



DEL ROSARIO PANDIPHIL Inc.

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Q & A on the Amended Migrant Workers Act (AMWA – Republic Act No. 10022)

Four months after the passage of the Act and prior to its effective implementation, this edition of the Philippine Shipping Update will try to explain the new law in the form of a simple Q&A. (Some of the statements contained below are opinions of Del Rosario & Del Rosario and does not constitute legal advice)

I. EFFECTIVITY DATE OF THE AMWA

Q: When did the Amended Migrant Workers Act (AMWA) become law?

A: The Act became law on 8 March 2010 and took effect on 9 May 2010 after satisfying the publication requirement. However, for the law to be effectively implemented, the Act required Implementing Rules and Regulations (IRR). The IRR was prepared and signed July 8, 2010 and it becomes fully effective after publication in two (2) newspapers of general circulation. It is expected that said publication will be done soonest.

Q: Can the Act be now implemented after the Implementing Rules and Regulations (IRR) have been published in two (2) newspapers of general circulation?

A: Yes, the law can now be fully implemented with the exception of the “Compulsory Insurance Coverage” provisions (Sec. 23 / 37-A, AMWA). Under the IRR, the Insurance Commission shall within 30 days from effectivity of the IRR consult with the concerned government agencies and private sector, in order to issue the necessary rules and regulations, which shall include the following:

1. Qualification of participating insurers;
2. Accreditation of insurers;
3. Uniform Standard Policy format;
4. Premium rate;
5. Benefits;
6. Underwriting Guidelines;
7. Claims procedure;
8. Dispute settlement;
9. Administrative monitoring and supervision; and
10. Other matters deemed necessary. (Sec. 15, Rule XVI, IRR)

II. AREAS OF CONCERN HAVING AN IMPACT ON SEAFARERS AND THE MANNING INDUSTRY

A. On Illegal Recruitment / Non-Filipino Citizen

Q. Section 5(n) on illegal recruitment prohibits a non-Filipino citizen to head or manage a licensed recruitment/manning agency. Can a non-Filipino representative of the shipowner/shipmanager hold a position in the office of the manning agents?

A. Yes, provided he does not head or manage the manning agency. According to the IRR, the terms “head” or “manage” refers to any of the following acts:

1. Control and supervise the operations of the recruitment/manning agency or branch thereof of which they are employed; or
2. Exercise the authority to hire or fire employees and lay down and execute management policies of the recruitment/manning agency or branch thereof. [Rule II, Sec.1(r)]

Q: What does illegal recruitment mean?

A: Illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13 (f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, that any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged.

Q. Is a case of a seafarer who has signed a contract of employment but not deployed considered illegal recruitment

A: No. The mere signing of an employment contract is not considered illegal recruitment. To be liable for illegal recruitment, there must be failure to deploy a contracted worker without a valid reason as determined by the Department of Labor and Employment. When the seafarer signs a contract of employment, the seafarer cannot be classified as a “contracted” worker because according to the IRR, to be considered as a contracted worker, said seafarer’s employment contract has already been processed by the POEA for overseas deployment. [Sec. 5 Sec. 6 (l) AMWA in relation to Rule II Sec. (f) IRR]

B. On Prohibited Acts – Medical Clinics and Training Institutions

Q: Can the manning agents require the seafarer to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons?

A: Yes provided the cost of the health examination will be shouldered by principal/shipowner. Otherwise, the seafarer has the right to choose his own service provider.

Q: Can the manning agents require a seafarer to undergo recommendatory training, seminar, instruction or schooling only from specifically designated institutions, entities or persons?

A: Yes provided the cost of recommendatory training will be shouldered by the principals/shipowners. Otherwise, the seafarer has the right to choose his own service provider.

1. Persons Liable and Corresponding Penalties

Q: Who are the persons that can be held criminally liable for acts constituting illegal recruitment and prohibited acts?

A: The persons that can be held criminally liable for illegal recruitment and prohibited acts 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.

Q: What are the penalties provided in the amended law for the commission of illegal recruitment and prohibited acts?

A: (a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One Million pesos (P1,000,000.00) nor more than Two Million pesos (P2,000,000.00).

(b) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Five Hundred Thousand pesos (P500,000.00) nor more than One Million pesos (P1,000,000.00).

