

A Shipowners' liability under the Maritime Labour Convention (MLC) 2006

Introduction

A large majority of the claims handled by the Club involve crew illness or injury, with this in mind, the Club seeks to inform Members that understanding the basis of a Shipowners' liability and how international conventions may apply is of vital importance to them in their operations. The terms of the seafarer's contract of employment will be the main focus, however the Club has found in practice that a Shipowner's liability is often derived from the provisions of the Maritime Labour Convention 2006 ('MLC').

Regulation 4.2 of the MLC deals with a Shipowners' liability and requires a Shipowner to have adequate measures in place that ensure seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment. There is often confusion regarding how Regulation 4.2 will apply to an individual claim and therefore to assist Members in understanding these issues, this article will address some of the frequently asked questions that arise in relation to how to apply the provisions of the MLC.

Where does the MLC apply?

The MLC applies to seafarers working on a vessel of a country that has ratified the MLC or where a vessel trades in a country that has ratified the MLC. The MLC applies to all vessels, whether publicly or privately owned, which are ordinarily engaged in commercial activity. It does not apply to vessels navigating solely in inland or sheltered waters, or areas where port regulations apply, nor does it apply to vessels engaged in fishing activities; or vessels of traditional build such as dhows or junks; or to warships or naval auxiliaries.

What are a Shipowner's obligations under the MLC?

- The Shipowner shall be liable to bear the costs for the seafarers working on their vessels in respect of sickness and injury occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates;
- Shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarer's employment agreement.
- Shipowners shall be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and

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- board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character;
- Shipowners shall be liable to pay the burial expenses in the case of death occurring on board or ashore during the period of engagement; and
 - Where the sickness or injury results in incapacity for work, the Shipowner shall be liable (i) to pay full wages provided the sick or injured seafarer remains on board or until the seafarer has been repatriated, and (ii) to pay wages in whole or in part as prescribed by national laws or regulations or as provided for in collective agreements from the time when the seafarers are repatriated or landed until their recovery or, if earlier, until they are entitled to cash benefits under national legislation.

Frequently Asked Questions

Q. When must the illness or injury arise for a Shipowner to be liable?

A. The Shipowner will generally be liable for any illness or injury (or death) arising during the dates of the seafarer's employment while in service of the vessel. This will include any period travelling to the vessel after having signed the contract of employment, up to the point that the seafarer is landed in their home country following their repatriation, usually at the agreed international airport, port or place.

A Shipowner will be liable for any illness or injury (or death) which occurs while the seafarer is ashore during those dates, so long as they are carrying out their duties ashore.

The Shipowner may also be liable for any illness or injury (or death) which arises from the employment, even if they do not fall ill or require treatment until after their period of employment has finished. This means that if a seafarer can show medical evidence, usually by way of a doctor's report, that their illness or injury was contracted or occurred during their period of employment, the Shipowner will be liable.

Q. When can a Shipowner exclude liability?

A. Shipowner may exclude liability for medical treatment or sickness wages in relation to:

- an injury which is incurred otherwise than in the service of the vessel – this would include an injury which occurs while a seafarer is ashore for personal reasons, not carrying out their duties. Each specific scenario would need to be carefully considered as it would be entirely fact dependant as to whether the injury would fall within the scope of the MLC (Regulation 4.2(5)(a));
- an injury or illness due to the wilful misconduct of the seafarer – this would include where a seafarer has taken action to harm themselves, or intentionally acts in such a way that results in an injury or illness (Regulation 4.2(5)(b)); or
- a sickness or infirmity which is intentionally concealed when the engagement is entered into. (Regulation 4.2(5)(c)).

Importantly, even if a Shipowner can exclude liability under the MLC, they may nevertheless be liable directly under the employment contract (either expressly or as implied by the law of the contract). The terms of the employment contract should be closely considered.

A Shipowner may in certain circumstances consider covering medical treatment and sickness wages for a seafarer whose injury or illness would otherwise be excluded by (a) or (b) above on a humanitarian basis. In such instances a Shipowners' liability is not derived from a legal obligation, therefore would fall outside of Club cover under Rule 2 Section 1(A), subject to discretion exercised by the Managers.

