

NB: Unofficial translation
Ministry of Employment and the Economy, Finland
July 2014

SEAMEN'S ANNUAL HOLIDAYS ACT (433/1984)
(as amended by several acts, including No. 1071/2013)

1. Scope of application

This Act shall apply, with the exceptions stated below, to work done in accordance with an agreement by a worker for an employer, subject to the latter's direction and supervision, for pay or other remuneration, on a Finnish ship or, by order of the employer, temporarily elsewhere.

This Act shall not apply to work that:

- 1) is done by a person who receives only a share of the profit as pay,
- 2) is done by the employer's spouse or children, or
- 3) is done on timber floating equipment, with the exception of transport equipment used for timber floating.

Nor shall this Act be applied to work to be viewed as merely temporary inspection, maintenance, pilotage or other comparable work or that is done without accompanying the ship and only when it is moored at a quay or at safe anchorage, if said work comes under the Annual Holidays Act (162/2005). (1025/2011)

2. Length of the annual holiday

The worker is entitled to two and a half weekdays of holiday for every full holiday credit month. If the total holiday days calculated do not make up a whole number, any fraction of a day shall be given as a full day of holiday. (1025/2011)

When this Act is applied, Independence Day, Christmas Eve, Midsummer Eve, Easter Saturday and May Day shall not be counted as weekdays.

A full holiday credit month is considered to be a calendar month during which the worker has worked for the employer on at least fourteen days.

3. Days equal to working days

When annual holiday is worked out, days on which the worker was on annual holiday or paid leave according to law or agreement shall be counted as equal to working days, unless the provisions of section 11, subsections 2 and 3, require otherwise.

Such days during the employment shall also be considered equal to working days on which the worker has been prevented from working:

- 1) because of the annual holidays, or the leave referred to in subsection 1 of other workers at the workplace,
- 2) because of military reservist training or extraordinary military service or supplementary service if the worker has returned to work as soon as such hindrance ended; (1025/2011)
- 3) because of sickness or accident, though not for more than 75 weekdays during two consecutive holiday credit periods, these pairs to be calculated from the beginning of the employment; if a hindrance of this kind continues without interruption after the period comprising the two holiday credit periods referred to above ended, not more than 75 weekdays

altogether shall be considered equal to working days in respect of the sickness or accident in question;

3 a) because of medical rehabilitation in case it is given on doctor's orders at a rehabilitation unit or other physical examination or treatment unit, approved by an authority, because of an occupational disease or accident in order to restore or preserve working capacity, though for not more than 75 weekdays during two consecutive holiday credit periods, these pairs to be calculated from the beginning of the employment; if a hindrance of this kind continues without interruption after the end of the period comprising the two holiday credit periods referred to above, not more than 75 weekdays shall be considered equal to working days in respect of the rehabilitation period in question; (782/1988)

4) because of a medical examination as referred to in the Occupational Health Care Act (1383/2001) or the Act on Medical Examinations of Seamen (1171/2010) or ordered by the employer, or as a result of any sickness or accident; (1025/2011)

5) during maternity, special maternity, paternity or parental leave as provided in the section 5 of the Seafarers' Employment Contracts Act (756/2011); (1025/2011)

6) because of a municipal or other public elective function, or appearance as a witness in a court of law which the worker was not entitled to refuse according to the law, or refusal of which would only have been permitted for a special cause stated in the law;

7) because of an order by the authorities issued to prevent the spread of disease;

8) because of travel required by the work, if these travel days are not otherwise counted as working time;

9) for any other reason, if the employer is by law required to pay the worker remuneration for such time despite his absence;

10) because of lay-off, though only for up to 30 days at a time;

11) because of a shortening of the working week corresponding to lay-off or other comparable arrangement of working time, though not for more than three months at a time; if this working time arrangement continues uninterruptedly after the end of the holiday credit period, calculation of a new three- month period shall begin with the beginning of the new holiday credit period;

12) on account of study leave as referred to in the Study Leave Act (273/1979), though for not more than 30 days during two consecutive holiday credit periods, if the worker has returned to work allocated to him by the employer as soon as the study leave ends; (1025/2011)

13) because of taking part in theoretical training required by an apprenticeship agreement in force, in accordance with the Act on Vocational education and Training (630/1998) (1025/2011)

14) because of taking part in training required by the job with the employer's consent; it may be agreed, however, that only 30 days at a time are counted as equal to working time; and

15) because a ship in seasonal traffic is laid up for the winter.

