

Introduction: *An Employee-Centric Framework*



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Psychology

Today's Focus

Part 1: General Principles of Employment Law and Occupational Health and Safety

Part 2: Equality and Discrimination in Employment



Article 42 – Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta)

[...] if a contract of service between an employee and his employer [...], provides for any conditions of employment, including conditions relating to the termination of the contract, less favourable to the employee than those specified in or under this Act, they shall have effect as if for those conditions less favourable to the employee there were substituted the conditions specified in or under this Act:

[...] in exceptional cases, the employer in agreement with the employee [...] may provide for different conditions of employment than those specified in or under this Act as long as such agreement is a temporary measure to avoid redundancies and as long as it is approved by the Director, which approval needs to be reviewed every four weeks.



Ethical and Legal Considerations in Occupational Psychology



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Date: 20/10/2022



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Sources of Maltese Employment Law

1. Primary Sources
2. Secondary Sources
3. Other Sources



Basic Conditions of Employment

- Working hours and Overtime
- Protection of Wages
- Occupational Health and Safety
- Equal treatment and Non-discrimination



Working Hours and Overtime



1. Organisation of Working Time Regulations (S.L. 452.87)
2. Overtime Regulations (S.L. 452. 110)

However ...

Sectoral Minimum Conditions of Employment – Wage Regulation
Orders regulating the minimum employment conditions for employees working in specific sectors of the local labour market.



Organisation of Working Time Regulations (S.L. 452.87)

- Daily rest (Reg. 4) – minimum daily rest period of eleven (11) consecutive hours per 24-hour period, subject to certain exceptions.
- Rest breaks (Reg. 5) – of not less than 15 minutes when the working day is longer than 6 hours.
- Weekly rest (Reg. 6) – uninterrupted weekly rest period of 24 consecutive hours; or one period of 48 consecutive hours within a 14 day period; or two periods of 24 consecutive hours each within a 14 day period.





Can rest periods be substituted with monetary compensation?

No rest period can be substituted by monetary compensation. This practice is prohibited by law (S.L. 452.87, Reg. 14)

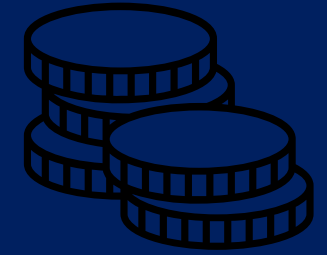


Maximum average working time (Reg. 7)

- Overtime – prerogative of the employer. Work conducted by an employee outside the normal hours of work.
- The employer can oblige an employee to work overtime when the total hours of work do not exceed an average of 48 hours a week.
- Hours of work exceed 48 hours a week – upon the written consent of the employee.



The EIRA - Wages



- Wages shall be paid in legal tender (i.e. money)
- Includes the remuneration on earnings and statutory bonuses
- Paid at intervals not exceeding 4 weeks
- Wages can also be paid in provisions of accommodation or food excluding alcohol or drugs, so long as this is given over and above the minimum wage at least.



- No conditions can be put on wages.
- Wages cannot be attached, save according to the provisions of Art 381, 382 and 849 Chapter 12 of the Laws of Malta.
- Wages cannot be deducted, except in those instances stipulated by law.
- Wages are privileged debts.



Dynamic Nature of Employment Law

The Work-Life Balance for Parents and Carers Regulations – S.L. 452. 125

- Minimum requirements in relation to:
 - paternity leave;
 - parental leave;
 - carers' leave; and
 - flexible working arrangements;
- Reconciling work and family life for parents and carers to achieve equality of opportunities at work between men and women and equal treatment at work.
- Contravening – penalty of €2000.





Health and Safety Legislation

Why is Occupational Health and Safety legislation needed?

- Prevention of industrial accidents, occupational diseases, deaths and stress;
- Devastating effects on the workers involved and their employers;
- Effects extend beyond the workplace
 - Family Life;
 - Society in general.



Occupational Health and Safety Authority Act (Chapter 424)

Applicable to:

- All work places
- All sectors of activity (i.e. public and private)
- Exceptions?



