

# Employment and Industrial Relations Act – Chap. 452 of the Laws of Malta

**MAMO TCV**  
ADVOCATES

**Dr Christine Calleja**

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**Let's take a look at the definitions...**



# Class

*When used in the context of a group or a category of employees, shall refer to the groups or categories listed in a collective agreement*



# Collective Agreement

*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*



# Conditions of Employment

*wages, the period of employment, the hours of work and leave and includes any conditions related to the employment of any employee under a contract of service including any benefits arising therefrom, terms of engagement, terms of work participation, manner of termination of any employment agreement and the mode of settling any differences which may arise between the parties to the agreement; but it does not include professional ethics arising from any professional relationship between an employer and an employee;*



# Contract of Service & Contract of Employment

*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*



# Discriminatory Treatment

*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*



# Employee

*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*





# Employer

*a partnership, company, association or other body of persons, whether vested with legal personality or not*



# Employment Agency/Business

*a natural or legal person carrying out any activity in Malta:*

- (a) for the recruitment of persons for employment in Malta or outside Malta;*
- (b) as a temporary work agency; or*
- (c) as an outsourcing agency;*



# Hours of Work

*the time on any day during which employees are available for service to the employer, exclusive of the intervals allowed for meals and rest*



# Outsourcing Agency

*a natural or legal person, and in the case of a legal person whose objects in its memorandum of association include the carrying out of the relevant activities as well as all activities ancillary or incidental thereto, but do not include such objects which are not compatible with the services of an outsourcing agency, who enters into contracts of employment or employment relationships with employees and who assigns, whether on a regular or on an irregular basis, the employees to user undertakings to work there temporarily, by being physically present at the premises of the user undertaking or working remotely, under the supervision, direction and control of the outsourcing agency, whether or not such activity is the main or ancillary activity of the outsourcing agency;*



# Part-Time Employee

*an employee whose normal hours of work, calculated on a weekly basis or on an average over a period of employment of up to one year, are less than the normal hours of work of a comparable whole-time employee and who is not a whole-time employee with reduced hours;*



# Self-Employed

*all persons pursuing a gainful activity on their own account*



# Temporary Work Agency

*a natural or legal person, and in the case of a legal person whose objects in its memorandum of association include the carrying out of the relevant activities as well as all activities ancillary or incidental thereto, but do not include such objects which are not compatible with the services of a temporary work agency, who enters into contracts of employment or employment relationships with temporary agency workers and who assigns, on a regular or on an irregular basis, the temporary agency workers to user undertakings to work there temporarily under their supervision, direction and control, whether or not such activity is the main or ancillary activity of the temporary work agency*



# Unfair Dismissal

- (a) the termination by the employer in respect of that worker of a contract of employment for an indefinite time (other than probationary employment as defined in this Act) being a termination which is not made solely on the grounds of redundancy or for a good and sufficient cause in accordance with the relevant provisions of this Act or any regulations prescribed hereunder, or*
  - (b) which is made in contravention of the provisions of article 64(4), or*
  - (c) which, though made on grounds of redundancy or for a good and sufficient cause, is discriminatory as defined in this Act or any regulations prescribed hereunder;*
- and includes any failure by the employer to re-employ such person to re-employ him as provided in article 36(3), or*
- (d) the termination by the employer in respect of that worker of a contract of employment for a fixed term*





# Wages

*remuneration or earnings, payable by an employer to an employee and includes any bonus payable under article 23 other than any bonus or allowance related to performance or production*

# Employment Relations Board



# Functions of the Board

- ✓ to make recommendations to the Minister as to any national minimum standard conditions of employment
- ✓ to make recommendations to the Minister as to any sectoral conditions of employment
- ✓ to advise the Minister on any matter relating to conditions of employment, or on any matter referred to the Board by the Minister
- ✓ to carry out the functions assigned to it by article 73 (establishment of IT) and any other function that may be assigned to it by law from time to time





# Wages

# Article 11

- Wages must be paid entirely in money being legal tender in Malta.
- Failure to comply will render the payment invalid.
- Wages are to be paid directly to the employee to whom they are due UNLESS:
  - a. Law provides otherwise,
  - b. Court order demanding otherwise,
  - c. Employee concerned agrees to the contrary.