4. Annual holiday entitlement (1025/2011)

The worker shall be entitled to annual holiday at the end of six full holiday credit months from the start of the employment and thereafter at regular six month intervals (holiday credit period) from the date on which the previous annual holiday entitlement was gained.

If the worker has been on care leave referred to in section 5, subsection 3, of the Seafarers' Employment Contracts Act or on study leave as referred to in the Study Leave Act, has been a conscript performing normal military service, or non-military service or has during his employment been prevented for another similar reason from working for a time which is not, when annual holiday is worked out considered equal to working time in accordance with section 3, a new period of six full holiday credit months shall, notwithstanding the provision in subsection 1, begin when the worker comes back to work, unless otherwise agreed.

5. Granting annual holiday

Annual holiday shall be granted as soon as the ship's manpower situation allows, and always within a month of gaining the holiday entitlement. If the worker's periods on and off duty are decided according to a rotation system based on a collective agreement, however, the annual holiday may be granted at a date practicable for implementing said rotation system, provided, however, that the holiday may not be postponed for more than two months from gaining the holiday entitlement.

One of the holidays deriving from two consecutive holiday credit periods shall be granted between May 2 and September 30, despite what is provided in subsection 1.

At the worker's request, it may be agreed that annual holiday is granted at a time other than is provided in subsections 1 and 2. Holiday cannot, however, be postponed for over six months from gaining the holiday entitlement.

6. Granting annual holiday in certain cases (1025/2011)

Notwithstanding what is provided in section 5, a worker may be granted his annual holiday or part of it together with the maternity, special maternity, paternity or parental leave or care leave referred to in section 5 of the Seafarers' Employment Contracts Act.

Any accumulated annual holiday a worker returning to work has at the start of the holiday credit period referred to in section 4, subsection 2, may be granted together with the annual holiday granted for said holiday credit period.

7. Start and end of annual holiday

Holiday may not without the worker's consent be granted to a Finnish worker or a worker living in Finland at a place other than a Finnish port. In the case of any other worker, holiday shall be granted in a port in his home country or in the port where the employment contract was concluded.

If the granting of the holiday in a port referred to in subsection 1 involves travelling for over 12 hours, the holiday shall be considered to begin at midnight after the day following the departure date.

At the end of the annual holiday or partial holiday the worker shall be entitled to return in the first place to the ship which he left to go on holiday. Unless otherwise agreed, the worker shall return from holiday so as to be able to begin work on the ship, or start the journey to the ship, in accordance with his normal working hours.

8. Dividing annual holiday

Annual holiday shall be continuous. One of the holidays from two consecutive holiday credit periods can, however, be granted in two or more parts. Shore leave of a short duration granted to a worker during a work period is not considered annual holiday. (343/1998)

The precondition for dividing holiday granted between 1 October and 1 May in the manner referred to in subsection 1 is that this is essential to maintain the work in progress or that the worker consents to it. Holiday granted between 2nd May and 30th September can only be divided with the worker's consent.

9. Postponing annual holiday

When the worker is unfit for work by sickness, childbirth or accident at the start of the annual holiday or part of it, the holiday shall, if the worker so requests, be postponed to a later date. The worker shall have a corresponding right to postpone the holiday or partial holiday if it is known at the start of the holiday or partial holiday that the worker will during the holiday be under medical or comparable treatment during which he will be unfit for work.

When disablement arising from sickness, childbirth or accident begins during the annual holiday and continues uninterruptedly for over seven days, the part of the disablement period extending beyond this time shall not be counted as annual holiday if the worker so requests without unwarranted delay. If the employer so demands, the worker shall present a doctor's certificate or other reliable account of his disablement.

In the cases referred to above in subsections 1 and 2, the postponed holiday shall be granted together with the holiday subsequent to the postponed holiday, at the latest. However, a holiday postponed because of a rotation system based on a collective agreement shall be granted before 30th September whenever possible.

10. Consulting the worker on the dates of his annual holiday and notifying him of these dates

Before fixing the dates of an annual holiday, the employer shall provide the worker or his representative with an opportunity to express his opinion on the matter.

The employer shall notify the worker about the dates of his annual holiday whenever possible one month and in any case not less than two weeks before the holiday or partial holiday begins, except that in the cases referred to in the last sentence of section 9, subsection 3, the minimum period shall be three days beforehand.

