

Overview of Employment Law

Dr Ann Bugeja

Date: 7th November 2023



Agenda

1. Main Sources of Employment Law;
2. Employment Relationship;
3. Different Entitlements;
4. Transparent and Predictable Working Conditions;
5. Different Types of Employment Contracts;
6. Terminations;
7. Industrial Tribunal.



A stack of three books is positioned on the left side of the frame. The top book is a dark red or maroon color. The middle book is a light beige or cream color. The bottom book is a dark blue or black color. To the right of the books, a rolled-up document or scroll is visible, tied with a white string. The entire scene is set against a dark blue background.

Main sources of employment law

Main sources of employment law

- The Constitution of Malta;
- The Employment and Industrial Relations Act (EIRA) & other Regulations;
- Wage Regulation Orders (WRO);
- Collective agreements;
- Contracts of employment;
- Company policies.



Employment Relationship



The EIRA defines “Employment” as:

...any relationship whereby *one person does work or performs services for another*;

“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 in a personal capacity or as a contractor.



Entitlements

A blue-tinted photograph of a mountain landscape. In the foreground, there is a wooden fence made of horizontal rails and vertical posts, situated in a grassy field. Behind the fence, a dense forest of evergreen trees covers the lower slopes of a mountain. In the background, a large, rounded mountain peak is visible under a clear sky. The overall scene is serene and natural.

Entitlements | *Annual Leave*

Award in Introduction to Business Law



Every employee with a 40-hour working week is entitled to paid annual leave of at least the equivalent in hours of 192 hours.

- 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.

Entitlements | *Sick Leave*

Award in Introduction to Business Law



Leave granted to the employee without loss of pay, whenever an employee presents a medical certificate certifying incapacity for work.

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

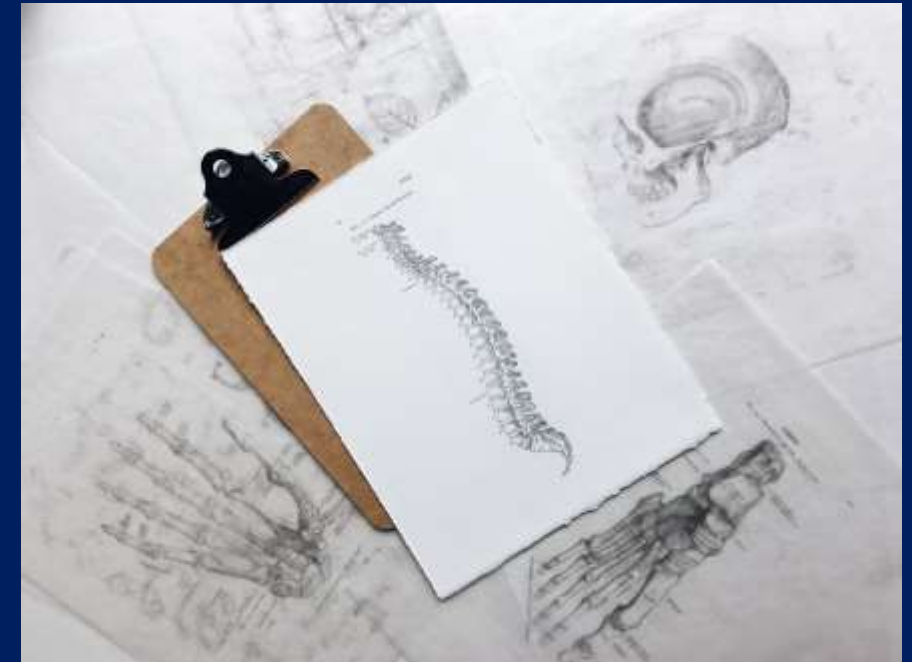
E.g.

