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.

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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 the Regulations on employment agreement and pay statement, etc. as a result of amendments to the MLC of 2018

1. Introduction

The Norwegian Maritime Authority (NMA) has laid down amendments to the Regulations of 19 August 2013 No. 1000 on employment and pay statement, etc. in order to implement amendments made to the Maritime Labour Convention, 2006 (MLC). The amendments to the Regulations involve an implementation of amendments to the Convention agreed upon by the employers' and employees' organisations in the International Labour Organization (ILO) in the third meeting of the Special Tripartite Committee for MLC.

Reference is made to the fact that in 2018, Norway adopted amendments to ILO's Maritime Labour Convention, 2006 (MLC), concerning seafarers' labour law rights when held captive as a result of an act of piracy or armed robbery against ships. The MLC applies to Norwegian cargo and passenger ships operating in trade area 3 or greater trade areas. The amendments to the Convention enter into force on 26 December 2020. Please see the official version of the amendments, «Amendments of 2018 to the MLC, 2006», under the headline «Amendments» on the ILO's website:
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::NO::P91_ILO_CODE:C186

2. Consultation

The proposed amendments to the Regulations on employment and pay statement, etc. were circulated for review from 6 to 20 November 2020. The deadline for comments was shorter than usual. In the opinion of the NMA, this is justifiable based on the fact that the amendments to the Regulations involve an implementation of amendments to the Convention agreed upon by the employers' and employees' organisations in the International Labour Organization (ILO) in the third meeting of the Special Tripartite Committee for MLC. Furthermore, it is desirable to lay down these regulatory amendments before the amendments to the Convention enter into force on 26 December 2020.

The NMA has received 7 consultative statements. The Norwegian Bar Association and DNV GL AS had comments to the proposal.

2.1 Comments to the new regulatory text
The NMA agrees with the Norwegian Bar Association and DNV GL AS that the text of the Regulations should be made clearer to reflect the NMA's intention that limited employment agreements that are not expired should also be covered by the Regulations on employment and pay statement, etc. section 4 new second paragraph.

The Norwegian Bar Association's proposal for section 4 new paragraph (b) is taken into account with a specification that it applies to release from the captivity. The provision shall reflect that wages shall continue to be paid after the release, until a possible dismissal is presented, when the employment agreement is not limited or the expiry date of the employment agreement has not been passed. In addition, a new sentence is included to meet the requirement of MLC standard A2.2 paragraph 7 on wages, etc. that even though his time-limited employment agreement has expired, the seafarer is entitled to receive wages until he is released and duly repatriated. At the same time, section 4 new second paragraph (a) first sentence is amended, so that it becomes clearer that the purpose of the provision is to secure continued payment of salary during the captivity, and that subparagraph a does not cover what takes place after the release. Furthermore, section 4 new second paragraph (d) is amended to make it clear that the employee is entitled to free repatriation after being released, and not just at the time of the release.

2.2 Comments to the legislative amendments
The Norwegian Bar Association believes that the amendments to the Convention pursuant to MLC standard A2.2 paragraph 7 on wages, etc. may require regulatory amendments as required by the implementation of MLC standard A2.1 paragraph 7 on employment agreements. Consequently, the Norwegian Bar Association doubts that section 4-2 fourth paragraph of the Ship Labour Act provides the legal basis for the implementation of MLC standard A2.2 paragraph 7 on wages, etc.

The Norwegian Maritime Authority considers that section 4-2 fourth paragraph the Ship Labour Act provides legal basis for implementation of MLC standard A2.2 paragraph 7 on wages, etc. Based on a comment from the Norwegian Bar Association, however, the NMA presumes that it would be useful to carry out a more detailed assessment of whether the legal basis should be made clearer when it comes to implementation of MLC standard A2.2 paragraph 7 on wages, etc., at the same time as a proposal is made for regulatory amendment for implementation of MLC standard A2.1 paragraph 7 on employment agreements.

3. Details on the legislation
Section 4 new second paragraph of the Regulations on employment and pay statement, etc. will apply regardless of whether the employee is held captive on board or off the ship.

