

C146 - Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)

Convention concerning Annual Leave with Pay for Seafarers (Entry into force: 13 Jun

1979) Adoption: Geneva, 62nd ILC session (29 Oct 1976) - Status: Up-to-date instrument (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 Sixty-second Session on 13 October 1976, and

Having decided upon the adoption of certain proposals with regard to revision of the Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91), in the light of, but not necessarily restricted to, the Holidays with Pay Convention (Revised), 1970 (No. 132), which is the second item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-ninth day of October of the year one thousand nine hundred and seventy-six the following Convention, which may be cited as the Seafarers' Annual Leave with Pay Convention, 1976:

Article 1

The provisions of this Convention, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards, court decisions, statutory wage-fixing machinery, or in such other manner consistent with national practice as may be appropriate under national conditions, shall be given effect by national laws or regulations.

Article 2

- 1. This Convention applies to all persons who are employed as seafarers.

- 2. For the purpose of this Convention, the term **seafarer** means a person who is employed in any capacity on board a sea-going ship registered in a territory for which the Convention is in force, other than--
 - (a) a ship of war;
 - (b) a ship engaged in fishing or in operations directly connected therewith or in whaling or similar pursuits.
- 3. National laws or regulations shall determine, after consultation with the organisations of shipowners and seafarers concerned, where such exist, which ships are to be regarded as sea-going ships for the purpose of this Convention.
- 4. Each Member which ratifies this Convention may, after consultation with the organisations of employers and workers concerned, where such exist, extend its application, with the modifications rendered necessary by the conditions of the industry, to the persons excluded from the definition of seafarers by paragraph 2, subparagraph (b), of this Article, or to certain categories thereof.
- 5. Each Member which extends the application of this Convention in pursuance of paragraph 4 of this Article at the time of ratifying it shall specify in a declaration appended to its ratification the categories to which the application is extended and the modifications, if any, rendered necessary.
- 6. Each Member which has ratified this Convention may further subsequently notify the Director-General of the International Labour Office, by a declaration, that it extends the application of the Convention to categories beyond those, if any, specified at the time of ratification.
- 7. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of shipowners and seafarers concerned, where such exist, to exclude from the application of this Convention limited categories of persons employed on board sea-going ships.
- 8. Each Member which ratifies this Convention shall list, in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation, any categories which may have been excluded in pursuance of paragraphs 3 and 7 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

- 1. Every seafarer to whom this Convention applies shall be entitled to annual leave with pay of a specified minimum length.

- 2. Each Member which ratifies this Convention shall specify the length of the annual leave in a declaration appended to its ratification.
- 3. The leave shall in no case be less than 30 calendar days for one year of service.
- 4. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a further declaration, that it specifies annual leave longer than that specified at the time of ratification.

Article 4

- 1. A seafarer whose length of service in any year is less than that required for the full entitlement prescribed in the preceding Article shall be entitled in respect of that year to annual leave with pay proportionate to his length of service during that year.
- 2. The expression ***year*** in this Convention shall mean the calendar year or any other period of the same length.

Article 5

- 1. The manner in which the length of service is calculated for the purpose of leave entitlement shall be determined by the competent authority or through the appropriate machinery in each country.
- 2. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, service off articles shall be counted as part of the period of service.
- 3. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, absence from work to attend an approved maritime vocational training course or for such reasons beyond the control of the seafarer concerned as illness, injury or maternity shall be counted as part of the period of service.

Article 6

The following shall not be counted as part of the minimum annual leave with pay prescribed in Article 3, paragraph 3, of this Convention:

- (a) public and customary holidays recognised as such in the country of the flag, whether or not they fall during the annual leave with pay;
- (b) periods of incapacity for work resulting from illness, injury or maternity, under conditions to be determined by the competent authority or through the appropriate machinery in each country;
- (c) temporary shore leave granted to a seafarer while on articles;
- (d) compensatory leave of any kind, under conditions to be determined by the competent authority or through the appropriate machinery in each country.

Article 7

- 1. Every seafarer taking the annual leave envisaged in this Convention shall receive in respect of the full period of that leave at least his normal remuneration (including the cash equivalent of any part of that remuneration which is paid in kind), calculated in a manner to be determined by the competent authority or through the appropriate machinery in each country.
- 2. The amounts due in pursuance of paragraph 1 of this Article shall be paid to the seafarer concerned in advance of the leave, unless otherwise provided by national laws or regulations or in an agreement applicable to him and the employer.
- 3. A seafarer who leaves or is discharged from the service of his employer before he has taken annual leave due to him shall receive in respect of such leave due to him the remuneration provided for in paragraph 1 of this Article.

Article 8

- 1. The division of the annual leave with pay into parts, or the accumulation of such annual leave due in respect of one year together with a subsequent period of leave, may be authorised by the competent authority or through the appropriate machinery in each country.
- 2. Subject to paragraph 1 of this Article and unless otherwise provided in an agreement applicable to the employer and the seafarer concerned, the annual leave with pay prescribed by this Convention shall consist of an uninterrupted period.

Article 9

In exceptional cases, provision may be made by the competent authority or through the appropriate machinery in each country for the substitution for annual leave due in virtue of this Convention of a cash payment at least equivalent to the remuneration provided for in Article 7.

Article 10

- 1. The time at which the leave is to be taken shall, unless it is fixed by regulation, collective agreement, arbitration award or other means consistent with national practice, be determined by the employer after consultation and, as far as possible, in agreement with the seafarer concerned or his representatives.
- 2. No seafarer shall be required without his consent to take annual leave due to him at a place other than that where he was engaged or recruited, whichever is nearer his home, except under the provisions of a collective agreement or of national laws or regulations.
- 3. If a seafarer is required to take his annual leave from a place other than that permitted by paragraph 2 of this Article, he shall be entitled to free transportation to the place where he was engaged or recruited, whichever is nearer his home, and subsistence and other costs directly involved in his return there shall be for the account of the employer; the travel time involved shall not be deducted from the annual leave with pay due to the seafarer.

Article 11

Any agreement to relinquish the right to the minimum annual leave with pay prescribed in Article 3, paragraph 3, or--except as provided, exceptionally, in pursuance of Article 9 of this Convention--to forgo such leave, shall be null and void.

Article 12

A seafarer taking annual leave shall be recalled only in cases of extreme emergency, with due notice.

Article 13

Effective measures appropriate to the manner in which effect is given to the provisions of this Convention shall be taken to ensure the proper application and enforcement of regulations or provisions concerning annual leave with pay, by means of adequate inspection or otherwise.

Article 14

This Convention revises the Paid Vacations (Seafarers) Convention (Revised), 1949.

Article 15

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

Article 16

- 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 twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
- 3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 17

- 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 18

- 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 second ratification communicated to him, 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 19

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 20

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 21

- 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 17 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 22

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