Duties of the Employer



- Ensure health and safety at all times of all persons who may be affected by the work being carried out for such employer;
- If employer enlists competent external services or persons, the employer shall not be discharged from his duties.
- The measures that need to be taken by an employer to prevent physical and psychological occupational ill-health, injury or death



General measures of prevention

- Avoidance of risk;
- Identification of hazards associated with work;
- Evaluation of those risks which cannot be avoided;
- Control at source of risks which cannot be avoided;
- Taking of all necessary measures to reduce risks;



- Giving collective protective measures priority over individual protective measures;
- Adapting the work to the worker;
- Adapting to technical progress in the interest of occupational health and safety;
- Develop coherent overall prevention policy.



- Where a sufficient number of workers are employed, the employer is to elect, chose or otherwise designate a person/s to act as the Workers' Health and Safety Representative/s;
- Representative should be consulted by the employer on matters which may affect occupational health and safety.



What do our Courts say?



“...huwa obbligu ta’ min iħaddem biex jipprovdi kundizzjonijiet li jassiguraw is- saħħa tal-ħaddiem fuq il-post tax-xogħol tiegħu.”

Kevin Mallia vs. Alfred Mizzi & Sons Ltd (Civil Court, First Hall
09/10/2003)



What do our Courts say?



“...huwa daqstant importanti fil-kuntest ta’ responsabilita’ li l-ambjent kollu fejn jaħdmu l-impjegati jkun tali li jwarrab l-iċken possibilita’ ta’ infortunji fuq ix- xogħol. Dan l-obbligu huwa ġeneralment rikonoxxut bħala dmir tal-employer li jipprovdi a ‘safe place of work’.

Christian Bugeja vs. Dr. Gerald Montanaro Gauci noe (Court of Appeal (Superior) 14/05/2004)



What do our Courts say?



“Illi fl-opinjoni ta’ din il-Qorti...is-soċjeta’ konvenuta meta ordnat lill-attur sabiex jagħmel xogħol li ma kienx impjegat biex jagħmel, naqset milli tipprovdi għalhekk lill-attur b’ post tax-xogħol ħieles minn kull sogru bla bżonn għas-saħħa tiegħu u minn perikli ohra...anzi bl-ordni tagħha ħolqot l-istess periklu”

Eugenio Cassar vs. Hallet Construction Company Limited (Civil Court, First Hall, 29/05/2001)



What do our Courts say?



“...qabel ma jintbagħt ħaddiem jaħdem fuq sit, minn iħaddem għandu l-obbligu ‘li tagħmel eżami jew spezzjoni semplici sabiex tara minn qabel li l-post u l-ambjent fejn ikun ser isir ix-xogħol huwa wiehed safe’

Joseph Gauci vs. Korporazzjoni Enemalta (Civil Court, First Hall, 10/10/2006)



What do our Courts say?



“The fact that the system adopted has been in use for years without incident, is not proof that the system is safe; the accident in question justifies this”.

Calleja vs. Fino (Civil Court, First Hall 10/10/1980) and Simon Chetcuti v Alec Mizzi et noe (Civil Court, First Hall 20/06/2002)



What do our Courts say?



“Min ihaddem ghandu jinzamm responsabbli meta ma jiehu x hsieb li jipprovd i ambjent li jassikura s- sahha tal-haddiem, u jrid ukoll jipprevedi u jipprovd i ghal fatt li l-haddiem ghandu tendenza li jitraskura r- riskji inerenti fix-xoghol tieghu.”

Kevin Mallia v Alfred Mizzi & Sons Ltd (Civil Court, First Hall, 09/10/2003)



Duties of Workers

- Safeguard one's own health and safety and that of other persons who can be affected by work being carried out;
- Cooperate with employer and the Health and Safety Representative/s on matters relating to health and safety.

HOW?



- Not interfere with or misuse anything provided for purposes of Health and Safety;
- Use work items correctly including personal protective equipment;
- Report safety risks and short comings.



What do our Courts say?



“Il-haddiem ghandu d-dmir li jinqeda bl-apparat ta’ sigurtà li jaghtih min ihaddmu, u jkollu htija hu wkoll jekk dak l-apparat ma jinqediex bih.”

Joseph u Victoria Pace v Enemalta Corporation et (Civil Court, First Hall 23/01/2003)



Work Places (Health, Safety And Welfare) Regulations (S.L. 424.09)

Notification of Accidents

- Any accident arising out of or in connection with work which results either:
 - in the death of or major injury to a person; or
 - In the case of an employee at work, in that employee being incapacitated for more than 3 consecutive (working) days:

Employer must notify accident and report to the Director of the DIER.



