

## Newsletter No 5 – Entitlement to Leave and Repatriation

### Part I – Entitlement to Leave

*Purpose: To ensure that seafarers have adequate leave*

In Newsletter No 5 Part I we will look at MLC Title 2, Regulation 2.4 and Standard A2.4 – Entitlement to Leave. MLC Regulation 2.4 requires that seafarers are given paid annual leave and be granted shore leave for their health and well-being. MLC Standard 2.4 requires that the Isle of Man Ship Registry puts in place legislation determining the minimum standards for annual leave. Standard 2.4 also sets the annual leave with pay entitlement to be calculated as a minimum of 2.5 days per calendar month of employment and that justified absences from work by the seafarer shall not be considered as annual leave.

**Standard 2.4 further requires that any agreement to forgo the paid annual leave requirement shall be prohibited.**

We will now look at the specific minimum requirements for shipowners with Isle of Man registered ships and seafarers on Isle of Man ships. The requirements have taken into account Guideline B2.4.

1. Seafarers shall be entitled to paid annual leave of a minimum of two and a half (2.5) days for each month (*or 30 days*) of employment on board ship, this shall include all travelling time to and from the vessel.
2. For periods of employment of less than one month, the seafarers leave entitlement as stated in 1. shall be calculated on a pro-rata basis. The proportion shall be in days and any fraction of a day to be treated as a half day.
3. In addition to the entitlement in 1. and 2. a seafarer shall be entitled during each year of employment to paid leave of ten (10) days for public holidays. This number will vary from country to country and the Isle of Man has 10 public holidays a year.
4. For periods of employment of less than one year the seafarers leave entitlement as stated in 3. shall be calculated on a pro-rata basis. The proportion shall be in days and any fraction of a day to be treated as a full day.

5. The paid leave that the seafarer is entitled to shall not be replaced by a payment in lieu, except where the seafarer's employment is terminated.
6. The level of pay during paid annual leave should be at the seafarer's normal level of remuneration as stated in the Seafarers Employment Agreement (SEA) ( see news letter 3).
  - a. Paid annual leave shall not include any other period which is agreed between the employer and the seafarer; or the employer and any organisation representing the seafarer. (training courses)
  - b. Periods of incapacity for work resulting from illness or injury or from maternity.
  - c. Temporary shore leave granted to a seafarer while employed under an SEA, and
  - d. Compensatory leave of any kind which forms part of a seafarer's agreed pattern of work.

The Isle of Man considers that the time at which annual leave, and the frequency of the leave periods, is to be taken is a matter to be determined between the seafarer and the shipowner.

Seafarers shall have the right to take annual leave at the place with which they have a substantial connection, normally the same place to which they are entitled to be repatriated. Unless stated in the SEA or with the seafarer's agreement, a seafarer shall not be required to take annual leave owed to them in a different location.

Young seafarers aged 16 or 17, who have served up to six months on a SEA, should be given the opportunity of repatriation at no expense to themselves to their country of residence, for the purpose of taking any leave earned during the voyage.

## Part II – Repatriation

*Purpose: To ensure that seafarers are able to return home*

In Part II we will look at MLC Title 2, Regulation 2.5 and Standard 2.5 – Repatriation. MLC Regulation 2.5 requires that seafarers are repatriated at no cost to themselves in the circumstances and under the conditions as specified in the code and that the Isle of Man Ship Registry requires that shipowners have in place financial security to ensure that seafarers are duly repatriated in accordance with the code. MLC Standard 2.5 sets out minimum standards for repatriation.

We will now look at the specific minimum requirements for shipowners with Isle of Man registered ships and seafarers on Isle of Man ships.

It will be the responsibility of the shipowner to repatriate seafarers when:

1. The seafarers' employment agreement (SEA) expires;
2. The SEA is terminated by the shipowner due to the seafarers' breach of terms and conditions of employment as stated in the SEA;
3. The SEA is terminated by the seafarer on the basis of the minimum terms as agreed between the seafarer and shipowner contained within the SEA;
4. The SEA is terminated by mutual consent between the seafarer and shipowner;
5. The SEA is terminated by the seafarer or shipowner within the required notice period as stated within the SEA.
6. The seafarer in the event of illness or injury or other medical condition that requires repatriation, (when medically fit to do so)
7. The ship is proceeding to a Warlike Operations Area/war zone and the seafarer does not consent to go;
8. In the event of termination or interruption of employment in accordance with an industrial award or collective agreement;
9. In the event of shipwreck, and
10. In the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of seafarers by reason of insolvency, sale of the ship or change in ships registration.

The maximum period of service on board an Isle of Man ship following which a seafarer is entitled to repatriation will always be less than 12 months. (repatriation for paid annual leave mentioned in Part I)

Young seafarers under the age of 18 during their first foreign going voyage shall be repatriated at no costs to themselves if it becomes apparent that they are unsuited for a life at sea.

Shipowner's shall make arrangements for repatriation by appropriate and expeditious means and the normal mode of transport for repatriation should be by air.

It will be responsibility of the shipowner to inform the Isle of Man Ship Registry and the local proper officer (British Consul) of any seafarer left behind or brought ashore after being shipwrecked including the seafarers particulars.

The shipowner will be responsible for repatriating the seafarer to a country or a place as agreed within the SEA.

The Isle of Man Ship Registry has decided the country or place to be;

1. The place where the seafarer signed and entered into their SEA;
2. The seafarers country of residence;
3. Such other place as mutually agreed with the shipowner when the seafarer signs their SEA.

There will also be certain circumstances where the shipowner will no longer be responsible for the seafarer's repatriation, which include:

1. The shipowner makes reasonable arrangements for repatriation which are unsuccessful because of the seafarer's unreasonable conduct;
2. The shipowner is unable to contact the seafarer for a period of three months or more (Seafarer who has been left behind) , and
3. The seafarer confirms in writing to the shipowner that repatriation is not required.

The shipowner as well as being responsible for repatriation is also responsible for relief and maintenance during repatriation. The provision of relief and maintenance shall include:

1. Accommodation and food from the moment the seafarer leaves the ship until they reach their repatriation destination.
2. Pay and allowances, including any minor ancillary expenses incurred or likely to be incurred by the seafarer until they reach their repatriation destination.
3. Surgical or medical treatment and such dental or optical treatment including the repair or replacement of any appliance (dentures, glasses, etc) as cannot be postponed without impairing efficiency.

4. Transportation of 30 kg of seafarers' personal luggage to the repatriation destination.

The shipowner shall not deduct any time spent waiting for repatriation or during repatriation from paid leave accrued by the seafarer.

Shipowners will not be able to recover any costs of repatriation or relief and maintenance when seafarers' have completed their contractual obligations contained within the SEA or the SEA is terminated by the seafarer on the basis of the minimum terms as agreed between the seafarer and shipowner contained within the SEA.

As explained in newsletter No 4 there will no longer be the facility to recover some of the repatriation costs from a seafarer who has been dismissed from the vessel.