# Article 12

- Employers are prohibited from including any terms in the employment contract that dictate how employees spend their wages.
- Such terms are null and void.



# Article 13

**Employers are prohibited from deducting any amount from wages, including discounts, interest, or similar charges, for any wage advances made to employees before the agreed payment date.**



# Article 15

- **An employer is prohibited from making any deductions from an employee's wages or entering into any agreement that authorises such deductions UNLESS:**
  - a. **Permitted by law**
  - a. **Ordered by a court**
  - a. **Agreed by employer and trade union**
- **An employer shall not include as part of an employee's wages any benefits/income, even if provided/paid by the employer, that are granted for reasons unrelated to the employment contract.**
- **Deductions from an employee's wages for the purpose of obtaining or retaining employment are prohibited.**





# Article 18

**An employer is not prohibited from entering into a contract with an employee to provide food, housing, or other allowances or benefits (excluding liquor/drugs)– in addition to the minimum wage or a higher agreed wage for regular hours and overtime, as remuneration for the employee’s service.**



# Article 19 - Fines

- Unless a collective agreement states otherwise, an employer can deduct fines from an employee's wages only if:
  1. employment contract clearly outlines such fines and
  2. approval by the Director General for Employment and Industrial Relations
- If an employee fails to work the required hours without a valid reason, the employer cannot impose a fine but may deduct from the employee's wages the amount corresponding to the hours not worked.
- If an employer suspends an employee and either does not pay wages or pays less than the full amount due, it is considered a deduction from the employee's wages equivalent to the underpaid amount.



# Mark Bugeja et pro et noe vs Mellyora Grech – Court of Appeal – 27<sup>th</sup> May 2015

## Facts

- An employer filed a lawsuit against a former employee requesting the court to order her to pay the sum of €4,658.75.
- Employer argued that she acted in breach of clause 7.5 of her employment contract by working for the client of the plaintiff's company after termination.

## Clause 7.5

- *the employee cannot take up employment for a minimum period of two years after date of termination of employment with the firm, with any person, firm or company who for two years prior to termination of this agreement were clients of the firm. In such case, the parties agree that the employee will pay the firm by way of agreed damages the sum of Lm 2,000*



## First Court

- The clause in question was considered to fall within the parameters of Article 19 and thus required authorisation from the Director:

*...gjal darba din il-klawsola taqa taħt dak dispost fl-artikolu 19 tal-Kapitolu 452 u kwindi għall-istipulazzjoni tal-istess kien hemm bżonn l-awtorizzazzjoni tad-Direttur, liema awtorizzazzjoni ma ġietx fil-fatt mitluba, kwindi l-istess mhijiex waħda permissibbli, tmur kontra l-ordni pubblika għaliex meqjusa in restraint of trade u konsegwentament hija illecita u m'għandhiex ikollha validita'*



## Court of Appeal

- A penalty clause in an employment contract which imposed pre-liquidated damages did not fall under Article 19.
- Concept of fine and contractual penalty are different in an employment context.

*...illi l-artikolu 19 japplika għall-klawsoli f'kuntratt li jitrattaw dwar għemil jew ommissjonijiet u l-multi rispettivi għal tali għemil jew ommissjonijiet. Billi l-fatti tal-kaz kienu jitrattaw ħlas ta' ammont miftiehem minn qabel mill-partijiet f'każ li l-impjegat jimpjega ruħu ma' klijent tal-principal tieghu fi żmien stipulat wara terminazzjoni tal-impjieg, dawn gew ikkunsidrati li jikkostitwixxu danni pre likwidati u ghalhekk ma għandhomx jigu ekwiparati ma' multi. Għaldaqstant gie deciz illi l-Artikolu 19 ma japplikax u kwindi din il-konvenzjoni bejn il-partijiet ma kenitx tinneċessita l-kunsens tad-Direttur tal-Impjegi u Relazzjonijiet Industrijali... Inoltre hi l-opinjoni ta' din il-Qorti li danni likwidati u miftiehma minn qabel m'għandhomx jigu ekwiparati ma "multi" li huma imsemmija fl-artikolu talligi in kwestjoni*