Duty to keep General Registers

- Keep particulars of accidents and disease occurring at work of which notice is required to be given to the Director;
- All reports and particulars requested by the Regulations;
- To be kept available for inspection for 2 years after date of last entry.



Young Persons at Work (S.L. 424.10)

- Young persons under 18 years;
- Employer's duties:
 - Carry out assessment of occupational risks and repeated upon a major change in the working conditions;
 - Medical examinations to certify young person is physical and mentally fit to carry out the work – at the employer's cost;
 - Adequate training;
 - Keeping of register with details of the young persons.



Protection of Maternity (S.L. 424.11)

- Duty of a pregnant employee to inform employer as soon as she becomes aware of it.
- Duty of the employer to assess nature of work and degree of hazard and resultant risk to:
 - the physical and mental health of the worker; and
 - to the safety of the pregnancy arising from the industrial processes used; and
 - from the presence of any chemical, physical or biological agent used at the employer's place of work.

To take place prior assigning work to a pregnant / breastfeeding employee or mother (up to 6 months from birth)



Other Important S.L.

- S.L. 424.13 - First Aid;
 - S.L. 424.14 – Display Screen Equipment;
 - S.L. 424.15 – Minimum Health and Safety Requirements;
 - S.L. 424.16 – Provision of Health and safety Signs;
 - S.L. 424.17 – Risk of Back Injury;
 - S.L. 424.18 – General Provisions for Health and Safety Provisions
 - S.L. 424.21 – Personal Protective Equipment
- Amongst others.



Other measures protecting the well-being of Employees

- Limitations on Restraint of Trade Clauses;
- Warnings and Suspension;
- Limitations on Changing Conditions of Employment.



Limitations on Restraint of Trade Clauses

- Not specifically regulated in terms of Maltese law – interpretation of the Maltese Courts through case law.
- *Attilio Vassallo Cesareo vs Anthony Cilia Piasni (Court of Appeal, Superior, 03/03/2006)* – a restraint of trade provision must be favourable to both (quid pro quo) and not only to one party)



- Must not be “impossible, or prohibited by law, or contrary to morality, or to public policy” (A. 985 Civil Code);
- Must protect the interests of both employer and employee equally (quid pro quo);
- Must be limited in time and scope;
- Must be designed to protect legitimate business interests (some advantage or asset) of the employer; and
- Must not be wider than what is reasonably necessary.



Warnings and Suspension

- EIRA and the Maltese Constitution protects the right to employment thus restricting the right of employers to dismiss employees.
- Condition of dismissal on a good and sufficient cause.
- Implementation and enforcement of disciplinary procedures (Disciplinary Policies) which follow the principles of natural justice:
 - Employees provided with details of breach;
 - The right to state one's case;
 - Case subject by an independent and impartial board.



Limitations on Changing Conditions of Employment

“... in exceptional cases, the employer in agreement with the employee or union representatives may provide for different conditions of employment than those specified in or under this Act as long as such agreement is a temporary measure to avoid redundancies and as long as it is approved by the Director, which approval needs to be reviewed every four weeks”

Article 42, Employment and Industrial Relations Act (Cap. 452, Laws of Malta



Lecture Title: Ethical & Legal Considerations in Occupational Psychology



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20/10/2022



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Introduction

- Every individual possesses characteristics which makes him different from others
- The more years go by, the more diverse our cultures will become – freedom of movement in EU
- Pre-EU and Post-EU era in Malta
- Diversity needs to be managed and protected
- Consequentially, discrimination or discriminatory behaviour is mitigated



Sources of Law

- Employment and Industrial Relations Act
- Equal Treatment in Employment Regulations
- Equality for Men and Women Act
- Bill 96 of 2019



Employment & Industrial Relations Act (EIRA)

Article 2

“**discriminatory treatment**” means any distinction, exclusion or restriction which is not justifiable in a democratic society, including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers’ association



EIRA - Article 26 (1)

- Unlawful to discriminate:
 - (a) when advertising or offering employment
 - (b) when selecting applicants for employment
 - (c) during employment with regards to conditions or dismissal