3.1 MLC standard A2.1 paragraph 7 on employment agreements
In the opinion of the NMA, the amendments to the Convention pursuant to MLC standard A2.1 paragraph 7 on employment agreements require regulatory amendments because the Convention provides seafarers with a new employment legislation protection by determining that the employment agreement shall be valid during captivity as a result of piracy or armed robbery against ships. It is the wish of the NMA that this is specified in Norwegian legislation by including a new provision to the Ship Labour Act stating that the employment agreement is still valid if an employee who is working on a Norwegian ship or covered by the MLC is held captive on or off the ship as a result of acts of piracy or armed robbery against the ship, regardless of whether the date fixed for its expiry has passed or either party has given notice to suspend or terminate it before or during the captivity.

3.2 MLC standard A2.2 paragraph 7 on wages, etc.
In general, the NMA considers that it is the duty of the employer to pay wages, etc. for as long as the employment lasts, even if this is not further specified in Norwegian legislation. See the remarks to the comments from the Norwegian Bar Association regarding the need for regulatory amendments under point 2.2 above.

In addition to the payment of wages, the MLC standard 2.2 paragraph 7 shall secure the payment of entitlements under the employment agreement, relevant collective bargaining agreement or applicable national laws. It is set out in section 4-2 of the Ship Labour Act that salary shall be paid at least once a month, and that any requirement for a monthly bank transfer of all or part of the employees' due amount to members of their household or others should still be done by the employer. The other relevant rights in MLC standard A2.2 paragraph 7 are covered by the Ship Labour Act section 2-2, cf. section 2-4. It is set out in section 2-2 of the Ship Labour Act that the employer shall ensure that provisions laid down in and pursuant to this Act and the employment agreement are complied with, except in those cases where the company is required to ensure compliance, cf. the first paragraph. The employer is responsible with regard to his or her own employees for ensuring that their financial requirements and rights as set out in the employment agreement and in provisions laid down in and pursuant to this Act are met, cf. the second paragraph. The general duties and liabilities of the company, including joint and several liability, are set out in section 2-4 of the Ship Labour Act.

To provide user-friendly legislation, both to employees, employers and companies, the NMA has laid down the details of the Convention on the payment of salary in MCL standard A2.2 paragraph 7 in the Regulations on employment and pay statement, etc. section 4 new second paragraph.

Section 4 new second paragraph (a) sets out that wages shall continue to be paid to the employee during the entire period of captivity. The same applies to payments to designated persons pursuant to the Ship Labour Act section 4-2 third paragraph.

Section 4 new second paragraph (b) first sentence sets out that when the employment agreement is not terminated upon release from captivity, salary shall continue to be paid until the employment may be terminated after returning home. This will apply to employment agreements without expiry dates or that are not expired. The second sentence sets out that if the expiry date of a limited employment agreement is exceeded during the captivity or before returning home, wages shall continue to be paid until the employee has been able to travel home.

Section 4 new second paragraph (c) sets out that wages shall continue to be paid to the employee until the date of death, if the employee dies during the period of captivity."Date of death" is the date of medical certification of death pursuant to Act of 2 July 1999 No. 64 relating to Health Personnel etc., decree of presumption of death pursuant to Act of 12 May 2015 No. 27 on missing persons (only available in Norwegian, or similar legislation in the employee's country. This means that the general legislation for determination of date of death will decide the cut-off time for date of death pursuant to subparagraph c.

Section 4 new second paragraph (d) sets out the entitlement to free repatriation after being released from captivity.

3.3 MLC guideline B2.5.1 on the entitlement to free transportation home

Amendments have also been adopted for MLC guideline B2.5.1 on the entitlement to free transportation home. Unlike the articles, rules and standards of MLC, the guidelines are non-binding. Due account should, however, be taken of the MLC guidelines when implementing the Convention's corresponding standards. The amendment to guideline B2.5.1 clarifies that the entitlement to transportation home should remain during the period of captivity, even if the entitlement to transportation home is not plead in due time as defined by national legislation or collective bargaining agreements. Section 4-6 of the Ship Labour Act therefore does not set out a limit for pleading transportation home. It has therefore not been necessary to amend Norwegian legislation as a result of guideline B2.5.1 of the MLC, saying that the entitlement to repatriation should not lapse during the period of captivation.

