

SEAFARER SUBJECT GUIDE

PERSONAL INJURIES AND DEATHS IN PANAMA

This Guide explains national law when seafarers are injured or killed in a port in Panama or on a Panamanian flagged ship. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is injured or killed, then the seafarer or his relatives are strongly advised to consult a lawyer qualified to practise in Panama.

*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.

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- 1. If a seafarer is injured or killed in a work related incident, does Panamanian law allow a claim for compensation to be brought?**
 - 1.1 Under the law of Panama, if a seafarer is injured or killed in a work related incident two compensation claims are permitted. One is a contractual base claim and the other is a negligence or fault claim. The contract of employment is the basic document for the contractual claim for benefits and compensation. The negligence or fault claim is an additional legal remedy that is available to the seafarer.
 - 1.2 If the vessel involved is Panamanian and Panamanian law is applicable, any claim can be brought in Panama. However, if the contract of employment calls for a foreign law to apply, a Panamanian Court will allow the claim to be decided abroad. If the seafarer is injured or killed in a foreign flagged vessel and the vessel is in Panamanian waters, the action can be filed in Panama.
 - 2. What is the basis for recovery of compensation for personal injury or death claims?**
 - 2.1 Panama has adopted a disability table for different types of injuries, based on a percentage of the disability for the purposes of a contractual claim.
 - 2.2 In the case of a negligence or fault claim, the burden proof is on the claimant to prove the damages (economic, actual and moral).
 - 3. Are Panamanian laws for compensation for personal injury or death of a seafarer applicable only to Panamanians, or are the laws applicable to foreigners also?**

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- 3.1 The laws of Panama governing compensation for personal injury and wrongful death claims are applicable to all seafarers without distinction as to their citizenship or nationality.
- 4. Is Panamanian law the same throughout the country, or does it change from state to state or from province to province or for any other political or geographical area?**
- 4.1 The law of Panama is applicable to the whole country. For the purposes of Panamanian law, all vessels registered in Panama are considered to be part of Panamanian territory.
- 5. Is Panamanian law the same for all types of seafarers, such as blue water seafarers engaged in international trade, seafarers employed in coastal waters, or fishers?**
- 5.1 The only difference between blue water seafarers and coastal waters seafarer is that the local seafarers are mandatorily covered by workers compensation provided by the Panama Social Security Entity which takes care of contractual claims for disability.
- 6. Which court would have jurisdiction over a claim for compensation by a seafarer who was injured or killed: (1) on a Panamanian vessel, or (2) on a foreign flagged vessel in a local port of Panama or in the territorial seas of Panama?**
- 6.1 The Maritime Courts of Panama have jurisdiction to determine cases involving seafarers on a national flagged vessel or on foreign flagged vessels present in Panama.
- 7. Would the Panamanian court uphold a jurisdiction and/or law clause in the employment contract of a seafarer who had been injured or killed in a work related accident?**
- 7.1 A court in Panama will uphold a jurisdiction clause or choice of law clause in the employment contract or a collective bargaining agreement for claims involving injury to, or death of, a seafarer. Such a clause must be an expressly worded if it is to be upheld.
- 8. What is the time limit for bringing a claim after the occurrence of an incident?**

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8.1 Under the law of Panama the time limit is one year from the occurrence of an incident.

8.2 In addition to the *in personam* claim given by the law against the shipowner/operator, there is also a maritime lien enforced by an *in rem* action against the vessel.

9. Is a seafarer's claim for compensation for injury or death a maritime claim that can be secured by arrest of a ship? If so: (1) which ship can be arrested; and (2) in what circumstances can the ship be arrested?

9.1 Any claim, contractual or negligence/fault based can be secured by arresting a ship. The claimant, under Panamanian law, has a maritime lien for an action *in rem* against the guilty ship.

9.2 If the case involves a foreign flagged vessel and the applicable law grants a maritime lien, the guilty vessel can also be arrested in Panama.

9.3 If the claim involves an *in personam* claim, any vessel owned/operated by the defendant could be arrested to obtain security.

10. What types of damages are recoverable?

10.1 Under Panamanian law, a claimant is entitled to all proven damages. Damages can be economic, loss of earnings, actual damages, and future medical expenses.

10.2 A seafarer can also claim 'moral damages,' a term which includes damages for pain and suffering.

11. What are the principles for calculating compensation for a claim by a seafarer or his next of kin for: (1) a work related injury; and (2) a work related death?

11.1 The main elements for the purpose of calculating compensation are: (a) the wages earned, including future increases; (b) the age of the claimant; (c) the number of working years until retirement; and (d) a percentage of the medically determined disability.

12. What damages might be awarded in the following circumstances:

(1) 30 year old seafarer, injured aboard a vessel, who is now totally disabled. Medical expenses of US\$15,000 per year for the remainder of his life?

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- 12.1 In a situation like this, assuming an income of US\$1,500.00/month, the basic claim will be for US\$18,000.00/year for 35 years (age until retirement): US\$630,000.00, plus a wage increase 3-5% per year, plus medical expenses for 35 years: US\$525,000.00, plus moral damages at the discretion of the court. A reduction in the value of the damages could be argued by the defendants. The law of Panama Law makes the defendant liable for 'all damages' without qualification, other than at the discretion of the court.
- (2) 30 year old seafarer, who dies as a result of an accident on board a vessel, who is survived by a 29 year old wife and 2 children, ages 2 years and 4 years old?**
- 12.2 Here, the damages economic damages will be calculated similarly to the previous example, US\$630,000.00, plus a wage increase of between 3-5% per year, plus funeral costs, plus moral damages at the discretion of the court. Economic damages are divided in Panama: 50% goes to the widow, and 50% goes to the children.
- 13. How efficient are the local courts and what would be an average estimated time for hearing and ruling on a seafarer's claim for compensation for injury or death?**
- 13.1 A normal case could be decided at the trial level within 12-18 months, depending on how long discovery takes place.
- 13.2 If the case is appealed to the Panama Supreme Court, the appeal could take up to two years.
- 14. On what basis will a lawyer generally charge a seafarer for handling a claim for compensation?**
- 14.1 Maritime claims for seafarer are normally taken by lawyers on a no cure - no pay basis, with the lawyer taking up to 1/3 of the net recovery.
- 14.2 The lawyer will pay all the expenses of the case.