



DBA LEGAL UPDATES

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OWCP UPDATES

NEW LONGSHORE RATES

**National Average
Weekly Wage**
\$816.35

**Maximum
Compensation Rate**
\$1,632.70.

**(Annual earnings >
\$127,350.60.)**

**Minimum
Compensation Rate**
\$408.18.

**Annual adjustment:
4.65%. (US inflation
rate in 2020 was
1.4%)**

WHY THE COLA MATTERS

- DOL's "Commutation disability calculator" uses the current COLA as a lifetime escalator, greatly inflating values.
- When the COLA is outsized, this disparity is exaggerated. Examples showing the disparity follow.

Example 1: 1.4% COLA

	A	B	C	D	E	F	G
2	U.S. Department of Labor -- Office of Workers' Compensation Programs						
3	Division of Longshore and Harbor Workers' Compensation						
5	Commutation Disability Calculator				Version:	v3.6 - 20181001	
6					Run Date:	6/21/2021 16:03	
8	Claim Input Data						
9	Claimant's Name:	Bosnian B		OWCP Case Number:	02-00000		
10	Country of Residence:	Bosnia and Herzegovina		Date of Birth (mm/dd/yyyy):	3/21/1985		
11	Country for Life Exp. Data:	BIH		Date of Injury (mm/dd/yyyy):	9/30/2019		
12	Gender:	Male		Date Max Med Impr (mm/dd/yyyy):	6/24/2021		
13	Disability Type:	PTD		Date of Commutation (mm/dd/yyyy):	6/24/2021		
14	Commutated Amount will be calculated from Average Weekly Wage (AWW)					AWW	
15	Interest Rate (n.nn%):	0.05%		Average Weekly Wage:	\$1,000.00		
16	For Interest Rate go to:	http://www.federalreserve.gov/releases/h15/current/default.htm					
17	Look for: "Treasury constant maturities"/"1-year" / during the week spanning the DOC						
18	Imputed Claim Parameters						
19	Max Wkly Benefit Rate:	1,510.76					
20	Effective Weekly Benefit Rate:	666.67		Max Not Applicable			
21	Escalated Rate:	667.00					
22	10(f) Increase (DOC):	1.40%					
23	Econ. Adj. Factor:	1.013493					
24	Age at DOC:	36.3		37 <== Age at DOC rounded up			
25	Expected[Life]:	39.18		40 <== Expected[Life] rounded up			
26	Commutation Results						
27	Present Value:	1,804,285.13					
28	Commutated Amount:	902,142.56					
29							
30							

Example 2: Actual 4.65% COLA used by DOL

	A	B	C	D	E	F	G
2	U.S. Department of Labor -- Office of Workers' Compensation Programs						
3	Division of Longshore and Harbor Workers' Compensation						
5	Commutation Disability Calculator				Version:	v3.6 - 20181001	
6					Run Date:	6/21/2021 16:03	
8	Claim Input Data						
9	Claimant's Name:	Bosnian B		OWCP Case Number:	02-00000		
10	Country of Residence:	Bosnia and Herzegovina		Date of Birth (mm/dd/yyyy):	3/21/1985		
11	Country for Life Exp. Data:	BIH		Date of Injury (mm/dd/yyyy):	9/30/2019		
12	Gender:	Male		Date Max Med Impr (mm/dd/yyyy):	6/24/2021		
13	Disability Type:	PTD		Date of Commutation (mm/dd/yyyy):	6/24/2021		
14	Commutated Amount will be calculated from Average Weekly Wage (AWW)					AWW	
15	Interest Rate (n.nn%):	0.05%		Average Weekly Wage:	\$1,000.00		
16	For Interest Rate go to:	http://www.federalreserve.gov/releases/h15/current/default.htm					
17	Look for: "Treasury constant maturities"/"1-year"/ during the week spanning the DOC						
18	Imputed Claim Parameters						
19	Max Wkly Benefit Rate:	1,510.76					
20	Effective Weekly Benefit Rate:	666.67		Max Not Applicable			
21	Escalated Rate:	667.00					
22	10(f) Increase (DOC):	4.65%					
23	Econ. Adj. Factor:	1.045977					
24	Age at DOC:	36.3		37	<== Age at DOC rounded up		
25	Expected[Life]:	39.18		40	<== Expected[Life] rounded up		
26	Commutation Results						
27	Present Value:	3,788,148.99					
28	Commutated Amount:	1,894,074.49					
29							
30							

OWCP REORGANIZATION AND CASE MANAGEMENT

- OWCP released its internal case management program, replacing its decades-old program
- The program promised integration with email service, but had some failures with service of orders that resulted in penalty situations.

