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The scope of application of the Ship Labour Act

General

This Circular provides guidance to the Regulations of 19 August 2013 on the scope of application of the Ship Labour Act (Act of 21 June 2013 No. 102), cf. the Ship Labour Act and the Regulations of 19 August 2013 No. 990 on the scope of application of the Act. The Circular is a continuation of guidance Circular RSV 04-2013 dated 19 August 2013 on the scope of application of the Ship Labour Act. There are no changes to the content of the Circular.

This Circular sets up the elements of judgement the employee and the employer must make when deciding which employment protection legislation shall apply, in addition to some specific indications. The Norwegian Maritime Authority emphasises that this guidance is not intended to be an exhaustive static document, but rather a guidance that will be updated as necessary.

The Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act) shall in principle apply in its entirety to "employees on Norwegian ships", with the exception of persons referred to in section 1-2 second paragraph (a) and (b) of the Act. Further provisions on the application of the Act are laid down in the Regulations on the scope of application of the Ship Labour Act.

The Working Environment Act shall apply to all undertakings that engage employees, with the exception of "shipping, hunting and fishing", cf. the Working Environment Act section 1-2 second paragraph. It is the legislator's intention that an employee is either covered by the Ship Labour Act or the Working Environment Act, and that no employee shall experience a situation where no employment protection legislation applies. Furthermore, it is the intention of the legislator to avoid situations where both the Ship Labour Act and the Working Environment Act may be made applicable. In the interest of the employee, it is also desirable to avoid the use of other employment protection legislation while working on board for shorter periods.

In February 2006 the International Labour Organization (ILO) of the UN adopted a new convention for seafarers' working and living conditions. The convention was named the Maritime Labour Convention, 2006 (hereafter referred to as the MLC, 2006). Norway ratified the Convention in 2009. The MLC applies to any person working on board "in any capacity". The term also includes independent contractors. This broad approach allows the MLC to fully or partially grant exemptions from the requirements to categories of persons by leaving it to the flag State to provide a more precise definition of the term "seafarer" under certain specific conditions, cf. MLC Article II, paragraph 3 concerning the right to grant exemptions to certain categories of

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persons, and ILO Resolution No. VII of 2006, which provides guidance on the criteria that should be applied for such exemptions. The determining factors will be whether the person concerned is involved in the maritime operation of the ship, the duration of the work and where the main workplace (ashore or at sea) of the person concerned is. The question shall be determined by the flag State after consultation with the two sides of industry, and in Norway this was done in connection with the implementation of the MLC. Following these consultations, certain categories are now exempted from the MLC. However, these categories are covered by equivalent Norwegian legislation. They are also not exempted from the Ship Safety and Security Act, which implements large parts of the MLC.

Persons to whom the Ship Labour Act shall not apply – section 1 of the Regulations on the scope of application of the Ship Labour Act

Any person working on board while the ship or mobile offshore unit is in port

The provision of subparagraph a) repeats section 1-2 (a) of the Ship Labour Act, which establishes that the Ship Labour Act does not apply to persons working on board while the ship is in port. The Ship Labour Act also not applies to persons who only work on board a mobile offshore unit while it is in port. Personnel typically covered by section 1 (a) are dock workers, but also other categories of personnel may be covered, for example persons performing drug testing while the ship or mobile offshore unit is in port. Cleaning personnel who are to perform work while the ship or mobile offshore unit is in port are also covered by section 1 (a) of the Regulations on the scope of application of the Ship Labour Act.

Personnel from the Norwegian Armed Forces

The Ship Labour Act shall not apply to persons serving on the Norwegian Armed Forces' vessels, cf. section 1-2 second paragraph (b) of the Ship Labour Act and section 1 (b) of the Regulations on the scope of application of the Ship Labour Act. Note that the Ship Labour Act applies to civilian personnel on board ships chartered by the Norwegian Armed Forces.

Persons who only carry out inspections on board

Persons who only carry out inspections on board are not covered by the Ship Labour Act, cf. section 1-2 second paragraph (b) of the Act and section 1 (c) of the Regulations on the scope of application of the Ship Labour Act. Such inspectors may include inspectors from public authorities or classification societies, or ship inspectors and operation inspectors from the shipping company. Section 1 (c) of the Regulations on the scope of application of the Ship Labour Act provides that these persons solely carry out inspections on board and don't carry out other work related to the operation of the ship.

Pilots

Pilots from the Norwegian Coastal Administration are covered by the Civil Servants Act and the Pilotage Act, and the Ship Labour Act shall not apply to these pilots. It is stipulated in the second paragraph of section 2 of the Regulations on the scope of application of the Ship Labour Act that only parts of the Ship Labour Act apply to persons covered by the Civil Servants Act. Section 1 (d) of the Regulations on the scope of application of the Ship Labour Act is a special rule that take precedence, which means that the pilot is not covered by the Ship Labour Act although parts of the Act are made applicable to civil servants in section 2 second paragraph. The Ship Labour Act shall also not apply to pilots who embark Norwegian ships abroad.

Persons covered by the Working Environment Act and who perform work on board for a shorter period of time

It is not unusual that employees who principally work onshore occasionally spend a short period working on a ship. This may for example be the case if there is a need for a repairer on board, a cleaner, a technician/specialist, company representative, contractor, etc., who perform work on board for a shorter period of time. The practice in accordance with the Seamen's Act was that shorter work on board did not affect which Act the employee concerned was covered by. This

practice will be continued in accordance with the Ship Labour Act, cf. section 1 (e) of the Regulations on the scope of application of the Ship Labour Act.

