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## **Seafarers Employment Agreement**

Notice to Shipowners, Managers, Masters, Approved Nautical Inspectors, Recognised Organisations and Surveyors

*This Notice supersedes BMA Information Bulletin No.142*

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### **1. Purpose**

- 1.1. This Notice is issued by the Bahamas Maritime Authority (BMA) to ensure compliance with the Merchant Shipping Act and to provide Bahamas Recognised Organisations and other parties with supplementary information concerning Seafarers' Employment Agreements.
- 1.2. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended (STCW) and the Maritime Labour Convention, 2006, as amended (MLC 2006) require that all seafarers are provided with minimum periods of rest or maximum hours of work.
- 1.3. This Marine Notice details The Bahamas requirements in relation to minimum hours of rest for the purpose of compliance with MLC 2006 and STCW. It also outlines The Bahamas' terms and conditions for seafarers to work on a ship under 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.
- 1.4. Recognised Organisations and their MLC inspectors, in accordance with the established agreements, have the full authority to inspect and certify ships and have the full authority to carry out the duties described under Standard A5.1.4.7 of the MLC Code.

### **2. Application**

- 2.1. MLC 2006, as amended, shall have the force of law in The Bahamas.
- 2.2. The hours of rest and hours of work requirement is applicable to all ships registered with the Bahamas and to all seafarers, except where expressly provided otherwise.

- 2.3. This Notice 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 Marine Notice 31.

### 3. Definitions

- 3.1. The following definitions apply for the purposes of this Marine Notice:
- 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. *Collective Bargaining Agreement (CBA)* means any written collective bargaining agreement by the shipowner and attached or endorsed to the contractual agreement.
  - iii. *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.
  - iv. *Hours of Rest* is deemed to be any period outside the hours of work.
  - v. *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.
  - vi. *Master* means the person designated by the Company as having overall responsibility for the ship.
  - vii. *Non-Marine Personnel* means persons who regularly spend more than short periods abroad, even when they perform tasks that are not normally regarded as maritime tasks
  - viii. *Offshore worker* means any person who works on an offshore mobile unit according to IMO Resolution A.1079(28)
  - ix. *Overtime* is deemed to be any period worked in excess of the normal hours of work.
  - x. *Seafarer* means any person who is employed or engaged or works in any capacity on board a ship
  - xi. *Seafarers Employment Agreement (SEA)* means any written seafarers employment agreement, which bind(s) a seafarer to work on board the ship listed in the policy schedule during the policy period
  - xii. *Shipowner* means the owner of the ship or another organisation 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.

#### **4. General Requirements for SEAs**

- 4.1. The shipowner shall ensure that every seafarer whom he employs or engages shall enter into a seafarer employment agreement.
- 4.2. The SEA 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 SEA, 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 SEA 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 seafarer employment can be easily obtained on board by seafarers, including the ship's master, and that such information including a copy of the seafarer's employment agreement and any applicable CBA that forms all or part of it, is also accessible for review by a Bahamas duly authorised official, including authorised Recognised Organisation inspectors and duly authorised 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 SEA shall be not less than 7 days. In accordance with Bahamian law, a notice period shorter than the minimum may be given for termination of the SEA at a shorter notice or without notice in exceptional circumstances. Seafarers shall have the opportunity to terminate the SEA without penalty at a shorter notice or without notice for valid compassionate or urgent reasons.
- 4.10. An SEA 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 SEA shall contain at least the following particulars:
- i. the seafarer's full name, date of birth or age, and birthplace.
  - ii. the shipowner's name and address.
  - iii. the place where and date when the seafarers' employment agreement is entered into.
  - iv. the capacity in which the seafarer is to be employed.
  - v. the amount of the seafarer's wages or, where applicable, the formula used for calculating them.
  - vi. the amount of paid annual leave, or where applicable, the formula used for calculating it.
  - vii. the termination of the agreement and the conditions thereof, including:
  - viii. 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.
  - ix. If the agreement is for a definite period, the date fixed for its expiry; and
  - x. 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.
  - xi. the health and social security protection benefits, to be provided to the seafarer by the shipowner (See Marine Notice 40)
  - xii. the seafarer's entitlement to repatriation
  - xiii. reference to the CBA, if applicable and
  - xiv. any other particulars required by Bahamian law.
- 4.12. The SEA shall be retained by the shipowner for a period of seven (7) years after the expiry of the agreement

