

INFORMATION BULLETIN No. 142

Seafarer Employment Agreement and Article of Agreement

Guidance and Instructions for Bahamas Recognised Organisations, Bahamas Approved Nautical Inspectors, Ship Owners, Managers, Masters, Seafarers and Seafarers Recruitment and Placement Providers

1. Purpose

- 1.1 This Bulletin outlines the Bahamas' terms and conditions for seafarers to work on a ship under the Maritime Labour Convention 2006 (MLC 2006), having due regard to seafarers rights to fair terms of employment, decent working and living conditions, elimination of fatigue amongst seafarers and the safety of life, ship and cargo and protection of the environment.
- 1.2 This Bulletin shall be read in conjunction with BMA Information Bulletins no. 1, 127, 144 and 148.

2. Application

This Bulletin applies to any person who is employed or engaged or works in any capacity on board Bahamian registered ships to which MLC 2006 applies, except as provided otherwise in BMA Information Bulletin no. 127.

3. DEFINITIONS:

The following definitions apply for the purposes of this Bulletin.

- i. *Basic pay or wages* is the pay, however composed, for normal hours of work; it does not include payments for overtime worked, bonuses, allowances, paid leave or any other additional remuneration.
- ii. *Consolidated wage* is the wage or salary which includes the basic pay and other pay-related benefits; a consolidated wage may include compensation for all overtime hours worked and all other pay-related benefits, or it may include only certain benefits in a partial consolidation.
- iii. *Hours of Rest* is deemed to be any period outside the hours of work.
- iv. *Hours of Work* is deemed to be any period when the seafarer is engaged in any business of the ship or is required to do work on account of the ship.
- v. *Overtime*: is deemed to be any period worked in excess of the normal hours of work.
- vi. *Seafarers Employment Agreement* includes both a contract of employment and the Articles of Agreement.
- vii. *Shipowner* means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with MLC 2006, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.
- viii. *Master* shall be deemed to be the person designated by the Company as having overall responsibility for the ship.

4. General requirements for Seafarers Employment Agreement

- 4.1 The shipowner shall ensure that every seafarer whom he employs or engages shall enter into a seafarer employment agreement.

- 4.2 The seafarer employment agreement shall be signed by both the seafarer and the shipowner or a representative of the shipowner. In the event that the seafarer is not directly employed by the shipowner, there shall be documentary evidence of contractual or similar arrangements to provide decent working and living conditions on board ship.
- 4.3 The shipowner and seafarer concerned shall each have a signed original of the seafarers' employment agreement. The BMA may accept an electronic copy of the sea, that has been signed by the shipowner and seafarer, being retained onboard by the shipowner.
- 4.4 Seafarers shall be given an opportunity to examine and seek advice on the agreement, including any collective bargaining agreement that forms part of it, before signing, as well as other facilities as necessary to ensure that they have freely entered into an agreement with sufficient understanding of their rights and responsibilities. The agreement may include a provision stating that the seafarer has the opportunity to examine and seek advice on the agreement before signing
- 4.5 The shipowner shall ensure that clear information as to conditions of seafarers employment can be easily obtained on board by seafarers, including the ships master, and that such information including a copy of the seafarer's employment agreement and any applicable Collective Bargaining Agreement (CBA) that forms all or part of it, is also accessible for review by a Bahamas duly authorised official including an authorized Recognized Organization ("RO") inspector and duly authorized officers in the ports to be visited.
- 4.6 Seafarers, on completing their employment onboard, shall be given a document containing a record of their employment on board the ship. The document shall not contain any statement as to the quality of the seafarers' work or as to their wages.
- 4.7 Where a CBA forms all or part of the SEA, a copy of the applicable CBA shall be available on board for seafarers to review their conditions of employment. The BMA may accept an electronic copy being maintained provided that it is accessible by all seafarers and records any agreed changes.

