

OFFSHORE WORKPLACE STANDARDS OF CARE REGARDING THE PREVENTION OF WORKPLACE INJURIES

Under the dictates of ordinary care, those who control offshore workplaces have a responsibility to exercise reasonable care to establish and maintain such workplaces to be reasonably free of recognized (reasonably foreseeable) hazards likely to result in the death or severe injury of anyone reasonably anticipated to be exposed to such hazards.

It is understood that in certain circumstances such responsibility for the safety of offshore workplaces (and workers) is separately controlled by federal (*Jones Act*) law and (USCG/OSHA) regulation.

In this regard, it is *understood* ⁽¹⁾ that if an injured worker is designated a *seaman* under the *Jones Act*, general maritime law stipulates that negligence be imputed to certain parties if such a seaman is injured as a result, in whole or in part, from the negligence of any of such parties' officers, agents, or employees.

It is also *understood*, that such maritime law calls for a warranty of *vessel seaworthiness*, the term *seaworthy* meaning *reasonably fit for its intended purpose* of being a safe (reasonably fit) place to work and live, to include the provision of proper *vessel appurtenances* (things attached to or accompanying the vessel) and *manpower* (vessel personnel) in terms of their number and competence reasonably necessary for the safety of the crew.

Regarding potential vessel appurtenance hazards, whether or not a vessel appurtenance is reasonably fit for its intended purpose is *in part* determined by whether or not its design or construction (its physical condition) is in compliance with good engineering practice as well as recognized standards. Such standards include but are not

restricted to the provisions of applicable *statutory regulations*. That is, the term *recognized standard* also includes authoritative design criteria, concepts, principles, guidelines, and accepted practices as contained in the authoritative safety literature, as well as the provisions of national codes and standards published by various professional societies, national (public service) organizations (such as ANSI and NFPA), and various governmental (public service and education) agencies (such as NIOSH).

Regarding potential competent crew hazards, whether or not a vessel is provided with sufficient, as well as competent vessel personnel, is *in part* determined by whether or not such personnel are sufficiently trained and their work is performed in compliance with important recognized standards of conduct related to crew safety. Again, such standards include but are not restricted to the provisions of applicable *statutory regulations*. That is, the term *recognized standard* also includes authoritative guidelines and generally accepted safe work practices as contained in the authoritative safety literature, as well as the provisions of national codes and standards published by various professional societies, national (public service) standards organizations (such as ANSI and NFPA), and various governmental (public service and education) agencies (such as NIOSH).

Depending on the type of "vessel" involved and its physical location (within or outside state territorial waters), applicable federal regulations may include standards promulgated under the authority of the U.S. Department of Transportation (U.S. Coast Guard) or the U.S. Department of Labor (OSHA). Both agencies have promulgated what are called "general duty" clauses that require all workplaces to be free from recognized hazards.

Under USCG (OCS) regulations [33 CFR 142.4(a) and (b)], each holder of a lease or permit, and all persons responsible for actual operations, including owners, operators, contractors, and subcontractors are to ensure that those operations subject to their control comply with applicable workplace safety and health regulations, and in addition, *free from recognized hazards*.

Likewise, under OSHA regulations [29 USC 654(a)(1) and (a)(2)], every employer is required to ensure that workplaces under their control comply with promulgated occupational safety and health standards, and in addition, are *free from hazards that are causing or are likely to cause death or serious physical harm*.

In regard to issues concerning USCG versus OSHA jurisdiction, it should be clearly understood that such jurisdictional questions are exclusively limited to issues pertaining to *working conditions*. Regarding *working conditions*, these agencies have agreed to a cooperative approach and have issued joint letters of understanding as to the authority of each in various situations. Regardless, both agencies are concerned with workplace safety, and both agencies require that offshore workplaces be *free of recognized hazards*.

(1) Herein, there is no intent or claim to providing legal advice or any definitive definition of legal terms. Discussion of legal terms is for general understanding purposes only and cannot be relied on regarding any particular matter without consultation with a licensed attorney.

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