# Articles 20 & 21

**An employee's claim for up to 3 months of unpaid wages, leave compensation and any compensation related to termination or notice will take priority over all other claims against the employer's assets, irrespective of whether they are privileged or hypothecary.**

**Article 21 establishes the Guarantee Fund which aims:**

- To ensure payment of unpaid wages owed to employees whose employment is terminated as a result of the employer's insolvency.**



# Article 21A – Recent Amendment

## Establishment of the Employment Agencies Guarantee Fund

### Aim:

- to provide compensation to employees of temporary work/outsourcing agencies whose employment is terminated due to the revocation or non-renewal of the agency's license



# Article 21B – Recent Amendment

## Establishment of the Employment Agencies Appeals Board

- This Board hears appeals on decision of the Director including:
  - a. any failure to inform an applicant or a licensee of the refusal of its application for a licence or the renewal thereof, or of the revocation or variation of its licence
  - b. any refusal of an application for a licence, whether original or renewed, or the revocation of a licence and
  - c. any variation of a licence
- Decision of Board can be appealed from within 20 days before Court of Appeal only on a question of law.





# Articles 22

- Every employer must pay employees their wages at regular intervals, not exceeding 4 weeks in arrears.
- Upon termination of a contract, all outstanding wages and any compensation for unused leave must be paid by the next scheduled payday.
- Employers must settle accounts at least once a year for employees whose wages are based on profit shares, commissions, or other payments made or received by the employer.



# Protection against Discrimination Related to Employment



# Prohibition of Discrimination – Article 26

## Pre-Employment Stage:

- Advertising and offering (incl. recruitment/training in anticipation of employment) of employment to prospective candidates
- Selection process

## Employment Stage:

- Current employees cannot be subjected to unfair treatment in relation to their working conditions or dismissal.



# What is Discriminatory Treatment?

- ✓ Selecting a less qualified candidate of one sex over a more qualified candidate of the opposite sex
- ✓ Providing less favourable pay or employment conditions to an employee compared to others in similar roles or with equal value work
- ✓ Intentionally managing work, distributing tasks, or arranging conditions so that an employee is placed in a clearly less favourable position compared to others

# Equal Pay for Work of Equal Value – Article 27

Employees in the same class of employment are entitled to the same rate of remuneration for work of equal value.



# Victimisation – Article 28



**It is unlawful to victimize anyone for making complaints to authorities, participating in proceedings regarding violations of this Act, or disclosing information about suspected illegal activities by their employer or representatives.**

# Harassment – Article 29

It is unlawful for an employer/employee to harass another person by subjecting them to unwelcome actions, requests or conduct – such as spoken words, gestures or written materials – based on sexual discrimination and which could be seen as offensive, humiliating or intimidating.



# Industrial Tribunal

- **Competent authority to hear complaints by persons claiming their employer has breached Articles 26, 27, 28 or 29.**
- **4-month time-limit from date of alleged breach to file action**
- **Powers of the Industrial Tribunal:**
  - a. To cancel any discriminatory contract of service or any clause in a contract/collective agreement**
  - b. To order the payment of compensation**





# Article 32

- Any person who violates Article 28 (victimisation) and Article 29 (harassment) is guilty of an offence subject to:
  - a. Imprisonment for 6 months-2 years
  - b. Fine > €5,000 but < €10,000
  - c. Fine & imprisonment

# **Employment Contract**



NAME  
NOM

# Article 33

- A person may agree to provide services for:
  - a. a fixed term
  - a. an indefinite term
  - a. for a specific task, undertaking, work/service



# Article 33

- If an employee continues in the same category after their fixed-term contract terminates or is re-employed in that category within 1 year from date of termination of the fixed-term contract, their conditions of employment must be at least as favourable as those that would apply under an indefinite contract.
- Additionally, the total probationary period cannot exceed what is specified in Chap. 452.
- Regardless of any agreement to the contrary, an indefinite contract cannot be converted to a definite contract unless there has been a substantial change in the employee's work or category.



