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Ocean Wave

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P&I Correspondent in the Philippines

Topics of interest relating to the Philippine Maritime Industry and Shipping

Sick Wages (Illness allowance)
when do they apply?



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SICK WAGES AND COVID 19

There has not been any legal case yet in regards to the POEA contract and COVID-19, but there are basic guidelines and we have also been applying the POEA's legal journal about application of sick wages. The defining point for sick wages will be when has the COVID-19 been detected and was it the cause of repatriation or during repatriation.

First of all any returning seafarer to the Philippines requires mandatory RT-PCR testing and this is at the cost of the Philippines Government. The seafarer will then be placed in a quarantine facility (official listing of places is issued by the government) however the expense of the quarantine accommodation is defined in POEA Governing Board Resolution GBR 13-2020 :

*ITEM 8. A seafarer who is repatriated to the point of hire but is not yet home and is in quarantine shall be provided accommodation and food at **principal/employer's cost**, unless otherwise provided by the government*

The seafarer will remain in quarantine up to 14 days or a negative result from the RT-PCR whichever comes first. If positive moved to COVID-19 hospital.

In regards to the specific point of sick wages, then;

- Sick wages will apply if the cause of repatriation is COVID-19 and it is a medical repatriation.
- Sick wages will not apply if routine end of contract and upon arrival at mandatory testing result is positive then only obligation is medical treatment at hospital if ill, if asymptomatic at approved reception facility.

The obligation under GBR 13 and the costs of this period are clearly defined as for the principal/employer and we are currently identifying it as a financial obligation and operational cost only not as a full extension of the POEA contract as GBR 13 does not state that. A grey area is what happens if a seafarer has an accident or a heart attack while at the holding/quarantine facility, there has been no case at the moment so this remains a very grey area how the POEA would view liability.

GENERAL GUIDELINES ON SICK WAGES

Whether sick-wages should be paid or not is an area which can cause confusion. This on the whole is because there is a simple misunderstanding about the way in which the seaman's repatriation is recorded. It is also directly related to what is understood by "*duration of contracts*", in considering this issue we respectfully point out that duration of contracts are almost "*virtual*" in nature and that specifying a contract period in months is a point which benefits the owner more than the seafarer. By placing a specified period in a contract this gives the owner the control in stating a minimum period in which the seafarer can be returned from the vessel. Some contracts are as short as 3 months, suiting the need of a ship-owner who requires a riding squad for maintenance work. For normal ship operation then crew contracts of 6, 9 and 12 months duration are more common. In Section 2 of the Philippines Overseas Employment Administration (POEA 2010 *current SEC*) contract it states;

"The period of employment shall be for a period mutually agreed upon by the seafarer and the employer but not to exceed 12 months. Any extension of the contract shall be subject to the mutual consent of both parties."

In practice we experience seafarers who have been on board the ship for 24 and even 36 months. Therefore even though a seafarer is on a 9 month contract there is no guarantee that he/she will definitely be repatriated exactly on the completion of 9 months, "Section 19 Repatriation" goes into several scenarios. The nature of "sick wages" is to compensate a seafarer for lost income due to repatriation due to an illness or injury.

The contract under Section 20A (3) Compensation and benefits for injury or illness, states;

In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-



designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

It is understanding the interpretation of the phrase **"from the time he signed off"** and the start date of the 120 days sickness allowance computation. In exchanges with the POEA this point has been clarified and a summary is given below.

The provision of Section 20.A.3 as worded is very clear.

Section 20. A 3 paragraph goes on to state that, Upon sign-off from the vessel for medical treatment;

The seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company- designated physician but in no case shall tis period exceed one hundred twenty (120) days. For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed a compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

"Any proposition that the start date of the 120 days sickness allowance computation will be from the time the seafarer was reported sick/injured while still on board or while still at the foreign port is NOT in accordance with the above-cited provision.

The second paragraph of Section 20.A.3 is instructive that the seafarer upon his return shall submit himself to a post-employment medical examination by a company-designated physician within three working days. Thus, the start date of the 120 days sickness allowance should be from the date the seafarer arrived home and after compliance with the conditions set in the same section. If another interpretation will be considered and the entitlement to the sickness allowance will be made earlier than it was stipulated, it will clearly be prejudicial and disadvantageous to the seafarer."

