

# Lecture 3:

## Employment Law & the Various Entitlements:

Part 1

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**Date: 26<sup>th</sup> October 2022**



# Agenda

1. General Introduction
2. Employment Relationship
3. Main sources of employment law and applicable laws
4. Protection of wages
5. Leave Entitlements
6. Itemised payslip



# The EIRA defines “Employment” as:

...any relationship whereby *one person does work or performs services for another* (other than a service as a member of a disciplined force);

"employee":

any person who has entered into or works under a **contract of service, or a person** who has undertaken personally to execute any work or service for, and under the immediate **direction and control** of another person... but **excluding** work or service performed as a contractor



An employment relationship gives rise to rights and obligations emanating from the law on both parties.

The general rights that an employer / employee should be aware of are:

- Protection of wages
- Annual Bonus & Weekly Allowance
- Protection from discrimination & victimization
- Maximum working hours & Overtime
- Various Leave entitlements
- Occupational Health & Safety
- Information & Consultation



# Main sources of employment law and applicable conditions of employment:

- The Constitution of Malta
- Statute law (including the Employment and Industrial Relations Act (EIRA) & other Regulations)
- National Standard Orders (WRO)
- Collective agreements
- Contract of employment (including company policies)
- Sectoral Regulations Orders



## *Which laws are applicable?*

### **General provisions of law or Wage Regulation Orders?**

#### *General provisions of law:*

- Minimum Special Leave Entitlement Regulations (SL 452.101) – lay down a series of special leave entitlements employees may be eligible for.

#### *Wage Regulation Orders:*

- Certain types of employment are covered by specific Wage Regulation Orders (WRO) such as the:
  - ✓ FOOD MANUFACTURE INDUSTRIES WAGES COUNCIL WAGE REGULATION ORDER;
  - ✓ HOTELS AND CLUBS WAGES COUNCIL WAGE REGULATION ORDER
  - ✓ WHOLESALE AND RETAIL TRADES WAGES COUNCIL WAGE REGULATION ORDER and
  - ✓ PROFESSIONAL OFFICES COUNCIL WAGE REGULATION ORDER

#### *What about Collective Agreements?*



# Protection of Wages

- Provisions in the Employment and Industrial Relations Act (Chap 452 of the Laws of Malta) (“EIRA”) ensure that an employee is safeguarded from any possible **abuse** in relation to remuneration.
- “wages” means remuneration or earnings, payable by an employer to an employee and includes any statutory bonuses applicable, other than any bonus or allowance related to performance or production;
- The entire amount of wages earned by the employee are to be paid in money being **legal tender in Malta**
- May be paid in money or by cheque or by payment in a bank account
- Wages are to be paid **directly to the employee**, unless (i) otherwise provided by law; (ii) an order is made by a competent court; or (iii) in the event that the employee and employer agree otherwise;
- Subject to certain exceptions, wages **cannot be assigned or attached** in any manner whatsoever. An employer cannot exert interest or charge on any wage given in advance;
- Any provisions in a contract of employment regulating the place or manner in which wages are to be spent shall be deemed **null and void**.



# Protection of Wages

- Deductions from wages already earned are generally **disallowed** and cannot be made as a guarantee to secure or retain employment.
- Deductions are allowed:
  - (i) where expressly permitted by the law;
  - (ii) where ordered by a competent court;
  - (iii) when permitted in a collective agreement;
  - (iv) where the employee agrees to pay a private pension scheme or other saving scheme, in which the employer has beneficial financial interest whether direct or indirect.
- Wages constitute a **privileged claim** i.e. payable in preference. However, the maximum amount of the privileged claim cannot exceed the national minimum wage payable over a period of 6 months.
- In the event that employment is terminated due to an employer's proved insolvency, employees may resort to requesting the payment of their unpaid wages from the Guarantee Fund administered by the Guarantee Fund Administration Board.





