

The Employers' Information Handbook



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Foreword



Arthur Muscat

It is a great pleasure for me to present you with this resource which is in line with the main objective of the Malta Employers' Association, i.e. to assist employers from all sectors and all sizes to fulfil their function as employers in order to reach their organisational goals, through a correct knowledge and observance of laws, rules and regulations which is conducive to positive ethical behaviour in their important role of creating decent jobs. The Association is celebrating its fiftieth anniversary since it was founded, and over these decades has always been an active participant in the economic and social transformation of our nation. I am certain that many companies will find this handbook useful, and that, as it has done during its fifty years of history, the Association will continue to be of service to employers in Malta for many years to come.



Joseph Farrugia

This handbook is an extension of the services that the MEA secretariat provide to members of the Association on an ongoing basis. Our expanding membership contributes to the collective experience of employers in handling employment related matters, and strengthens our resolve to constantly engage with employers in Malta whenever we represent them in local and international fora, as well as through the continuous professional and prompt advice that we deliver. This handbook is a tangible resource which many companies will appreciate and use in their function as employers, and presents in a condensed form the information that is also available on our on-line HR handbook. I thank all members for their support over the years and, on behalf of the members of the secretariat team, assure them of a sustained effort to improve our services in an innovative and efficient manner that reflects their contemporary needs.

Introduction

The Malta Employers' Association is a constituted body which brings together employers from all sectors of industry and commerce in Malta. Its members currently employ 30% of the Maltese labour force.

The changing economic and legal environment is highlighting the need for companies to be informed and well-gearred to face the challenges that emerge from the fact that they employ people.

Malta's accession to the European Union has introduced considerable legal obligations which all employers, irrespective of size have to abide with. These responsibilities entail such critically sensitive

elements as employee relations, relations with government bodies and interpretation of legislation. The consequences of non-compliance can be costly in terms of lost productivity, fines, and industrial unrest. The majority of cases of non-compliance occur because of insufficient awareness of the complexity of legal obligations that all businesses are expected to respect, and not due to wilful negligence.

Micro-businesses, in particular, need to have access to knowledge and training in order to function effectively as employers, since they do not have a set up that includes a human resources department or specialist.

The main objectives of this handbook are:

- To create public awareness about the need of micro business employers to be informed and active in policies and good employment practices
- To equip, involve and facilitate the participation of micro business employers for this purpose
- To have more informed and active micro business employers in related policy development and implementation in Malta.

The Malta Employers' Association and its Functions

The Malta Employers' Association (MEA) is a constituted body which brings together employers from all sectors of industry and commerce in Malta.

The MEA seeks to promote:

- A unity of purpose among all employers in Malta in a modern, pro-business climate.
- Optimum relations between employers and their employees, as well as between individual employers.
- A good working relationship between government and employers.

Since it was first created in 1965, the MEA has successfully represented its members' interest in all aspects of industrial relations and trade union disputes. It is the acknowledged leader in its specialised field of industrial relations and is highly respected by the Government, the trade unions and other constituted bodies with whom it enjoys close working relationships.

The MEA is represented in various national organisations and fora amongst which:

- Employment Relations Board
- Malta Council for Economic and Social Development (MCESD)
- Employment and Training Corporation (ETC)
- Social Security Umpire's Office
- Health and Safety Commission
- National Employment Authority

The MEA maintains contact with the more important labour-oriented international organisations and is a member of the following organisations:

- International Labour Organisation (ILO)
- Association of Business Organisation in European Capital Cities (OPCE)
- European Centre of Enterprises with Public Participation and of
- Enterprises of General Economic Interest (CEEP)
- International Organisation of Employers (IOE)
- Businessmed

A First Step

MEA represents employers – micros, SMEs and large companies - from all sectors of the economy, and its members benefit from:

- Personal consultancy services of a professional calibre, drawing upon the accumulated field experience of experts. This means that you have available to you free advice on all aspects of conditions of work, labour law and social policy.
- Representation and assistance in conciliation, mediation, arbitration and Industrial Tribunal cases.
- Representation in national fora.
- Access to the online Human Resources Handbook. The HR handbook consists of various chapters on human resources matters. These chapters are constantly updated to reflect any changes in legislation. The online version of the Handbook, which is accessible to members, contains many more chapters than the printed edition.
- access to all publications and newsletters published by MEA.
- Discounted rates on courses, seminars and information sessions organized by the Association
- Specialised services to micro businesses and SMEs through an SME Helpdesk

The Human Resource Handbook

FAQs about employing people

Contracts of Employment

Related Legislation:

Part V Article 33 - 42 of the Employment and Industrial Relations Act, 2002, Chapter 452 of the Laws of Malta
L.N. 431 of 2002, Information to Employees Regulations, 2002

1. Are contracts of employment obligatory for all employees?

Contracts of employment are not obligatory. Nevertheless Article 4 of LN 431 of 2002 states that in those cases where no contract of employment has been signed between the employer and the employee, and, or in those cases where a written contract does not cover all or some of the information required to be notified to the employee by these Regulations,

the employer shall be bound to give or send to the employee a letter of engagement or a signed statement. The statement should include the basic conditions of employment stipulated in the Legal Notice, and should be given to the employee by not later than eight working days from the commencement of employment.

