L.N. 326 of 2024

EMPLOYMENT AND INDUSTRIAL RELATIONS ACT (CAP. 452)

Organisation of Working Time in Inland Waterway Transport Regulations, 2024

IN EXERCISE of the powers conferred by article 48(2) of the Employment and Industrial Relations Act, the Minister responsible for employment and industrial relations, has made the following regulations:-

Citation.

1. The title of these regulations is the Organisation of Working Time in Inland Waterway Transport Regulations, 2024.

Scope and applicability.

2. (1) These regulations transpose Council Directive 2014/112/EU of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF).

(2) These regulations shall be construed as a national standard order and lay down the minimum requirements for the organisation of working time in the inland waterway transport sector.

(3) These regulations shall apply to workers employed as travelling personnel, whether as crew members or in any other function, on board a craft which operates, or ordinarily operates transport services for passengers or goods by inland waterway, in the territory of one or more Member States.

(4) Inland waterway transport operators shall not be considered as workers falling within the scope of these regulations, even if they have the status of workers in their own undertaking.

S.L. 452. 87.

(5) The Organisation of Working Time Regulations shall not apply to workers employed on board a craft operated in the inland waterway transport sector where any particular matter is regulated by these regulations.

(6) These regulations shall be applicable without prejudice to other legislation which grants a higher level of protection to workers in inland waterway transport and to the introduction and implementation of provisions in collective agreements or any other agreement entered

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into between employers and the employees, which are more favourable to the protection of the safety and health of workers.

Interpretation.

3. (1) In these regulations, unless the context otherwise requires:

"Act" means the Employment and Industrial Relations Act; Cap. 452.

"boatmaster" means a deck crew member who has overall responsibility to sail a craft on the inland waterways and who is responsible for the crew and for the passengers;

"craft" means a vessel or unit of floating equipment;

"designated officer" means an inspector appointed by the Director;

"Director" shall have the same meaning as assigned to it in the Act;

"employer" shall have the same meaning as assigned to it in the Act;

"inland waterway transport operator" means any person operating vessels for commercial purposes in the inland waterway transport sector on his own account;

"Member State" means a member State of the European Union;

"night time" means the period between 22:00 of any one day and 06:00 of the next day;

"night worker" means a worker who:

(a) works at least three (3) hours of his daily working time during night time as part of his normal course of work; or

(b) works more than fifty percent (50%) of his annual working time during night time, or such lower proportion as may be specified in appropriate provisions of a relevant collective agreement:

Provided that for the purposes of paragraph (a) of this definition, the term "normal course" means those instances where the worker works such hours on the majority of his working days;

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"passenger vessel" means a day trip or cabin vessel constructed and equipped to carry more than twelve (12) passengers;

"rest day" means an uninterrupted rest period of twenty-four (24) hours which the worker spends in a place of his own choosing;

"rest time" means the time outside working time, including rest periods on a moving craft, on a stationary craft and on land, but does not include short breaks of up to fifteen (15) minutes;

"season" means a period of not more than nine (9) consecutive months out of twelve (12) months, in which the activities are tied to certain periods of the year as a result of external circumstances, such as weather conditions or tourist demand, and "seasonal work" shall be construed accordingly;

"shift worker" means any worker whose work schedule is part of shift work;

"work schedule" means the planned working days and rest days communicated to the worker in advance by the employer;

"working time" means any period during which the worker is available for service, to the employer and is carrying out his activity or duties (on-call time) on and for the craft on the instructions of the employer or the employer's representative and includes any relevant training, and "work" shall be construed accordingly.

(2) Subject to the provisions of sub-regulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

Working time and reference period.

4. (1) Without prejudice to regulation 6, standard working hours shall be based on an eight (8) hour day.

(2) Working time may be extended in accordance with regulation 6 provided that an average of forty-eight (48) hours per week is not exceeded within twelve (12) months. The maximum working time in the reference period is two thousand three hundred and four (2,304) hours (calculation basis: fifty-two (52) weeks minus a minimum four (4) weeks' leave x forty-eight (48) hours). Periods of annual leave and sick leave shall not be included in the calculation of the average or shall be neutral. Rest time entitlements resulting from statutory public holidays shall also be deducted.

(3) For employment relationships with a duration of less than twelve (12) months, the maximum permissible working time shall be calculated on a pro-rata basis.

Breaks.

5. A worker shall not be required to work for a period of more than six (6) hours without being allowed a break of at least thirty (30) minutes.

Daily and weekly working time.

