

Translation. Only the Danish version has legal validity

Order no. 1110 of 26 November 2012 issued by the National Labour Market Authority

Order on maternity/paternity benefits for seafarers

Pursuant to 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 section 2(5) of the act on childbirth (*barselloven*), cf. consolidated act no. 1070 of 14 November 2012, and following recommendations by the Board of the National Labour Market Supplementary Pension Fund and negotiations with the Ministry of Business and Growth, 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 act on childbirth (*barselloven*) shall mean the act on the right to leave and benefits in case of childbirth, cf. consolidated act no. 1070 of 14 November 2012.

Part 2

Group of persons

Section 2. Maternity/paternity 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 (company employees) during service abroad.
- 4) Seafarers belonging to any of the groups mentioned under item (i) or (iii) during their journey to or from the ship.

Part 3

General provisions

Section 3. Maternity/paternity benefits for seafarers may be granted in case of absence in connection with pregnancy and childbirth for the periods mentioned in this part.

Section 4. Benefits shall be paid by:

- 1) the employer in case of absence due to preventive pregnancy examinations, cf. section 6(3); and
- 2) the Danish Maritime Authority in other cases.

Section 5. The following seafarers shall be entitled to receive maternity/paternity benefits from the Danish Maritime Authority:

- 1) Seafarers who have been affiliated with the Danish labour market during the last 13 weeks before the start of the absence and who have, during this period, been employed for at least 120 hours;
- 2) seafarers who have, during the last month, finalised a vocational training programme of at least 18 months' duration; or
- 3) seafarers who are students in paid work-experience as part of a training programme regulated by or in accordance with the 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, etc. (*lov om arbejdsløshedsforsikring m.v.*), shall be included in the employment periods pursuant to subsection 1(i). In addition, periods during which the seafarer has been employed in another EU/EEA country, cf. the EU regulations on coordination of social security schemes, shall also be included in the employment periods.

Part 4

Periods with a right to receive maternity/paternity benefits

Section 6. A female seafarer shall be entitled to receive maternity benefits from the date when it is estimated that there are four weeks until the childbirth.

Subsection 2. The woman shall be entitled to benefits before the four-week period prior to the childbirth if:

- 1) if it is medically estimated that the pregnancy progresses abnormally in a manner that would, in case of continued employment, involve a risk to the woman's health or the foetus; or
- 2) if the special nature of the work involves a risk to the foetus or if the pregnancy, due to publically stipulated provisions, would prevent her from performing her work and the employer has not offered her any other suitable employment.

Subsection 3. The employer shall pay benefits during absence due to preventive pregnancy examinations. The provision shall not apply to the extent that an obligation on behalf of the employer to pay benefits or any other suitable payment derives from a collective agreement that, as a minimum, corresponds to the provisions of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

Section 7. Maternity/paternity benefits may be paid for a period of up to 26 weeks after the childbirth.

Subsection 2. The mother shall be entitled to receive maternity benefits during the first 14 weeks after the childbirth. The father shall be entitled to receive paternity benefits for two weeks during the same period.

Subsection 3. In addition, the parents shall together be entitled to receive maternity/paternity benefits for an additional ten weeks after the expiry of the 14th week after the childbirth. It shall be possible to pay maternity/paternity benefits to only one of the parents at a time.

Subsection 4. After the expiry of the 24th week after the childbirth, the father shall be entitled to receive paternity benefits for an additional two weeks.

Section 8. If the child is hospitalized, the period for which there is a right to receive maternity/paternity benefits may be prolonged or postponed.

Subsection 2. If the seafarer does not resume work, the period for which there is a right to receive maternity/paternity benefits shall be prolonged by the hospitalization period if the hospitalization takes place during the first 26 weeks after the childbirth. However, it shall be possible to prolong the maternity/paternity benefits period only by three months. The right to prolong the maternity/paternity benefits period shall not apply to the father's right to receive paternity benefits for two weeks pursuant to section 7(2), the second clause.

Subsection 3. If the seafarer continues or resumes work in connection with the hospitalization, the right to receive maternity/paternity benefits for the remaining period shall be postponed. It is a condition that the person concerned stops working in connection with the discharge and that the discharge takes place within nine months from the childbirth.

Section 9. The father shall take the mother's right to receive benefits pursuant to section 7(2), the first clause, if the mother dies or, due to illness, becomes incapable of taking care of the child.

Subsection 2. The seafarer may, without losing the right to receive benefits, participate in spare-time training when the consideration of the child does not go against this.

