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ILO Information note on MLC issues and COVID-19

The International Labour Organization has issued an information note on maritime labour issues and COVID-19

Notice to: Ship Owners/ Managers/ Operators | Surveyors/Auditors

C20020 | 24 April 2020

The COVID-19 pandemic has created a global crisis and in the maritime sector it has severely disrupted the functioning of shipping and affected the work of nearly 2 million seafarers worldwide.

Numerous governments, seafarers and shipowners have turned to the ILO for guidance on how best to address the complexities of the current crisis in light of the provisions of the Maritime Labour Convention, 2006.

The information note aims to respond to such requests by referring to the MLC, 2006, the work of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), a statement of the Officers of the Special Tripartite Committee of the MLC, 2006, (STC) and, when relevant, the recommendations published by the International Maritime Organization (IMO) and the World Health Organization (WHO).

In general, it is recalled that under the MLC, 2006, derogations, exemptions or other clauses allowing for flexible application of the Convention by governments must be decided in consultation with shipowners and seafarers, with any determinations that are made reported to the ILO by the government concerned. The CEACR has on numerous occasions underlined the importance of these consultations for the implementation of the MLC, 2006. This is seen as a necessary and important approach to ensuring that all countries, irrespective of national circumstances, can engage with the international legal system and that international obligations are respected and implemented, to the extent possible, while efforts continue to be made to improve existing conditions. Governments are thus strongly encouraged to consult national seafarers' and shipowners' organizations in order to address several issues in the current context created by the COVID-19 pandemic in light of the MLC, 2006.

Finally, it is noted that the current circumstances might render compliance with some of the obligations set out in the MLC, 2006, materially impossible. As noted on a few occasions below, these circumstances could constitute cases of force majeure. Force majeure is "the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation" and which excuses noncompliance with an obligation. These circumstances "do not annul or terminate the obligation; rather they provide a justification or excuse for non-performance while the circumstance in question subsists" and entail that compliance must resume as "soon as the factors causing and justifying the non-performance are no longer present". There must be a causal link between material impossibility and the unforeseen circumstances. In short, the parties involved should make every attempt to comply with their obligations under the MLC, 2006, non-compliance only being excused when compliance is materially and objectively impossible by reason of the occurrence of an irresistible event. While authorities are encouraged to be pragmatic in their approach under the current circumstances, they should also ensure that the COVID-19 pandemic is not used as an excuse to breach the MLC, 2006.

The ILO information note consist issues raised as listed below:

1. Seafarers' safety and health
2. Facilitation of transit and transfer of seafarers and repatriation
3. Expiry of seafarers' employment agreements
4. Maximum period of service on board and safeguards
5. Reduction of minimum manning
6. Expiry of medical certificates
7. Certification in respect of training and qualifications
8. Maritime labour certificate and inspections
9. Social protection: Seafarers' entitlement to paid sick leave in case of infection or quarantine
10. Shore leave and welfare facilities during the pandemic
11. Abandonment of seafarers

Act now

Ship Owners/ Managers/ Operators should take into consideration the ILO informative note and ensure their fleet and crew compliance with MLC, 2006 in the highest possible level.