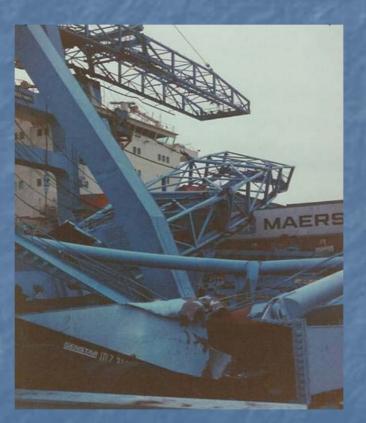
Occupational Safety & Health/Worker's Compensation

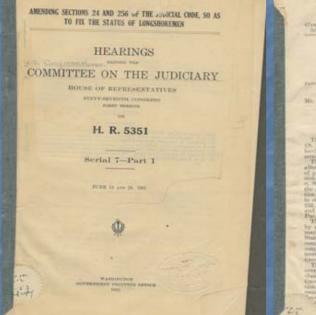
In The U.S. Marine Cargo Handling Industry



A History and Overview for Port Industry Executives



The Jensen Era



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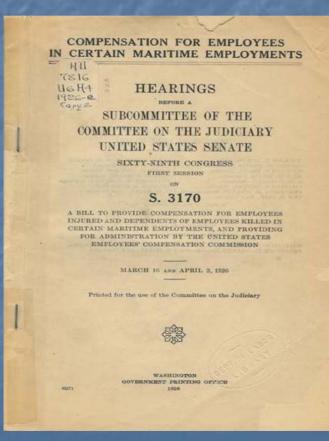
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 Knickerbocker v Stewart (1920)
 Washington v Dawson (1924)

Memorializing an internecine turf fight between the U.S. Congress and the Supreme Court, in determining the method (or indeed the existence) of worker's compensation for injuries sustained "*on the navigable waters*."



LHWCA of 1927



Creates a Federal scheme for the payment of compensation to marine cargo handling and shipyard workers injured "on the navigable waters."

Clarified by the Supreme Court in:

- \checkmark T. Smith & Son v Taylor (1928)
- Minnie v Port Huron Terminals (1935)



(1951) Organized Labor Initiates Attempts to "Perfect" the LHWCA

[COMMITTEE PRINT]

82d Congress 2d Session	}	HOUSE	OF	RÉPRESENTATIVES	{	Report No
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SAFETY IN LONGSHORE AND HARBOR WORK

The subcommittee of the Committee on Education and Labor, to which was referred the bill (H. R. 5796) to amend section 41 of the Longshoremen's and Harbor Workers' Compensation Act of 1927, as amended, to provide a system of safety rules, regulations, and safetinspection and training, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill be considered favorably by the full Committee on Education and Labor and be reported to the House of Representatives for passage.

The subcommittee amendment is as follows:

On page 5, line 8 of the bill, strike out the comma after the word "amended" and insert in lieu thereof a period and strike out all of line 9.

Hearings on H. R. 5796 were held on March 19, 20, and April 3, 1952, by the subcommittee. The subcommittee held hearings on H. R. 4032 on June 5, 11, 12, 19, 20, 22, and 26, 1951. Members of the subcommittee observed the longshoring operations at Cleveland, Ohio, Chicago, Ill., and in the Boston, Mass., and city of New York harbors. As a result of the subcommittee's consideration of H. R. 4032, certain amendments thereto were adopted, and the chairman of the subcommittee was instructed to introduce a new bill which was designated H. R. 5796.

HISTORICAL BACKGROUND

The Longshoremen's and Harbor Workers' Compensation Act was passed by Congress on March 4, 1927, to provide compensation for disability or death resulting from injury to employees, other than officers and crew members of vessels, who are injured while employed on the navigable waters of the United States and who are not covered by the compensation laws of any State. Upon its enactment, the bill was administered by the United States Employees Compensation Commission. On June 16, 1946, the Commission was abolished and its functions transferred to the Federal Security Agency. Effective May 24, 1950, the functions previously transferred to the Federal Security Agency were transferred by Reorganization Plan No. 19 to provide for better administrative efficiency. The functions and personnel relating to safety were placed under the Director of the Bureau of Labor Standards and the existing safety services of the Bureau have been utilized to bolster accident prevention programs on a voluntary basis in the stevedoring industry. The Director of Employees Compensation administers the compensation features of this law.

