

# Maritime Employers Liability – What It Is and Why You Need It

By [Chris Richmond](#)

For [WorkBoat Magazine](#)

Recently we were reviewing insurance coverage with a local marine contractor. Through the course of our conversation, we learned that one of their employees had been operating a crane aboard another contractor's barge for that contractor's project. While this happened only rarely, it did open up a big gap in their coverage. Fortunately, there was a solution: Maritime Employers Liability.

Commercial vessels will carry Protection and Indemnity. As we know, P&I provides coverage for the insured's crew members. But this only applies to crew members who are employed by the vessel owner or operator. Your employees working on board someone else's vessel would be covered under an MEL. The MEL follows your employees while they are on non-owned vessels. Coverage under the policy can include:

- Jones Act
- Death on the High Seas Act
- General Maritime Law of the United States
- Maintenance, Cure and Wages

One important thing to remember is that while an MEL policy will provide coverage for the benefits listed above it does not include a workers compensation policy. You will still need to keep in force coverage under either you state workers compensation policy or your USL&H. One nice thing about an MEL is that you can often have it added to your existing USL&H policy.

MEL is rated differently than typical crew members on your Protection & Indemnity policy. Those crew members are charged per crew for a fixed price, usually between \$750 and \$1,000 per head. MEL not only looks at how many employees you have working on non-owned vessels but also at your total number of employees as well as payroll associated with both wet and dry exposures. Payroll also needs to be broken out between USL&H, state act (workers compensation) and Jones Act.

There is much more underwriting that goes into an MEL quote as compared with crew on an owned vessel. The premium associated with the MEL policy will vary based on the payroll associated with the exposure – but be prepared to pay at least \$5,000 as there is generally a minimum premium with this coverage.

When you send your employees out on a job you want to make sure that they are properly prepared and protected. Do not forget to protect yourself, as well. Without a Maritime Employers Liability policy you could be leaving yourself unprotected against a major claim.

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## **Why It's Important Not to Overlook Cargo Insurance**

By [Chris Richmond](#)

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I met recently with a client who operates a small water taxi service. I noticed several crates in the bed of his truck and learned he was transporting them to one of our local islands.

While this seemed like an innocent risk to the insured, there was one glaring problem: His policy excluded coverage for cargo.

While marine policies will have limited coverage for passengers' personal effects, there is often an exclusion attached for cargo. This can be added by endorsement with a sublimit of coverage, with premium based on the amount of coverage. Be sure to understand the value of the cargo you are going to be transporting, because your policy will only provide the limits you have paid for. You will also have a separate deductible for cargo claims. A good practice is to have a freight contract with your customer which determines the value of the items to be shipped. This can help avoid any surprises in case of a loss.

Take a look at how the cargo has been packed. We all know things can get rough and wet on the water. You should have an established set of guidelines regarding packaging and you should reserve the right to refuse the right to ship an improperly packaged item. You can't control the weather and you don't want to have to pay for someone else's poor work.

As with all insurance, the cargo endorsement will come with exclusions. Be sure to review these with your agent to make sure everyone is on the same page. Negotiations with an underwriter can often result in more favorable coverage.

Here in Maine, small cargo vessels servicing local island communities are lifeblood to those islands. Often the families operating them have been doing so for many generations. The same is true of many coastal and riverine cargo operations throughout the U.S. As the nature of your business changes and develops, so too should your approach to risk management. Talk to your agent and see if your policy needs to be updated.

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# Rein in Workers' Compensation Insurance Costs

By [Chris Richmond](#)

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We've spent some time in this space discussing the Jones Act, which covers your crew on owned vessels and USL&H, which responds to your employees who meet the situs and status of the federal act. Now let's talk about another layer of protection for employees: State workers compensation insurance, which for many smaller yards can be a primary coverage for employees.

The action of every employee at a yard can have a dramatic effect on the cost of a workers compensation insurance policy. Here's why:

A workers compensation base premium is calculated by two things: Job classifications for each employee (based on the work they are doing) and the payroll associated with each classification. Your premium is multiplied by your experience mod. A neutral experience mod is 1.0. With yards experiencing frequent or expensive claims, the experience mod will increase, as will your premium. For yards experiencing no claims, this number will go down – and so will your premium.

The calculation of an experience mod is based on the prior three years of policy period. When a claim occurs, you can reduce the negative impact of an injured employee on your experience mod by getting them back to work as soon as possible. Medical-only claims are weighted far less than indemnity benefits claims.

Aside from telling your employees to be careful and not get hurt there are other ways to help create a safer work space. For starters, contact your workers compensation company. They will have all sorts of workshops and webinars to assist you, very often if not always, at no cost to you. Schedule a visit with their loss control department and have one of their safety management consultants do a walk thru of your facility. This can turn in to an annual event and can help you track improvements or areas of concern to address. Your state department of labor will also have consultation services available. By getting a new set of eyes on your facility and workforce simple improvements can be made that can have dramatic effects in a safer work environment.