# Protection of Wages

- Wages shall not be lower than the national minimum wage – updated on an annual basis.
- Employees are to receive their wages at regular intervals **not exceeding 4 weeks in arrears**, subject to a derogation by way of a collective agreement.
- In the event of termination of a contract of employment, all outstanding wages and any compensation due to the employee, shall be paid on the next pay as if the contract had not been terminated.
- **Fines** - the imposition of fines is an exception to the non-deduction of wages. There are certain conditions attached to this.



# Leave Entitlements

[INSERT STUDY PROGRAMME  
NAME}

## Annual Leave

### *Organisation of Working Time Regulation (S.L.452.87) and Annual Leave National Standard Order (S.L.452.115)*

Every employee with a 40-hour working week is entitled to paid annual leave of at least the equivalent in hours of 4 weeks + 32 hours (192 hours)

*Provided that with effect from the 1st January 2021, in the case of whole-time employees, where a national or public holiday falls on a Saturday, Sunday or weekly day of rest to which an employee is entitled, such employee shall be entitled to an additional day of vacation leave during that same calendar year in respect of each such national or public holiday, as specified in article 6 of the National Holidays and Other Public Holidays Act*

- Annual leave is additional to national and public holidays.
- A proportion of leave entitlement not exceeding 50%, may, by mutual agreement, be carried over to the next calendar year.
- Accrual of annual leave continues to accrue during maternity leave, sick leave and injury leave but not during unpaid leave.
- Leave for part-timers is pro-rated on the basis of full time worker entitlement



*How much prior notice should an employee provide an employer prior to taking annual leave?*

*Can an employee request payment for unutilised leave?*

### ***Shutdown***

An employer may only utilize up to the equivalent in hours of **12 working days** from the annual leave entitlement for the purposes of any type of shutdown, (including temporary closure of whole/part of the premises by the employer for bridge holidays or any other short periods of shutdown).

Any type of shutdown shall be communicated to all the employees by the end of January of each calendar year.

### ***Forced Leave***

In the case that an employee is made to avail himself of forced leave by his employer, the employer shall always provide a **written statement** justifying the forced leave, within a reasonable time frame before the forced leave starts to run. In such instances the utilization of such forced leave does not give rise to a civil debt in favour of the employer should the leave taken exceed the annual leave entitlement of the employee.

However, any leave taken by an employee which has been requested by the employee himself, which is in excess of the annual leave entitlement shall give rise to a civil debt in favour of the employer upon termination of the employee's employment.



# Leave Entitlements

[INSERT STUDY PROGRAMME  
NAME}

## *Sick Leave*

*Minimum Special Leave Entitlement Regulations (SL 452.101) & WRO as may be applicable*

**What is it?** Leave granted to the employee without loss of pay, whenever an employee presents a medical certificate certifying incapacity for work

### *What is the statutory sick leave entitlement?*

Sick leave entitlement is calculated in hours.

In terms of general provisions of law = **10 days** of sick leave unless ... a specific WRO applies

E.g.

- Professional Offices: 20 days on full pay, 20 days on half pay
- Wholesale & Retail: 15 days on full pay, 36 days on half pay
- Hotels and Clubs (including catering establishments within them): 18 days on full pay
- Food Manufacture: 12 days on full pay



Also ... keep in mind any applicable collective agreements or more advantageous provisions in Employment Contract

***What about part-timers?***

***What is required?***

- Medical certificate
- Company may choose to send over company doctor to certify illness – generally included in contract of employment

***What if sickness is not certified ?***

***What happens if all sickness is utilised?***

***Do benefits continue to accrue during sick leave? What about unpaid sick leave?***



# Leave Entitlements

[INSERT STUDY PROGRAMME  
NAME}

## *Injury Leave*

*Minimum Special Leave Entitlement Regulations (SL 452.101) & WRO as may be applicable*

### *What is it?*

Leave entitlement if an employee suffers personal injury *caused by accident arising out of and in the course of his employment, or by any of the diseases specified in the Social Security Act (being a disease due to the nature of his work)* not due to any contributory negligence on his part or to any contravention of safety rules laid down by management.

*What is the statutory sick leave entitlement?* up to 1 year on full pay less the full amount of any injury benefit to which the employee may be entitled under the Social Security Act

In cases of *contributory negligence* the absence from the place of work shall be considered as sick leave not injury leave.

