



DEFENSE BASE ACT (DBA) INSURANCE HANDBOOK

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Defense Base Act (DBA) Insurance

Federal law requires all U.S. government contractors and subcontractors to secure DBA insurance for their employees working outside the United States on military or non-military projects. The related statutes include the Defense Base Act and the Longshore & Harbor Workers' Compensation.

What is the Defense Base Act?

Established in 1941, the primary goal of the Defense Base 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 United States 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 DBA coverage.

Target Employees

DBA benefits apply to employees who work as civilians outside the U.S. for the U.S. government or any other government on both military and non-military projects. DBA coverage extends benefits payable under the U.S. Longshore & Harbor Workers' Compensation Act. All employees engaged in such employment, regardless of nationality (including U.S. citizens and residents, host country nationals (local hires), and third country nationals (individuals hired from another country to work in the host country), are covered under the Act.

DBA Coverage Triggers

The Defense Base Act covers employees:

1. 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. The DBA does apply to the U.S. Territories and possessions. The Defense Base Act does not apply to Guam.
2. 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.

3. 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.
4. 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.

If you have answered “yes” to any of the DBA coverage triggers mentioned, then DBA probably applies.

Note regarding Grants: Although this issue has been addressed by a court of law in only one instance, the Department of Labor has adopted a position consistent with the decision of the U.S. Court of Appeals for the Second Circuit in *University of Rochester v. Hartman (Vishniac)*, 618 F.2d 170 (2nd Cir. 1980), that work performed pursuant to a grant is not covered under the DBA.

Useful Links

Defense Base Act

<http://www.dol.gov/owcp/dlhwc/lbdba.htm>

Defense Base Act FAQ

<http://www.dol.gov/owcp/dlhwc/DBAFaqs.htm#2>

Insurance Procurement Process

Coverage for DBA is available through a specific Defense Base Act Policy available through ADOA Risk Management, issued by ACE American Insurance Company. This policy is applicable for contracts entered into by a State of Arizona agency and/or University employees (however, excludes certain contracts as noted below). **Contracts must be reported 30 days prior to the award** of such contract to secure coverage. ACE American Insurance Company reserves the right to underwrite and accept or decline the risk submitted. The process for requesting DBA benefits coverage is:

Review data from contract managers to identify Federal contracts with employees in foreign countries (do not include Grants). The Target Employees and DBA Coverage Triggers sections of this handbook can be referenced to determine if coverage is required. If DBA benefits are required, please provide the following information (If the project is classified, provide at least Items d, f and g):

- a. Name and description of contract, e.g., type of work/services to be performed
- b. Contract number/reference
- c. Contract term
- d. Government agency
- e. Number of employees working on the project
- f. Country of citizenship of employees
- g. Remuneration of the employees on the project while they are actually working on the project; It may not necessarily be the annual salary
- h. Site (country) location of project

Email information directly to State Risk Management at AZRISK@azdoa.gov (see also NOTE below).

NOTE: Contracts with the United States Agency for International Development (USAID), Army Corps of Engineers and/or Department of State have exclusive agreements (insurer/broker arrangements) and cannot be insured under the ACE American Insurance Company program. The requirements and contact information will be noted in your contract. In these instances you should contact ADOA Risk Management *prior* to sending data. You will be required to complete separate applications for these contracts.

DBA Terms & Definitions

Job Classification – This is used to identify the activities of the employee. Some examples of job classifications are Engineer, Technician, Managerial or Clerical, Delivery worker, Packing worker, etc.

Local National (LN) – This classification refers to a non-U.S. citizen hired to work within their country of hire or permanent residence. For example, a German national working in Germany.

Remuneration – The salary or other earnings of employees, which make up the payroll. This includes regular earnings, piecework payment and overtime. For the purpose of DBA, the payroll of the employee to be used is only for the time when the employee will be working on the DBA contract. For example, if the contract term is 3 months, the payroll to be imputed in the application is for the 3 month period, not the employee's annual salary.

Third Country National (TCN) – A non-U.S. citizen hired to work outside their respective country of permanent residence or hire if other than the United States of America. For example, a German national working in Switzerland.

Waiver – This is given by the U.S. Department of Labor advising that the employer does not need provide DBA coverage. Written waivers are difficult to receive and usually not given.

Insurance Premium Payments and Authorization

For any DBA coverage arranged within the ACE American Insurance Company program purchased by ADOA Risk Management, the ADOA Risk Management premium allocation process applies. Premium developed by payroll for your applicable contracts will be included in future allocation of your overall International coverage cost.

When purchasing coverage for USAID contracts, not insured through ACE American Insurance Company, you may be directed by ADOA Risk Management to send data directly to the exclusive broker handling this program, however, any premium invoiced can be routed to ADOA Risk Management for handling within the cost allocation arrangement.

See also FAQ's below regarding authority to purchase coverage outside of ADOA.

Frequently Asked Questions

1. **Does ADOA Risk Management provide this coverage within their self-insurance program under A.R.S. 41-621?** - No, this is a coverage that must be purchased on a contract-by-contract basis.
2. **Does ADOA Risk Management grant authority to agencies for them to purchase the coverage on their own, without involving ADOA?** - When necessary ADOA will review exception requests in a letter from your Director to Ray Di Ciccio, State Risk Manager.
3. **Are there penalties for not purchasing the coverage?** - Yes, the Federal Government can impose fines for the contracting party. Such fines would not be insured by ADOA Risk Management.
4. **Is there a formula for remuneration, i.e. overtime calculation, etc.? What other rates apply for other classes?** - General rule is that compensation reportable to the IRS should be included in the payroll calculation. This includes wages, bonus, hazard pay, etc. The payroll provided for the employees should be for the term of the contract that occurs during the policy term. Rates are generally based on NCCI class codes.
5. **Are all contracts covered under the ACE American Insurance Company policy?** - Contracts with USAID, Army Corp of Engineers and Department of State have exclusive broker/insurer arrangements and cannot be covered by the ACE American Insurance Company policy. ADOA Risk Management has other arrangements available to provide coverage for these contracts.
6. **Are all tiers of subcontractors covered?** Subcontractors must purchase their own insurance, and provide proof of that insurance.
7. **Are any government and university employees exempt from DBA?**
Legal opinion provided by ACE American Insurance Company to ADOA Risk Management concludes that neither the U.S. L.&H. statutes nor the Eleventh Amendment provide exemptions from purchasing DBA coverage if the criteria for Target Employee above applies.