

Translation. Only the Danish version has legal validity

Order no. 131 of 22 February 2011 issued by the National Labour Market Authority

Order on sickness benefits for seafarers

Pursuant to section 2(3) of the act on sickness benefits, cf. consolidated act no. 85 of 7 February 2011, and following negotiations with the Ministry of Economic and Business Affairs, the following provisions are laid down:

Chapter 1

Definitions

Section 1. For the purposes of this order, the following definitions shall apply:

- 1) Domestic trade shall mean trade exclusively between Danish ports.
- 2) Abroad shall mean foreign states as well as the Faeroe Islands and Greenland.
- 3) The sickness benefits act shall mean the act on sickness benefits, cf. consolidated act no. 85 of 7 February 2011.

Chapter 2

Group of persons

Section 2. Sickness benefits pursuant to this order shall be paid to persons belonging to one of the following groups of persons:

- 1) Seafarers serving on a Danish merchant ship unless the ship is exclusively engaged in domestic trade.
- 2) Seafarers staying or living abroad and who, within the last two weeks, have served on a Danish merchant ship provided that they have not taken up another occupation after the service has ended.
- 3) Seafarers whose employment relationship is not linked to a specific merchant ship (employees of a shipping company) during service abroad.
- 4) Seafarers in the groups mentioned under items 1 or 3, during the journey to or from the ship.

Chapter 3

General conditions

Section 3. Sickness benefits shall be paid on condition of full incapacity for work due to own sickness, including injuries.

Subsection 2. Payment of sickness benefits shall cease on the day the seafarer is fit for work even if the seafarer in question does not resume work or report fit for work.

Section 4. The Danish Maritime Authority shall pay sickness benefits during sickness absence. However, the employer shall pay sickness benefits to employees in connection with sickness absence for 21 calendar days from the first day of absence, cf. section 5.

Subsection 2. The right to receive sickness benefits from the Danish Maritime Authority shall commence on the first day of absence or on the first day of absence after the right to receive sickness benefits from the employer has lapsed.

Section 5. Seafarers who are not paid wages/salary during sickness shall have the right to receive sickness benefits from the employer if they

- 1) have been employed without interruption for the last eight weeks before the absence with the employer in question; and
- 2) in this period have worked for the employer for no less than 74 hours.

Subsection 2. If the seafarer has worked for the current employer in the past, and if the total period of work for this employer was no less than 74 hours within the last eight weeks, the conditions in subsection 1(i) shall, however, not apply.

Subsection 3. The right to receive sickness benefits from the employer shall apply even if the employment relationship ends before the expiry of the employer period unless the employer documents that the date of resignation had been determined before the start of the sickness, cf. however subsection 2.

Subsection 4. In case the employer's obligation under subsection 3 ceases within the employer period, cf. section 4(1), the Danish Maritime Authority shall pay the sickness benefits for the remainder of the period.

Section 6. Seafarers shall have the right to receive sickness benefits from the Danish Maritime Authority if they

- 1) have been attached to the Danish labour market without interruption for the last 13 weeks before the sickness commenced and in this period have worked for no less than 120 hours and they have not had the right to receive sickness benefits from the employer for the same period and employment relationship;
- 2) within the last month have completed vocational education and training of no less than 18 months; or
- 3) are students in paid practice in an education or training programme regulated by or pursuant to law.

Subsection 2. For periods of employment pursuant to subsection 1(i), periods shall be included in which the seafarer whose incapacity for work had not commenced would have been entitled to unemployment benefit or benefits which may apply instead of unemployment benefit, cf. the act on unemployment insurance, etc. (*lov om arbejdsledshedsforsikring m.v.*). For periods of employment pursuant to subsection 1(i), periods in which the seafarer has been employed in the European labour market shall also be included, cf. the aggregation principle in EC regulation no. 883/04.

Chapter 4

Notification and documentation

Section 7. Incidences of sickness shall be notified to the employer (the shipping company or the master) as soon as possible.

Subsection 2. The employer may demand that the seafarer documents that the absence is due to own sickness within a reasonable time limit.