- 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

Entitlements | *Injury Leave*

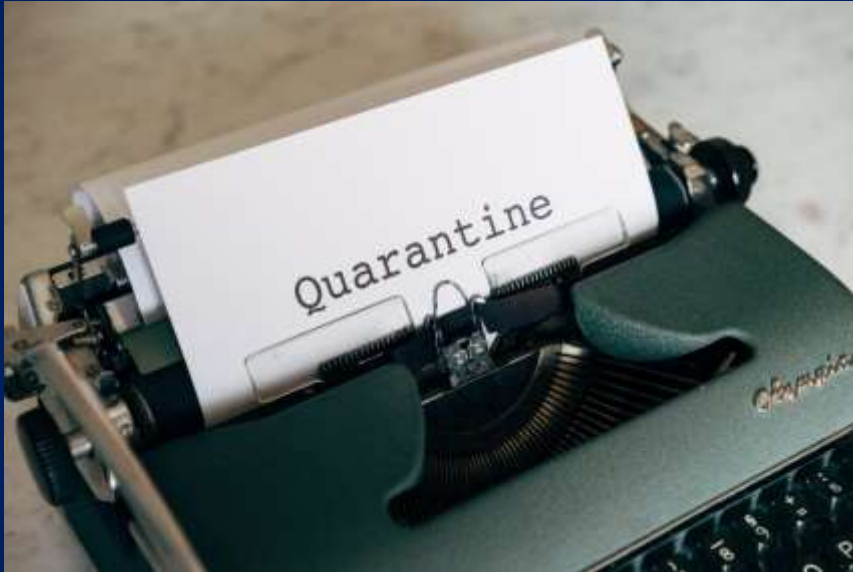
Award in Introduction to Business Law

- 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.
- 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.



Entitlements | *Quarantine Leave*

Award in Introduction to Business Law



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.

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



Entitlements | *Maternity Leave*

- 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.
 - I. 6 weeks immediately after the date of confinement;
 - II. 4 weeks before the expected date of confinement unless otherwise agreed, in which case the remainder would be availed of after confinement;
 - III. Remaining balance as the employee wishes.



Entitlements | *Special Maternity Leave*



- Employees who are pregnant, breastfeeding or who have recently given birth, who could be exposed to a risk or be conducting 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.

Entitlements | *Adoption Leave*

- *Applies to employees who have adopted a child does NOT apply where the person adopted is the natural offspring of either parent.*
- *Consists of 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 longer period*
- *commences when the child passes into the care/custody of the adoptive parent/s by means of a judgment in the country of origin.*
- *A single parent may avail of the full period of adoption leave*
- *When more than 1 parent: it 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 or the same employer, on the date of adoption, each parent is entitled to such part of the adoption leave as they may agree in writing.*



Entitlements | *Medically Assisted Procreation*

Award in Introduction to Business Law

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 of leave.



Entitlements | *Other forms of leave*

Award in Introduction to Business Law

<i>Marriage Leave</i>	2 working days
<i>Bereavement Leave</i>	1 working day
<i>Jury Services Leave</i>	As long as necessary on full pay
<i>Urgent family Leave</i>	15 hours with full pay

When is urgent family leave 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



Work-Life Balance for Parents and Carers Regulations (S.L. 452.125)

Transposing EU Directive 2019/1158 on Work-Life Balance for Parents and Carers and repealing Council Directive 2010/18/EU.

Transposed in Malta in July 2022.

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

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.

- 10 working days paid leave, immediately after the birth or adoption of the child
- Irrespective of:
 - Length of service
 - Marital/family status





Parental Leave

- Entitlement available to all employees – birth, custody, adoption, fostering of child until they reach 8 years of age;
- 12 months continuous service, whether indefinite or definite (including successive fixed term contracts);
- Agreed dates of leave must be respected by both parties.
- Under the new law, 2 months may be transferred from one parent to another.

Parental Leave

Parental leave shall be paid at sickness benefit rates in the following manner:

Parental leave can be postponed via request:

- Seasonal work;
- No replacement;
- Employment is strategic;
- Small businesses (10 persons) (alternatives may need to be discussed);
- If many apply for parental leave at once.
- Written justification to be given within 2 weeks from request if denied;
- Other flexible arrangements must be considered prior to postponement.

(a) fifty per centum (50%) of entitlement will be paid, where the child or children for whose care parental leave was granted has or have not attained four (4) years of age;

(b) twenty five per centum (25%) of entitlement will be paid, where the child or children for whose care parental leave was granted has or have attained the age of four (4) years but has or have not yet attained the age of six (6) years; and

(c) twenty five per centum (25%) of entitlement will be paid, where the child or children for whose care parental leave was granted has or have attained the age of six (6) years but has or have not yet attained the age of eight (8) years:

Start of Parental Leave

Once the employee provides:

- Birth certificate (*only parental*);
- Proof of foster placement;
- Proof of start of successful adoption.

Termination during Parental Leave

If notice of termination is given during parental leave (by either party), parental leave is automatically suspended.