Finally, review your experience mod work sheet with your agent. Mistakes in coding can have a negative effect to your policy. Recently we were reviewing a boatyard's report and noticed a claim that should have been coded as medical-only had been mis-coded as indemnity. This had a dramatic effect to the mod in the wrong direction and once corrected reduced the insured's premium. Have a chat with your agent, it could save you some money.

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## The Value of Check Lists

By Chris Richmond

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At today's shipyards there can be a variety of daily tasks, all running the gamut across industrial and marine. Staying on top of safety is a full-time job and details are critical. You can

micro-manage efficiently with simple check lists. Here are a few examples from a local yard we work with:

### **On the marine side**

**Station bills:** Are they relevant? If not, rewrite them.

**Wheelhouse:** All house lights, spotlights, running lights and deck lights; no hitches in the steering function or throttle function; fuel; check all instruments.

**Engine room:** All safety equipment, including safety glasses, hard hats, safety gloves, hearing protection, non-slippery decking, flashlights, fire extinguishers. Check all fluid levels and heat and shaft shielding.

**Charts:** Are they up to date? We all get lazy sometimes and rely too much on electronics to the point where we can't even find our charts. Channel markers are often updated and moved. Your GPS may need updating as well as your charts.

### **On the dry side**

**Company vehicles:** Tire pressure and wear, engine oil, lights and gauges. A complete safety check and a place to note unusual items including whether anything is broken or protruding.

**Fork trucks:** Hydraulic fluid and all other fluids. Check the load lock (twice). Battery and safety equipment including fire extinguishers, also driver certification.

**User manuals:** Are they handy and can you quickly refer to them in case you need to troubleshoot a problem with your electronics? Most user manuals have a toll-free number to call in case you need expert help to figure something out. You may need to make one of those calls when you're out to sea and have nobody else to help you.

**Paint rooms:** All ventilation working; filters clean; respirator filters clean; all painters beard free and able to use coveralls, etc.; fire suppression systems checked.

**Welding shop:** All safety equipment, including helmets, gloves, eyewash station, welding curtains, all gas bottles chained in and welder leathers available to all.

Nothing is too obvious or basic to appear on a check list. Having checklists and using them effectively are two separate things. Keep track of how your employees are using them to stay on top of both safety as well as maintenance. This can help keep your equipment in good shape as well as keeping your claims down.

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# What You Should Know About Hull Perils

By Chris Richmond

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A commercial hull policy can sometimes resemble an action-packed maritime novel: Covered perils of the sea can include men of war, pirates, letters off mart and detainments of all kinds are just some of the terms you might read there. But what about when you just have a problem with your engine? This may or may not be covered.

A hull policy is a named peril policy, meaning unless something is a stated peril- written right there in the policy - it is not covered. That said, a hull policy still provides rather broad coverage. There are always exclusions; for instance, wear and tear is not a covered cause of loss. But you should know about two coverages found in a hull policy: Latent Defect and Negligence of Repairers.

Latent Defect is defined as a flaw in material existing at the time of the building of the vessel or machinery not discoverable by ordinary methods of testing. While the expense of replacing the broken part is excluded, the ensuing damage can be covered.

Negligence of Repairers is another peril which can provide important coverage. Should you have a repair to your vessel's



engine – and it fails – then you may have coverage. Case in point: An insured had a high-pressure fuel line fail repeatedly on his engine. An investigation determined that during a previous repair job, the repairer had not installed the proper number of clamps as stated by the manufacturer. This produced excessive vibration and eventually stress fractures. The client was relieved two-fold. First that he had found out why he was repeatedly blowing fuel lines, and also that he now had a covered cause of loss. Aside from the repair being covered, he could also claim loss of use from the cancelled charters that he suffered.

Claims can come in all different sizes and varieties. Don't be afraid to give your agent a call to discuss what is going on with your vessel. While it may initially appear that there is no coverage, some investigation into the root of the problem can often yield positive results.

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# **Commercial Hull Policy Coverage & Equipment On and Off Your Vessel**

By Chris Richmond

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Your commercial hull policy provides coverage for more than just your hull. A policy may extend coverage to the “hull, tackle, apparel, engines, boilers, machinery, appurtenances, equipment, stores, boats and furniture.”

But what happens when you have a claim involving any one of these items? If the claim is covered, then you will first have to pay the deductible. Depending on the amount of hull coverage you have, this can be rather sizable and may well exceed the value of what was damaged. Let's look at some ways to help improve your coverage

Do you have a tender? Have it listed separately on the policy with its own hull limit and a smaller deductible. The liability from your vessel still extends to the small boat but when the tender has its own hull value listed, you can have a much more manageable deductible. And don't forget to tell your insurance agent when you buy a new outboard for the tender. This can greatly increase its value and quickly exceed the value for which you have insured the tender.