2. Can a contract of employment include confidentiality clauses with penalties?

According to LN 431 of 2002, it would be advisable to inform the Director of Employment and Industrial Relations of such penalty.

3. Can conditions of employment change once there is a contract of employment?

The conditions of employment can be changed by mutual agreement or due to statutory requirement.

4. What is the minimum/obligatory information that has to be included in a contract of employment?

There are minimum requirements established by the Legal Notice including the name, registration number and registered place of business of the employer and the identity card number, sex and address of the employee and the place of work as well as

- a. the date of commencement of employment
- b. the period of probation
- c. normal rates of wages payable
- d. the overtime rates of wages payable
- e. the normal hours of work
- f. the periodicity of wage payments
- g. in the case of a fixed term contract of employment, the expected or agreed duration of the contract period
- h. the paid holidays, and the vacation, sick and other leave to which the employee is entitled
- i. the conditions under which fines may be imposed by the employer
- j. the title, grade, nature or category of the work for which the employee is employed

- k. the notice periods to be observed by the employer and the employee should it be the case
- l. the collective agreement, if any, governing the employee's conditions of work and
- m. any other relevant or applicable condition of employment

Provided that if any of the above information is regulated by any law, regulation, national standard order, sectoral regulation order or collective agreement, the information may, where appropriate, be given in the form of a reference to the laws, regulations, orders or collective agreements governing that same agreement.

5. Does a collective agreement supercede a contract of employment?

Insofar as the conditions of employment are agreed to by both parties, within the ambit of the law and are more favourable to the employee, the collective agreement supercedes a contract of employment.

6. Can a non-unionised employee with a contract of employment refuse to accept the conditions of a collective agreement?

If the employee happens to fall in a category governed by the collective agreement then it applies to that employee irrespective of whether the employee is unionised or not.

7. Is there a procedure to change conditions of a contract of employment?

Article 42 of the EIRA stipulates that where conditions are less favourable than those stipulated in the Act, then this must be put down in writing and the Director of Employment and Industrial Relations must be informed.

8. Should a job description be a part of a contract of employment?

The employer is not obliged to do so but it is advisable to include it so that the employee knows exactly what is expected of him/her and so as to avoid any misunderstandings. The job description should be drafted in such a way so as to afford the employer flexibility in assigning duties.

9. Should bonus schemes be a part of a contract of employment?

The bonus scheme may or may not be included in the contract of employment. In any case it should have a time frame.

10. Can a contract of employment include conditions that are different than the legal minimum?

This is permissible only if the conditions are more favourable to the employee. Otherwise the employee can contest their validity.

However, Article 42 of the EIRA does allow for inferior conditions but only 'in exceptional cases... a temporary measure to avoid redundancies'. In such cases there must be approval by the Director of Employment and Industrial Relations and such approval is reviewed every four weeks.

11. Is a contract of employment made with a company employee acting on behalf of a company, binding?

If the employee has the juridical requirements and is authorized by the company, it is binding even if the authorized person is no longer in the company's employment.

12. Can hours of work (e.g. shifts) stipulated in a contract of employment be changed unilaterally?

If the company reserves the right to change the working hours and the exigencies of the company warrants a change, then they can be changed after due notice is given. Care must be given to include a wording in the contract of employment to allow for changes in hours of work to avoid problems.

13. In cases of promotion, does a new contract of employment have to be issued?

It is advisable so as to include the new conditions of employment especially the job description to avoid any misunderstandings.

14. If a new contract is issued, does it necessarily imply that there is, in fact, a fresh employment?

Provided that there is no six month break between one contract of employment and another, then it is deemed to be a continuation of employment. If there is a break of any duration, ETC termination and engagement forms have to be filled in. But for purposes of employment continuity it will still be

regarded as continuous employment if the break is less than six months.

Therefore a new contract issued for purposes, say, of promotion or reassignment of duties, does not necessarily imply fresh employment. In such cases no notice period is due, neither is the probationary period applicable if probation had been completed successfully in the previous position. In fact employers can impose a trial period but not a probationary period in the new post if there is a continuation of employment.

15. Does a properly filled ETC engagement form substitute a contract of employment?

The purpose of the ETC form is to inform the authorities of labour movements and not to act as a contract of employment. The ETC does not satisfy the requirements laid in L.N. 431 of 2002.

Definite Period Contracts

Related Legislation:

Employment and Industrial Relations Act, 2002
L.N. 429 of 2002 - Contracts of Service for a Fixed Term Regulations, 2002

1. What is a fixed term contract?

A fixed term contract is a contract with a specified beginning and a specified end.

