



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., November 25, 2009

Proposed Amended Migrant Workers Act May Seriously Affect Manning Industry

Background and Current Status

The Migrant Workers Act of 1995 (Republic Act No. 8042) was enacted into law in 1995 mainly to prevent illegal recruitment. Its main effect on the seafaring industry was the transfer of jurisdiction of seafarer's claims from the POEA to the NLRC.

Amendments to the Migrant Workers Act of 1995 have now been proposed and the JMG (Joint Manning Group composed of manning industry associations) strongly disagreed with some amendments and made proposals to change some provisions. Unfortunately, said proposals of the JMG were not approved by the Bicameral Conference Committee of the Philippine Congress.

The Bicameral Conference Committee will now submit the proposed law to the House of Representatives and the Senate for approval. Thereafter, it goes to the President for signature. It is usual that a law is passed once it is approved by the Bicameral Conference Committee.

Areas of Concern to the Filipino Seafaring Industry

The major areas of concern in the proposed amendments are as follows:

- A. Prohibited Act: Requiring seafarers to undergo health examinations from specifically designated clinics;
- B. Prohibited Act: Requiring seafarers to undergo training from specifically designated training institution; and
- C. Providing insurance coverage to seafarers in addition to the benefits available to the seafarers under the provisions of the POEA SEC and CBA.
- D. Prohibited Act: To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency
- E. Expansion of persons held criminally liable for prohibited acts.

A & B. Prohibited Acts: Requiring Seafarers to undergo health examinations from specifically designated clinics and Requiring Seafarers to undergo training from specifically designated training institutions

The proposed amendments state:

“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;

- (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;”**

An OFW (Overseas Filipino Workers) includes a seafarer. The amendments basically mean that a seafarer cannot be required to undergo his PEME / health examinations and his maritime training/schooling from clinics or maritime training institutions designated by the employer. The seafarer in effect can choose his own PEME / health examination and his own training institution. This runs counter to current practices of vessel interests to require the seafarers to undergo their PEME / health examination and training in designated clinics and training facilities.

Please note that a violation of the above prohibited acts shall make the officers of the corporation having ownership, control, management or direction of their business and the responsible employees/agents liable for the offence of illegal recruitment and shall suffer the penalty of imprisonment of 6 years and 1 day to 12 years and a fine of not less than Php1, 000,000 but not more than Php2,000,000.

C. Providing insurance coverage to seafarers in addition to the benefits available to the seafarers under the provisions of the POEA SEC and CBA.

The proposed amendment states:

SEC. 23. A new Section 37-A of Republic Act No. 8042, as amended, is hereby added to read as follows:

“SEC. 37-A. COMPULSORY INSURANCE COVERAGE FOR AGENCY-HIRED WORKERS. – IN ADDITION TO THE PERFORMANCE BOND TO BE FILED BY THE RECRUITMENT/MANNING AGENCY UNDER SECTION 10, EACH MIGRANT WORKER DEPLOYED BY A RECRUITMENT/MANNING AGENCY SHALL BE COVERED BY A COMPULSORY INSURANCE POLICY WHICH SHALL BE SECURED AT NO COST TO THE SAID WORKER. SUCH INSURANCE POLICY SHALL BE EFFECTIVE FOR THE DURATION OF THE MIGRANT WORKER’S EMPLOYMENT CONTRACT AND SHALL COVER, AT THE MINIMUM:

- (A) ACCIDENTAL DEATH, WITH AT LEAST FIFTEEN THOUSAND UNITED STATES DOLLARS (US\$ 15,000.00) SURVIVOR’S BENEFIT PAYABLE TO THE MIGRANT WORKER’S BENEFICIARIES;**
- (B) NATURAL DEATH, WITH AT LEAST TEN THOUSAND UNITED STATES DOLLARS (US\$ 10,000.00) SURVIVOR’S BENEFIT PAYABLE TO THE MIGRANT WORKER’S BENEFICIARIES;**
- (C) PERMANENT TOTAL DISABLEMENT, WITH AT LEAST SEVEN THOUSAND FIVE HUNDRED UNITED STATES DOLLARS (US\$ 7,500) 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;**
- (D) REPATRIATION COST OF THE WORKER WHEN HIS/HER EMPLOYMENT IS TERMINATED WITHOUT ANY VALID CAUSE, OR, IN CASE OF DEATH, THE WORKER’S REMAINS INCLUDING THE TRANSPORT OF HIS/HER PERSONAL BELONGINGS, WITH AT LEAST FIVE THOUSAND UNITED STATES DOLLARS (US\$ 5,000) COVERAGE;**
- (E) SUBSISTENCE ALLOWANCE BENEFIT, WITH AT LEAST ONE HUNDRED UNITED STATES DOLLARS (US\$100) PER MONTH FOR A MAXIMUM OF SIX (6) MONTHS FOR A MIGRANT WORKER WHO IS INVOLVED IN A CASE OR LITIGATION FOR**

THE PROTECTION OF HIS/HER RIGHTS IN THE RECEIVING COUNTRY.

