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# Washington USL&H Assigned Risk Plan

*Insurance for United States Longshore & Harbor Workers' Act*

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## **Who is a Washington worker for WARP eligibility purposes?**

### WARP POLICY DISCLAIMER

This policy is designed to provide general information in regards to the current position of the Washington USL&H Assigned Risk Plan ("WARP") on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Executive Director should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. To receive updated information on the topics covered under this policy, the user is encouraged to notify the Executive Director. This document will remain in effect until rescinded, modified, or withdrawn by the WARP Governing Committee.

### **1. Applicability**

This policy is intended to assist in determining whether an employee is a "Washington worker" for purposes of Article 1, Section 1 of the current WARP Operating Procedures, as approved by the Insurance Commissioner pursuant to WAC 284-22-080(1) on 8 / 13, 2020, which states that employers "Must be seeking coverage for Washington workers who are subject to USL&H.." Employers' non-Washington workers are not eligible for coverage. Accordingly, whether an employer is eligible for WARP coverage depends, in part, upon whether its employees are Washington workers. In addition to seeking coverage for Washington workers, employers must meet all other WARP eligibility criteria as set forth in the WARP Operating Procedures.

### **2. Who is a "Washington worker"?**

A Washington worker is person whose employment is "principally localized" in Washington.

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### **3. What factors determine whether an employee is principally localized in Washington?**

A person's employment is "principally localized" in Washington when:

- i. His/her employer has a place of business in Washington and he/she regularly works (or it is contemplated that he/she shall regularly work) at or physically from such place of business; or
- ii. If clause (i) foregoing is not applicable, he/she is domiciled and spends a substantial part of his/her working time in the service of his/her employer in Washington.

For purposes of subsection i, "a place of business in Washington" is a physical business location.

For both subsections i and ii, the employer must have a Uniform Business Identification (UBI) number assigned to the employer by the state of Washington and registration with the state of Washington Department of Revenue (DOR).

The references to "work" and "works" in these guidelines refer specifically to work which is subject to USL&H.

The term domiciled for the purposes of subsection ii refers to the employee's true, fixed, and permanent home.

### **4. What are some examples of employees that WARP considers Washington workers?**

Considering the factors described above, WARP would conclude that the following individuals are Washington workers for the purposes of eligibility for WARP coverage. The examples are intended for guidance purposes only.

#### ***Example 1***

Veronica, a domicile of Oregon, is hired by marine painting company headquartered in Westport, Washington. Her work consists of painting vessels in dry dock at shipyards adjoining navigable waters. Every weekday, Veronica is required to physically report to the Westport headquarters of her employer to pick up supplies. Veronica regularly spends her day in Washington, but she occasionally has a work assignment in Oregon. Veronica is allowed to end her work-day in Oregon without reporting back to Westport if her day's assignment is in Oregon.

<b>Washington worker factors</b>	<b>Oregon worker factors</b>
Employer's place of business	Employee's domicile
Employee required to report to WA to pick up supplies	Occasional work performed in OR

Veronica is a Washington worker as that term is defined by the WARP Operating Procedures. To be eligible for coverage, Veronica's employer must also satisfy the other eligibility requirements stated in the WARP Operating Procedures.

***Example 2***

Gary has worked as a commercial diver for a small company in Bellingham, Washington since 1999. All of Gary's diving is in navigable waters. Gary is paid by the hour. Gary relocated and is now domiciled in New Orleans, Louisiana. When the Bellingham company does not have work in Washington, Gary performs commercial diving services all over the country for other companies. Gary is required to travel to the Bellingham office several times a year for assignment to diving jobs to be performed in Washington.

<b>Washington worker factors</b>	<b>Louisiana worker factors</b>
Employer's place of business	Employee's domicile
Regularly works at employer's Washington place of business	Work for other companies performed outside of WA.

Gary is a Washington worker as that term is defined by the WARP Operating Procedures. To be eligible for coverage, Gary's employer must also satisfy the other eligibility requirements stated in the WARP Operating Procedures.

***Example 3***

Paul is a Montana domicile who works as a commercial fisherman on a vessel with a homeport in Port Angeles, Washington. The vessel fishes exclusively in Alaska. Paul only works one season at a time. Paul signs a crew contract in Port Angeles prior to each season. A couple times a year, Paul performs work on the vessel while it is docked in Port Angeles which is above and beyond the usual preparation for the season. This work is performed at the dock and can last from anywhere between a couple weeks to a couple months. There is no expectation that Paul report to the vessel in Port Angeles except at the beginning of a

season or those times when Paul is performing maintenance beyond preparation for the season.

<b>Washington worker factors</b>	<b>Alaska or Montana worker factors</b>
Employer's place of business	Employee's domicile is in MT
Regularly works at employer's Washington place of business	All fishing occurs in AK

Paul is a Washington worker with respect to his USL&H subject work performing maintenance at the dock beyond preparation for the season, as that term is defined by the WARP Operating Procedures. To be eligible for coverage, Paul's employer must also satisfy the other eligibility requirements stated in the WARP Operating Procedures.