(c) If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

(d) In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institution, training school or medical clinic.

C. On Money Claims

1. Jurisdiction

Q: Which quasi-judicial body or agency of the government has jurisdiction over money claims of seafarers?

A: The Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising from an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary or other form of damages.

Q. Is there a provision on voluntary arbitration in the law?

A. The IRR states that for OFW's with Collective Bargaining Agreements, the case may be submitted for voluntary arbitration in accordance with Articles 261 and 262 of the Labor Code. (Rule VII, Sec. 7). Note the use of the word "may" which means it is not mandatory to submit to voluntary arbitration.

2. On Joint and Solidary Liability of the Manning Agents and their Officers, Directors and Partners

Q: Is the joint and solidary liability of the corporate officers and directors and partners with the corporation or partnership for money claims of the seafarers retained in the amended law?

A: Yes the above nature of liability of the corporate officers, directors and partners was retained in the amended law.

3. On the Liability of the Manning Agents on Illegal Dismissal and Unauthorized Deduction on Seafarer's Salary

Q: What is the extent of liability of the manning agents/principals in case of termination of a seafarer without just, valid or authorized causes or any unauthorized deductions from the seafarer's salary?

A: The seafarer shall be entitled to the following: (1) full reimbursement of the deductions made with interest at twelve (12%) per annum; and (2) salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

4. Effect of a Final and Executory Judgment of the NLRC

Q: What is the effect of a final and executory judgment of the NLRC against a foreign employer/principal?

A: The foreign employer/principal shall be **automatically disqualified** from participating in the Philippine Overseas Employment Program until and unless it fully satisfies the judgment award. The POEA shall issue an order of disqualification after it receives from the NLRC or any interested party a certified true copy of the sheriff's return indicating the failure to fully satisfy a final and executory judgment against a foreign employer/principal.

5. On the Legal Assistance Fund

Q: What is the purpose sought to be achieved in creating the Legal Assistance Fund?

A: The Legal Assistance Fund shall be used exclusively to provide reasonable legal services to migrant workers and overseas Filipinos in distress in accordance with the approved guidelines, criteria and procedures of the Department of Foreign Affairs.

Q: What are the uses of the Legal Assistance Fund?

A: The Legal Assistance Fund shall be used exclusively for the following specific purposes:

- (a) In the absence of counsel *de officio* or court-appointed lawyer, payment of attorney's fees to foreign lawyers for their services in representing migrant workers facing criminal and labor cases abroad, or in filing cases against erring or abusive employers abroad, provided, that no amount shall be disbursed for the appeal of cases except when the penalty meted is life imprisonment or death or under meritorious circumstances as determined by the Undersecretary for Migrant Workers Affairs.
- (b) Bail bonds to secure the temporary release of workers under detention upon the recommendation of the lawyer and the foreign service post concerned; and
- (c) Court fees, charges and other reasonable litigation expenses when so recommended by their lawyers.

Q: Can a seafarer who is currently facing criminal and labor charges abroad or a seafarer who has filed a case in foreign jurisdiction seek reimbursement from the Legal Assistance Fund for the expenses incurred in defending or prosecuting the case?

A: The seafarer can seek reimbursement from the Legal Assistance Fund subject to approved guidelines, procedures and criteria, governing its use, disposition and disbursement. The said guidelines are to be issued by the Office of the Legal Assistant for Migrant Workers Affair but to date, no such guidelines have been issued.

6. On Tax Exemption Granted to the Migrant Worker

Q: Are there tax incentives available to the migrant workers under the old and the amended law?

A: Under the old law, the migrant worker shall be exempt from the payment of travel tax and airport fee upon proper showing of proof of entitlement by the POEA. In the new law, in addition to the afore-said exemption, it is further provided that the remittances of all overseas Filipino workers, upon showing of the same proof of entitlement by the overseas Filipino worker's beneficiary or recipient, shall be exempt from the payment of documentary stamp tax.