Section 10. Maternity/paternity benefits pursuant to this part shall be paid to seafarers who, at the start of the absence, meet the employment requirements of section 5.

Subsection 2. When assessing the employment requirement pursuant to subsection 1, periods shall be included during which the seafarer, due to the special nature of the work, has had to stop working before four weeks prior to the childbirth or when it has been medically estimated necessary to keep the insured person from working though the conditions of section 6(2) were not met.

Subsection 3. The conditions of subsection 1 shall not apply to the payment of benefits pursuant to section 6(3).

Section 11. During stays abroad, the Danish Maritime Authority shall pay maternity/paternity benefits for the maternity/paternity benefits periods to which a seafarer is entitled pursuant to this part.

Section 12. During stays in this country or upon arrival in this country, the payment of maternity/paternity benefits shall be made by Payment Denmark (*Udbetaling Danmark*) pursuant to the provisions of the act on childbirth (*barselloven*).

Section 13. The Danish Maritime Authority may lay down more detailed regulations on requests for maternity/paternity benefits in connection with absence due to pregnancy and childbirth and on documentation in the form of doctor's statements in connection with absence pursuant to section 6(2).

Part 5

Calculation and payment

Section 14. Maternity/paternity benefits shall be paid on the basis of the wage income of a seafarer.

Subsection 2. The Danish Maritime Authority may decide:

- 1) to what extent persons with income that is not taxable in this country shall be entitled to receive maternity/paternity benefits; and
- 2) that persons entitled to maternity/paternity benefits in another country shall not be entitled to maternity/paternity benefits in this country.

Section 15. Benefits pursuant to section 6(3) shall be paid in an amount of the same size as pay during sickness (sick pay) pursuant to the seamen's act (*sømandsloven*).

Subsection 2. Maternity/paternity benefits from the Danish Maritime Authority, including refunds of maternity/paternity benefits per week, shall not exceed the maximum amount of maternity/paternity benefits per week stipulated pursuant to the act on childbirth (*barselloven*).

Subsection 3. For seafarers who are or who have been employed on board a ship registered in the Danish International Ship Register, maternity/paternity 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 on the calculation of unemployment benefits for wage earners issued by the National Labour Market Authority.

Subsection 4. The Danish Maritime Authority may, when conditions so warrant, decide that maternity/paternity benefits shall be paid in another amount than the sick pay, cf. however subsection 2.

Part 6

Financing and refunding

Section 16. The employer shall pay the expenses for benefits in case of absence due to preventive pregnancy examinations, whereas other expenses for maternity/paternity benefits shall be paid by the Danish Maritime Authority or Payment Denmark (*Udbetaling Danmark*).

Section 17. An employer paying wages or sick pay during absence from work shall be entitled to be paid the maternity/paternity benefits the seafarer would otherwise 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, cf. section 16 and section 47(3) of the seamen's act (*sømandsloven*), 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 on notification of requirements on payment of maternity/paternity 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.

Part 7

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

Section 18. In connection with payment of maternity/paternity 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 benefits are paid pursuant to section 6(3) and the Danish Maritime Authority 2/3 when maternity/paternity benefits are otherwise paid pursuant to this order.

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 maternity/paternity benefits.

Section 19. 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 maternity/paternity benefits from Payment Denmark (*Udbetaling Danmark*) or the Danish Maritime Authority.

Subsection 3. The regulations of section 66(3)-(13) of the sickness benefits act (*sygedagpengeloven*) on the employer contribution shall apply correspondingly.

Part 8

Appeals provisions

Section 20. Any decision of the Danish Maritime Authority on maternity/paternity 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 (*retssikkerhedsloven*). 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 21. 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 9
Administration, etc.

Section 22. Administration of this order shall be carried out by the Danish Maritime Authority unless otherwise decided.

Section 23. In the period during which the Danish Maritime Authority pays maternity/paternity benefits, it shall ensure that the conditions for receiving maternity/paternity benefits are continuously met.

Section 24. 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 (*retssikkerhedsloven*) 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. Claims for repayment of over-paid benefits pursuant to this order may be deducted from benefits pursuant to the act on childbirth (*barselloven*) and from benefits pursuant to this act.

Section 25. 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 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 26. Claims for benefits pursuant to 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.

Entry into force, etc.

Section 27. This order shall enter into force on 1 December 2012.

Subsection 2. Order no. 698 of 23 June 2006 on maternity/paternity benefits for seafarers shall be repealed.

National Labour Market Authority, 26 November 2012

Marie Hansen / Jens Erik Zebis