

## Lecture 4:

# Employment Law & the Various Entitlements:

Part 1

**Dr. Stefania Attard Montalto**

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# Agenda

1. Employment Relationship
2. Different elements of contracts of employment
3. Different types of contracts
  - i) Fixed term contracts
  - ii) Indefinite term contracts
4. Different types of workers



# Employment Relationship

“Employment”... implies a contractual agreement and relationship between the employer and employee, where the employee agrees to carry out *work for* the employer.

## Article 7 of the EIRA

On engagement of any employee, the employer shall explain to the employee the provisions of any recognised conditions of employment as may be applicable and shall deliver to the employee a written statement about such conditions as may be prescribed.



If contract of service or collective agreement provides for conditions of employment less favourable than those specified in according to the Act....

Article 42 of the EIRA:

...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:

Provided that, 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. (permit obtained)

There is no fixed template for an employment contract – this would typically be tailored depending on the nature / duration of the employment  
Certain **basic information** must always be included.



# Information to Employees Regulations, 2003, has been repealed and replaced with .... the **Transparent and Predictable Working Conditions Regulations, 2022**

Transposes Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union

AIM: to transpose minimum requirements relating to working conditions applicable to every worker in the European Union who has an employment contract or employment relationship as defined by the law, collective agreements

Applicable retroactively - **1st August 2022**

In the case of an employee who is already employed as at 1 August 2022, an employer shall provide docs referred to in reg 5(1) (info which should be provided to an employee) and 7 (info which should be provided in the case that the employee works outside Malta), only when requested by the worker who is already employed at this date.



## the **Transparent and Predictable Working Conditions Regulations, 2002** (New Regs) expand on the former Information to Employees Regulations, 2003 (Old Regs).

Old Regs provide that an employment relationship should be based on a written instrument between the parties:

Either in writing or verbal

But if verbal or if not all the info in the LN is put in the contract -> then a letter of engagement or written statement needs to be given by the employer to the employee

New Regs:

Employer to provide all info in the LN to employee in writing

Information to be provided on paper or electronic

A record should be kept by the employer that this info has been transmitted or received (ideally both)



Employers are required to inform workers of the essential aspects of the employment relationship. LN tells us that this info should AT LEAST include the following:

(a) **Details of employer and employee:**

Employer:

- The name,
- registration number and
- registered place of business

Employee:

- a legally valid identification document number,
- gender,
- address of the employee and
- place of work

(b) **Place of Work:**

If no fixed or main place of work = various places or free to determine his place of work + registered place of business

Where no registered place of business = domicile of the employer



(c) Title, Grade, Nature or Category or Work for which employee is employed

(d) A Brief specification or description of work (NEW)

(e) Commencement date of employment relationship

(f) In the case of fixed term contracts -> the end date or expected duration

(g) In the case of temporary agency workers - information on who the user undertaking they will be performing work for is (NEW)

(h) the period and conditions of Probation

(i) Training entitlement to be given by employer... if any (NEW)





(j) Amount of **Paid leave** the employee is entitled to (UPDATED)

- Old Regs covered different types of leave however New Regs provide a non-exhaustive list of different types of leave entitlements, including maternity/paternity/parental/carers/quarantine/jury ....
- Or where this cannot be indicated when the information is given, the procedures for allocating and determining such leave.....

(k) the **Procedure** to be observed, including formal requirements and notice periods where employment is terminated (UPDATED)

- Or where length of notice cannot be indicated when information is give, the method for determining notice period



(l) without prejudice to legislation in force laying down the minimum remuneration, overtime and special rates of pay,

the remuneration including initial basic amount, any other component elements if applicable, indicated separately, the frequency and method of payment, and the conditions under which fines may be imposed and quantum (UPDATED)

(m) If the work pattern is entirely or mostly predictable,

the length of the worker's standard working day or week and any arrangements for overtime and its remuneration and where applicable any arrangements for shift changes (UPDATED)



(n) If the **work pattern** is entirely or mostly unpredictable, the employer shall inform the worker of **(UPDATED)**:

- i. the principle that the work schedule is **variable**, the number of **guaranteed paid** hours and the **remuneration** for work performed in addition to those guaranteed hours;
- i. the **reference hours and days** within which the worker may be required to work;
- ii. the **minimum notice** period to which the worker is entitled **before the start of a work assignment** and, where applicable, the **deadline for cancellation** of the work assignment;



The Regs also provide that where a worker's work pattern is entirely or mostly **unpredictable**:

the worker shall not be required to work by the employer unless both of the following conditions are fulfilled:

- (a) the work takes place within **predetermined reference hours** and days as referred to and agreed by and between the parties in terms of their contract/statement/engagement; and
- (b) the worker is informed by his employer of a work assignment within a **reasonable notice period** as referred to agreed by and between the parties in terms of their contract/statement/engagement:

Provided that a reasonable notice period shall be not less than that stipulated by law, according to the length of the work assignment. Different notice periods apply to different assignments having different durations.