- 4.8 For ships engaged in international voyages, where the language of the SEA and any applicable CBA is not in English, then a copy of the standard form of the seafarers' employment agreement and those portions of the applicable CBA that are subject to a port state inspection, shall also be available in English.
- 4.9 The minimum notice to be given by seafarers or shipowners for early termination of the seafarers' employment agreement shall not be less than 7 days. In accordance with Bahamas Law, a notice period shorter than the minimum may be given for termination of the seafarers' employment agreement at a shorter notice or without notice in exceptional circumstances. Seafarers shall have the opportunity to terminate the seafarers' employment agreement without penalty at a shorter notice or without notice for valid compassionate or urgent reasons.
- 4.10 A seafarers' employment agreement shall be set out or referred to in a clearly written legally enforceable document and shall include the contract of employment and may incorporate any applicable CBA.
- 4.11 The seafarers' employment agreement shall contain at least the following particulars:
- a) the seafarer's full name, date of birth or age, and birthplace;
 - b) the shipowner's name and address;
 - c) the place where and date when the seafarers' employment agreement is entered into;
 - d) the capacity in which the seafarer is to be employed;
 - e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them;
 - f) the amount of paid annual leave, or where applicable, the formula used for calculating it;
 - g) the termination of the agreement and the conditions thereof, including:
 - i) if the agreement is for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;
 - ii) If the agreement is for a definite period, the date fixed for its expiry; and

- iii) If the agreement is for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged.
 - h) The health and social security protection benefits to be provided to the seafarer by the shipowner (See BMA Information Bulletin no. 148),
 - i) The seafarer's entitlement to repatriation,
 - j) Reference to the CBA, if applicable, and
 - k) Any other particulars required by Bahamian law.
- 4.12 The Seafarer Employment Agreement shall be retained by the shipowner for a period of seven (7) years after the expiry of the agreement.

5. Wages and payment of wages

- 5.1 Seafarers shall be paid in full at no greater than monthly intervals and in accordance with their employment agreements.
- 5.2 Seafarers shall be given a monthly account of the payments due and the amounts paid, including wages, any additional payments, and the rate of exchange used if applicable.
- 5.3 Shipowners shall provide the seafarers with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries.
- 5.4 The means specified in 5.3 above maybe established by the seafarer at the time of their entering employment or during it, if they so desire. The transfer of all or a proportion of the seafarer's wages for remittance maybe by bank transfers or similar means at regular intervals, in due time and directly to the person(s) nominated by the seafarers.
- 5.5 Any charges directed to the seafarer for such transmission of wages, including the currency exchange rates shall be at the prevailing market rate or the official published rate and shall not be unfavourable to the seafarer.

- 5.6 Seafarers are entitled to receive, on demand, from the master, wages actually earned, less any valid deductions, and payable at every intermediate port where the vessel shall load or discharge cargo before the voyage is ended, but not more than once in any fifteen-day period.
- 5.7 The normal working hours' standard for seafarers shall be based on an eight-hour day with one day of rest per week and rest on public holidays, BMA Information Bulletin no. 1 outlines the annual Bahamas public holidays which are applicable to Bahamian registered ships. Any applicable collective agreement may determine seafarers' normal working hours on a basis no less favourable than this.
- 5.8 Hours worked in excess of the normal working hours shall be considered overtime. The rate of compensation for overtime should not be less than one and one-quarter times the basic wage per hour.
- 5.9 Overtime records shall be maintained at least monthly on board and endorsed by the seafarer. The records of overtime shall be consistent with the record of rest hours.
- 5.10 In the absence of any agreement to the contrary, the shipowner or the Master of the ship shall pay to every seafarer their wages within two days after the termination of the Articles, or at the time when the seafarer is discharged, whichever is first, and provide the seafarer a full and true account of their wages due and all deductions therein.
- 5.11 Where the seafarer unlawfully refuses or neglects to work when required, the seafarer shall not be entitled to wages for that period.
- 5.12 Where the seafarer is by reason of sickness incapable of performing his assigned duty and it is proved that such illness has been caused by the seafarer own wilful act or default or is a sickness or illness concealed at the time of employment, the seafarer shall not be entitled to wages for the time during which the seafarer is by reason of the sickness, incapable of performing the assigned duty.

