



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., March 9, 2010

This issue contains the following:

Amendment to the Migrant Workers Act is now law

Update on required Anti-Piracy Training

Supreme Court rules gallstones not compensable; credibility of POEA standard employment contract must be upheld by the Court

Amendment to the Migrant Workers Act is now law

Current Status

The Amendments to the Migrant Workers Act of 1995 (Republic Act No. 8042) has lapsed into law on March 8, 2010. The law takes effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation. However, for its effective implementation, the Department of Labor and Employment, Department of Foreign Affairs, Department of Health, POEA, OWWA and any other involved government agency shall within sixty (60) days after its effectivity, formulate the necessary rules and regulations for the law's implementation.

(The new law can be downloaded at

<http://www.delrosariolaw.com/dl/filesupload/Amendments%20to%20Migrant%20Workers%20Act%20-%20Enrolled%20Bill.pdf>

or you may email mail@delrosariolaw.com and we will send a copy of the law.)

Areas of Interest to the Filipino Seafaring Industry

The major areas of interest in the new law are as follows:

A. PEME Clinics and Training Institutions

It was reported previously that the new law prohibited principals / ship owners from designating a particular clinic or training institution for a seafarer. The law as passed now allows principals / ship owners to designate clinics and training institutions provided the cost is shouldered by the principal / ship owner.

The law as passed states:

“Sec. 5. Section 6 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

“...IT SHALL ALSO BE UNLAWFUL FOR ANY PERSON OR ENTITY TO COMMIT THE FOLLOWING PROHIBITED ACTS:

xxx xxx xxx

- (D) Impose a compulsory and exclusive arrangement whereby an OFW is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, *except in the case of a seafarer whose medical examination is shouldered by the principal / ship owner.*”**
- (E) Impose a compulsory and exclusive arrangement whereby an OFW is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, *except for recommendatory trainings mandated by principals / ship owners and the latter shoulder the cost of such trainings.*”**

B. Insurance Coverage

The new law under Section 23 requires compulsory insurance coverage such as US\$15,000 for accidental death, US\$10,000 for natural death, US\$7,500 for permanent total disability, repatriation cost including repatriation of remains, subsistence benefit of US\$100 per month for six months for a seafarer involved in a litigation, compassionate visit for seafarer hospitalized for more than seven (7) consecutive days, medical evacuation and medical repatriation. For more exact wordings of the law, the law itself can be downloaded at our website at:

<http://www.delrosariolaw.com/dl/filesupload/Amendments%20to%20Migrant%20Workers%20Act%20-%20Enrolled%20Bill.pdf>

However, the last paragraph of Sec. 23 on compulsory insurance coverage states:

“in the case of seafarers who are insured under policies issued by foreign insurance companies, the POEA shall accept certificates or other proofs of cover from manning agencies, provided the minimum coverage under sub-paragraphs (A) to (I) are included therein.”

While the last paragraph cited above appears to exempt seafarers from the insurance provisions of the law, some of the provisions may actually entail additional liabilities for the principal / ship owner. The accidental death (US\$15,000), natural death benefits (US\$10,000) and permanent disability of US\$7,500 and all of the other related benefits do not distinguish whether the cause of death is work-related or not.

In addition, the law does state the following:

“Any claim arising from accidental death, natural death or disablement under this section shall be paid by the insurance company without any contest and *without the necessity of proving fault or negligence of any kind on the part of the insured migrant worker*”

The proposed amendment in effect may require “additional insurance” to be given to seafarers in addition to benefits under the POEA and/or CBA. Said insurance must be obtained from insurance companies duly registered with the Philippine Insurance Commission although for seafarers, evidence of some other insurance is allowed.

The rules and regulations of the law that are still to be drafted and hopefully will clarify this provision.

