



DEL ROSARIO PANDIPHIL Inc.

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By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., November 11, 2010

An Overview of the Amendments to the POEA Standard Employment Contract

The POEA Standard Employment Contract (SEC) was last amended in the year 2000. A tripartite meeting to discuss proposed amendments was held in May 2008 with representatives from the manning agencies representing employers, the union representing the seafarers and the government represented by the POEA. A Technical Working Group was formed which consulted with various industry stakeholders and after more than two years of work, the POEA through its Governing Board issued a resolution date 4 October 2010 approving the amendments to the present Standard Employment Contract. The 2010 Amendments to the POEA Standard Employment Contract was published in the Manila Times on 28 October 2010 and takes effect on 12 November 2010. The amendments will have prospective application and will cover those seafarers whose employment contracts are processed starting 12 November 2010. (The 2010 Amended POEA SEC may be downloaded at www.delrosariolaw.com)

The following is a brief discussion of amendments to the current POEA SEC:

1. The word “vessel” was substituted by the word “ship”.

Comments: The Maritime Labor Convention, 2006 uses the word “ship” instead of “vessel” and thus the word “ship” is now used in the POEA SEC.

2. The “allottee” and “beneficiary” of the seafarer are now defined in the POEA SEC. (Nos. 1 and 3, Definition of Terms)

Comments: There has always been confusion as to the rightful recipient(s) of death compensation basically due to confusion between the terms “allottee” and “beneficiary”. Under the amendments, the “allottee” is the person designated by the seafarer as the recipient of his salary allotment. The “beneficiary” is the person(s) to whom the death compensation and other benefits are paid and is based on the Philippine law on succession. Thus, not all allottees are automatically considered as beneficiaries.

Simply stated, the right of the “allottee” as the terms suggests is limited to the allotment of the seafarer which is equivalent to at least 80% of his monthly basic salary. Thus, if a seafarer has his mother as allottee and he dies survived by his wife and one child, the death compensation is paid to the wife and child and not to the mother in accordance with the Philippine law on succession..

3. The concept of “pre-existing illness” has been introduced in the POEA SEC. (No. 11, Definition of Terms)

Comments: The conditions under which an illness can be considered as pre-existing have been made explicit in the new POEA SEC. An illness is pre-existing if advice from a medical doctor on treatment was given for such illness or a seafarer has been diagnosed with the illness and failed to disclose it in his PEME and such illness cannot be diagnosed during the PEME.

4. The phrase “resulting to disability or death” has now been deleted in the POEA SEC. (No. 16, Definition of Terms)

Comments: The above phrase was removed from the definition of work-related injury and illness as not all illnesses / injury result in disability or death. Seafarers can be declared fit to work from a work-related injury or illness.

5. Mandatory Coverage of Seafarers under Philippine Social Security regimes (Section 1.A.2, POEA SEC)

Comments: It is now the duty of the principal / employer to extend coverage to the seafarers under the Philippine Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), Employees Compensation Commission (ECC) and Home Development Mutual Fund (Pag-ibig Fund). Although there was a Memorandum of Agreement in July 1988 that seafarers are to be covered under the SSS, there have been issues as to whether it was actually in force. The new POEA SEC has clarified this and now requires seafarers to be covered by SSS. Likewise, the Home Mutual Development Fund Law of 2009 otherwise known as PAG-IBIG Fund makes the membership and coverage of Filipino seafarers with PAG-IBIG Fund mandatory beginning 1 January 2010.

6. The number of leave pay was increased from 2 ½ days to 4 ½ days (Section 12, POEA SEC)

Comments: Leave pay has been increased by 80% from 2 ½ days to 4 ½ days.

7. Strengthening of the Voluntary Arbitration clause and Recognition of the Maritime Industry Labor Arbitration Council (Section 16.C, POEA SEC)

Comments: The new POEA SEC now states that an aggrieved seafarer shall elevate an unsatisfactory resolution of his grievance to voluntary arbitration as agreed upon in the CBA. Voluntary arbitration in the Philippines is administered by the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment.

If a seafarer has no CBA, he may elevate his complaint to the Maritime Industry Labor Arbitration Council (MILAC). It is said that the goal of MILAC is to establish within the maritime industry a specialized body wherein disputes can be resolved through the arbitration council. The MILAC is still to issue its rules and regulations.

8. Effects Whenever a Seafarer Delays or Makes a Detour or Violates Travel Itinerary During Repatriation (Section 19.F, POEA SEC)

Comments: The provision of the present POEA SEC is silent on whether the manning agents and their principal are liable or not whenever the seafarer delays or makes a detour after signing-off from the vessel as a result of the termination of his employment contract.

The new POEA SEC is explicit on this issue as it is now clear that if the seafarer delays or makes a detour or he proceeds to a destination other than through the travel itinerary arranged by the employer, the manning agents and their principals shall not be liable for any illness or injury that will be suffered or death that will occur during this period, that is from the point the seafarer delays or makes a detour or violates the arranged travel itinerary.