# Fixed-Term Contracts - Article 34

- ✓ The conditions of employment for a fixed-term contract must be at least as favourable as those for an indefinite contract at the same workplace.
- ✓ Different treatment can only be justified on objective grounds.
- ✓ An employee on a fixed-term contract whose contract has expired and who is retained by the employer is considered on an indefinite contract IF they are NOT provided with a new contract within the first 12 working days after the expiration of the previous contract.



# Probation – Article 36



- ✓ Probation period: 6 months
- ✓ Fixed-term contracts: probation period proportionate to the set duration of contract (can be shorter by agreement of parties)
- ✓ Renewal of fixed-term contracts for the same function and tasks does not mean a new probationary period
- ✓ Fixed-term contracts must be  $> 6$  months UNLESS a shorter period is justified by objective reasons
- ✓ Fixed-term contract  $< 6$  months = employer must list the objective reasons for such duration



# Probation – Article 36

- ✓ Fixed-term contract < 6 months = probation is 1/3 of the duration of contract
- ✓ Fixed-term contract of 6-15 months = 2 -month probation per 6-month contract duration
- ✓ Fixed-term contract > 15 months = 6-month probation period
- ✓ Workers holding technical, executive, administrative or managerial positions and whose wages are at least double the minimum wage = 12-month probation period
- ✓ The probationary period is suspended in the case of any 2 or more weeks of approved leave, whereby such probationary period shall be extended to the corresponding duration of the leave.
- ✓ During the suspension period of the probation, the employer cannot dismiss an employee.



# Indefinite Contracts– Article 36

- ✓ An indefinite contract can be terminated, by giving notice, by the employee without giving reasons and by the employer on the grounds of redundancy.
- ✓ An employee who is made redundant is entitled to re-employment in the same position if post becomes available within 1 year.
- ✓ This re-employment must be under conditions at least as favourable as those the employee would have received if their contract had not been terminated.
- ✓ The employee will be considered to have continued their employment despite the termination.





# Last-In-First-Out

- ✓ Upon termination based on redundancy, the employer must first terminate the employment of the most recently employed employee in the affected job category **UNLESS** such employee is related to the employer by blood/marriage up to third degree.
- ✓ In this case, the employer can choose to terminate the next most recently employed employee instead.



# Notice Period for Termination of Indefinite Contract Based on Duration of Continuous Employment

- for more than 1 month but not more than 6 months = 1 week
- for more than 6 months but not more than 2 years = 2 weeks
- for more than two years but not more than four years = 4 weeks
- for more than four years but not more than seven years = 8 weeks
- for more than 7 years, an additional 1 week for every subsequent year of service or part thereof up to a maximum of 12 weeks;
- or longer periods as agreed by the employer and employee holding technical, administrative, executive or managerial posts



# Notice Period for Termination of Indefinite Contract

- The notice period will commence from the first working day following the day the notice is given.
- Upon receiving notice from the employer, an employee has 2 options:
  1. continue working until the notice period ends or,
  2. at any time during that period, request payment equal to half the wages for the remaining notice period.



# Notice Period for Termination of Indefinite Contract

- If an employee with an indefinite contract fails to provide the required notice, they must pay the employer an amount equal to half the wages for the notice period.
- Conversely, if the employer fails to give the necessary notice, they must pay the employee an amount equal to the wages for the notice period



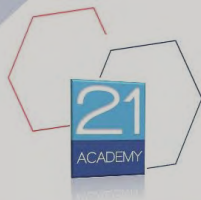
# Termination of Fixed-Term Contract

- If an employer terminates an employee's contract before the specified end date, they must pay the employee an amount equal to half of the full wages that would have been earned for the remaining duration of the contract.
- An employee who abandons their employment before the end of the specified contract period must pay the employer an amount equal to half of the full wages they would have earned if they had completed the remainder of the contract.



# Termination for Good & Sufficient Cause

An employer can dismiss an employee on an indefinite contract, and an employee on an indefinite contract can abandon his employment, without notice or liability for payment, if there is good and sufficient cause for the dismissal or abandonment of service.