Subsection 3. The employer may, when deemed necessary, demand a medical certificate from the employed person. The employer shall pay for the certificate.

Section 8. The right to receive sickness benefits from the Danish Maritime Authority shall be conditional on submission of a declaration to the Danish Maritime Authority without undue delay stating the reason for incapacity for work, and on pay and working conditions and other conditions of importance in connection with the decision on whether the seafarer has the right to sickness benefits. The declaration shall be accompanied by a medical certificate. Expenses for the medical certificate shall be paid by the Danish Maritime Authority.

Subsection 2. The employer (the shipping company or the master) shall carry out the notification to the Danish Maritime Authority.

Subsection 3. For seafarers covered by section 2(2), the duty to notify shall rest with the seafarer. In these circumstances, the declaration shall be submitted to the Danish Maritime Authority through the nearest Danish international representation.

Chapter 5

Lapse of the right to sickness benefits

Section 9. The right to sickness benefits shall lapse,

- 1) if the seafarer, against advice from the doctor, refuses to be hospitalised or to receive the necessary medical treatment, or against the advice of the doctor or the Danish Maritime Authority refuses to participate in appropriate rehabilitation to regain ability to work; or
- 2) if the seafarer delays his recovery by his behaviour.

Subsection 2. Lapse of sickness benefits under subsection 1(i) shall be conditional upon the Danish Maritime Authority having given the person reported sick written information about the consequences of the person reported sick refusing to receive the necessary treatment or appropriate rehabilitation.

Subsection 3. The right to sickness benefits shall terminate the day after the conditions for receiving sickness benefits are no longer met. Decisions on termination of the right to sickness benefits may be made at the earliest when the person reported sick has had an opportunity to give a statement on the information about the actual circumstances of the case that, in the opinion of the Danish Maritime Authority, lead to the conditions for receiving sickness benefits no longer being met. The Danish Maritime Authority shall determine a date for giving such a statement.

Subsection 4. The payment of sickness benefits that have lapsed pursuant to subsection 1(i) shall be resumed the day after the date when the conditions for payment of sickness benefits are once again met if this date falls no later than four weeks after the person reported sick having been informed about the decision.

Subsection 5. The right to sickness benefits from the employer shall lapse,

- 1) if the seafarer has brought on the disease intentionally or by gross negligence;
- 2) if the seafarer, in connection with taking over the position, has concealed health information of importance to the employment relationship;
- 3) during strike or lockout; or
- 4) if the seafarer does not fulfil his duty to notify or document his absence, cf. section 7. However, this shall not apply if adequate grounds are given that the seafarer has failed to fulfil the requirement, or if the employer, as soon as possible, does not object to delayed notification or to the form or delay of the documentation.

Chapter 6
Calculation and payment

Section 10. Sickness benefits shall be paid on the basis of the salary/wage income of the seafarer.

Subsection 2. The Danish Maritime Authority may decide,

- 1) to what extent persons with earned income who cannot be taxed in Denmark have the right to sickness benefits; and
- 2) that persons with the right to sickness benefits in another country shall not have the right to sickness benefits in Denmark.

Section 11. Sickness benefits shall be paid in the first 21 calendar days in an amount corresponding to the amount of pay during sickness (sick pay) pursuant to the merchant shipping (masters and seamen's) act (*sømandsloven*).

Subsection 2. Sickness benefits from the Danish Maritime Authority, including advance payments and repayment of sickness benefits per week, may not exceed the maximum amount of sickness benefits per week stipulated pursuant to the sickness benefits act (*sygedagpengeloven*).

Subsection 3. For seafarers who are employed or have been employed on board a ship registered in the Danish International Register of Shipping, sickness benefits from the Danish Maritime Authority shall be calculated in the same way as unemployment benefits are calculated for this group of persons pursuant to the order from the National Labour Market Authority on calculation of the rate of unemployment benefits for employees.

Subsection 4. The Danish Maritime Authority may, if circumstances so warrant, decide that sickness benefits shall be paid at another amount than the sick pay, cf. however subsection 2.