This provision continues section 1 paragraph 2 of the current Regulations on the scope of application of the Ship Labour Act, as well as the general principle that an employee's employment relationship should not be regulated by two different employment protection Acts. Furthermore, it is desirable to avoid that employees have to use other employment protection legislation while working on board for shorter periods.

It's hard to specify what "working on board for shorter periods" means. When determining whether persons who are covered by the Working Environment Act are considered to "work on board for a shorter period", different factors will be taken into account. Such factors may for instance be how long the person concerned has been on board, the purpose of the work, how frequently the person concerned has such short stays on board, and where the main workplace of the person concerned is located. Whether an employee has performed work on board other ships must also be taken into account when deciding what is to be considered as service on board for a shorter period. In other words, totality must be considered and individual assessments must be made. The weighting of these factors may also vary from case to case. Researchers who mainly work ashore and who sail on board as part of their research have, in principle, been covered by the Working Environment Act, although the voyage in some cases may be of longer duration. These Regulations are not intended to change this practice. Resolution No. VII also points to researchers as a category of persons who are not necessarily covered by the term "seafarer".

Cleaning personnel whose main workplace is on board the ship and who perform cleaning during voyages are covered by the Ship Labour Act, cf. the first paragraph of section 1-2 of the Act, even if they are employed by a cleaning contractor. If the work is mainly performed while the ship is berthed, but in exceptional circumstances is performed during a voyage, the decision may be based on section 1 (e) of the Regulations on the scope of application of the Ship Labour Act, provided that the person in question is covered by the Working Environment Act.

If an agreement is made to prolong the engagement beyond what was originally intended, so that the period on board no longer can be considered to be a short period, it is the employer's duty to ensure that the working relationship is established pursuant to the Ship Labour Act. The purpose is to avoid any doubts about whether the employee is covered by the Working Environment Act or the Ship Labour Act.

Persons to whom the Ship Labour Act apply in part – section 2 of the Regulations on the scope of application of the Ship Labour Act

Employees performing work which in its nature does not form part of the ship's ordinary operation
Employees performing work which in its nature does not form part of the ship's ordinary operation may be exempted from the application of the Ship Labour Act, cf. section 1-2 third paragraph (a) of the Act. In the preparatory work on the Ship Labour Act¹ project personnel on offshore vessels and certain capacities on tourist ships are mentioned as examples of employees who may be exempted from parts of the provisions of the Act. As mentioned, the MLC provides the opportunity to exempt persons if there is any doubt as to whether they should be considered seafarers in accordance with the Convention. Persons who are employed by other employers than the company, and who perform work which in its nature does not form part of the ship's ordinary operation, are not considered seafarers under the MLC. This is often the case on offshore vessels where such persons are the contractor's own employees. Such persons are therefore not covered by the joint and several liability pursuant to the third paragraph of section 2-4 of the Ship Labour Act, and are also not included in the ship's certification pursuant to chapter 12 of the Ship Labour Act.

¹ Prop. 115 L p. 184

In principal, all persons who are assigned tasks in the ship's muster list must be considered to have tasks related to the operation of the ship. Such persons will therefore not be covered by the exemption of the first paragraph of section 2 of the Regulations on the scope of application of the Ship Labour Act. Based on consultations with the two sides of industry, a list of persons who will be covered by the exemption of section 2 of the Regulations on the scope of application of the Ship Labour Act has been prepared.

The following project personnel on ships in the offshore industry are covered by the exemption of section 2 of the Regulations on the scope of application of the Ship Labour Act:

Table of occupational categories covered by the term "project personnel on ships in the offshore industry"

ROV personnel	Exempted only if the capacity is not a dual-purpose capacity (for example able seafarer /
Monitoring (data, scheduling)	Seismograph
Divers	
Catering for personnel who are not operational crew	Catering personnel who only cater for project personnel
Operation and installation manager	
Health/care	Health personnel who only care for project personnel
Technical maintenance	Maintenance of equipment which is not a part of the ship itself, and which is not related to the operation of the ship
Safety personnel	HES personnel that are monitoring and assuring the quality of the project but not related to the operation of the ship
Technicians, engineers	Technicians who perform mobilisation of equipment, such as DP equipment – DP consultants are included while DP operators
Training personnel	Instructors for equipment or software related to projects
Laboratory personnel	
Researchers	
Film personnel	Related to the project organisation

Furthermore, guest entertainers on board are covered by the first paragraph of section 2 of the Regulations on the scope of application of the Ship Labour Act.

Armed guards will also be covered by the first paragraph of section 2 of the Regulations on the scope of application of the Ship Labour Act, but such persons may also be covered by section 1 (e).

Different flag States have different approaches to how persons not performing ordinary maritime operational tasks are regulated and whether the MLC applies or not. This may create some challenges and potential conflicts between jurisdictions. For example when an employee, such as an offshore project assistant or an armed guard, is employed by a foreign employer on a Norwegian ship on a foreign shelf, where also the Working Environment Act does not apply when the work on board is of short duration. This raises questions concerning choice of law as well as protection issues. Any conflicts between the flag State rules and labour law in the employee's home country must, however, be settled specifically in each case.

Employees who are covered by the Civil Servants Act

In accordance with the second paragraph of section 2 of the Regulations on the scope of application of the Ship Labour Act parts of the Ship Labour Act do not apply to persons who are covered by the Civil Servants Act. Such persons may for instance be employees in the Norwegian Coastal Administration and the Norwegian Maritime Authority. The Civil Servants Act is considered a special law with regard to the Ship Labour Act, and the Civil Servants Act will take precedence in case of conflict.

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