

## **Algunas Observaciones Sobre el Seguro de Barcos Pesqueros Comerciales**

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### *Abstracto*

El abastecimiento y la demanda por seguro para botes pesqueros, están sujetos a frecuentes ajustes, dependiendo sobre el número de tipos de botes que requieren seguro. Hay una falta de propaganda en el caso de seguro para botes pesqueros, en contraste con otros tipos de seguro.

Los dueños de botes pesqueros no parecen comprender los costos de seguro hasta que la industria está deprimida. El costo del seguro está relacionado con el valor del casco, mantenimiento del equipo y la seguridad de operación del bajel. Las pérdidas han sido grandes debido a negligencia de parte de los dueños y la tripulación, y ésto ha causado una elevación en las tarifas. Standards para los barcos, inspecciones periódicas y entrenamiento de las tripulaciones son deseables y reducirían las pérdidas así como las tarifas de seguro. Se necesitan leyes para limitar los reclamos por accidentes individuales.

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## **Labor Accident Law of the Republic of Cuba and Its Application to the Fishing Industry**

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### **History and Origin of Workmen's Compensation in Cuba**

The first Workmen's Compensation Law enacted in the Republic of Cuba dates back to the year 1916; from the very beginning it was one of the most complete and advanced Workmen's Compensation laws in the world.

The Republic of Cuba by complying with the international agreements derived from the Conferences held by the International Labor Office in Geneva, made very rapid progress in favor of the Cuban working classes, progress that most countries have not achieved during a large number of years.

In Anglo-Saxon countries, long before the enactment of Workmen's Compensation Legislation, they had in their common law what was known as Employer's Liability; a rudimentary Workmen's Compensation for accidents incurred during working hours. With the progress and modernization of industrial methods during the machine age, the frequency of working risks was increased and the simple benefits of the Employer's Liability Laws were not sufficient to cope with the new situation. Thus the beginning of specific Workmen's Compensation legislation; Employer's liability laws were in some instances completely rescinded and in some others they were not, but its application became less frequent.

In our Republic, we do not have conflicts between Employer's Liability

and Workmen's Compensation laws. From the very beginning we had a definite Workmen's Compensation law, which as stated before was quite complete and very modern.

### Modifications and Present Status

The basic Workmen's Compensation Law enacted in Cuba in 1916 was completely revised and modified in the year 1933 and 1934 by several Decree-Laws. Among the major modifications introduced in the present law are the following:

To include professional sicknesses such as:

Poisoning from lead, its alloys or compounds.

Poisoning by mercury, its amalgams and compounds.

Carbuncular infections.

Silicosis, with or without pulmonary tuberculosis, provided that the silicosis is the determining cause of the disability or death.

Poisoning from phosphorus and its compounds.

Poisoning from arsenic or its compounds.

Poisoning from benzene or its homologs, its nitrous and aminic derivatives.

Poisoning from halogenous derivatives of fatty hydrocarbons.

Pathological disorders due: a) to radium and to other radioactive substances, b) to X-rays.

Primitive epitheliomas of the skin.

Tabaccosis.

There is no waiting period; the injured workman starts drawing the benefits of the law from the very first day he becomes injured.

Minors under eighteen years of age have the same rights as adult workers.

All types of accidents are covered by the Workmen's Compensation Law, with the exception of Acts of God or *force majeure*.

Complete medical assistance is given to the injured workman who has the privilege of choosing physicians and hospital.

Indemnizations are of four types:

- a) Temporal or *per diem* allowance; that is, half of the salary drawn on the date of the accident if he has fixed daily salary, or half of the average of the salary drawn during the last sixty days if he has intermittent, variable or piece-work salary. The minimum per diem allowance is \$0.50 per day. The per diem allowance may be received for a maximum period of one year.
- b) For partial permanent disability the workman is entitled to one half of the diminution he has suffered in his full capacity for work, payable either as a lump sum, in which case it will be three times the total partial disability corresponding to one year, or a monthly pension for life.
- c) Total permanent disability has to be paid, as a monthly pension for life, on the basis of two thirds of the annual salary.
- d) In the case of death, the workmen's legal widow and children derive monthly pensions according to scale, based on the number of children surviving. If there are no surviving widow or children, then the parents and collaterals may derive monthly pensions, which in the

case of parents may be for life and in the case of brothers, until they become twenty-one and for sisters until they become twenty-one, or before, if they are legally wed. The pensions for brothers and sisters may be for life, if one happens to be physically or mentally disabled to work.

Total and partial disabilities are determined by physicians according to tables. Claims can be established with or without the intervention of a Court of Justice and the Workmen's Compensation Law has been widely interpreted and supported by Supreme Court rulings.

Workmen's Compensation is compulsory in the Republic of Cuba. All employers operating within the limits of the Republic of Cuba, are obliged to insure their employees against the perils of accidents and professional sickness under the Workmen's Compensation Law. They have the choice of either using a fully authorized Workmen's Compensation Insurance Company, which, to operate must obtain a license and deposit with the Treasury Department of the Republic of Cuba a guarantee of \$100,000 either in currency or in Government Bonds, or the employer may assume the risk himself, but must first secure the authorization and also deposit the \$100,000 guarantee. I do not know of anyone doing so. There is no competition by Municipal, Provincial or Government Insurance, as by Article No. 65 of the Constitution, Workmen's Compensation Insurance shall only be written by private stock companies.

