

Workers' Compensation and Jones Act Crew Coverage

Issue

Due to recent court cases, it has become apparent that it is possible for an injured aquaculture worker to sue their employer in federal court under the Jones Act. State workers' compensation will NOT protect you, your employees, or provide any coverage for Jones Act exposure. If the injury falls under the Jones Act, state workers' compensation will not apply. Conversely, if the Jones Act doesn't apply, then state workers' compensation does.

We clearly communicate to our workers' compensation carriers what our clients' operations entail, however that is no guarantee that in the future a claim will not be denied by an adjuster who believes Jones Act coverage applies. The cost to defend a Jones Act case in federal court can be \$50,000 - \$150,000 and up, not including settlement.

Analyze Your Operations

The first step to determine whether you need to obtain coverage for the Jones Act is to see if you employ any Jones Act seamen. So, who is a Jones Act seaman? In true insurance agent style, our official answer is "Ask your jury." Court cases and opinions vary from one federal district to another. Realizing that answer provides little value, here is what we understand to be a litmus test for a Jones Act seaman:

1. Is assigned to a boat or fleet of boats - if all the boats are owned by the same person, that usually meets the definition of a fleet,
2. Works on commercially navigable water - any tidal water that empties into the Chesapeake Bay or the ocean fits this definition, and
3. Contributes to the function of the boat - if they pilot it, load it, unload it, work on it, etc, they contribute to its function. If someone does this approximately 30% or more of the time, they typically are considered a seaman.

Resolution

So, how do you plug the Jones Act hole? ***The best way to provide full coverage is to carry both state workers' compensation and crew (Jones Act) coverage.*** Here are a few points of interest:

- The first thing to do is to determine which employees you think are Jones Act seamen – see paragraph above.
- Next, get a quote for A) state workers' compensation and B) crew coverage.
- As long as you track payroll separately, you are permitted to break out payroll/headcount for workers' compensation and crew coverage. This helps ensure you don't double-pay for coverage.



- Just because someone is injured while ashore, doesn't mean they lose their Jones Act status. Generally, a Jones Act seaman is still a Jones Act seaman as long as they are in service of the vessel. However, if they are not in service of the vessel at the time of the injury, chances are that would be a state workers' compensation claim.
- Policies are not written by employee name. They are based on payroll and/or headcount estimates.

To get a quote for workers' compensation or crew (Jones Act) coverage, give us a call.

In the interest of thoroughness, we also need to briefly address the United States Longshore And Harbor Workers' Compensation Act (USL&HWCA). This is a separate act from the Jones Act and clearly EXCLUDES aquaculture workers as being subject to this act. Reference Pamphlet LS-560 at <http://www.dol.gov/owcp/dlhwc/LS-560pam.htm> or view the law at <http://www.dol.gov/owcp/dlhwc/lhwca.htm#902> and reference section 902 definitions. However, this does not mean you can't be sued under USL&H. You can be sued for anything. To ensure you have a measure of protection for USL&H, your workers' policy would need to include the correct USL&H classification codes.

Bankers Insurance LLC

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Insurance Types and Pricing

Below is a general outline of coverages available to you and their costs. Costs will vary widely based on state, your loss history, and a variety of other factors, so please understand this is generic information. We pride ourselves in being able to provide quality coverage at reasonable prices. Your costs may be less or more than those below.

Workers Compensation

- State regulated protection that covers you and your employees for injury. It pays for their healthcare bills and lost wages, while protecting your business from liability for the same.
- Most people you pay are considered an employee under workers' comp, despite whether you pay by 1099 or not.
- An employee (for workers' comp purposes) is someone you pay, someone to whom you provide the tools to do their job, and someone you tell what/how to do their job. If there is a gray area, it will be decided in favor of the injured party.
- This coverage typically does NOT cover you for suits brought under the Jones Act. It can provide such coverage under code 7016, but is typically limited to only \$25,000.
- Costs
 - Varies based on levels of coverage and claim history. Also varies widely by state.
 - For aquaculture workers, Virginia is around 2% of payroll, Georgia is around 6.6% of payroll.
 - For the code 7016 discussed above, costs can be 15% or more.

