

COVID-19: VESSEL ENTRY INTO U.S. PORTS IN THE AGE OF A PANDEMIC

KEY CONSIDERATIONS AND BEST PRACTICES FOR SHIP OWNERS & OPERATORS

Date: 29 April 2020

Maritime Alert

By: Emanuel L. Rouvelas, James A. Sartucci, Jeffrey S. King, Elle M. Stuart, Luke M. Reid

As a vessel owner or operator, are you prepared to mitigate and manage the operational uncertainty and risks of COVID-19?

The risks of COVID-19 to seafarers are particularly apparent, given the close living and working conditions onboard vessels. With these risks in mind, and the potential for spread of infection across borders, port states and flag states worldwide have imposed various reporting requirements and restrictions on vessels in response to public health concerns over COVID-19. These measures have the potential to disrupt vessel operations, delay cargo delivery, and create potential liability for ship owners and operators. This alert will help the owner/operator manage and mitigate those risks for vessels entering a U.S. port. K&L Gates' global maritime practice is actively engaged in managing these changing realities for clients. Anyone with questions should contact the authors.

Under U.S. law, vessels destined for ports in the United States are required to report any crew or passengers who were sick during the 15 days prior to arrival at a U.S. port. The U.S. Coast Guard ("USCG") has announced that it considers the presence of any sick crewmember or passenger on board the vessel who is exhibiting flu-like symptoms consistent with COVID-19 to be a "hazardous condition" requiring immediate reporting to the USCG Captain of the Port ("COTP") at the port of destination. See 33 CFR § 160.216(a). Failure to make such reports, in the vessel's Advance Notice of Arrival or otherwise, carries serious consequences under U.S. law, including potential civil and criminal penalties.

Once such a report is made, many questions and uncertainties persist about how the USCG and Centers for Disease Control ("CDC") will handle such matters. These include:

- Will the vessel be permitted to proceed to its berth, held offshore, or subjected to other control actions? We know that such control actions have already occurred in some cases.
- Will all sick crewmembers be required to be tested for COVID-19? Who makes that determination?
- If the vessel is allowed to proceed to its berth, may cargo operations proceed if crewmembers onboard are suspected of having COVID-19?
- If a crewmember tests positive for COVID-19, may the crewmember stay onboard?
- If a crewmember tests positive for COVID-19, may the crewmember obtain medical care ashore?

- Will the vessel and crew be subject to quarantine in the port (and for how long), or will the vessel be permitted to depart with a sick crewmember onboard?

If COVID-19 risks are not managed appropriately by vessel owners and operators, the measures and precautions instituted by port states have the potential to disrupt vessel operations, cause a significant delay, and result in liability claims.

Much uncertainty remains, but our experience, based in part on our interactions with the USCG on these issues, tells us that these risks can be managed and mitigated. Specifically, the more a vessel owner or operator has taken precautions and instituted procedures consistent with existing CDC and other industry COVID-19 guidelines, the less likely it is that vessel operations will be significantly disrupted should a crewmember become sick or infected with COVID-19.

To manage and mitigate risks, ship owners and operators should:

UNDERSTAND AND FOLLOW THE REPORTING REQUIREMENTS

- The USCG and CDC require the reporting of sick crewmembers and those exhibiting symptoms of the flu or COVID-19 (“ill persons”) within the last 15 days prior to arrival. Separate reports must be filed with the CDC and the USCG.
- In general, the applicable regulations broadly define “ill person” as someone exhibiting a fever (temperature greater than 100.4 °F [38 °C]), feels “warm to the touch,” or gives a history of feeling feverish, in combination with other symptoms. For further details, see USCG Marine Safety Information Bulletin (“MSIB”) 6-20, which can be accessed [here](#), and MSIB 2-20 (Change 3), which can be accessed [here](#).
- Some USCG COTPs have also issued local amplifying reporting guidance, which should be reviewed. For example, vessels calling on ports in Houston/Galveston, Texas, should refer to the reporting guidance regarding ill persons onboard vessels arriving in that COTP zone. This guidance can be accessed [here](#). This local guidance states that the Master of the vessel must file a separate, affirmative attestation with the USCG, as a condition of port entry.
- Vessels arriving in the United States that have persons on board who have been to certain countries, or embarked crewmembers from certain countries within the last 14 days, should expect heightened scrutiny by the USCG.¹

FOLLOW AND IMPLEMENT THE CDC GUIDELINES AND INDUSTRY STANDARDS FOR VESSELS

- The CDC has issued “Guidance for Ships on Managing Suspected Coronavirus Disease 2019,” which sets forth measures to prevent, detect, and medically manage suspected COVID-19 infections onboard vessels. This guidance can be accessed [here](#).
- Similarly, the World Health Organization has published its “Operational Considerations for Managing COVID-19 Cases or Outbreaks on Board Ships,” which can be accessed [here](#).