2. What happens if an employer terminates the contract before its expiry date?

One has to distinguish between termination during probation, termination after probation and dismissal for good and sufficient cause:

- **Termination during probation**

During probation the employer may terminate employment without incurring any liability. He is however obliged to give one weeks' notice if more than one month's employment has elapsed.

- **Termination after probation**

Once the probationary period has elapsed, half the remaining rule applies. This means that the employer would be obliged to pay half the salary of the unexpired period, unless the employee is dismissed for good and sufficient cause. This rule applies only to the basic salary (i.e. it excludes bonuses, allowances, commissions and any other benefits.)

- **Termination for good and sufficient cause**

If employment is terminated for good and sufficient cause, then half the remaining rule does not apply - meaning that the employer does not incur any liability. For an explanation of what does not constitute good and sufficient cause please refer to Article 36 (14) of the Employment and Industrial Relations Act.

3. What happens if an employee terminates the contract before its expiry date?

This depends whether the employee terminates employment during probation or after probation has expired:

- **Termination during probation**

During probation the employee does not incur any liability provided that one week's notice is given if the employee has been in employment for a continuous period of one month.

- **Termination after probation**

If the employee terminates employment after the probationary period has elapsed and before the contract expires, then the employee will have to pay to the employer half the wages of the remaining unexpired time, unless the employee terminates employment for good and sufficient cause (for example allegations of discrimination, harassment or victimisation).

4. Are employees on a definite period contract entitled to maternity leave?

As a general rule all female employees are entitled to maternity leave, however the employers' obligations end with the expiry of the contract. For example if an employee is employed on a definite period contract of employment goes out on maternity 5 weeks before the contract expires, the employer is not bound to

pay maternity leave beyond the expiry of the contract i.e. in this case, 5 weeks.

The provision stating that the employee would have to refund the maternity leave money if not working for a continuous period of six months (as per Article 36 (20) of the Employment and Industrial Relations Act) following return to work does not apply. For example if, following the 14 week maternity leave period, the returning employee only has four weeks till the expiry of the contract, the employer cannot oblige the employee to pay back the maternity leave money. Nor can the employer coerce the employee into renewing the contract for an additional period that would cover the six months (this is stipulated in Article 10 of Legal Notice 439 of 2003).

5. Are part time employees on a definite contract entitled to maternity leave?

All employees, whether employed on full time or part time basis are entitled to maternity leave.

6. Can an employee on fixed term contract apply for promotions?

Yes. The law states that employee on fixed term contracts cannot be treated less favourably than comparable employees. (Article 4 of L.N. 51 of 2007)

7. Can a fixed term contract be extended?

Yes, however on the lapse of four year's employment, the contract would automatically be deemed to be one of indefinite duration.

8. Does the probationary period apply for fixed term contracts?

Yes Article 36 of the Employment and Industrial Relations Act clearly states that the first six months of any employment shall be probationary.

9. If an employee is terminated on disciplinary grounds during a fixed term contract, is she/he bound to pay half the remaining period?

Half the remaining period rule does not apply in the case of a breach of contract for good and sufficient cause.

10. Can an employee on a definite period contract be made redundant?

No, but half the remaining period rule still applies.

11. What can constitute an objective reason for extending a fixed term contract beyond 4 years?

It is up to the Director of Employment and Industrial Relations to determine.

12. How much notice has to be given to notify the employee of a contract's termination?

It is at the employers' discretion however it is advisable to follow that stipulated by the EIRA in Article 36.

13. What happens if such notice is not given?

Nothing, but ethically it should be given.

14. If an employee on a definite period contract becomes indefinite, does it constitute new employment?

No. In accordance with Art 7 (2) of L.N. 51 of 2007 the effective date when an employee shall be considered to have been employed on an indefinite basis is the date following that when the four-year period has expired, but the period in continuous employment on one or more fixed-term contract or contracts of service shall be taken into account for all other purposes, including seniority and redundancy.

15. Does the time spent on a definite period contract count for purpose of seniority and notice periods?

Yes. Refer to question 14.

16. Does the time spent on successive periods count for purposes of seniority and notice periods?

Yes. Refer to question 14.

17. Can conditions of employment during a definite period contract be re-negotiated?

- If the conditions of employment are more favourable for the employee then yes they may be re-negotiated.
- If however the conditions of employment are less favourable for the employee then the employer cannot impose them unilaterally but there has to be mutual agreement.

Part Time Employment

Related Legislation:

Chapter 452 - Employment and Industrial Relations Act, 2002

L.N. 427 of 2002 - Part-Time Employees Regulations, 2002

Organisation of Working Time Regulations

1. Who is deemed to be a part time employee?

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

2. What is a comparable employee?

A comparable employee is a whole time employee in the same establishment who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualifications and skills.