Q. Does a Shipowner need to urgently provide medical care?

A. The general rule is yes. Regulation 4.1 (Standard A4.1 (b) and (c)) specifies that seafarers must be given health protection and medical care comparable in so far as is possible to that which is generally available ashore, including prompt access to necessary medicines, medical equipment and facilities for diagnosis and treatment. A seafarer must have the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable.

Q. Can a Shipowner limit the medical expenses payable?

A. A Shipowner is entitled to limit the payment of medical expenses to a period of not less than 16 weeks from the day of the injury or the commencement of the sickness (Regulation 4.2(2)).

National law or regulations may also exempt the Shipowner for liability for medical care, board and lodging, in so far as such liability is assumed by the public authorities (Regulation 4.2(6)) or where the seafarer can claim medical benefits under a scheme of compulsory insurance. For example, under the German statutory health insurance programme.

Q. Does a Shipowner have to pay for the repatriation of a sick or injured seafarer?

A. The MLC gives the seafarer the right to be returned to their home country when they are no longer able to carry out their duties, which includes when they are ill or injured. A Shipowner must arrange this free of charge to the seafarer and cannot request advance payment or make deductions for the repatriation.

Q. Is a seafarer entitled to compensation under the MLC?

A. While the MLC does specify that the Shipowner must have financial security to assure, among other things, that compensation is payable in the event of death or long-term disability, the MLC does not state the quantum of any disability payable or how this is to be calculated. This is determined by the applicable national law, employment contract or collective bargaining agreement. For example, the Philippine Overseas Employment Administration (POEA) Standard Employment Contract sets out a list of injuries and conditions and assesses them between Grade 1 and Grade 14. These grades attract fixed compensation pursuant to a schedule within the SEC.

Q. If a seafarer passes away, what “burial costs” is a Shipowner liable to pay?

A. Unless the costs are paid by a local authority resulting in no liability on the part of the Shipowner, the Shipowner is liable for “burial costs”. There is no standard definition of “burial costs” within the MLC and so there is the potential for differing interpretations. In general, the Club would accept that the Shipowner is liable to meet basic funeral costs including but not limited to the funeral director fee (including cost of internment), venue hire and a basic reception (such as a buffet lunch with soft drinks). Any costs presented by the seafarer’s next of kin must be considered as reasonable for the relevant jurisdiction and the seafarer’s religious beliefs. The local correspondent will be able to provide advice in this regard.

Q. Can a Shipowner pay a seafarer 50% sickness wages?

A. A Shipowner is required to pay full wages for as long as the seafarer is on-board or until they have been repatriated. However, a Shipowner may pay part wages “*as prescribed by national laws or regulations or collective agreements*” from the time when the seafarer is repatriated or landed. A Shipowner will need to review the applicable local law to establish whether this is permitted as often national laws require payment of full wages for the 16-week period, whether or not the seafarer has been repatriated.

The payment of full wages as required may however be exclusive of bonuses, meaning a Shipowner can pay a seafarer’s basic wage (Guideline B4.2(1)).

Q. What sickness wages is a seafarer entitled to if they work rotational shifts?

A. Under the MLC, a seafarer is entitled to basic wages - not including allowances or bonuses – for a period of up to 16 weeks. For a rotational seafarer, their basic daily wage is often made up of two elements, an earned pay and pay in lieu of leave. They are not normally paid in their off rotation period but rely on the leave pay they earned during their last on rotation. Therefore, during an ordinary 16-week period, a rotational seafarer would have a certain number of working days (where they are essentially paid double their basic pay) and a certain number of non-working days (where they are not paid). As their sickness wages will comprise 16 weeks of consistent basic pay the seafarer will generally earn the same wages as they would have earned over a 16-week period, had they been working.

Q. If there is a conflict between the contractual provisions of the seafarer’s Contract of Employment and the MLC, which prevails?

A. If the MLC applies to the contract and the contractual provisions do not comply with the MLC minimum requirements, then the terms of the MLC will prevail. If, however the contractual provisions are more beneficial to the seafarer, the contractual terms will prevail.

For further advice, please contact the Club’s local [correspondents](#) or the [Claims Department](#).