- In addition, several industry groups, such as the International Chamber of Shipping and INTERTANKO, have issued guidance documents for vessel owners and operators in connection with COVID-19. The International Maritime Organization has made these industry guidance documents and others available on its web site. These can be accessed here.
- For U.S. flag vessels operating domestically, the American Waterway Operators has developed and published numerous resources for prevention, contingency planning, and other best practices in connection with COVID-19. These resources can be accessed here.
- U.S. flag owners and operators should also consult CDC guidelines regarding safety practices for critical infrastructure workers who may have been exposed to a person with suspected or confirmed COVID-19. This guidance can be accessed here.
- Owners should also check for any relevant guidance from their P&I Club.

ENSURE ADEQUATE PERSONAL PROTECTIVE EQUIPMENT (“PPE”) AND OTHER MEDICAL EQUIPMENT IS ON BOARD

- Owners and operators will need to ensure sufficient equipment is on the vessel to implement the guidelines and standards referred to above. For a complete list of PPE and other medical supplies recommended being onboard, consult Annex C of the International Chamber of Shipping's COVID-19 Guidance for Ship Operators for the Protection of the Health of Seafarers.
- Owners and operators based in the United States experiencing difficulty acquiring PPE or other supplies are encouraged to work with their local state emergency operations centers.
- Non-U.S.-based owners and operators experiencing difficulty acquiring PPE or other supplies through normal supply channels are encouraged to contact local vessel agents or port health authorities for guidance.

ESTABLISH A WRITTEN RESPONSE PLAN TO ADDRESS COVID-19 ISSUES

- Prepare this plan now, not after you identify a sick crewmember on a vessel. This plan should be consistent with the CDC guidelines and other guidance referenced above
- This response plan should address various contingencies, including, for example:
 - How will sick crewmembers be quarantined, and in what location(s) on the vessel, to mitigate the risk of spread?
 - How will testing be accomplished, what resources ashore will be used, and how will medical personnel be brought aboard the vessel to conduct testing?
 - What protocols and resources will be used to disinfect contaminated spaces, and will any resources ashore be needed?
 - What additional measures, if any, need to be put in place to ensure vessel and cargo operations may continue safely and efficiently?

- Have contingencies been put in place to address any safe manning issues that may arise?
- What protocols are in place for addressing crew changes?
- Additional response guidance is provided in the references cited above.
- The response plan should also address the format and content of reports to be made to the CDC and the USCG, regarding sick crewmembers:
 - The USCG and CDC will expect a full description of the crewmember's symptoms, exposure history, and potentially a description of any underlying health issues. Be mindful of privacy requirements in this area, and be sure to comply with them.
 - Ship owners and operators should consider providing a full description of measures taken on the vessel to isolate or quarantine the sick crewmember, the use of PPE onboard the vessel, and other prevention measures that have been implemented. This will help demonstrate that the vessel owner and operator have acted proactively in good faith, in the interest of the safety of seafarers, and mitigating the risk of spread.

UNDERSTAND WHAT MAY HAPPEN UPON REPORTING THE PRESENCE OF A SICK CREWMEMBER OR PASSENGER

- Upon receipt of the information described above, USCG officials will consult with the CDC to determine whether the sick crewmember must be tested for COVID-19. USCG officials will also determine what control actions or other restrictions, if any, may be necessary regarding the vessel's entry into port and its cargo operations.
- By implementing and following the guidelines and standards referred to above, the vessel can mitigate the risk of infections and related risks. If sickness or COVID-19 infection occurs, diligent adherence to these procedures in a transparent way will give USCG and CDC officials confidence that the health and safety of seafarers on the vessel has been adequately safeguarded, and the risk of spread is minimized. By contrast, not adhering to these or similar standards will likely result in the USCG acting more cautiously with respect to vessel entry, and being more likely to impose additional requirements or institute control actions on the vessel, causing disruption and delay to normal vessel operations.

FOOTNOTES

¹ See USCG MSIB 2-20 (Change 3) at p. 1. Presidential Proclamations have placed entry restrictions on persons arriving from or through certain countries, and these persons are therefore deemed to be higher risk. These countries include: Iran, China (excluding Hong Kong and Macau), the European states within the Schengen Area (Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland), the United Kingdom, and Ireland.

KEY CONTACTS



EMANUEL L. ROUVELAS
PARTNER
WASHINGTON DC
+1.202.661.6262
EMANUEL.ROUVELAS@KLGATES.COM



JEFFREY S. KING
PARTNER
BOSTON
+1.617.261.3179
JEFFREY.KING@KLGATES.COM



JAMES A. SARTUCCI
GOVERNMENT AFFAIRS COUNSELOR
WASHINGTON DC
+1.202.778.9374
JIM.SARTUCCI@KLGATES.COM



ELLE M. STUART
ASSOCIATE
WASHINGTON DC
+1.202.778.9081
ELLE.STUART@KLGATES.COM



LUKE M. REID
PARTNER
BOSTON
+1.617.951.9108
LUKE.REID@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.