

# 船員僱傭契約法律關係爭議之探討：以雇主認定、契約性質、適用法源及契約期限為對象

## A Study on Legal Issues Relating to Seafarers' Employment Contracts: Identity of Employers, Legal Nature of the Contracts, Their Applicable Law and Period of Contracts.

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### 中文摘要

本文係針對雇主與船員所簽訂船員僱傭契約之基礎法律關係爭議進行探討，探討的具體議題主要有：1.雇主的認定：實務上常以船舶所有人作為船員僱傭契約名義上之僱用人，然而該船舶所有人為外國公司，實際上指揮監督船員的則為另一本國公司，於此情形，究竟何人係該船員的雇主，或者何人應對該船員負僱傭契約之雇主責任？2.船長聘僱契約的性質：實務上船公司雖然與船長簽訂與一般海員相同版本的「船員僱傭契約」，然而船長在船上具有相當的獨立裁量決策權限，則其契約的法律性質究竟屬於僱傭契約或委任契約？3.適用法源：船員法對於船員僱用及勞動條件等事項亦設有規定，則在船員法與勞動基準法之間，應如何適用相關之規定？以及，4.契約期限：船公司可否與船員簽訂定期僱傭契約，雙方間是否另有不定期契約關係存在？對於上開議題，本文將簡要說明其爭議概況，並整理現行實務見解及提出分析檢討。

關鍵字：船員僱傭契約、雇主認定、法人格否認理論、船長、船員法、特定航線船員、定期契約、不定期契約

## Abstract

This article discusses disputes of the fundamental legal relationship arising from seafarer employment contracts signed between the employer and seafarers. The specific topics this article covers mainly include: 1. Identity of employers: In practical scenarios, it often happens that the shipowner is the employer of the seafarer employment contract nominally, however this shipowner is a foreign corporation, and the actual supervision and oversight of seafarers are carried out by another local company. In this case, who exactly is the seafarer's employer, or who shall bear the employer's responsibility under the employment contract of the seafarer? 2. Legal nature of master's contract: Although the shipping company and the master usually signed the same version of the "seafarer employment contract" as that of ordinary seamen, however the master has considerable discretionary authority when he/she is on board, thus the work contract of the ship company and the master should be categorized as an employment contract or an contract of mandate? 3. Applicable law of the seafarer employment contracts: Compared to regular land-based employment, the shipping industry and seafaring jobs have unique characteristics. As a result, The Seafarer Act establishes special regulations distinct from the Labor Standards Act concerning the employment, working conditions, and welfare of merchant seafarers. In view of this, when resolving relevant disputes, how to apply relevant provisions between the Seafarer Act and the Labor Standards Act? 4. Period of contracts: whether a shipping company can sign a fixed-term employment contract with seafarers and use each voyage as the contract period or not? In addition to the fixed-term employment contract relationship of the seafarer, is there any other indefinite contractual relationship between the shipping company and the seafarer? In regard to the aforementioned issues, this article will provide a brief overview of the disputes, consolidate existing practical court insights, and present an analytical review.

**Keywords:** employment contract for employing seafarers, identity of employers, disregard of corporate entity, master of a ship, The Seafarer Act, seafarers of the specific route, fixed-term contract, indefinite contract