

SEAFARER "SEA-RIES" NO.4 – SEAFARER FUNDAMENTAL RIGHTS



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**DO NOT JOIN
MERCHANT NAVY
FRAUD AGENTS
SAY NO TO AGENTS**



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SEAFARER LEGAL RIGHTS

Maritime Labour Convention 2006 (MLC)

- *Minimum requirements for seafarers to work on a ship*
- *Conditions of employment*
- *Accommodation, recreational facilities, food and catering.*
- *Health protection, medical care, welfare and social security protection*

Seafarer fundamental rights

- *Associate & to bargain collectively (right to join trade union of choice & to bargain collectively)*
- *Freedom from forced labour as right not to be treated as a slave (right to work of your own free will and to be paid for that work)*
- *Elimination of discrimination in respect of employment and occupation (regardless of race, religion, national origin, gender, or political views)*
- *Work hours and regulated hours*

SEAFARER LEGAL RIGHTS

Seafarers Employment Agreement (SEA) / Collective Bargaining Agreement (CBA)

- **Duration of the contract is clearly stated**
- **Contract allows for alterations at sole discretion of the shipowner should not be accepted**
- **Any change to the agreed duration of the contract should be by mutual consent**
- **Contract clearly states the basic wages payable & basic working hours, International Labour Organisation (ILO) specifies basic working hours max. 48 per week or 208 per month**
- **Contract clearly stipulates how overtime will be paid and at what rate (ILO states that all overtime hours should be paid at a minimum of 1.25 x the normal hourly rate)**
- **Contract clearly stipulates how many days paid leave per month you will get (ILO states that paid leave should not be less than 30 days per year i.e., 2.5 days per calendar month)**
- **Contract clearly mentions payments for basic wages, overtime and leave are clearly and separately itemized in the contract**
- **Check that contract states that costs of repatriation is borne by shipowner**
- **Shipowner cannot withhold or retain any portion of wages during period of the contract**

SEAFARER LEGAL RIGHTS

Seafarers Employment Agreement (SEA) / Collective Bargaining Agreement (CBA)

- Seafarers are entitled to **full payment of wages earned at the end of each calendar month**
- SEA wont give all details of **special compensation**, hence refer to CBA for following:
 - ✓ *Sickness or injury during the contractual period*
 - ✓ *Death (amount payable to the next of kin)*
 - ✓ *Loss or abandonment of the vessel*
 - ✓ *Loss of personal effects resulting from the loss of the vessel*
 - ✓ *Premature termination of the contract.*
- Contract should not have any clause that **restricts your right** to join, contact, consult with or be represented by a **trade union** (be a registered member of such union) of your choice
- Ensure that you are given and **retain a copy of the contract** you have signed
- Check **conditions for terminating your contract**, including how much notice the shipowner must give you to terminate your contract
- Terms and conditions, any contract / agreement entered voluntarily is **legally binding**

SEAFARER LEGAL RIGHTS

Making a claim for death or long-term disability:

*[Ensure you clearly have provided full details of your **Next of Kin (NoK)** prior joining ship]*

- *Seafarer death and long-term disability are seafarers rights and would be provided to seafarer / NoK as per agreed terms & conditions as per **applicable CBA***
- *DG Shipping have adopted compensation due to seafarers and their family in law (MS Rules)*
- *Seafarer or NoK representative can directly request contractual compensation*
- *If the nature of long-term disability makes it difficult to assess the full compensation, seafarer must be given an interim payment to avoid undue hardship*
- *Seafarer or NoK must approach the company for compensation claims and if there are unusual delays, should approach Directorate for expediting the matter*

Death cases (where **NO compensation** would be given by ship-owners) to NoK

- *Seafarer **commits suicide** (witness / with proof such as CCTV recording etc.)*
- *Seafarer death due to **non occupational disease** (suffering from cancer, TB etc. prior joining)*
- *Seafarer **doesn't declare his health / medical issues** (due diligence)*

WARNING SIGNS (ABANDONMENT)

When a crew on a merchant ship is abandoned in a foreign port, a familiar pattern of events as listed below often unfolds, following are warning signs:

- *Ships are generally anchored for longer periods with no voyage orders*
- *Fuel for generators runs out and vessel black outs*
- *No spares, paints etc. on board to continue onboard maintenance*
- *Salaries stop being paid (more than 2 months salary not paid)*
- *Shore leave is denied*
- *Food and fresh water stops being supplied*
- *Services provided to the ship go unpaid*
- *Often the ship owner cannot be traced or remains in the background, sometimes threatening the crew and making false promises*
- *On board, phone cards run out of credit and seafarers are unable call home*
- *Relationships suffer as boredom sets in and tempers flare*
- *Families of seafarers are left begging for help*

WHAT TO DO IF ABANDONED (**VALID P&I CERTIFICATE**)