C. Prohibition on Non-Filipino citizen

The law states that the following is a prohibited act:

Sec. 5 (n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency

Although the above appears to be a new provision, the said prohibited act is actually a reiteration of an old law in the Philippines, the Anti-Dummy Law. It is also part of POEA policy, rules and regulations. Punishment is imprisonment of from 12 years to 20 years and fine of Php1M to Php2M. The offending alien shall be deported without further proceedings. Conviction shall cause the revocation of the manning license.

D. Expansion of persons held criminally liable for prohibited acts

The new law now includes “ownership” and the “responsible employees / agents thereof” of a juridical person as among those to be criminally liable for illegal recruitment. However, said persons must be “responsible for the commission of the offense.” Minimum penalty is imprisonment of from 12 years to 20 years and fine of from Php1M to Php2M. If offender is an alien, he shall be deported without further proceedings. Conviction shall cause automatic revocation of the manning license.

SEC. 5. Section 6 of Republic Act No. 8042, states:

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business *who are responsible for the commission of the offense* and the responsible employees / agents thereof shall be liable.

E. Legal Assistance to include filing cases against employers

The new law not only gives legal assistance to seafarers who are facing charges abroad but also in “filing cases against erring or abusive employers abroad.”

The law states:

Sec. 19. Section 26 is xxx amended as follows:

xxx xxx The expenditures to be charged against the (Legal Assistance) Fund shall include the fees for the foreign lawyers to be hired by the Legal Assistant for Migrant Workers Affairs to represent migrant workers facing charges or *in filing cases against erring or abusive employers abroad*, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses. xxx

Update on required Piracy training

In response to queries on the length of validity of the anti-piracy training seminar and whether the required piracy training is to be done every deployment, the POEA has clarified that the Anti-Piracy training seminar will be taken by the seafarers only once. A clarificatory advisory will be issued by the POEA on this issue. We will keep you updated.

Supreme Court rules gallstones not compensable

At issue before the Court was whether gallstones are compensable.

The Supreme Court ruled it was not compensable for the following reasons:

1. Gallstone is not one of the compensable diseases under the POEA standard employment contract. It is therefore wrong to treat it as work-related and compensable.

The standard contract precisely did not consider gallstone as compensable illness because the parties agreed, presumably based on medical science, that such affliction is not caused by working on board ocean-going vessels.

2. Seafarer failed to prove that the nature of his work on board a ship aggravated his illness. Gallstone does not develop overnight. It is caused by stone formation in the gallbladder that blocks the tube leading out of the gallbladder, causing bile to build up, resulting in gall bladder inflammation. The formation takes months if not years to build up. By the nature of his illness, it is highly probable that seafarer already had it when he boarded his assigned ship although it went undiagnosed because he had yet to experience its symptoms.

The Court further ruled that payment of benefits must be found in the contract otherwise the contract's credibility will suffer. In the words of the Court:

“The Court recognized in *Vergara v. Hammonia Maritime Services, Inc.* the significance of the adoption by the Department of Labor and Employment of the Philippine Overseas Employment Administration Standard Employment Contract as a condition for deploying Filipino seafarers working on foreign ocean-going vessels. When the foreign shipping company signs that contract, there is assurance that it voluntarily subjects itself to Philippine laws and jurisdiction. If the NLRC orders the payment of benefits not found in that contract, the particular seaman might be favored but **the credibility of our standard employment contract will suffer**. Foreign shipping companies might regard it as non-binding to the detriment of other seamen.”

Bandila Shipping, Inc., Mr. Reginaldo A. Oben, Bandila Shipping, Inc. and Fuyoh Shipping, Inc., vs. Marcos C. Abalos; G.R. No. 177100; Second Division; February 22, 2010 ; Supreme Court Associate Justice Roberto A. Abad, Ponente. (Attys. Hansel Tillmann and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests.)

“The Philippines’ top shipping firm, Del Rosario & Del Rosario has a wealth of talent at its disposal.”

from Asia-Pacific, The Legal 500, 2009-2010, p. 341

This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. For further information, please email ruben.delrosario@delrosario-pandiphil.com.

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