### *In the case of injury...*

- An **injury form** should be submitted by the employer to the Social Security Department within 10 days from the incident.
- An OHSA accident report should be completed and submitted to the OHSA (required for injuries subsisting over 3 days)

*What happens when the injury leave entitlement lapses and the employee is still not able to return to work?*



# Leave Entitlements

[INSERT STUDY PROGRAMME  
NAME}

## *Quarantine Leave*

*Minimum Special Leave Entitlement Regulations (SL 452.101)*

### *What is it?*

Leave to be granted to the employee without loss of wages in such cases where the employee is legally obliged to abide by **a quarantine order** confining the employee to a certain area or to certain premises as determined by the Superintendent of Public Health under the Public Health Act or by any public authority under any other law.

### *What is the statutory leave entitlement?*

Any period of quarantine as may be determined by the Superintendent of Public Health or by any other public authority

*What is the difference between Quarantine leave and sick leave? When does Quarantine leave become Sick leave?*



# Leave Entitlements

## *Maternity Leave*

*(S.L. 452.91, Protection of Maternity (Employment) Regulations) and the EIRA*

- Pregnant employees are entitled to maternity leave amounting to an uninterrupted period of 14 weeks with full pay, which may be extended to 18 weeks. However, for any period of leave exceeding 14 weeks, the employer will not be bound to pay any wages for such period;
- Once an employee's maternity leave has been availed of, such employee has the right to resume work in the **same post** she was in prior to the commencement of maternity leave or a related post, if the former is no longer available.
- These Regulations also deal with the way in which maternity leave is to be availed of.

### *When can this be utilised?*

6 weeks immediately after the date of confinement

4 weeks before the expected date of confinement unless otherwise agreed, in which case the remainder would be availed of after confinement

Remaining balance as the employee wishes





## *Maternity Leave*

*Are all employees eligible to maternity leave?*

*Does the employee need to inform the employer ? How long before?*

- Ante-natal check ups: time off work without loss of pay where visits can only take place during work hours.
- Employer may request documentation as proof.



## *Special Maternity Leave*

- Employees who are pregnant, breastfeeding or who have recently given birth, who could be exposed to a risk of work that could jeopardise their health and safety and/or the pregnancy/child will be entitled to **special maternity leave** for as long as such risk exists.

### *What should the employer do in the case that a pregnant employee may be exposed to risk at work?*

- Temporary adjustment of work environment (as much as possible)/ hours of work
  - Or Assign the employee to more suitable work
  - If employee refuses without justification she forfeits her right to payment but should be treated on a case by case basis...
- 
- During special maternity leave the employee shall be entitled to a special allowance equivalent to the rate of sickness benefit
  - If this special leave is being provided to an employee who is breastfeeding, the entitlement ends when she stops breastfeeding.
  - If the risk for which special maternity leave is required no longer persists, the entitlement also terminates



## *Special Maternity Leave*

### *What should the employee do to avail herself of special maternity leave work?*

- The employee should **notify her employer** in writing of her intention to avail herself of this type of leave in writing at the earliest time possible
- Employer to take **all reasonable measures** to ensure that she may continue to carry out her work
- Employer must take all reasonable steps to **give employee her previous job back** and notify her in writing that she may resume her job once the risks are assessed and removed
- Special maternity leave shall end **7 days** after the notification to return is received by the employee, or if it is earlier before
- Employer to transfer worker to **day work** if she presents a medical certificate certifying that she cannot carry out night work while pregnant or breastfeeding -> if this is not possible then she shall be placed on special maternity leave.
- Similarly to maternity leave, all the rights and benefits she is entitled to **continue to accrue** and she is entitled to do the same job upon her return to work – if this is not possible, she should be offered similar/equivalent work



## *Termination of Employment during Special /Maternity Leave*

- *What happens if the employee does not return to work?*
- *What if the employee is on a fixed term contract and the employer does not renew her contract?*
- *What happens if the employee becomes pregnant during probation?*
- In case of termination on grounds of good and sufficient cause the employer shall:
  - Cite duly substantiated grounds for her dismissal in writing in her notice of termination
  - Send a copy of such notice to the Director

The reason must be unrelated to the employee's condition.