3. What is the distinction, if any, between a part timer and a whole timer with reduced hours?

A whole time employee with reduced hours is an employee who in agreement with the employer works for less than the number of hours applicable to a whole timer, provided that such employment is the principal employment of the employee in respect of which social security contributions are paid. This might be a temporary arrangement.

4. Is the probationary period applicable to part time employees?

Yes. The EIRA does not distinguish between part time and full time employees given that it clearly states that the first six months of any employment are probationary.

5. Are notice periods applicable to part time employees?

Yes. Article 36 of the EIRA does not distinguish between part time and full time employees. The same provisions apply.

6. Do the employers' obligations vary if the part time employment is the sole/principal employment or additional employment?

All employees including part timers are eligible for all entitlements, bonuses and benefits pro rata temporis, that is based on the average number of hours worked.

7. Do part time employees have any entitlements?

See 6 above.

8. Do part time employees pay National Insurance Contributions? If yes how much?

If the part time employment is the principal employment then the employee has to pay NI Contributions. By means of Budget 2007 the employee is entitled to choose whether to pay 10% of wages earned or a flat rate which is the same rate applicable to full time employees not exceeding the national minimum wage.

Part time employees do not pay NI Contributions in their secondary employment.

9. What is principal employment?

Principal employment means that employment in respect of which social security contributions are payable under the Social Security Act. Employees who have more than one employment are obliged to pay social security contributions in that job where they work the most basic hours. (i.e. excluding overtime.)

10. Does the employer of a part time employee pay NI Contributions?

The employer always has to pay NI contributions for his employees if it is the employee's principal employment and the employee is paying social security contributions in that employment. However with respect to employees who earn less than the minimum wage, the employer is obliged to pay the flat rate applicable to those earning the minimum wage, whilst the employee has the option of either paying the flat rate applicable to those earning a minimum wage or paying 10% of the earning.

11. Should part time employees have a written contract of employment?

See the chapter on contracts of employment page 55.

12. Can the employer terminate employment of a part time employee?

The employer has vis-a-vis part timers the same rights and obligations applicable to whole/full timers. Therefore the employer may terminate employment of a part time employee during the probationary period without assigning any reason. Nevertheless on the expiry of the probationary period the employer may only terminate for good and sufficient cause. A part time employee has the right of recourse at the Industrial Tribunal.

13. What happens if there are internal calls for full time employment?

In accordance with L.N. 427 of 2002, the part time employee has to be notified by the company of such vacancy.

14. What happens if there are external calls for full time employment?

The same provisions apply. In accordance with L.N. 427 of 2002, the part time employee has the right of first preference.

15. What happens if the part time employee rejects an offer for full time employment?

Rejection of an offer for full time employment does not constitute a valid reason for termination of employment or any form of discrimination/ victimisation.

16. Can the employer offer part time workers less favourable conditions of employment than comparable full time employees?

No. The Equal Pay for Work of Equal Value principle applies vis-a-vis a comparable employee.

17. Can the employer offer part time employees more favourable conditions of employment than comparable full time employees?

No. The Equal Pay for Work of Equal Value principle applies vis-a-vis a comparable employee.

18. In the case of redundancies should the employer differentiate between part time and full time employees?

The law does not differentiate between part time and whole time/ full timers. Therefore the 'last in first out principle' applies within each category of employees irrespective of whether the employees are full or part timers and regardless of whether it is the principal or secondary employment.

19. Can a full time employee have part time employment with the same employer?

No. Any additional hours worked for the same employer shall be deemed to be overtime, payable at overtime rates and not part time employment even if the two jobs are distinct from each other.

20. Can an employee have two part time jobs with the same employer rather than one full time job?

This question arises when employees are employed with two or more companies having the same owners/ shareholders. In such cases, this is legal because the companies are separate juridical persons.

It is to be noted, particularly in some service sectors, that employers have engaged persons doing similar work in more than one company. By means of Legal Notice 17 of 2010 even employees in secondary employment shall accrue benefits and entitlements.

21. Can part time workers be given a definite period contract?

Yes. The same regulations applicable to full time employees still apply to part timers.

22. Can part time employees on an indefinite contract be offered full time employment for a definite period of time? Would the employee have any entitlements?

If there is mutual agreement then the number of hours may be extended provided that the employee gets pro rata entitlements, benefits, bonuses etc.

23. What happens in the case that a part time employee has an occupational injury in employment which is not the principal employment?

For the purpose of social benefits, the Social Security Department does not consider this as injury in the part time employment but as sickness in the principal employment.

Probation

Related Legislation:

Article 36 (1) and Article 41 of the Employment and Industrial Relations Act, 2002, Chapter 452 of the Laws of Malta

1. What is the probationary period established by law?

The EIRA establishes a six month probationary period. However in the case of executive, technical, managerial and administrative posts whose salary exceeds twice the minimum wage a one year probationary period applies.

2. Can the probationary period be more than that stipulated by law?

A one year probationary period applies in the case of executive, technical, managerial and administrative posts whose salary exceeds twice the minimum wage.