(F) MONEY CLAIMS ARISING FROM EMPLOYER'S LIABILITY WHICH MAY BE AWARDED OR GIVEN TO THE WORKER IN A JUDGEMENT OR SETTLEMENT OF HIS/HER CASE IN THE NLRC. THE INSURANCE COVERAGE FOR MONEY CLAIMS SHALL BE EQUIVALENT TO AT LEAST THREE (3) MONTHS FOR EVERY YEAR OF THE MIGRANT WORKER'S EMPLOYMENT CONTRACT;

(G) COMPASSIONATE VISIT, THE INSURANCE COVERAGE SHALL PROVIDE TRANSPORTATION FOR AT LEAST ONE (1) FAMILY MEMBER OR REQUESTED INDIVIDUAL BY THE QUALIFIED MIGRANT WORKERS TO THE MAJOR AIRPORT CLOSEST TO THE PLACE OF HOSPITALIZATION. FOR THIS PURPOSE, THE MIGRANT WORKER MUST BE MEDICALLY EVALUATED AND REQUIRES HOSPITAL CONFINEMENT FOR SEVEN (7) CONSECUTIVE DAYS OR MORE. IT IS HOWEVER THE RESPONSIBILITY OF THE FAMILY MEMBER OR REQUESTED INDIVIDUAL TO MEET ALL VISA AND TRAVEL DOCUMENT REQUIREMENTS.

(H) MEDICAL EVACUATION. WHEN AN ADEQUATE MEDICAL FACILITY IS NOT AVAILABLE PROXIMATE TO THE MIGRANT WORKER, AS DETERMINED BY THE INSURANCE COMPANY'S PHYSICIAN AND A CONSULTING PHYSICIAN, EVACUATION UNDER APPROPRIATE MEDICAL SUPERVISION BY THE MODE OF TRANSPORT NECESSARY SHALL BE UNDERTAKEN BY THE INSURANCE PROVIDER.

(I) MEDICAL REPATRIATION. WHEN MEDICALLY NECESSARY AS DETERMINED BY THE ATTENDING PHYSICIAN, REPATRIATION UNDER MEDICAL SUPERVISION TO THE MIGRANT WORKER'S RESIDENCE SHALL BE UNDERTAKEN BY THE INSURANCE PROVIDER AT SUCH TIME THAT THE MIGRANT WORKER IS MEDICALLY CLEARED FOR TRAVEL BY COMMERCIAL CARRIER. IF THE TIME PERIOD TO RECEIVE MEDICAL CLEARANCE TO TRAVEL EXCEEDS FOURTEEN (14) DAYS FROM THE DATE OF DISCHARGE FROM THE HOSPITAL, AN ALTERNATIVE APPROPRIATE MODE OF TRANSPORTATION, SUCH AS AIR AMBULANCE, MAY BE ARRANGED. MEDICAL AND NON-MEDICAL ESCORTS MAY BE PROVIDED WHEN NECESSARY.

(J) RETURN OF MORTAL REMAINS. INCASE OF DEATH OF THE MIGRANT WORKER DUE TO ANY CAUSE, THE INSURANCE PROVIDER SHALL ARRANGE AND PAY FOR THE RETURN OF HIS OR HER MORTAL REMAINS. THE INSURANCE PROVIDER SHALL RENDER ANY ASSISTANCE NECESSARY IN THE TRANSPORT, INCLUDING BUT NOT LIMITED TO, LOCATING A LOCAL AND LICENSED FUNERAL HOME, MORTUARY OR DIRECT DISPOSITION FACILITY TO PREPARE THE BODY FOR TRANSPORT, COMPLETING ALL DOCUMENTATION, OBTAINING LEGAL CLEARANCES, PROCURING CONSULAR SERVICES, PROVIDING DEATH CERTIFICATES, PURCHASING THE MINIMALLY NECESSARY CASKET OR AIR TRANSPORT CONTAINER, AS WELL AS TRANSPORTING THE REMAINS INCLUDING RETRIEVAL FROM SITE OF DEATH AND DELIVERY TO THE RECEIVING FUNERAL HOME

THE ABOVEMENTIONED INSURANCE COVERAGE SHALL BE *WITHOUT PREJUDICE* TO CLAIMS UNDER THE POEA STANDARD EMPLOYMENT CONTRACT AND/OR COLLECTIVE BARGAINING AGREEMENT (CBA) FOR SEAFARERS. (*italics ours*)

The proposed amendment in effect requires 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.

This will be an added burden to vessel interests who are already doing their best to keep their Filipino seafarers employed despite the economic recession.

D. Prohibited Act: To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency

The proposed amendments states:

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

“Sec. 6. Definition. - For purposes of this Act, 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 a 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. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

(N) TO ALLOW A NON-FILIPINO CITIZEN TO HEAD OR MANAGE A LICENSED RECRUITMENT/MANNING AGENCY .

Based on the amendment, it is prohibited to “allow” a non-Filipino citizen to head or manage a licensed manning agency. Punishment is imprisonment of from 6 years to 12 years and fine of Php1M to Php2M.

E. Expansion of persons held criminally liable for prohibited acts.

The proposed amendment states:

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

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 AND THE RESPONSIBLE EMPLOYEES/AGENTS THEREOF shall be liable.

It should be noted that those in bold capitalized letters are the amendments. Whereas before, the officers having control, management or direction of the manning agency are the ones held criminally liable, now those having ownership are also criminally liable. Even responsible employees / agents can also be held liable. Punishment is imprisonment of from 6 years to 12 years and fine of from Php1M to Php2M.

Author's Note:

The above is a quick review of the proposed amendments. The author's review is still on-going and there may be other areas of concern.

In the meantime, the Joint Manning Group has called meetings of industry leaders to determine actions to be undertaken to resolve the areas of concern. We will keep you updated.

Those interested in obtaining a complete copy of the proposed amendments may email mail@delrosariolaw.com or you can download at <http://www.delrosariolaw.com/dl/downloads.php>.

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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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