

As we mentioned in our [previous post](#), injured workers' claims arising out of the oil spill cleanup will be governed by three sets of laws: the *Jones Act*, the *Longshore and Harbor Workers' Compensation Act*, and state workers' compensation laws. Here is a more detailed analysis of when each set of laws might apply to an injured workers involved in the Transocean's Deepwater Horizon oil spill clean up.

[The Jones Act](#) will be used to compensate seamen who are injured during the cleanup. In order to be classified as a seaman a worker's duties "must contribute to the function of the vessel or the accomplishment of its mission," and the employee must have a "connection to a vessel in navigation (or to an identifiable group of such vessels) that is [substantial in terms of both duration and nature](#)." The workers who are hired for the seaside portion of the oil spill cleanup should meet these requirements because the mission of the vessel will be to aid in the cleanup efforts and the employees will presumably be working for a single boat or a single company with a fleet of boats.

[The Longshore and Harbor Workers' Compensation Act](#) presents a more complicated question. In order for a worker to be covered by the *Longshore* statutes they must satisfy both a geographic and a job requirement. The [geographic requirement](#) is satisfied if the worker is injured "upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel." The [job requirement](#) is satisfied if an employee is "engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor worker including a ship repairman, shipbuilder, and shipbreaker." It is not a requirement that the injured worker be performing longshoring or shipbuilding activities at the time of the injury, but it is [a requirement that those activities make up some portion of his job](#).

As the workers who are hired by BP and their subcontractors to clean up the oil spill will not be involved in either loading/unloading cargo ships or shipbuilding it is possible they will not meet the maritime job requirement. At least [one federal circuit](#) has held that a maintenance worker whose only job was to cleanup debris scattered around a shipyard did not qualify as a maritime worker. However, as the [AEU Longshore Blog notes](#), a worker employed in oil spill clean up was considered to be engaged in "clearly a maritime activity conducted in a

maritime environment,” and recommends that any insurance carrier or broker resolve any doubt in favor of obtaining coverage.

There is some overlap between these areas of law. The United States Supreme Court has held that the *Longshore* Act “[supplements, not supplants state \[workers’\] compensation law.](#)” This creates a concurrent jurisdiction between *Longshore* and state law in states whose workers’ comp laws cover the same type of injury. Of the states currently affected by the oil spill, only Alabama is a so-called [concurrent state](#). Florida, Mississippi, and Louisiana are exclusive states, meaning that they expressly provide in their workers’ compensation statutes that if an employee is covered by a federal compensation plan then they are not entitled to any recovery under the state statutes. [33 U.S.C. 903\(e\)](#) states that any recovery under state compensation laws will be credited against future recovery under the *Longshore* Act.

In other situations, an employee may be uncertain as to whether he is a seaman under the *Jones Act* or is instead covered by the *Longshore* Act. The statutes are mutually exclusive, meaning a worker is only entitled to recovery under one or the other. However, recognizing that there is a “zone of uncertainty” between the two acts, the [courts have held](#) that an employee may file *Jones* and *Longshore* claims concurrently or successively and let the courts decide which compensation laws apply to them.

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