- *Be alert to the early signs of abandonment and take action as soon as appropriate.*
- *If abandoned, seek outside help immediately from following:*
 - ✓ *Port State Control authority*
 - ✓ *Flag State of your ship*
 - ✓ *Indian embassy or consulate*
 - ✓ *DG Shipping (Indian Maritime Administration)*
 - ✓ *ITF / your own or local trade union*
 - ✓ *Welfare organisations and/or a local lawyer*
- *If ship-owners / RPS agents are **RESPONDING** and **vessels P&I certificate is valid** and you are not paid for wages, food, accommodation, drinking water supplies, fuel for survival on board your ship & medical care then vessels Master should directly access financial security system under the MLC (for up to four months) for paid wages and repatriation at no cost to seafarer*
- *Vessels Master should approach concerned P&I through the flag state to invoke financial security system under the MLC to effect your repatriation*

WHAT TO DO IF ABANDONED (**IN-VALID** P&I CERTIFICATE)

- *If ship-owners are **NOT RESPONDING** vessels **P&I certificate is NOT valid***
- *Vessels Master **CANNOT** invoke financial security system under the MLC as P&I is invalid*
- *Immediately approach seafarers trade union or Indian embassy or consulate or Welfare organisations to arrange for a local lawyer to enforce your **maritime lien rights** by **arresting** the ship to which the maritime lien attaches, or by **arresting a sister ship or ship-owners other vessel** if your own ship value is insufficient to pay for your wages and repatriation.*
- *As the shipowner is evading your claim, you may be able to **obtain a court order** compelling him not to remove his assets (ship) from the country and pay your dues and repatriation based on your employment agreement you can execute the judgment against those assets.*
- *Obtain assistance for survival, accommodation, food, water etc. from local port authority, ITF, your own local trade unions and welfare organizations till vessel is **arrested and auctioned** and your wages (4 months) and repatriation would be settled through auctioning of the vessel*
- *Obtain assistance from lawyer if you are at risk of detention and deportation to manage these risks and ensure your repatriation*

RIGHTS OF NOK IF SEAFARER FOUND **MISSING** AT SEA

- *Vessels Master will inform all parties and initiate SAR as per IAMSAR and applicable SOP*
- *On receipt of information from vessel, family (NoK) may inform DG Comm and seek updates*
- *It is ship-owners / RPS agents who are duty bound to provide updates about SAR*
- *If missing seafarer is **found at sea alive**, will be rescued & all parties would be informed*
- *If missing seafarer is **found at sea & found dead**, body will be retrieved and all parties would be informed, vessel will be diverted to nearest port, flag inspectors, P&I & local law enforcing agencies will board for investigations and then body would be sent for post mortem, after local formalities are completed, mortal remains will be repatriated to back to home town*
- *If missing seafarer is **NOT found after extensive search**, search will be called off, all parties would be informed, vessel will proceed to next port of call, flag inspectors, P&I & local law enforcing agencies will board for investigations and submit report to flag state & DG Shipping*
- *Basis the report (if missing and no suicide), then DG Shipping will direct Shipping Master for cancellation of CDC and passport to MEA, and issuance of **Presume Death Certificate (PDC)***
- *Basis issuance of PDC, P&I will **issue compensations** to NoK as per applicable CBA*

RIGHTS OF SEAFARERS WHEN VESSEL IS ARRESTED ABROAD

Vessel is detained / arrested and crew kept arrested and confined onboard:

- *Vessel may be arrested for carrying out illegal activities (which are forbidden by law) such as:*
 - ✓ *Narcotics / contraband drugs smuggling*
 - ✓ *Cargo theft or illegal smuggling*
 - ✓ *Illegal cargo / fuel discharge*
 - ✓ *Fire arms or banned articles smuggling*
 - ✓ *Geo Political issues*
- *Immediately contact ship-owners / RPS agents to inform Flag State of your ship, Indian embassy or consulate and DG Shipping (Indian Maritime Administration) about situation*
- *DG Shipping will contact Ministry of External Affairs (MEA) to provide consular access in respective country through Indian Embassy / Consulate and provide necessary support*
- *DG Shipping through Indian Embassy / Consulate would request to provide seafarers survival, accommodation, food, water etc. in ship and assist in repatriation through diplomatic channels*
- *All measures will be taken diplomatically for crew welfare, well-being & early repatriation*

RIGHTS OF SEAFARERS WHEN VESSEL IS ARRESTED ABROAD

Vessel is detained / arrested and crew taken in jail:

- *Vessel may be arrested for carrying out illegal activities (which are forbidden by law) such as:*
 - ✓ *Narcotics / contraband drugs smuggling*
 - ✓ *Cargo theft or illegal smuggling*
 - ✓ *Illegal cargo / fuel discharge*
 - ✓ *Fire arms or banned articles smuggling*
 - ✓ *Rape or Murder charges*
 - ✓ *Geo Political issues*
- *Immediately contact ship-owners / RPS agents to inform Flag State of your ship, Indian embassy or consulate and DG Shipping (Indian Maritime Administration) about situation*
- *DG Shipping will contact Ministry of External Affairs (MEA) to provide consular access in respective country through Indian Embassy / Consulate and provide necessary legal support*
- *DG Shipping through Indian Embassy / Consulate would request ship-owners to provide best legal support to defend the case and assist as required*
- *Closure of matter may take time depending upon the law of the land (court decision)*



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