

Stakeholders responsibilities under the Maritime Labour Convention, 2006, during the COVID-19 Lockdown

Introduction

The current coronavirus outbreak is causing significant difficulties within and across the shipping industry, presenting a whole range of supply and logistical problems in every sphere of its operations across the globe. The ILO is particularly concerned about how the resulting travel, quarantine and social distancing restrictions, put in place by nearly all countries to contain the spread of the virus, have adversely affected the exercise of key MLC rights by seafarers, including: the right to repatriation/relief and crew transits to and from their ship; resulting extensions of SEA's/tours of duty; the right to take annual leave; access to shore leave or to seek urgent dental or medical care ashore; resulting fatigue and reduction of welfare. Since the first few months of the lockdown, the situation has much improved, and the work of social partners, governments and NGO's has resulted in measures such as: seafarers being universally granted 'key worker' status; major maritime hubs introducing transit guidance; guidance and protocols issued by the ILO, IMO, WHO and other bodies, all easing the repatriation and crew relief process. Nevertheless, in more limited cases now, residual travel restrictions and quarantine measures, make it difficult or impossible for shipowners to facilitate the granting of these MLC rights to seafarers onboard their ships, or to those in transit to join them.

Notwithstanding these difficulties, the ILO is committed to ensuring that the disruption to the enjoyment of MLC rights is kept to an absolute minimum, as expressed in its 'Information note on maritime labour issues and coronavirus (COVID-19)

https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_741024/lang--en/index.htm

Accordingly, the delay or inability to extend these rights to seafarers can only be justified in each case where it is impossible to exercise the right because of circumstances which amount to *force majeure*, that is, material circumstances beyond the control of shipowners or other parties involved in ensuring MLC compliance and enforcement. Such parties include: port States; flag States; labour supply State/seafarer home State; ILO Member States obligated to facilitate seafarers' shore leave, medical care and transit.

This document sets out guidance to seafarers on the steps they can take in attempting to enforcing these rights and bring MLC non-conformities to the attention of appropriate parties.

MLC rights, compliance and enforcement

The MLC requires ratifying flag states to ensure that shipowners extend Convention rights to seafarers, by implementation through flag State laws, regulations or other measures. Each ship must carry a Maritime Labour Certificate (MLCert), with an appended Declaration of Maritime Labour Compliance (DMLC), Parts I and II, informing seafarers of flag State

implementation laws, regulations and other measures (Part I) and how the shipowner has committed to comply and apply them to seafarers onboard (Part II) . In addition, a seafarer's employment agreement (SEA) and any applicable collective bargaining agreement (CBA), will set out and, in some cases, enhance those rights. Further information will be given on the website of the maritime authority of the flag state, including details of how to report a non-conformity (see below 'on-board complaints procedure'). This structure enables seafarers to: enforce their statutory MLC implementation rights in the flag State; enforce their SEA/CBA rights in contract law in the appropriate jurisdiction (as set out in the SEA/CBA); report non-compliances to various compliance and enforcement authorities using the MLC on-board and onshore complaints procedures (see below) .

Shipowner responsible under flag State MLC implementation laws, regulations and other measures to grant seafarers rights such as: repatriation; a minimum of 2.5 days per month paid annual leave (in addition to flag state public holidays); the right to visit a doctor or dentist in port for urgent care; access to shore leave to benefit their health and well-being. If the shipowner refuses access to these rights, a seafarer can: use the MLC on-board complaints procedure and, if the matter is not resolved at the lowest possible level, report the matter to the master and external authorities such as the flag State, port State, shipowner, trade union and ITF inspector. Flag State measures must protect seafarers against victimisation for lodging such complaints.

Flag State is responsible for ensuring that shipowners extend its MLC implementation provisions to seafarers on ships that fly its flag. Compliant ships are issued with a Maritime Labour Certificate. As stated above, the on-board complaints procedure entitles seafarer's to complain to the flag State about unresolved MLC non-compliances, and most maritime administrations will provide the appropriate contact details and procedure on their website. Flag State inspectors may be appointed to carry out an inspection/investigation, wherever the ship is. The sanctions against non-compliant shipowners can be serious and include: detention of the ship; withdrawal of the MLCert; prosecuting the shipowner/personnel for breaches of flag State MLC laws (punishable by a fine and/or imprisonment).

If a shipowner fails to repatriate a seafarer, the MLC financial security provider (usually the P&I Club) and the flag State have a duty do so, and may recover the costs from the shipowner. If the matter remains unresolved, then the port State, or the State of which the seafarer is a national, may repatriate a seafarer and recover the costs from the flag State. See also 'MLC Financial Security Provider' below.

More generally, the ILO's '*Guidelines for flag State inspections under the Maritime Labour Convention, 2006*', provide detailed information on general MLC implementation enforcement.

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_101788.pdf

Chapter 4 outlines a range of actions that can be taken if deficiencies or non-conformities are identified by flag State inspectors.

Port State is responsible for carrying out MLC inspections in accordance with the applicable regional port State control Memorandum of Understanding (MOU). Seafarers may make an MLC onshore complaint concerning non-compliances, the contacts/procedure for which should be on the maritime administration's website. Port State Control Officers (PSCO's) must carry out an initial investigation into the matter complained of and seek to resolve the matter at shipboard level. If this fails, the PSCO must seek advice from the flag state and a corrective plan of action. If this fails, the PSCO must inform the ILO.

Where conditions on-board are clearly hazardous to safety, health or security of seafarers, or there is a serious non-conformity or repeated breach, the PSCO has powers to detain the ship until the matter is rectified. In this context, health and safety could be compromised due to fatigue arising from extended tours of duty, breaches of minimum rest/maximum working time or a failure to allow access to onshore medical care. There could be repeated and unjustified refusals to repatriate seafarers or allow them shore leave (where safe to do so). A prosecution may be brought by the port State for breach of its MLC laws (which apply to foreign ships in port and territorial waters),, punishable by a fine and/or imprisonment.

Furthermore, when a ship is in the port of a Member State of the ILO, or passes through its territorial or internal waters, the State must facilitate the repatriation of seafarers, as well as their replacement onboard.

The port State should repatriate seafarers, where the shipowner and flag State have failed to do so. Costs can be recovered from the flag State.

More generally, the ILO's '*Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*', provide detailed information on MLC enforcement by port State control. The guidelines have been developed to assist port State administrations to effectively implement their responsibilities under the MLC and to harmonise port State enforcement.

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_101787.pdf

Chapter 4 provides information on 'more detailed inspections' and chapter 5 sets out courses of action to be taken by PSCO's when finding deficiencies or non-conformities.

Seafarers' organisations the role of trade unions in MLC implementation and enforcement is expressly recognised throughout the Convention. Trade unions play a major role in negotiating MLC compliant SEA's and CBA's with shipowners. The MLC ratifying States must respect the rights to freedom of association and the right to collective bargaining. As such,

trade unions are very well placed to advise, act on behalf of or assist their members to enforce their MLC rights and in carrying out many of the steps outlined above.

MLC financial security provider the ship must carry and display an MLC financial security certificate (FSC), which is usually issued by the P&I Club. When a seafarer is abandoned, the FSC covers the costs of repatriation, outstanding wages and other SEA entitlements (up to four months), necessary accommodation, food, medical expenses, etc. The FSC must contain details of the claims handler, whom seafarers, their union or personal representative can contact for urgent assistance and resolution.