

INTERNATIONAL LABOUR OFFICE

REPORT FORM

FOR THE

SEAFARERS' ANNUAL LEAVE WITH PAY CONVENTION, 1976 (No. 146)

The present report form is for the use of countries which have ratified the Convention. It has been approved by the Governing Body of the International Labour Office, in accordance with article 22 of the ILO Constitution, which reads as follows: "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request."

Practical guidance for drawing up reports

First reports

If this is your Government's first report following the entry into force of the Convention in your country, full information should be given on each of the provisions of the Convention and on each of the questions set out in the report form.

Subsequent reports

In subsequent reports, information need normally be given only:

- (a) on any new legislative or other measures affecting the application of the Convention;
- (b) in reply to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organizations of employers and workers and on any observations received from these organizations;
- (c) *in reply to comments by supervisory bodies*: the report must contain replies to any comments regarding the application of the Convention in your country which may have been made by the Committee of Experts on the Application of Conventions and Recommendations or by the Conference Committee on the Application of Standards.

Article 22 of the Constitution of the ILO

Report for the period to
made by the Government of

on the

SEAFARERS' ANNUAL LEAVE WITH PAY CONVENTION, 1976 (No. 146)

(ratification registered on

I. Article 1 of the Convention reads as follows :

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.

Please state whether the provisions of the Convention are applied by means of—

- (a) national laws or regulations ;
- (b) collective agreements, arbitration awards or court decisions ;
- (c) statutory wage fixing machinery ;
- (d) in some other manner.

Please give a list of the measures which apply the provisions of the Convention and indicate their scope. Where this has not already been done, please forward copies of the relevant laws, regulations, agreements, awards, etc., to the International Labour Office with this report.

Please state whether the above measures have been adopted or modified to permit, or as a result of, ratification.

II. Please indicate in detail for each of the following Articles of the Convention the provisions of the above-mentioned laws and regulations, or other measures, under which the Article is applied.

If in your country ratification of the Convention gives the force of national law to its terms, please indicate by virtue of what constitutional provisions the ratification has had this effect. Please also specify what action has been taken to make effective those provisions of the Convention which require a national authority to take certain specific steps, such as measures to define its exact scope and to institute the practical arrangements and procedures required for its implementation.

If the Committee of Experts or the Conference Committee on the Application of Conventions and Recommendations has requested additional information or has made an observation on the measures adopted to apply the Convention, please supply the information asked for or indicate the action taken by your Government to settle the points in question.

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 ship-owners 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.

Paragraph 3. Please indicate what ships are considered to be "sea-going ships" for the purpose of the Convention.

Paragraph 8. If any categories of persons have been excluded from application of the Convention in pursuance of paragraph 3 or paragraph 7, please list in the first report the categories so excluded and give the reasons for their exclusion. In the subsequent reports, please state the position of law and practice in respect of the categories excluded and indicate any change which has occurred or is contemplated in the matter.

Please give information on the consultation with the organisations of shipowners and seafarers concerned, where such exist, regarding any measures taken in pursuance of this Article.

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.

Please state how effect is given to this Article.

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.

Paragraph 1. Please indicate the manner in which the length of service is calculated for the purpose of determining leave entitlement.

Paragraphs 2 and 3. Please indicate the conditions under which service off articles and absence from work to attend an approved maritime vocational training course or for reasons beyond the control of the seafarer concerned are 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.

Please indicate the measures taken to ensure that public and customary holidays and temporary shore leave are not counted in the minimum annual holiday with pay (subparagraphs (a) and (c) of this Article).

Please indicate the measures taken to ensure that periods of incapacity for work and compensatory leave are not counted in the paid holiday, and the conditions laid down in this regard (subparagraphs (b) and (d)).

Article 7

1. Every seafarer taking the holiday envisaged in this Convention shall receive in respect of the full period of that holiday 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 holiday, 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.

Paragraph 1. Please indicate the manner in which holiday remuneration is calculated.

Paragraphs 2 and 3. Please indicate the measures taken to ensure that these provisions are applied.

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 the Convention shall consist of an uninterrupted period.

If recourse is had to paragraph 1 of this Article, please indicate what arrangements govern the division and/or accumulation of the holiday.

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.

If recourse is had to the provisions of this Article please indicate the circumstances in which provision may be made (by the competent authority or through the appropriate machinery) to substitute a cash payment for the annual leave, and the method by which such a payment is calculated.

Article 10

1. The time at which the holiday 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.

Paragraph 1. Please indicate the method by which the time of the holiday is determined.

Paragraphs 2 and 3. Please indicate how effect is given to these provisions.

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.

Please indicate how effect is given to this Article.

Article 12

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

Please indicate the conditions in which a seafarer can be recalled from annual leave.

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.

Please indicate how the proper application and enforcement of regulations or provisions concerning annual leave with pay is ensured.

III. Please state to what authority or authorities the application of the above-mentioned legislation, administrative regulations, etc., is entrusted, and by what methods such application is supervised.

IV. Please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply the text of these decisions.

V. Please give a general appreciation of the manner in which the Convention is applied in your country, including, for instance, extracts from the reports of the inspection services, and, if such statistics are available, information on the number of seafarers covered by the relevant legislation and other measures, the number and nature of infringements reported, etc.

VI. Please indicate the representative organisations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organisation.¹ If copies of the report have not been communicated to representative organisations of employers and/or workers, or if they have been communicated to bodies other than such organisations, please supply information on any particular circumstances existing in your country which explain the procedure followed.

Please indicate whether you have received from the organisations of employers or workers concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Convention or the application of the legislation or other measures implementing the Convention. If so, please communicate a copy of the observations received, together with any comments that you consider useful.

¹ Article 23, paragraph 2, of the Constitution reads as follows: "Each Member shall communicate to the representative organisations recognised for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22."