Sjøfartsdirektoratet
Norwegian Maritime Authority

Circular - Series R

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

Circular recipients: (check box)

- ☐ Sdir: Norwegian Maritime Authority
- ☐ A: 16 specially authorised employment offices
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- ☒ Hov: Main organisations
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- ☐ Others:

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Reference to: Act of 21 June 2013 No. 102 relating to employment protection, etc. for employees on board ships (Ship Labour Act)

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.

New Regulations on control measures for employees covered by the Ship Labour Act

The Norwegian Maritime Authority (NMA) has laid down new Regulations on control measures for employees covered by the Ship Labour Act. The Regulations harmonise the state of the law for employees covered by the Working Environment Act[1] and the Ship Labour Act[2], respectively, with regard to the employer's use of camera surveillance and access to e-mails and other electronically stored information.

These Regulations enter into force immediately.

The background for the proposal

The Regulations contain rules restricting the authority to carry out camera surveillance in places where only a limited number of employees stay on a regular or continuous basis, as well as the authority to access e-mails and other electronically stored information in personal storage area provided for the employee by the employer.

Up until 20 July 2018, these factors were regulated in the Personal Data Regulations[3], which was founded on the Personal Data Act of 2000[4] and applied to all employees.

When the new Personal Data Act entered into force[5], new regulations on camera surveillance of employees and access to e-mails and other electronically stored information were laid down. At the same time, the Personal Data Regulations were repealed. The new regulations are founded on the Working Environment Act, which does not include shipping and fishing, etc., cf. section 1-2

[1] Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act).
[2] Act of 21 June 2013 No. 102 relating to employment protection, etc. for employees on board ships (Ship Labour Act)
[3] Regulations of 15 December 2000 No. 1265 on the processing of personal data
[4] Act of 14 April 2000 No. 31 on the processing of personal data
[5] Act of 15 June 2018 No. 38 on the processing of personal data

second paragraph (a) of the Act. As a result, there is an unintended difference in the privacy protection of employees on shore and at sea. This is rectified by these Regulations.

The purpose of the Ship Labour Act is almost identical with that of the Working Environment Act, and it provides adapted regulations for conditions of employment and working environment for persons who work on Norwegian ships.

Section 9-1 of the Ship Labour Act stipulates the possibility of implementing control measures for the crew members if such measures are objectively justified for the employment and does not involve an undue burden for the employee. The provision provides basic requirements for implementation of control measures and lays down a legal basis for more detailed rules of the Regulations.

The consultation

The proposed new Regulations on control measures were circulated for review on 19 November 2018, with a deadline for comments on 7 January 2019. Ten consultative bodies chose to reply to the consultation. Five of these bodies had comments to the wording and disposition of the proposal. All renderings and comments on the consultative statements are included in the enclosed matrix. Some of the comments are listed below.

The Ministry of Justice and Public Security points out that section 6 third paragraph (a) could be misinterpreted as an accelerated obligation to delete surveillance data submitted to the police. The provision originated from the fact that the Personal Data Regulations to a certain extent applied to the police as well. Whereas the scope of application of the new Regulations is limited to employees subject to the Ship Labour Act, this provision is of no real value. Therefore, the NMA agrees that it should not be continued.

The Norwegian Bar Association is concerned that the harmonisation of the data protection legislation for seafarers and shore-based employees will be weakened in the long term if, within the same legal field, separate regulations are established for employees subject to the Working Environment Act and the Ship Labour Act, respectively. The NMA considers it appropriate, with respect to maritime legislation, to implement a specific regulation as suggested. Moreover, such a division is supported by the fact that the preparatory work on the Ship Labour Act set out that there were clear rules for the revision of the former Seamen's Act specifying that a revised Seaman's Act would be continued as an independent act and not be incorporated into the Working Environment Act.

DNV GL points out that the use of the term “personal data” in section 5 of the draft has a limiting effect and could give the impression that other surveillance data may be released, and that the use of the terms “personal data” and “surveillance data” should be clarified. Even if the surveillance data would be considered as personal data, we agree that the introduction of the term “personal data” at this time does not provide new information and can be confusing. Therefore, the introduction of section 5 is changed to “Camera surveillance data” by using section 6 first paragraph as a template.

Furthermore, DNV GL has made a comment on a grammatical error in section 10 third paragraph of the draft, which will be corrected.