Carers' Leave

Carer: 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.

Relative: a worker's son, daughter, mother, father, spouse or, partner in civil partnership.

Consists of:

- 5 working days;
- Unpaid;
- Evidence of individual's illness and requirement of care and support shall be requested.





*Transparent and Predictable Working
Conditions*

Transparent and Predictable Working Conditions (S.L. 452.126)

Ensure minimum requirements relating to working conditions applicable to every worker in the EU.
'Directive on transparent and predictable working conditions (EU/2019/1152)';

Replaces the Information to Employees Regulations of 2003 which had implemented the Written Statement Directive (91/553/EEC);

Provision of information by the employer to the employee –**in writing** –on paper or if it can be accessible to the worker, that it can be stored and printed and employer retains proof of transmission or receipt, in electronic form;

Employers must provide information to employees of the essential aspects of the employment relationship.

Transparent and Predictable Working Conditions

- Cut-off date –1st August 2022;
- 1/8/22 onwards –contracts need to comply with the new requirements;
- Prior to this date –contracts need to comply with the Information to Employees Regulations (now repealed) BUT employee can make a request to receive the additional information;
- Regulations also apply to seafarers with some exceptions.



Information to be provided

- A. The name, registration number and registered place of business of the employer and a legally valid identification document number, gender, and address of the employee and the place of work;
- B. The place of work. Where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his place of work, and the registered place of business or, where appropriate, is the domicile of the employer;
- C. The title, grade, nature or category of work of employee
- D. Brief specification /description of the work;
- E. The date of commencement of the employment relationship;
- F. In the case of a fixed-term contract, the end date/expected duration thereof;
- G. In the case of temporary agency workers, the identity of the user undertakings, when and as soon as known;
- H. The duration and conditions of the probationary period;
- I. The training entitlement
- J. The amount of paid leave to which the worker is entitled
- K. The procedure to be where their employment relationship is terminated
- L. The remuneration including the initial basic amount, any other component elements, the frequency and method of payment and the conditions under which fines maybe imposed by the employer and their quantum;



Information to be provided

- 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;
- N. If the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of:
- 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;
 - ii. the reference hours and days within which the worker may be required to work;
 - iii. 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;

Information to be provided

- 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;
- 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.
- Q. Any other relevant or applicable condition of employment.

Information to be provided

Timing

- Information from a to e and g k l m – to be provided between the 1st working day and not later than the 7th calendar day;
- Other information mentioned – within one month of the first working day.





IMPORTANT

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

Different types of employment contracts

What is the main difference?



Definite Contract

- A definite contract is a contract of employment 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

A blue-tinted photograph showing several people's hands and arms as they sign documents on a table. The scene is dimly lit, with the primary light source highlighting the papers and the hands holding pens. The overall mood is professional and focused.

Definite Contracts

Definite contracts

- Duty of employer to inform employees on a definite 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 definite 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.

- An employee whose definite 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 definite 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 definite 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 renewal of such a contract for a definite term.**

A dimly lit desk setup with a laptop, keyboard, mouse, and several potted plants. The scene is overlaid with a blue tint. The text "Indefinite term" is centered on the desk.

Indefinite term

Indefinite term

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

An employee: By providing the employer with notice

- i. for more than one month but not more than six months one week;
- ii. for more than six months but not more than two years two weeks;
- iii. for more than two years but not more than four years four weeks;
- iv. for more than four years but not more than seven years eight weeks;
- v. for more than seven years, an additional 1 week for every subsequent year of service up to a maximum of twelve weeks;
- v. 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



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

- **Good and Sufficient Cause**
- **Redundancy**; or
- the employee reaching **Retirement age**.

A photograph of a person's hands typing on a laptop keyboard, overlaid with a semi-transparent blue filter. The scene is dimly lit, focusing on the keyboard and the person's hands. The word "Probation" is centered in white text over the image.

Probation

Probation

- Purpose of probation: employer keeps his right to confirm employment after a specified period;
- Probation by law –6 months or shorter by agreement / 1 year in the case of employees holding technical, executive, administrative or managerial posts and wages at least double minimum wage;
- Termination without assigning reason (except in cases where the employee is pregnant) but 1 week's notice if employment longer than 1 month.

Probation

- Cannot be extended – not even by agreement;
- No new probationary period in the case of promotions – trial periods with reversal to prior position.

