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WORKING IN THE SUPERYACHT INDUSTRY



Some advice on employment agreements

As the superyacht industry develops it is increasingly becoming an integral part of the wider maritime world. It is adopting similar approaches to technical and crew management and mainstream human resource management processes are becoming increasingly commonplace amongst superyacht operators and managers.

Over the years Nautilus International has provided invaluable advice to those of its members who work on individual contracts of employment and do not have the benefit of collectively negotiated terms and conditions of employment.

In today's shipping industry it makes no sense to start work without having an organisation like Nautilus International behind you. We can check your employment agreement (the Seafarers Employment Agreement – 'SEA') and make sure it is reasonable and meets recognised industry and international standards, such as the Maritime Labour Convention, 2006. Under the MLC, you have a legal right to be issued with a SEA, which must specify major key details of your employment terms and conditions, such as the amount of wages and annual leave, social security, repatriation rights, etc, which you are legally entitled to.

However, every situation is different, so what follows is a general summary of the advice Nautilus International provides to individual members who are seeking employment in the global shipping industry, specifically adapted

to the superyacht industry: it is not intended to be exhaustive but summarises some key issues to watch out for. Furthermore, the MLC (from which many of these rights derive) sets out the minimum standards which must be applied onboard by flag state laws. Flag states have implemented the MLC in different ways, so you should check the administration's website, which will set out its specific requirements, including details of where it has gone above those minimum standards, for instance, on annual leave entitlement (how many public holidays are you due in addition?), interest on late payment of wages, etc.

In terms of context, in the superyacht industry in particular, the parties involved and the employment arrangements are invariably fragmented between several countries. For instance, it is common for the yacht owning company, the agency/employer, main port of operation, SEA applicable law and jurisdiction clauses, domicile of the seafarer, etc., to be in entirely different countries and overseas territories, often involving exotic tax havens with little transparency concerning corporate accounts and assets. If you find yourself with a legal claim (e.g. for unpaid wages, unfair or wrongful dismissal), such arrangements make it difficult to resolve matters due to: jurisdictional barriers (due to fragmentation, lack of strong connections with any one country); legal action and enforcement to be taken in at least two countries; the risk that a judgment cannot be satisfied because the owner/employer are 'brass-plate' companies with no assets.

- All seafarers must have a MLC compliant SEA signed by the shipowner (or its representative) and the seafarer. Before signing the SEA, you must be given an opportunity to seek advice on its contents and you should be given an original of the jointly signed agreement. No one should start work without knowing what they are expected to do and what they will get in return.

Always ensure that the SEA clearly states:

- your name, date of birth or age, and birthplace;
- the shipowner's name and address (if the shipowner is not your employer, ask for a clause whereby the owner will indemnify you against the employer's liabilities towards you)
- the place and date where/on the SEA was entered into;
- the capacity in which you are to be employed (e.g. captain, chief engineer, etc.);
- the wages payable (or formula used for calculating it); you must be paid in full at least once per month; the owner has no entitlement to withhold any part of your wages as a deposit or security; any deductions (e.g. for tax) must be authorised under flag state laws, which also give you the right to transfer monies to your family; you should not be required to pay the costs of joining the yacht or repatriation; high rates of interest can be imposed on the owner for late payment – check with the flag state;
- your paid annual leave entitlement (or formula used for calculating it); this is a minimum of 2.5 days per month, with public holidays of the flag state in addition;
- notice provisions for terminating the SEA (whether it be for a definite or indefinite period or a voyage agreement); you cannot be required to give more notice than the owner is required to give you; do not sign a SEA which allows the shipowner to alter the duration of the engagement/employment without your consent;
- the health and social security protection benefits to be provided to you by the owner; these should include medical care; sick pay for up to 16 weeks; compensation for the yacht's loss or foundering; ideally a contractual right to compensation in cases of death or long-term disability (check that the yacht displays its compulsory MLC financial security certificate to cover these costs); enquire with the flag state about other social security entitlements;
- your repatriation rights, including destination, mode of transport (normally by air), baggage allowance and other entitlements (check that the yacht displays its compulsory MLC financial security certificate to cover the costs of repatriation in situations of abandonment);
- any other requirements of flag state law;
- Seek advice on your SEA before signing it, particularly if you have doubts in relation to any terms. Once signed, you are legally bound by its terms.
- Although the MLC does not require that hours of work or rest be stated in the SEA, they often will be; however, these must be displayed on board in a standardised table, together with a schedule of service at sea and in port.
- Finally, you should seek to ensure that you only accept employment from bona fide shipowners or their representatives. Be very wary of signing, or accepting, employment agreements with clauses specifying overseas applicable laws and jurisdictions with companies that are effectively payroll-only and have few or no assets. Should legal action be required in these jurisdictions by the Union's lawyers, it is often extremely difficult to succeed due to: unfavourable legal forums; legal action being required in two or more jurisdictions; weak enforcement mechanisms; opaque brass-plate defendant companies with no assets; high costs and fees disproportionate to the amount of the claim.

For more information about the support Nautilus International can provide to seafarers working in the superyacht industry please contact: Nautilus International, 1-2 The Shrubberies, George Lane, London E18 1BD.

Tel: +44 (0)208 989 6677 Fax: +44 (0)208 530 1015 Email: yachts@nautilusint.org Webpage: www.nautilusint.org

NB. To be read in conjunction with the Union's Legal Terms and Conditions.