

SEAFARER SUBJECT GUIDE

PERSONAL INJURIES AND DEATHS IN SPAIN

This Guide explains national law when seafarers are injured or killed in a port in Spain or on a Spanish flagged ship. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is injured or killed, then the seafarer or his relatives are strongly advised to consult a lawyer qualified to practise in Spain.

*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. If a seafarer is injured or killed in a work related incident, does Spanish law allow a claim for compensation to be brought?**
 - 1.1 Spanish law allows a claim for compensation if a seafarer is injured or killed in a work related incident.
 - 2. What is the basis for recovery of compensation for personal injury or death claims?**
 - 2.1 The basis for liability recovery includes all the damages that are consequence of the personal injury or death: emerging damage (medical care, rehabilitation) and loss of profits.
 - 3. Are Spanish laws for compensation for personal injury or death of a seafarer applicable only to Spaniards, or are the laws applicable to foreigners also?**
 - 3.1 Spanish laws for compensation are applicable to citizens and foreigners also.
 - 4. Is Spanish law the same throughout the country, or does it change from state to state or from province to province or for any other political or geographical area?**
 - 4.1 Spanish law is the same throughout the entire country.
 - 5. Is Spanish law the same for all types of seafarers, such as blue water seafarers engaged in international trade, seafarers employed in coastal waters, or fishers?**
 - 5.1 Spanish law is the same for all types of seafarers.

SEAFARER SUBJECT GUIDE

- 6. Which court would have jurisdiction over a claim for compensation by a seafarer who was injured or killed: (1) on a Spanish vessel, or (2) on a foreign flagged vessel in a local port of Spain or in the territorial seas of Spain?**
- 6.1 If the seafarer was injured or killed on a Spanish flagged vessel, the Spanish court has jurisdiction over a claim for compensation.
- 6.2 If the seafarer was injured or killed on a foreign flagged vessel in a Spanish port, the Spanish court has at first instance jurisdiction over a claim for compensation.
- 6.3 If the seafarer was injured or killed on a foreign flag vessel in the territorial seas of Spain, the Spanish court does not at first instance have jurisdiction over a claim for compensation. But the judge, considering the circumstances of the case, has a discretion to accept or reject the jurisdiction.
- 7. Would the Spanish court uphold a jurisdiction and/or law clause in the employment contract of a seafarer who had been injured or killed in a work related accident?**
- 7.1 The judge, considering the circumstances of the case (flag of the ship, law clause in the employment contract, place of accident, etc), has a discretion to accept or reject the jurisdiction.
- 8. What is the time limit for bringing a claim after the occurrence of an incident?**
- 8.1 The time limit for bringing a claim after the occurrence of an accident of personal injury is one year once the sequelae are stabilized. The time limit for death is one year from the date of death. For criminal liability (for example, absence of protective measures on board), the time limit is six months.
- 9. Is a seafarer's claim for compensation for injury or death a maritime claim that can be secured by arrest of a ship? If so: (1) which ship can be arrested; and (2) in what circumstances can the ship be arrested?**
- 9.1 The seafarer's claim for compensation for injury or death can be secured by arrest of ship according to the International Convention on Arrest of Ships 1999 ('1999 Convention'). This Convention has been in force in Spain since 14 September 2011. The ship that can be arrested is the same ship on which the accident happened.

SEAFARER SUBJECT GUIDE

Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim (loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship) and who was, when the claim arose: (a) owner of the ship in respect of which the maritime claim arose; or (b) demise charterer, time charterer or voyage charterer of that ship. The ship can be arrested within a term of one year from the time of the injury or death.

10. What types of damages are recoverable?

10.1 The types of damages allowed are all the damages that are the consequences of the personal injury or death: general damage (medical care, medical expenses rehabilitation) and loss of profits (wages).

11. What are the principles for calculating compensation for a claim by a seafarer or his next of kin for: (1) a work related injury; and (2) a work related death?

11.1 The principles for calculating compensation for this kind of claim is general damage (medical care, medical expenses rehabilitation) and loss of profits (wages).

11.2 The seafarer may claim the amount of compensation which he considers appropriate. The judge is free to set the amount of compensation in work accidents, but not in road traffic accidents because there is a Spanish law that sets mandatory the amounts of compensation (not high amounts because it protects insurance companies). Sometimes, a judge may apply this Spanish law to work accidents. In any event, the amounts of compensation fixed by Spanish judge are much lower than in the United States.

12. What damages might be awarded in the following circumstances: (1) 30 year old seafarer, injured aboard a vessel, who is now totally disabled. Medical expenses of US\$15,000 per year for the remainder of his life?

12.1 The seafarer would recover general damages: medical expenses of US\$ 15,000 per year for the remainder of his life and loss of profits: total calculation of monthly wages until retirement at 65 years old.

(2) 30 year old seafarer, who dies as a result of an accident on board a vessel, who is survived by a 29 year old wife and 2 children, ages 2 years and 4 years old?

SEAFARER SUBJECT GUIDE

- 12.2 The seafarer would recover general damages: compensation for his wife and two children; and loss of profits: that is, the total calculation of monthly wages to date scheduled for the retirement at 65 years old.
- 13. How efficient are the local courts and what would be an average estimated time for hearing and ruling on a seafarer's claim for compensation for injury or death?**
- 13.1 The local courts are quite efficient but are slow. The average estimated time for hearing and ruling on a seafarer's claim is about one and a half years; and, if the judgment is appealed, the ruling will be handed one in about one more year.
- 14. On what basis will a lawyer generally charge a seafarer for handling a claim for compensation?**
- 14.1 The lawyer generally charges a seafarer for handling a claim for compensation on a contingency fee basis (a percentage of the money recovered at the end of the case).