

FAQs in Employment

MAMO TCV
ADVOCATES

Dr Christine Calleja
Dr Warren Ciantar
Dr Julian Fenech Adami

20th March 2024



Award in Office Management and Administration
Fundamentals

Question 1

Does the employment contract need to be in writing and what does it need to contain?



Answer

- Written information must be provided.
- Refer to the Transparent and Predictable Working Conditions Regulations – S.L. 452.126



Question 2

What are the new rules on probation?



Answer

- No new probationary period in the case of renewal of fixed term contracts.
- Fixed term contracts cannot be shorter than 6 months.
- Fixed term contracts of 6–15 months:
 - 2 months' probation/6 months contract duration
- Fixed term contracts < 6 months:
 - probationary period = $\frac{1}{3}$ of contract duration
- Fixed term contracts > 15 months:
 - probationary period = 6 months.



Answer

- Suspension of probation in the case of leave for more than 2 weeks.
- No dismissal during the suspended period of probation.
- Probation can be shorter by agreement between the parties.



Question 3

If we terminate during probation, are there any claims that can be raised by the terminated employee?



Answer

➤ YES, the following claims can be made:

- a. discrimination,
- b. harassment,
- c. victimisation,
- d. equal pay and,
- e. payment of notice.



Question 4

Are there any special considerations for employees occupying a senior grade?



Answer

➤ YES, the following considerations can be made:

- a. non-solicitation clauses,
- b. post-termination clauses,
- c. intellectual property clauses,
- d. longer notice period and,
- e. performance bonuses.



Question 5

Do we need to pay bonuses when employment is terminated?



Answer

- This depends on the wording of the bonus.
- It may need to be paid pro rata.



Question 6

Can employees be forced to take leave?



Answer

- YES, but ONLY if there is a justifiable reason.



Question 7

What can we deduct from an employee's salary?



Answer

- Deductions can only take place if there is a request in writing from the employee,

AND

- The employer has no beneficial interest in the purpose of the deduction.



Question 8

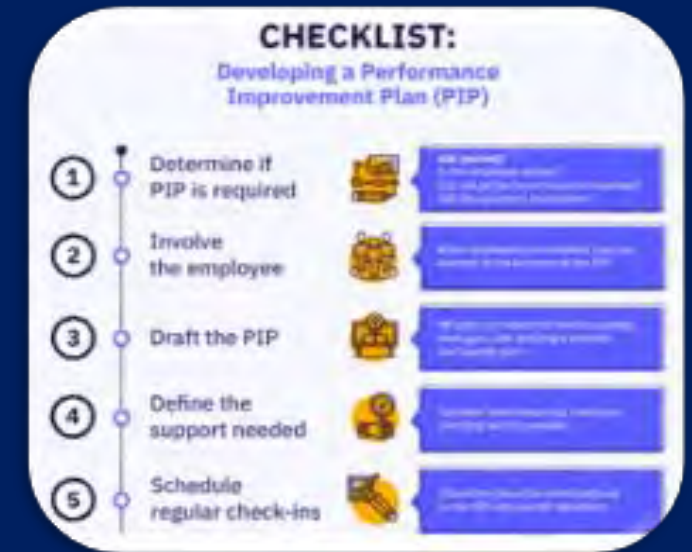
What is a PIP? Does it replace warnings?



Answer

➤ PIP = Performance Improvement Plan

➤ A PIP constitutes a form of giving warnings in a constructive manner.



Question 9

What should employees do to avail themselves of parental leave?



Answer

➤ 1 year continuous employment,

AND

➤ A minimum of 2 weeks' notice in writing.



Question 10

What steps should we take before terminating someone's employment?



Answer

- The following considerations must be made:
 - a. warnings,
 - a. gravity of the offence,
 - a. holding a final meeting.



Question 11

What obligations are imposed on employers making use of temporary employees – outsourced employees?



Answer

- Ensure that the agency providing such employees is properly licensed.
- Health and safety considerations.



Question 12

What are the implications of the principle of equal pay for work of equal value?



Answer

- Employees in the same class and performing work of equal value must be paid the same rate of remuneration.



Question 13

Someone was involved in a work-related accident. What steps should the employer take?



Answer

1. Inform OHSA and DIER,
2. Fill in injury form,
3. Note down accident in register.



Question 14

An employee has exhausted all his sick leave. Can employer proceed to terminate?



Answer



➤ NO

➤ There is no automatic right to terminate.

Question 15

Can we stop an employee from performing other work outside the normal working hours?



Answer

- YES, but this is only by way of exception.
- Can only be done for certain objective reasons.



Question 16

Can I prevent an ex-employee from competing after termination of employment?



