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Five common misconceptions about foreign workers offshore

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Whether you're a huge multinational oil and gas company or a small company bidding on offshore contracts, regulations for foreign national employees working on the Outer Continental Shelf can be confusing, frustrating and often unsuccessful. Below are the most common misconceptions regarding employment on the Outer Continental Shelf:

1. Only U.S. citizens may work offshore.

Generally, the Outer Continental Shelf Lands Act, or OCSLA, requires that all employees working on the OCS be either U.S. citizens or legal permanent residents of the United States. In certain situations, OCS exemptions or letters of determination can be obtained based on a vessel's foreign ownership, the lack of qualified U.S. citizens or by demonstrating that the position is not considered part of the normal crew complement. However, in each situation, full approval from the **U.S. Coast Guard** is required prior to the employment of any foreign national offshore.

2. Approval to work offshore is governed only by the U.S. Coast Guard.

One of the largest areas of confusion is determining whether or not a foreign national is authorized to work offshore. The vessel's ownership, location and function, the position to be filled, the current labor market in the U.S. and the nationality of the individual could play a role in determining which governmental agencies are able to authorize employment offshore.

In some cases, review or authorization from the Departments of State, Labor, Homeland Security, the **Transportation Security Administration**, and the U.S. Coast Guard may be required for employing foreign labor offshore.

3. Immigration law doesn't govern work offshore.

Immigration law may not directly govern the work done offshore — but the OCSLA does. Also, the foreign national employees will most likely need a proper visa stamp and immigration status to enter or transit through the U.S. prior to their travel offshore. **U.S. Customs and Border Protection** may even require an armed guard to escort individual foreign employees ashore if they do not have the appropriate visa stamp.

4. A rig owner can't be held responsible for a contractor's noncompliance.

If someone doesn't have appropriate immigration status, visa, or U.S. Coast Guard authorization to perform his or her specific job offshore, the vessel owner, operator, or a third-party contractor could be held liable.

For example, if a contracting company installing or repairing equipment offshore provides a particular rig with foreign labor without authorization, both the vessel operator and the contracting company could be held liable and the entire rig's operations could be shut down for a complete investigation of the employees.

Fines or mandatory operational delays are penalties that can be imposed on the violating companies involved. Additionally, an individual employee may be subjected to removal proceedings, deportation or future immigration hurdles if he or she does not obtain the appropriate immigration status required for offshore employment.

5. Offshore employment can begin as soon as the documentation is filed with the U.S. Coast Guard.

All U.S. Coast Guard authorizations as well as proper immigration status must be obtained prior to the start of employment offshore. The specific situation and the agencies involved will determine the timing of the case. Waiting on the approvals for a Letter of Determination versus a crew exemption based on the unavailability of U.S. Citizens can range from two weeks to four months. Although the U.S. Coast Guard is extremely willing to assist in true emergency cases, bluntly put, a company's lack of planning is not the Coast Guard's problem.

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