

Employment and Industrial Relations Law

Sources of Employment Law and Overview of the Employment and Industrial Relations Act

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Diploma in Law (Malta)



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Sources of Employment Law

- Maltese law is segmented into chapters, with subsidiary law emanating from each chapter
- The chapters are referred to as “Acts” (issued through Parliament as ‘acts of parliament’)
- Subsidiary law can be of various types, and is often issued at ministry level



Chapter 452

- Cap 452 of the Laws of Malta – the Employment and Industrial Relations Act (EIRA)
- Subsidiary laws enacted under the EIRA regulate specific sectors and topics in employment law, such as:
 - Leave
 - Working Time
 - Work-Life Balance
 - Collective Redundancies



Sectoral Subsidiary Laws

- Working hours & overtime
 - Organisation of Working Time Regulations
 - Overtime Regulations
 - WROs
- Written statement of particulars
 - Transparent and Predictable Working Conditions Regulations
- Collective Agreements
- Any orders and regulations made under the EIRA – non-compliance is an offence



A slight exception...

- Health and safety is not directly regulated under the EIRA
- Occupational health and safety falls under the auspices of the OHSa (Occupational Health and Safety Authority) which is regulated by the OHSa Act – Cap 424 of the Laws of Malta
- The OHSa contains various subsidiary laws on health and safety at the workplace



Wage Regulation Orders

- Specific subsidiary laws which legislate on specific conditions in special sectors
- May carry different entitlements with regard to working time, overtime pay, sick leave etc.
- Examples of industries: tourism, professional offices, manufacturing, cleaning, private security etc.



The EIRA

ARRANGEMENT OF ACT

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Interpretation – some important definitions

"collective agreement" means an agreement entered into between an employer, or one or more organisations of employers, and one or more organisations of employees regarding conditions of employment in accordance with the provisions of any law in force in Malta



Interpretation – some important definitions

"contract of service" and "contract of employment" means an agreement, (other than service as a member of a disciplined force except as may be provided in or under this Act) whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for wages, and, in so far as conditions of employment are concerned, includes an agreement of apprenticeship



Interpretation – some important definitions

(cont...)

Provided that unless otherwise specifically referred to in another law, in this Act or in any regulations made under this Act, irrespective of the declared nature of the relationship, whenever the employer exercises effective direction, control and choice over the nature of the work or the tasks being or to be performed by a person for the employer, that relationship shall be considered to be one of a contract of service and the person carrying out the work shall be deemed to be an employee of the employer



Interpretation – some important definitions

"employee" means any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service



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The Employment Relations Board

- Chairperson
- DIER Director
- 4 employee representatives
- 4 employer representatives
- 3 other representatives appointed by the minister



The Employment Relations Board

- The board has an important role as a social partner to the governmental level, providing advice and recommendations on matters relating to employment law and policy
- Carries out review functions on legislation



Wages

- Wages may be paid in legal tender (i.e. money)
- Wages can also be paid in provisions such as accommodation or food (excluding alcohol or drugs), so long as this is given over and above the minimum wage at least



Protection of Wages

- Can conditions be put on wages?
- Can wages be deducted or attached?
- Is wage deduction permissible?
- When are statutory bonuses paid out?
- What about whole-time employees on reduced hours, or part-time workers?
- What happens if an employee is not paid their wage?
- Can employees be fined or have their wages docked?
- What conditions must exist for an employee to be fined?



Guarantee Fund

- The Guarantee Fund is set up as an emergency fund for the payment of wages, overtime, leave payments and notice due to employees who've lost their job due to their employer's insolvency.
- The maximum claim one can make is up to **13 weeks' minimum wage**
- Applications (with evidence) are to be made to the Chairperson of the Fund's Board



Guarantee Fund

- If, during liquidation of the employer, the employee receives some money, an equal amount to that received needs to be paid back to the fund
- Persons lodging false claims will incur a fine *multa*



Discrimination

‘Discrimination’ in the EIRA:

“ ... 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.”



Discrimination

When can discrimination occur?

What constitutes discriminatory treatment?

- Gender inequality
- Equal pay for equal work of equal value (*applies across the board, not simply re gender inequality – see Grezzju Azzopardi vs. PBS Ltd, Industrial Tribunal, 2012*)
- Sexual harassment
- Victimisation

Discrimination

An employee who believes s/he have been discriminated against may lodge a claim for **compensation** before the Industrial Tribunal within 4 months from the alleged breach.