Protection and Indemnity (P&I) and Crew

- Can cover your boat, liability arising out of the use of your boat, and crew.
- P&I is similar to auto coverage for your boat.
- Crew coverage will protect the employee and the business for exposures under the Jones Act. Most policies exclude coverage once the crew is off the boat (in the water working the beds/cages). For complete coverage, the policy should be endorsed to include coverage when the crew is in the water if possible.
- Crew coverage pays for transportation, wages, maintenance, and cure, which is the maritime equivalent of workers' compensation.
- Costs
 - **On-Boat-Only crew coverage:** The following are from a company with whom we have negotiated special rates, for OH, MA, PA, NJ, DE, MD, VA, & NC
 - Hull: 1.5% - 3% of insured value
 - P&I (boat liability): \$500,000 coverage for \$409 per boat per year
 - Crew, on boat coverage only: \$300,000 coverage for \$300 per crew member per year
 - **Full Crew Coverage:**
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- P&I (boat liability): \$1,000,000 coverage for \$1,000 per boat per year
- Crew: \$1,000,000 coverage for \$1,200 to \$1,500 per boat per year
- A "bumbershoot" policy can go over your P&I including crew to provide higher levels of coverage, similar to an umbrella liability policy.

General Liability

- Protection for bodily injury and physical damage to others and other things.
- This is where you get coverage if your product makes someone else sick, among other things.
- Does not cover injury to your employees.
- Does not cover anything having to do with an auto, truck, or a boat.
- Costs
 - Price varies widely by state, business operations, and size of business.
 - Price starts around \$350 per year at the lowest (small grower) and is based on sales and/or payroll. As an example, we recently insured a grower with \$225,000 in sales at \$910/year (\$1,000,000 in coverage).

Maritime Employers Liability

- Protection against liability arising from a variety of exposures under general maritime law.
- Price varies too widely by business operations, location, and size of business to provide generalities.

Business Auto

- Protects against liability for auto related claims.
- Personal auto policies generally do not provide protection for a business.
- Business policies need to be written to include all possible exposures. If employees ever drive their own vehicles on company business (get mail, get supplies, salespeople visit clients, deliver product, etc.) then you could be liable if they are in an accident. In this case, you need to ensure your policy covers you for "hired and non-owned liability".
- Costs
 - Varies widely based on levels of coverage, driver history, and claim history.
 - We recently insured one grower with two trucks, liability only, \$500,000 limits, for \$1,365 per year total.

Other Exposures/Insurance types to consider:

- **Building and Contents** – Self explanatory. Be sure to understand your wind and hail deductibles.
- **Umbrella Liability** – Provides additional coverage over your general liability, auto liability, and even employer's liability if requested.
- **Bumbershoot** – The same idea as umbrella but over your boat and/or crew policy.

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- **Employment Practices Liability** – One of the most requested coverages. Protects for liability for sexual harassment (from employer or other employee), discrimination, wrongful termination, or (our favorite) refusal to hire.
- **Business Income With Extra Expense** – If you lose a building or property, this coverage replaces your business' lost income along with necessary continuing and extra expenses while the building is being rebuilt. This is a vital coverage since many businesses that suffer a serious fire or other disaster can not re-open because they don't have income in the meantime.
- **Inland Marine** – Can cover tools, equipment, machinery, and many other items. Usually used for items that frequently go off premises.
- **Transportation** – Covers stock, inventory, or other property while it is being shipped within the US.
- **Ocean Marine** – Covers stock, inventory, or other property while it is being shipped over the ocean.
- **Flood** - Loss by flood is not covered under your Property policy. It is that simple. You do not need to be near water to have a flood loss.
- **Employee Dishonesty** – Covers loss due to employee theft or other acts of dishonesty.
- **Directors and Officers** – Protects the directors and officers of a company for a variety of acts that are not covered under general liability including failure to discharge duties of their position.
- **Fiduciary Liability** – Do you manage a retirement plan? Do you sign checks on behalf of the company? If you act as a fiduciary in any capacity, you have an exposure.
- **Data Processing (Computer) Policy** – Covers hardware, software, and the expense of putting the two together and getting it all back up and running.
- **Employee Benefits Liability** – Do you manage any sort of employee benefits plan? If so, this exposure should be a consideration.
- **Health, Life, Disability, Long Term Care** – Group or individual.

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