11. Continuance of employment

Employment shall not be considered to have been interrupted because of a change of owner or control of the enterprise or because the worker has transferred directly to the employ of an enterprise in which his former employer has the decisive power. A former employer is also considered to have decisive power when a person has a holding in both enterprises and has decisive power alone or jointly with members of his family.

If the worker does not wish to continue in the same employment when his holiday or partial holiday ends, he can bring the employment to an end irrespective of the period of notice otherwise to be observed in the employment, by so informing his employer in writing at least one week before the holiday ends, if he is a rating, and at least two weeks beforehand, if he is an officer. The employment shall then end when the holiday ends, unless otherwise agreed.

If the worker terminates his employment in the manner referred to in subsection 2, any holiday days and leave days as referred to in section 3, subsection 1, occurring immediately before the employment ends shall not be considered equal to working days. This provision shall not apply if the worker gives notice during his holiday observing the period of notice otherwise to be observed in the employment.

12. Effect on employment of period of military and non-military service (1025/2011)

In cases referred to in section 2, subsection 1, above and section 19, subsection 1, below, time during which work has been interrupted because the worker performed normal military service or non-military service as a conscript shall not be reckoned as time during which the employment continued.

13. Holiday pay

For the time of his annual holiday, the worker shall be remitted a sum of holiday pay obtained by multiplying his average daily pay by the number of holiday days and other free days attached to the holiday.

The average daily pay is calculated by dividing the worker's monthly pay or, if his monthly pay is not defined, his average monthly earnings during the holiday credit period, by thirty and multiplying the result by a coefficient of 1.18.

In determining the monthly pay or average monthly earnings used as the basis for holiday pay, pay shall be counted as including, in proportion to the length of the holiday credit period, all the fixed supplements and increases paid for at least one month during this period according to the type of work, with the exception of pay remitted or that can be viewed as remitted for overtime.

14. Fringe benefits during annual holiday (1025/2011)

Fringe benefits included in pay shall be granted during annual holiday without any deductions.

Workers who do not use their fringe benefits during the holiday, shall be entitled to cash compensation instead, also for Sundays, church holidays, Independence Day, Christmas Eve and Midsummer Eve, Easter Saturday and May Day. Grounds fixed by the Ministry of Employment and the Economy after providing the Advisory Body for Maritime Questions with an opportunity to express an opinion, shall be observed in calculating this compensation, unless agreement has been reached on a higher cash compensation.

15. Remittance of holiday pay

Holiday pay shall be remitted before the holiday or partial holiday begins.

In remitting holiday pay, the employer is required to provide the worker with an account showing the size of the holiday pay and the basis of its calculation.

16. Holiday travel

A worker entitled to annual holiday is entitled to free travel and board to the port locality at which the holiday must be granted in accordance with section 7, subsection 1, and to return travel to the ship at the end of the holiday. The travel referred above shall be arranged by the employer. (1071/2013)

The worker is not, however, entitled to the free travel referred to in subsection 1 if he has already received a similar benefit during the same holiday credit period, and not for a holiday credit period during which he exercised his right to free travel under chapter 3, section 1, subsection 1, of the Seafarers' Employment Contracts Act, if the annual holiday or partial holiday has been granted in accordance with section 6 together with the maternity, special maternity, paternity or parental leave or care leave referred to in chapter 5 of the Seafarers' Employment Contracts Act. (1025/2011)

If, within a period of one month from gaining holiday entitlement, the ship is expected to reach a port from which the holiday travel can be arranged at substantially lower cost than if the worker departed as soon as the holiday entitlement was gained, and the worker does not wish to postpone his departure on holiday until the ship reaches said port, he shall himself pay the difference in the costs mentioned above.

17. Repealed (1071/2013)

17 a. Holiday compensation when employment continues (142/2012)

Workers who under their contract work on so few days or for such short periods of time during the holiday credit period that they do not accrue any full holiday credit months referred to in section 3 or only some of the relevant calendar months are full holiday qualifying months, are paid as holiday compensation 11 per cent of the wages remitted during or due for the previous holiday credit period in place of holiday pay, provided that they have worked a total of at least 6 hours during the holiday credit period. The increase or a remuneration remitted on overtime work based on law or contract in addition to basic pay is not included in wages multiplied by the coefficient referred to in section 13, subsection 2.

18. Holiday compensation when employment ends

When employment ends, a worker who has been at work on at least fourteen days during the employment shall instead of annual holiday be entitled to holiday compensation equivalent to the holiday pay provided for in sections 13 and 14.

