

Regulations of 18 February 2005 No. 146 on guarantee of remuneration for work and of repatriation for employees on mobile offshore units registered in the Norwegian International Ship Register

Legal basis: Laid down by Royal Decree on 18 February 2005 under the Seamen's Act of 30 May 1975 No. 18 section 32. Prepared by the Ministry of Trade and Industry.

Added legal basis: Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act) section 4-7, cf. Formal Delegation of 3 July 2013 No. 974.

EEA references: EEA Agreement Annex XVIII point 24 (Directive 2008/94/EC and Regulation (EEC) No 1408/71).

Amendments: Amended by Regulations of 17 August 2009 No. 1078, 19 August 2013 No. 1012, 19 December 2017 No. 2294 (i.a. title).

Section 1

Scope of application

These Regulations apply to any employee who is not covered by Norwegian social security schemes pursuant to statute or to a reciprocal agreement or by the Social Security Regulation of the EEA Agreement, Regulation (EEC) No 1408/71, Article 14b, and who is employed on board mobile offshore units registered in the Norwegian International Ship Register. Amended by Regulation of 19 December 2017 No. 2294.

Section 2

The company's obligation to furnish a guarantee of remuneration due to employees and of coverage of repatriation in the event of bankruptcy or liquidation

For every mobile offshore unit registered in the Norwegian International Ship Register, the company shall furnish a guarantee of remuneration due to employees as referred to in section 1, as a result of the institution of bankruptcy or liquidation proceedings against a person or company that is directly or indirectly responsible for paying remuneration for the service of employees on board the mobile offshore unit. The guarantee shall cover:

- a) the employees' claims to outstanding remuneration for their work pursuant to statute or agreement with the employer in the event of his or her bankruptcy or liquidation;
- b) other remuneration for work pursuant to a contract of service, such as holiday or leisure time remuneration, claims for the reimbursement of the expenses of repatriation pursuant to statute or agreement, claims against the employer for a pension or any other loss of remuneration for service on board;
- c) any interest due or cost incurred through the recovery of claims as mentioned in subparagraphs a) and b).

Amended by Regulation of 19 December 2017 No. 2294.

Section 3

Limitations of the obligation to pay remuneration upon coverage of remuneration

The obligation to pay remuneration is limited to remuneration for eight weeks or for a number of shorter periods amounting to a total of eight weeks. The right to remuneration shall have been earned within the last 18 months of the contract of employment or the course of employment before the deadline, cf. sections 1-1 and 1-2 of the Act relating to creditors' right to satisfaction of claims. The employee's claim is limited in each case to an amount corresponding to three times the national insurance system's basic amount at the date of the deadline, cf. section 6-2 of the National Insurance Act.

Claims to outstanding remuneration must be presented to the liquidator within the deadline prescribed in the announcement of the institution of bankruptcy or liquidation. Claims against the guarantor must be presented by the liquidator prior to the distribution of assets from the estate.

Section 4

Maximum amounts of the guarantee

The requirements laid down in these Regulations for insurance or a guarantee in the event of bankruptcy or liquidation is considered to be complied with if a mobile offshore unit has a guarantee of at least NOK 500,000. Exemptions may be granted according to the following scale, provided the employees' and employers' organisations concerned agree to it:

- a) total crew from 1 to 5 employees; NOK 250,000;
- b) total crew from 6 to 10 employees; NOK 350,000.

The guarantor may limit his or her ability as regards the cost of repatriation to NOK 15,000 per crew member within the limits of liability set out in the first paragraph.

The guarantor may limit his or her total liability for more than one mobile offshore unit, but not to less than the net total of NOK 10 million. In cases where the guarantor's total liability pursuant to this section does not amount to NOK 10 million, the limits of liability mentioned in this section are cumulated.

Amended by Regulation of 19 December 2017 No. 2294.

Section 5

Requirements for the guarantor

A guarantee as referred to in section 2 shall be furnished by an insurance company that is licenced to carry out such business activity in Norway. The Ministry of Trade and Industry may upon application permit other persons to furnish a guarantee for the whole or parts of the guarantee.

The guarantor shall be a legal person independent of the company/employer.

A national social security scheme in the employee's country of residence may be approved of as a guarantee pursuant to the first paragraph, provided that the social security benefits satisfy the requirements of these Regulations.

Section 6

The State's obligation where no guarantee is furnished

If such security as referred to in section 2 is not provided, and as a case involving a guarantee has occurred, the State will give the employee a guarantee covering undisputed remuneration obligations in so far as they would have been covered by a valid guarantee. The State will in such a case succeed to the employee's claim with the same priority in relation to a debtor in bankruptcy or in liquidation and his or her estate, with such security as appertains thereto pursuant to sections 51 to 52 of the Norwegian Maritime Code and section 9-3 of the Act relating to creditor's rights to satisfaction of claims. This applies even though the conditions for payment of the wages guarantee were not fulfilled.

Section 7

Entitlements upon coverage of the employee's claim for remuneration

Any person who covers an employee's claim for remuneration or repatriation pursuant to these Regulations shall succeed to such claim with the same priority in relation to a debtor in bankruptcy or in liquidation and his or her estate, with such security as appertains thereto pursuant to sections 51 to 52 of the Norwegian Maritime Code and section 9-3 of the Act relating to creditor's rights to satisfaction of claims.

Section 8

The creditor's opportunity to take legal action

If a claim is wholly or partly disputed by a debtor in bankruptcy or in liquidation, the estate in bankruptcy or in liquidation, or the guarantor, the creditor may be directed to take legal action concerning the claim.

Section 9

Notification of guarantee in the ship register

A guarantee as referred to in section 2 shall, as a condition for registration, be noted in the ship register.

Section 10

Documentation of a necessary guarantee

The Ministry of Trade and Industry, or whoever is authorised by the Ministry, may require that documentary proof that a necessary guarantee has been provided shall be submitted. If necessary, such documentation shall cover the required agreement between the organisations concerned.

Section 11

Entry into force

These Regulations enter into force immediately. As of the same date, the Regulations of 17 December 1993 No. 1162 concerning mandatory guarantee scheme for employees on Norwegian ships, the Regulations of 23 December 1993 No. 1253 concerning guarantees ensuring payment of wages and passage home in the event of an employer's bankruptcy or liquidation, and the Regulations of 23 December 1993 No. 1254 concerning guarantees for social security entitlements for EEA nationals employed in hotel and restaurant services on board tourist ships registered in the Norwegian International Ship Register, are repealed.