

C091 - Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)

Convention concerning Vacation Holidays with Pay for Seafarers (Revised 1949) (Entry into force: 14 Sep 1967) Adoption: Geneva, 32nd ILC session (18 Jun 1949) - Status: Shelved convention (Technical Convention).

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Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Paid Vacations (Seafarers) Convention, 1946, adopted by the Conference at its Twenty-eighth Session, which is included in the twelfth item on the agenda of the session, and

Considering that these proposals must take the form of an international Convention,

adopts this eighteenth day of June of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Paid Vacations (Seafarers) Convention (Revised), 1949:

Article 1

- 1. This Convention applies to every sea-going mechanically propelled vessel, whether publicly or privately owned, engaged in the transport of cargo or passengers for the purpose of trade and registered in a territory for which this Convention is in force.
- 2. National laws or regulations shall determine when vessels are to be regarded as sea-going vessels.
- 3. This Convention does not apply to--

- (a) wooden vessels of primitive build such as dhows and junks;
 - (b) vessels engaged in fishing or in operations directly connected therewith or in sealing or similar pursuits;
 - (c) estuarial craft.
- 4. National laws or regulations or collective agreements may provide for the exemption from the provisions of this Convention of vessels of less than 200 gross register tons.

Article 2

- 1. This Convention applies to every person who is engaged in any capacity on board a vessel except--
- (a) a pilot not a member of the crew;
 - (b) a doctor not a member of the crew;
 - (c) nursing staff engaged exclusively on nursing duties and hospital staff not members of the crew;
 - (d) persons working exclusively on their own account or remunerated exclusively by a share of profits or earnings;
 - (e) persons not remunerated for their services or remunerated only by a nominal salary or wage;
 - (f) persons employed on board by an employer other than the shipowner, except radio officers or operators in the service of a wireless telegraphy company;
 - (g) travelling dockers (longshoremen) not members of the crew;
 - (h) persons employed in whale-catching vessels, in floating factories, or otherwise for the purpose of whaling or similar operations under conditions regulated by the provisions of a special collective whaling or similar agreement determining the rates of pay, hours of work and other conditions of service concluded by an organisation of seafarers;
 - (i) persons employed in port who are not ordinarily employed at sea.
- 2. The competent authority may, after consultation with the organisations of shipowners and seafarers concerned, exempt from the application of the Convention masters, chief navigating officers and chief engineers who by virtue of national laws or regulations or collective agreements enjoy conditions of service which are not less favourable in respect of annual leave than those required by the Convention.

Article 3

- 1. Every person to whom this Convention applies shall be entitled after twelve months of continuous service to an annual vacation holiday with pay, the duration of which shall be--

- (a) in the case of masters, officers and radio officers or operators, not less than eighteen working days for each year of service;
 - (b) in the case of other members of the crew, not less than twelve working days for each year of service.
- 2. A person with not less than six months of continuous service shall on leaving such service be entitled in respect of each complete month of service to one and a half working days' leave in the case of a master, officer, or radio officer or operator, and one working day's leave in the case of another member of the crew.
- 3. A person who is discharged through no fault of his own before he has completed six months of continuous service shall on leaving such service be entitled in respect of each complete month of service to one and a half working days' leave in the case of a master, officer, or radio officer or operator, and one working day's leave in the case of another member of the crew.
- 4. For the purpose of calculating when a vacation holiday is due--
 - (a) service off articles shall be included in the reckoning of continuous service;
 - (b) short interruptions of service not due to the act or fault of the employee and not exceeding a total of six weeks in any twelve months shall not be deemed to break the continuity of the periods of service which precede and follow them;
 - (c) continuity of service shall not be deemed to be interrupted by any change in the management or ownership of the vessel or vessels in which the person concerned has served.
- 5. The following shall not be included in the annual vacation holiday with pay:
 - (a) public and customary holidays;
 - (b) interruptions of service due to sickness or injury.
- 6. National laws or regulations or collective agreements may provide for the division into parts of an annual vacation holiday due in virtue of this Convention or for the accumulation of such a vacation holiday due in respect of one year with a subsequent vacation holiday.
- 7. National laws or regulations or collective agreements may, in very exceptional circumstances when the service so requires, provide for the substitution for an annual vacation holiday due in virtue of this Convention of a cash payment at least equivalent to the remuneration provided for in Article 5.