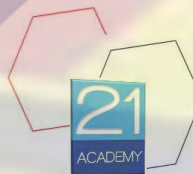
# Termination for Good & Sufficient Cause

- **Article 36(14) provides what is NOT a good and sufficient cause:**
  - a. Membership in a trade union or acting as an employee representative**
  - b. Loss of the employer's confidence (except for private domestic employees)**
  - c. Employee contracts marriage**
  - d. Pregnancy or absence from work during maternity leave**
  - e. Disclosing information about illegal or corrupt activities by employer to the authorities**
  - f. Filing a complaint or participating in proceedings against the employer for illegalities**
  - g. Transfer of business ownership – UNLESS for economic, technical, organisational reasons**



# Termination-Related Prohibitions

- An employer, in the absence of the employee's consent, cannot terminate an employee's contract during a period of incapacity due to a work-related injury or specified occupational diseases occurring during employment.
- During this period, the employee is entitled to wages, minus any injury benefits under the Social Security Act (excluding permanent disability benefits).
- IMP: These safeguards apply only for the first 12 months of incapacity.
- A full-time female employee cannot be dismissed by her employer during her maternity leave or within 5 weeks after the leave if she is unable to work due to a medical condition related to childbirth.





# Procedure for Termination for a Good and Sufficient Cause

- No automatic right to dismiss after 3 warnings
- Consider also the time which elapses between one warning and another
- Verbal warnings are also relevant but more difficult to prove



# Warnings

- The need for warnings and the amount which should be given depend on the gravity of the incident in question.
- Even following warnings, a final meeting should be held before the decision to dismiss is taken.
- In case of serious breaches which might merit dismissal, employee should still be given the opportunity to defend his case.



# Disciplinary Proceedings

- No mention in the law but developed by case law
- Importance of acting reasonably in dismissing – following a reasonable procedure
- David Calleja v Peak Leisure Limited - Court of Appeal - 12<sup>th</sup> December 2017:  
Once Tribunal decides that the dismissal was fair on the merits, it cannot order compensation to be given based on the fairness or otherwise of the procedure of dismissal as the law makes no provision for such compensation.



# How to Handle Internal Grievances



# Collective Redundancies – Article 37

1. Employer must notify the employees' representatives in writing

2. Consultation with the employees' representatives



# Transfer of Business – Article 38

- When a business is taken over by someone (the "transferee") from an employer (the "transferor"), any employee working for the transferor at the time of the takeover will automatically become an employee of the transferee.
- The transferee will assume all the rights and responsibilities the transferor had towards the employees.



# Article 39

**Seamen employed on ships under the provisions of the Merchant Shipping Act are excluded from the operation of Articles 36, 37 and 38.**



# Certificates of Service – Article 41

- **When a contract of service lasting more than 1 month is terminated, the employer must, upon the employee's request, provide a certificate stating:**
  - a. The duration of the employment**
  - b. The nature of the work performed**
  - c. The reason for termination, if the employee requests it**
  - d. The rate of wages paid**
- **However, if the termination occurred during probation, the employer is not required to provide a reason for the termination.**





## Article 42 - IMP

**If an employment contract or collective agreement includes employment conditions that are less favourable to the employee than those outlined in this Act, the conditions in this Act will automatically replace the less favourable ones.**



# Enforcement – Article 45

- Any employer who violates or fails to comply with recognized employment conditions set by a national standard order, sectoral regulation, collective agreement, or with any provisions of Chap. 452 or its regulations will be fined upon conviction:

Not less than €232.94 but not more than €2,329.37



# Enforcement – Article 45

- If an employer is convicted of any of the following offenses:
  - a. Failing to pay wages at the correct rate as per the recognized condition of employment or contract of service (whichever is higher)
  - b. Making illegal deductions or imposing fines not permitted by law
  - c. Failing to pay any bonus or other payments due to the employee under the Act
  - d. Withholding any wages or payment in lieu of notice
  - e. Not allowing paid holidays as required by law or contract
  - f. Failing to pay any money due to an employee under this Act or any relevant orders
- In addition to imposing a fine, the court shall order the employer to repay the owed amounts to the employee.
- If holidays with pay were denied, the employer must also pay an additional sum equal to the pay for those holidays.