4. Administrative and financial implications

4.1 Private companies

In 2019, 874 Norwegian ships had a valid MLC certificate. See MLC 2006 Annual report 2019. If MLC standard A2.1 paragraph 7 is implemented in the Ship Labour Act for Norwegian ships covered by the MLC, the amendment to the Regulations will also be limited to these ships.

Very few employees on Norwegian ships have been held captive as a result of an act of piracy or armed robbery against ships. If this trend continues, the economic burden on shipping companies and other employers will remain small.

4.2 Employees on Norwegian ships

A clear regulation of seafarers' entitlements while being held captive as a result of an act of piracy or armed robbery against ships, and the possibility to enforce these entitlements, are considered important for seafarers who are at a risk of such incidents. Statements from the international seafarers' group during the third meeting of the Special Tripartite Committee for MLC, indicated that the seafarers' organisations would like amendments to national legislation.
It was also important to them for seafarers' entitlements to be set out in detail to prevent issues occurring in practice. See the report from the meeting.

4.3 Employers with employees on Norwegian ships

A shipping company that hires employees to work on Norwegian ships will be included in the definition of employer as described in
the Ship Labour Act, cf. section 2-1 of the Ship Labour Act. Employers other than shipping companies can be employment agencies who hire and supply seafarers to Norwegian-flagged ships. If employers have not continued to pay wages to employees during captivity as a result of acts of piracy or armed robbery in the past, the clarification of this duty could have economic consequences for them. Reference is also made to 4.4 below.

4.4 Shipping companies with Norwegian ships

If the employer is not the company, the company has a duty to see to that provisions laid down in and pursuant to the Ship Labour Act or in the employment agreement are complied with, with regard to employees working on board the ship, cf. section 2-4 first paragraph of the Ship Labour Act, and the company has economic and joint and several liability pursuant to section 2-4 fourth paragraph of the Ship Labour Act. If the company has covered the employee's claim for salary, etc., the company shall succeed to the employee's rights by subrogation with such claims, cf. section 4-8 of the Ship Labour Act.

During the third meeting of Special Tripartite Committee of the MLC, the international ship owners' group stated that one interpretation of MLC means that the duty to pay salary during captivity as a result of acts of piracy or armed robbery of ships was already a Convention requirement, that is before the amendments to the Convention of 2018 were adopted. See the report from the meeting. If the company already have the duties set out in the MLC amendments of 2018, the economic burden will not grow as a consequence of the proposed amendment to the Regulations.

The NMA in principle agrees that the duty to pay salary pursuant to the current legislation remains during captivity for as long as the employment continues. The proposed amendments to the Regulations only make this duty clearer. In principle, the companies' expenses should not increase due to the proposed regulatory amendments.

The amendments to the Convention will not be a part of the MLC certification of ships, so that the attachments that are an integrated part of the MLC certificate (Declaration of Maritime Labour Compliance parts 1 and 2) should not be amended when the new requirements enter into force. This was settled during the negotiations of the amendments to the Convention in the third meeting of the Special Tripartite Committee of the MLC. This means that unnecessary administrative burdens will be avoided both for companies with MLC certified ships and for the authorities.

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Norwegian Maritime Authority

4.5 The authorities

An implementation of MLC standard A2.2 paragraph 7 on wages, etc. by Regulations involves use of resources for the NMA in the form of regulatory work and associated efforts.

Lars Alvestad (by authority)
Acting Director General of Navigation and Shipping

Bjørn Egil Pedersen
Head of Department

This document has been electronically approved, and therefore does not contain handwritten signatures.

Attachment:

- Amendments to the Regulations on employment agreement and pay statement, etc.
- Consultative statements