Answer

- Generally, NO!
- Exception: ex-employee is paid.



Question 17

What are the basic obligations of the new employer as regards occupational health and safety?



Answer

1. Safe system of work,
2. Adequate training,
3. Adequate supervision,
4. Adequate equipment,
5. Written risk assessment,
6. Appointing health and safety representative.



Question 18

What should the employer consider in terms of occupational health and safety legislation as regards use of laptop/PC?



Answer

1. Identify all displayed screen equipment,
2. Keep a record of such equipment and its users,
3. Provide training,
4. Ensure periodical interruptions,
5. Eye tests,
6. Assess risk,
7. Comply with Minimum Health and Safety Regulations for Work with Display Screen Equipment Regulations – S.L. 424.14.



Question 19

Can an employer be exempted from liability in terms of occupational health and safety if external consultancy is engaged?



Answer

➤ NO

➤ The responsibility ultimately lies on the “employer”.



Question 20

What is the difference between a probation period and a trial period?



Answer

➤ Probation period =

- new employment and,
- can lead to termination.

➤ Trial period =

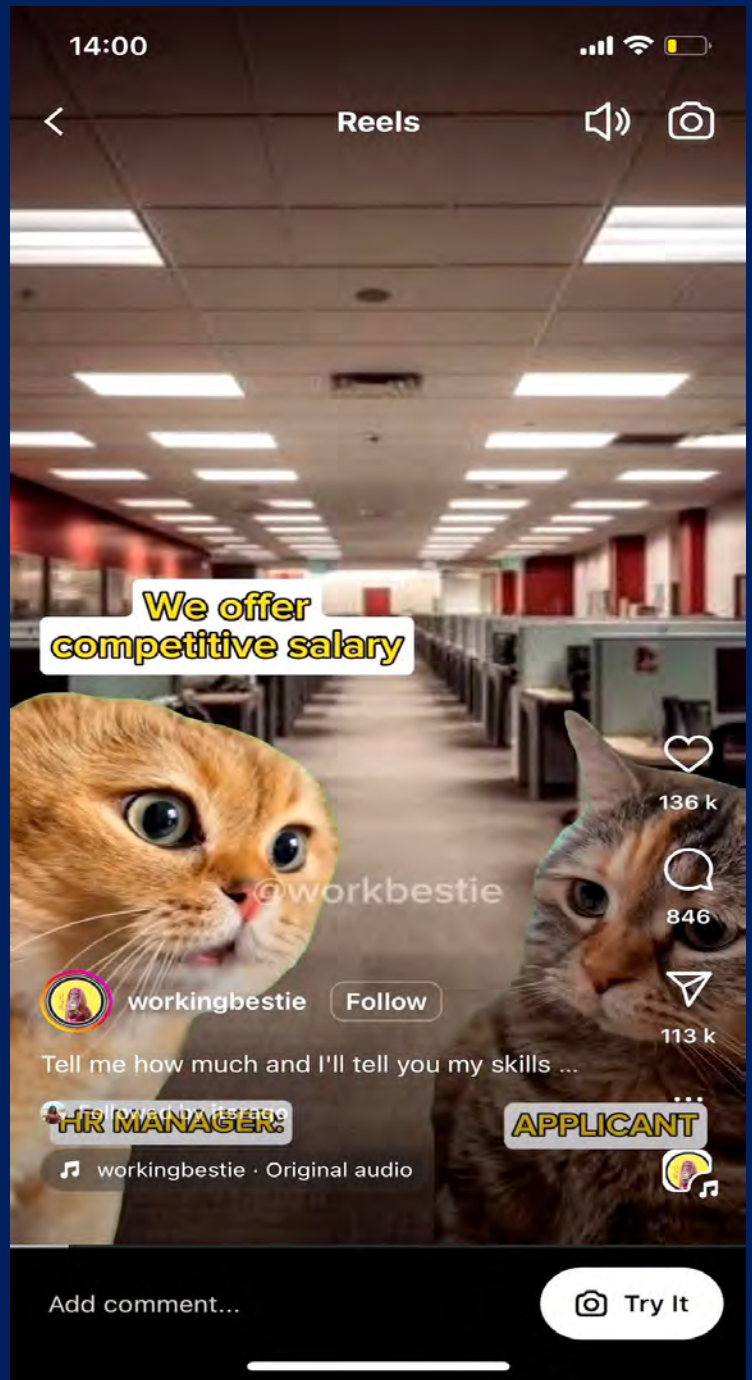
- promotions and,
- can lead to reversion of former post.



Question 21

What new obligations have been imposed on employers in virtue of the EU Pay Transparency Directive?





