

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN NORWAY

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of Norwegian flagged ships, and foreign ships which are in the ports of Norway. These rights can be enforced in court, where they are secured and preferred by maritime liens and enforced by the arrest and forced (judicial) sale of the ships.

This document is not intended to be legal advice, nor does it constitute legal advice.

If a seafarer intends to claim his wages, he is strongly advised to consult a lawyer qualified to practise in Norway.

*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

1. What is the maritime lien for seafarers' wages? How is it enforced?

- 1.1 Maritime liens are recognized under the Norwegian Maritime Code of 24 June 1994 number 39 ('the NMC'). The NMC provides that certain claims related to the operation of a ship are secured by maritime liens on the ship, including claims for wages and other sums due to the master and other persons employed on board in respect of their employment on the vessel.
- 1.2 Maritime liens are applicable irrespective of whether:
 - (1) the claim in question is against the registered owner of the ship, a charterer, or a manning company, or other independent contractors;
 - (2) the ship changes its registration or ownership, since any maritime lien continues to attach to the ship.
- 1.3 The maritime lien attaches by virtue of law at the same time as the wage claim arises. This means that there is an automatic securing of the wage claim without the need for registration or other activity by the seafarer.
- 1.4 The maritime lien is enforced through arrest of the ship. An arrest on the basis of a maritime lien can only be affected against the ship to which the maritime claim relates.

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2. Which courts have jurisdiction over seafarers' wage claims?

- 2.1 It is the ordinary courts in Norway that have jurisdiction over seafarers' wage claims.
- 2.2 The jurisdiction of Norwegian Courts is regulated in Act of 17 June 2005 no. 90 relating to Mediation and Procedure in Civil Disputes ('the Disputes Act').
- 2.3 Proceedings may be brought before a Norwegian court if:
 - (1) the defendant is resident in Norway. Disputes in relation to wage claims and working conditions on Norwegian ships can generally be instituted in Norway because the NMC requires that the shipowner be resident in Norway, or that the owner designates a representative with authority to receive the lawsuit in Norway; or
 - (2) the defendant has property or other assets in Norway.
- 2.4 If the vessel has been arrested in Norway, an action relating to the claim for the payment of money secured by such an arrest may be brought at the place where the arrest took place. The same applies if the vessel has been released or the arrest has been avoided by the provision of security.
- 2.5 If no local venue can be established, but the case is still subject to Norwegian jurisdiction, and an action may be filed with the Oslo City Court.

3. Can the courts refuse to hear seafarers' claims for wages?

- 3.1 The courts can refuse to hear a seafarer's claim for wages if the case is filed at the wrong venue and it is not within the Norwegian court's jurisdiction. In addition, the general conditions for instituting legal proceedings must be satisfied. The case may be dismissed if, for example, it is beyond doubt that it cannot serve any sensible purpose and is brought by a person who abuses the court system by repeatedly bringing such cases.

4. Who can claim seafarers' wages?

- 4.1 Provided the court has jurisdiction, a seafarer with so-called procedural capacity can institute a claim for wages in the Norwegian courts, irrespective of the nationality of the claimant. Procedural capacity is the capacity to act on behalf of oneself in a lawsuit, including the capacity to bring and defend an action. Any person of legal age under Norwegian law (as well as the law of the domicile of a foreign claimant) has procedural capacity.

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4.2 A seafarer may also be represented by counsel. Only Supreme Court advocates can be engaged as counsel in cases that involve an oral hearing before the Supreme Court.

4.3 A person to whom a seafarer's wage claim has been duly assigned may act as claimant before the Norwegian court, assuming that the court has jurisdiction and the assigned has procedural capacity.

5. Which ships are subject to the jurisdiction of the courts?

5.1 A seafarer can arrest a ship in Norway to secure a claim for unpaid wages irrespective of the nationality of the claimant or the ship. This is so whether the claim is secured by a maritime lien or not, although the requirements for an arrest are somewhat more stringent when the claim is not secured by a maritime lien.

6. What is included in the maritime lien for seafarers' wages?

6.1 The law determines that wages and other sums due to the master and other persons employed on board in respect of their employment on the vessel are included in the maritime lien for wages.