98325-52

ILA/ILWU
Boilermakers
Steelworkers

Higher than usual number of explosions in shipyards.

Increased trade volumesw/more cargo gear failures.

Political incentives to reseat a Democratic president



The Political Landscape

COMMITTEE ON EDUCATION AND LABOR

GRAHAM A. BARDEN, North Carolina, Chairman

AUGUSTINE B. KELLEY, Pennsylvania ADAM C. POWELL, JR., New York JOHN S. WOOD, Georgia JOHN F. KENNEDY, Massachusetts WINGATE H. LUCAS, Texas CLEVELAND M. BAILEY, West Virginia LEONARD IRVING, Missouri CARL D. PERKINS, Kentucky CHARLES R. HOWELL, New Jersey TOM STEED, Oklahoma ROY W. WIER, Minnesota BOYD TACKETT, Arkansas ERNEST GREENWOOD, New York SAMUEL K. McCONNELL, JR., Pennsylvar RALPH W. GWINN, New York WALTER E. BREHM, Ohio WINT SMITH, Kansas CARROLL D. KEARNS, Pennsylvania THRUSTON BALLARD MORTON, Kentu THOMAS H. WERDEL, California HAROLD H. VELDE, Illinois CHARLES E. POTTER, Michigan RICHARD B. VALL, Illinois E. Y. BERRY, South Dakota

FRED G. HUSSEY, Chief Clerk JOHN O. GRAHAM, Minority Clerk JOHN S. FORSYTHE, General Counsel DAVID N. HENDERSON, Assistant General Counsel RUSSELL C. DERRICKSON, Investigator

SUBCOMMITTEE ON SAFETY IN LONGSHORE AND HARBOR WORK

JOHN F. KENNEDY, Massachusetts, Chairman CLEVELAND M. BAILEY, West Virginia CARROLL D. KEARNS, Pennsylvania



The 85th Congress

SIGNAMINA

Netterstrom Calendar No. 1823 S5TH Congress 2d Session SENATE REPORT No. 1788 ESTABLISHING A SAFETY PROGRAM FOR THE LONGSHORE AND SHIP REPAIR INDUSTRIES JULY 1, 1958 .- Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany S. 3486]

The Committee on Labor and Public Welfare, to whom was referred the bill (S. 3486),"to amend section 41 of the Longshoremen's and Harbor Workers' Compensation Act so as to provide a system of safety rules, regulations, and safety inspection and training, and for other purposes, having considered the same, report favorably thereon, with amendments, and recommend that the bill, as amended, do pass.

The amendments are as follows On page 2, line 1, strike out the word "methods" and insert the word "procedures"

On page 2, line 2, strike out the phrase "work methods" and sub-On page 2, nue 2, strike out the phrase "work methods" and sub-stitute "working conditions". On page 6, strike out lines 12 through 21 and insert a new subsection (g) as follows:

(g) (1) The provisions of this section shall not apply in the case of any employment relating to the operations for the exploration, production and transportation by pipeline of mineral resources upon the navigable waters of the United States, nor under the authority of the Act of August 7, 1953 (ch. 345, 67 Stat. 462), nor in the case of any employment in connection with lands (except filled in, made or reclaimed lands) beneath the navigable waters as defined in the Act of May 22, 1953 (ch. 65, 67 Stat. 29), nor in the case of any May 22, 1965 (cf. 65, 67 Stat. 29), for m the case of any employment for which compensation in case of disability or death is provided for employees under the authority of the Act of May 17, 1928 (ch. 612, 45 Stat. 600), as amended, nor under the authority of the Act of August 16, 1941 (ch. 357, 55 Stat. 622), as amended.

20006 58 1

Sustained organized labor efforts to widen LHWCA coverage and increase safety protection.

