

## SEAFARER SUBJECT GUIDE

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### ABANDONMENT IN THE BAHAMAS

This Guide deals with the situation where seafarers are abandoned in a port in the Bahamas as well as where seafarers are abandoned on a Bahamas flagged vessel in a port outside the Bahamas. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is abandoned, he is strongly advised to consult a lawyer qualified to practise in the Bahamas.

\*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

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- 1. When is a seafarer considered abandoned according to national case law or legislation? Is there any special legislation concerning abandoned crew?**
  - 1.1 There are no reported cases on the subject of abandonment because the implementation of the Maritime Labour Convention 2006 ('the MLC') is relatively new and the old offence was restrictive and rarely applied. But, special legislation, extensive regulations and bulletins are emerging in the Bahamas relating to abandoned crew.
  - 1.2 The drafting of the Bahamas Merchant Shipping (Maritime Labour Convention) Regulations 2012 has been completed and is at the final stage of the legislative process. But extensive bulletins have already been issued and implemented.
  - 1.3 Other parts of the Merchant Shipping Act ('MSA') also govern the treatment of an abandoned seafarer. The MSA considers the seafarer's rights as an employee and makes proactive rules to protect those rights. The MSA says that every agreement entered into for the employment of a seaman in a ship has to provide that, if the agreement terminates at a port other than the port of engagement, the master/owner will bear the expenses incurred in returning the seaman his port of engagement.
  - 1.4 As to specific legislation, there is an offence of wrongfully leaving a seaman at sea or on shore, which has rarely been applied. That legislation is aimed indirectly at the seafarer, but directly at the master or owner, who commits an offence if he abandons the seafarer. The legislation states that an offence is committed when the master or owner of a ship belonging to the Bahamas wrongfully forces on shore and leaves behind, or wilfully leaves behind, in any place on shore or sea any seafarer belonging to the ship before the completion of the voyage or the return of the ship to the Bahamas. Thus, a master or owner that abandons a seafarer is guilty of a

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misdeemeanour and may be criminally liable of an offence punishable with a fine and/or jail time. The Penal Code of the Bahamas provides:

'Whoever, being the master of or other person connected with any ship belonging to The Bahamas (whether the ship be or be not registered as such) wrongfully forces on shore, and leaves behind or otherwise wilfully and wrongfully leaves behind in any place on shore or at sea in or out of Her Majesty's dominions, any seaman or apprentice belonging to such ship before the completion of the voyage for which such person was engaged, or the return of the ship to The Bahamas, is guilty of a misdemeanour.'

- 1.5 Similarly, there is also the offence of forcing a seaman ashore. There are several other provisions for the maintenance and return of a seafarer to a proper port on termination of service.
- 1.6 Definitions of abandonment differ. The international definitions of abandonment recommended in the ILO and discussed in connection with the MLC characterise an abandoned seafarer with regard to the owner's failure to fulfil fundamental obligations to the seafarer in respect of timely repatriation, payment of outstanding remuneration and provision of the basic necessities of life, such as adequate food, accommodation and medical care. The international definitions suggest that a seafarer is abandoned if the owner does not provide for the care, maintenance and repatriation of a seafarer once the ship owner becomes bankrupt, the vessel is arrested or deemed unseaworthy. There is a severance of ties between the shipowner and the seafarer, notably by failing to pay contractual wages for at least two months. Abandonment will also have occurred when the master of the ship has been left without any financial means in respect of ship operation.
- 1.7 The Bahamian offences are not as extensive as the above definitions of abandonment. According to a liberal interpretation of the legislation, a master or shipowner that leaves a seafarer in a place that is not his home port or port of destination before the completion of the voyage would commit an offence; the master or owner must have the required mental element, i.e., he must do so 'wilfully.' While in practice most instances would fall under the international definitions, they would arguably not be included within the more restrictive Bahamian offence. But, the old legislation has been eclipsed and superseded by the legislation incorporating the MLC into law.

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### 2. What is the immigration status of abandoned seafarers?

- 2.1 Seafarers are normally required to have a valid passport for travel, travel visa, health certificate, and sufficient money to provide for maintenance while in the Bahamas and a return or outward ticket. A seafarer that enters into, stays in, or embarks from, the Bahamas without the consent of an immigration officer has committed an offence and may be liable to a fine or time in prison.
- 2.2 Once a seafarer is successful in providing evidence that he was abandoned, the seafarer will be repatriated. For example, in a case an action for the arrest of the vessel by creditors, a warrant of arrest was issued, the vessel was arrested, and, in due course, the court ordered the vessel to be sold. The crew was left on the vessel and needed to be paid and repatriated. The court ordered that a creditor initiating the arrest advance payments to the crew on account of unpaid wages and repatriation expenses, to be recovered against the vessel. While waiting to be repatriated, the crewmembers were granted shore leave, as usually occurs in Bahamian arrests.

### 3. Can an abandoned seafarer get shore leave?

- 3.1 A seaman may land in the Bahamas once the master has obtained proper consent to enter the country. The seaman may enter the port and enjoy shore leave so long as the ship is in that port.
- 3.2 The MSA states that the master of a Bahamian ship should not abandon a seaman at any foreign port unless it is with cause (i.e., discharged or illness). A seaman who is left behind should contact a Bahamas consul. A consular officer will examine the circumstance in which the seaman was abandoned, and may provide for the return of any such seaman at the expense of the Government to a proper return port and also provide for his necessary clothing and maintenance until his departure for such a port.

### 4. Is abandonment of seafarers considered a crime?

- 4.1 On a restrictive definition of abandonment, there are a number of related criminal offences. A master or owner who wrongfully leaves a seaman at sea or on shore is guilty of an offence. A master that wrongfully causes a seafarer to be left behind, is guilty of an offence and liable on summary conviction.

### 5. What entities and/or persons may be involved with or assist an abandoned crew?

- 5.1 Various entities and/or persons may be involved with or assist an abandoned crew.

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### 5.2 Lawyers

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at [www.seafarersrights.org](http://www.seafarersrights.org)

#### 5.2.1 In addition, reference may be made to the Guide on Using Lawyers and Fact File available on the SRI app and at

[https://www.seafarersrights.org/seafarers\\_subjects/using\\_lawyers/](https://www.seafarersrights.org/seafarers_subjects/using_lawyers/)

### 5.3 ITF Inspectors and union officials

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at [www.seafarersrights.org](http://www.seafarersrights.org)

### 5.4 Welfare agencies

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at [www.seafarersrights.org](http://www.seafarersrights.org)

### 5.5 Governments and Embassies

Additionally the seafarer may need to access government official websites, including lists of embassies, to find an appropriate contact.