The holiday compensation shall comprise two and a half days pay for each full holiday credit month. (1025/2011)

When employment ends, workers referred to in section 17 a who have worked at least six hours, are paid as holiday compensation 11 per cent of the wages determined under section 17 a for the period for which they have not yet received said compensation. (142/2012)

19. Calculating holiday compensation and granting it in certain cases

If a worker has been at work on a total of at least fourteen days during the calendar months in which the employment began and ended, and has not received any holiday or compensation for this period, this time shall be counted as one month when holiday compensation is worked out. If the worker has been at work on a total of at least forty four days during said months, this time shall be counted as two months.

In case part of the annual holiday is granted before the entitlement to holiday compensation is gained, the number of weekdays in the holiday shall be deducted from the number of days used as the basis for calculating holiday compensation.

A worker starting normal military service or non-military service as a conscript shall also be entitled to the holiday compensation referred to in section 18 above and in this section even if the employment has not ended. (1025/2011)

19 a. (343/1998) Holiday compensation based on several employment relationships

A worker who has been employed by the same employer in more employments than one for at least six hours altogether during a calendar month and is not otherwise entitled to annual holiday

or holiday compensation, is paid as holiday compensation 11 per cent of the wages earned during the calendar month. (142/2012)

When determining the entitlement to the holiday compensation referred to in this section, the days and hours of work which entitle to a holiday compensation under section 18 are not taken into account. When calculating holiday compensation, the wages paid for the said days and hours are not taken into account.

Holiday compensation is calculated from the wages paid or payable during a calendar month as laid down in section 17a. The holiday compensation paid under this section shall fall due during the following calendar month at the latest.

20. Service charges

If it has been agreed or can be assumed that the work is to be remunerated wholly or partially through service charges paid by the public, the employer shall pay the worker the holiday pay provided for in sections 13 and 14 or the holiday compensation referred to in sections 18 and 19 also on the basis of his earnings from service, observing the provisions of said sections where applicable.

21. Doing work or having work done during annual holiday

The employer may not keep the worker at work during the annual holiday due to him, and the worker may not do any work related to his occupation against remuneration during his annual holiday.

22. Claim period

A worker's entitlement to holiday pay or holiday compensation shall have lapsed if no court proceedings have been initiated within three years of the end of the calendar year within which the annual holiday should have been granted or holiday compensation paid.

23. Mandatory nature of provisions

Any agreement that diminishes the worker's benefits under this Act in violation of the Act's provisions shall be null and void.

24. Exceptions to the provisions of this Act (153/2001)

Employers' organisations and workers' organisations whose sphere of operations covers the whole country shall be entitled to contract by collective agreement on the accrual, granting and division of the annual holiday, on the calculation and payment of holiday pay and holiday compensation, and on fringe benefits during annual holidays contrary to what the present Act provides above.

An employer may apply the agreement stipulations referred to in subsection 1 to such workers who are not bound by the collective agreement but in whose employment its stipulations are otherwise observed. Said collective agreement provisions may be observed from when one agreement ends until another takes effect in employment in which the regulations might be applied if the collective agreement were still in force.

The provisions of this section on employer organisations which operate nationwide shall correspondingly apply to government negotiating authorities or other government contracting authorities, municipalities, joint municipal associations, the Commission for Local Authority

Employers, the Provincial Government of the Province of Åland and the Municipal Agreement Commission of the Province of Åland.

Any provision included in a collective agreement that reduces benefits equivalent to those stipulated in international conventions to which Finland is party or benefits conferred on an employee by European Union regulations shall be null and void. Instead of such a provision, the provisions of the relevant international convention or European Union regulations or, should this not be possible, regulations that implement the provisions of the relevant international convention or European Union regulations shall be observed. (1025/2011)

25. Right to longer than statutory annual holiday

If a worker is entitled under an agreement to holiday longer than is provided in this Act, the provisions herein concerning annual holiday and holiday pay shall likewise be applied to the longer than statutory holiday if the agreement does not provide otherwise.

Unless otherwise agreed, the part in excess of the statutory annual holiday may, however, be granted outside the period referred to in section 5, subsection 2, though at the latest together with the holiday granted for the following holiday credit period.

Unless otherwise agreed, the worker shall, if the employer gives him notice, be entitled to holiday compensation corresponding to agreement-based annual holiday which is longer than provided in this Act, calculated as specified in the provisions on holiday compensation in this Act, as applicable.

