



BERMUDA

MERCHANT SHIPPING (SEAFARERS' WAGES) REGULATIONS 2013

BR 105 / 2013

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The Minister responsible for Maritime Administration, in exercise of the power conferred by sections 3 and 39 of the Merchant Shipping Act 2002, makes the following Regulations:

Citation

1 These Regulations may be cited as the Merchant Shipping (Seafarers' Wages) Regulations 2013.

Interpretation

2 In these Regulations—

“basic pay” means the wages, however composed, paid for normal hours of work and does not include payments for overtime worked, bonuses, allowances, paid leave, or any other additional remuneration;

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- “Collective Bargaining Agreement” means a written agreement, valid for not more than 5 years, between a shipowner and an independent trade union which is recognised in its country of domicile;
- “commercial activity” means any activity or employment of the vessel for which a contract or charter party is in force and includes the carriage of any cargo or person for reward;
- “consolidated wage” means a salary or a wage that includes—
- (a) basic pay; and
 - (b) all other pay related benefits (including overtime pay);
- “independent”, in relation to a trade union, means not under the influence or control of an employer, a group of employers, or one or more employer’s associations, and not subject to interference or control provided that a shipowner’s contributions to a welfare fund or similar shall not be construed as affecting the independence of a trade union;
- “Maritime Labour Certificate” means the certificate issued in accordance with Article V of the Maritime Labour Convention;
- “Maritime Labour Convention” means the Maritime Labour Convention 2006 adopted at a general conference of the International Labour Organisation in Geneva on 7 February 2006;
- “Minister” means the Minister responsible for maritime administration;
- “normal hours” means the time in port and at sea for which the seafarer’s employment agreement specifies that he is to work;
- “overtime” means hours worked in excess of the normal hours of work and shall be reckoned in whole hours and any part of an hour shall be regarded as an hour;
- “partially consolidated wage” means a salary or a wage that includes the basic pay and some, but not all, of any additional pay-related benefits;
- “pleasure vessel” means—
- (1) A vessel which, at the time of its use, is—
 - (a) in the case of—
 - (i) a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or immediate family or friends of the owner; or
 - (ii) a vessel owned by a body corporate, used only for sport or pleasure and on which the passengers are employees or officers of the body corporate, or their immediate family or friends; and
 - (b) on a voyage or excursion from which the owner does not receive money for, or in connection with, operating the vessel, or carrying any person, other than as a contribution to the direct expenses of the operation of

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the vessel incurred during that voyage or excursion, and no other payments are made by or on behalf of users of the vessel other than by the owner; or

- (2) A vessel which, at the time of its use, is any vessel wholly owned by or on behalf of a member's club formed for the purpose of sport or pleasure, which is used only for the sport or pleasure of members of that club or their immediate family; and
 - (a) for the use of which, any charges levied are paid into club funds and applied for the general use of the club; and
 - (b) no other payments are made by or on behalf of users of the vessel other than by the owner;
- (3) For the purposes of this definition—
 - (i) "immediate family" means in relation to an individual, the husband or wife of the individual and a relative of the individual or the individual's husband or wife; and
 - (ii) "relative" means brother, sister, ancestor or lineal descendant;

"Port State Authority" means the authority in any country assigned the responsibility under Article V of the Maritime Labour Convention 2006 for the inspections of ships of other flags in its territory;

"seafarer", in these Regulations, means any person, including a master, who is employed or engaged or works in any capacity on board a ship, on the business of the ship and where there is doubt as to whether a person working or engaged on a ship is a Seafarer, the Minister shall make a determination and in doing so he shall be guided by the advice and guidance provided by the International Labour Organisation;

"shipowner" means the owner of the ship or another organisation or person, such as a manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner;

[Regulation 2 "consolidated wage" inserted by BR 56 / 2014 reg. 3 effective 30 June 2014]

Application

- 3 (1) These Regulations apply to—
- (a) Bermuda ships wherever they may be other than—
 - (i) fishing vessels,
 - (ii) vessels owned and operated by a Government Department or Agency for non-commercial purposes;
 - (iii) pleasure vessels in which no seafarers are employed; and
 - (b) subject to regulation 9, other ships that are not Bermuda ships when in a port in Bermuda other than—

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- (i) fishing vessels;
- (ii) pleasure vessels; and
- (iii) warships, naval auxiliaries and other ships owned or operated by a state and not engaged on commercial activity.

