



TECHNICAL CIRCULAR No. 128 of 17th May 2013

To:	All Surveyors/Auditors
Applicable to flag:	All Flags
Subject:	MLC 2006, Title 2, C2.13-C2.8 Hours of work and rest
Reference:	MLC, 2006 – Maritime Labour Convention, 2006

MLC, 2006, Titles C2.3-C2.8

C2.3. Hour of work and hours of rest

C2.3.a. Must both hours of work and rest be regulated?

Standard A2.3, paragraph 2 of the MLC, 2006 requires each country to fix either a maximum number of hours of work which shall not be exceeded in a given period of time, or a minimum number of hours of rest which shall be provided in a given period of time. It is up to the country to decide which of the two arrangements to choose.

C2.3.b. What are the standards for minimum hours of rest and maximum hours of work?

Standard A2.3, paragraph 4 of the MLC, 2006 requires countries, in determining the national standards, to take account of the danger posed by the fatigue of seafarers, especially those whose duties involve navigational safety and the safe and secure operation of the ship. Standard A2.3, paragraphs 5 and 6 set out the basic parameters for these standards:

(a) no more than 14 hours in any 24-hour period; and 72 hours in any seven-day period; if the basis chosen by the country is maximum hours of work;

(b) at least ten hours in any 24-hour period; and 77 hours in any seven-day period; if the basis chosen by the country is minimum hours of rest.

Hours of rest may be divided into no more than two periods, one of which must be at least six hours in length, and the interval between consecutive periods of rest must not exceed 14 hours.

C2.3.c. What is meant by “any 24-hour period”?

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Standard A2.3, paragraph (b), for example, provides that hours of rest must not be less than 10 hours “in any 24-hour period”. Thus, any 24-hour period – starting at any moment during a day – must comprise at least ten hours of rest.

C2.3.d. Does the choice between hours of work and hours of rest lead to any different result in practice?

Paragraph 5(a)(i) of Standard A2.3, sets a maximum limit on work of 14 hours in any 24-hour period, which results in **10** hours of rest ($24-14=10$), corresponds to the minimum **10** hours of rest required by paragraph 5(b)(i) of the Standard. However, paragraph 5(a)(ii), which sets a maximum limit on work of 72 hours in any 7-day period, results in **96** ($7 \times 24 - 72 = 96$) hours of rest, whereas the minimum hours of rest in any 7-day period required by paragraph 5(b)(ii) of the Standard is set at only **77**. The provisions in paragraphs 5(a) and 5(b) of Standard A2.3 are not new, but reproduce the text of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180). During the preparation of the MLC, 2006, it was recalled that agreement on the various requirements in Convention No. 180 had been achieved only after protracted discussions, and it was decided that it would not be in the interest of the constituents to reopen the negotiations on any provisions agreed in 1996.

C2.3.e. Are there any exceptions to the hours of rest or work standards?

Standard A2.3, paragraph 13 of the MLC, 2006 allows flag States to have national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits on maximum hours of work or minimum hours of rest referred to in paragraphs 5 and 6 of the Standard [see C2.3.b. What are the standards for minimum hours of rest and maximum hours of work?]. These exceptions must therefore be provided for in a registered or authorized collective agreement. They must also follow the limits set out in Standard A2.3 “as far as possible”.

C2.3.f. How does Regulation 2.3 relate to the STCW requirements?

With the adoption by the International Maritime Organization of the 2010 “Manila amendments” to the STCW, the wording in both the MLC, 2006 and the STCW on minimum hours of rest is very similar, other than the provisions in each regarding possible exceptions. Flag States that ratify the MLC, 2006 and are also bound by the 2010 STCW amendments could approve arrangements in this connection which would be consistent with the requirements of both Conventions.

C2.3.g. Do the minimum hours of rest/maximum hours of work requirements apply to ships' masters?

Ships' masters are seafarers and, as such, the requirements in Regulation 2.3 and Standard A2.3 also apply to them.