Where one or both of these conditions are not met, a worker shall have the right to refuse a work assignment without adverse consequences.



A worker who has carried out work on an unpredictable work pattern with the same employer for at least 6 months and who has completed his probationary period, if any,

may request his employer a form of employment with more predictable and secure working conditions where available and receive a reasoned written reply.

The employer shall provide the reasoned written reply within **1 month of the request**:

Provided that in the case that the employer is a natural person or a micro, small, or medium enterprise, the deadline for the provision of the reasoned written reply shall be **no more than 3 months** of the request and

In the case that the same worker makes a subsequent, similar request, the employer may make an oral reply if the justification by the employer for the reply regarding the situation of the worker remains unchanged.



(o) any **collective agreements** governing the worker's conditions of work or in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of such bodies or institutions within which the agreements were concluded **(UPDATED)**:

(p) where it is the responsibility of the employer, the **identity of the social security institutions receiving the social contributions** attached to the employment relationship and **any protection relating to social security provided by the employer. (NEW)**

(q) any other relevant or applicable condition of employment;



In the case that certain information previously provided is missing from the contract of employment, such information shall be provided individually to the worker in the form of 1 or more documents during a period starting on the **1<sup>st</sup> working day** and ending no later than the **7<sup>th</sup> calendar day**:

While other information may be provided in a separate document within the period of **1 month** from the 1<sup>st</sup> working day.

In the case of workers working outside of Malta for more than 4 consecutive weeks, the following information should be provided to the worker before leaving Malta:

- a) The country/ies where the employee is to work abroad and the anticipated duration
- b) The currency the employee will be paid in
- c) Benefits in cash/in kind relating to the work assignment abroad
- d) Any information regarding repatriation if this is included and if so, the conditions relating to such repatriation

Where the worker has not received all or part of the relevant information the employee has a right to receive, the worker may submit a complaint to the DG who shall investigate the matter and order the employer to provide the worker with the missing information.

Right to redress and protection against adverse treatment or consequences





Records to be kept by Employers:

**(i) Copies of written contracts/statements/letters of engagement of each worker**

**(ii) Employee register including the following information for each employee:**

- a) the name, address, gender, a legally valid identification document number and date of birth of the worker;
- b) the occupation of the worker;
- c) the date of commencement of employment;
- d) the nature of the contract of employment namely whether the contract is indefinite or fixed term and if fixed term the date of termination;
- e) the time, paid for at ordinary time rates;
- f) the time, paid for overtime or higher rates;
- g) the periods of daily and weekly rest accorded to the worker;
- h) the periods of leave accorded to the worker;
- i) the total wages paid to the worker each week; and
- j) any change or update in the conditions of the worker's occupational status.

(iii) The Employer has a duty to provide the DIER Director General (DG) with any information the DG may request relating to conditions of work



(iii) The Employer has a duty to provide the DIER Director General (DG) with any information the DG may request relating to conditions of work – including but not limited to:

- (a) the name, gender, a legally valid identification document number and address;
- (b) the occupation;
- (c) the date of birth;
- (d) the wages paid;
- (e) the hours of work;
- (f) the date of engagement;
- (g) a copy of the registers or part thereof, kept according to these regulations; and
- (h) any other information which the DG may request regarding conditions of workers' employment



No condition of employment can be modified or amended after the commencement of employment,  
unless such modification or amendment is a result of a change in laws, regulations or a collective agreement

An employer ***may not prohibit*** a worker from taking up employment with other employers, outside the work schedule established with that employer, nor subject a worker to adverse treatment for doing so.

However, an employer may prohibit a worker from taking up employment with other employers on the basis of ***objective grounds***, such as health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interest



## *Different types of employment contracts*

What is the main difference?



Fixed and indefinite term contracts are largely the same in nature and the same conditions of work apply to both

**Cannot discriminate** between employees having different types of contracts and cannot be treated in a less favourable manner than comparable employees...