6. Hours of work and hours of rest

- 6.1 The Shipowner shall ensure that requirements relating to hours of work and hours of rest shall be as specified in BMA Information Bulletin no. 144.

- 6.2 The shipowner shall ensure that seafarers receive a copy of their records as referred to in Section 6.1 above, endorsed by the Master, or a person authorized by the Master, and by the seafarer at an interval not exceeding one month.
- 6.3 The BMA may authorize or register CBA permitting exceptions to the hours of work or hours of rest requirements at its discretion in certain exceptional circumstances that may include taking account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.

7. Entitlement to leave

- 7.1 Whenever and wherever possible, all seafarers shall be granted shore leave to benefit their health and wellbeing and with the operational requirements of their positions.
- 7.2 Any agreement that requires the seafarers to agree to forego the minimum annual leave with pay will not be allowed, except in cases provided by the BMA.
- 7.3 All seafarers shall receive annual leave with pay calculated on the basis of a minimum of 2.5 calendar days per month of employment. Justified absences from work shall not be considered as annual leave.
- 7.4 Any absence from work to attend an approved maritime vocational training course or for such reasons as illness or injury or for maternity should be counted as part of the period of service. The following should not be counted as part of annual leave with pay:
- a) public and customary holidays recognized as such in the Bahamas (BMA Information Bulletin no. 1), whether or not these fall during the annual leave with pay;
 - b) periods of incapacity for work resulting from illness or injury or from maternity;
 - c) temporary shore leave granted to a seafarer while under an employment agreement; and
 - d) compensatory leave of any kind.
- 7.5 A seafarer taking annual leave should be recalled only in cases of extreme emergency and with the seafarers consent.

7.6 The level of pay during annual leave should be at the seafarer's normal level of pay provided for in the applicable seafarers' agreement. Where the employment period is less than one year or in the event of termination of employment, entitlement to pay should be calculated on a pro-rata basis.

8. Repatriation

8.1.1 Shipowners shall maintain financial security to ensure that seafarers are duly repatriated.

8.1.2 The financial security system may be in the form of, inter alia, social security schemes, insurance, a national fund, or other forms of financial security.

8.1.3 The shipowner shall ensure that the financial security system provides for the expenses relating to the repatriation of the seafarer. The expenses and any entitlements are to be met without costs to the seafarer, as specified in this Bulletin and Merchant Shipping (Maritime Labour Convention) 2012 Regulations.

8.1.4 Any document(s) of evidence of financial security system should include:

- .1 name of the ship;
- .2 port of registry of the ship;
- .3 IMO number or call sign of the ship;
- .4 name of the provider of the financial security;
- .5 place of business of the provider of the financial security;
- .6 name of the shipowner;
- .7 period of validity of the financial security.

8.2 Seafarers shall not be required to serve on board a ship for a period exceeding 12 months, before being entitled to repatriation.

- 8.3 Seafarers shall be entitled to repatriation at no cost to themselves subject to the following conditions:
- (a) if the seafarers' employment agreement expires while they are abroad;
 - (b) in the following cases where the seafarer employment agreement is terminated:
 - (i) in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;
 - (ii) in the event of shipwreck;
 - (iii) in the event of shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason;
 - (iv) in the event of a ship being bound for a war zone, as defined by national laws or regulations or seafarers' employment agreements, to which the seafarer does not consent to go; and
 - (v) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason.
- 8.4 The shipowner is responsible for repatriation by appropriate and expeditious means. The destinations may include the countries with which the seafarers have a substantial connection including:
- (a) the place at which the seafarer agreed to enter into the engagement;
 - (b) the place stipulated by collective agreement;
 - (c) the seafarer's country of residence; or
 - (d) such other place as may be mutually agreed at the time of engagement.
- 8.5 Time spent awaiting repatriation and repatriation travel time shall not be deducted from paid leave accrued to the seafarers.

