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Ordinance on Working Time in relation to Offshore Work (Offshore Working Time Ordinance)

Offshore Working Time Ordinance of 5 July 2013 (Federal Law Gazette [BGBl.] Part I p. 2228)

Pursuant to section 15 subsection (2a) of the Working Time Act,¹⁾ inserted by Article 3 paragraph (6) number 2 of the Act of 20 April 2013 (Federal Law Gazette I, p. 868), the Federal Government orders and, pursuant to section 55, first sentence, number 3 of the Maritime Labour Act²⁾ of 20 April 2013 (Federal Law Gazette I, p. 868), in agreement with the Federal Ministry of Transport, Building and Urban Development, the Federal Ministry of Labour and Social Affairs orders as follows:

Footnote 1)

Arbeitszeitgesetz.

Footnote 2)

Seearbeitsgesetz.

Division 1 General provisions

Section 1 Scope

This Ordinance shall apply in the coastal waters and in the exclusive economic zone of the Federal Republic of Germany and on ships from which offshore work within the meaning of section 15 subsection (2a) of the Working Time Act or section 55, first sentence, number 3 of the Maritime Labour Act is carried out in relation to

1. workers carrying out offshore work within the meaning of section 15 subsection (2a) of the Working Time Act,
2. crew members within the meaning of in section 3 subsection (1) of the Maritime Labour Act.

Division 2 Provisions governing workers carrying out offshore work

Section 2 Application of the Working Time Act

In relation to workers within the meaning of section 1 number 1 the Working Time Act shall apply unless the following provisions specify otherwise.

Section 3

Working time

- (1) By way of derogation from section 3, section 6 subsection (2) and section 11 subsection (2) of the Working Time Act, the daily working time may be extended to a maximum of 12 hours.
- (2) If the work carried out on a single day does not fall exclusively within the scope of this Ordinance, total working time may not exceed the maximum period of working time specified in subsection (1) above.

Section 4

Rest breaks

Without prejudice to section 4, first sentence, of the Working Time Act, if the working time exceeds ten hours, the rest break shall have a duration of at least 60 minutes.

Section 5

Work on Sundays and public holidays

By way of derogation from section 9 of the Working Time Act, workers may be employed to work on Sundays and on public holidays.

Section 6

Period of offshore work

- (1) Employers shall ensure that workers do not spend more than 21 consecutive days at sea. Within that period, workers may not carry out offshore work with a daily working time extended pursuant to section 3 subsection (1) beyond ten hours on more than seven days of which no more than two may be consecutive. Employers shall ensure that during the period specified in the first sentence above the daily working time does not exceed an average of ten hours.
- (2) If the daily working time is extended pursuant to section 3 subsection (1) beyond ten hours on more than seven days, workers may carry out offshore work for a maximum of 14 consecutive days starting with the first day of offshore work.

Section 7

Compensation for extra work and work on Sundays and public holidays

- (1) Where in the context of offshore work the period of daily working time is extended beyond eight hours ('extra work'), compensation shall be provided in the form of days off. For each period of eight hours' extra work completed a free day shall be granted.
- (2) If the period of working time is extended pursuant to section 3 subsection (1) beyond ten hours on more than two days, workers shall be granted an uninterrupted non-working period to immediately follow the periods referred to in section 6. That non-working period shall include the compensatory days of rest for any Sunday work carried out during the periods referred to in section 6 and, at least, compensation in the form of days off for the extra work carried out beyond a daily working time period of ten hours.
- (3) The start of the non-working period specified in subsection (2) above may be postponed by a period of up to two days if follow-up work directly related to the offshore work needs to be carried out onshore.
- (4) In all other cases, by way of derogation from section 11 subsection (3) of the Working Time Act, the compensatory day of rest for Sunday work shall be granted within a period of three weeks following the day of Sunday working.
- (5) Days off to compensate for extra work and compensatory days of rest for work on Sundays and public holidays shall be granted onshore.
- (6) By way of derogation from section 3, section 6 subsection (2) and section 11 subsection (2) of the Working Time Act, the weekly working time may not exceed 48 hours on average over a 12-month period.

Section 8

Records of working time

By way of derogation from section 16 subsection (2), first sentence, of the Working Time Act, employers are obliged to record on a daily basis total working time, compensation for extra work in excess of eight hours working time and alternative days of rest for work on Sundays and public holidays.

Section 9

Transport periods

(1) If workers are transported from an onshore location to their place of work, the transport period shall begin at the meeting point specified by the employer at the specified meeting time. On the return journey, the transport period ends on the return to the meeting point. These periods of transport shall be treated as working time as specified in section 6 and shall be recorded and compensated with periods of time off. Section 6 subsection (1), second and third sentences, section 6 subsection (2) and sections 7 and 8 shall apply accordingly.

(2) Employers shall ensure that on a day involving a period of transport the working time and the period of transport do not exceed 14 hours in total. This maximum period may only be exceeded if as a result of exceptional circumstances for which the employer is not responsible the transport period scheduled for the return journey ashore has to be extended. On the days referred to in the first sentence above, by way of derogation from section 5 subsection (1) of the Working Time Act, the daily rest period may be reduced by the duration of the transport period but by not more than two hours. Where certain days comprise only periods of transport, the periods referred to in section 6 may be extended by these days.