OWCP SERVICE AND “ADDITIONAL COMPENSATION”

Leinum v. Washington United Terminals (ALJ May 6, 2021)

- On June 25, 2020, filed and served a settlement approval involving multiple carriers, but failed to serve 1 carrier and its counsel.
- On July 7, the District Director re-served all parties correctly.
- The Claimant argued he was entitled to 20% additional compensation from the carrier that did not get service.
- ALJ on summary decision found that service on both carrier *and* employer is required.

OALJ UPDATES

- New Electronic Filing System went live 12/7/2020. DOL shared system for electronic filing in proceedings before BRB and OALJ as well as some others
- Has had some hiccups including delay in parties being given access to claims once NOA submitted.
- In interim, OALJ will still accept e-filings under COVID filing procedures stated at https://www.dol.gov/agencies/oalj/FILING_BY_EMAIL.
- Sets forth protocol for emailing each regional OALJ office directly
- Result is attorneys receive multiple e-mails and pleadings from multiple sources

OALJ UPDATES

- **Problems with Foreign Nationals**
- **Over past several months, Judges were giving push back to testimony for foreign testimony of certain overseas claimants.**
- **Judges continued numerous hearings and requested parties to brief admissibility of foreign testimony from Uganda, Kosovo and Macedonia.**
- **Judges asked for clarification of procedural requirements for taking testimony of nationals of Hague Convention countries (an international treaty dealing in part with international evidentiary standards).**

OALJ UPDATES

Judges also have questioned admissibility of any testimony of claimants or doctors from non-Hague Convention nations (Kosovo).

These inquiries and challenges have led to much delay, uncertainty and inconsistencies among the claimant and defense bar as well as the Judges.

The Joint Bar Association has contacted the OALJ to attempt to come up with uniform procedures to address these issues.

OALJ UPDATES

- **Mixed results:** Some Judges are permitting parties to secure a local notary or equivalent to put together an affidavit which places claimant under oath which is witnessed and signed by the notary or qualified local official.
- Some Judges are permitting parties to stipulate to admissibility of evidence and testimony.
- Some Judges are demanding briefing on testimonial issues and continuing hearings.
- Consensus building that Kosovars must leave their country to testify.
- Based on recent conversations with OALJ, we believe they are working on a general consensus to streamline the discovery and testimony process which the national office will ultimately present to each Judge for potential adoption.

OALJ UPDATES

- Until uniformity is reached, we can expect more delay, briefing and potential gamesmanship from the claimant's bar.
- Brings into question admissibility of foreign medical records and the weight they should be given without authenticating testimony.
- Also Judges are inundated and many have implemented new complex hearing procedures including requirements for parties to meet and confer prior to assigning a hearing date.
- Many Judges are remanding cases if parties do not comply with their unique and specific pre-hearing orders.

DBA COVERAGE: DEVELOPING ISSUE

Lui v. American University of Afghanistan

BRB No. 19-0315 (2020)

- Claimant was an associate professor of finance at American University of Afghanistan
- The United States provides approximately 36% of the University's budget via a cooperative agreement with USAID.
- Claimant was injured in a 2016 insurgent attack

DBA COVERAGE: DEVELOPING ISSUE

Lui v. American University of Afghanistan

BRB No. 19-0315 (2020)

- The ALJ held the cooperative agreement is not a “contract” with the United States under 1(a)(4) of the DBA and that the United States did not “approve” the contract between the University and Claimant, so DBA did not apply
- USAID approved the University’s budget generally, and that of senior staff, but not every employee
- The BRB took a broader view of “approved,” holding that the context of the cooperative agreement was approval of the employment of faculty generally, and that specific approval was not needed

DBA COVERAGE: DEVELOPING ISSUE

Claimant's free-lancing mutiny against her employer is rewarded

Sheren v. Lakeshore Engineering

54 BRBS 17 (2020)

- The alleged employer was a construction subcontractor, Select Construction. The Claimant's employment relationship was convoluted: during her employment she set up a company to compete with employer, and even diverted payments to her bank account (with approval from a Select manager)