Payment of wages

4 (1) Every shipowner shall ensure that each seafarer engaged or employed by him on a Bermuda ship is paid the wages due to him in accordance with his employment agreement and in accordance with any applicable Collective Bargaining Agreement at intervals that do not exceed one calendar month.

(2) Every shipowner shall ensure that each seafarer engaged or employed by him on a Bermuda ship receives a monthly account of wages showing payments due and payments made, and that account shall specify the basis and amount of any additional payments that are included and any deductions, and, if the payment is in a currency other than the currency agreed in the employment agreement or at a different exchange rate from that agreed in the employment agreement, the exchange rate that has been applied.

(3) In the case of seafarers whose employment agreement includes separate compensation for overtime worked—

- (a) for the purpose of calculating wages, the normal hours of work in port and at sea shall be considered to be no more than eight hours in any day.
- (b) for the purposes of calculating overtime, the number of normal hours per week covered by basic pay shall not exceed 48 hours per week except in a case where a Collective Bargaining Agreement specifies a different arrangement.
- (c) The rate of compensation for overtime shall be as specified in any applicable Collective Bargaining Agreement but in no case shall be less than 1.25 times the rate of basic pay.

(4) In the case of seafarers whose employment agreement specifies either a consolidated wage or a partially consolidated wage, the seafarer's employment agreement shall specify clearly the number of hours of work that are expected for the agreed remuneration and any additional allowances that may become due and in what circumstances they may become due.

(5) For the purpose of calculating the remuneration due when overtime is payable in respect of hours worked in excess of those covered by a partially consolidated wage, the hourly rate for the excess hours shall be not less than 1.25 times the basic wage defined for normal hours.

(6) Except as may be provided by paragraph (7), the wages due to a seafarer shall be paid by bank transfer to an account nominated by the seafarer at the commencement of the employment agreement or by a similar arrangement which permits the seafarer the same degree of control over the money paid to him in wages, and the costs of transfer to the seafarer's account shall not be deducted from the wages due.

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(7) When, for exceptional reasons, it is not practical to pay wages by bank transfer in accordance with paragraph (5), the shipowner may pay the seafarer by bank cheque or by money order.

Overtime records

5 (1) Whenever the remuneration due to a seafarer includes compensation for overtime the master, or a person assigned by him, shall ensure that a record is kept of all overtime worked, and that record shall be endorsed by the seafarer on a monthly basis as a true record.

(2) When a seafarer's wages are paid as a partially consolidated wage, the record of overtime in sub-paragraph (1) need only be the record of overtime in excess of that contained within the partially consolidated wage.

(3) The records of overtime required by paragraph (1) may be in paper format or in electronic format, and—

- (a) if in paper format the seafarer shall be entitled to a copy of each month's records; and
- (b) if in electronic format each seafarer shall have access to his record at any time, and shall have the right to obtain a paper copy if he so wishes.

(4) The records of overtime shall be available to any authorised Bermuda surveyor or auditor at any time.

Balance of wages due on leaving the ship

6 (1) When a seafarer leaves a ship at the end of an employment agreement and has not been paid the wages due to him for the time worked in that month, as well as any other outstanding wages, the balance due shall be paid at the end of the month in which the seafarer leaves the ship.

(2) If the balance due is not paid in accordance with paragraph (1) and where the employment contract or an applicable Collective Bargaining Agreement does not provide for payment of wages during the seafarer's period of leave, the seafarer shall be entitled to wages at the rate in the employment agreement for the time that the outstanding balance is unpaid for up to 56 days following the end of the employment agreement, and thereafter any balance unpaid shall carry a rate of interest of 20% per annum until paid.

(3) The provisions of paragraph (2) above shall not apply when the failure to pay outstanding wages is due to—

- (a) a mistake that is subsequently rectified,
- (b) delay as a result of a reasonable dispute on liability;
- (c) an act or default of the seafarer, or
- (d) any other cause, not being the wrongful act or default of the person liable to pay the wages

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Transmission of earnings

7 (1) Any seafarer may, at the time of entering into an employment agreement, or at any reasonable time during the course of the employment under that agreement, allot either a proportion of his wages or a fixed amount of money to be transmitted directly to persons nominated by him in writing to the shipowner.