Political impetus now gradually translated into labor support for one prospective Democratic presidential candidate.



The 1958 LHWCA Amendments [Public Law 85-742]





Political compromise brokered by Lyndon Johnson, with JFK as strongest proponent.

Resisted by Ike; needed by Richard Nixon in his (1960) bid for Presidency.

Expanded §41 of LHWCA, to provide for safety standards, enforcement and training.

Put in the enforcement hands of DOL (LSB).







The Longshoring Industry Safety Regulations

DESE COPY

EARL J. EROTZER

BUREAU OF LABOR STANDARDS.

Pallets. Cluttes, gravity conveyors and rollers. Powered conveyors. Portable storting windhes. Rein tends. Tools.

Subpart H-Handling Corps 9.81 Bilinging. 9.42 Bulliting deatts. 9.83 Torting and breaking down. 9.84 Bulling earge.

Subpart J-Personal Protective Equipment

Appendix I-Carys Goor Register and Certificates

Subpart A-General Provisions § 9.1 Basis and authority.

§ 9.1 Basis and subscript. (a) The Longshovemmu's and Harbor Workers' Compensation Act (44, Stat.) 454; 33 US-C. 901 et score) provides compensation for injurise suffired by employees which they are working for private employees within the Federal maritime jurisdiction on the mavinable waters of the Enkloted States, inclusion dry decks. Phylic Law 95-166, 72 State.

beis. Sechanically powered webicles. Notifying ship's officers before using certain equipment.

Arthur W. Motley, Director

(Receipted from Federal Register, February 20 1008)

Safety and Health Regulations for . . . LONGSHORING

U.S. DEPARTMENT OF LABOR James P. Mitchell, Secretary

Title 29-LABOR

Subtitle A-Office of the Secretary of Labor PART 9-SAFETY AND HEALTH REG-

ULATIONS FOR LONGSHORING

 On September 18, 1996, notice was pub-linked in the Veneza Ramaran, CAF P.R. Oldows:
 Subpart A-General Parties
 Sub Subpart A-General Parties

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matum process by submission of orsal and written data, views and arguments, pub-la hearings for this purpose were hold on Billionin, San Prancisco, Challernia, New Orienzu, Louisiana, and New York, New 264, and November 3, Mode, respectively 355, and November 3, Mode, respectively 356, and November 3, Mode, respectively 357, and November 3, Mode, respectively 358, and November 3, Mode, respectively 358, and November 3, Mode, respectively 359, and November 3, Mode, respectively 350, and November 3, Mode, respectively 350, and November 3, Mode, respectively 351, and November 3, Mode, respectively 355, and November 3, Mode, respectively 355, and November 3, Mode, respectively 356, and November 3, Mode, respectively 357, and November 3, Mode, respectively 358, and November 3, Mode, respectively 359, and November 3, Mode, respectively 350, and November 3, Mode, respectively 350, and November 3, Mode, respectively 351, and November 3, Mode, respectively 352, and November 3, November 3 Alter acts such hearing, interested ps. After acts such hearing, interested ps. After acts such hearing, interested ps. After acts such hearing and afforded opportunity for the subhasion of write comments ac-The time for filing such comments ac-part bases and the tran-ter bases are act of the such as the such as a such as a such as a such as the such as a s

Secretary of Labor on December 6, 1909, 9-38 Freedy wild devia: Regressentatives of 29 employers in the Industry, 18 frade associations, 7 labor regratizations and the Department of the perificipation in the proceedings with mitted, and devise and regratements. Market 1999, 1

conditions that the proposed requisitions, as hereinafter amended, should be Solopert G-Cargo Handling Geor and Equipment Other Than Salp's Geor

The basis and purpose of these regula- 9.41 in is that stated in [0.1 of Subpart A 9.63 9.63 tions is that stated in [0.1 of Subpart A see blands rope and manum rope and of the regulations which follow. 9.0 Therefore, pursuant to section 4 of 9.0 the Administrative Procedure Act (60 0.66 Hocks other than hand hoks.