DBA COVERAGE: DEVELOPING ISSUE

Sheren v. Lakeshore Engineering

54 BRBS 17 (2020)

- She continued to work on the project from her employer work email while also bidding on the same contract with her new company
- The Lakeshore on site supervisor wanted to shift the work to claimant, but Lakeshore would not approve it
- Claimant was stabbed by a Lakeshore employee in 2013, bringing rise to the claim

DBA COVERAGE: DEVELOPING ISSUE

Sheren v. Lakeshore Engineering

54 BRBS 17 (2020)

- The ALJ found that claimant was not working on a DBA contract at all and dismissed the claim in its entirety
- The BRB reversed, finding that – despite claimant’s admission that she was not a Select employee at the time of the attack – that she was anyway
- Because the BRB found her a subcontractor employee, they found the DBA applied and the sub, contractor, and carrier were liable for DBA benefits

**OCCUPATIONAL
DISEASE
PHYSICAL**

Thomas Benchley v. SEll, BRB 20-0188 4/19/2021 Claimant allegedly developed a pulmonary injury as a result of his work as a truckdriver for Employer in Iraq.¹ From July 2004 to July 2010, he drove eighteen-wheelers for Employer which, he alleges, exposed him to noxious fumes and smoke from burn pits.

- Claimant thereafter worked in the United States in 2013 as a truck driver but stopped altogether in 2017 because of shortness of breath.

OCCUPATIONAL DISEASE PHYSICAL

- *Thomas Benchley v. SEII, BRB 20-0188
4/19/2021*
- Claimant treated with Dr. Al-Zabaidi who diagnosed moderate persistent asthma without complication, restrictive lung disease, diaphragmatic weakness, and dyspnea on exertion. He opined Claimant's asthma-like illness is secondary to exposure to burn pits and it is possible Claimant's exposure in Iraq could have resulted in his diaphragmatic weakness. Claimant then treated with Dr. Wilfred VanderRoest who, on March 13, 2019, diagnosed hemi- diaphragmatic paralysis, restrictive lung disease, chronic neuromuscular respiratory failure, mild persistent reactive airway disease without complication, silicosis, and occupational lung disease Dr. VanderRoest stated he had "no doubt" Claimant's interstitial disease is due to inhalation of silica "plus or minus inhalation of noxious smoke from burning pits in the Middle East."

OCCUPATIONAL DISEASE PHYSICAL

- *Thomas Benchley v. SEll, BRB 20-0188 4/19/2021*
- Also evaluated by Dr. Dunn, who diagnosed dyspnea, restrictive lung disease and diaphragmatic paralysis and opined Claimant's conditions were not caused or aggravated by his work in Iraq.
- The assessed by Dr. Gerr wherein he diagnosed a paralyzed right diaphragm, with dyspnea. He opined Claimant's work in Iraq did not cause or aggravate his pulmonary condition as the paralyzed right diaphragm is a neurological condition, not a disease of the lung tissue itself, and the restrictive physiology exhibited on pulmonary function testing is entirely explained by his paralyzed diaphragm and obesity.

OCCUPATIONAL DISEASE PHYSICAL

- *Thomas Benchley v. SEll, BRB 20-0188 4/19/2021*
- The administrative law judge found Employer produced substantial evidence of the absence of a relationship between Claimant's pulmonary illnesses and his work for Employer through the opinions of Drs. Dunn and Gerr, who each opined Claimant's pulmonary conditions were not caused or aggravated by his work in Iraq. He thus concluded Employer rebutted the Section 20(a) presumption.
- *Case shows that good and thorough experts can rebut presumption when they identify alternative diagnosis and specific causes for those conditions other than claimant's work exposures.*

OCCUPATIONAL DISEASE PHYSICAL

- *Carswell v. E. Pihl & Sons, 2021 U.S. App. LEXIS 15979*
- *In 1968 US B-52 Bomber crashed in Greenland causing plutonium contamination.*
- *US Civilian contractors worked in clean-up*
- *In 2010, some of the contractors filed claims under the DBA alleging injuries from plutonium exposure.*
- *ALJ denied all claims, finding they did not establish casual connection between their illnesses and the alleged plutonium exposure. BRB affirmed, petition review denied by Court of Appeals for the first Circuit*