Comments from Tribunal:

- i. Employer has the right to terminate without giving a reason;
 - ii. Even if reason is given, Tribunal has no competence to “judge” that reason.
- Tribunal advised employers NOT to give reasons for termination during probation.

Probation

New Provisions in the law:

- Fixed-term contract – probation needs to be proportionate to the expected duration of the contract;
- Renewal of a contract – if there are same functions and tasks – no new probationary period.



NEW

- Fixed term – contract – **cannot be shorter than 6 months** UNLESS a shorter period is justified by objective reasons based on precise and concrete circumstances characterising a given activity;
- Contract for a shorter period – must list in writing the objective reasons for which the contract is entered into for less than 6 months;
- Probation period can be shorter;
- Probation period shall be suspended in the case of any two weeks or more approved leave – probation shall be extended to a corresponding duration of the leave;
- Employer cannot dismiss a worker during period of suspension of probation.

NEW

New provisions for probation of a fixed term contract

- Contract is for less than 6 months – probation shall be $\frac{1}{3}$ of the duration of the contract – 2 months;
- Contract of between 6 months to 15 months duration – two months for 6 months contract duration;
- Contracts exceeding 15 months duration – probation shall be of six months.

A person in a suit is walking, carrying a briefcase. The image is overlaid with a blue gradient. The word "Terminations" is written in white serif font in the center.

Terminations

Good and Sufficient Cause

No clear definition in terms of law – but – the law tells us what cannot be considered as a good and sufficient cause:

a) at the time of the dismissal, employee was a member of a trade union, or is seeking office as, or acting /acted in the capacity of an employees' representative; or

(b) employee no longer enjoys the employer's confidence (except in the case of a private domestic employee); or

(c) employee contracts marriage; or

(d) employee is pregnant or is absent from work during maternity leave; or

(e) employee discloses information, whether/not confidential, to a regulating body, regarding alleged illegal or corrupt activities being committed his employer; or

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

(g) business where 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.

Terminations continued

(i) Retirement Age

(ii) Redundancy

(iii) Collective Redundancy

(iv) Constructive dismissal

(v) Good and sufficient cause vs
unfair dismissal



Other employment notions

(i) Settlement Agreement

(ii) TUPE

(iii) Restrictive Covenants



A hand holding a pen over a document, with a blue overlay. The background is a dark blue gradient with a faint image of a hand holding a pen over a document. The text is centered and reads:

Contract of Service vs Contract of Employment

Contract of Service vs Contract of Employment

- Main distinction as found in the definition of employee: works under the direction and control of another person with regard to the manner in which the work is done.
- Difficult to determine in the case of highly skilled workers/professionals.

Employment Status National Standard Order (S.L.452.108) – criteria to determine whether a person is an employee or self-employed;

- Independently of the intention of the parties or the designation in the contract;
- Presumption of an employment relationship if at least 5 out of 8 criteria are satisfied.
- Exemption maybe granted by the Director.



Criteria

- (a) **he depends on one single person** for whom the service is provided for at least **75% of his income over a period of one year;**
- (b) he 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;**
- (c) he performs the work **using equipment, tools or materials provided by the person** for whom the service is provided;
- (d) he is **subject to a working time schedule** or minimum work periods established by the person for whom the service is provided;
- (e) he **cannot sub-contract his work** to other individuals to substitute himself when carrying out work;
- (f) he is **integrated in the structure** of the production process, the work organisation or the company's or other organization's hierarchy;
- (g) **the person's activity is a core element** in the organization and pursuit of the objectives of the person for whom the service is provided; and
- (h) **he carries out similar tasks** to existing employees, or, in the case when work is outsourced, he performs tasks similar to those formerly undertaken by employees.



*Industrial
Tribunal*

The Tribunal's Functions



Industrial Disputes



Unfair Dismissals & other cases
indicated under the EIRA



Jurisdiction

Article 30 EIRA s:

- Discrimination
- Harassment

Article 30 EIRA:

- Victimisation
- Action for equal pay for equal work



Jurisdiction

Article 73 EIRA:

- Trade disputes which are not resolved via amicable settlement

Article 75 EIRA:

- Cases of alleged unfair dismissals
- Cases falling within the jurisdiction of the Tribunal as per the provisions of the EIRA (such as penalties re breach of a fixed term contract and protection of wages).



Dr Ann Bugeja

ann.bugeja@gvzh.mt