Biat. 239; 5 U.S.C. 1003), and under au-liverity of Public Law 05-743 (12 Biat. 577 835), annualing settion 41 of the Long-metric stress stress stress stress stress stress persuation. Act, as annualed (44 Sint. 577 144; 33 U.S.C. 941), and R.S. 101 (4 D.S.C. 877 127), Subtille A of 30 Code of Pederal AS Resultations. Is hereby annucled by 3-34 adding thereto a new Part 9 to read as follows:

Subsert C-Meens of Access

Congrego and other measure of secent, Jacoby indifers, Access to barges and river foreboats, Birding plates and ramps, Ladors To Largo spaces, Birding plates and ramps, Ladors To Largo spaces, Status Statu

Subport D-Warking Surfaces

- Auto-coverings. Stored nargo and temporary landing plastores. Deck hashs. Deck

Subport E-Opening and Closing Hatches

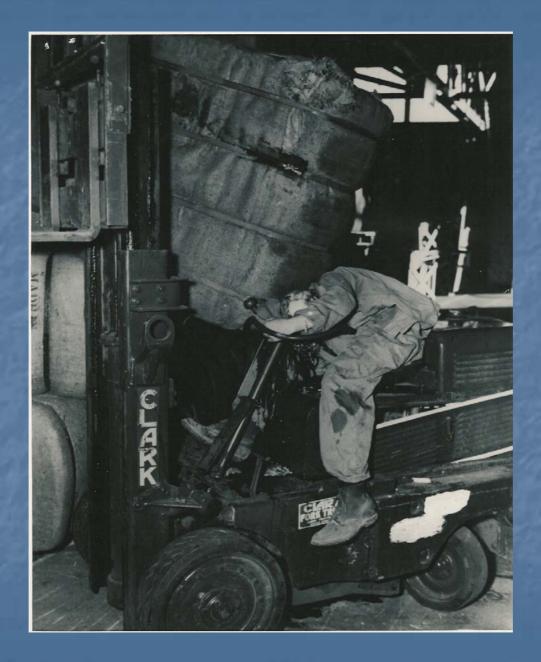
- Subpart #-Ship's Carps Handling Gear

GITY OCCLER. FURDLE LAW 85-442, 72 STAL 855, asproved August 23, 1568, which amends section 41 of the Longshorement's and Harbor Workers' Compensation Act, as amended (44 Stal, 1444; 33 U.S.C. 941) requires, among other things, that every employer of the aforementioned Manila rope and manila rope alinea. employees "shall install, furnish, main tain, and use such devices and safes with particular reference to equipment **Published in the Federal Register, February 20,** 1960

Applicability tracked the jurisdiction of enabling legislation (LHWCA), i.e., to work "on the navigable waters"

Work on terminals therefore, not covered





The Occupational Safety and Health Act of 1970 [Public Law 91-596]

Public Law 91-596 91st Congress, S. 2193 December 29, 1970 As amended by Public Law 101-552, §3101, November 5, 1990

An Act

84 STAT. 1590

Occupational Safety and

Health Act of 1970

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, edu-cation, and training in the field of occupational safety and health; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act of 1970.

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. (2) The Congress finds that personal injuries and illnesses 29 USC 651 arising out of work situations impose a substantial burden upon, and arising out or work situations impose a substantial burden upon, mu are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments. (b) The Congress declares it to be its purpose and policy, through

the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general wel-fare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human re

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

providing sale and healthing working conditions; (2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achiev-ing safe and healthful working conditions; (3) by authorizing the Sceretary of Labor to set mandatory occupational safety and health standards applicable to busi-nesses affecting interstate commerce, and by creating an Occu-pational Safety and Health Review Commission for carrying out childrater functions under the Act. adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health

Signed into law by Richard Nixon, December 29, 1970

Extended to all workplaces

Adopted all existing Federal Safety Standards (including the Longshoring safety regulations)

"on the navigable waters" limitations of LHWCA (for safety/health) no longer apply



LHWCA Extensions of 1972

544

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSA-TION ACT AMENDMENTS OF 1972

An Act To provide compensation for disability or death resulting from injury to employees in certain maritime employment, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as "Longshoremen's and Harbor Workers' Compensation Act."