Answer

- Granting of information within a reasonable time (2 months from date of request) on individual and average pay levels based on employee's request,
- No questions to job candidates on current/previous earnings,
- Job announcements must reveal the starting salary level for position,
- Gender neutral wording in job announcements and job titles.



Answer

- Reporting gender pay gaps,
- Gender pay gap of 5% or more (no objective justifications) – employer must rectify the situation within reasonable time – if not, joint assessment by employer and worker representatives,
- Account of requirements used to determine individual and average pay and pay progression to be made available,



Question 22

Are the parties free to decide on the status of the worker, i.e. whether the worker will be an employee or self-employed?



Answer

➤ NO

➤ This depends on the facts of the arrangement in terms of the Employment Status National Order – S.L. 452. 108.



Question 23

Do certain employees enjoy a right to demand to work reduced hours?



Answer

➤ NO

➤ However, certain employees have the right to request flexible working arrangements.

➤ Parents and carers



Question 24

What should we consider before engaging a person who has already retired?



Answer

- No right to terminate by reason of retirement.
- Consider fixed term contract.



Question 25

The company is in the process of recruiting an EU national. What steps need to be taken?



Answer

- Engagement form to be lodged by employers of EU nationals with Jobsplus.
- EU nationals must:
 - submit an application with Identity Malta for a residence permit based on their employment (or self-employment/economic self-sufficiency),
 - provide proof of residential address.
- 6-month term for submission



Question 26

Do the same rules apply when recruiting a non-EU national (third-country national)?



Answer

- TCN seeking employment in Malta must be in possession of:
 - employment license
 - residence permit
- This process is referred to as the Single Permit.
- At no point can a TCN begin his/her employment unless the employment license is issued.



Answer

- It is imperative that any TCN taking up employment in Malta and in possession of a residence permit always holds a valid title to a residential address and remains in employment.
- The residence permit based on a Single Permit shall become invalid should any one of the above cease to remain in effect.



Question 27

Who requires an employment license?



Answer

- All TCNs taking up employment in Malta require an employment license (save for some exceptions).
- However, not all TCNs are required to submit an application for a Single Permit.



Answer

- Third Country Nationals Not eligible for the Single Permit Process:
- Self-Employed TCNs
- Temporary TCN Workers (< 6 months)
- TCN Student Workers
- Other TCNs (residence valid for > 1 year): Malta Permanent Residence Programme (MPRP), Victims of Human Trafficking, Parents of Maltese Nationals, Partners of Maltese nationals, family members of EU nationals...



Question 28

Who does not require an employment license?



Answer

- Maltese nationals,
- Foreign nationals with freedom of movement rights,
- Posted workers from EU Member States,
- EU nationals and their family members,
- Long term resident.



Question 29

What are the different types of Single Permit applications?



Answer

1. Standard applications:

Gross salary annual salary of less than €25,000



Answer

2. Specialist Employee Initiative:

Gross annual salary: €25,000 – €35,000,

Position is of a professional or technical level,

The employee holds, as a minimum, Malta Qualifications Framework (hereinafter referred to as “MQF”) Level 6, or equivalent, qualifications directly related to the job being applied for.

If applicant holds an MQF level lower than level 6, proof of a minimum of 3 years’ experience in a position directly related to the one being offered in Malta is required.



Answer

3. Key Employee Initiative:

Minimum gross basic salary of €35,000,

Managerial or highly technical role,

Duly certified and recognised qualifications of the applicant by the Malta Qualifications Recognition Information Centre.



Question 30

How does an employer submit an application for a Single Permit?



Answer

- The Company must register on Identity Malta's online portal <<https://singlepermit.gov.mt/>> by appointing an Organisation Manager (OM).
- The OM is appointed via Company resolution and agreement.
- The OM will then have access to the Company's portal by using the E-ID login.



Question 31

The company has entered into an employment agreement with a potential employee who still lives abroad. What is the procedure?



Answer

- An application is to be submitted on the online portal while the applicant is still abroad.
- Once the application is approved, an approval in principle letter is issued and the applicant may proceed to Malta to finalise the application.
- Should a visa be required, the applicant may use the approval in principle letter as part of the required documents for the visa application.



Question 32

A potential TCN employee is already employed with another company. What is the process to be followed to engage the employee with the company?



Answer

- Change in employer application process
- The employee may remain in employment with the previous employer if the residence permit still has a minimum of 60 days validity.
- Should there be less, then the employee must submit a termination with Jobsplus as part of the application.



Question 33

What if a potential TCN employee has already terminated with the previous employer?



Answer

- 10 working days to regularise stay in Malta,
- Employer must submit application for a Single Permit within 10 working day from date of termination of employment.



Question 34

An application for a Single Permit has been submitted for a new employee. When can the new employee begin working?