Failure to give written reason or failure to justify the reason will give employee the right to lodge a claim at the Tribunal and the employer would need to prove that there was a good and sufficient cause otherwise this would be considered to be unfair dismissal.



# Leave Entitlements

## *Adoption Leave*

*(S.L. 452.111, Adoption Leave National Standard Order)*

### *What is it?*

- This is a period of leave which employees who have adopted a child may avail of, but does not apply in the case of adoptions where the person adopted is the natural offspring of either of the parents.

### *What is the statutory leave entitlement?*

An uninterrupted period of 18 weeks

Similarly to maternity leave, the first 14 weeks are paid in full, and the employer shall not be obliged to pay for any period of adoption leave utilised past the first 14 weeks.

### *Who may avail of this leave entitlement?*

- An employee who is the parent of an adopted child whenever a child is adopted and such leave shall commence on the date when the child passes into the care and custody of the adoptive parent or parents by means of a judgment of a court of law in the country of origin.
- A single parent may avail of the full period of adoption leave
- In the case of more than 1 parent: this may be enjoyed by the parent who is in employment on the date of adoption of the child
- If both parents are in employment whether with different employers or with the same employer, on the date of adoption of the child, each parent shall be entitled to such part of the adoption leave as they may agree in writing.



# Leave Entitlements

[INSERT STUDY PROGRAMME  
NAME]

## *Adoption Leave*

*(S.L. 452.111, Adoption Leave National Standard Order)*

- An employee who intends to utilise adoption leave shall notify the employer in writing of the date of the intended period when the entitlement is to be utilised.
- This notification shall include:
  - i) A written statement by the employee's accredited adoption agency certifying that a court date has been set for the hearing of the adoption case in the country of origin.
  - ii) The notification shall be given to the employer at least 2 weeks before the adoption leave begins, in so far as is reasonably practicable.
- Also available for persons on a fixed term contract
- Rights continue to accrue during adoption leave (i.e. right to leave and may apply for promotions) – however not eligible to performance bonus during this time.
- Employee is entitled to resume work at his post after the lapse of adoption leave
- If an employee availing of adoption leave does not resume work, or, after having so resumed work, abandons the service of the employer without good and sufficient cause within 2 calendar months from the date of such resumption, the employee shall be liable, to pay the employer a sum equivalent to the basic wages received during the period of adoption leave.
- If only part of the 2 calendar month period is worked by the employee, such equivalent sum shall be reduced by a proportionate amount, taking into account the period worked.



# Leave Entitlements

[INSERT STUDY PROGRAMME  
NAME}

## *Leave for Medically Assisted Procreation (SL 452.114)*

- Who is eligible for this: two persons who are united in marriage, civil union, cohabitation or who have attained the age of majority and are in a stable relationship with each other.

Eligibility: Total of 100 hours of leave, with full pay, between the prospective parents... per process (up to 3 processes);

How are the 100hrs divided between both parents?

- 60 hours for the receiving parent and 40 hours for the other prospective parent;

This also applies If only one prospective parent is in employment during the process (same break down)

If both parents are in employment (same or different employer) leave may be enjoyed concurrently by both prospective parents.

- The employee is to notify the employer in writing of intended dates



# Leave Entitlements

[INSERT STUDY PROGRAMME  
NAME}

## *Leave for Medically Assisted Procreation (SL 452.114)*

- The notification:
  - is to include written certification by medical practitioner in charge of procedure;
  - must be given at least 2 weeks before the leave is to start, in so far as is reasonably practicable
  - for non-continuous utilisation – notification at least 2 days before each part of the leave commences
- This type of leave should be granted independently and irrespectively of any other kinds of leave entitlement taken.
- An employee who is a prospective parent shall not be dismissed by the employer for the intention or availing of such leave
- Any person contravening the law shall be guilty of an offence and shall be liable on conviction to a fine (multa) of not less than €500





# Leave Entitlements

[INSERT STUDY PROGRAMME  
NAME}

## *Other forms of leave*

- **Marriage Leave:** 2 working days
- **Bereavement Leave:** 1 working day
- **Jury Services Leave:** as long as necessary on full pay.