(2) Any such allotment shall—

- (a) specify the intervals at which money is to be transmitted, which shall not be more frequent than monthly;
- (b) be made by bank transfer; and
- (c) not exceed the monthly wage of the seafarer as expressed in the seafarer's employment agreement less any deductions that are reasonably anticipated to fall due.

(3) A shipowner in making transmissions of earnings to a seafarer's nominee in accordance with this regulation shall ensure that—

- (a) any charges for the service are reasonable;
- (b) the rate of currency exchange, where the money earned by the seafarer is in a different currency from that of the account to which the money is sent, is set at the official published rate; and
- (c) the details of any transmission of earnings are included in the monthly account of wages required in regulation 4(2).

(4) Where a shipowner has created a scheme in which an individual seafarer is able to transmit money from his wages to beneficiaries of his choosing at his choice, and the shipowner has made this scheme available to the seafarer, such a scheme shall be considered to meet the requirements of sub-paragraphs (1), (2) and (3) of this regulation.

Deductions from wages

8 (1) No deductions shall be made from a seafarer's wages except as are permitted by paragraph (3) or agreed in a Collective Bargaining Agreement, and whenever such deductions are permitted and made, they shall be clearly stated on the account of wages issued in accordance with regulation 4(2).

(2) Monetary fines shall not be imposed on a seafarer or deducted from his wages for any purpose.

(3) Deductions may only be made from a seafarer's wages in respect of the costs of—

- (a) statutory deductions in respect of tax, social security, national insurance, court orders and related statutory deductions required by the seafarer's country of domicile where that country requires or permits such direct deductions;
- (b) telephone calls made by the seafarer on board;

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- (c) necessities purchased on board by the seafarer;
 - (d) cash advances made to the seafarer during the voyage;
 - (e) contributions to a pension scheme or other savings scheme operated by the shipowner on behalf of the seafarer and to which the seafarer has consented to contribute;
 - (f) any proportion of wages allotted to a nominee;
 - (g) the costs of repatriation where the seafarer is dismissed for serious misconduct;
 - (h) subject to a maximum limit of one month's basic wage, the expense or loss suffered by the shipowner as a direct result of any act of misconduct by the seafarer on board the ship or ashore;
- (4) Where deductions are made in accordance with paragraph (3), the cost charged to the seafarer shall be the cost of providing the item only.

Penalty

8A (1) Any person who acts in breach of regulation 4, 6, 7 or 8 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$5,000.

(2) Any master of a ship who acts in breach of regulation 5 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$3,000.

[Regulation 8A inserted by BR 56 / 2014 reg. 4 effective 30 June 2014]

Inspection

9 (1) Any person duly authorised by the Minister may inspect any ship to which these Regulations apply when in a port in Bermuda, and if he is satisfied that any seafarer or seafarers are not receiving the wages due to him in accordance with the requirements stated in the Declaration Part 1 to the ship's Maritime Labour Certificate, or in the case of a ship to which a Maritime Labour Certificate is not issued, the requirements in Regulation 2.2 of the Maritime Labour Convention, he may detain the ship, but shall not in the exercise of these powers detain or delay the ship unreasonably.

(2) Any authorised officer of the Maritime Administration who discovers that a Bermuda ship does not comply with these Regulations may—

- (a) withdraw the vessel's Maritime Labour Certificate until such time as the deficiency is rectified; or
- (b) if the vessel is in a port outside Bermuda, report the deficiency to the Port State Authority in that port.

[Regulation 9 paragraph (1) amended by BR 56 / 2014 reg. 5 effective 30 June 2014]

Revocations

10 (1) The following Regulations are revoked—

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- (a) Merchant Shipping (Seaman's Allotments) Regulations 1980;
- (b) Merchant Shipping (Seaman's Wages) (Contributions) Regulations 1980;
and
- (c) Merchant Shipping (Seamen's Wages and Accounts) Regulations 2007.

Commencement

11 These Regulations shall come into operation on the same date on which the Merchant Shipping (ILO) Amendment Act 2012 comes into operation.

Made this 12th day of December 2013

Minister of Tourism Development and Transport

[Amended by:

BR 56 / 2014]