3. Can the probationary period be less than that stipulated by law?

The parties may agree to a shorter probationary period. Nevertheless it is not advisable for the employer to do so since certain issues may arise during the probationary period. Employers should make full use of the probationary period to monitor performance and attitude, and also to identify any training requirements.

4. Can the probationary period established by a collective agreement differ from that stipulated by law?

Yes it can differ, but it can only be for a shorter period and cannot exceed the maximum stipulated by law.

5. Can the probationary period be extended?

The probationary period may not extend beyond the six months or one year as the case may be. However in cases where the employee has been engaged on a shorter probationary period than that stipulated by law (say, 3 months) the employer does have the option

- by mutual agreement – to extend the probationary period for a further period which does not exceed the maximum stipulated in Article 36 of the EIRA.

In case where an employer wishes to retain the employee beyond the probationary period without incurring the risk of giving him/her a full time indefinite period employment an option is to terminate employment before the expiry of the probationary period and, by agreement with the employee, offer a short definite period contract of employment. In such cases the full provisions of legislation related to definite period contracts apply. (Refer to the Chapter on Definite Period Contracts in this handbook).

6. Does the probationary period apply to definite period contracts and part time employment?

The law states that the first six months of any employment are probationary without making any distinction between definite and indefinite contracts, part time and full time employment.

7. What happens if the employee is given an employment contract for six months or less?

Since the law states that the first six months of any employment are probationary, if the contract is for six months or less, then the entire period shall be probationary.

8. Does notice period apply if employment is terminated during the probationary period?

If the employee exceeds one month's employment then one week's notice will apply to both parties.

9. Is the party terminating employment during the probationary period obliged to give a reason for such termination?

No. The law clearly states that either party may terminate employment without assigning any reason. Therefore it is advisable to stipulate 'terminated during probation' on the ETC termination form. The only exception is when the employee is pregnant. In this case the employer has to give a reason in writing for terminating which is unrelated to the fact that the employee is pregnant

10. If employment is terminated during probation should such termination be put in writing?

It would be advisable for record purposes for the employer to put in writing the fact that employment is being terminated during probation.

11. If an employee is given a promotion does the probationary period apply again?

There is a distinction between a probationary period and a trial period. The difference between new employment and a promotion is that if the employee is unsuccessful during the trial period he/she will not lose their employment but will revert back to their previous position under the same terms and conditions they previously held.

12. Are employees put on probation if there is a transfer of business?

No since the law states that once there is a transfer of business, the employer will assume the previous employer's rights and obligations and employees will retain seniority rights etc.

13. Once the probationary period expires, does employment have to be confirmed in writing?

The employer is not obliged to give anything in writing upon successful completion of the probationary period. However it is ethical to do so.

14. Are there instances when an employer cannot terminate employment during probation?

The employer of an employee who gets injured during probation cannot terminate his employment prior to the lapse of one year injury leave.

15. Are there instances where the employer may refuse an employee's resignation during the probationary period?

No. The probationary period allows both parties to terminate the employment relationship.

16. Should notice of termination of employment be given one week before the expiry of the probationary period or can it be given on the very last day?

The law is not clear on the matter however it is advisable for the employer who intends to terminate employment, to tender notice prior to its expiration.

17. What happens if employment is terminated during the probationary period and the same employee is re-engaged? Does the probationary period continue running or does it start afresh?

This depends very much on how much time elapses between termination and re-engagement.

If re-engagement takes place prior to the lapse of six months then it will be deemed to be one continuous period and the probationary period had been interrupted.

However if re-engagement takes place after six months then it will be deemed to be a new employment and the six month or one year probationary period will start afresh.

18. Are employees entitled to sickness and other benefits during the probationary period?

Various Wage Regulation Orders stipulate that employees may only avail themselves of sick leave after the lapse of a specified time period. For example Article 9 (1) of the Construction WRO states that sick leave entitlement starts after the completion of one year's continuous service. This varies from one industry to another according to its respective WRO.

It is to be noted that irrespective of the entitlement during the probationary period, all benefits accrue as from the first day of employment.

Maternity Leave

Related Legislation:

Article 10 and 36 of the Employment and Industrial Relations Act, 2002, Chapter 452 of the Laws of Malta

L.N. 439 of 2003, as amended by Legal Notices 3 of 2004 and 431 of 2007, Protection of Maternity (Employment) Regulations, 2003

L.N. 225 of 2003, Parental Leave Entitlement Regulations, 2003

1. What is the duration of maternity leave?

With effect from 1st January 2012 an employee who is either already on maternity leave or who will give birth during 2012 has the option of extending her maternity leave entitlement if she notifies her employer. This uninterrupted period shall increase from 14 to 16 weeks as from 1st January 2012 and to 18 weeks as from 1st January 2013 onwards.

2. Are all employees eligible to maternity leave?

All full time and part time employees are entitled to maternity leave.