C2.3.h. Do the hour of rest and hour or work standards still apply in an emergency?

Standard A2.3 paragraph 14 of the MLC, 2006 safeguards the right of the master of a

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ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. It allows the master to suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master must ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

C2.4. Entitlement to leave

C2.4.a. What is a seafarers' minimum entitlement to paid leave?

Under Standard A2.4, paragraphs 1 and 2, the annual leave with pay entitlement must, in general, be calculated on the basis of a minimum of 2.5 calendar days per month of employment, to be determined by the competent authority or through the appropriate machinery in each country. Justified absences from work are not to be considered as annual leave.

C2.4.b. Can a seafarer agree to be paid instead of actually taking a paid leave?

Standard A2.4, paragraph 3 of the MLC, 2006 states that any agreement to forgo the minimum annual leave with pay prescribed in the Standard, except in cases provided for by the competent authority, must be prohibited.

C2.5. Repatriation

C2.5.a. What is the entitlement to repatriation?

The MLC, 2006 provide general entitlements and some parameters. However the specific entitlements are a matter for flag State implementation. Regulation 2.5, paragraph 1, provides the basic right of seafarers to repatriation at no cost to themselves. The basic parameters are set out in Standard A2.5, with many of the precise details being recommended in Guideline B2.5.1 [see A12. What is the status of the Guidelines in Part B of the Code?].

C2.5.b. What will ensure that repatriation occurs and that costs are paid?

Regulation 2.5, paragraph 2 of the MLC, 2006 provides that flag States must require their ships to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.

C2.5.c. What costs are to be covered a shipowner when a seafarer is repatriated?

This is a matter for flag State implementation as set out under Standard A2.5, paragraph 2, requiring flag States to prescribe the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.

C2.5.d. Can a seafarer be charged for repatriation costs?

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Standard A2.5, paragraph 3 of the MLC, 2006 prohibits shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations.

C2.6. Seafarer compensation for the ship's loss or foundering

C2.6.a. Who is to pay compensation to seafarers on a ship's loss or foundering? Under Regulation 2.6, paragraph 1, seafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering.

C2.7. Manning levels

C2.7.a. Does the MLC, 2006 establish a minimum manning level for ships? The MLC, 2006 does not set a specific number of seafarers who must be working on board a ship as this is a matter that the competent authority in the flag State would need to decide for a ship or category of ships. However it sets out some parameters that must be followed when deciding on the manning levels for ships. Standard A2.7 requires every ship to be manned by a crew that is adequate, in terms of size and qualifications, to ensure the safety and security of the ship and its personnel, under all operating conditions, in accordance with the minimum safe manning document or an equivalent issued by the competent authority, and to comply with the standards of the MLC, 2006. In this connection, when determining manning levels, the competent authority [see A25. Who is the competent authority?] must take into account all the requirements within Regulation 3.2 and Standard A3.2 concerning food and catering.

C2.7.b. Is the manning level the same as the manning required in a ship's "safe manning document" (SMD)?

The answer would depend on the factors a flag State has taken into consideration when establishing the SMD levels. If the factors set out in Standard A2.7 of the MLC, 2006, including the need to take account of all the requirements within Regulation 3.2 and Standard A3.2 concerning food and catering [see C2.7.a. Does the MLC, 2006 establish a minimum manning level for ships?], were considered in establishing the SMD, then it may be the same.

C.2.8. Career and skill development and opportunities for seafarers' employment

C2.8.a. Who has an obligation under Regulation 2.8?

The obligations under Regulation 2.8 and the related Code are directed to

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governments with seafarers domiciled in their territory. Specifically Regulation 2.8, paragraph 1 requires countries to have national policies to promote employment in the maritime sector and to encourage career and skill development and greater employment opportunities for seafarers domiciled in their territory.

REFERENCES:

- **MLC, 2006 – Maritime Labour Convention, 2006**

ATTACHMENTS: No.

Kindest Regards,
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