SASH (SEXUAL ASSAULT AND SEXUAL HARASSMENT) REPORTING IN THE MARITIME INDUSTRY KEY ISSUES FOR ALL US FLAG COMMERCIAL VESSEL OWNERS AND OPERATORS

Date: 3 May 2023

US Maritime Alert

By: Elle Stuart

When Congress enacted the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, it included several provisions requiring owners and operators of US flag commercial vessels to report complaints and incidents of sexual harassment and sexual assault to the Coast Guard. These requirements are now codified at 46 U.S.C. §10104.

BACKGROUND

Before this enactment, masters and other individuals in charge of US documented vessels were required to report to the Coast Guard complaints of certain sexual abuse offenses that were cognizable under federal law. In general, the scope of reportable conduct was limited to a certain class of sexual abuse crimes that occurred within the special maritime and territorial jurisdiction of the United States.[1] Accordingly, reporting of such complaints was a relatively rare occurrence.

By contrast, under the revised law, the scope of what is required to be reported to the Coast Guard—and who is required to report it—has expanded dramatically. In general, the new law now requires commercial vessel owners, operators and masters, and employers of seafarers to report complaints and incidents of harassment, sexual harassment, and sexual assault that violate any law or company policy. In addition, Congress increased the potential civil penalties for failing to report such incidents to the Coast Guard from US$5000 to US$50,000 per violation.

WHO MUST MAKE SUCH REPORTS TO THE COAST GUARD?

Under the new law, an “owner, master, or managing operator of a documented vessel engaged in commercial service; or employer of a seafarer” (hereinafter a Responsible Entity) is required to make such reports to the Coast Guard.[2] US law broadly defines “commercial service” as “any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.”[3] Thus, the reporting requirement applies to a Responsible Entity of documented commercial vessels of any size and type, whether inspected or uninspected and regardless of tonnage.

©2005-2026 K&L Gates LLP. All Rights Reserved.

WHAT TYPES OF COMPLAINTS OR INCIDENTS ARE REQUIRED TO BE REPORTED TO THE COAST GUARD?

Under the new law, the Responsible Entity must make a report to the Coast Guard for "any complaint or incident of harassment, sexual harassment, or sexual assault in violation of employer policy or law, of which such entity is made aware."[4] Thus, reporting requirements are no longer limited to complaints of criminal conduct. Now, all complaints and incidents of harassment, sexual harassment, or sexual assault in violation of employer policy or law (local, state, federal) that a Responsible Entity becomes aware of are required to be reported to the Coast Guard.

WHEN MUST SUCH REPORTS BE MADE TO THE COAST GUARD?

In the case of a "sexual assault or sexual harassment incident" the Responsible Entity must make a report to the Coast Guard "immediately after the responsible entity of a vessel gains knowledge of a sexual assault or sexual harassment incident by the fastest tele-communication channel available."[5] This initial report must include basic information, including where the incident occurred and a brief description of the alleged sexual harassment or sexual assault.[6] Within 10 days of making the initial report, the responsible reporting entity must make a more detailed written report to the Coast Guard "with detailed information to describe the actions taken by such entity after becoming aware of the sexual assault or sexual harassment incident, including the results of any investigation into the complaint or incident and any action taken against the offending individual."[7]

HOW ARE SUCH REPORTS TO BE MADE?

The Coast Guard has published Marine Safety Information Bulletin (MSIB) 1-23, which provides details on where reports should be submitted, including phone and email contacts for reporting.[8]

AMBIGUITIES IN THE NEW LAW–FURTHER REGULATIONS OR POLICIES

The statute broadly requires reporting of any "complaint" or "incident" that the Responsible Entity is "made aware" of.[9] It is clear that the intention for this new statute is to require reporting of shipboard sexual harassment and sexual assault incidents involving seafarers. There are, however, a number of notable ambiguities.

Specifically, the statute is worded in such a way that it could apply to other forms of harassment (not just sexual harassment), and could be read to apply to events occurring shoreside. It could also be read to cover incidents involving all employees, not just credentialed mariners. Thus, depending on the breadth of its application and interpretation by the Coast Guard, it could be seen to address all forms of harassment that violate any law or company policy (race, disability, bullying, etc.), and any complaint or incident of harassment, sexual harassment, or sexual assault involving one or more employees of the vessel owner or managing operator—regardless of where the incident occurred or whether it involved credentialed mariners.

Under the new law, the Coast Guard may issue additional regulations or could also potentially issue policies to provide further clarification on the scope of the law. In the meantime, each potentially reportable complaint or incident should be carefully reviewed to determine whether it is reportable under the statute.

©2005-2026 K&L Gates LLP. All Rights Reserved.

CONCLUSION

The US maritime industry is now broadly required to report complaints or incidents of harassment, sexual harassment, or sexual assault to the Coast Guard. Owners and operators of all US documented commercial vessels should develop policies and procedures to ensure compliance with the new law. Members of our Maritime Regulatory and Policy and Regulatory teams are monitoring these new reporting requirements and actively counseling clients. Should you have any questions, please do not hesitate to contact one of our team members below.

FOOTNOTES

[1] *See* 18 U.S.C. Chapter 109A and 18 U.S.C §7.

[2] 46 U.S.C. § 10104(a)(1) and (g).

[3] 46 U.S.C. § 2101(4).

[4] 46 U.S.C. § 10104(a)(1).

[5] 46 U.S.C. § 10104(a)(1) and (b)(1).

[6] 46 U.S.C. § 10104(b)(2).

[7] 46 U.S.C. § 10104(d)(1).

[8] MSIB 1-23 may be accessed here.

[9] 46 U.S.C. § 10104(a)(1) and (g).

KEY CONTACTS



ELLE STUART
PARTNER

WASHINGTON, DC
+1.202.778.9081
ELLE.STUART@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.