6. (1) Working time shall not exceed:

(a) fourteen (14) hours in any twenty-four (24) hour period; and

(b) eighty-four (84) hours in any seven (7) day period.

(2) When the work schedule provides for more working days than rest days, an average weekly working time of seventy-two (72) hours shall not be exceeded over a four (4) month period.

Rest periods.

7. (1) Workers shall have regular rest periods which are sufficiently long and continuous and the duration of which is expressed in units of time in order to ensure that, as a result of fatigue or irregular working patterns, workers do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term.

(2) Rest periods shall not be less than:

(a) ten (10) hours in any twenty-four (24) hour period, of which at least six (6) hours are uninterrupted; and

(b) eighty-four (84) hours in any seven (7) day period.

Working days and rest days.

8. (1) Subject to sub-regulation (2) and regulation 9, a worker shall, in each period of seven (7) days, be granted a rest period of at least twenty-four (24) consecutive hours which shall be immediately preceded by a daily rest period as established in regulation 7(2)(a).

(2) An employer may, instead of granting to a worker in any period of seven (7) days the first-mentioned rest period in paragraph (1), grant to him, in the next following period of seven (7) days, two (2) rest periods, each of which shall be a period of at least twenty-four (24) consecutive hours and:

(a) if the rest periods so granted are consecutive, the time at which the first of those periods commences shall be such that such period is immediately preceded by a daily rest period established out in regulation 7(2)(a); and

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(b) if the rest periods so granted are not consecutive, the time at which each of those periods commences shall be such that each of them is immediately preceded by a daily rest period as established in regulation 7(2)(a).

Seasonal work on passenger vessels.

9. (1) Notwithstanding the requirements established under regulations 6, 7 and 8 for seasonal work, working time for a worker employed on board a passenger vessel during the season shall not exceed:

(a) twelve (12) hours in any twenty-four (24) hour period; and

(b) seventy-two (72) hours in any seven (7) day period,

and such a worker shall be granted at least two (2) rest days during every period of thirty-one (31) days, with any remaining rest days to be granted by agreement. A worker shall be credited with zero point two (0.2) rest days per working day.

(2) The provisions of regulation 4(2) and (3) shall be adhered to when making provision for seasonal work.

Maximum working time during night time.

10. A worker shall not work more than seven (7) hours during the night time and not more than forty-two (42) hours per seven (7) day period.

Annual leave.

11. A worker shall be entitled to paid annual leave of at least four (4) weeks, or to a corresponding proportion thereof if the period of employment is less than one (1) year. The minimum period of paid annual leave may not be replaced by an allowance *in lieu*, except when the employment relationship is terminated.

Protection of minors.
S.L. 424.10.

12. (1) Without prejudice to the requirements of the Protection of Young Persons at Work Places Regulations, a person under the age of eighteen (18) shall not be employed for work on board a craft unless such person has reached the age of sixteen (16) and is no longer subject to compulsory full-time schooling.

(2) Subject to sub-regulation (3), a person under the age of eighteen (18) shall not be required to perform night work on board a craft.

(3) A person under the age of eighteen (18) may be permitted to perform night work when there are objective grounds justifying the requirement provided the effective training of the person under an established training programme would be prejudiced if he did not perform night work, and such work shall not have a detrimental impact

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on the person's health or well-being.

(4) A worker who is required to perform night work under sub-regulation (3) shall receive appropriate compensatory rest.

Maintaining records.

13. (1) The employer shall maintain a record of the daily hours of work and rest for every worker on board the craft in order to verify compliance with the provisions of these regulations.

(2) Each record maintained in a backdated manner in accordance with sub-regulation (1) shall be completed monthly and shall include at a minimum:

(a) the name of the craft;

(b) the name of the worker;

(c) the name of the competent boatmaster;

(d) the date;

(e) working day or rest day; and

(f) the beginning and end of the daily working and rest periods.

(3) Every record maintained in accordance with sub-regulation (1) shall be endorsed by the boatmaster or a person authorised by the boatmaster, and by the relevant worker not later than seven (7) days after the last day of the month to which the record relates and the worker shall be given a copy of the record as endorsed.

(4) Each record maintained in accordance with sub-regulation (1), as endorsed in accordance with paragraph (3), shall be retained on board for at least twelve (12) months.

Emergency situations.

14. (1) The boatmaster of a craft or his representative may suspend the scheduled hours of rest of a worker and require him to perform any hours of work necessary for the immediate safety of the craft, the persons on board, the cargo or for the purpose of giving assistance to other craft or persons in distress, until such time as the normal situation has been restored.