3. Is a female employee who has just adopted a child entitled to maternity leave?

Neither maternity leave nor Birth Leave applies in the case of adoption since it refers to the birth of a child. Nevertheless the employee shall be entitled to parental leave which is unpaid leave.

4. Are employees on definite period contracts entitled to maternity leave?

An employee on a fixed term contract shall have the same rights as a full time employee for the duration of the fixed term contract.

5. Are employees on probation entitled to maternity leave?

Yes, female employees on probation are also entitled to maternity leave. The probationary period will be suspended the moment that the employee goes out

on maternity leave and continues running upon her return to work.

6. How can maternity leave be distributed before and after birth?

- i. Six weeks of the maternity leave are to be taken immediately after the date of confinement. This is compulsory;
- ii. Four weeks are to be availed of immediately before the expected date of confinement (unless agreed otherwise with the employer);
- iii. The remaining balance is to be taken in whole or in part immediately before or after the above periods.

7. Can an employer oblige an employee to go out on maternity leave?

The Employer is obliged to send the employee on maternity leave as provided by legislation (refer to question 5).

8. What are the conditions for taking special maternity leave during pregnancy or after having given birth or during breastfeeding?

When a risk assessment has indicated that a risk exists to the health/safety of the employee and/or her baby, in her present work, the employer is to provide an alternative post. If such alternative post is not possible, the employee is entitled to 'special maternity leave'. During this 'special maternity leave' the employer is to pay the employee a special allowance equivalent to the rate of sickness benefit in terms of the Social Security Act.

9. (a) Is the employer obliged to offer alternative employment if the job presents a danger to the employee?

If a risk assessment has revealed a risk to the safety/health of the employee and/or her baby, the employer shall offer an alternative job or adjust the hours of work in order to eliminate the risk.

9. (b) What if the employee refuses a suitable alternative job?

If the employee, without justification, refuses to perform an alternative job which does not represent a hazard to her health and safety, she will not be entitled to payment mentioned in Question 7 above.

9. (c) What if there is no alternative job available?

If the employer shows to the satisfaction of the OHSA, that he is unable to offer alternative employment, then the employer shall grant the employee 'special maternity leave' as stipulated by legislation (refer to question 7).

10. How much notice has to be given to take maternity leave?

A pregnant employee shall notify the employer in writing of the date she intends to avail herself of the maternity leave at least four weeks before the maternity leave begins.

11. Does vacation leave accumulate during periods of maternity leave?

Vacation leave accrues during the whole period of maternity leave whether paid or unpaid.

12. If the maternity leave overlaps a shutdown period, is the foregone leave added to the leave entitlement?

Yes, the leave is added.

13. Can an employee opt to remain in her job even if it might present a health hazard to the pregnancy? Can the employer be held liable? Who can determine whether a job presents a health hazard?

Only through a risk assessment can a particular job be established as posing a safety/health hazard.

The ultimate authority in such cases is the OHSA.

The employer can engage an independent assessor to determine the suitability of a job, or whether adjustments have to be implemented.

An employer cannot and should not allow an employee to remain in her job if a risk assessment has established that the particular job poses a risk to mother and/or baby.

An employer can be held liable only if an employee is kept in her work, after a risk assessment has established that a safety/health risk exists.

14. If a pregnant employee, who is on a definite period contract, cannot continue performing her work for the duration of the pregnancy what are the options available to the employer?

The conditions explained in question 7 of this chapter also apply to employees on definite period contracts.

It should be noted that the employer may at any time during the definite period contract terminate employment and pay half the wages/salary that would have been payable for the unexpired period.

15. If the employee gives notice of resignation before six months after returning to work, how can the employer obtain the refund for the payments issued during maternity leave?

An employee, on a contract for an indefinite duration, who has availed herself of maternity leave is obliged to work for a continuous period of six months upon her return to work. The employer is entitled to request payment from the employee for refund of payments made to her during the maternity leave if the employee does not work for a continuous period of six months. If the employee refuses to pay, the employer may take legal action against the employee.

16. Is post natal depression considered as sick leave?

An employee on post natal depression is considered to be sick and is therefore entitled to sick leave as stipulated by legislation or a collective agreement or contract of employment. The employer however has the right to refer the employee to a specialist for a second opinion.

17. Can the period of maternity leave be immediately followed by a request for parental leave?

An employee may request parental leave immediately following the period of maternity leave. However an employer may postpone the timing of the parental leave in accordance with the provisions of clause 7 of L.N. 225 of 2003 (Parental Leave).

18. If an employee takes parental leave immediately following the maternity leave does this exempt her, partly or wholly, from working for a continuous period of six months upon her return to work?

The employee would still have to work for a continuous period of six months upon her return to work even if she would have taken parental leave following the maternity leave.

19. Are employees who have given birth eligible for birth leave over and above maternity leave?

No, an employee is not entitled to birth leave in addition to maternity leave. Birth leave is only applicable to the father on the birth of a child.

