

**Commonwealth of Dominica**



**Office of the Maritime Administrator**

**TO: ALL SHIPOWNERS, OPERATORS, MASTERS AND OFFICERS OF MERCHANT SHIPS, AND RECOGNIZED ORGANIZATIONS**

**SUBJECT: Maximum Period of Shipboard Service for Seafarers Under the Maritime Labour Convention, 2006 (MLC, 2006)**

**PURPOSE:**

The Commonwealth of Dominica Maritime Administration (the "Administration") is issuing this Notice to articulate its requirements and policies regarding:

- a) the maximum time a seafarer may be required to serve on board a vessel before gaining the right to be repatriated;
- b) the right to annual leave and repatriation; and
- c) the maximum amount of time a seafarer may serve before taking annual leave.

**BACKGROUND:**

The maximum amount of time a seafarer can serve on board a vessel without taking annual leave and being repatriated has been subject to varying interpretations. The difficulty lies in how the provisions of the Maritime Labour Convention, (MLC, 2006) Standards A2.4 (annual leave) and A2.5 (repatriation) are interpreted. One interpretation is that the maximum continuous period that a seafarer can serve on board a vessel is exactly 11 months. Other interpretations attempt to balance the protections to be afforded to seafarers and the logistical realities of the maritime industry.

**APPLICABILITY:**

This Notice applies to all DMA-flagged vessels to which MLC, 2006 applies.

**REQUIREMENTS:**

**1.0 Length of Contract**

- 1.1 The duration of the seafarer's contract of employment should not be confused with the protection of the rights to repatriation and annual leave.
  - 1.2 There is no restriction on the length of a Seafarer's Employment Agreement (SEA) under MLC, 2006. Seafarers may enter into SEAs covering periods longer than 11 months. MLC, 2006 Standard A2.1, paragraph 4(g)(i) expressly allows SEAs for an indefinite period.
  - 1.3 Regardless of contract length, all SEAs must provide for annual leave and repatriation in accordance with MLC, 2006 Standards A2.4 and A2.5, respectively and DMA law and regulation.
  - 1.4 A fixed expiry date for the length of the contract need not be indicated on a SEA (containing a start date) when a valid Collective Bargaining Agreement (CBA) with a set period (e.g., 6 months  $\pm$  1 month) of contract duration is attached. See §4.0 below.
- 2.0 Annual Leave (MLC, 2006 Standard A2.4)**
- 2.1 Annual leave with pay is to be calculated on the basis of a *minimum* of 2.5 days per completed calendar month of employment.
  - 2.2 MLC, 2006 Standard A2.4.3 prohibits any agreement to forgo the minimum annual leave with pay, except in cases provided for by the Competent Authority. The Competent Authority in this case is the flag State.
  - 2.3 The Administration strictly prohibits a forfeiture of paid annual leave, but does allow paid annual leave to be accumulated and taken as mutually agreed by the seafarer and shipowner as spelled out in the SEA, provided the requirements for accumulating paid leave and the right of repatriation are continued and met.
- 3.0 Repatriation (MLC, 2006 Standard A2.5)**
- 3.1 MLC, 2006 Standard A2.5.2(b) states that the maximum duration of service periods on board following which a seafarer is **entitled** to repatriation is to be less than 12 months. Establishing the circumstances under which a seafarer is entitled to repatriation rests with the Competent Authority (flag State) as provided under Standard A2.5.2(a) and Guideline B2.5.1.8<sup>1</sup>.
  - 3.2 When Standard A2.5 is read in conjunction with Standard A2.4, it has been interpreted by some as meaning that a seafarer must take annual leave and be repatriated before or at the 11-month mark<sup>2</sup>. The Administration's interpretation of Standard A2.5 is that repatriation is an entitlement/a right. Seafarers have the right to be repatriated at least once in a 12-month period.

3.3 However, when the entitlement to repatriation arises, seafarers may decide for various acceptable reasons not to exercise this entitlement. From a practical standpoint, repatriation at an exact date may not be possible when factoring in annual leave and taking into consideration the logistics of shipping.

3.4 The dangers of physical and mental fatigue that may be experienced by seafarers must be taken into consideration when agreeing to extend a continuous service period beyond 12 months.

#### 4.0 Collective Bargaining Agreements

4.1 As defined MLC, 2006 Article II 1.(g), a SEA includes both a contract of employment and articles of agreement. Regulation §7.45.1(i) provides, in accordance with MLC, 2006 Title II, Regulation 2.1 paragraph 3:

*To the extent not prohibited by the laws, regulations and practices of the DMA, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreement. Clear information, including any labor contract, shall be made available to the crew on board every vessel as to the conditions of employment thereon.*

4.2 It is the policy of the Administration to allow the provisions of a CBA to govern the specific conditions of employment, provided they are not in conflict with DMA laws and regulations into which the MLC, 2006 is incorporated fully.

---

<sup>1</sup> In doing so, it is incumbent upon the flag State to take into consideration the purpose of the MLC, 2006 requirements on annual leave and repatriation which is to prevent seafarer fatigue and to allow a seafarer the ability to return home, either at periodic intervals during an ongoing contract of employment, or on completion of a contract.

<sup>2</sup> The simplistic calculation being made is 12 months minus 30 days paid annual leave is equal to 11 months of service on board at which time the seafarer is to be repatriated. The problem with this calculation is that 11 months of completed service only equates to 27.5 days of paid leave and does not take into consideration that seafarers onboard DMA vessels are entitled to annual leave with pay for each completed month of employment. Thus, a full 12 months of service would be required to accumulate a minimum of 30 days paid annual leave, the reason why the two (2) concepts cannot be equated together, but must be taken separately.

#### 5.0 Administrator Policy and Determinations

5.1 In accordance with MLC 2006, the Administration has determined the duration of service on board, as mutually agreed upon between the seafarer and the shipowner following which a seafarer is **entitled** to repatriation, shall be less than 12 months. The right to repatriation shall also be retained by a seafarer at the end of any satisfied contract period, extended or

otherwise, unless forfeited.

**5.2** Taking into consideration 1.4 above, the Administration has determined that there are certain limited circumstances in which a seafarer may serve on board a vessel for a period of 11 months or more. These circumstances are as follows:

- .1 seafarers serving a full 12 months to qualify for the minimum 30 days paid leave;
- .2 cadets in order to finish their sea time or onboard training in accordance with their training agreements;
- .3 seafarers in industry sectors (yachting and offshore) where rotational crews are standard business practice; and
- .4 seafarers who have **mutually agreed** in writing to extend their time on board. Any such extensions must be in the form of an addendum to the original SEA. Shipowners are reminded of the dangers of fatigue referenced in paragraph 3.4 herein.

## **6.0 Ports State Interpretations**

**6.1** Shipowners should be aware that the Australian Maritime Safety Agency (AMSA) has interpreted the MLC 2006 Standard A2.4 in conjunction with Standard A2.5 to mean that seafarers should serve no more than 11 months continuously on board. Vessels arriving in Australia with seafarers on board who have served more than 11 months but no more than 13 months (with the consent of the seafarer and in accordance with the flag State requirement), will be required by AMSA inspectors to rectify this deficiency at the earliest opportunity. If any seafarer has served more than 13 consecutive months on board, AMSA will not allow the vessel to sail until this deficiency is rectified. Shipowners are advised that AMSA's interpretation may also be the interpretation of other coastal States.