**Urgent family Leave:** 15 hours with full pay

## *When is this applicable?*

Urgent force majeure family reasons:

- Accidents to immediate family members of the employee
  - Sudden illness of immediate family member requiring the assistance and presence of the employee
  - Presence during deaths/births of immediate family members of the employee
- No advance notice is required except where possible to give 24 hours notice



# Work-Life Balance for Parents and Carers Regulations (SL 452.125)

- New regulations transposing EU directive Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU
- Aim: designed to achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents, or carers.
- What are the main updates?
  - - paternity leave
  - - updates to parental leave
  - - carers leave
  - - flexible working arrangements



## ***Paternity Leave***

### ***What is it and who may avail of it?***

- leave from work for fathers or, equivalent second parents, on the occasion of the birth or the adoption of a child for the purposes of providing care.

### ***What is the statutory leave entitlement?***

- 10 working days paid leave

### ***When can this leave be availed of?***

Immediately after the birth or adoption of the child



## Parental Leave

### What is it and who is eligible?

- Every employee who has been employment with the same employer for a continuous period of 12 months, is eligible to this leave for a period 4 months upon the birth, adoption, child fostering or legal custody to enable them to take care of the child, until the child reaches the age of 8 years.

### How does it work?

- 2 months are paid at the same rate established for the sickness benefit entitlement under the Social Security Act (currently €21.85 per working day – this rate of sickness benefit changes every 1st January) and shall be availed of in established periods of at least 2 weeks each.
- This leave shall be taken in accordance to the age of the child or children for whose care parental leave was granted, as follows:
  - (a) Where the child or children has or have not attained four (4) years of age = fifty per centum (50%) of entitlement (4 weeks) will be paid;
  - (b) Where the child or children has or have attained the age of four (4) years but has or have not yet attained the age of six (6) years= twenty five per centum (25%) of entitlement (2 weeks) will be paid;
  - (c) Where the child or children has or have attained the age of six (6) years but has or have not yet attained eight (8) years of age= twenty five per centum (25%) of entitlement (2 weeks) will be paid.

## *Parental Leave*

- Every employer shall be bound to keep records of the parental leave of every worker and shall deliver to the worker (even after termination) a written statement of the leave to the worker within 2 weeks from the request.
- In order to avail of this leave, the employee should provide the employer with at least 2 weeks prior notice in writing stating the beginning and end of the parental leave.
- Parental leave may be taken in a flexible manner if agreed to with the employer
- 2 months may be transferrable to the other parent
- ***Does the employer need to accept an employees request for parental leave?***



## *Carers Leave*

### *What is it and who may avail of it?*

- any worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of care or support for a serious medical reason may avail of carers leave in order to provide personal care or support to such a person.

### *What is the statutory leave entitlement?*

5 working days unpaid leave

- Medical proof shall be provided by the carer, showing that the person the carer is caring for is suffering from an illness and is in need of care and support



# Itemised Payslip Regulations (S.L.452.116)

*...the employer shall be bound to give to his employees an itemised payslip...*

Which should include the following minimum information:

1. Details of the employer (name/address/registered office of the company)
2. Name of the employee,
3. Employee's designation
4. Period for work which the payslip covers
5. Total wages paid and the breakdown thereof,
6. Number of normal hours worked (including work on Sundays/ public holidays when part of the scheduled normal hours);
7. Number of hours at overtime or special rates (broken down into those in excess of normal daily/weekly hours, hours worked on a Sunday or on a public holiday);
8. Number of hours of annual leave availed of and any remaining balance;
9. Basic wages received;
10. Breakdown of any bonuses, allowances or commissions received; and
11. Any deductions effected, including N.I contributions, tax & others.





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PROGRAMME NAME]**





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