Do you store items ashore during the off season? Some policies will reduce the coverage on these items while off the boat by covering only claims based on fire. Be aware: Should an item be stolen then your boat's policy will not react.

Have you installed special equipment on your vessel to perform specific work? They can be scheduled on your policy with a stated value along with an appropriate deductible.

Do you operate equipment overboard? Good luck getting that added to your commercial hull policy. If you have ROV units stored on board your boat you may be able have them scheduled on your hull policy but as soon as they go overboard coverage would cease. Obtaining a stand-alone policy specifically written to cover your ROVs is the proper way to provide coverage. This policy will react to claims from incidents both on the boat as well as in the water.

Take a moment to look at your boat and the equipment that you have on board, then give your insurance agent a call and discuss

the current limits you for the vessel and everything on it, especially what can be stored (or is stored) on land. You will be happy you did should you need to file a claim.

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# Maintenance, Cure and Wages – and Your Insurance

By Chris Richmond

Originally Submitted to [WorkBoat Magazine](#)



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.

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## Start With the Exclusions



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Originally Submitted to [WorkBoat Magazine](#)

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 anticipated 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.

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## Claims: Always Call Your Agent



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Insurance can often be one of your business's larger expenses and one that you hope to rarely use. But please don't think that making a call to your agent to report a claim is going to adversely affect your policy's premium. Even if you think that the incident is minor and not worth reporting, a quick call your agent can save you from some major hassles down the road. Here are a few things to remember to keep a claim hassle-free.

First and foremost, make the call and report the claim to your agent. Alerting your agent does not reflect on you negatively. In fact, insurance adjustors appreciate this kind of reporting

because it gives them a baseline right at the time of the claim. Recording the essential facts in a timely fashion helps greatly in case something develops from the incident six months down the road. And, as a bonus you, get to touch base with your agent. This is always a good thing.

Second, should the claim involve damage to property, keep the damaged items secure so they will not suffer any further damage. Should you have to make emergency repairs, document the damage first so an adjustor can see it. You don't want the damage to get worse due to your inattention.

Third, save receipts. Once repairs start on your vessel or property, the bills will accumulate. Keep all associated receipts and send them to your agent who will then forward them to the adjustor. If you are doing repairs yourself, keep track of your own time.

Were there witnesses to the accident? Record their names and contact information. See if anyone took photos or video with their cell phone. Is there a security camera which could have captured the event? All of these sources of information can help you with your claim.

Finally, we are back to where we started. Report your claim. All too often I hear from a client that something happened six or eight weeks ago. The time to call your agent is right after the incident occurs so the adjustors can start their investigation and document all the facts – with your assistance. Strike while the iron is hot and get all the facts down while they are fresh in your mind, and in the mind of any witnesses. You will be happy you did.



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# Properly Insuring Your Employees in Case of Injury



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By Chris Richmond

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Shipyards and marine related business are comprised of a wide variety of jobs and with this variety comes different types of injury coverage for the people who work there. Just because you believe your employees are properly covered does not mean they are. Take a moment to review these three areas of injury coverage.

## **Jones Act**

Officially called “The Merchant Marine Act of 1920,” this covers employees who are considered crew members on your vessels. Seamen employed on vessels traveling from U.S. port to U.S. port are entitled to coverage under the Jones Act, with the coverage provided under a vessel’s Protection and Indemnity policy. Crew are covered for injury and illness while ‘in service to the ship’ through the Maintenance and Cure portion of the coverage. Crew are also entitled to sue the ship or ship owner for

unseaworthy or negligent conditions which they believe caused their injury. To be considered a crew member, the employee must spend roughly a third of their time at work in service to the ship.

## **USL&H**

Employees who are working around docks, wharves or servicing a vessel will fall under the U.S. Longshore and Harbor Workers Act. These are your stevedores, repair crew, crane operators or similar employee who service, load or go on and off vessels but are not considered crew members. The two determining factors for USL&H are Situs and Status, both of which need to be met in order to be eligible for this coverage. To meet the Situs test, an injury must have occurred while working on or near navigable waters. The Status test is met by the work being done. Exclusions include office workers, aquaculture and boat builders who build recreational vessels less than 65 feet in length. Even if you have a boat yard where you feel you would never have a USL&H risk, it is very inexpensive to have this added to your state workers compensation policy on an 'if any' basis. This way you have at least some defense covered should a USL&H claim be filed against you.

## **State workers compensation**

Your office staff and other employees are covered under your state workers compensation act. Keep in mind that if you have employees who work in other states besides the one where your business is located then you need to list these as well. State workers compensation acts are no-fault laws which means they cover a claim as long as the employee's accident happened within the scope of their employment.

This is a very quick explanation of a very important insurance coverage. Take the time to review your operation and exposure with your agent to help you get the coverage you need.