Article 4

- 1. When an annual vacation holiday is due it shall be given by mutual agreement at the first opportunity as the requirements of the service allow.

- 2. No person may be required without his consent to take the annual vacation holiday due to him at a port other than a port in the territory of engagement or a port in his home territory. Subject to this requirement, the vacation holiday shall be given at a port permitted by national laws or regulations or collective agreement.

Article 5

- 1. Every person taking a vacation holiday in virtue of Article 3 of this Convention shall receive in respect of the full period of the vacation holiday his usual remuneration.
- 2. The usual remuneration payable in virtue of the preceding paragraph, which may include a suitable subsistence allowance, shall be calculated in a manner which shall be prescribed by national laws or regulations or fixed by collective agreement.

Article 6

Subject to the provisions of paragraph 7 of Article 3 any agreement to relinquish the right to an annual vacation holiday with pay, or to forgo such a vacation holiday, shall be void.

Article 7

A person who leaves or is discharged from the service of his employer before he has taken a vacation holiday due to him shall receive in respect of every day of vacation holiday due to him in virtue of this Convention the remuneration provided for in Article 5.

Article 8

Each Member which ratifies this Convention shall ensure the effective application of its provisions.

Article 9

Nothing in this Convention shall affect any law, award, custom or agreement between shipowners and seamen which ensures more favourable conditions than those provided by this Convention.

Article 10

- 1. Effect may be given to this Convention by (a) laws or regulations; (b) collective agreements between shipowners and seafarers; or (c) a combination of laws or regulations and collective agreements between shipowners and seafarers. Except as may be otherwise provided herein, the provisions of this Convention shall be made applicable to every vessel registered in the territory of the ratifying Member and to every person engaged on any such vessel.
- 2. Where effect has been given to any provision of this Convention by a collective agreement in pursuance of paragraph 1 of this Article, then, notwithstanding anything contained in Article 8 of this Convention, the Member in whose territory the agreement is in force shall not be required to take any measures in pursuance of Article 8 in respect of the provisions of the Convention to which effect has been given by collective agreement.

- 3. Each Member ratifying this Convention shall supply to the Director-General of the International Labour Office information on the measures by which the Convention is applied, including particulars of any collective agreements which give effect to any of its provisions and are in force at the date when the Member ratifies the Convention.
- 4. Each Member ratifying this Convention undertakes to take part, by means of a tripartite delegation, in any committee representative of Governments and shipowners' and seafarers' organisations, and including in an advisory capacity representatives of the Joint Maritime Commission of the International Labour Office, which may be set up for the purpose of examining the measures taken to give effect to the Convention.
- 5. The Director-General will lay before the said Committee a summary of the information received by him under paragraph 3 above.
- 6. The Committee shall consider whether the collective agreements reported to it give full effect to the provisions of this Convention. Each Member ratifying the Convention undertakes to give consideration to any observations or suggestions concerning the application of the Convention made by the Committee and further undertakes to bring to the notice of the organisations of employers and of workers who are parties to any of the collective agreements mentioned in paragraph 1 any observations or suggestions of the aforesaid Committee concerning the degree to which such agreements give effect to the provisions of the Convention.

Article 11

For the purpose of Article 17 of the Holidays with Pay (Sea) Convention, 1936, the present Convention shall be regarded as a Convention revising that Convention.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

- 1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
- 2. It shall come into force six months after the date on which there have been registered ratifications by nine of the following countries: United States of America, Argentine Republic, Australia, Belgium, Brazil, Canada, Chile, China, Denmark, Finland, France, United Kingdom of Great Britain and Northern Ireland, Greece, India, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Sweden, Turkey and Yugoslavia, including at least five countries each of which has at least one million gross register tons of shipping. This provision is included for the purpose of facilitating and encouraging early ratification of the Convention by Member States.

- 3. Thereafter, this Convention shall come into force for any Member six months after the date on which its ratification has been registered.

Article 14

- 1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
- 2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 15

- 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
- 2. When notifying the Members of the Organisation of the registration of the last of the ratifications required to bring the Convention into force, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 16

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 17

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 18

- 1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
- 2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 19

The English and French versions of the text of this Convention are equally authoritative.