**Example 4**

Bill is a Seattle, Washington domicile employed by a private cargo inspection company with its place of business in Portland, Oregon. Bill's work involves inspecting cargo on the dock as it is offloaded at the Port of Seattle, on behalf of his Oregon employer. Bill has to travel to Portland for weekly meetings and training.

<b>Washington worker factors</b>	<b>Oregon worker factors</b>
Employee's domicile	Employer's place of business
Employee spends a substantial part of his working time in the service his employer in WA	Weekly business trips to OR

Bill is a Washington worker as that term is defined by the WARP Operating Procedures. To be eligible for coverage, Bill's employer must also satisfy the other eligibility requirements stated in the WARP Operating Procedures.

**5. What are some examples of employees WARP does not consider to be Washington workers?**

Considering the factors described above, WARP would conclude that the following individuals are not Washington workers. The examples are intended for guidance purposes only.

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**Example 1**

Amy has a shop on a pier over Lake Coeur d’Alene in Idaho where she machines components for a vessel engine manufacturer based on a pier in Everett, Washington. Amy is an Idaho domicile. Amy’s employer has no facilities in Idaho and only operates the manufacturing plant in Everett. Amy’s employer has employed suppliers like Amy in every western state, but Amy is the only one in Idaho. Amy is required to travel to do business within the boundaries of Idaho to obtain materials approved by her employer to incorporate into the components she machines. The only time Amy is required to travel to Washington is to attend a once-a-year training class held at the pier in Everett. The vast majority of Amy’s job can only be performed at her shop in Idaho.

<b>Washington worker factors</b>	<b>Idaho worker factors</b>
Employer’s place of business	Employee’s domicile
	Vast majority of work performed in ID
	Does not regularly work at employer’s Washington place of business

Amy is not a Washington worker and her employer is not eligible for WARP coverage for Amy.

**Example 2**

Phil, a domicile of Miami, Florida, works for a Miami marine crane installation company that is headquartered in Seattle. Phil applied for and received a job with the Seattle company while a representative for the employer was touring the employer’s facility adjoining navigable waters at PortMiami. Although 50 employees work in Seattle, only 5 workers are employed at PortMiami. Phil travels from home to work in Miami every weekday, and except for a few conferences out of state each year, nearly all of his work is performed at the PortMiami facility.

<b>Washington worker factors</b>	<b>Florida worker factors</b>
Employer’s primary place of business	Employee’s domicile
	Does not regularly work at employer’s Washington place of business

Phil is not a Washington worker and his employer is not eligible for WARP coverage for Phil.

**Example 3**

Stew is a port engineer employed by the Society of Port Engineers in Seattle. Stew travels to port facilities throughout the United States to promote training and access to career opportunities for maritime industry personnel. He is a domicile of New York, New York. The company has a place of business in New York. He interviewed at the company’s place of business at the Port of Seattle. More than 70% of his work is at sea ports in states other than Washington. Stew is generally dispatched from his home in New York. He receives his assignments from the Senior Port Engineer, who works at the company’s Port of Seattle office. Other than securing the job in Washington, and receiving dispatch calls from Washington, the vast majority of Stew’s work is performed in other states.

<b>Washington worker factors</b>	<b>New York worker factors</b>
Employer’s place of business	Employee’s domicile
Only occasional work performed at Employer’s place of business in WA	Does not regularly work at employer’s Washington place of business

Stew is not a Washington worker and his employer is not eligible for WARP coverage for Stew.

**Example 4**

Gordon, a domicile of Moclips, Washington, was hired as a longshoreman by a company headquartered in Astoria, Oregon. Every weekday morning, Gordon reports to the Astoria headquarters of his employer to receive work assignments at various ports primarily in Oregon, but occasionally also in Washington. Gordon typically spends all of his day in Oregon, but occasionally is assigned to a port in Washington. Gordon is allowed to end his workday in Washington without reporting back to Astoria if his assignment is in Washington.

<b>Washington worker factors</b>	<b>Oregon worker factors</b>
Employee’s domicile	Employer’s place of business
Occasional work performed in WA	Does not regularly work at employer’s Washington place of business

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Gordon is not a Washington worker and his employer is not eligible for WARP coverage for Gordon.

***Example 5***

Chloe, a Honolulu, Hawaii resident, applied for a job with a Washington freight forwarding firm headquartered in Seattle. Chloe was offered her job in-person in Seattle. Her work involves overseeing the unloading of cargo ships at the Port of Honolulu in support of her employer's Seattle operation. All of her work occurs over navigable waters or in adjoining areas. Chloe is not required to physically report to the freight forwarding firm's Seattle headquarters. Chloe receives instruction and work assignments from the Seattle office only and all of her work is in direct support of the Seattle office.

<b>Washington worker factors</b>	<b>Hawaii worker factors</b>
Employer's place of business	Employee's domicile
	All of her daily work performed in HI rather than at employer's WA place of business

Chloe is not a Washington worker and her employer is not eligible for WARP coverage for Chloe.

*This policy is effective as of \_09/04\_, 2020.*