Therefore, unless a seaman has actually signed off the ship because of "completion of contract" the only other ways to leave, are shipwreck, sale of the vessel and for "medical reasons". A seafarer who is on a 9 month contract and is ill or injured having served 8 months 30 days we respectfully comment is still entitled to a maximum of 120 days sick-wages, unless declared fit before the 120 period has expired. This is because at the time of the incident he/she was still employed on board the vessel and the reason that he/she is leaving the vessel is for a medical reason, not completion of contract. If it was not for the medical incident even though the contract is for 9 months the seafarer may in effect have remained on board the vessel for 10 months, 12 months or even 24 months through mutual consent. Following on then if a seafarer has remained on board the vessel and their contractual period has been passed, the seafarer is still under his/her contract which remains in force until the seafarer returns to the point of hire. Again, if on a 9 month contract but is injured or ill after that date and is repatriated for a medical reason then the seafarer is still entitled to sick wages as they were removed from the vessel unexpectedly and therefore a loss of potential income which is the purpose of the sick wages.

This perception has been accepted by the industry over many years and is a position adopted by the courts.

As outlined in the POEA journal their guidelines are that sick-wages are not due when the seafarer falls ill or is injured once he/she has "signed off" the vessel for completion of contract and is on route back to the point of hire (Philippines). As an example, a seafarer is injured in a car accident on the way to the airport or falls ill at the airport with Malaria. The seaman was already on the way home having completed his employment and therefore the medical condition is not denying the seafarer any future earning capacity. The seafarer is however entitled to medical treatment and disability benefits depending on the circumstances.



To clarify even further a seaman who signs a 9 month contract, but due to the trading pattern of a vessel it is decided for commercial reasons it is better to repatriate the crew after 8 months and one week and the crew duly signed off as "End Of Contract" . Then completion of contract has occurred and if a crewmember is injured or ill on the way home he/she is entitled to medical treatment but no sick-wages as there is no loss of earning capacity.

In determining the quantum of sick-wages to be paid, as described in the POEA contract it is a monthly salary designed to compensate the seafarer for loss of earning because they have been signed off the ship unexpectedly. Just as regular wages are calculated onboard based on the actual calendar month, so are the sick-wages computed using the basic wage. The actual number of days he/she is under treatment or if the full month the number of days in that calendar month. The cumulate days not to exceed 120 days.

Reference POEA Contract

Section 19 F

The seafarer, when discharged and repatriated as directed by the principal/employer/master/company shall be entitled to basic wages from date of signing off until arrival at the point of hire except when the discharge is in accordance with the above or for disciplinary reasons.

If the seafarer delays or makes a detour or proceeds to a destination other than through the travel itinerary arranged by the employer to the point of hire, the employment of the seafarer will be considered terminated at the time the seafarer signs off the ship and all additional expenses shall be to the seafarer's account. The seafarer shall be entitled to earned wages and basic wage calculated based on the original scheduled date of arrival at the point of hire. All other liabilities of the company in this event shall cease at the time the seafarer is terminated. Any illness, injury or death sustained by the seafarer, due to the above shall be considered non-work related and shall not be compensated.

The POEA is the bench-mark, some CBA's have a different start date and longer periods but can not be applied if inferior to the POEA.

A pragmatic view on sick wages, a respectful suggestion for application.



The POEA is a ship owners' "minimum" obligation under the law, the application of sick wages in one area of the contract that after overseeing many thousands of cases the actual application requires consideration and can be applied in a positive way that is not: setting an unwanted precedent or detrimental in certain cases even though those cases would not fall strictly under the POEA parameters.

A good example of this is a seafarer who while during their contract has a medical issue on board, sees a doctor in a foreign port, but a condition that is not severe enough or incapacitates that they can not perform their duties and does not require medical repatriation. However, the doctor does recommend follow up treatment upon return to the Philippines. Technically the seafarer is then repatriated under normal end of contract many weeks or even months after seeing the doctor abroad with a recommendation for a follow up, under the POEA there would be no loss of earning capacity and no need to apply sick wages. In practice the medical treatment needed may require follow ups or therapy to make a full recovery. This shrewd application of sick wages on such cases has shown clear evidence that payments of sick wages in

support of the seafarer has deterred many from seeking a lawyer and any unwanted legal claim. Upon successful treatment seafarer declared fit to work and able to be redeployed.

A further positive application to considering sick-wages in certain cases has also been viewed favourably by the courts as “thoughtful” on more complex cases and equitable results observed when a seafarer has filed a case.

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