**UNLESS...**

An employer may differentiate between the conditions of employment of an employee on a fixed term contract and a comparable employee on a contract of service for an indefinite time, if:

- (a) the difference arises in view of the recognition of **length of service, experience, qualifications or conditions of pay and work** attached to the contract of service immediately preceding the contract of service for a fixed term, and such other differences as are **justified on objective grounds**; or
- (b) the task for which the employee has been employed **is specific or has a top management nature and includes objective considerations** which justify such differentiation.



## Fixed Term Contract

- A **fixed or definite term contract** is a contract of service where the end of the contract is determined by either:
  - (i) reaching a specific date;
  - (ii) by completing a specific task;
  - (iii) through the occurrence of a specific event.

## Indefinite Contract

- An **indefinite term contract** has a fixed commencement date, but no pre-determined date of termination.

Difference in term and duration

=

Difference in termination



## Fixed term contracts

- Duty of employer to inform employees on a fixed term contract of vacancies of indefinite term positions which become available in the place of work and to give employees the same opportunity as other employees

### Termination :

- If any one of the parties would like to terminate a Contract of Employment with a Fixed Term prior to the expiry of the established term, the terminating party has to pay to the other a **penalty** - a sum equal to half the wages that the employee would have earned in the remaining period of employment

### Certain timing issues / considerations:

- An employee whose fixed term contract has expired but remains in employment will be considered to be under an **indefinite contract** if the employer does not produce a new contract of service **within 12 working days** following the expiry of the previous contract.
- A fixed term contract will also be transformed into a contract of service for an indefinite term if:
  - (a) the employee has been continuously employed under such a contract for a fixed term in excess of a period of **continuous** employment of **4 years** (even if there is more than 1 fixed term contract); **and**
  - (b) the employer cannot provide **objective reasons to justify the limitation of a renewal** of such a contract for a fixed term.



**Objective grounds for extending fixed term contract past 4 years ->** based on precise and concrete circumstances characterizing a given activity. Such circumstances may result, in particular, from the specific nature, or from inherent characteristics, of the tasks to be performed in the fixed term contract, and may, where appropriate,

Includes instances where:

- (a) was employed as a casual substitute or similar employee on a back to back basis or as a temporary substitute employee;
- (b) occupies –
  - (i) a top management position, or
  - (ii) a position where the maintenance of a higher level of trust is necessary by virtue of the nature of the position or where a higher level of trust is objectively an essential element of the employment relationship;
- (c) was employed by means of an appointment made to safeguard particular security or economic interests of the State:

Provided that this shall only apply when the employee is granted a contract of employment for a minimum period of two years;

- (d) was employed on temporary assignments in missions or postings abroad for a duration not exceeding 6 years;
- (e) was engaged to serve as a person of trust of a particular individual who himself holds an office of a temporary nature such as persons engaged to serve in the office of holders of publicly elected office.





Deemed to be **“continuously employed”** if:

- i) fixed-term contract renewed within six months from their termination. In this case the period in between the contracts shall be included in the calculation of the 4 year qualifying period
- ii) if the tasks under the subsequent contract are substantially the same as the tasks under the previous contract of employment
- iii) If contract will remain fixed – contract should include, in writing, the objective reasons, if any, why the contract to be entered into should not be converted into one of indefinite duration if the employee is continuously employed on one or more successive fixed-term contracts for a period exceeding four years



# Indefinite term

- Employment without time limit/expiration date
- Cannot change from an indefinite to a definite term contract

How can I terminate?

- (i) If I am an employee: By providing my employer with notice
- (a) for more than one month but not more than six months ..... one week;
  - (b) for more than six months but not more than two years ..... two weeks;
  - (c) for more than two years but not more than four years ..... four weeks;
  - (d) for more than four years but not more than seven years ..... eight weeks;
  - (e) for more than seven years, an additional 1 week for every subsequent year of service up to a maximum of twelve weeks;
  - (f) or such longer periods as may be agreed by the employer and employee in the case of technical, administrative, executive or managerial posts.



# Indefinite term

- A contract may provide for longer notice periods - but not shorter .
- When does notice begin to run?
- Does notice apply in definite term contracts?
- What is garden leave?
- Are employees entitled to sick leave during notice?
- Does leave entitlement accrue during notice?
- Can an employee use leave during notice periods?
- Can a resignation be made verbally?
- Can an employee withdraw notice of resignation?



