation Commission throughout this chapter even when not expressly so directed by statute in view of the transfer of the functions of the commission first to the Federal Security Administrator by Reorg. Plan No. 2 of 1946, §3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, and later to the Secretary of Labor by Reorg. Plan No. 19 of 1950, §1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271. Where such substitution had thus been made the statutory substitution of terms by Pub. L. 98-426 required no change in text.

§ 903. Coverage

(a) Disability or death; injuries occurring upon navigable waters of United States

Except as otherwise provided in this section, compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

(b) Governmental officers and employees

No compensation shall be payable in respect of the disability or death of an officer or employee of the United States, or any agency thereof, or of any State or foreign government, or any subdivision thereof.

(c) Intoxication; willful intention to kill

No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

(d) Small vessels

(1) No compensation shall be payable to an employee employed at a facility of an employer if, as certified by the Secretary, the facility is engaged in the business of building, repairing, or dismantling exclusively small vessels (as defined in paragraph (3) of this subsection), unless the injury occurs while upon the navigable waters of the United States or while upon any adjoining pier, wharf, dock, facility over land for launching vessels, or facility over land for hauling, lifting, or drydocking vessels.

(2) Notwithstanding paragraph (1), compensation shall be payable to an employee—

(A) who is employed at a facility which is used in the business of building, repairing, or dismantling small vessels if such facility receives Federal maritime subsidies; or

(B) if the employee is not subject to coverage under a State workers’ compensation law.

(3) For purposes of this subsection, a small vessel means—

(A) a commercial barge which is under 900 lightship displacement tons; or

(B) a commercial tugboat, towboat, crew boat, supply boat, fishing vessel, or other work vessel which is under 1,600 tons gross as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title.

(e) Credit for benefits paid under other laws

Notwithstanding any other provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this chapter pursuant to any other workers' compensation law or section 30104 of title 46 shall be credited against any liability imposed by this chapter.

(Mar. 4, 1927, ch. 509, § 3, 44 Stat. 1426; Pub. L. 92-576, §§ 2(c), 21, Oct. 27, 1972, 86 Stat. 1251, 1265; Pub. L. 98-426, § 3, Sept. 28, 1984, 98 Stat. 1640; Pub. L. 104-324, title VII, § 703, Oct. 19, 1996, 110 Stat. 3933.)

CODIFICATION

In subsec. (e), "section 30104 of title 46" substituted for "section 20 of the Act of March 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. 688) (relating to recovery for injury to or death of seamen)" on authority of Pub. L. 109-304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 30104 of Title 46, Shipping.

AMENDMENTS

1996—Subsec. (d)(3)(B). Pub. L. 104-324 inserted before period at end "as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title".

1984—Subsec. (a). Pub. L. 98-426, § 3(a), inserted introductory language relating to exceptions provided for elsewhere in this section, redesignated existing par. (1) as subsec. (b), and struck out existing par. (2) which had excepted from coverage masters and crew members or persons engaged by such masters or crew members to load, unload, or repair vessels under 18 tons net.

Subsec. (b). Pub. L. 98-426, § 3(a), redesignated as subsec. (b) provisions formerly set out in subsec. (a)(2). Former subsec. (b) redesignated (c).

Subsecs. (c) to (e). Pub. L. 98-426, § 3(a), (b), redesignated former subsec. (b) as (c) and added subsecs. (d) and (e).

1972—Subsec. (a). Pub. L. 92-576, § 2(c), substituted provisions respecting coverage of injuries occurring upon navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel, for prior provisions respecting coverage of such injuries upon navigable waters and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.

Subsec. (a)(1). Pub. L. 92-576, § 21, substituted "or" for "nor" before "any person engaged by the master".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 3(a) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, and amendment by section 3(b) of Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after Sept. 28, 1984, and to claims pending on that date, see section 28(a), (c) of Pub. L. 98-426, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

DISTRICT OF COLUMBIA

The Longshoremen's and Harbor Workers' Compensation Act [this chapter] was made applicable in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, by act May 17, 1928, ch. 612, 45 Stat. 600, as amended.

§ 904. Liability for compensation

(a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908, and 909 of this title. In the case of an employer who is a subcontractor, only if such subcontractor fails to secure the payment of compensation shall the contractor be liable for and be required to secure the payment of compensation. A subcontractor shall not be deemed to have failed to secure the payment of compensation if the contractor has provided insurance for such compensation for the benefit of the subcontractor.

(b) Compensation shall be payable irrespective of fault as a cause for the injury.

(Mar. 4, 1927, ch. 509, § 4, 44 Stat. 1426; Pub. L. 98-426, § 4(a), Sept. 28, 1984, 98 Stat. 1641.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908, and 909 of this title. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, and applicable both with respect to claims filed after Sept. 28, 1984, and to claims pending on that date, see section 28(a) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 905. Exclusiveness of liability

(a) Employer liability; failure of employer to secure payment of compensation

The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee. For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 904 of this title.