OCCUPATIONAL DISEASE PHYSICAL

*Carswell v. E. Pihl & Sons, 2021 U.S. App.
LEXIS 15979*

- *Carwswell worked and a packager who made labels for container that would house contaminate snow. Claimant frequently drank drinks with ice from nearby Fjords. He developed esophageal cancer. Hanson worked as carpenter and constructed scoops used to remove material from crash sites. He was diagnosed with Kidney cancer. Erickson worked as fireman at the site. Both men claimed they worked in hangers with floors covered in ice and snow which may have been contaminated. He developed kidney cancer as well.*

OCCUPATIONAL DISEASE PHYSICAL

- *Carswell v. E. Pihl & Sons, 2021 U.S. App. LEXIS 15979*
- *Employer retained highly qualified experts*
- Dr. Anspaugh explained that plutonium radiation -- which mostly emits alpha particles -- cannot penetrate most materials, including a piece of paper or skin. Any exposure claimant's may have had would not have exceeded a small fraction of background radiation dose humans receive in a year.
- Dr. Mettler is a physician in Radiology and Nuclear Medicine and an expert in the effects of plutonium radiation on the human body. Based on his extensive experiences and relevant scientific authority, he explained that Petitioners' illnesses are simply not caused by plutonium exposure.

OCCUPATIONAL DISEASE PHYSICAL

- *Carswell v. E. Pihl & Sons, 2021 U.S. App. LEXIS 15979*
- Also had an epidemiologist who did a study on illness between workers at site and offsite and found no differences in illness or mortality rates.
- *Claimants had their own experts who gave broad opinions that kidney tumors and cancers were associated with plutonium inhalation and exposure.*
- ALJ concluded that even if the Petitioners had been exposed to a detectable dose of plutonium radiation, the weight of the scientific consensus was that plutonium radiation does not cause the illnesses that the Petitioners suffered from. The ALJ explained that in order to find otherwise, she would have to "discount the opinions of highly credentialed physicians and ignore a multitude of medical and epidemiological studies, in favor of the 'vague' . . . [or] 'conclusory' opinion[s] [of the Claimants' experts.]"
- Battle of the experts

OCCUPATIONAL DISEASE TRENDS: PTSD

- A large percentage of claims being filed currently are for psychiatric claims where the claimant last worked several, or more, years ago
- Each of these cases brings into question whether a timely claim was filed or whether average weekly wage should be determined at a time other than last employment, such as the year prior to diagnosis

OCCUPATIONAL
DISEASE
TRENDS:
PTSD

Example 1:

Smith v. Fluor, 2020 LDA 0042 (Feb. 20, 2021)

- Claimant worked in Afghanistan in 2010-2011
- Key facts of her testimony:
 - Symptoms started in 2010
 - Left employer due to symptoms
 - Left a stateside employer in 2013 due to symptoms
 - March 2016 diagnosis of PTSD
 - Filed claim in February 2017

OCCUPATIONAL
DISEASE
TRENDS:
PTSD

Example 1:

Smith v. Fluor, 2020 LDA 0042 (Feb. 20, 2021)

- ALJ Rosen held:
 - No dispute claimant was actually aware of her condition in March 2011
 - Thus her claim was time barred because not filed within 2 years
 - Decision currently on appeal

OCCUPATIONAL DISEASE TRENDS: PTSD

Which brings us to Example 2:

Rodriguez v. Triple Canopy, BRB no. 20-0520
(May 27, 2021)

- Claimant worked in Iraq from 2006-2010
- 6 months after leaving the employer, he was denied employment on the basis of having worked in Iraq
- In 2014 he failed a prospective employer's psychological evaluation
- ALJ Henley found claimant should have known of his condition and disability no later than the 2014 evaluation
- Claimant appealed

OCCUPATIONAL DISEASE TRENDS: PTSD

Example 2:

Rodriguez v. Triple Canopy, BRB no. 20-0520
(May 27, 2021)

- BRB Reversed, finding the 2014 evaluation, which claimant was not given a copy of, was insufficient to show claimant knew of his work-related psychological condition
- No other evidence that claimant knew of should have known
- Found that while a medical diagnosis is not a prerequisite, the facts of this case were not enough.