The Norwegian Seafarer's Union (NSU) points out a mistake in the numbering of chapters, which is corrected. The union agrees with the NMA's assessment of not referencing to the Regulations of the Work Environment Act and instead make a separate regulation regarding control measures.

The Norwegian Shipowners' Association supports the NMA's assessment that separate regulations should be made.

Details on the content

The Regulations are based on the Regulations of 2 July 2018 No. 1107 on camera surveillance in undertakings and Regulations on 2 July 2018 No. 1108 on employer's access to e-mails and other electronically stored information which continue the current law and to a great extent use the wording from the rules being replaced by the Regulations. The proposal which is now being circulated for review is therefore a continuation of the current law before 2 July 2018.

In order to limit the number of regulations and continue a thematic division of the legislation, the NMA has chosen to gather all the rules in a common regulation on control measures, including chapters on camera surveillance and access to e-mails and other electronically stored information. In this way, it will be easier to integrate any new rules in the area of control measures that may be relevant, e.g. through technological development, to the existing legislation.

Comments on some of the provisions

To section 1 Scope of application
It is suggested to lay down the Regulations pursuant to section 9-1 of the Ship Labour Act. Section 1-2 of the Ship Labour Act makes the Act applicable to employees working on board Norwegian ships. In accordance with section 3 of the Regulations[6] on the scope of application, the Act shall also apply to employees on mobile offshore units. Additionally, the Working Environment Act is made applicable to the petroleum industry at sea, cf. section 1-3 of the Act. Outside of the petroleum industry, mobile offshore units are subject to the legislation administered by the NMA. This means that there are parallel and partly overlapping regulations in some areas. To make sure that employees on mobile offshore units not engaged in the petroleum industry are offered the same level of protection, the scope of the Regulations will also apply to employees on mobile offshore units.

To section 3 Conditions for camera surveillance
The first paragraph continues the state of the law pursuant to the Personal Data Act 2000 section 37. We have chosen to omit the delimiting phrase "areas where a limited circle of persons move regularly", as "this, within the scope of the Ship Labour Act, will be the case anyway.

The second paragraph continues the wording in section 36 first paragraph of the same Act. A consultative body has questioned the fact that signs, notices, etc. providing information about camera surveillance when this is not the case, are also subject to the rules. The rules are also meant to protect the population from the feeling of being monitored, which in itself compromises people's integrity as it affects their behaviour. As a result, real and fake camera surveillance have an equal status, as they had pursuant to the Personal Data Regulations.

To section 4 Notification of camera surveillance
This provision continues the content of section 40 of the Personal Data Act of 2000 and, at the same time, specifies the company's role as a controller.

To section 5 Release of camera surveillance data

[6] Regulations of 19 August 2013 No. 990 on the scope of application of the Ship Labour Act

The provision continues the content of section 39 of the Personal Data Act 2000.

To section 6 Erasure of camera surveillance data
The provision continues section 8-4 fifth paragraph of the Personal Data Regulations. Moreover, the content related to payment, bank and postal services has been updated to reflect today's reality where such services are increasingly integrated into other retail shops. Tax-free shops, kiosks and cafés on passenger ships will be covered by these rules.

The requirement to erase surveillance data when there is no longer an objectively justified reason for storing them, as stipulated in section 8-4 of the Personal Data Regulations, is assumed to have little significance in comparison to the other rules regarding erasure of surveillance data, and has therefore been omitted.

To section 8 Scope of this chapter
The provision continues the content of section 9-1 of the Personal Data Regulations.

To section 9 Invariability of the provisions
The provision continues the content of section 9-5 of the Personal Data Regulations. Due to pedagogical reasons, the NMA has moved the provision further ahead in the chapter and changed the subtitle after the consultation.

To section 10 Conditions for access to e-mails, etc.
The provision continues the content of section 9-2 of the Personal Data Regulations.

To section 11 Access procedures
The provision continues the content of section 9-3 of the Personal Data Regulations.

To section 12 Deletion of information at the end of the employment relationship
The provision continues the content of section 9-4 of the Personal Data Regulations.

Administrative and financial implications
Even though the rules on some points have been modernised, the Regulations will continue the current law, as specified above. This also includes the arrangement to have the Norwegian Data Protection Authority as the supervisory and decision-making authority. By linking the rules to the legislation already applicable to seafarers, it will be more readily accessible to the industry as well as the NMA as an adviser. Therefore, the NMA presumes that the Regulations will first and foremost have positive consequences and cannot see any significant financial consequences for the industry.

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