EIRA – Article 26(2)

- Discriminatory treatment:
 - (a) Employing a candidate who is less qualified than a person of the opposite sex
 - (a) Actions towards an employee, terms of payment or employment conditions less favourable than those applied to another employee in the same line of work
 - (a) An employer knowingly manages work, distributes tasks or arranges working conditions to hinder an employee's status



EIRA – Article 26(3)

Provisions of Article 26(1) and 26(2) shall not apply where actions are justified when taking into account:

- (a) the nature of the vacancy
- (b) the employment offered
- (c) where a required characteristic constitutes a genuine and determining occupational requirement
- (d) where requirements are established by laws or regulations



EIRA & Part-Time Regulations

- EIRA Article 34 – No discrimination between fixed term and indefinite contracts
- Part-time Employees Regulations Article 4 – Part-time employee shall not be treated less favourably than a full-time employee
- Remedy – Article 75 EIRA within four months



EIRA - Remedies

- Article 30 – Reference to the Industrial Tribunal within four months for breaches of Articles 26 – 29.
- Article 31 – Imprisonment for a term from six months to two years OR a fine of not less than €5,000 and not more than €10,000 for breaches of Articles 28 and 29.



Equal Treatment in Employment Regulations

- Promulgated in virtue of the EIRA
- Applicable to:
 - Access to employment (Recruitment)
 - Access to all types and levels of vocational guidance and training
 - Membership or involvement in any Union
 - Employment and conditions of employment



Equal Treatment in Employment Regulations

- Grounds covered:
 - Religion or religious belief
 - Disability
 - Age
 - Sex
 - Sexual orientation
 - Racial or ethnic origin
 - Gender reassignment
 - Pregnancy
 - Maternity leave
- } Article 3



Equal Treatment in Employment Regulations

- Applicable to:
 - Access to employment (Recruitment)
 - Access to all types and levels of vocational guidance and training
 - Membership or involvement in any organisation of employees or employers
 - Employment and conditions of employment



Equal Treatment in Employment Regulations

- NOT applicable to:
 - Differences of treatment based on nationality & without prejudice to TCN laws and conditions
 - The Armed Forces of Malta in so far as discriminatory treatment based on age and disability



Equal Treatment in Employment Regulations

- **Direct discrimination:** “where one person is treated less favourably than another is, has been, or would be treated in a comparable situation”
- **Indirect discrimination:** “where an apparently neutral provision, criterion or practice would put persons of a particular race or ethnic origin, or having a particular religion or religious belief, disability, age, sex or sexual orientation at a disadvantage when compared with other persons”



Equal Treatment in Employment Regulations

- Example 1

A business is looking to hire a personal assistant. In the job application form, there's a question asking if the applicant has any disabilities that will make doing the job difficult.



Equal Treatment in Employment Regulations

- Example 2

Kim moved to Malta from South Korea a year ago and started working as a hairdresser with a local company. A couple of weeks ago, she was fired from her job because she was not performing her duties well enough. A client who remained in contact with her informed her that she had overheard another client talking to Kim's ex-boss and thanking her for firing Kim because she only likes being served by Maltese workers.



Equal Treatment in Employment Regulations

- Example 3

A business is recruiting for a head of sales. The HR team only advertises the job internally. The only people who could apply for the job are all men.



Equal Treatment in Employment Regulations

- Example 4

A job advert for a salesperson states that prospective applicants must have spent a minimum of ten years working in the retail industry.



Equal Treatment in Employment Regulations

- Exceptions in Art. 4:
 - Characteristic constitutes a genuine and determining occupational requirement provided the objective is legitimate and the requirement is proportionate
 - There is no discrimination in cases of difference in treatment based on sex in access to employment when the particular occupational requirement is genuine and determining with legitimate objectives and proportionate requirements
 - Ethos based on a religion or religious belief, provided it is proportionate to apply in such that particular case



Equal Treatment in Employment Regulations

- Exceptions in Art. 5:

Difference in treatment on the ground of age is not discriminatory if:

- 1) The difference in treatment is objectively and reasonably justified by legitimate aim, such as an employment policy or labour market and vocational training objectives; AND
- 2) Means achieving that aim are appropriate and necessary



Discrimination by Association

- When someone is treated unfairly because of discrimination based on a protected characteristic of either someone they know or someone they're associated with, and not a protected characteristic they possess.
- May also be referred to as associative discrimination
- It is not found in the current enacted legislation, but it has been proposed through Bill No. 96 of 2019.