OCCUPATIONAL DISEASE TRENDS: PTSD

The BRB does its own fact finding

Dawson v. Fluor, BRB no. 19-0528 (June 9, 2020)

- Claimant worked for Employer in Afghanistan from 2010-2014, until suffering a knee injury
- Diagnosed with PTSD, depressive disorder, and anxiety, and files a timely claim
- Employer expert found claimant did not have PTSD and was too unreliable to determine depressive disorder or anxiety
- ALJ found claimant not a credible witness
 - Discounts opinions of treating doctor based on claimant's lack of credibility
 - Found the employer expert more credible based on the facts, and rebutted claimant evidence

OCCUPATIONAL DISEASE TRENDS: PTSD

Dawson v. Fluor, BRB no. 19-0528 (June 9, 2020)

- ALJ finds based on employer expert evidence that psychological symptoms are not related to work
- On appeal, the BRB:
 - Finds that because the doctor “equivocated” on anxiety and depression, but not PTSD, so therefore the doctor’s opinion can not rebut the presumption and the entire psychological condition is compensable as a matter of law

“Because Dr. Shindell equivocated as to the existence of anxiety and depression, and did not state that either diagnosis is unrelated to the admittedly stressful conditions of claimant’s war zone employment including the need to seek shelter during air raids, his opinion does not rebut the presumed causal connection between claimant’s employment and psychological condition.”

OCCUPATIONAL DISEASE TRENDS: PTSD

But see:

Gatewood v. SEll et al, BRB no. 20-0216
(Feb. 26, 2021)

- Claimant worked for employer until May 2012, when he was terminated for poor performance
- First sought mental health treatment in December 2015. Diagnosed with PTSD, alcohol abuse, and depressive disorder
- Employer expert conceded claimant has mental illness, it was primarily related to his termination and adjustment thereafter
- The claimant sought an appeal based on the equivocations by employer expert, just as in Dawson

OCCUPATIONAL DISEASE TRENDS: PTSD

Gatewood v. SEll et al, BRB no. 20-0216 (Feb. 26, 2021)

“She permissibly found his statements that “I don’t have any consistent or reliable evidence to say” Claimant’s psychological conditions were caused by his overseas work, “I don’t find any evidence that his exposure to work life over[seas] caused his anxiety or depression,” and that “it’s more likely than not that the actual work experience did not contribute” to Claimant’s psychological conditions constitute substantial evidence sufficient to rebut the Section 20(a) presumption. Moreover, Dr. Tsanadis’s opinion that Claimant does not have PTSD constitutes substantial evidence to rebut the Section 20(a) presumption that Claimant’s PTSD-like symptoms are work-related. As the administrative law judge was entitled to find this evidence throws “factual doubt” on Claimant’s prima facie case, we affirm her finding that Dr. Tsanadis’s “well-reasoned” opinion is “legally sufficient to rebut the Section 20(a) presumption.””

DBA TRENDS: THE REPEAT CUSTOMER

- Claimants who had settled injury claims years ago are re-appearing with psychiatric or hearing loss claims, or vice versa
- There is a cat and mouse game over attempting to settle these claims in initial settlements
- OWCP and claimant counsel push back, and law is not favorable

DBA TRENDS: THE REPEAT CUSTOMER

One such repeat customer – *Fetrat v. Mission Essential Personnel* (ALJ Dec. 29, 2020)

- Fetrat was injured in an IED blast in 2015 resulting in permanent disability. He settled his claims pro se in 2017.
- In 2019, Fetrat hired lawyers and filed a psychological claim specifically related to the same 2015 IED blast.
- The ALJ denied the Employer's Motion for Summary Decision, reading the 8i critically and finding no mention of psychiatric injury.
- The ALJ found the claim should be remanded and a new OWCP file created.

PAIN IS
DISABILITY—THE
9TH CIRCUIT
STRIKES AGAIN

Jordan v SSA Terminals, 973 F.3d 930 (9th Cir. 2020)

- Claimant suffered a spinal injury in 2015 and had a fusion in 2018
- Surveillance in 2015 and 2016 showed the claimant bending, doing pushups, throwing a baseball, and attending sports events without difficulty
- Claimant testified that before the fusion, he could do “anything he wanted” but with pain
- Based on the surveillance, some treating physicians changed their opinion

**PAIN IS
DISABILITY—THE
9TH CIRCUIT
STRIKES AGAIN**

Jordan v SSA Terminals, 973 F.3d 930 (9th Cir. 2020)

“We hold, as a matter of first impression, that credible complaints of severe, persistent, and prolonged pain can establish a prima facie case of disability, even if the claimant can literally perform his or her past work.”