Punishments for harassment or victimisation may even result in a fine *multa* or even a prison sentence.



Duration of Employment

- Is the contract **fixed term** or **indefinite**?
- Can conditions in one's contract be worsened at any time? What if your employment is terminated (for whatever reason) and you're re-employed within 1 year?
- Can an indefinite contract change to a fixed term contract?
- What happens once a fixed term contract expires? – Remember the 12-working day rule!





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Probation

- A 'test' period – either party can terminate the employment without repercussions
- Length of the period varies from 6 to 12 months depending on various factors
- 1 week notice (except if in the first month) – what if probation is longer than 6 months?
- In fixed term contracts, probation must be proportionately calculated
- Can be suspended in specific cases



Termination of Employment - Article 36

- Redundancy
 - No need to provide a reason
 - Notice must be paid as usual
 - Last in first out (LIFO) rule
 - Re-employment within 1 year if possible



Termination of Fixed Term Employment

- Early termination incurs a penalty of half the remaining salaries to be paid for the remainder of the agreement
- Exception – good and sufficient cause – but what does this mean?



Termination of Indefinite Employment

The law sets down **minimum** notice periods for indefinite contracts:

- 1 month - 6 months: **1 week**
- 6 months - 2 years: **2 weeks**
- 2 years - 4 years: **4 weeks**
- 4 years - 7 years: **8 weeks**
- Over 7 years: **8 weeks + an additional week for each year, up to a maximum of 12 weeks**

A contract may however provide for longer (but not shorter!) notice periods.



Termination of Employment - Article 36

- What happens when the employer gives notice, or fails to do so?
- What happens when the employee gives notice, or simply abandons his service?
- In what case can one terminate without notice?



Termination of Employment - Article 36

- What is the 6 month-gap rule?
- Can termination occur during a period of **incapacity** to work, or during **maternity leave**?
- Can a woman not return to work after maternity leave, or resign shortly after returning to work?



Collective Redundancies

- Specific regulations exist on the subject
- Employee representatives must be notified of the plan to effect collective redundancies, and may negotiate and make proposals



Transfer of Business

- Specific regulations exist on the subject
- The EIRA refers to:
 - Employee representatives consultations
 - Retention of employees on the same conditions
 - Collective agreements to be continued until expiry
- To be discussed further on in this presentation in further detail



Certificate of Service

- An employee whose employment is terminated may request a certificate of service indicating:
 - The duration of employment
 - The nature of work carried out
 - The reason for termination (if requested)
 - Rate of wages paid (if requested)



Article 42 - Conditions Less Favourable

- Employers cannot impose conditions on employees which are less favourable than those provided for in the law
- **An exception** exists where the employer can prove that such action is taken to avoid effecting redundancies (the employees affected must acceded to any proposed changes)



Article 42 - Conditions Less Favourable

- A permit needs to be formally obtained from the DIER (with justifications), which must be renewed every 4 weeks
- Prior to effecting changes, such as reduction of working hours/days, available leave balances should be used up (forced leave)



Enforcement

- Inspectors have the power to:
 - To enter employer premises for inspections
 - To carry out any inspection necessary to ensure compliance with the law, including interrogation of employer or employees, and the requirements to present any books, registers or other documents as required by the EIRA
- Inspectors should give notice, unless it may be prejudicial
- No person may give false answers, fail to produce required documentation, prevent persons from appearing before the inspectors, or in any way obstruct the inspection



Penalties

- A fine *multa* of between €232.94 and €2,329.37 may be imposed on any employer contravening the EIRA or other regulations
- The employer may be made to pay employees any amount due in the case that such employer:
 - fails to pay the minimum wage or statutory bonuses
 - made illegal wage deductions
 - withheld remuneration or payment in lieu of notice
 - prohibited vacation leave
 - failed to pay any other money due to employees



The Industrial Tribunal

- Composition
- Chairpersons
- Reference
- Jurisdiction
- Unfair dismissals & Discrimination
- Procedure
- Powers
- Bear great similarity to those of the superior courts (particularly as regards the calling of witnesses to testify under oath)



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