



Marine Notice 18/2014

Maximum period of shipboard service for seafarers

Purpose

This Marine Notice aims to advise vessel owners, operators, masters and crews of AMSA's approach to implementing the Maritime Labour Convention, 2006 (MLC, 2006) requirements in relation to 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 during AMSA port State control (PSC) 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 its structured PSC inspection regime.

Recently, AMSA inspectors have identified occurrences of 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

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

Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining 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 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 is 11 months.

This interpretation is further supported by the ILO Standards Department, MLC, 2006 Frequently Asked Questions (FAQ), Third edition (revised) 2014 - Question C2.4.c. (Page 37), which states: *Does this mean that the maximum period that a seafarer can serve on board a ship is 11 months before taking one month of paid annual leave?*

Yes. The concept of paid annual leave implies that it is to be taken annually and therefore the maximum period for service on board a ship without leave would be 11 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.
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Compliance and enforcement

Following the MLC, 2006 requirements and the ILO clarification, AMSA inspectors will continue to verify compliance with the maximum 11 month shipboard service period for seafarers, including verification that any service extensions do not exceed 11 months.

In recognition that the above interpretation is not being applied universally, for a period of six months from the release date of this Marine Notice, AMSA will bring such issues of non-compliance to the attention of the vessel owner, with an expectation that non-compliance will be rectified at the earliest possible opportunity.

However, extreme or systemic breaches will be managed in accord with the requirements of MLC, 2006 Standard A5.2.1.6.

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