DEFINITIONS

SEC. 2. When used in this Act-(1) The term "person" means individual, partnership, corporation,

or association.
(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally out mavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.
(3) The term "employee" means any person engaged in moritime employment, includier, and ship-breaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.
(4) The term "employee" means an employer any of whose em-

under eighteen tons net.
(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railing, unloading, repairing, or building a vessel).
(5) The term "carrier" means any person or fund authorized under section 32 to insure this Act and includes self-insurers.
(6) The term "Sarrier" means the Secretary of Labor.

section 52 to insure this Act and includes self-insurers.
(6) The term "Secretary" means the Secretary of Labor.
(7) The term "deputy commissioner" means the deputy commissioner having jurisdiction in respect of an injury or death.
(8) The term "State" includes a Territory and the District of Columbia.

¹ Includes 1972 amendments made by P.L. 22-576 printed in italic. ⁹ The amendments (except section 19(d) of the Act) are effective thirty days after enact-ment (12.01 a.m., November 26, 1972).

Brings Federal program of compensation ashore

Now additionally covers "related employments"

Substantially boosts amount of compensation paid to recipients (66 2/3%) of average wkly wage)



Applicability of OSHA Regulations to Marine Cargo Handling Operations

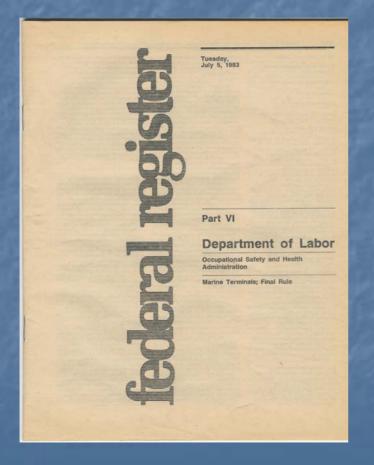
Vertical Rules:

Horizontal Rules: Designed specifically for application to a given industry. Applies in lieu of any other rule. In the case of marine terminal operations, 29 CFR Part 1917. In the case of longshoring operations (aboard vessels), 29 CFR Part 1918.

All regulations contained in 29 CFR Part 1910, OSHA's Rules for General Industry



The Marine Terminals Standard



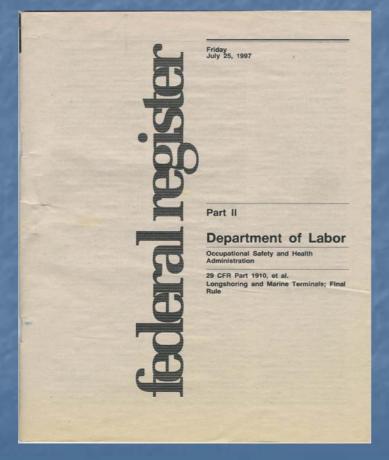
- 29 CFR Part 1917 reduced the volume of applicable regulations by 75%
- Custom tailored in unison with labor & management interests

 Included criteria for safely conducting modern cargo handling operations

 Applies from gate to gangway



Modernizing Part 1918 Standards



Afloat marine cargo handling rules had very little change since the 1960's

 Needed to subjectively track, without any variance, the shoreside (Part 1917) rules



Human Suffering



Financial Loss (With Loss Of Life)



Greater Financial Loss



Accidents: Direct/Indirect Costs

Worker's Comp: "The Manual Rate"

All In Costs: 4-15 Percent of Total Payroll

Therein lies the difference between profit and loss in an industry with razor thin profit margins



Labor Relations

ILA seeks safety talks Journal of Commerce Wednesday, December 01, 2004 By: The JOURNAL of COMMERCE ONLINE

The president of the International Longshoremen's Association has called for port safety meetings with employers and federal agencies following recent accidents that killed a union dockworker in New Jersey and injured three others in South Carolina.

"Safety remains a top priority with the ILA as it is with our employers," said ILA President John Bowers. "However, something is wrong when ILA members are killed or critically injured at the work sites. We need to address this problem immediately."



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