20. Can an employee ask for payment in lieu of part of the maternity leave? Can the employer accept such a request?

Employers should not accept any request for payment in lieu of maternity leave. Besides being against the law the employer would be exposing himself to damages in case of any mishap.

21. Are public holidays falling during periods of maternity leave added to the leave entitlement?

Yes. Employees are entitled to both maternity leave and public holidays falling between Monday and Friday.

22. Can a pregnant employee continue to work on night shift?

Unless an employee notifies the employer by means of a medical certificate that she should not perform night duties, or where a risk assessment establishes that night work is detrimental to the safety/health of the mother or baby, a pregnant employee may continue to work night shift.

Employers are however advised to be extremely cautious and should ideally carry out a risk assessment themselves to ensure that they will not be liable to any damages in future. Employers are reminded that if any alternative work is given during pregnancy, the employee's wages shall not be less favourable than those stipulated in the contract of employment.

23. Is a pregnant employee obliged to work overtime?

Pregnant employees shall not be obliged to work overtime during pregnancy and for a period of 12 months from the birth of the child.

Maternity Leave Fund

1. What is the Maternity Leave Trust?

As of 6th July 2015, all employers in the private sector have to pay a contribution to the Maternity Leave Trust for all employees on their payroll. By means of this Trust Fund employers can get reimbursed for the fourteen weeks maternity leave (cost of employment) of employees going out on maternity leave subsequent to the 6th July 2015. Therefore, in Malta, maternity leave is still going to continue being funded by employers.

2. How much is the contribution payable by employers?

Contributions are equivalent to 0.3% of employee's gross basic wage which is capped at €65/employee/annum. Therefore this contribution excludes any bonuses or commissions.

As announced in the last budget, from July of this year a Maternity Leave Fund has been launched. By means of this fund, employers in the private sector are entitled to a reimbursement of the salary of the 14

weeks maternity leave paid to their employees. For this purpose, private sector employers are obliged to pay a contribution for each employee to the maternity fund as shown in the table below:

Category	Type of employee	Weekly contribution rate to be paid by employer
A	Persons under 18 years of age whose basic weekly wage or the weekly equivalent of their basic monthly salary does not exceed €166.26.	€0.20C
B	Persons over 18 years of age whose basic weekly wage or the weekly equivalent of their basic monthly salary does not exceed €166.26.	€0.50c
C	Persons born on 31 December 1961 or before whose basic weekly wage or the weekly equivalent of their basic monthly salary exceeds €166.26 but does not exceed €343.11.	0.3% calculated to the nearest cent of their basic weekly wage or the weekly equivalent of their basic monthly salary
	Persons born on 1 January 1962 or after whose basic weekly wage or the weekly equivalent of their basic monthly salary exceeds €166.26 but does not exceed €418.25.	
D	Persons born on 31 December 1961 or before whose basic weekly wage or the weekly equivalent of their basic monthly salary exceeds €343.11.	€1.03c
	Persons born on 1 January 1962 or after whose basic weekly wage or the weekly equivalent of their basic monthly salary exceeds €418.25.	€1.25c

E	Persons under 18 years of age who are following a full-time course of studies or instruction under the Student-Worker Scheme, or other similar schemes (including the Extended Skills Training Schemes, but excluding the Worker-Student Schemes) involving distinct work and study periods for which they are receiving remuneration.	0.3% calculated to the nearest cent of the basic weekly remuneration or the weekly equivalent of their basic monthly remuneration up to a maximum rate of contribution of €0.13c
F	Persons over 18 years of age who are following a full-time course of studies or instruction under the Student-Worker Scheme, or other similar schemes (including the Extended Skills Training Schemes, but excluding the Worker-Student Schemes) involving distinct work and study periods for which they are receiving remuneration	0.3% calculated to the nearest cent of the basic weekly remuneration or the weekly equivalent of their basic monthly remuneration up to a maximum rate of contribution of €0.24c

3. Who pays the contribution?

Only employers pay the contribution and it is an added cost for them. Employees pay nothing.

4. Are there any employees for whom the contribution is not payable?

The following employees are exempt from having the Maternity Leave contribution paid in their respect:

- a. Employees over 65 years of age who are exempt from the SSC but still considered to be in an employment relationship,
- b. Directors who are liable to pay SSC Class 2
- c. Employees on unpaid leave for whom no SSC is being paid
- d. Casual employees for whom no SSC is being paid
- e. Expatriate employees for whom no SSC is being paid in Malta
- f. All self-employed persons who are not entitled to Maternity Leave but to Maternity Benefit

5. What happens if an employee has more than one employment?

Only the employer of the employees' principal employment has to pay the 0.3% contribution.

6. Is the contribution payable also for Directors in a company?

If a director holds shares within the company then he is not considered to be an employee of the company but is a self-employed person. Thus no contribution is payable.

7. How does an employer pay the?

The monthly FS5 form has been amended to include provision for the maternity leave contribution.

