

Lecture 3

Employment Law & the Various Entitlements Part 1

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Agenda

1. Main sources of employment law and other applicable laws;
2. Employment Relationship;
3. Protection of Wages;
4. Leave Entitlements;
5. Itemised Payslip.



The background of the slide is a dark blue gradient. In the center, there is a stack of several books of varying thicknesses and colors, including shades of brown, tan, and grey. To the right of the books, there is a rolled-up document or scroll tied with a string. The overall aesthetic is professional and academic.

Main sources of employment law
and
other applicable laws

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.



A group of people are seated around a table, engaged in a meeting or discussion. Several white coffee cups are visible on the table. The entire scene is overlaid with a semi-transparent blue filter. The text 'Employment Relationship' is centered in the image in a white, serif font.

Employment Relationship

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.



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

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

- Protection of wages
- Protection from discrimination & victimization
- Maximum working hours & Overtime
- Various entitlements





Protection of Wages

Protection of Wages

- Provisions in the Employment and Industrial Relations Act (Chap 452 of the Laws of Malta) (“EIRA”) ensure that an employee is safeguarded from any possible **abuse** in relation to remuneration;
- “wages” means remuneration or earnings, payable by an employer to an employee and includes any statutory bonuses applicable, other than any bonus or allowance related to performance or production;
- May be paid in money or by cheque or by payment in a bank account;
- Wages are to be paid **directly to the employee.**



Protection of Wages

Deductions from wages already earned are generally **disallowed** and cannot be made as a guarantee to secure or retain employment.

Deductions are allowed:

- (i) where expressly permitted by the law;
- (ii) where ordered by a competent court;
- (iii) when permitted in a collective agreement;
- (iv) where the employee agrees to pay a private pension scheme or other saving scheme, in which the employer has beneficial financial interest whether direct or indirect.

Wages constitute a privileged claim i.e. payable in preference. However, the maximum amount of the **privileged claim** cannot exceed the national minimum wage payable over a period of 6 months.



Protection of Wages

- Wages shall not be lower than the national minimum wage – updated on an annual basis (circa EUR 10,000 for 2023);
- Employees are to receive their wages at regular intervals **not exceeding 4 weeks in arrears**, subject to a derogation by way of a collective agreement;

In the event of termination of a contract of employment, all outstanding wages and any compensation due to the employee, shall be paid with the next payroll run as if the contract had not been terminated.



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, several tall evergreen trees are visible. In the background, a large, rounded mountain peak is partially covered in snow. The overall scene is serene and natural.

Leave Entitlements

Entitlements | *Annual Leave*



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*

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*

- 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*



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*

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

- An uninterrupted period of 18 weeks
- Similarly, to maternity leave, the first 14 weeks are paid in full, and the employer shall not be obliged to pay for any period of adoption leave utilised past the first 14 weeks.



Entitlements | *Adoption Leave*

Such leave shall commence on the date when the child passes into the care and custody of the adoptive parent or parents by means of a judgment of a court of law in the country of origin.

- A single parent may avail of the full period of adoption leave
- In the case of more than 1 parent: this may be enjoyed by the parent who is in employment on the date of adoption of the child

If both parents are in employment whether with different employers or with the same employer, on the date of adoption of the child, each parent shall be entitled to such part of the adoption leave as they may agree in writing.



Entitlements – *Medically Assisted Procreation*

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*

<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.

Parental Leave | Transferability

Under the new law, 2 months of Parental Leave may be transferred from one parent to another.



Parental Leave

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

(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:



Postponement of Parental Leave 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.



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.





Carers' Leave

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

Flexibility

- Parents of children under 8 years old and carers have the right to request flexible working patterns for caring purposes, which includes:
 - Remote working
 - Flexible schedules
 - Reduced hours





Flexibility

The law says that flexible arrangements *may* be limited in duration.

In such cases, the employer must consider a request by employee to return to previous arrangements, and must give an adequate justification if the request is refused.

A blue-tinted photograph of a person's hands working at a desk. The left hand is positioned over a calculator, and the right hand is on a keyboard. The scene is dimly lit, with a soft glow from the desk. The text 'Itemised Payslip' is overlaid in the center in a white, italicized serif font.

Itemised Payslip

Itemised Payslip Regulations (S.L.452.116)

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

Which should include the following minimum information:

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





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& VARIOUS ENTITLMENTS**



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