Section 12. If an employer partly or wholly fails to pay sickness benefits, and if the Danish Maritime Authority deems that the omission is unjustified, or if the omission is due to the inability to pay, the Danish Maritime Authority shall pay advance payments of the sickness benefits. If it is decided that advanced payments shall be made, the employer shall be notified hereof.

Subsection 2. When the Danish Maritime Authority has paid advanced payments pursuant to subsection 1, the employer shall repay this advance payment within four weeks after the notification hereof is received.

Section 13. If the National Social Appeals Board decides that the employer shall be liable to pay sickness benefits after the Danish Maritime Authority has paid advance payments pursuant to section 12(1), the employer shall repay the advance payment within four weeks after receipt notification hereof.

Chapter 7
The right to sickness benefits in connection with industrial injuries

Section 14. Anyone who suffers an industrial injury covered by the legislation on workers' compensation shall have the right to sickness benefits from the first day of absence after the date the industrial injury occurred.

Chapter 8
Financing and repayment

Section 15. The employer shall pay sickness benefits in the first 21 calendar days of a period of absence, whereas other sickness benefits shall be paid by the Danish Maritime Authority or the municipality of residence of the seafarer.

Section 16. The right to sickness benefits from the Danish Maritime Authority shall lapse no later than 18 weeks after the first day of absence.

Subsection 2. The Danish Maritime Authority may, if circumstances so warrant, extend the period mentioned in subsection 1.

Subsection 3. In circumstances where the Danish Maritime Authority shall pay sickness benefits, these shall be financed by the central government.

Subsection 4. Seafarers who have used up the right to sickness benefits pursuant to subsection 1 shall be paid sickness benefits pursuant to the regulations of the Danish sickness benefits act (*sygedagpengeloven*) if they are resident in Denmark and otherwise meet the conditions to be paid sickness benefits pursuant to the Danish sickness benefits act (*sygedagpengeloven*).

Section 17. An employer paying wages/salary (sick pay) during sickness under the merchant shipping (masters and seamen's act) (*sømandsloven*) or paying wages/salary during absence from work shall be entitled to be paid the sickness benefits the seafarer otherwise would have been entitled to from the Danish Maritime Authority for the same working conditions, however no more than an amount corresponding to the amount of wages/salary or sick pay paid for the same period.

Subsection 2. The compensation granted pursuant to section 45 of the merchant shipping (masters and seamen's) act (*sømandsloven*), cf. section 16 and section 47(3), to a ship's officer and to a master laid off because of sickness shall be deemed wages/salary pursuant to this order.

Subsection 3. The Danish Maritime Authority shall lay down regulations regarding the employer's duty to notify the seafarer's sickness absence and on notification of requirements on payment of sickness benefits (repayment) to the employer.

Subsection 4. The Danish Maritime Authority may lay down regulations regarding the form and content of the request for repayment.

Section 18. In return for paying a contribution to the central government pursuant to the administrative provisions laid down under section 55(4) of the Danish sickness benefits act (*sygedagpengeloven*), some employers may take out insurance giving the employer the right to refund of an amount from the Danish Maritime Authority corresponding to the sickness benefits the seafarer is entitled to receive from the employer. This amount may not exceed the maximum sickness benefits amount per week stipulated under the Danish sickness benefits act (*sygedagpengeloven*).

Chapter 9
*Contributions to the Arbejdsmarkedets Tillægspension
(labour market supplementary pension scheme (ATP))*

Section 19. In connection with payment of sickness benefits to seafarers who have turned 16 years of age, payment shall be made of twice the contribution laid down in section 15 related to section 2a of the act on Arbejdsmarkedets Tillægspension.

Subsection 2. More detailed regulations on calculation of the contribution shall be laid down by the Supervisory Board for the Arbejdsmarkedets Tillægspension pursuant to the principles in section 15 of the act on Arbejdsmarkedets Tillægspension.

