

Risks Flying on Ships not MLC Ratified

Summary

This notice sets out to raise awareness amongst seafarers to the Maritime Labour Convention, 2006 (MLC) and how this will impact on seafarers' working lives. It aims to inform them of their assured level of protection, their rights and entitlements under the MLC, and will enable seafarers to make an informed decision whether they choose to work on a ship registered with a country which has not ratified the MLC.

1. Introduction

1.1 Standard A1.4.8 of the maritime labour convention, 2006 (MLC) places an obligation on ratifying states to advise, as far as practicable, its nationals of the possible problems of signing on a ship flying the flag of a State which has not ratified the MLC.

1.2 The MLC provides protection for seafarers because:

- a) It sets out clearly the responsibilities of shipowners to their seafarers. The shipowner is ultimately responsible for meeting MLC requirements, even when the seafarer is employed by/recruited through a recruitment and placement service.
- b) Documentation is required which makes clear the standards of living and working conditions which apply on board
- c) It requires flag States to carry out a maritime labour inspection twice in every five-year period, to ensure those living and working conditions are being fully met by the shipowner, and that where complaints are made by the seafarers, steps are taken to ensure they are investigated and resolved.

1.3 The MLC inspection covers all aspects of the seafarer's living and working conditions as defined by the MLC. Following a successful inspection the ship may be issued with a certificate valid for five years.

1.4 If a seafarer works on a ship which is registered with a flag state which has not ratified the MLC, the seafarer might not enjoy the same level of protection provided for by the MLC. Instead the flag State may only be subject to a selected patchwork of conventions (or none at all) which the MLC replaces and updates (Preamble page 1 and Article I(1) of the MLC). Protection for the seafarer would not therefore be guaranteed.

1.5 However, some of the protections provided by the MLC may be provided under other international conventions, if the flag State of the vessel is a signatory to those conventions. The International Convention on Standards of Training, Certification and Watchkeeping (STCW), adopted by the International Maritime Organization (IMO) contains provisions relating to medical examinations and certification, training and certification and minimum rest periods. A vessel that meets the STCW standards in these areas will also meet the minimum standards required under the MLC. In addition, the International Code for the Safe Management of Ships and Pollution Prevention (ISM Code) requires ship operators to have in place safety management systems which are subject to annual flag state audits. These may provide for standards of health and safety protection and accident prevention that conform to the minimum standards of the MLC.

2. Recruitment and placement

2.1 There would be no requirement for the shipowner to use a recruitment agency meeting MLC standards. As a result this might mean the seafarer is charged for services which it would not be permitted to charge for under the MLC. Seafarer recruitment and placement services come under the jurisdiction of the state in which they are located. In addition, there would be no requirement to use a recruitment and placement agency which: prohibits the use of lists intended to prevent or deter seafarers from gaining employment (A1.4, paragraph 5(a)); ensures that seafarers can examine their employment agreements before and after they are signed (A1.4, paragraph 5(c)(ii)); verify that seafarers recruited and placed by them are qualified (which has implications for safety) (A1.4, paragraph 5(c)(iii)). Although some flag states' national legislation may regulate recruitment and placement services, responsibility for ensuring a ship complies with the MLC lies with the shipowner.

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3. Seafarer employment agreement (SEA)

3.1 The seafarer might not enjoy the benefit of a clear, individual, Seafarer Employment Agreement (SEA) which sets out the important aspects of the seafarer's contract of employment. This includes:

- a) Seafarer's employment agreement is accessible for review by officers of competent authorities including those in ports (A2.1, paragraph 1(d))
- b) Collective bargaining agreement (s) incorporated into the seafarers employment agreement is/are available on board (A2.1, paragraph 2))
- c) A requirement that the seafarers employment agreement contains particulars of applicable health and social security provisions (A2.1, paragraph 4(h))
- d) The seafarers entitlement to repatriation (A2.1, paragraph 4(i))
- e) Important protections concerning the minimum notice periods, including termination by the seafarer on compassionate grounds (A2.1, paragraph 4(5) and (6)).

3.2 The seafarer also has the right to review their SEA before signing it, and must be given the opportunity to review it.

4. Wages

4.1 The seafarer might not enjoy the protection of the convention's standards on the payment of wages at the rate set out in the SEA, the regularity of payments and statements, the limitations on administrative charges and provision for allotments as described in the MLC. (An allotment is a method by which shipowners provide seafarers with a means of transmitting all or part of their earnings in due time to their families by bank transfers or similar means and any charge for this service should be reasonable (A2.2 paragraph 3-5). The provision of such a facility is mandatory under the MLC.

5. Hours of work

5.1 By working on a non-MLC ship, there is a danger that the seafarer might be required to work excessive hours and may not receive the rest and/or leave to which they are entitled. This can result in fatigue, compromising the safety of the vessel. The MLC sets out maximum hours of work and minimum hours of rest. (A2.3, paragraph 5).

5.2 Under the MLC, the maximum hours of work shall not exceed:

- a) 14 hours in any 24-hour period; and
- b) 72 hours in any seven-day period

5.3 Under the MLC, the minimum amount of rest shall be:

- a) Ten hours in any 24-hour period; and
- b) 77 hours in any seven-day period

5.4 A non-MLC compliant ship might not provide for the monitoring of hours of work with the provision of an endorsed record of working time to be provided to the seafarer (A2.3 paragraph 12).

