

## [OIL SPILL LIKELY TO LEAD TO FUTURE WORKERS' COMPENSATION CLAIMS](#)

On April 20, 2010, Transocean's Deepwater Horizon drilling rig exploded, leading to 1.3 million gallons of crude oil leaking into the Gulf of Mexico per day. By comparison, the Exxon/Valdez spill, which has long been considered the worst environmental disaster in American history, only consisted of 10.8 million gallons of crude oil...total. The Gulf spill is reaching that number once every 8 days. The total estimated cost of clean up will be between \$15 - 23 billion. BP will also be liable for an estimated \$14 billion in lawsuits brought by the fishing and tourism industries in the Gulf states. One future consequence of the oil spill that is not as readily apparent, however, is the effect that the spill will have on employers and workers compensation insurance carriers.

Over 25,000 workers were helping clean up the Gulf Coast by the beginning of June. The number of workers participating in the cleanup will only rise in the coming months. According to [WKRG5 in Mobile, AL](#) BP relies on subcontractors to handle this work. BP requires that the workers go through at least four hours of training before being certified to participate in the cleanup, but it appears that many of these workers are under trained and under-supervised. [The Labor Department](#) has already voiced concerns that BP's safety systems for these workers are grossly inadequate. The dangers these workers face range from inhaling toxic chemicals and coming in direct skin contact with the crude oil to ergonomic stresses and heat stroke. Some workers participating in the cleanup in Louisiana have already [fallen ill](#). One only has to read about the [long term health problems](#) that have afflicted the cleanup workers from the Exxon/Valdez spill and then look to the media for photographs and videos of clean up workers with minimum or no protective gear.

There are a number of Gulf Coast personal injury attorneys who have already begun marketing their law firms to workers in anticipation of future workers comp claims. It is important that employers (and their workers' comp insurance carriers) begin taking proactive measures to protect these workers if they are involved in the cleanup. OSHA has published a [list of precautions](#) that should be taken on their website. These include general things such as regular rest breaks to prevent heat stroke, having water readily available, providing sun screen to protect from sun poisoning, and providing personal protective equipment to protect employees from the toxins in both the crude oil and the dispersants being used to clean the spill. While OSHA states that the level of toxins that workers are being exposed to fall within [non-hazardous limits](#) they continue to keep a close eye on the situation.

### **My Two Cents:**

The oil spill cleanup poses serious risks of long-term injury to workers. There were over [1,800 workers' compensation claims](#) filed as a result of the Exxon/Valdez spill. The Gulf spill will probably result in many more workers' comp claims being filed considering that there are already twice as many workers involved in the cleanup than were used during

the Alaskan spill. The law that governs these claims will differ depending upon where the worker is injured.

If the worker is injured on shore he will be covered by the state's workers' compensation laws in most cases (there are a few limited situations, such as working on a dock or pier, where a worker will be covered by the federal Longshore and Harbor Workers' Compensation Act). Employees who are injured on a seafaring vessel will be covered by the *Jones Act*. [The Workers Comp Kit Blog](#) is a good resource for some basic facts about this law. Both workers' compensation laws and the *Jones Act* require the employer to pay for medical costs resulting from the injury. Unlike workers' compensation laws, under the *Jones Act* the employer will not be required to pay for any resulting disability to the employee once he has reached maximum medical improvement. Under the *Jones Act*, however, the employee will be able to file a lawsuit against his employer for future lost wages and punitive damages. In order for an employee to prevail in this type of lawsuit he must show either that the employer was negligent or that the vessel was not seaworthy.

Additionally, it is possible that these injured workers may be able to get relief from federal plans. The *Oil Pollution Act of 1990* (signed in response to the Exxon/Valdez spill) allows the government to use the Oil Spill Liability Trust Fund (OSLTF) for a number of things, including payment for uncompensated removal costs and damages. It is not entirely clear whether this fund could be used to aid injured workers. The new federal healthcare bill contains a provision that expands Medicare to cover victims of "environmental health hazards." This provision is another avenue that may be potentially used to compensate injured oil spill workers.

Employers must be diligent in educating employees and requiring the use of protective equipment. If the employees then choose to violate the safety rules, they will do so at their own peril.

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