

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.

#### (b) Negligence of vessel

In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.

#### (c) Outer Continental Shelf

In the event that the negligence of a vessel causes injury to a person entitled to receive benefits under this Act by virtue of section 1333 of title 43, then such person, or anyone otherwise

entitled to recover damages by reason thereof, may bring an action against such vessel in accordance with the provisions of subsection (b) of this section. Nothing contained in subsection (b) of this section shall preclude the enforcement according to its terms of any reciprocal indemnity provision whereby the employer of a person entitled to receive benefits under this chapter by virtue of section 1333 of title 43 and the vessel agree to defend and indemnify the other for cost of defense and loss or liability for damages arising out of or resulting from death or bodily injury to their employees.

(Mar. 4, 1927, ch. 509, § 5, 44 Stat. 1426; Pub. L. 92-576, § 18(a), Oct. 27, 1972, 86 Stat. 1263; Pub. L. 98-426, §§ 4(b), 5(a)(1), (b), Sept. 28, 1984, 98 Stat. 1641.)

### Editorial Notes

#### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-426, § 4(b), inserted at end “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.”

Subsec. (b). Pub. L. 98-426, § 5(a)(1), substituted “If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer” for “If such person was employed by the vessel to provide ship building or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing ship building or repair services to the vessel”.

Subsec. (c). Pub. L. 98-426, § 5(b), added subsec. (c).

1972—Pub. L. 92-576 designated existing provisions as subsec. (a), substituted “the chapter” for “this chapter”, and added subsec. (b).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 4(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, and amendment by section 5(a)(1), (b) of Pub. L. 98-426 applicable with respect to any injury after Sept. 28, 1984, 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.

### § 906. Compensation

#### (a) Time for commencement

No compensation shall be allowed for the first three days of the disability, except the benefits provided for in section 907 of this title: *Provided, however,* That in case the injury results in disability of more than fourteen days the compensation shall be allowed from the date of the disability.

#### (b) Maximum rate of compensation

(1) Compensation for disability or death (other than compensation for death required by this

chapter to be paid in a lump sum) shall not exceed an amount equal to 200 per centum of the applicable national average weekly wage, as determined by the Secretary under paragraph (3).

(2) Compensation for total disability shall not be less than 50 per centum of the applicable national average weekly wage determined by the Secretary under paragraph (3), except that if the employee's average weekly wages as computed under section 910 of this title are less than 50 per centum of such national average weekly wage, he shall receive his average weekly wages as compensation for total disability.

(3) As soon as practicable after June 30 of each year, and in any event prior to October 1 of such year, the Secretary shall determine the national average weekly wage for the three consecutive calendar quarters ending June 30. Such determination shall be the applicable national average weekly wage for the period beginning with October 1 of that year and ending with September 30 of the next year. The initial determination under this paragraph shall be made as soon as practicable after October 27, 1972.

### (c) Applicability of determinations

Determinations under subsection (b)(3) with respect to a period shall apply to employees or survivors currently receiving compensation for permanent total disability or death benefits during such period, as well as those newly awarded compensation during such period.

(Mar. 4, 1927, ch. 509, § 6, 44 Stat. 1426; June 24, 1948, ch. 623, § 1, 62 Stat. 602; July 26, 1956, ch. 735, § 1, 70 Stat. 654; Pub. L. 87-87, § 1, July 14, 1961, 75 Stat. 203; Pub. L. 92-576, §§ 4, 5(a), Oct. 27, 1972, 86 Stat. 1252; Pub. L. 98-426, § 6, Sept. 28, 1984, 98 Stat. 1641.)

## Editorial Notes

### AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-426, § 6(a), substituted provisions setting a maximum compensation for disability on death of 200 per centum of the applicable national average weekly wage as determined by the Secretary for former provisions which had set out a schedule of progressive percentages of 125 per centum or \$167, whichever is greater, during the period ending September 30, 1973, 150 per centum during the period beginning October 1, 1973, and ending September 30, 1974, 175 per centum during the period beginning October 1, 1974, and ending September 30, 1975, and 200 per centum beginning October 1, 1975.

Subsecs. (c), (d). Pub. L. 98-426, § 6(b), redesignated subsec. (d) as (c) and substituted "under subsection (b)(3)" for "under this subsection". Former subsec. (c), which had directed that the maximum rate of compensation for a nonappropriated fund instrumentality employee be equal to 66⅔ per centum of the maximum rate of basic pay established for a Federal employee in grade GS-12 by section 5332 of title 5 and the minimum rate of compensation for such an employee be equal to 66⅔ per centum of the minimum rate of basic pay established for a Federal employee in grade GS-2 by such section, was struck out.

1972—Subsec. (a). Pub. L. 92-576, § 4, substituted "forty-nine days" for "twenty-eight days".

Subsecs. (b) to (d). Pub. L. 92-576, § 5(a) added subsecs. (b) to (d) and struck out former subsec. (b) compensation for disability provisions which prescribed a \$70 per week limit, a \$18 per week minimum for total disability, and provided that if the employee's average weekly wages, as computed under section 910 of this

title, were less than \$18 per week he should receive as compensation for total disability his average weekly wages.

1961—Subsec. (b). Pub. L. 87-87 increased limitation on compensation for disability from "\$54" to "\$70" per week.

1956—Subsec. (a). Act July 26, 1956, substituted "three days" for "seven days" and "twenty-eight days" for "forty-nine days".

Subsec. (b). Act July 26, 1956, substituted "\$54" for "\$35", and "\$18" for "\$12" in two places.

1948—Subsec. (b). Act June 24, 1948, increased maximum weekly compensation from \$25 to \$35 and the minimum from \$9 to \$12 in two places.

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 6(a) of Pub. L. 98-426 applicable with respect to any death after Sept. 28, 1984, and amendment by section 6(b) of Pub. L. 98-426 applicable with respect to any injury, disability, or death after Sept. 28, 1984, see section 28(d), (f) 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.

### EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87-87, § 4, July 14, 1961, 75 Stat. 204, provided that: "The amendments made by the foregoing provisions of this Act [amending this section and sections 909 and 914 of this title] shall become effective as to injuries or death sustained on or after the date of enactment [July 14, 1961]."

### EFFECTIVE DATE OF 1956 AMENDMENT

Act July 26, 1956, ch. 735, § 9, 70 Stat. 656, provided that: "The amendments made by the first section and sections 2, 4, and 5 of this Act [amending this section and sections 908, 909, and 914 of this title] shall be applicable only with respect to injuries and death occurring on or after the date of enactment of this Act [July 26, 1956] notwithstanding the provisions of the Act of December 2, 1942, as amended (42 U.S.C. sec. 1701 et seq.)."

### EFFECTIVE DATE OF 1948 AMENDMENT

Act June 24, 1948, ch. 623, § 6, 62 Stat. 604, provided that: "The provisions of this Act [amending this section and sections 908, 909, 910, and 914 of this title] shall be applicable only to injuries or deaths occurring on or after the effective date hereof [June 24, 1948]."

## § 907. Medical services and supplies

### (a) General requirement

The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

### (b) Physician selection; administrative supervision; change of physicians and hospitals

The employee shall have the right to choose an attending physician authorized by the Secretary to provide medical care under this chapter as hereinafter provided. If, due to the nature of the injury, the employee is unable to select his physician and the nature of the injury requires immediate medical treatment and care, the employer shall select a physician for him. The Secretary shall actively supervise the medical care rendered to injured employees, shall