

Statement on the Protection of Seafarers and Shipmasters on Danish Ships under the Act on the Wage Earner's Guarantee Fund

The Wage Earner's Guarantee Fund is a statutory scheme that covers the wage earner's claims for wages and other remuneration against the employer in the event of the employer's bankruptcy or the termination of a company, provided it is proven that the employer is unable to pay the claim. The Fund's coverage is independent of whether the employer has paid the mandatory contribution to the Wage Earner's Guarantee Fund.

Seafarers and shipmasters on Danish ships are covered by the wage guarantee under the Act on the Wage Earner's Guarantee Fund (LG) if they and their employer meet the general conditions of the law. The main scope of the guarantee for seafarers and shipmasters (employees) on Danish ships is outlined below.

Whether an employee is covered by the LG guarantee is determined based on a specific assessment of the employee's employment relationship, the employer's domicile and places of business, and where the employee usually performs their work.

Employer's circumstances:

In addition to cases where the employer is bankrupt and cases where the company ceases operations without the employer being able to pay wage claims, the scheme also covers cases where the employer has passed away, and the estate is treated as insolvent or is concluded without probate proceedings.

Requirements for the employment relationship:

The guarantee covers wage earners who have an employment connection to Denmark. As a general rule, this applies when an employment contract has been concluded with a Danish employer.

If the Danish employer operates in multiple countries within the EU/EEA, and the employee usually performs their work in another EU/EEA member state, the employee is not covered by the LG guarantee. This would be the case, for example, if the vessel on which the employee worked engaged in regular cabotage in another EU/EEA member state.

If the employer is a foreign company, the employee is generally covered by the LG guarantee if the employment relationship is linked to a branch or establishment established in Denmark. If the foreign company is established in another EU/EEA country and operates in several EU/EEA member states, the LG guarantee applies if the employee usually performed their work in Denmark. This may be the case, for example, when ships with a foreign crew regularly sail in Danish domestic waters.

The guarantee applies to wage earners who have been in an employment relationship with the employer. The top management of a company is usually not in an employment relationship with the company and is therefore not covered by the LG guarantee. Individuals who are closely related to a company or its owners may be exempted from the coverage of the guarantee based on a specific assessment. This includes co-owners or individuals with close family relationships to the owners.

Scope of the LG Guarantee

The guarantee covers claims that are granted priority of payment in the event of bankruptcy, according to the provisions of Section 95(1)(1-5) and (2), as well as Section 94(2) of the Bankruptcy Act. These claims include:

- Wages and other remuneration for work performed (salary, allowances, pension contributions, flex funds, etc.)
- Compensation for termination of employment (salary during a notice period)
- Compensation in connection with termination or disruption of employment
- Holiday allowance

As a general rule, only claims that have fallen due within the past 6 months up to the filing date of the employer's bankruptcy can be covered by the guarantee. The filing date is usually the day when the bankruptcy petition is submitted against the employer. However, older claims can also be covered if the employee has diligently pursued the claims without undue delay. This means that the employee must have sent written reminders to the employer shortly after the claim fell due, and if it does not lead to payment, a labor dispute must have been initiated or a lawsuit or bankruptcy petition must have been filed within a few months.

The 6-month rule does not apply to holiday allowance. Instead, the rules on limitation periods specified in the Holiday Act apply. Holiday pay may be deposited with FerieKonto or may be covered by a guarantee provided by the employer's employer association, such as the Danish Shipowners' Association. On www.borger.dk/feriepengeinfo, the holiday pay calculated and reported by the employer can be viewed. When an employee takes vacation days, they can apply for the payment of holiday pay.

The LG Guarantee does not cover advances made by the employee on behalf of the employer, such as advances for travel expenses, meals, and lodging.

If the employee is liable for tax in Denmark, the LG deducts income tax (A-skat) and labor market contributions (AM-bidrag) before making the payment. These amounts are reported to

SKAT (the Danish tax authorities), which credits the employee's tax account as if the employer had paid the taxes to SKAT.

If employees are covered by the DIS scheme (net wages), LG can calculate the net salary until the end of the notice period if the conditions for DIS taxation were met at the time of termination.

LG can pay a maximum of 160,000 DKK net (after tax) to an employee per employment. In addition, holiday pay and the balance on a flex fund account can be paid without a limit.

The claims that LG can cover for each individual employee depend on what has been agreed between the employee and the employer, whether there is a collective agreement, and the documentation of the claims.

Notification of claims to LG

LG's digital notification can be found at www.borger.dk/lg. The same place provides guidance on filling out the notification and the documentation that needs to be attached.

Notification to LG must be made no later than 4 months after the day of the employer's bankruptcy or the bankruptcy court's decision on insolvent treatment of the employer's estate. In the case of the employer's termination without bankruptcy but with documented insolvency, notification must be made no later than 6 months after the termination date. LG typically cannot process a notification received after the expiration of these deadlines.

In the event of the employer's death, the claims must also be reported to the estate administrator within 8 weeks after the date on which a proclamation has been published on www.statstidende.dk. If this deadline is not met, the claims can no longer be asserted against the employer's estate and therefore cannot be covered under the LG guarantee.

When notifying claims to LG, the employee can authorize an association or person assisting the employee, such as a trade union. LG will then communicate with the authorized representative regarding the handling of the case and make payments to the authorized representative.

Contacting LG

For more information about the LG guarantee, to send a message to LG, or to fill out the digital notification, visit www.borger.dk/lg. You can also contact LG by phone at +45 48 20 49 17.

Lønmodtagernes Garantifond (Workers' Guarantee Fund)

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