6.2 'Wages and other remuneration' also covers other claims arising out of the employment relationship, such as, sick pay and travel allowances.

6.3 'Wages' includes not just ordinary wages, but also additional compensation including overtime, extra compensation for work done outside the seafarer's ordinary duties, and holiday pay.

7. Can seafarers' wages be claimed if there is no written contract of employment?

7.1 Wages can be claimed if there is no written contract of employment. But there may well be a question of proof; and the seafarer must prove that he has a claim and the basis for the claim.

8. Must seafarers' services have been rendered on board the ship?

8.1 The NMC determines that claims against a shipowner are secured by maritime liens against the ship in so far as they relate to wages and other sums in respect of the seafarers employment on the ship in question. This means that the seafarer's service must have been rendered on board the ship.

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- 8.2 If the seafarer is employed by the shipping company as opposed to an employment on a given ship, the employee has a maritime lien on the ship for the earnings related to the work on this ship.
- 9. What is the ranking of seafarers' claims for wages in the event that sale proceeds are distributed?**
- 9.1 A maritime lien has priority over all other encumbrances on the ship by virtue of the NMC and a seafarer's claim for wages has first priority among the maritime liens (subject only to the minor exception set out below). Hence, a claim secured by a maritime lien is afforded top priority, over and above registered mortgages and the proven likelihood of a maritime claim secured by a maritime lien gives an immediate right to arrest.
- 9.2 Maritime liens are ranked in the order in which they are listed below:
- (1) wages and other sums due to the master and other persons employed on board in respect of their employment on the vessel;
 - (2) port, canal and other waterway dues and pilotage dues;
 - (3) damages in respect of loss of life or personal injury occurring in direct connection with the operation of the ship;
 - (4) damages in respect of loss of or damage to property, occurring in direct connection with the operation of the ship, provided the claim is not capable of being based on contract; and
 - (5) salvage reward, compensation for wreck removal, and general average contribution.
- 9.3 However, maritime liens arising under 9.2(5) take priority over all other maritime liens which have attached to the ship earlier in time; and, as between maritime liens arising under 9.2(5), priority is accorded to the most recently arising maritime lien.
- 10. Can wages be claimed if the employer is not the shipowner or acts illegally?**
- 10.1 For a claim for wages to be secured by a maritime lien it is not a requirement that the seafarer must be employed by the shipowner or belong to the 'real' crew. Hence, the remuneration of a catering employee is secured by a maritime lien.
- 10.2 However, a maritime lien arises only in connection with the ship for which the work was done. Whether the shipowner or employer 'acts illegally' in any way does not in itself have any immediate effect on the validity of a claim for wages or the existence of a maritime lien. Depending on the circumstances, however, a claim for wages earned by a seafarer who knowingly participates in illegal activity on board, or in

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relation to a ship, may be found to be invalid in the sense that the courts will not enforce a so-called '*pactum turpe*,' that is, an agreement which violates public order.

11. Can the seafarer's maritime lien for wages be abandoned or waived by agreement?

11.1 It is determined by the Supreme Court that the legal provisions concerning the maritime lien for wages must be regarded as mandatory and cannot be waived by agreement.

12. When is the seafarer's maritime lien for wages forfeited or not recognised or extinguished?

12.1 A maritime lien becomes time-barred one year from the day when the claim in question arose, unless prior to the expiry of the time limit the ship has been arrested and the arrest has led to a forced sale.

12.2 The ship is regarded as arrested when the warrant of arrest is served on board or the arrest is otherwise made effective on board.

12.3 The one year period ceases to run whilst the holder of the lien is by law prevented from arresting the ship. Otherwise, the one year period is not subject to extension or interruption.

12.4 However, the right to arrest ceases when the claim becomes time-barred in accordance with the law governing the employment contract, which is not necessarily Norwegian law. By way of example, a claim for wages becomes time-barred under Norwegian law three years after it arose. The right to invoke a maritime lien to secure the claim, on the other hand, expires one year after the claim arose.

12.5 A maritime lien automatically lapses on the expiry of the one year period above, unless the vessel is arrested by the claimant before that. A maritime lien also lapses automatically if the ship in question is lost.