(2) When a scheduled rest period is suspended in accordance with sub-regulation (1), the boatmaster shall ensure that the worker receives an adequate period of rest as soon as practicable after the normal situation has been restored.

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Health assessment.

15. (1) A worker shall be provided with an annual health assessment free of charge, by a registered medical practitioner. During such assessment, particular attention shall be paid to identifying symptoms or conditions which could be a result of work on board with minimum daily rest periods and, or minimum rest days in accordance with regulations 8 and 9.

(2) On the completion of the assessment, the person who performs the assessment shall inform the employer and the worker concerned:

(a) of their opinion as to whether the worker is fit or otherwise to perform the work concerned; and

(b) if such opinion is that the worker is unfit to perform that work by reason only of the particular conditions under which that work is performed, he may suggest changes in those conditions that could be made so that the worker could be considered fit to perform that work.

(3) The free health assessment shall comply with medical confidentiality.

(4) When a night worker:

(a) becomes ill or otherwise exhibits symptoms of ill-health; and

(b) such illness is, or those symptoms are recognised as being connected with the fact that the night worker performs night work, the employer whenever possible, shall assign duties to the worker that do not involve performing any night work and to which the worker is suited.

Safety and health protection. Cap. 424.

16. (1) With prejudice to the provisions of the Occupational Health and Safety Authority Act and any regulations made thereunder, in relation to night workers and shift workers, the employer shall carry out a risk assessment, taking account of risks to the safety and health that attach to such work, so as to determine whether that work involves particular hazards or a heavy physical or mental strain.

(2) Taking account of the risk assessment referred to in sub-regulation (1), the employer shall take such steps as are appropriate for the protection of the safety and health of the worker, having regard to the nature of the work concerned.

Designated officers.

17. (1) Without prejudice to the powers of the Director under the Act, for the purposes of ensuring compliance with these

regulations, the Director may request the assistance of a designated officer who, when so requested by the Director, may do any of the following:

(a) board any craft at all reasonable times;

(b) search and inspect the craft and any documents or records found on board;

(c) require any person on board the craft to produce to the designated officer any report, document or record, including in the case of information in non-legible form, a copy of the information, or of extracts from it, in permanent legible form, as the designated officer may reasonably require;

(d) inspect, examine and take copies or extracts from, or collect, if necessary, for the purposes of inspection or examination, any report, document or record, including in the case of information in non-legible form, a copy of the information, or of extracts from it, in permanent legible form, that the designated officer finds in the course of his inspection and require the person by whom such document or record is kept, or who produced the document or record, to certify the copy as a true copy.

(2) A person to whom an order by a designated officer is given in accordance with sub-regulation (1) shall immediately comply with such order.

Protection from dismissal, other adverse consequences and the burden of proof.

18. (1) A worker who is dismissed shall be regarded for the purposes of these regulations as having been unfairly dismissed if the reason for the dismissal of the worker is that the worker refused or proposed to refuse to comply with a requirement which the employer imposed or proposed to impose in contravention of these regulations, or refused or proposed to refuse to forgo a right conferred on him by these regulations or, in any other manner, exercised his rights provided for in these regulations.

(2) A worker who considers that he has been dismissed, or has been subjected to measures with equivalent effect, on the grounds that he has exercised the rights provided for in these regulations, may request the employer to provide duly substantiated grounds for the dismissal or the equivalent measures. The employer shall provide such grounds in writing.

(3) When a worker establishes before the Tribunal facts from which it may be presumed that there has been such an unfair dismissal or an equivalent measure, it shall be for the employer to provide

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evidence that the dismissal was based on grounds other than those referred to in sub-regulation (1).

(4) Without prejudice to articles 45 to 47A of the Act, a worker who has been paid wages less than the rate applicable according to the National Minimum Wage Standard Order and Wage Regulation Orders in force, shall have the right to submit a complaint to the Director who shall investigate the matter and order the employer to pay the worker wages in conformity with the National Minimum Wage Standard Order and Wage Regulation Orders which are in force.

(5) In cases referred to in sub-regulations (1) and (2), a worker may submit a complaint to the Tribunal set up in terms of article 73 of the Act.

Offences.

19. Any person who contravenes or fails to comply with the provisions of any of these regulations shall be guilty of an offence against the Act, and shall be liable to a minimum fine (*multa*) of four hundred and sixty-five euro and eighty-seven cents (465.87).

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