

Maintenance, Cure and Wages – and Your Insurance

By Chris Richmond

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Chris Richmond

Commonly referred to as The Jones Act, coverages under the Merchant Marine Act of 1920 provide broad benefits for your crew. It is always important to review what your crew are entitled to and what insurance you should have for this.

Under the MMA of 1920 if a crewmember is injured or falls ill while in service to the ship then they are eligible for maintenance, cure and wages.

Maintenance is lodging and meals should an injured crewmember have to find alternative accommodations due to the claim; the cure is doctor's visits and medical treatment until maximum medical cure has been reached and wages are the pay the affected crewmember would have earned had they not been laid up. Your

protection and indemnity policy will respond to this if you have crew coverage.

Be sure to keep your crew count accurate as you can. If you have more crew on board than you have listed on your insurance policy, you may suffer a co-insurance penalty. Insurance companies generally don't like to cover something (or someone) who isn't specifically written in a policy.

It is also important to remember that maintenance, cure and wage claims are no-fault. This means a crew member only has to establish that they were in service to the ship at the time of their injury or illness and then these benefits are available to them.

Though this can vary, the standard to establish seaman status as a crewmember is generally seen as spending 33% of one's time in service to the ship.

I always tell my clients to let an adjustor determine whether or not a claim is valid. If you know of an incident or a crew member reports one, turn in the claim and let the insurance company decide. Otherwise, you may face suit under the Jones Act.

The Jones Act allows for crewmembers to sue the vessel for damages resulting from injuries they may have suffered aboard the vessel either because of negligence or unseaworthiness. Should the claim be successful the crewmember would be entitled to future lost wages as well as damages for pain and suffering. Again, the crewmember must establish seaman status - but again, let the insurance adjuster make that call.

You P&I insurance can be one of your vessel's larger expenses but a claim that is not handled properly can cost you much more. Don't be afraid to let your agent know what is happening on

board involving injuries. You're paying for your insurance to cover you when you need it in cases like these.

Estate Planning for LGBTQ+ Married Couples

On June 26, 2015, in the *Obergefell v. Hodges* decision, the U.S. Supreme Court ruled that states must allow same-sex couples to marry and must recognize same-sex marriages from other states. As a result, estate planning for LGBTQ+ married couples became equal, under the law, to planning for other married couples. As with any historic legal case, however, unique challenges have emerged in the wake of the *Obergefell* decision. This is especially true regarding estate planning.

Consequently, a comprehensive estate plan review is a must for LGBTQ+ couples who were married, were in a domestic partnership, or created an estate plan *before* June 26, 2015. Your current estate plan might no longer make sense for several reasons, including those discussed below. Together, we can discuss your situation and create or update your estate plan appropriately.

Beneficiary Designations

To move forward with a fresh slate, you may want to purge anything related to a previous relationship from your estate plan. That includes removing former partners as the beneficiary of retirement accounts, investment accounts, life insurance, or annuities. If you co-owned real estate with a former partner, this situation may also need to be addressed.

Dissolved Partnerships

If you were in a domestic partnership but broke up without formally dissolving it, you may still be legally married. How can this be? Some states automatically converted domestic partnerships to marriages after the *Obergefell* ruling. Or, perhaps a same-sex couple was married in a different state than their state of residence (such as a couple living in Texas who got married in Vermont). The couple may have broken up thinking the marriage “didn’t count” because their state of residence didn’t recognize it as a legal union. In reality, the couple in question could still be legally married. Given the complexity of this topic, we should discuss potential pitfalls such as these.

Marriage Benefits

Marriage comes with several potential income and estate tax benefits that now apply to all married couples. While there are several reasons to remain unmarried, you may want to consider the marriage benefits now available to LGBTQ+ couples, including:

Income tax filing. Married filing jointly status often benefits couples with disparate salaries, and it could also bring a couple’s total tax bill down in certain other situations. For instance, if one spouse makes about \$215,000 per year, and as a couple you still make about that much, married filing jointly status would bring the single marginal tax bracket down from 32 percent to a married filing jointly bracket of 24 percent. Married filing jointly can also provide additional deductions and other related tax benefits compared with those available to single filers.

Unlimited marital deduction. This is a provision in the U.S. tax law that allows a married person to transfer an unlimited amount of assets to their spouse at any time, including after death,

free from tax. So, if you created a trust or other transfer plan to protect assets after the death of a partner, a better option may now be available. A revised estate plan could provide greater flexibility to a surviving spouse.

Joint tenants by the entirety. Many states offer married persons a “joint tenants by the entirety” ownership option for real estate and other accounts. This type of ownership offers extra creditor protection to the marital unit. In the event of death, it automatically ensures that a surviving spouse receives the full title of a property.

Parenting Planning

If you and your spouse are planning on having children, you should be aware of how the following legalities affect LGBTQ+ couples. The rules differ for parents who are married versus those who are unmarried.

Married couples. Married couples where one partner gives birth to the child should receive treatment very similar to different-sex couples. The U.S. Supreme Court ruling in *Pavan v. Smith* held that Arkansas could not apply a different parentage assumption to the wife of a birth mother than the state applies to husbands of birth mothers.

If you’re planning on conceiving through assisted reproduction, such as surrogacy, however, you and your spouse will likely have to rely on your state’s adoption procedures. This process is often called a “second-parent adoption” because a co-parent is adopting their partner’s child without terminating the partner’s parental rights. In some states, the “second-parent adoption” procedure is easier for married couples because *Obergefell* requires that all married couples have access to a state’s stepparent adoption procedures.

