

Translation. Only the Danish version has legal validity

Order no. 728 of 29 June 2012 issued by the National Labour Market Authority

Order on sickness benefits for seafarers

Pursuant to section 2(3) of the act on sickness benefits (*lov om sygedagpenge*), cf. consolidated act no. 653 of 26 June 2012, and section 2c of the act on the National Labour Market Supplementary Pension Fund (*lov om Arbejdsmarkedets Tillægspension*), cf. consolidated act no. 942 of 2 October 2009, and following negotiations with the Ministry of Business and Growth and recommendations by the Board of the National Labour Market Supplementary Pension Fund, the following provisions are laid down:

Part 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 (*lov om sygedagpenge*), cf. consolidated act no. 653 of 26 June 2012.

Part 2

Group of persons

Section 2. Sickness benefits pursuant to this order shall be granted 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 residing abroad 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 contract of service is not attached to a specific merchant ship (employees of a shipping company) during service abroad.
- 4) Seafarers belonging to any of the groups mentioned under paragraph 1 or 3 during their journey to or from the ship.

Part 3

General provisions

Section 3. Sickness benefits shall be granted 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 absence due to sickness. However, the employer shall pay sickness benefits to employees in connection with absence due to sickness for 30 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 continuously employed by the employer in question for the last eight weeks before the absence; 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 contract of employment 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 continuously attached to the Danish labour market for the last 26 weeks before the sickness commenced and in this period have worked for no less than 240 hours and they have not had the right to receive sickness benefits from the employer for the same period and contract of employment;
- 2) within the last month have completed vocational education and training of no less than 18 months; or
- 3) are students in paid work experience in connection with an education or training programme regulated by or pursuant to law.

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

Chapter 4

Notification and documentation

Section 7. Cases 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 report 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 report. Expenses for the medical report shall be paid by the Danish Maritime Authority.

Subsection 2. The employer (the shipping company or the master) shall be responsible for notifying the Danish Maritime Authority.

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

Part 5

Lapse of the right to sickness benefits

Section 9. The right to sickness benefits shall lapse,

- 1) if the seafarer, against the doctor's advice, 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 the ability to work; or
- 2) if the seafarer by his behaviour delays his recovery.

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 set a time-limit 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. Payment of sickness benefits may be resumed only once during the relevant sickness benefit period.

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 material importance to the employment;
- 3) during strike or lockout; or

- 4) for as long as 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 for the seafarer's failure to fulfil the requirement, or if the employer does not, as soon as possible, object to delayed notification or to the form or delay of the documentation.

Part 6

Calculation and payment

Section 10. Sickness benefits shall be paid on the basis of the 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 during the first 30 calendar days in an amount corresponding to the amount of pay during sickness (sick pay) pursuant to the seamen's act (*sømandsloven*).

Subsection 2. Sickness benefits from the Danish Maritime Authority, including advance payments and repayment of sickness benefits per week, shall 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 issued by 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. Seafarers shall not be obliged to receive sickness benefits on weekday holidays, cf. section 53a of the sickness benefits act (*sygedagpengeloven*).

Section 13. 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 advance payments pursuant to subsection 1, the employer shall refund the advance payment within four weeks after having received the notification hereof.

Section 14. 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 13(1), the employer shall refund the advance payment within four weeks after having received notification hereof.

Part 7

The right to sickness benefits in connection with industrial injuries

Section 15. Anyone who suffers an industrial injury covered by the act on industrial injury insurance (*lov om arbejdsskadesikring*) or the act on protection against the consequences of occupational accidents (*lov om sikring mod følger af arbejdsskade*) shall have the right to sickness benefits from the first day of absence after the date the industrial injury occurred.

Part 8

Financing and repayment

Section 16. The employer shall pay sickness benefits during the first 30 calendar days of a period of absence, whereas other sickness benefits shall be paid by the Danish Maritime Authority or the seafarer's municipality of residence.

Section 17. 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 cases 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 sickness benefits act (*sygedagpengeloven*) if they are resident in Denmark and otherwise meet the conditions to be paid sickness benefits pursuant to the sickness benefits act (*sygedagpengeloven*).

Section 18. An employer paying wages during sickness (sick pay) under the seamen's act (*sømandsloven*) or paying wages 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 or sick pay paid for the same period.

Subsection 2. The compensation granted pursuant to section 45 of the seamen's act (*sømandsloven*), cf. section 16 and section 47(3), to a ship's officer and to a master dismissed because of sickness shall be deemed wages 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 (refunding) to the employer.

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

Section 19. In return for paying a contribution to the central government pursuant to the administrative provisions laid down under section 55(4) of the sickness benefits act (*sygedagpengeloven*), some employers may take out insurance giving the employer the right to a 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 shall not exceed the maximum sickness benefits amount per week stipulated under the sickness benefits act (*sygedagpengeloven*).

Part 9

Contributions to the National Labour Market Supplementary Pension Fund (Arbejdsmarkedets Tillægspension (ATP))

Section 20. 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 the National Labour Market Supplementary Pension Fund (*lov om Arbejdsmarkedets Tillægspension*).

Subsection 2. More detailed regulations on calculation of the contribution shall be laid down by the Board of the National Labour Market Supplementary Pension Fund pursuant to the principles in section 15 of the act on the National Labour Market Supplementary Pension Fund (*lov om 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 15, 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 sickness benefits.

Section 21. The contribution paid by the Danish Maritime Authority to the National Labour Market Supplementary Fund 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 the National Labour Market Supplementary Pension Fund (*lov om 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 provisions

Section 22. 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 appointed by a shipping company organisation and a seafarer organisation, respectively, cf. section 59a(5) of the act on due process of law and administration in the social area (*lov om retssikkerhed og administration på det sociale område*). 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 23. 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.

Part 11

Administration, etc.

Section 24. Administration of this order shall be carried out by the Danish Maritime Authority unless otherwise decided.

Section 25. In the period during which the Danish Maritime Authority pays sickness benefits, it shall ensure that the conditions for receiving sickness benefits are continuously met.

Section 26. 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 sickness benefits act (*sygedagpengeloven*), this order, in part pension, and in early retirement pension.

Section 27. 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 28. Claims for benefits under this order shall 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 29. If a seafarer receives sickness benefits from the Danish Maritime Authority, cf. sections 6, 15 and 18, 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 act on industrial injury insurance (*lov om arbejdsskadesikring*).

Part 12

Entry into force, etc.

Section 30. This order shall enter into force on 2 July 2012.

Subsection 2. Order no. 131 of 22 February 2011 on sickness benefits for seafarers shall be repealed.

National Labour Market Authority, 29 June 2012

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