Premiums on Workmen's Compensation Insurance are payable on percentages calculated on the basis of the total pay roll including all types of wages paid, the sole exception are private owners and their close relatives working on what is known as family basis, that is without retribution, because they room and board with the owner. The rates are promulgated according to statistics by the Commission on Premiums for Workmen's Compensation which is a committee formed by members of Insurance Companies, owners' associations, and delegates from the Ministry of Labor.

### **Workmen's Compensation as Applied to the Fishing Industry**

Fishing itself is precisely covered by Title IV of Workmen's Compensation Law, which says:

ARTICLE XL. "For the purpose of this law all persons composing the crew of a vessel or aircraft, or who are carried on the roll thereof, shall be considered workmen, provided said vessel or aircraft is registered under the Cuban flag and said persons are paid wages or compensation.

The charterer of the vessel or any other person or company which directly profits by its operation shall be considered as employer of the business.

In case of accident or death, the indemnification and other rights to which sea men are entitled shall be regulated by the provisions of this law."

Comments: There is no difference between sailing, motor boats or motor vessels as long as they use workmen and they receive wages or any other type of compensation, such as those peculiar to fishermen, that is a proportionate division of the whole catch after deducting all expenses of the trip and the maintenance of the vessel. Furthermore it is customary in fishing schooners that the repair of sails, mast and

painting of the vessel is done by the same crew, while they are in port and it also includes all accidents derived from this type of work, since the crew at all times are registered in the roll and therefore are employees of the owner or company that directly profits by the operation of the vessel.

ARTICLE XLI. "If the vessel is lost or six months elapse without any news being received regarding it or the members of the crew, the indemnification to which this law refers shall be demandable as if in case of death."

Comments: By this Article, special regulation is established whereby the lack of news during the period of six months is considered equivalent to a total loss of the vessel and all its crew.

ARTICLE XLII. "The Captain or Employer must prepare the proper reports when an accident arises by reason of work aboard his vessel, setting forth the circumstances of the case, in accordance with the provisions of Article XXVII of this law.

If there is a physician aboard, his intervention shall be requested in preparing the report and in the issuance of the proper certificate.

In case of an accident during navigation, the period of 24 hours fixed by this law for reporting the accident shall be counted from the arrival of the vessel at any Cuban port, or at a foreign port where there is a consular or diplomatic representative of the Republic, who shall present himself aboard, in order to comply with the obligation fixed for Municipal Judges in these cases."

Comments: By Article XXVII of the law the employers are obliged to communicate to the Municipal Court within 24 hours of any accident occurred during the working days, this is fulfilled by the Captain of the vessel and as the fishing trips most of the time start from and return to Cuban ports, then the 24-hour period for advising the Municipal Court is counted from the time that the vessel returns to port.

I would like to mention the fact that I do not know of any other Workmen's Compensation Law which contains the regulations referring to aircraft operations. This I point out to show that the Cuban Workmen's Compensation Law is so modern that in its original draft air navigation is covered.

The above refers exclusively to the art of fishing, the marketing and industrialization of fish are also covered by the Workmen's Compensation Law under general caption of mercantile enterprises and industrial plants.

The official tariff of Workmen's Compensation rates have the following items for the industrialization of fish:

Item No. 171	Tinning (excluding the manufacture of the tins) .....	2.00%
Item No. 373-a)	Retail selling of fish .....	2.00%
Item No. 373-b)	Curing, smoking and packing .....	2.00%
Item No. 373-c)	Wholesale imports (fishing excluded) .....	1.50%
Item No. 349	Oysters, cleaning, selecting and packing, (fishing excluded) .....	3.00%

As information the rates for fishing are:

Item No. 342-g	Renting of boat and/or motor boat, for fishing .....	8.00%
Item No. 372	Fishing operation either by schooners or motor vessel .....	7.00%

There is only one point that I would like to submit before finishing.

We have stated clearly that Cuban Workmen's Compensation Law applies only to vessels registered under the flag of Cuba. The question arises consequently, in the case of foreign cargo or passenger vessels, whether workers are protected by the Workmen's Compensation Law of the country under whose flag the vessels navigate. This interpretation emanates from the International Code of Law promulgated at the Sixth Pan American Conference held at Havana on February 13th, 1928, under the Presidency of late Dr. Antonio Sánchez Bustamante, a native of Cuba and a prominent international lawyer. This international Code of Law has been approved by fifteen Latin American countries.

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## **Ley de Accidentes del Trabajo de la Republica de Cuba y su Aplicación a la Industria Pesquera**

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### *Abstracto*

1. Historia y origen de la indemnización para trabajadores en Cuba.

Se hace un breve resúmen del origen y datos históricos sobre la indemnización de trabajadores, desde que se puso en efecto en la República de Cuba en el año de 1916.

2. Modificaciones y estado presente.

Información acerca de las modificaciones que se han introducido a la ley original y cuales son las regulaciones actuales.

3. Aplicación a la industria pesquera.

Información relacionada con la aplicación específica de la indemnización para trabajadores en la industria pesquera, tanto al arte de pescar como a la despensa e industria del pescado.

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## **Insurance of Small Boats in the Barbados, B.W.I., Fishery**

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As a result of a loan scheme which allows a boat-owner to make small loans from the Government of Barbados for the building, repairing or re-fitting of his boat, it was found necessary to back these loans with an insur-