26. (334/1996) Exemption granted to a foreign employer (1025/2011)

If a Finnish ship or part of it is assigned to the use of a foreigner, the Ministry of Employment and the Economy can, on application by the ship's owner and after hearing the Advisory Body for Maritime Questions, exempt the foreign employer from the provisions of this Act in whole or in part. No exemptions can be granted from the length of annual holiday as prescribed in subsection 2.

An exemption referred to in subsection 1 above can only be granted if compelling reasons apply. Before the exemption is granted, every effort must be made to ensure that the granting of the exemption will not result in essential changes in the worker's standing as provided in this Act. The decision of the Ministry of Employment and the Economy may be appealed as prescribed in the Administrative Judicial Procedure Act.

27. Terms of the exemption (1025/2011)

An exemption referred to in section 26 above can only be granted for a fixed period and any terms considered necessary may be attached to it.

An employer who has been granted the exemption or the ship's master shall immediately inform the Ministry of Employment and the Economy of any changes in the circumstances constituting the grounds for the exemption. The terms included in the exemption can be amended because of changes in said circumstances. The exemption can be withdrawn if the changes can be considered to endanger the worker's standing as referred to above. (334/1996)

An exemption may also be withdrawn if the terms laid down in it are not observed.

28. Repealed (408/1999)**29. Display (1025/2011)**

The employer shall make this Act and the provisions issued under it freely available to employees at the place of work.

The documents must also be available in the English language on board ships operating in international traffic.

30. Duty to keep books

The employer shall keep books on workers' annual holidays and the holiday pay and holiday compensation remitted to them, stating the initial dates of employment, interruptions in work, closing dates of employment, dates of holidays and the amounts of pay and compensation remitted, and the grounds on which length of holidays and amounts of pay have been calculated. The ministry in charge of labour protection and the supervision thereof can order the information referred to in this subsection to be entered on a form prescribed by it. (18/1997)

On request, the employer shall show a supervisory authority documents providing the information referred to in subsection 1. The worker or his representative shall be entitled to information on the record concerning the worker's holiday. On request, the employer shall provide a written account of said record.

The employer shall preserve the bookkeeping for at least four years after the books are closed, and, if court proceedings are instituted concerning a holiday or compensation referred to in the bookkeeping, until the dispute has been settled by a final judgement.

31. Violation of the provisions of the Seamen's Annual Holidays Act (685/1995)

An employer or a representative thereof who wilfully or negligently

1) neglects to grant a worker annual holiday as provided in this Act or keeps a worker at work during the time that the said employer or representative has designated as annual holiday, contrary to the provisions of this Act, or

2) neglects the obligation prescribed in section 29,

shall be sentenced to a fine *for violating the provisions of the Seamen's Annual Holiday Act*. Liability shall be divided between the employer and the representative according to the provisions of chapter 47, section 7, of the Criminal Code.

32. Violation of working hour protection (685/1995)

The penalty for neglect or abuse concerning the annual holiday bookkeeping referred to in section 30, subsection 1, and for violation of the provisions of the Seamen's Annual Holiday Act, committed despite an admonition, order or prohibition issued by the labour protection authority, is prescribed in chapter 47, section 2, of the Criminal Code.

33. Repealed (685/1995)**34. Supervision**

Observance of this Act shall be supervised by the labour protection authorities.

35. Competent court (334/1996)

The competent court of first instance in cases arising under this Act shall be determined according to chapter 21, sections 1 and 7, of the Maritime Act (674/94). Otherwise, the provisions of the Code of Judicial Procedure shall be observed.

36. Repealed (1025/2011)**37. Power to issue decrees**

More detailed regulations on the application of this Act shall be issued by decree if necessary.

38. Entry into force

This Act shall come into force on 1 October 1984.

It thereby repeals the Seamen's Annual Holidays Act of 23 May 1975 (353/1975) and any later amendments of it.

39. Transitional provisions

The law in effect when this Act comes into force shall be applied, unless agreed otherwise, to a contract of employment concluded before said entry into force. If a contract has been made for indefinite duration, however, the earlier law shall not apply for any longer than if the employer had, on the day this Act comes into force, given notice on it, provided, however, that the starting date of the annual holiday can then be postponed for the necessary transitional period by agreement between the employers' and workers' organisations referred to in section 24. If, during the validity of this Act, a contract were to expire as a result of notice given, the end of an agreed fixed period or any other reason, but work continues as laid down in section 42 of the Seamen's Act, the present Act shall thereafter be applied to the contractual relationship.