

Employment and Industrial Relations Law

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

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Part 1

Sources of Employment Law



Understanding the Various Sources

Source 1

Local Laws and Regulations
[The EU influence]



Local Laws and Regulations (1)

- Maltese law is divided into various chapters, with subsidiary legislation being published under each chapter
- The chapters are referred to as “Acts” (issued through Parliament as ‘acts of parliament’)
- Subsidiary legislation can be of various types, and is often issued at ministry level
- Above all, however, is the Constitution of Malta, which recognises the right to work as a fundamental right



Local Laws and Regulations (2)

- Chapter 452 – The Employment and Industrial Relations Act (the “EIRA”)
- Subsidiary legislation enacted under the EIRA regulates specific sectors and topics in employment law, such as:
 - Leave
 - Working Time
 - Work-Life Balance
 - Collective Redundancies.
- Sectoral subsidiary rules governing specific areas of operation/trades, such as:
 - Retail
 - Construction
 - Private Security Guards
 - Cleaning
 - Manufacturing.
 - Wage Regulation Orders determine minimum entitlement of specific sectors



Local Laws and Regulations (3)

Some exceptions:

1. H&S

- 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 – Chapter 424 of the Laws of Malta
- The OHSa contains subsidiary legislation on health and safety at the workplace

2. Data Protection

- Data protection is not directly regulated under the EIRA
- One must refer to the Data Protection Act – Cap 586 of the Laws of Malta, and the subsidiary legislation issued thereunder



Local Laws and Regulations (4)

3. The Employment and Training Services Act – Chapter 594 of the Laws of Malta

- Regulates employment and training services, including traineeships and the employment of TCNs
- The National Employment Authority and Jobsplus are also established in virtue of this Act.



The EU influence

- Regulations: *automatically applicable*
- Directives: *must be “transposed” into national legislation*

E.g. – S. L. 452.126 ‘Transparent and Predictable Working Conditions Regulations’:

2. (1) The scope of these regulations is to transpose 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.

Scope and applicability.



Understanding the Various Sources

Source 2

Jurisprudence
[The UK influence]



Local Case-law

- The law does not tell you everything! Sometimes, one must look at court judgments to decipher acceptable practices

- The Industrial Tribunal, the Court of Appeal, the Court of Justice of the European Union, the European Court of Human Rights



The UK Influence

- Maltese tribunals and courts oftentimes draw from UK case-law, jurists and text-books

Some examples:

- In *Eileen Leone Ganado v Link School of Languages Limited* (2017), the Tribunal, in relation to disciplinary processes, referred to Selwyn's 'Law of Employment' and held that: "Ta' rilevanza importanti hi l-osservazzjoni ġenerali sottomessa mill-awtur ċitat illi "each case must be determined on its own merits";
- Maltese law does not set out the criteria to understand the notion of constructive dismissal and as a result, the English law position is used as a basis for interpretation by the Maltese courts, such as outlined in *Charichelon Company Limited [C-14614] vs Amanda Greaves* (2016);
- In *Petar Angelovski vs Coral Cafè* (2023), the Tribunal delved into the purpose of 'warnings' in the place of work and in doing so made reference to the case of '*Carmelo k/s Charles Borg vs Dargonara Gaming Limited*', (2013), where the Tribunal had guided itself upon the definition of 'warnings' as laid out by '*Plasticers Ltd vs Harold Amos*', a case decided in England by the Employment Appeals Tribunal.



Understanding the Various Sources

Source 3

Others:

- 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



Part 2

An Overview of the EIRA



The EIRA – History

- Trade Unions and Trade Disputes Ordinance 1945...
- This was superseded by the more well-known Conditions of Employment (Regulation) Act 1952 (“CERA”), lasting half a century!
- The CERA provided for the establishment of Wages Councils whose main function was to fix tailor made conditions of employment: Wage Regulation Orders (WROs) - for specific sectors.
- In 1976, the Industrial Relations Act was published, establishing the Industrial Tribunal
- In 2002, the EIRA was born, consolidating both the CERA and the IRA



The EIRA – Contents

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The EIRA – Noteworthy Definitions (1)

“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.**



The EIRA – Noteworthy Definitions (2)

“Employer” includes a partnership, company, association or other body of persons, whether vested with legal personality or not.



The EIRA – Noteworthy Definitions (3)

“Contract of Service” or "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 [...]



The EIRA – Noteworthy Definitions (4)

“Contract of Service” (continued) 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.

An aside... the importance of the Employment Status National Standard Order (S. L. 452.108).



