Sjøfartsdirektoratet
Norwegian Maritime Authority

Circular - Series R

Circular Series R (Regulations) supersede previous Series F. In the new Series R, relevant legal amendments and amendments to conventions are also published.

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The Circular should be entered into a special diagram or as appropriate in the latest editions of relevant NMA publications and kept until the next editions.

Amendments to regulations concerning the employment agreement and settlement of wages form

Introduction

Amendments to Regulations concerning the employment agreement and settlement of wages form have been laid down by the Norwegian Maritime Authority. Draft amendments to the Regulations were circulated for comments in the period 2 July to 24 September 2012.

The grounds for the amendments to the Regulations are that Norway has ratified the Maritime Labour Convention (MLC), 2006. The Convention enters into force on 20 August 2013.

A concise outline of the regulatory amendments

The purpose of the amendments to the Regulations has been to implement the MLC regulations for the content of the employment agreement into the Regulations concerning the employment agreement and settlement of wages form, cf. MLC standard A2.1 No. 4.

MLC standard A2.1 No. 4 sets requirements for the content of the employment agreement, which prior to the regulatory amendments went beyond the requirements of Norwegian legislation. The amendments imply that employment agreements on board Norwegian ships from the entry into force of the MLC on 20 August 2013 shall include, in addition to the information previously set out in section 2 (1) of the Regulations concerning the employment agreement and settlement of wages form, the following information:

- The extent of annual paid holiday, or the formula used to calculate it.
- Sick pay and social benefits which the employer shall ensure that the employee is covered by.
- The employee's right to passage home.

The Norwegian Maritime Authority has furthermore introduced a transitional arrangement for the use of the new employment agreement form in section 5 of the Regulations. The provision implies that when the employment agreement has been entered into prior to the entry into force of the MLC on 20 August 2013, it will not be necessary to write the employment agreement on the new form. As set out in the request for comments to the regulatory amendments, the condition for the transitional arrangement is that the employer can provide evidence that the employee has the rights set out in section 2 (1) subparagraphs h), i) and j) of the Regulations, even when the existing employment agreement form is used. According to the request for comments, the employer may in these cases comply with their duties pursuant to the Regulations by referring, in the employment agreement, to the relevant collective agreement containing the rights set out in section 2 (1) subparagraphs h), i) or j) of the Regulations, or by attaching a supplementary agreement stating that the employee is entitled to these right. The description in the request for comments of how the transitional rule should be interpreted, did however not correspond with the proposed section 5 circulated for comments. The proposed transitional rule in section 5 has therefore been amended in accordance with the description in the request for comments. Moreover, due to fact that it is now clear that the MLC will enter into force on 20 August 2013, the reference in the provision to the ILO Convention no. 186 has been amended.

On the relation to the new Norwegian maritime labour act

Regulation concerning Amendments to Regulations of 3 February No. 230 concerning the employment agreement and settlement of wages form is laid down under section 3 of the current Seamen's Act. The Norwegian Maritime Authority has decided to lay down the amended regulations even though the maritime labour act most likely will replace the Seamen's Act in connection with the MLC's entry into force on 20 August 2013. The reason for this decision is that the NMA wishes to regulate the implementation of MLC well in advance of the entry into force of the Convention, whenever it is possible. By the very fact that the amended regulations are laid down, it is clear which regulations the NMA finds adequate for the implementation of the MLC regulations concerning the content of the employment agreement.

The Regulations concerning the employment agreement and settlement of wages form shall moreover be aligned with the new maritime labour act as soon as the act has been adopted. As the title of the regulations will have to be amended in order to be in accordance with section 3-1 of the draft of the new maritime labour act, it is deemed most practicable to lay down new regulations concerning the employment agreement. A new employment agreement form will be made available for use on the Norwegian Maritime Authority's website when the regulations are laid down. Should, contrary to expectation, the maritime labour act not be adopted well in advance of the entry into force of the MLC on 20 August 2013, the NMA will ensure that the transitional rule of section 5 of the Regulations is changed so that it will be practically possible to meet the requirements of the Regulations for the use of a new employment agreement form.

Entry into force

The amendments to the Regulations enter into force on 20 August 2013, at the same time as the Maritime Labour Convention.

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Regulation concerning Amendments to Regulations of 3 February 1986 No. 230 concerning the employment agreement and settlement of wages form

Laid down by the Norwegian Maritime Authority on 17 December 2012 under the Seamen's Act of 30 May 1975 No. 18 section 3 (1), cf. Formal Delegation of 23 December 1988 No. 1081 and Formal Delegation of 27 December 1988 No. 4321.

I

In Regulation concerning Amendments to Regulations of 3 February 1986 No. 230 concerning the employment agreement and settlement of wages form, the following amendments are made:

Section 2 (1) subparagraph h) should read:
h) the extent of annual paid holiday, or the formula used to calculate it,

Section 2 (1) subparagraph i) should read:
i) sick pay and social benefits which the employer shall ensure that the employee is covered by,

Section 2 (1) new subparagraph j) should read:
j) the employee's right to passage home,

Section 2 (1) subparagraphs h) and i) become new subparagraphs k) and l).

Section 5 should read:

Transitional Rule

The requirement for the use of an employment agreement form which includes the rights set out in section 2 (1) subparagraphs h, i and j, applies only to employment agreements entered into on 20 August 2013 or later. The employer shall in all cases ensure that the rights pursuant to section 2 (1) are complied with, and these rights shall be specified in the employment agreement or in attachment(s) thereto.

Section 5 is renumbered as section 6.

II

Entry into force

These amendments enter into force on 20 August 2013.