## 5. Non-marine personnel and offshore worker

- 5.1. The shipowner shall ensure that every offshore worker whom they employ or engage shall enter into a contractual agreement.
- 5.2. If the shipowner deems that there is any other category of persons who should not be considered seafarers for the purpose of MLC 2006 compliance, an application containing the following must be submitted to the BMA at [mlc@bahamasmaritime.com](mailto:mlc@bahamasmaritime.com):
- i. The category or capacity of the person(s).
  - ii. the duration of the stay on board of the person(s) concerned.
  - iii. the frequency of periods of work during their time spent on board.
  - iv. the location of the person's principal place of work.
  - v. the purpose of the person's work on board.
  - vi. who is responsible for the labour and social conditions for those persons?
  - vii. whether an agreement is in place for those persons and if the shipowner has assessed it to ascertain if it is compliance with MLC 2006. Where the shipowner is not the employer of the affected person(s), there should be documentary evidence that there is an agreement in place that takes into account the MLC 2006 requirements.
- 5.3. The contractual agreement shall be signed by both the non-marine personnel/offshore worker and the shipowner or an authorised representative of the shipowner.
- 5.4. Both parties shall retain a signed original of the contractual agreement. The BMA accepts electronic copies of the contractual agreement, provided that they have been signed by both parties.
- 5.5. The contractual agreement for offshore workers and non-marine personnel shall contain at least the following particulars:
- i. the seafarer's full name, date of birth (or age) and place of birth.
  - ii. the shipowner's name and address.
  - iii. the place where and date when, the seafarers' employment agreement is entered into.
  - iv. the capacity in which the seafarer is to be employed.
  - v. the amount of the seafarer's wages or, where applicable, the formula used for calculating them.
  - vi. the amount of paid annual leave, or where applicable, the formula used for calculating it; the termination of the agreement and the conditions thereof, including:



- vii. 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.
  - viii. If the agreement is for a definite period, the date fixed for its expiry; and
  - ix. If the agreement is for a voyage, the port of destination and the time at which it is to expire after arrival before the seafarer should be discharged.
  - x. The health and social security protection benefits, to be provided to the seafarer by the shipowner (See Marine Notice 42)
  - xi. The seafarer's entitlement to repatriation,
  - xii. Reference to the CBA, if applicable, and
  - xiii. Any other particulars required by Bahamian law
- 5.6. The BMA does not permit 'non-compete' clauses which prohibit seafarers from using means, mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified.
- 5.7. Non-marine personnel/offshore workers MUST be given an opportunity to examine and seek advice on the agreement, including any CBA 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 had the opportunity to examine and seek advice on the agreement before signing.
- 5.8. For ships engaged in international voyages, where the language of the contractual agreement and any applicable CBA is not in English, a copy of the standard form of the contractual agreement and those portions of the applicable CBA that are subject to a port state inspection, shall also be available in English.
- 5.9. The shipowner shall ensure that clear information as to the conditions of the contractual agreement can be easily obtained by seafarers, whether they are on board or offshore and that, such information including a copy of the contractual agreement and any applicable CBA that forms all or part of it, is also accessible for review by a Bahamas duly authorised official, including an authorised Recognised Organisation inspector and any duly authorised officers in the ports to be visited.
- 5.10. Seafarers, on completing their employment, 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.
- 5.11. Where a CBA forms all or part of the SEA, a copy of the applicable CBA shall be available 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

- 5.12. The minimum notice to be given by seafarers or shipowners for early termination of the seafarers' employment agreement shall be not less than 7 days. In accordance with Bahamian law, a notice period shorter than the minimum may be given for termination of the contractual agreement, or without notice in exceptional circumstances. Seafarers shall have the opportunity to terminate the contractual agreement without penalty at a shorter notice or without notice for valid compassionate or urgent reasons.

## **6. Wages and payment of wages**

- 6.1. Seafarers shall be paid in full at no greater than monthly intervals and in accordance with their contractual agreement
- 6.2. Seafarer shall be given a monthly account of the payments due, and the amounts paid, including wages, any additional payments, any authorised deductions and the rate of exchange used if applicable
- 6.3. Shipowners shall provide the seafarers with a means to transmit all or part of their earning to their families or dependant or legal beneficiaries
- 6.4. The means specified in paragraph 6.3 may be 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 non-marine personnel/ offshore worker 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 non-marine personnel/ offshore worker
- 6.5. The normal working hours' standard for non-marine personnel/offshore workers shall be based on an eight-hour day with one day of rest per week and rest on public holidays. Any applicable collective agreement may determine non-marine personnel/offshore workers normal working hours on a basis no less favourable than this.
- 6.6. Bahamas public holidays are applicable to Bahamian registered ships.
- 6.7. 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.