Subsection 3. The seafarer shall pay 1/3 of the contribution, and the employer 2/3. When sickness benefits are paid pursuant to sections 6 and 14, the contribution shall be paid by the Danish Maritime Authority.

Subsection 4. The employee contribution calculated by the Danish Maritime Authority shall be rounded to the nearest full DKK amount.

Subsection 5. The seafarer's share of the contribution shall be withheld in connection with payment of the sickness benefits.

Section 20. The contribution paid by the Danish Maritime Authority to the Arbejdsmarkedets Tillægspension shall be covered by a contribution from the employer.

Subsection 2. The employer contribution shall be calculated in relation to the number of employees, including seafarers, covered by the act on Arbejdsmarkedets Tillægspension and receiving sickness benefits from their municipality.

Subsection 3. The regulations in section 66(3)-(13) of the sickness benefits act (*sygedagpengeloven*) on the employer contribution shall apply correspondingly.

Part 10
Appeals regulations

Section 21. Any decision of the Danish Maritime Authority on sickness benefits may be brought before the employment committee of the National Social Appeals Board.

Subsection 2. The decisions of the employment committee of the National Social Appeals Board shall be made at a meeting attended by two appeals board chairmen and two members by a shipping company organisation and an organisation for seafarers, cf. section 50a(8) of the act on due process of law and administration in the social area. Furthermore, a member appointed on recommendation by the Local Government Denmark (KL) and a member appointed on recommendation by the Danish Council of Organisations of Disabled People shall participate.

Section 22. Appeals to the employment committee of the National Social Appeals Board shall be submitted no later than four weeks after the claimant has been notified about the decision. The head of the National Social Appeals Board may disregard cases where the time limit is exceeded if there are specific reasons for this.

Chapter 11
Administration, etc.

Section 23. Administration of this Order shall be carried out by the Danish Maritime Authority unless otherwise decided.

Section 24. In the period in which the Danish Maritime Authority pays sickness benefits, the Authority shall ensure that the conditions for receiving sickness benefits are met.

Section 25. A seafarer, including a legal person, who has ignored his duty of information pursuant to section 11 of the act on due process of law and administration in the social area (*lov om retssikkerhed og administration på det sociale område*) or otherwise, acting in bad faith, has received benefits pursuant to this order to which he is not entitled shall repay this amount.

Subsection 2. A person whose right to sickness benefits has ceased under section 9(1) shall repay the amount paid from the day when the right to sickness benefits ceased and until the payment of sickness benefits actually ceased.

Subsection 3. Claims for repayment of over-paid benefits pursuant to this order may be deducted from benefits pursuant to the Danish sickness benefits act (*sygedagpengeloven*), this order, in part pension, and in early retirement pension.

Section 26. The authority considering a case pursuant to this order may demand information from employers, seafarers, public authorities, unemployment insurance funds, hospitals, clinics, medical practitioners, etc. necessary for a decision on sickness benefits and calculation of these, including medical journals or transcripts of these. Information on the financial situation of insured persons may also be obtained electronically from public authorities and unemployment insurance funds.

Subsection 2. The Minister for Employment may order the Danish Maritime Authority to procure statistical information.

Execution

Section 27. Claims for benefits under this order may not be made subject to execution or other legal proceedings unless three months have passed from the date the benefit could have been required paid. Agreements on such claims shall be void.

Recourse

Section 28. If a seafarer receives sickness benefits from the Danish Maritime Authority, cf. sections 6, 14 and 17, because of a condition caused by a liable person, the Danish Maritime Authority may make claims for indemnity against the person causing the injury for the sickness benefits paid, to the extent that the relevant conditions in damages are met. However, the Danish Maritime Authority may not make recourse

against the relevant employer in cases where a person employed by the relevant employer suffers an industrial injury covered by the workers' compensation act (*lov om arbejdsskadesikring*).

Chapter 12
Entry into force, etc.

Section 29. This order shall enter into force on 1 March 2011.

Subsection 2. Order no. 678 of 22 June 2006 on sickness benefits for seafarers shall be repealed.

National Labour Market Authority, 22 February 2011

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