



Marine Notice 17/2016
Supersedes 18/2014

Maximum period of shipboard service for seafarers

Purpose

This Marine Notice advises vessel owners, operators and seafarers of AMSA's approach to implementing the Maritime Labour Convention, 2006 (MLC, 2006) requirements for the maximum continuous period that a seafarer can serve on board a vessel without taking leave. It also outlines how these requirements will be enforced by AMSA during MLC, 2006 more detailed inspections.

Background

MLC, 2006 entered into force both in Australia and internationally on 20 August 2013. Since that time, AMSA has incorporated MLC, 2006 inspections within port State control (PSC) inspection regime.

AMSA inspectors continue to identify occurrences of continuous seafarer service periods extending well beyond 11 months. While AMSA has received complaints in relation to these occurrences, in some cases the crew members have subsequently agreed to additional service extensions. However, the AMSA inspectors have not always been comfortable that such service extensions have met the "mutual agreement" requirements of MLC, 2006 Regulation 2.1 – Seafarers' Employment Agreements.

MLC, 2006

The relevant sections of MLC, 2006, Regulation 2.4 – Entitlement to leave and Regulation 2.5 – Repatriation, which make reference to the maximum continuous period that a seafarer can serve on board a vessel without taking leave, are quoted below.

Regulation 2.4 – Entitlement to leave

Purpose: To ensure that seafarers have adequate leave

1. *Each Member shall require that seafarers employed on ships that fly its flag are given paid annual leave under appropriate conditions, in accordance with the provisions in the Code.*
2. *Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions.*

Standard A2.4

1. *Each Member shall adopt laws and regulations determining the minimum standards for annual leave for seafarers serving on ships that fly its flag, taking proper account of the special needs of seafarers with respect to such leave.*
2. *Subject to any collective agreement or laws or regulations providing for an appropriate method of calculation that takes account of the special needs of seafarers in this respect, the annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment. The manner in which the length of service is calculated shall be determined by the competent authority or through the appropriate machinery in each country. Justified absences from work shall not be considered as annual leave.*
3. *Any agreement to forgo the minimum annual leave with pay prescribed in this Standard, except in cases provided for by the competent authority, shall be prohibited.*

Standard A2.5.2

2. *Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargain agreements, prescribing:*
 - (a) *the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;*

- (b) *the maximum duration of service periods on board following which a seafarer is entitled to repatriation – such periods to be less than 12 months; and*
- (c) *the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.*

Analysis

Standard A2.5.2(b) states that the maximum duration of service on board before a seafarer is entitled to repatriation must be less than 12 months. This does not necessarily mean that seafarers must be repatriated, but rather that they are entitled to repatriation.

However, Regulation 2.4 clearly states that seafarers must be given paid annual leave and Standard A2.4 clearly states that annual leave shall be calculated at a minimum of 2.5 days per month of employment, which equates to a minimum of 30 days per year. Standard A2.4.3 also states that any agreement to forgo the minimum annual leave with pay prescribed in that standard, except in cases provided for by the competent authority, shall be prohibited.

Therefore, the MLC, 2006 requirements can be read as indicating that the maximum continuous period that a seafarer should serve on board a vessel without leave, is 11 months.

This interpretation has been confirmed with the ILO.

The ILO Standards Department, MLC, 2006 Frequently Asked Questions at <http://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/fag/lang-en/index.htm> Fourth edition (revised) 2015 - Question C2.4.c. (Page 43), also states:

Does the requirement for paid annual leave mean that seafarers cannot be on board for more than 11 months at a time?

Yes. The concept of paid annual leave is assumed to be an uninterrupted period (Guideline B.2.4.3, paragraph 2) that is to be taken annually and therefore the maximum period for service on board a ship or ships without leave would be 11 months [see question C2.1.j. *Does the MLC, 2006 set a maximum limit on the length of an employment agreement? Can I have an SEA for a period longer than 12 months?*]. This is

also linked to the requirement in Standard A2.5, paragraph 2(b), regarding the entitlement to repatriation in a period of less than 12 months [see question C2.5.a. *What is the entitlement to repatriation?*] [see question C2.5.g. *Can a seafarer decide not to exercise a right to be repatriated when that entitlement arises?*].

Compliance and enforcement

On this basis, when a complaint is received or during a more detailed inspection, AMSA inspectors will verify compliance with Regulation 2.4, ensuring seafarers serve no longer than 11 months continuously on board a vessel. This will include verification that any service extensions do not result in seafarers serving on board for more than 11 months.

Where inspectors identify that a seafarer has served on board a vessel for more than 11 months, but less than 13 months and this occurred with the full consent of the seafarer and in accordance with any flag State requirements, the non-compliance will be brought to the attention of the master and the vessel owner, with an expectation that the non-compliance will be rectified at the earliest possible opportunity. Due consideration to flag States policy in this regard may be taken into account.

Where inspectors identify that a seafarer has served on board a vessel for more than 13 months, or in cases of systemic breaches, the non-compliance will be managed in accordance with MLC, 2006 Standard A5.2.1.6. This requires the inspector to take steps to ensure that the ship shall not proceed to sea until the non-conformities have been rectified, or until the inspector has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner.

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