- 8.6 The shipowner shall not require that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment.
- 8.7 The shipowner shall not recover the cost of repatriation from the seafarers' wages except where the seafarer has been discharged after being found, in accordance with Bahamian law or applicable CBA, to be in serious default of the seafarer's employment obligation in the seafarers' employment agreement.
- 8.8 If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated, the BMA will arrange for repatriation of the seafarers concerned. The costs incurred in repatriating seafarers will be recoverable from the shipowner by the BMA.
- 8.9 Where the BMA arranges for the seafarers repatriation as specified in Section 8.8 above, the expenses of repatriation will in no case be a charge upon the seafarers, except as provided in accordance with Bahamian law where the seafarer is found to be in serious default of the seafarer's employment obligation in the seafarer's employment agreement.
- 8.10 Bahamian provisions regarding repatriation shall be made available to seafarers in English or the appropriate working language of the seafarer.
- 8.11 If, a young seafarers under the age of 18 years having served on a ship for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to a life at sea, they should be given the opportunity of being repatriated at no expense to themselves.

9. Seafarer compensation for the ship's loss or foundering

- 9.1 The shipowner shall provide for adequate compensation to each seafarer in the case of unemployment arising from the ship's loss or foundering, which should be paid for the days during which the seafarer remains in fact unemployed at the same rate as the wages payable under the employment agreement but the total compensation payable to any one seafarer maybe limited to two (2) months wages or as agreed in any applicable CBA
- 9.2 Shipowners shall provide adequate compensation for injury or loss arising from the ship's loss or foundering.

10. Article of Agreement

- 10.1 The requirements in relation to an Article of Agreement as listed in this Section may be incorporated into the seafarer contract of employment signed by the shipowner and the seafarer. In such cases, the Master shall confirm that a copy the contract of employment is onboard and that it contains the information specified in Section 10.3 and 10.4.
- 10.2 Where Section 10.1 is not applicable, the Master shall confirm, using an Article of Agreement signed by the Master and the seafarer, that all seafarers have a contract of employment that includes wages, leave entitlement and repatriation.
- 10.3 The Article of Agreement shall also contain the following information:
- i) Name of the ship, IMO no, Bahamas Official no, gross tonnage and propulsion power of the ship,
 - ii) description of the voyage and the names of the ports at which the ship is to call, or if that cannot be done, the general nature and the probable length of the voyage and the port or country at which the voyage is to terminate or for ships engaged in world-wide trading without definite itineraries or schedules, "*world-wide trading*" can be used as the description,
 - iii) Any regulation or requirement as to:
 - the conduct onboard,
 - Drug and alcohol policy. Whilst performing shipboard duties, the alcohol limit for Master, officers and all seafarers assigned safety, security and marine environmental duties shall not be greater than 0.05 % blood alcohol level (BAC) or 0.25 mg/l in the breath or a quantity of alcohol leading to such alcohol concentration,
 - Possession of dangerous or offensive weapon or instrument,
 - Absence without leave or desertion,
 - Obedience to any lawful command and as to fines or other lawful punishment for misconduct as approved in accordance with Bahamian law.
- 10.4 The Master should include an obligation for the seafarer to be duly qualified for the assigned shipboard duty and the action that will be taken relating to any mis-representation.
- 10.5 A legible copy of the Article of Agreement without signatures and with a list of person under 18 years of age shall be made accessible to all seafarers.

- 10.6 The copy of Article of Agreement referenced in 10.5 above shall be made available by the Master at the commencement of each voyage or whenever a seafarer is engaged.
- 10.7 The BMA will accept the Article of Agreement being maintained in an electronic form subject to the seafarer being advised of the changes and any changes being recorded with details of the change, date of change and details of the person making the change.

Revision History

Rev.0 (31 August 2012) – First issue

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