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Work Injury Compensation Act – are seagoing employees covered outside of Singapore?

This technical update looks at the issues facing companies who hire employees to work on board vessels that travel outside of Singapore. The key question is: are those employees covered under the Work Injury Compensation Act (Cap. 354) ("WICA")?



Key Points

- A review of Section 2(4) and 2(4A)
- Definition of "ordinarily resident of Singapore"
- Definition of "seaman"
- Rationale of only covering "Singapore ship"
- Nature of compensable medical expenses incurred overseas

Employees injured whilst working outside Singapore are only covered by the Work Injury Compensation Act (Cap 354) ("WICA") in certain circumstances. The relevant provisions are found in sections 2(4) and 2(4A) as explained below.

Section 2(4)

Under Section 2(4) WICA provides coverage for "an accident happening to an employee outside Singapore where the employee is ordinarily resident in Singapore and is employed by an employer in Singapore but is required in the course of his employment to work outside Singapore" (emphasis added).

To be covered under section 2(4), an employee injured outside of Singapore must:

- Be "ordinarily resident in Singapore"
- Be employed by an employer in Singapore
- Have been working outside Singapore in the course of his employment at the time he suffered personal injury by accident

Who is ordinarily resident in Singapore?

There is little judicial guidance on the meaning of the phrase "ordinarily resident" for the purposes of the WICA. However, guidance may be sought from other jurisdictions. For example, in *Regina v Barnet London Borough Council, Ex parte Nilish Shah* [1983] 2 AC 309, Lord Scarman observed that "all that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled." (sic)

The determination of whether a particular employee is an "ordinary resident in Singapore" is a question of fact that must be decided on a case by case basis. For example, it can be difficult to ascertain whether a foreign worker who enters Singapore under a valid work permit is "ordinarily resident in Singapore". That question becomes relevant when the said foreign worker meets with an accident after being required to work overseas by their Singapore based employer.



Subject to consideration of this issue by the Singapore judiciary and to the specific facts of each claim, it would appear a person who is a Singapore citizen, permanent resident, a holder of an employment pass and/or work permit that specifies a registered address in Singapore is likely to be considered "ordinary resident in Singapore" for WICA purposes. If that is so, then such a person would therefore be entitled to the benefit of section 2(4).

Section 2(4A)

Section 2(4A) provides coverage for "an accident happening, on or after 1 April 2008, to any seaman onboard any Singapore ship within the meaning of the Merchant Shipping Act (Cap. 179), whether the ship was within or outside Singapore at the time of the accident" (emphasis added).

Workers employed as "seamen" will typically spend a considerable period of time out of Singapore. It is also a common practice for Singapore employers in the maritime industry to engage workers who live permanently in overseas jurisdictions to work onboard Singapore-flagged vessels.

Section 2(4A) overcomes potential coverage difficulties by ensuring that employees who are employed as "seamen" and who suffer personal injury by accident whilst on a Singapore-flagged ship are entitled to claim under the WICA irrespective of whether:

- The employee's injury occurs in or outside of Singapore
- The employee is ordinarily resident in Singapore or elsewhere

Who is a "seaman"?

The WICA defines "seaman" by reference to the Merchant Shipping Act (Chapter 179) ("MSA"). That Act states that a "seaman" includes "every person employed or engaged in any capacity on board a ship on the business of the ship, other than –

- (a) the master of the ship;
- (b) a pilot; or
- (c) a person temporarily employed on the ship in port.

Why a "Singapore ship"?

In order to fall within the ambit of WICA, the seaman must be working on a "Singapore ship" within the meaning of the MSA. A Singapore ship "means a ship registered, provisionally or otherwise, under Part II (of MSA) and its registry is not closed or deemed to be closed or suspended under that Part".

Based on the UN Convention on the Law of the Sea, the flag that a ship is flying will indicate the jurisdiction to which it is subject in most instances. Thus, the law of Singapore applies on a ship flying its flag irrespective of where the ship is located.

Medical expenses incurred outside of Singapore

Although work accidents occurring outside Singapore are covered by WICA subject to the requirements of section 2(4) or section 2(4A), medical expenses incurred outside of Singapore are only covered in certain circumstances.

Section 14(2)(b) medical treatment costs incurred outside Singapore for an accident which occurred overseas are only covered where the Commissioner is satisfied that the worker required "immediate medical treatment due to the nature of injury suffered...". In other words, the employer is only liable to pay medical treatment costs incurred outside of Singapore where the nature of the injury is such that immediate treatment was justified.



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Conclusion

Employers can determine whether their workers operating onboard vessels are covered by WICA, based on the following checklist:

1. Is the worker a Singapore citizen, permanent resident, or holder of an employment pass holder and/or work permit that specifies a registered address in Singapore?

or

2. Is the worker a "seaman", as defined by the Merchant Shipping Act (Chapter 179)?

3. Is this "seaman" also working on a "Singapore ship" as defined by the same Act?

If an employee satisfies one of the tests above, it is likely (subject to the facts of the case and the relevant WICA policy generally) that they will be covered in the event of an injury occurring outside Singapore.

There is one final question an employer needs to consider – will medical expenses incurred outside of Singapore be covered? In this regard, the test is whether - having regard to the nature of the injury – the provision of medical treatment was required prior to the employee's return to Singapore.

Employers should bear these considerations in mind when reviewing their WICA insurance needs. If there is any doubt about whether statutory or policy coverage applies, it is imperative that the insured and their insurer discuss the issue and establish common intent of cover. This will minimise unexpected risk exposures. Endorsements to the standard form of policy can be drafted to reflect that intent where required.

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