7. On Repatriation of Workers

Q. Who has primary responsibility for repatriation of workers?

A. The primary responsibility for repatriation now rests with the principal or agency without a prior determination of the cause of the termination of the worker's employment. Upon the worker's return to the country, the principal or agency may recover the cost of repatriation from the worker if the termination of employment was due solely to his or her fault. (Rule XIII, Sec. 1, IRR)

8. Compulsory Insurance Coverage for Migrant Workers

a. Benefits Covered

Q: What are the benefits covered by the Compulsory Insurance Coverage provided under Section 37-A of the amended law?

A: The benefits covered are as follows:

- (1) Accidental death, with at least USD15,000 survivor's benefit payable to the migrant worker's beneficiaries;
- (2) Natural death of at least USD10,000 survivor's benefit payable to the migrant worker's beneficiaries;
- (3) Permanent total disablement, with at least USD7,500 disability benefit payable to the migrant worker. The following disabilities shall be deemed permanent: total, complete loss of sight of both eyes; loss of two limbs at or above the ankles or wrists; permanent complete paralysis of two limbs; brain injury resulting to incurable imbecility or insanity;

- (4) Repatriation cost of the worker when employment is terminated without any valid cause, including transport of his personal belongings; repatriation of remains in case of death of the seafarer including assistance on the requirements for repatriation of remains;
- (5) Subsistence allowance benefit of at least One hundred US Dollars (USD100) per month for a maximum of 6 months for a migrant worker who is involved in a litigation in receiving country;
- (6) Money claims arising from employer's liability equivalent to at least 3 months' salary for every year of the migrant worker's employment contract;
- (7) Compassionate visit when a migrant worker is hospitalized and has been confined for at least 7 consecutive days wherein the insurance provider will shoulder the transportation cost of one family member of the migrant worker in going to the major airport closest to the place of hospitalization of the migrant worker;
- (8) Medical evacuation cost when there is no proximate adequate medical facility; and
- (9) Medical repatriation cost when medically cleared to travel by commercial carrier; if period to receive such clearance exceeds 14 days, an alternative mode of transportation, such as air ambulance, may be arranged; medical escorts shall also be provided if necessary.

b. Concept of Insurance Cover

Q: Is the coverage of the seafarer mandatory under Section 37-A of the amended law?

A: Yes, each migrant worker deployed by a recruitment/manning agency shall be covered by a compulsory insurance policy.

Q: To whom did the amended law impose the burden of shouldering the cost of premium of the compulsory insurance policy?

A: The amended law placed the burden on the employer and in fact, it states that the policy shall be secured at no cost to the migrant worker.

Q: What are the consequences, if any, if the migrant worker pays for the premium of the compulsory insurance coverage:

A: The responsible employees of the manning agent or the foreign principal can be held criminally liable with a penalty of 6 years and 1 day to 12 years and a fine of Php500,000.00 to Php1,000,000.00. Further, the licensed recruitment/manning agency shall lose its license and all its directors, partners, proprietors, officers and employees shall be perpetually disqualified from engaging in the business of recruitment of overseas workers.

Q: What is the period covered by the compulsory insurance policy?

A: The insurance policy shall be effective for the duration of the migrant worker's employment contract.

Q: After the publication of the recently signed Implementing Rules and Regulations, can the POEA still issue an Overseas Employment Certificate to a seafarer even without the compulsory insurance policy being submitted to the POEA ?

A: Yes the Overseas Employment Certificate can still be issued to a seafarer even without the compulsory insurance policy. The rules and regulations for said compulsory insurance requirement is still to be drafted and finalized. (Sec. 15, Rule XVI, IRR and Sec. 2, Rule XX, IRR)

Q: After the formulation of the necessary Rules and Regulations of said compulsory insurance policy, can the seafarer's application for overseas deployment still be processed with the POEA even without the compulsory insurance policy? (Sec. 15, Rule XVI, IRR)

A: No, upon issuance of the necessary Implementing Rules and Regulations referred to in Section 15 Rule XVI of the IRR, the certificate of compulsory insurance coverage shall be submitted to the POEA **as a requirement** for the issuance of an Overseas Employment Certificate to the seafarer.

c. Qualification of Insurance Provider

Q: *Who can be an insurance provider under Section 37-A of the amended law?*

A: The insurance cover can be obtained either from a foreign insurance company or from a local insurer provided said local insurance company is reputable, duly registered with the Insurance Commission, which are in existence and operational for at least five (5) years, with a net worth of at least Five Hundred Million pesos (Php500,000,000.00) to be determined by the IC, and with a current year certificate of authority.