# Indefinite term

How can I terminate:

(ii) If I am the employer:

The Employer may **only** terminate a contract of employment on the basis of:

**I. Good and Sufficient Cause**

**II. Redundancy; or**

**III. the employee reaching Retirement age.**



## Good and Sufficient Cause (GSC)

- No clear definition in terms of law – but – the law tells us what cannot be considered as GSC:
  - (a) that the employee at the time of the dismissal was a member of a trade union, or is seeking office as, or acting or has acted in the capacity of an employees' representative; or*
  - (b) except in the case of a private domestic employee, that the employee no longer enjoys the employer's confidence; or*
  - (c) that the employee contracts marriage; or*
  - (d) that an employee is pregnant with child or is absent from work during maternity leave; or*
  - (e) that the employee discloses information, whether confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by his employer or by persons acting on the employer's name and interests; or*



## Good and Sufficient Cause

*(f) that the employee has filed a complaint or is participating in proceedings against the employer involving alleged violation of laws or regulations or is having recourse to competent administrative authorities; or*

*(g) that the business in which the employee is engaged has undergone a transfer of ownership, unless he proves that the termination is necessary for economic, technical or organisational reasons entailing*

*changes in the workforce*

All of the above are **not** good causes for termination in themselves though it can be argued that they are if there is abuse or special circumstances.



# Restrictions on Termination

## Injury

A contract of service shall not, except with the consent of the employee, be terminated by the employer during any period of **incapacity for work** of the employee caused by personal injury by **accident arising out of and in the course of employment** or by any of the **occupational diseases** specified in the Social Security Act in each case occurring in the service of that employer:

Provided that –

(a) during such period of incapacity wages less injury benefit payable under the Social Security Act not including any benefit for permanent disability shall accrue in favour of the employee as may be provided by or under any recognised condition of employment as defined in Part II of Title I of this Act; and

(b)



# Restrictions on Termination

## Injury

(a) the provisions of this sub-article shall not apply beyond the first twelve calendar months of incapacity (as discussed during last session... 1 year injury leave).

On the cessation of the incapacity for work the employer shall, within **21 days** from an application made by the employee, re-instate the employee in his former employment or, if the injury or disease has caused a disablement rendering the employee unfit for the former employment, in other suitable employment:

Provided that the application for re-instatement by the employee shall be made in writing within 7 days of the cessation of the incapacity for work.

## Maternity

A whole time female employee shall not be dismissed by the employer during the period of her maternity leave or the period of 5 weeks following the end of such leave in which she is incapable for work owing to a pathological condition arising out of confinement.





## G&S cause vs unfair dismissal:

- Termination on grounds of G&S cause should be serious
- An employer should have proof to substantiate dismissal
- Disciplinary proceedings – should have a procedure in place and the employee should be given prior warnings prior to dismissal
- Not currently codified but emanating from case law
- Where employment is terminated by the employer for good and sufficient cause, the employer is not required to give advance notice of termination and/or pay the employee for any wages relating to such notice period or the unexpired period of a definite term agreed upon.
- If no proof/if employee deems it unjust -> may lodge a complaint to industrial tribunal within 4 months from alleged breach on grounds of unfair dismissal

What is Constructive dismissal?



## Redundancy

- Employees may be made redundant in a situation where their role and responsibilities have been abolished and there is no need for them to remain employed anymore.
- Redundancy = required to terminate the employment of that person who was engaged last in the class of employment affected by such redundancy (“**Last In First Out**”)
- Employee has a right to be re-employed if the post formally occupied is again made available within a period of one year from the date of termination. The conditions of work may not be less favorable
- An employee would be deemed to have continued in his employment notwithstanding the said termination if he is re-employed within one year
- Maltese law provides that an employee who is made redundant is only due his notice period pay
- An employee being made redundant should be permitted to work their notice – if not, then the employer should pay the employee a sum equal to full notice period unworked.



## Collective Redundancy

- Within a period of 30 days, an employer terminates on grounds of redundancy:
- 10 or more employees in establishments normally employing between 20- 99 employees
- 10% or more of employees in an establishment normally employing between 100-299 employees
- 30 or more in establishments employing 300 employees or more
- An employer considering collective redundancy has the duty to notify and consult with the employee representative and inform the DG at the DIER (specific information should be provided eg number of employees, reasons for redundancy and criteria for going about the redundancy)
- Consultation with the employee representative should commence within 7 days from the day of notification. What is consultation ?
- The aim is to reduce redundancies as much as possible and to try to discuss the best way forward



## Retirement Age

- An employer can terminate the employment of an employee when the employee reaches pension age as defined in the Social Security Act but, an employer may not terminate the employment of a female employee born on or before the 31st December 1951 before she reaches 61 years of the age.
- What if an employee is retained after pension age?
- What if an employee is employed after having reached pension age?