9. The 120-day limitation period Applies Only to Payment of Illness Allowance and NOT to Medical Treatment (Paragraph 1, Section 20.A.3, POEA SEC)

Comments: The above amendment is a reaction to various Court / NLRC decisions wherein the 120-day period is equated to the limitation on the obligation of the manning agents/principals to provide medical treatment to seafarers or as a gauge in determining whether the seafarer is suffering from total and permanent disability.

The new POEA SEC states that the period of 120 days only refers to payment of illness allowance but not to providing medical treatment because the duration of treatment would depend not on the number of days but

as to when the seafarer will be declared fit to work or until the degree of disability has been established by the company-designated physician.

10. The Right of the Seafarer to be Reimbursed on Costs of Medicines, Transportation and Accommodation (Paragraph 2, Section 20.A.3, POEA SEC)

Comments: The seafarer shall be entitled to reimbursement of cost of medicines as prescribed by the company designated physician. In case the seafarer is an out-patient, his company shall approve the appropriate mode of transportation and accommodation for his treatment which should be reasonable and subject to liquidation through official receipts / proof of expenses.

11. Effect of Failure of the Seafarer to Report Regularly to the Company Doctor in the Course of the Treatment (Paragraph 3, Section 20.A.3, POEA SEC)

Comments: The purpose of this amendment is to ensure that the seafarers will report regularly to the company-designated physician to undergo the required treatment. Otherwise, the said failure will result in the forfeiture of his right to claim the benefits provided in the POEA SEC.

12. The new POEA SEC clearly states that the seafarer is be compensated based solely on the disability gradings under Section 32 of the POEA SEC (Paragraph 2, Section 20.A.6, POEA SEC)

Comments:

This amendment was prompted by the 120 day issue. The POEA now states that disability shall be based solely on the disability gradings provided under the POEA SEC and it is hope the Courts / NLRC will abandon the 120-day concept of total and permanent disability.

13. Effect of Payment of Death and Total Disability Benefits to the Seafarers or his Beneficiaries Under the Provisions of the Amended Migrant Workers Act (AMWA) to the Claims Under the POEA SEC (Section 20.G, POEA SEC)

Comments: The death and disability benefits that the seafarer or his beneficiaries are entitled to receive under the AMWA shall be deducted from the total death or disability benefits that the seafarer or his beneficiaries shall receive under the provisions of the POEA SEC. The seafarer or his beneficiaries shall not receive an amount in excess of the total benefits provided under POEA SEC unless of course ,there is a CBA that provides for more benefits.

14. Subsistence Allowance Benefit and Compassionate Visit as Additional Benefits to Filipino Seafarers (Section 20.H to I, POEA SEC)

Comments: Under the amendment, the principal assumes the obligation of paying USD100 per month to the seafarer for a maximum of six (6) months whenever the seafarer is involved in a litigation in a foreign country for the protection of his rights. It appears from said provision that even if the seafarer files a complaint against his employer, as long as he can claim it is for the protection of his rights, he is still to be paid this benefit.

Under "compassionate visit", when a seafarer is hospitalized for at least seven (7) consecutive days, the principal/Owners have the obligation of shouldering the cost of transportation of one (1) family member or a requested individual of the seafarer to the major airport closest to the place where the seafarer is hospitalized. This benefit appears to cover only the transportation cost and not the visa and travel document requirements.

15. The List of Occupational diseases Has Been Expanded (Section 32.A, POEA SEC)

Comments: During the deliberation of the amendments, the doctors representing the Owners and the seafarers' Unions were invited to act as resource persons for the purpose of revisiting the list of occupational diseases and determine whether the same can be acquired by seafarers taking into account the nature of

their work on-board the vessel. The list was revised and the conditions in order for a disease to be considered occupational have been amended. Kindly refer to Section 32A of the new POEA SEC.

16. Death or Disability Caused by Sexually Transmitted Disease Shall Not be Compensable (Section 32.A, POEA SEC)

Comments: Incidents of death or disability arising from sexually transmitted diseases are gradually increasing throughout the years. The new POEA SEC now states that death or disability which is directly cause by sexually transmitted disease or arose from complications thereof shall not be compensable nor shall be entitled to the benefits provided under the POEA SEC.

17. Table of Offenses Has Been Amended to Cover New Offenses (Section 33, POEA SEC)

Comments: Due to the proliferation of pornography cases, *i.e.* child pornography, possession of pornographic materials, involving seafarers in foreign jurisdiction, it was decided to include those acts in the table of offenses which would warrant imposition of appropriate penalty and will serve as possible deterrent in the commission of those offenses. It can be noted also that the penalties corresponding to the acts committed have been revised depending on the gravity and frequency in the commission of those offenses. Kindly refer to Section 33 of the new POEA SEC.

The author will closely monitor developments in the implementation of the new POEA SEC and will provide regular updates in this respect.

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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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Del Rosario Pandiphil Inc. / Del Rosario & Del Rosario

Office Address: 15th Floor, Pacific Star Building, Makati Avenue, 1200 Makati City, Philippines

Telephone: 63 2 810 1791 * **Fax:** 63 2 817 1740/ 63 2 810 3632

24/7 Emergency Mobile: (63) (917) 830-8384; mail@delrosario-pandiphil.com; www.delrosario-pandiphil.com

