

ADMIRALTY COMMITTEE

Employment Law - Maritime Style

Wages due a seaman are given the utmost protection under maritime law. Unpaid wages are preferred liens on the ship on which the seaman is employed. (Ships are legal entities which can be sued in rem but only in federal court sitting in admiralty and only after arresting the vessel, through which the court obtains jurisdiction.) A seaman's wage lien "is sacred ... and so long as a plank of the ship remains, the seaman is entitled against all other persons, to the proceeds as security for his wages." *The John Stevens*, 170 U.S. 113 (1898). "Wages" giving rise to a lien include money owed for vacation, repatriation, and severance pay.



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As stated by the U.S. Supreme Court in *Southern S.S. Co v. NLRB*, 316 U.S. 31 (1942), "Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. He must command and the crew must obey. Authority cannot be divided. These are actualities which the law has always recognized. On the other hand, it has imposed numerous prohibitions against conduct by seamen which destroys or impairs this authority." "There must be abject obedience to orders from the moment the seaman enters service until his discharge. It is settled that this condition of the seaman's contract is a singular exception to the Thirteenth Amendment's prohibition against involuntary servitude. ... As a consequence, the relationship between the owner of vessel and its crew fashions a unique doctrine which places the employer in *loco parentis* to the seaman. *Robertson v. Baldwin*, 165 U.S. 275, 287-288 (1897). The master is essentially the legal guardian of the seaman. *The Iroquois*, 194 U.S. 240, 247 (1904). Seamen are thus "wards of the admiralty."

For the purposes of regulation of employment, a federal statute defines a "seaman" as "an individual engaged in employment in any capacity on board a vessel." 46 U.S.C. §10101(3). The master must make a contract of employment with each seaman in the crew. 46 U.S.C. §§ 10301 and 10302. Federal statutes require payment of all wages in full within 24 hours after the end of a voyage or within 4 days after the seaman is discharged. 46 U.S.C. § 10313(f). The statutes provide for a penalty of "2 days' wages for each day payment is delayed". 46 U.S.C. §§ 10504 and 10313(g). In *Griffen v. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982), it was held that the penalty is mandatory if failure to pay wages was without "sufficient cause" and awarded a penalty of over \$300,000 for failure to pay \$412.50 due a seaman. *Raby v. Pine Forest*, 1990 AMC 2441 (W.D. Wa. 1990), awarded damages of over \$32,000,000 for double wage penalties, punitive damages and attorney fees for failure of the employer to pay \$166,000 in wages to a group of seamen. *Breslin v. Maritime Overseas Corp.*, 662 F.Supp. 195 (S.D.N.Y. 1987), awarded double wages totaling \$69,120 for failure of the employer to timely pay wages of \$276. The double-wage penalty wage statute is applicable to foreign ships employing foreign seaman, irrespective where the wages may have become due, so long as the U.S. courts have jurisdiction over the ship (if the ship can be arrested in the U.S. waters) or the shipowner (via long-arm jurisdiction or otherwise). There is no statute of limitations for a penalty wage claim. However, the doctrine of laches applies to a claim where the claimant sits on his rights for an unreasonable length of time.

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