# Enforcement – Article 46

If an offense under this Act, or any related regulations or orders, is committed by a partnership, company, association, or other group, every director, manager, secretary, or similar officer at the time of the offense will be considered guilty UNLESS

1. offense occurred without their knowledge and
2. they took all reasonable steps to prevent it



# Limitation of Action – Article 47

Proceedings for an offense under this Act, or any related regulations or orders, can be initiated within 1 year of the offense being committed.



# Article 49

## Trade Unions



# Immunity of Trade Unions and Employers' Associations – Article 63

- No legal action in tort or quasi-tort can be taken for any act:
  - a. done by or on behalf of a trade union or an employers' association
  - or
  - a. threatened or intended to be done by them
- against the union or association, itself, or against any of its members, officers, or officials acting on behalf of themselves and other members.



# Acts in Contemplation/Furtherance of Trade Disputes – Article 64

Acts in contemplation/furtherance of trade disputes are not actionable in tort/quasi-tort





# Industrial Tribunal Jurisdiction – Article 75

1. All cases of alleged unfair dismissal
2. All claims made in line with Art. 36(11) and (12), for amounts due to a worker or employer after the early termination of a fixed-term contract
3. All cases falling within the jurisdiction of the Industrial Tribunal by virtue of Title I of this Act (discrimination, equal pay, harassment, victimisation)



# Procedure of the Industrial Tribunal – Article 76

The Chairperson of the Tribunal may be challenged or may abstain in any of the circumstances laid down in Article 734 of the COCP.



# Procedure of the Industrial Tribunal – Article 78

- ✓ Issue referred to before the Tribunal must be decided within a period not exceeding 1 month, unless a longer period is required.
- ✓ The Tribunal regulates its own procedure with the aim of ensuring that justice is done according to the substantive merits of the case and subject to the rules of natural justice.
- ✓ Sittings before the Tribunal are held in public.
- ✓ Where the members of the Tribunal are more than one and they are unable to agree as to their award, decision or advice, the matter shall be decided by the Chairperson .



# Powers of Industrial Tribunal in Cases of Dismissal – Article 81

- ✓ In cases of unfair dismissal, the Tribunal can order the complainant to be reinstated or re-engaged.
  
- ✓ Exception: complainant is employed in a managerial/executive post demanding special trust (unless the complainant was appointed/selected by his fellow workers)
  
- When ordering compensation, the Tribunal considers the following factors:
  1. real damages and losses
  2. worker's age and skills impacting the employment potential of such worker



# Effects of Awards or Decisions by Tribunal – Article 82

- ✓ Decisions of the Tribunal are binding
- ✓ A right of appeal on a point of law exists in cases of unfair dismissal and in cases falling under Article 75(1)(a), (b) and (c)
- ✓ 12-day time limit to file an appeal from date of Tribunal decision



# Transparent and Predictable Working Conditions Regulations

**Employers must inform workers of the essential aspects of the employment relationship:**

- a. Name, registration number and registered place of business of the employer
- b. Place of work
- c. Title, grade, nature or category of work
- d. Brief description of work
- e. Date of employment commencement
- f. End date of fixed-term contract
- g. Identity of the user undertaking in the case of temporary agency workers
- h. Duration and conditions of probation
- i. Training entitlements
- j. Leave entitlements
- k. Procedure re. termination
- l. Remuneration
- m. Working hours
- n. Collective agreements governing the worker's work conditions
- o. Identity of social security institutions & any social security protection
- p. Any other relevant/applicable condition of employment



# Transparent and Predictable Working Conditions Regulations

The following information must be given individually to the worker not later than 7 days from the first working day:

- a. Name, registration number and registered place of business of the employer
- b. Place of work
- c. Title, grade, nature or category of work
- d. Brief description of work
- e. Date of employment commencement
- f. Identity of the user undertaking in the case of temporary agency workers
- g. Procedure re. termination
- h. Remuneration
- i. Working hours

All other info. must be given within 1 month from the first working day.



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