Further, under the IRR, the term foreign insurance companies was further expanded to include “entities providing indemnity cover to the vessel.”

d. Jurisdiction and Period to Resolve Insurance Claims

Q: *Where must one file insurance claims?*

A: Any person having an insurance claim upon the policy shall present to the insurance company concerned a written notice of claim together with pertinent supporting documents. (Sec. 37-A, a,b,c,d,e, AMWA)

Q: *What is the period required for an insurance company to resolve a claim?*

A: The insurance company shall ascertain the truth and extent of the claim and make payment within ten (10) days from the filing of the notice of claim.

Q: *Which quasi-judicial body or agency can exercise jurisdiction over claims involving the compulsory insurance coverage?*

A: Any question or dispute in the enforcement of any insurance policy issued under Section 37-A shall be brought before the Insurance Commission for mediation or adjudication.

e. Documents Required in Processing of Insurance Claims

Q: *What are the documents that will be required by the insurance provider in the processing of the claim?*

A: The following documents shall be sufficient evidence to substantiate the claim:

1. In case of natural or accidental death – death certificate;
2. In case of accidental death – police or accidental report;
3. In case of permanent disablement – medical certificate;
4. For repatriation under subparagraph (d) of Section 37-A – a certification which states the reason/s for the termination of the migrant worker’s employment and the need for his or her repatriation shall be issued by the Philippine foreign post or the Philippine Overseas Labor Office located in the receiving country;
5. For subsistence allowance benefit under subparagraph € of Section 37-A, the concerned labor attaché or, in his absence, the embassy or consular official shall issue a certification which states the name of the case, the names of the parties and the nature of cause of action of the migrant worker.

f. Rules Governing Payment of Money Claims [Sec. 23, Sec. 37-A (f)]

Q: *What are the rules governing the payment of money claims under subparagraph (f) of Section 37-A?*

A: The rules are as follows:

1. After a decision has become final and executory or a settlement/compromise agreement has been reached between the parties at the NLRC, an order shall be released mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within thirty (30) days;
2. The recruitment/manning agency shall then immediately file a notice of claim with its insurance provider for the amount of liability insured, attaching therewith a copy of the decision or compromise agreement;
3. Within ten (10) days from the filing of notice of claim, the insurance company shall make payment to the recruitment/manning agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. After receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker’s claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay

- the balance thereof;
4. In case the insurance company fails to make payment within ten (10) days from the filing of the claim, the recruitment/manning agency shall pay the amount adjudged or agreed upon within the remaining days of the thirty (30)-day period, as provided in the first subparagraph hereof;
 5. If the worker's claim was not settled within the aforesaid thirty (30)-day period, the recruitment/manning agency's performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker's claim;
 6. The provision of compulsory worker's insurance under shall not affect the joint and solidary liability of the foreign employer and the recruitment/manning agency under Section 10 of the amended law;
 7. Lawyers for the insurance companies unless the latter is impleaded, shall be prohibited to appear before the NLRC in money claims cases under Section 37-A of the amended law.

g. Effect of Payment Made under the Amended Law vis-à-vis the Claim of Seafarers Under the Provisions of the POEA Standard Employment Contract or Collective Bargaining Agreements

Q: What is the effect, if any, on the claim of the seafarer under the provisions of the POEA Standard Employment Contract or Collective Bargaining Agreements upon receipt by the seafarer or his beneficiary of the benefits enumerated in the amended law?

A: On the assumption that the claim is compensable under the provisions of the POEA Standard Employment Contract or Collective Bargaining Agreement, the amounts provided in (a), (b) and (c) of Section 37-A of the amended law **shall form part of and be deducted** from whatever benefits the seafarer may be entitled to under the provisions of the POEA Standard Employment Contract or Collective Bargaining Agreement.. (Sec. 7 Rule XVI, IRR)

III. APPLICATION OF THE AMENDED LAW

Q: Does the amended law have retroactive application?

A: No, because the amended law does not contain a provision stating that it can be applied retroactively. This is in accordance with Article 4 of the Philippine Civil Code which states that "Laws shall have no retroactive effect, unless the contrary is provided".

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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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