

Solving the Mystery of Foreign Voluntary Workers Compensation



A doctor hired in Belize is sent to Haiti on a short-term assignment. While sleeping one night, she is bitten by a flea and contracts typhus. The doctor has to be transported back to Belize to obtain proper medical care.

A contractor hired in Texas is sent to Mexico on a long-term assignment to build a bridge. Two years later, while traveling to the job site, the contractor is injured in a motor vehicle accident.

An engineer hired in Colorado travels to the U.K. on what was supposed to be a short-term assignment, but the job drags on due to complications at the site. Seven months into the assignment, the engineer is electrocuted at the job site.

What do these cases have in common?

Each employee was injured while on assignment outside of the United States and its territories, and in each case the employee is ineligible for any state workers compensation benefits.

In the first case, the doctor would not be eligible for statutory workers compensation in any state as there was no contract of hire within the United States, nor was she principally employed within any particular state. In Texas, the contractor is eligible for statutory workers compensation benefits for an out-of-state injury if the claimant was hired in the state, and injured within one year of leaving the state or was employed in the state at least 10 days of the preceding 12 months. In Colorado, the Division of Workers Compensation retains jurisdiction over an out-of-state injury if

the injury occurs within six months of the date the employee left the state.

In each of these cases, the unavailability of statutory workers compensation coverage leaves the injured employee without coverage for such injuries, and therefore exposes the employer to potential tort damages, including claims for unsafe working conditions, improper training, and failure to provide appropriate safety equipment, to name a few such causes of action. Travelers Global CompanionSM — Foreign Voluntary Workers Compensation (FVWC) and Employers Liability Protection policy picks up where the domestic workers compensation policy leaves off, and provides a layer of protection for such exposures.

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Although the FVWC policy is not a statutory workers compensation policy, the benefits payable under the policy are keyed to the benefits available under the workers compensation law of the state designated by the employer, “as if” the employee was eligible for the benefits of that state. While this policy uses the term “workers compensation” in the title, the policy is not a statutory workers compensation policy, and does not replace compulsory workers compensation coverage. However, this policy extends additional coverage beyond what is provided under statutory workers compensation policies, adding an extra layer of protection for the employer and the employee.

For example, most states would find the Haiti claim non-compensable as the claim for typhus did not arise out of a work exposure. However, the Global Companion FVWC policy provides endemic disease protection, providing coverage for injury resulting from indigenous diseases to which the employee is exposed while on assignment. The Global Companion policy also provides for transportation and repatriation expenses, even if the employee is returning to a country other than the United States.

In the second example, most states would find that injuries incurred while commuting to a regular job site are not compensable; here, the Global Companion FVWC policy provides the necessary coverage to provide for the employee’s medical and income replacement needs despite the limitations found in the state’s workers compensation law.

Although the vast majority of states provide “extra-territorial” coverage for their employees, with no limit on the length of time an employee may be covered while working outside the state, there may be times when the employee’s injury is outside of the jurisdiction of the state’s workers compensation law, and the employer may not be eligible for the statutory protections that are usually found within that law.

Thus, an employer may not be protected against claims for damages that exceed the workers compensation benefits

available by statute, and could benefit from the purchase of the FVWC coverage available on the Global Companion policy.

The Global Companion policy also includes Transportation Expense coverage, which provides for transportation costs over and above that associated with normal transportation costs, for the relocation or repatriation of sick or injured employees who, in the opinion of competent medical authorities, must be transported to another country. This coverage is typically unavailable under a domestic workers compensation policy.

A great feature of this policy is that it is primary as to any other similar situations or claims that exceed the extra territorial benefits of any state workers compensation statutes. It cannot, however, replace the employer’s universal statutory obligation to purchase and maintain a statutory workers compensation policy. All states require an employer to insure its entire obligation under a state’s workers compensation law, with an approved statutory workers compensation carrier, on an approved form, and with such coverage filed directly with the state or through the National Council on Compensation Insurance. That carrier is then the “insurer of record” for all of the employer’s obligations under the law, and will receive orders, notices and filings from the state administrative agency.

As the “insurer of record,” the statutory workers compensation carrier participates as a party in the administrative process and litigation involving statutory workers compensation benefits in most states. A foreign voluntary workers compensation carrier cannot claim such status, and would therefore have no standing to participate in such litigation. This could be devastating to the employer that rightfully depends on its insurer to handle the litigation and claims processes. Because of each state’s particular filing and notice requirements, no foreign voluntary workers compensation policy can fulfill the employer’s obligation to insure and administer its statutory workers compensation exposure; however, the purchase of a Global Companion policy and its foreign voluntary coverage can help fill the gaps!

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