(3) Subsections (1) and (2) above shall not apply where the duration of an uninterrupted period of transport is six hours or more and during the period of transport spent on board a ship workers have access to a suitable place to sleep in a cabin.

Section 10

Additional health and safety measures

(1) Workers occupied with offshore work on no fewer than 48 days in a calendar year have the right to a medical occupational health examination both before starting work and thereafter at regular intervals of at least three years. Workers aged 50 and over have the right to this examination at yearly intervals. The employer shall bear the costs of the examinations unless it offers examinations free of charge carried out by a occupational physicians or an inter-company medical service.

(2) On request, an employer shall transfer a worker to a suitable onshore place of work if the medical occupational health examination reveals that continued offshore work presents a risk to the worker's health unless urgent business requirements prevent this. If, in the employer's view, urgent business requirements prevent a transfer, the works council shall be consulted. The works council may present the employer with suggestions for a transfer.

(3) This Ordinance shall be without prejudice to other health and safety provisions. When carrying out the risk assessment provided for in section 5 of the Safety and Health at Work Act,¹ the employer shall take particular account of the strain caused by extended working hours having due regard to the difficult working conditions involved in offshore work.

Division 3

Provisions governing crew members of ships from which offshore work is carried out

Section 11

Application of the Maritime Labour Act

The working time provisions of the Maritime Labour Act shall apply to the employment of crew members within the meaning of section 1 number 2 unless the following provisions specify otherwise.

¹ Arbeitsschutzgesetz.

Section 12

Working time

(1) By way of derogation from section 43 and section 48 subsection (1) number 1 of the Maritime Labour Act, the period of daily working time may be extended up to 12 hours and the period of weekly working time up to 84 hours. In that connection, derogation may also be made from provisions concerning the organisation of working time, the watch system and on Sunday and public holiday working. The first and second sentences above shall not apply to the journey to or from the actual place of work where that journey's duration exceeds 48 hours.

(2) The provisions of section 48 subsection (1) number 2 of the Maritime Labour Act shall be observed.

Section 13

Rest breaks

Without prejudice to section 45 subsection (2), second sentence, of the Maritime Labour Act, if the period of working time exceeds ten hours, the rest break shall have a duration of at least 60 minutes.

Section 14

Compensation for extra work and work on Sundays and public holidays

(1) Unless extra work is carried out on one of grounds set out in section 47 of the Maritime Labour Act, compensation shall be granted for extra work carried out pursuant to section 12 subsection (1) in excess of the working hours permitted under section 43 of the Maritime Labour Act. For each period of eight hours' extra work completed one day off shall be granted. Days off to compensate for extra work shall be granted within 12 calendar months. The days in compensation shall be granted ashore or in a port where it is both permitted and possible to go onshore.

(2) As regards compensation for Sunday and public holiday work section 52 of the Maritime Labour Act shall apply.

Section 15

Additional health and safety measures

This Ordinance shall be without prejudice to other health and safety provisions. When carrying out the risk assessment provided for in section 114 of the Maritime Labour Act in conjunction with section 5 of the Safety and Health at Work Act, the shipowner shall take particular account of the strain caused by extended working hours having due regard to the difficult working conditions involved in offshore work.

Division 4

Final provisions

Section 16

Approval by the supervisory agency

On application, the supervisory agency may authorise further exemptions in an individual case as far as these are necessary by reason of special circumstances and may specify measures necessary to protect the health and safety of workers.

Section 17

Evaluation

This Ordinance shall be evaluated after three years to determine whether the measures taken to compensate for exemptions are appropriate as regards their nature and scope and whether the general level of health and safety protection guaranteed by the Working Time Act is actually achieved.

Section 18

Administrative offences

A person shall be deemed to have committed an administrative offence specified in section 22 subsection (1) number 4 of the Working Time Act if wilfully or negligently, in his capacity as an employer, he

1. contrary to section 6 subsection (1), first sentence, fails to ensure that a worker does not spend more than 21 consecutive days at sea,
2. employs a worker contrary to section 6 subsection (1), second sentence, or section 6 subsection (2) in each case in conjunction with section 9 subsection (1), fourth sentence,
3. contrary to section 6 subsection (1), third sentence, also in conjunction with section 9 subsection (1), fourth sentence, fails to ensure that the period of daily working time does not exceed ten hours,
4. contrary to section 7 subsection (1), second sentence, or section 7 subsection (2), (4) or (5) in each case in conjunction with section 9 subsection (1), fourth sentence, does not grant the worker the compensation prescribed, does not grant this in the correct manner, does not grant this in full or does not grant this within the time-limits prescribed,
5. contrary to section 8, also in conjunction with section 9 subsection (1), fourth sentence, does not keep a record, does not keep proper records or does not compile the records at the proper time, or
6. contrary to section 9 subsection (2), first sentence, fails to ensure that the period specified in that provision is not exceeded.

Section 19

Reference to the provisions on criminal offences and fines in the Maritime Labour Act

Infringements of section 48 subsection (1) of the Maritime Labour Act in conjunction with section 14 subsection (1), second, third or fourth sentences, of this Ordinance shall be punishable under section 145 subsection (1) number 6 or section 146 subsection (2) number 1 or number 2 of the Maritime Labour Act.

Section 20

Entry into force

This Ordinance shall enter into force on 1 August 2013.

The *Bundesrat* has given its approval.