Unmarried couples. Unfortunately, the rules are much tougher for unmarried couples. Some states are still passing laws that deny adoption rights to unmarried persons with no genetic connection to a child—seemingly targeting the LGBTQ+ community directly. As a result, many lawyers encourage same-sex couples to “adopt their own children,” as strange as that sounds. This way, if you and your partner break up and move, states are required to follow the court orders of other states, preserving the rights of both parents.

Other considerations. You should also understand that state parentage laws and federal and international laws don’t always move in sync. In certain cases, if the genetic parent of a couple’s child is not a U.S. citizen, that child may not be granted automatic U.S. citizenship. This is so even if the nongenetic partner is a U.S. citizen and acts as the child’s parent. This scenario is most concerning when the child is born abroad, but with appropriate planning, it’s possible to ensure that a child can remain with either parent in the future.

A step forward. In 2017, the Uniform Law Commission drafted an [update to the Uniform Parentage Act](#) that promotes the use of “voluntary acknowledgment of parentage forms.” At its core, this proposed law seeks to assign parental rights at the birth of the child to the two people who sought to create a family, whether through assisted reproductive technology or natural birth. As of this writing, however, only five states (California, Connecticut, Rhode Island, Vermont, and Washington) have enacted a law substantially similar to the updated Uniform Parentage Act.

Other Estate Planning

A power of attorney provides very important protection for your health care and other estate planning decisions. To prevent

these decisions from being challenged, it's wise to have executed a clear statement of your wishes regarding health care treatment options, end-of-life care, and burial decisions. A legal provision known as an *in terrorem* clause can be helpful in preventing challenges to your will or any trusts you've created. As with all estate planning documents, working with a qualified attorney to craft a personalized plan is essential to ensuring your wishes are honored.

Planning to Protect Your Future

Whether or not you face the unique estate planning challenges discussed above, it's wise to review your estate plan when laws or your personal situation have changed. If you would like to schedule a review or have any questions about the information presented here, please reach out to us.

This material has been provided for general informational purposes only and does not constitute either tax or legal advice. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult a tax preparer, professional tax advisor, or lawyer.

Why You Need Employment Practices Liability Insurance

From [Karen Reed](#):



Employment practices liability insurance (EPLI) provides coverage to employers against claims made by employees alleging discrimination, wrongful termination, harassment, or other employment-related issues such as failure to promote.

All businesses, regardless of size are vulnerable to employment claims regardless of the number of employees and statistics tell us the average cost for legal defense and compensation for this type of claim can quickly add up to \$70,000.

Protect your business by calling us today to obtain a quote for this very important coverage.

**Meet Nate Van Lonkhuyzen, our
2021 Summer Intern**



Abraham Dugal and Nate Van Lonkhuyzen

Nate Van Lonkhuyzen of Rockport is Allen Insurance and Financial's 2021 summer intern.

Van Lonkhuyzen is an economics major at Colby College in Waterville class of 2023.

Allen Insurance and Financial's summer internship program creates the opportunity to learn about each of the company's insurance and financial planning departments. Van Lonkhuyzen's desk is based in the Allen Financial division and he is working under the guidance of Abe Dugal, financial advisor.

"From my very first day, I have been able to see how what I am being taught in classes is applied in the real world with actual problems," said Van Lonkhuyzen. "Abe Dugal and (company President) Mike Pierce have introduced me to the high quality, team-focused model Allen Financial maintains. My goal this summer is to learn as much as I can so I can further develop the

analytical, interpersonal and problem-solving skills I need for a career in finance. “

Health Care Reform: Dependent Coverage Up to Age 26

The Affordable Care Act continues to have an impact on health plans offered by employers. [Our monthly overviews of topics addressed by the ACA](#) endeavors to assist you with understanding your role and requirements as an employer. [The Allen benefits division](#) is happy to assist you with questions.

Under the ACA, group health plans and health insurance issuers that provide dependent coverage must make coverage available for adult children up to age 26. This ACA Overview summarizes this adult child coverage mandate.

HealthCare.gov

Start With the Exclusions



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When a boatyard or builder makes an investment in purchasing a building most likely they will want to have the structure insured. But just because you purchase property coverage does not mean that your building is insured for all potential hazards. Two big exclusions on property insurance forms are flood and earth movement, both of which can pose a significant threat to your building.

First things first. (This is a long sentence, but an important one.) The insurance definition of a flood is a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or two or more properties from overflow of inland or tidal waters, rapid accumulation or runoff of surface waters from any source, mudflow, collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents or water exceeding anticipate cyclical levels that result in a flood as defined as above.

If you have a bank loan on your property, most likely the bank will require you to have this flood coverage for at least the amount that is on the loan. Coverage can be provided through The National Flood Insurance Program. Your premium will vary depending on what flood zone the property is in.

While people talk about earthquake coverage, in the insurance world it actually is referred to as "Earth Movement," with earthquake being just one of many categories. Besides earthquakes being excluded the Earth Movement list includes landslides, man-made mines, earth sinking and volcanic eruption. Depending on your location, coverage for this can be either bought back from your carrier or as a stand-alone coverage through a specialty broker.

Sage advice when looking at your insurance policies: Start with the exclusions. While it is important to know what you are covered for, it is equally important to know what your policy does not cover. Don't think that just because you have an insurance policy that everything is covered. Have a conversation with your agent about your coverages to make sure you have what you need.