The 9th Circuit remanded to the ALJ

“ I WOULD DO
ANYTHING FOR
DISABILITY, BUT
I WON'T DO
THAT”
THE 9TH CIRCUIT

Aegis Defense v. Martin, 829 F. Appx 216
(9th Cir 2020)

Claimant attempted to get his home
refinance reimbursed by the Carrier. Even
the 9th Circuit won't go that far.

ATTORNEYS FEES - § 28

- *Jeanne Johnston v. Hayward Baker and Kemper Insurance Company, 53 BRBS 115*
- (UBD After protracted litigation on a death claim, claimant's counsel filed for attorneys fees with District Director for work performed at the OWCP from December 2005 through April 2018 totaling \$151,645.00 plus costs.
- Opposing counsel supported his claimed rate of \$575.00 an hour with three affidavits of other attorneys. Being from San Diego, he claimed the relevant legal market was San Diego with "potentially relevant" and "substantially the same" markets of San Francisco and Los Angeles.

ATTORNEYS FEES - § 28

- *Jeanne Johnston v. Hayward Baker and Kemper Insurance Company, 53 BRBS 115* (UBD District Director found Los Angeles and San Diego to be the relevant legal market. District Director accepted affidavits of for those areas and also commented that from his personal experience rates were similar in both areas.
- Employer argued claimant did not provide sufficient evidence of the requested rates but rather relied on prior cases awarding the attorney lower rates.
- Employer also objected to awarding current hourly rates for work performed over past 12.5 years as an improper fee enhancement.

ATTORNEYS FEES - § 28(B)

- *Jeanne Johnston v. Hayward Baker and Kemper Insurance Company, 53 BRBS 115* (UBD On appeal, the BRB found the District Director properly relied on all three fee affidavits.
- BRB also held that a delay enhancement compensates for the lapse in time between the performance of the legal services and the award of a fee for those services and it was within the Director's discretion to make such an award
- A footnote also acknowledged the BRB had awarded the same rate to claimant's counsel on another prior appellate matter involving same claim and that was noted by the Director in his findings as well.

ATTORNEYS FEES - § 28

- *Aguilar v. Navy Exchange Service Command*, 749 Fed.Appx. 648 (9th Cir. 2020).
- An ALJ found a California's attorney's fee for a Hawaii claim made Hawaii the relevant community.
- The 9th Circuit in *Shirrod* refused to set a firm rule in how to pick a location in such cases, preferring to leave it to ALJs and the BRB to decide on a case-by-case basis.
- It affirmed the ALJ's choice of Hawaii here, which means a much lower hourly rate than the attorney could receive in California.

ATTORNEYS FEES - § 28

- *Seachris v. Brady-Hamilton Stevedore Co.*
994 F.3d 1066; 2021
- 9th Circuit reviewed BRB decision which upheld award of fees and costs by ALJ to Claimant counsel, an Oregon attorney, yet at reduced rates.
- Case had various issues on appeal, the 9th Circuit found the ALJ had committed various errors by discounting evidence of an Oregon fee survey and affidavits provided by several local counsel supporting commercial litigation rates to be similar to Longshore rates and instead substituted her own formula using the same Oregon survey for determining comparable practice areas. The court ultimately remanded the case and ordered a new ALJ to be appointed due to the tone and manner of which she evaluated the evidence.
- Of interest, the court remanded to the BRB to ascertain if award of interest on costs is appropriate because of the "exceptionally protracted" period that the case had been pending—having been filed in 2005—spanning fourteen years ago.

COVID-19 LEGISLATION

- The House version of the American Rescue Plan Act, H.R. 1319, contained amendments that would make any longshore-covered employee's COVID-19 diagnosis conclusively covered
- The language was unclear about whether longshore extensions, like the DBA, would be included
- A reimbursement fund was also created, but only for previously unpaid claims
- The provision was removed during Senate reconciliation
- The "Longshore and Harbor Workers' COVID-19 Compensation Act of 2021" is currently being circulated in the House, which is similar but explicitly does not apply to DBA or other extensions