The EIRA – Noteworthy Definitions (5)

“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.





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The EIRA – Employment Relations Board

This consultative board brings together the representatives of employers and the unions where matters pertaining to industrial relations, conditions of work and workers are to be discussed. It has an important role as a 'social partner' to the government, providing recommendations on employment law and policy:

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



The EIRA – Wages (1)

- Wages may be paid in legal tender (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

The EIRA – Wages (2)

- PROTECTION OF WAGES

- Can conditions be put on wages?
- Can wages be attached?
- Is wage deduction permissible?
- What happens if an employee is not paid their wage?
- Can employees be fined?

WAGES ARE PRIVILEGED DEBTS (shall be paid in preference of all other claims).



The EIRA – Guarantee Fund

- This is set up as an emergency fund for the payment of wages, overtime, leave payments and notice due to employees who have lost their job because of their employer's insolvency
- Maximum claim one can make is up to 13 weeks' minimum wage
- Applications are to be made to the Chairperson of the Fund's Board
- If during the liquidation of the employer, the employee receives some money, an equal amount to that received must be paid back to the fund
- Persons lodging false claims will incur a fine



The EIRA – Discrimination (1)

- Discrimination in the EIRA is defined as follows:

“... 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.”



The EIRA – Discrimination (2)

- 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

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.



The EIRA – 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.

The EIRA – Probation

- In the case of a renewal of a fixed term contract for the same functions and tasks as the previous fixed term contract, there shall be no new probationary period.
- A fixed term contract cannot be shorter than 6 months unless there is an objective reason based on precise circumstances which needs to be listed in the contract.
- In the case of a fixed term contract of a duration of between 6 and 15 months, the probationary period shall be calculated on the basis of 2 months per 6 months contract duration.
- For a fixed term contract exceeding 15 months duration, probation shall be of 6 months.
- If the fixed term contract is of a duration less than 6 months, the probationary period shall be one third of the duration of the contract.
- Probation can be shorter by agreement between the parties.
- Workers holding technical, executive, administrative or managerial positions, and whose wages are at least double the minimum wage, shall have a probation of 12 months
- Probation is to be suspended in the case that the employee avails himself of leave for more than 2 weeks. Probation then needs to be extended to a duration corresponding to the amount of leave taken.



The EIRA – Termination of Employment (1)

- Redundancy:
 - No need to provide reason
 - Notice to be paid as usual
 - Last in first out rule
 - Re-employment within one year if possible



The EIRA – Termination of Employment (2)

- 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: the infamous “good and sufficient cause”



The EIRA – Termination of Employment (3)

• 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 in the case of technical, administrative, executive or managerial posts.



The EIRA – Termination of Employment – Art. 36 – (1)

- 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?
 - The “Good and Sufficient Cause”
 - The EIRA tells you what is NOT a Good and Sufficient Cause!



The EIRA – Termination of Employment – Art. 36 – (2)

- 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?



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



Certificate of Service

- An employee whose employment is terminated may request a certificate of service indicating:
 - Duration of employment
 - Nature of work carried out
 - 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 accede to any proposed changes)
- A permit needs to be formally obtained from DIER (with the justifications) which must be renewed every 4 weeks



Enforcement

- Inspectors have the power to:
 - Enter employer premises for inspections
 - Carry out any inspections necessary to ensure compliance with the law, including interrogations, and the imposition of the requirement 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 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
 - Failed to pay any other money due to employees



The Industrial Tribunal

- Composition
- Chairpersons
- Jurisdiction
- Unfair dismissals and discrimination
- Procedure
- Powers
- Procedure is similar to the superior courts

Alternative Dispute Resolution

- On allegations that the conditions of work have not been observed, an employee can forward his claim, to be supported with documents, to the DIER. The Department will investigate and take the necessary steps.
- If the DIER deems that the law has been breached, the employer concerned is contacted and the Department follows the issue accordingly. If the employer persists in breaching the law, criminal proceedings against the employer are initiated before the Court of Magistrates. The employee as a private individual has the right to institute a civil action as well.
- The concept of conciliation exists in the context of trade disputes.



Trade Unions and Employers' Associations

- Trade Unions

Employees can join trade unions to achieve common goals, such as higher pay and better working conditions.

Rather than having individual employees deal with the unions, one person is chosen to be the Union Representative and he or she speaks to the Union to defend the interests of his or her colleagues.

- Employers' Associations

A similar concept to trade unions, but in the context of employers. They bring together employers from different sectors in Malta.

Both trade unions and employers' associations must be registered.



Thank You

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