5.5 Under the MLC, the annual leave entitlement with pay is a minimum of two and a half calendar days per month of employment. Justified absences from work shall not be considered as annual leave (A2.4, paragraph 2).

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6. Repatriation

6.1 The seafarer might not be repatriated at the shipowner's expense in accordance with the standards laid down in the MLC.

6.2 The MLC protects every seafarer by ensuring that even if the shipowner fails to repatriate the seafarer, the competent authority of the Member shall do so at no cost to the seafarer, or failing that, the port state (A2.5.1, paragraph 5(a)).

6.3 Under the MLC, a seafarer is entitled to be repatriated at no cost to them (A2.5.1, paragraph 1), for example if (there are exceptions in certain circumstances):

- a) Their employment agreement expires when they are abroad
- b) It is terminated by the shipowner or
- c) The seafarer for justified reasons can no longer carry out their duties

7. Compensation in the event of injury or loss of employment arising from the loss or foundering of the ship

7.1 The seafarer might not be entitled to compensation in the event of injury, loss or unemployment, following the loss or foundering of the ship, which the shipowner is obliged to provide under the MLC. Detailed provisions of this are prescribed by a ratifying flag State.

8. Crew accommodation

8.1 The seafarer might not enjoy the standards of crew accommodation and recreational facilities prescribed by the MLC. In particular, the aspects of crew accommodation covered by the MLC are the size of rooms and other accommodation (including storage) spaces, heating and ventilation, noise and vibration and other ambient factors, sanitary facilities, lighting and hospital accommodation (A3.1, paragraph 4(a)-(f)).

9. Food and drink

9.1 The seafarer might not be provided with food and drinking water, prepared hygienically by suitably qualified persons, to the standards required under the MLC. The MLC requires that catering facilities onboard should permit seafarers to receive adequate, varied and nutritious meals prepared and served in hygienic conditions (A3.2, paragraph 2(b)).

10. Medical care

10.1 The seafarer might not be given access to prompt and adequate medical care on board ship and ashore which the shipowner is obliged to provide under the MLC, which entitles seafarers to visit a qualified medical doctor or dentist without delay in ports of call at no cost to themselves (A4.1, paragraph 1(c)).

11. Shipowner liability for sickness, injury or death

11.1 The seafarer might not be protected by the shipowner from the consequences of sickness, injury and death occurring in connection with their employment. The MLC provides for minimum standards of compensation and underpinning assurance of compensation in the event of death or long term disability due to occupational injury, in that it requires that shipowners are obliged to: bear the costs of medical care, treatment, medicines and board and lodgings until the seafarer has recovered or until the sickness has been declared to be permanent for at least a period of 16 weeks, should the illness persist to that extent (A.4.2.1, paragraph 2); pay wages as long as the sick or injured seafarer remains on board or until repatriation (A.4.2.1, paragraph 3(a)). The MLC requires that shipowners must also have financial security for this purpose, against which the seafarer or their representative may make a direct claim (A.4.2.1, paragraph 1).

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12. Declaration of maritime labour compliance (DMLC)

12.1 The seafarer might not enjoy the standard of health and safety protection and accident prevention which a shipowner operating under the MLC would be obliged to provide and specify in the declaration of maritime labour compliance (DMLC).

13. Seafarer complaints

13.1 The ship might not have a procedure in place for onboard complaints meeting the MLC standards, and the flag State may not have a system for investigating complaints about living and working conditions raised by seafarers.

13.2 For onboard complaints, the MLC provides that the seafarer has the right to be accompanied or represented, and that there must be safeguards against victimisation for filing complaints (A5.1.5, paragraph 3). Furthermore, in making an onshore complaint to a ratifying port State, the latter will attempt to resolve it at ship board level and where unsuccessful will notify the flag State and seek advice to resolve the matter (A5.2.2, paragraph 3 and 5).

14. Seafarer abandonment

14.1 The seafarer might not be able to access a financial security system for maintenance, repatriation and unpaid wages in the case of seafarer abandonment until the seafarer's arrival at home (A2.5.2).

14.2 The MLC requires a shipowner to have a financial security system which will provide essential needs including adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges. The financial security system will also cover up to four months of wages and other entitlements under the employment contract (A2.5.2).

15. Seafarer affected by piracy or armed robbery

15.1 The seafarer might not be entitled to receive their wages in cases they are held captive on or off the ship as a result of acts of piracy or armed robbery against ships. The MLC requires shipowners to continue to pay wages and other entitlements under the employment agreement until the seafarer is released and duly repatriated.

15.2 The seafarer employment agreement shall also continue to have effect while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, regardless of whether the date fixed for its expiry has passed or either party has given notice to suspend or terminate it. This ensures the other protections provided by the seafarer employment agreement continue to have effect (A2.1 paragraph 7).

16. Further Information

For the list with ratified countries of Maritime Labour Convention, 2006, visit the website: www.ilo.org/dyn/normlex/en and Select the options: NORMLEX Home | Ratification by conventions | MLC, 2006 - Maritime Labour Convention, 2006 (MLC, 2006)
https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO::P11300_INSTRUMENT_ID:312331

To see a full copy of the Maritime Labour Convention 2006 and find all related information and updates, visit the website: www.ilo.org and Select the options: ILO Home | Labour standards | Maritime Labour Convention, 2006
<https://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm>

United Kingdom: To see how the Maritime Labour Convention, 2006 has been implemented by the UK, visit the website: www.gov.uk/mca
<https://www.gov.uk/government/collections/implementing-the-maritime-labour-convention-2006>