Discrimination by Association

Example

Alex has a close friend who had surgery to change their sex. After Alex's employer found out about the surgery, Alex's employer excluded him from work social events and started assigning him work which clearly puts Alex in a less favourable status than others working in his same position.



Discrimination based on Assumptions

- This occurs when discriminates against another person on the basis of assuming that such other person possesses a protected characteristic.
- For example:
 - Rehan is rejected for promotion to a supermarket buying team that sources wines. The employer believes Rehan is a practicing Muslim because of her name and they would therefore not want to work with alcohol. However, Rehan is not a Muslim



The Equality for Men and Women Act

- In comparison with the EIRA's definition of discrimination, this Act protects discrimination also because of family responsibilities, sexual orientation, age, racial or ethnic origin and gender identity, gender expression or sex characteristics.
- Protects employees from discrimination:
 - When awarding employment
 - When setting the terms and conditions on which employment is offered
 - When determining who should be dismissed from employment
 - When managing work, distributing tasks and giving promotions
 - When offering training
 - When altering working conditions when invoking one's own right
 - When offering training



The Equality for Men and Women Act

- According to Art. 5:

“It shall be the duty of employers, upon the request of any person claiming to have been sexually harassed or discriminated against, or upon a request made by the Commissioner acting upon a complaint or otherwise, to provide such person or the Commissioner, as the case may be, **within ten working days of such a request, with a report on the allegation made or the procedures used by the employers in the matter alleged to constitute such sexual harassment or discrimination**”



The National Commission for the Promotion of Equality (NCPE)

- The National Commission for the Promotion of Equality is appointed by the Equality for Men and Women Act
- NCPE is the main central authority which amongst other functions:
 - is responsible for overlooking the implementation of national policies with regards to equality and to identify
 - Is responsible to identify, establish and update all policies related to equality
 - Is responsible towards eliminating discrimination in Malta
 - Has the power to investigate complaints (including incidents on the workplace) and take action



The National Commission for the Promotion of Equality (NCPE)

- After carrying out an investigation, whether ex officio or after a complaint, the Commissioner may:
 - (a) Dismiss the complaint; OR
 - (a) Find that the complaint is proved and thereupon shall:
 - I. Where the action complained of constitutes an offence, file a report with the Police; OR
 - II. Where the action complained of does not constitute an offence, call the person against whom the complaint is directed to redress the situation and mediate between the parties to settle the matter



The Equality Bill – Bill No. 96 of 2019

- Has not been enacted yet – Committee Stage since 18th November 2020
- Consolidates the already enacted legislation and adds new concepts such as discrimination by association, discrimination by assumption
- Adds to the already existing protected characteristics
- Supremacy clause & exclusion of the right of conscientious objection generated lots of controversy



The Equality Bill – Bill No. 96 of 2019

- The protected characteristics are:

- 1) Age
- 2) Belief, creed or religion
- 3) Colour
- 4) Ethnic or national origin or race
- 5) Disability
- 6) Family responsibilities or pregnancy
- 7) Family or civil status
- 8) Gender expression or gender identity
- 9) Genetic features
- 10) Health status
- 11) Language
- 12) Nationality
- 13) Political opinion
- 14) Property
- 15) Sex or sex characteristics
- 16) Sexual orientation
- 17) Social origin



The Equality Bill – Bill No. 96 of 2019

- Discrimination may occur on a single ground or multiple grounds
- Direct or Indirect
- Instructions to discriminate
- Discrimination by association
- Discrimination on the basis of assumptions regarding the protected characteristic of a person
- Aiding, abetting or instigating discrimination included



The Equality Bill – Bill No. 96 of 2019

- Ordinary Discrimination - Discrimination on the basis on one protected characteristic
- Intersectional/Dual Discrimination – Discrimination on the basis of two or more protected characteristics

Example: A headscarf ban would discriminate against Muslim women.

Discrimination based on (1) Religion and (2) Sex.



Conclusion: Ensuring Well-Being and Diversity



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What can you do?

1. Written Policies
2. Implementation
3. Training
4. Ask for help
5. Communication



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