



MOSCHETTA LAW


The River Lawyers

**Victims' Guide to the Defense Base Act:
Your Next Steps**

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Introduction

In many labor intensive industries, injuries on the job can be common and most often are handled with worker's compensation. However, working outside of the United States on a United States military base or on a job at another location and under contract with the U.S. government, public works, or for the national defense, coverage for on-the-job injuries falls under the Defense Base Act.

There are complex laws and legal processes to follow when trying to collect compensation and medical benefits for your injuries. Understanding how to protect yourself from further loss and achieve the results you deserve is the first step in the process.

If you or a loved one was injured overseas, on a U.S. military base, or on a job at another location and under contract with the U.S. government, national defense, or public works, this guide will assist you in understanding the process and what steps you should be taking to the proper medical treatment and compensation benefits you deserve.

The 3 Things You Need To Do Right Now

After this section, stop reading this guide immediately and take these three important steps to **improve your chances of helping your case** and receiving the maximum benefits:



1. Record your statement

While you get an incident report from your employer, it's important to write down precisely what happened **in your own words**. It is not uncommon for employer accident reports to leave out the truth of the incident. This is especially likely if the injury occurred due to the employer's negligence. There is a page towards the end of this guide where you can record your statement in detail, and provide it to your Defense Base Act attorney.



2. Be ready to answer basic questions about your incident

There are some basic questions which you will be asked when you first contact a Defense Base Act attorney. Although some of these may be covered in your statement, **you should still be prepared to answer**. At the end of this guide – immediately after the page provided to record your statement – are questions which you will be asked and space provided to record your answer.



3. Contact a Defense Base Act Attorney

You should contact a Defense Base Act Attorney immediately. These cases can be hard to navigate with an attorney who only practices general personal injury claims. Moschetta Law Firm in Washington, PA has years of **experience trying and winning Defense Base Act cases**. A lawyer who knows the Defense Base Act backwards and forwards will guide you throughout the remainder of your case.

When you have recorded your statement, and answered the questions in the back of this guide, **contact Moschetta Law Firm for your FREE consultation.**



What kind of Information and Documentation Does an Attorney need to Successfully Represent Me?

Along with your statement of the incident, you should give your attorney the following documents and information so he or she can start investigating and prosecuting your claim:

- Accident Report **submitted to your employer**
- **List of all medical providers** who have treated you for the work injury
- **Medical Reports** from any doctors/hospitals
- **A list of witnesses** to the accident and any written Witness statements
- **Emails & Text Messages** from your supervisor, co-workers and/or insurance adjustor
- **Investigative Reports** by the U.S. Military
- **Any Photographs** which Pertain to the Case



Can I choose my own doctor?

- It's important that you get prompt and proper medical treatment. It is well known that the sooner you get proper medical treatment for your work injuries, the greater the likelihood you will make a full recovery and be able to return to work.
- Under the Defense Base Act, you have certain medical rights:
 - You have one free choice to select your doctor. This is usually your primary care doctor (family doctor), who can then refer you to specialists, as your injury requires. The insurance carrier or a nurse case manager may tell you that you have to treat with the doctor they choose. This is not always the case especially considering that some company doctors may not have your best interests in mind.
- You don't need to provide recorded statement to receive your approved medical treatment.
- You should provide the doctors treating your work injury with the insurance adjustor's name and contact information so they can send the bills and records justifying you being off work (disabled) to the insurance carrier. In some instances, though, if the insurance carrier is disputing your case or refuses to authorize certain medical treatment, it will be necessary to provide your private health insurance information, if you have it, so you can be sure to receive timely medical treatment. Your Defense Base Act attorney at the Moschetta Law Firm will work out the details of who is responsible for paying the bills, even if it's already been paid by your private health insurance. Or if you had to pay for the treatment out of your own pocket, the Defense Base Act attorneys at the Moschetta Law Firm will seek reimbursement of any money you have spent for reasonable and necessary treatment of your work injuries.



Do I Have to See the Company's Doctor or the Insurance Company's Doctor?