- 6.8. Where the Seafarer workers unlawfully refuse or neglects to work when required, the seafarer shall not be entitled to wages for that period.
- 6.9. 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 non-marine personnel/offshore worker 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 non-marine personnel/offshore worker is by reason of the sickness, incapable of performing the assigned duty.

## **7. Hours of work and rest**

- 7.1. The Shipowner shall ensure that requirements relating to hours of work and hours of rest shall be as specified in Marine Notice 35.
- 7.2. The shipowner shall ensure that seafarers receive a copy of their records as referred to in paragraph 7.1, endorsed by the Master, or in the case of offshore personnel an Offshore Installation Managers and by the seafarer at an interval not exceeding one month.
- 7.3. The normal working hours shall be based on an eight-hour day with one day of rest per week and rest on public holidays. Any applicable collective agreement may determine non-marine personnel/offshore workers normal working hours on a basis no less favourable than this.
- 7.4. Bahamas public holidays are applicable to Bahamian registered ships.
- 7.5. 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.
- 7.6. Where the seafarer unlawfully refuses or neglects to work when required, the seafarer shall not be entitled to wages for that period.
- 7.7. 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 non-marine personnel/offshore workers 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 non-marine personnel/offshore worker is by reason of the sickness, incapable of performing the assigned duty



## **8. Entitlement to Leave**

- 8.1. 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.
- 8.2. 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 (please refer to Marine Notice 31).
- 8.3. All seafarers shall receive annual leave with pay calculated based on a minimum of 2.5 calendar days per month of employment. Justified absences from work shall not be considered as annual leave.
- 8.4. 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:
- i. public and customary holidays recognised as such in the Bahamas, whether or not these falls during the annual leave with pay,
  - ii. periods of incapacity for work resulting from illness or injury or from maternity,
  - iii. temporary shore leave granted to a seafarer while under an employment agreement; and
  - iv. compensatory leave of any kind
- 8.5. A seafarer taking annual leave should be recalled only in cases of extreme emergency and with the seafarer's consent.
- 8.6. 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.

## **9. Repatriation**

- 9.1. Shipowners shall maintain financial security to ensure that seafarers are duly repatriated.
- 9.2. 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.
- 9.3. 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 Marine Notice and the Merchant Shipping (Maritime Labour Convention) Regulations, 2012, as amended.

- 9.4. Any document(s) of evidence of financial security system should include:
- i. name of the ship.
  - ii. port of registry of the ship.
  - iii. IMO number or call sign of the ship.
  - iv. name of the provider of the financial security.
  - v. place of business of the provider of the financial security.
  - vi. name of the shipowner.
  - vii. period of validity of the financial security.
- 9.5. Seafarers shall not be required to serve on board a ship for a period exceeding 12 months, before being entitled to repatriation.
- 9.6. Seafarers shall be entitled to repatriation at no cost to themselves subject to the following conditions:
- i. if the seafarers' employment agreement expires while they are abroad.
  - ii. in the following cases where the seafarer employment agreement is terminated:
  - iii. in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel.
  - iv. in the event of shipwreck.
  - v. 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.
  - vi. 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
  - vii. 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.
- 9.7. 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:
- i. the place at which the seafarer agreed to enter into the engagement.
  - ii. the place stipulated by collective agreement.
  - iii. the seafarer's country of residence; or
  - iv. such other place as may be mutually agreed at the time of engagement.

- 9.8. Time spent awaiting repatriation and repatriation travel time shall not be deducted from paid leave accrued to the seafarers.
- 9.9. The shipowner shall not require that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment.
- 9.10. 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.
- 9.11. 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.
- 9.12. Where the BMA arranges for the seafarer's repatriation as specified 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.
- 9.13. Bahamian provisions regarding repatriation shall be made available to seafarers in English or the appropriate working language of the seafarer.
- 9.14. If, when a young seafarer 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.

## **10. Seafarer compensation for loss or foundering of a ship**

- 10.1. 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
- 10.2. Shipowners shall provide adequate compensation for injury or loss arising from the ship's loss or foundering.

**11. Queries**

- 11.1. Any queries on this Notice may be submitted to [stcw@bahamasmaritime.com](mailto:stcw@bahamasmaritime.com) or any BMA office.

