

Defense Base Act

OVERVIEW

In the present economic and political environment, the area of Defense Base Act (DBA or Act) coverage has never been more important. Today, as more and more U.S. corporations enter into relationships with the U.S. government for a variety of projects involving the military for public works, such as the rebuilding of war-torn countries and for the overall national security of the country, DBA coverage is vital—and mandatory. Safe Passage International is uniquely qualified to work with you to navigate through this complex area. AIG WorldSource uses a dedicated claims staff with offices around the world with the ability to respond quickly to any claims falling under this Act.

Background: Established in 1941, the primary goal of the Act was to cover workers on military bases outside the United States. The Act was amended to include public works contracts with the government for the building of non-military projects such as dams, schools, harbors and roads abroad. A further amendment added a vast array of enterprises revolving around the national security of the U.S. and its allies. Today, almost any contract with an agency of the U.S. government, for work outside the U.S., whether military in nature or not, will likely require Defense Base Act coverage.

PRODUCTS

Triggers for DBA — There are five provisions in the current version of the Defense Base Act that prompt coverage:

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 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 1 - 4 above

Waivers — One should note that DBA coverage makes no reference to the nationality of covered employees; thus, local nationals or third country nationals are automatically covered under the DBA. Waivers can be granted, but they need to follow certain criteria, and only the Secretary of Labor is able to authorize any such waiver. Key points for gaining waivers include:

- Class of employee must have available alternate means of compensation such as Employers Liability, Workers' Compensation, or Social Security
- Waivers can not be requested for any class of employee including U.S. citizens or those employees hired inside the U.S.
- Agency letting the contract must recommend that such a waiver be granted
- No waivers have been granted for Iraq
- Contractor must file an application with the U.S. Department of Labor

Coverage Issues — Below are some key points to keep in mind regarding coverage situations.

The courts often rely on precedent when determining liability issues. Two doctrines known as the Zone of Special Danger and Reasonable Recreation are central to finding coverage under the Act. The Zone of Special Danger doctrine requires that an employee's injury or death occurs arising out of or in the course of employment. In addition, the Zone of Danger states that where there exists unique conditions or circumstances of employment which place an employee in a zone of danger, then an accident resulting in injury or death need not be strictly related to job duties. The Reasonable Recreation doctrine requires that an employee's injury or death occur arising out of or in the course of the employer's furnished, funded or promoted recreational activities. Some non-sponsored activities may also be included. Please note that these two doctrines taken together may not guarantee "24 Hour Coverage" for an employee.

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Coverage Issues (continued) — Failure to obtain DBA insurance may carry stiff penalties. Government contracts generally contain a provision requiring bidding contractors to obtain necessary insurance. Failure to do so may result in fines and possible loss of contract. Employers without DBA coverage may be subject to suits under common law wherein common law defenses are waived. In other words, the claimants or their heirs sometimes need only file suit and may not have to prove negligence. Claims may be able to be brought in Federal Court against the insured directly.

Claims — With AIG WorldSource's domestic claims department working in concert with their sister organization, AIU (with offices in over 130 countries and jurisdictions including United Arab Emirates, Jordan and Turkey), our claims executives are able to minimize your company's risk and losses, as well as tend to the needs of the injured employees. The AIG WorldSource team is well versed in the intricacies of DBA coverage and its ever-emerging issues. They endeavor to remain in constant contact with key Dept. of Labor officials in Washington, DC to enable us to give the best possible advice to our clients.

Working closely with AIU, AIG WorldSource developed a dedicated staff in Dubai, UAE to provide local DBA claim handling expertise to our multinational clients operating in the region. Recognizing the local and third country employees, U.S. Department of Labor forms commonly used in the processing of DBA claims have been translated in Arabic and Turkish languages. The staff is well versed in DBA and makes periodic visits to the U.S. to stay abreast of developments with DOL, AIG WorldSource stateside claim offices and clients.

Finally, AIG WorldSource's Dubai claim office, using their local relationships and networks, has developed protocols and successfully delivered compensation to local employees in Iraq.

Additional Coverage — Recognizing the vital insurance protection provided by DBA, AIG WorldSource also provides an additional level of coverage. We include Accidental Death & Dismemberment (AD&D) coverage around-the-clock for all covered employees: \$50,000 AD&D for U.S. nationals and \$25,000 AD&D for third country nationals and \$2,500 AD&D for local nationals. This coverage does not include protection for security firms doing business in Iraq.

In addition, AIG Global Benefits Network's Natural Causes Group-Term Life Insurance coverage complements AIG WorldSource's coverage by providing Term Life coverage for a death not incurred due to an accident. For the loss of life due to illness, this coverage provides on a Guaranteed basis (no medical underwriting required) \$100,000 for U.S. Citizens/U.S. Hires and \$25,000 for Third Country Nationals.

For clients looking for even more insurance protection, AIG member companies can provide full Travel Accident insurance. This includes high-limit AD&D coverage, accident and emergency medical, medical evacuation and repatriation of remains. What's more, full travel assistance is provided by AIG Assist. Employees can access full 24-hour service in multiple languages for medical and legal referrals and emergency message services. Taken together, the package helps provide a valuable program for employees working far from home.

Our DBA policies also include embedded Kidnap, Ransom and Extortion coverage for certain U.S. and third country nationals. This includes Wrongful Detention and Hijacking in addition to Kidnap, Ransom & Extortion incidents. Covered losses include Ransom Monies, Consultant Expenses and Judgment as well as Settlements and Defense costs.

Disclaimer: This document is not intended to and does not purport to provide legal advice. You should consult your own broker and your own lawyer for advice regarding and for an explanation of which laws may or may not apply to you, your business, or your personnel. You should not rely on this as legal advice.



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