Subject to few exceptions, **you are generally are required to submit to an examination** (not treatment) with a company doctor if your employer or its insurance carrier seeks a "Second Medical Opinion". Your employer or its insurance carrier can request that you submit to such an exam periodically, again subject to certain exceptions. This is usually every 6 – 12 months. If the insurance carrier asks you to submit to an exam for purposes of a Second Medical Opinion, **contact an experienced Defense Base Act attorney at the Moschetta Law Firm immediately.**

When should I return to work?

This is generally a question for your treating doctors. If your doctor releases you to "full duty" work, then you should contact your company about returning. **Sometime your doctor will release to you "modified" duty.** This is usually where your doctor says that you can't perform your usual job, but you can perform medium or light duty work. If that happens, you should contact your employer to see if they can accommodate your restrictions. If they can, you should perform the modified job duty position. However, **be careful that when you return to modified work, that you aren't violating the restrictions imposed by your doctors.** If so, you need to remind your employer of the restrictions.



Do I have to file a Claim to Receive Benefits under the Defense Base Act? How do I file a Claim for Compensation? Is there a Time Limit for Filing the Claim for Compensation?

- Under the Defense Base Act, **you have only one (1) year from the date of the accident** in which to file your claim against your employer with the U.S. Department of Labor, or your claim will be forever barred. Or if your employer has voluntarily paid you compensation benefits as a result of your work-injury, you must file a claim within 1 year of the last payment of compensation. It is not enough that your employer and insurance carrier are aware of your injury. You must file a Claim for Compensation with the U.S. Department of Labor.
- In order to protect **your right to receive compensation benefits in the future**, you should immediately contact a Defense Base Act attorney at the Moschetta Law Firm to file the necessary papers. Or you can do it yourself by mailing an [Employee's Claim for Compensation \(Form LS-203\)](#) to the following address:

U. S. Department of Labor
Office of Workers' Compensation Programs
Division of Longshore & Harbor Workers' Compensation
201 Varick Street, Room 740
Post Office Box 249
New York, NY 10014-0249

- Once you file a Claim for Compensation, **your Defense Base Act attorney will prosecute it on your behalf.**



What will happen in court?

Many Defense Base Act cases do not go to court. A settlement can happen any time during a case, even after a Judge makes a decision on your case, assuming it goes to a formal Hearing. **How much you should demand to settle your case** is something you must discuss with your Defense Base Act attorney.

If the case does go to court (called a Hearing), then you will most likely be called to testify. Your attorney will ask you questions on what is called "direct examination". Then, the attorney for the insurance carrier will have the opportunity to "cross examine" you, which means he or she will ask you even more questions. Before we get to a Hearing, the opposing attorney will take your deposition. This is where you are asked questions under oath outside of court. Depositions usually take place in your attorney's office. The questions and your answers are transcribed by a court reporter. At the Hearing, the insurance company's attorney will use your deposition testimony and compare it against what you said at the Hearing. Since both statements are under oath, they both carry potential perjury penalties. If there are any conflicts between the statements, those will need an explanation. However, **not every difference in testimony is perjury.**

An Administrative Law Judge with the U.S. Department of Labor will hear and decide your case. Lawyers for both sides will make statements, they will call witnesses, they will present documents and other materials and try to get them accepted as evidence, and sometimes they will object to something the other side is doing.

Contrary to what you may see on television, the Administrative Law Judge will not make a decision at the close of the Hearing. Instead, the Judge **will review all of the evidence submitted by both parties and then write a lengthy decision discussing all of the evidence,** and why the judge believes (credits) some testimony and not others. Hearings vary in length and complexity but usually last for at least ½ a day.



The Defense Base Act

As an extension of the LHWCA (the Longshore and Harbor Worker's Compensation Act), the Defense Base Act was enacted in 1941 in order to protect civilian employees working outside of the United States on a United States military base. Or they could be working on a job at another location and under contract with the U.S. government, public works, or for the national defense. Basically, **the law requires employers to provide workers' compensation for their employees.** This is the same as what maritime employers are required to provide their employees under the LHWCA.

If you want more information

If you have suffered an injury while on the job for the United States government on a base or a job site, **then you owe it to yourself to call the Moschetta Law Firm and explore your rights under the Defense Base Act.**