Answer

- Once the employment license has been issued,
- Generally, after the in-person appointment with Identity Malta, the employee is issued with an interim receipt authorising the employee to begin working.



Question 35

An employee's permit is up for renewal. What is the process to be followed?



Answer

- Renewal process may commence 90 days before the expiry of the residence permit.
- Employee must hold a valid residential address.
- If on lease, the lease must have a remaining validity of at least 6 months.



Question 36

A TCN employee has terminated their employment with the company.
What should be done to de-register the employee?



Answer

- Compliance with the relevant employment rules
- Employer must:
 - submit a termination form with Josbplus and,
 - withdraw the employee's permit with Identity Malta Agency.



Question 37

A potential TCN employee is currently in Malta on a student visa. Can the applicant be employed?



Answer

➤ YES

➤ Student must present a completion certificate from the institution that they have attended.

➤ No completion certificate = inability to apply for a Single Permit



Question 38

Can we transfer all the employee's personal data from one company in the group to another when an employee moved from one company to another?



Answer

- Employee must be told beforehand and given all relevant information (transparency),
- The correct legal basis must be established,
- Only transfer what is needed,
- In case of merger/acquisition/transfer, when other party needs to do due diligence, anonymise data when granting access to data rooms etc.



Question 39

Does the privacy notice (GDPR) have to feature in an employment contract?



Answer

- Not necessarily,
- It can be integrated into the employment contract directly or it can be provided as a standalone document,
- IMP: made available to employee to read through and understand it, prior to signing the employment contract.



Question 40

Can the company contact employees through their personal mobile phone?



Answer

- Yes, if employee was informed that this may occur beforehand,
- Consider whether it is necessary, or if there are other means of contacting the employee (e.g. a phone provided by the company),
- Always go for the least intrusive method.



Question 41

Can we use covert monitoring when we suspect theft or malpractices at the place of work?



Answer

- No, covert recording is never permitted and, in some cases, (e.g. intercepting emails surreptitiously) constitutes a criminal offence,
- Employees must always be informed prior to any monitoring taking place – this is ideally done by the GDPR/privacy notice at onboarding.



Answer

- Distinguish this from certain types of access:
- E.g. IT department using employee's terminal to restore functionality or inspecting a possible cyberthreat...
- Ideally this is mentioned in the employment contract/GDPR notice.



Question 42

Is the company entitled to have access to an ex-employee's mailbox post-termination?



Answer

- Yes!
- The ex-employee's mailbox remains the property of the employer and can be retained for business continuity purposes,
- Access should be limited to only those individuals who need to have access (e.g. the employee's successor and supervisor),
- Be careful of any information that ex-employee might have which is 'personal' to them.



Answer

- At onboarding:
- Advise employees not to use their work email for personal reasons
- At outboarding:
- Allow employees to go through and clear their mailbox from any personal emails and,
- Sign an outboarding document stating that they have done so and that they have no further claims on anything in the mailbox.



Question 43

Can company devices given to employees be monitored and tracked 24/7?



Answer

- Depends on what the monitoring and tracking entails,
- You should always be aware of whether a device's security has been compromised or not,
- If the tracking involves knowing the location of the employee, this can only be done during working hours,
- Any such trackers should be switched off outside working hours,
- Employee must be informed of all the above,



Answer

- If employees use their own devices, appropriate technical measures should be in place to segregate the employee's personal data/information from the work data/information.
- 'Sandboxing'
- BYOD policy



Question 44

What have been the major faults by employers vis a vis employees in data breach reports to date?



Answer

- Relying on consent to process employee personal data,
- Not providing sufficient information to employees on how their personal data are processed by the employer,
- Not providing sufficient training which leads to mistakes and data breaches being inadvertently committed by employees (or not detected/reported),
- Having insufficient security measures in place to protect employee data.



Question 45

What can the company ask from the employee or from a medical practitioner in case of long periods of sick leave?



Answer

- Can depend on various factors including:
- what information the employee has been provided regarding processing of their sick leave and medical data,
- is the medical practitioner engaged by the company or is he/she chosen by the employee?
- Also dependent on the medical practitioner,
- Not an easy topic and common ground must be reached.



Answer

- If medical practitioner is engaged by company, a DPA should be in place in certain situations.
- A doctor is not always necessarily a processor, in some cases he/she can never be.
- Keep in mind that medical and health data constitute special categories of data and an appropriate legal basis must be identified to process them.



Question 46

Can we use a fingerprint scanner as a punch-clock?



Answer

- Absolutely not!
- Use alternative methods such as keycards combined with CCTV to prevent abuse.
- Such scanners can still be used for security purposes (e.g. to bar access to specific areas of a building).



Thank you!