## What is required upon termination:

- Outstanding/unpaid salary
- Bonus/allowances
- Unused vacation leave

What happens if employee abandons employers service without working notice?



## Settlement Agreement

- If both parties agree to the termination, it is possible to terminate the employment contract by mutual consent. The terms and conditions of the termination may be, and usually are, incorporated in a settlement agreement signed by both parties.
- Is this regulated by law?
- What does it generally entail?
- Settlement payments are often calculated in terms of wage, eg: 2 weeks' pay or 2 months' pay
- It is essential that the payment period established in the agreement is adhered to
- Such payments are not made via payslips



# Different types of employment

Different types of employment to suit different types of workers

## What are some typical types of workers?



# Different types of workers

[INSERT STUDY PROGRAMME  
NAME]

**Full time:** A worker who works an average of 40 hours per week and generally 8 hrs a day for 5 days a week.

**Part-time:** A part-time contract is a form of employment that carries fewer hours per week than a full-time job. Part-time workers are entitled to the same rights of full-time workers on a pro-rata basis. On average a part-timer works around 20 hours a week.

**Full time reduced:** a whole-time employee who in agreement with the employer works for less than the number of hours of work applicable in terms of the recognised conditions of employment to a whole-time employee, provided that such employment is the principal employment of the employee, in respect of which social security contributions are payable.



# Different types of workers

[INSERT STUDY PROGRAMME  
NAME]

## *Part-time*

The EIRA defines a part-time employee as an employee whose normal hours of work, calculated on a weekly basis or on an average over a period of employment of up to one year, are less than the normal hours of work of a comparable full time employee and who is not a whole-time employee with reduced hours.

- Basic Principle – is that part-time employees shall not be treated in a **less favourable manner** than comparable whole-time employees solely because they work part-time unless different treatment is justified on objective ground.
- Part-timers are always entitled to **Pro-Rata Benefits**. This is computed in hours as a fraction of the total number of hours entitled to a comparable full- time employee.
- The pro-rata is calculated as the proportion that the number of weekly hours worked by the part-time employee against the number of the normal weekly hours worked by a full-time employee performing the same work.
- Separate tax implications are applicable to part-time employees.





# Different types of workers

[INSERT STUDY PROGRAMME  
NAME]

- **Flexi-work:** All working parents with children up to at least 8 years old and all carers will have the right to request the following flexible working arrangements:
  1. Reduced working hours
  2. Flexible working hours
  3. Flexibility on the place of work

**Telework:** a form of organising and, or performing work, using information technology, in the context of an employment contract or relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis

**Digital Platform work:** any work organized through a digital labour platform and performed in Malta by a person on the basis of a contractual relationship between the digital labour platform and the person, or on the basis of a contractual relationship between the work agency and the person who is assigned to or placed at the disposal of any digital labour platform or multiple digital labour platforms by the work agency, in each case irrespective of whether a contractual relationship exists between the person and the recipient of the service



## Different types of workers

**Portfolio worker:** may have a variety of different clients that they offer different services to, or they may work part-time for a company and have their own business as well.

**Outworker:** a person to whom articles, materials or services of any nature are given out by an employer for the performance of any type of work or service where such work or service is to be carried out either in the home of the outworker or in some other premises not being premises under the control and management of that other person

**Zero hour contract/Casual worker:** an employee is only guaranteed work when it is needed, and there is no expectation that there will be more work in the future an employee is only guaranteed work when it is needed, and there is no expectation that there will be more work in the future

**Freelancer:** person who works for themselves, rather than for a company. While freelancers do take on contract work for companies and organizations, they are ultimately self-employed.

**Temps:** a worker who enters into a contract of employment or relationship with a temporary work agency and who is assigned to a user undertaking who uses the agency, to work temporarily under its supervision and direction

**Posted worker:** a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works



# Different types of workers

***Self-employed persons***: all persons pursuing a gainful activity on their own account;

It should be noted that when considering the employment status of a person who is nominally self-employed and is *prima facie* **not** considered as an employee, it shall be presumed that there is an employment relationship and that the person for whom the service is provided is the employer and that the provisions of the Act and of the regulations or orders issued shall apply to that relationship if at least five of eight criteria are satisfied in relation to the person performing the work

**Eg:**

- 1) the person depends on one single person for whom the service is provided for at least 75% of his income over a period of one year;
- 2) the person depends on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;
- 3) the person is subject to a working time schedule or minimum work periods established by the person for whom the service is provided;





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