8. What happens if the employer does not pay the contribution?

The Social Security Act stipulates clearly that employers who do not comply with their obligation to pay the contribution will be liable to fines and penalties.

9. Are there any companies which are excluded from paying the contribution for the Maternity Leave Trust?

Limited Liability Companies in which government is a shareholder are excluded since they are not deemed to form part of the private sector.

10. How do employers claim reimbursement for maternity leave subsequent to the 6th July 2015?

The MEA has been advised that around October/November an application form will be uploaded on the Social Security Department's website. This will give time so that contributions will be deposited in the Fund from which reimbursements approved by the Board of Trustees will be made.

11. Does the employee on an indefinite employment contract who goes out on maternity leave still have the obligation to work for a period of six months upon her return to work?

This obligation subsists nevertheless if she opts to terminate her employment before the six

month period is up, then it is up to Social Security Department to reclaim the funds back from the employee.

12. How will the Board of Trustees be composed?

The Board of Trustees will be composed of:

- the Permanent Secretary of the Ministry responsible for Industrial Relations, ex officio;
- the Permanent Secretary of the Ministry for Finance, ex officio;
- three members, representing the employer constituted bodies, appointed by the Minister responsible for Industrial Relations from amongst the members of the Malta Council for Economic and Social Development;
- one member representing trade unions appointed by the Minister responsible for Industrial Relations from amongst the members of the Malta Council for Economic and Social Development.

13. Is the 0.3% subject to revision?

The computation of the 0.3% is intended to make this measure cost neutral to employers collectively. Employers should be paying into the Trust Fund the exact amount that was previously being issued in total as payment for maternity leave. Therefore the 0.3% may be revised upwards or downwards according to the incidence of maternity leave and the changes in the labour supply.

Vacation Leave

Related Legislation:

Article 17 and 24 of the Employment and Industrial Relations Act, 2002, Chapter 452 of the Laws of Malta
Article 8 of the Organisation of Working Time L.N. 247 of 2003

L.N. 296 of 2003, Urgent Family Leave Regulations

1. Is there a minimum entitlement of vacation leave?

The minimum amount of annual vacation leave stipulated by legislation is four weeks and four working days (equivalent to 192 hours) on paid annual leave based on a forty-hour week. This entitlement is to be computed in hours.

2. Can vacation leave be carried forward?

An amount not exceeding 50% of the annual leave entitlement may, by mutual consent between employer and employee be carried forward (only once) to the next calendar year.

3. Can an employee refuse time in lieu as payment for overtime?

Yes, an employee may refuse time off in lieu and insist on payment for overtime worked.

4. What happens when an employee is called in to work while out on vacation leave?

In such cases the vacation leave for the period in question is cancelled and should be availed of at a later date. Normally these are cases of force majeure.

5. How much notice must an employee give before vacation leave is authorised?

There is no specific legislation on the matter. Normally notice of vacation leave is regulated by provisions in a collective agreement or contract of employment. If there is no reference then it is by mutual agreement although the employee is expected to give adequate notice (except in the case of urgent family leave). Some companies have policies which lay down the procedures for applying for leave.

6. Is vacation leave a pro rata entitlement? (see notice periods)

In cases where a full calendar year is not worked, such as in cases of commencement and termination of employment annual vacation leave entitlement is calculated on a pro rata basis.

7. (a) Does vacation leave accumulate during periods of sick and injury leave?

Yes, during periods of both sick and injury leave, the employee is still entitled to annual leave which is accumulated. The same applies to periods of paid maternity leave.

7. (b) Does vacation leave accumulate during periods of unpaid leave?

No, during period of unpaid leave, there is no entitlement for annual leave or any other leave.

8. Can an employee insist for payment for unutilised vacation leave?

According to local legislation, an employee may request payment for up to four days for unutilised vacation leave. The decision is however at the discretion of the employer who may insist that all vacation leave is availed of.

9. Can vacation leave be taken in fractions of a working day?

Vacation leave may be taken as a fraction of a working day by mutual consent between employer and employee. Such provisions are found in many collective agreements. In accordance with the Organisation of Working Time Regulations computation of vacation leave entitlement is calculated in hours.

10. Can an employer refuse applications for vacation leave?

An employer may refuse an application for vacation leave for justifiable reasons. Employers however need to keep in mind that 20 days vacation leave have to be availed of. Only four days can be paid in lieu.

11. Can an employer withdraw authorisation of vacation leave?

Employers are within their rights to withdraw authorisation for vacation leave for justifiable reasons. This shall only be resorted to in case of force majeure.

12. What is the annual vacation leave entitlement for:

- **Employees working Monday to Friday?**
4 weeks and 32 hours based on a 5-day week i.e. 24 days
- **Employees working 5 days Monday to Saturday?**
4 weeks and 32 hours based on a 5-day week i.e. 24 days

- **Employees working 5 days Monday to Sunday?**

4 weeks and 32 hours based on a 5-day week i.e. 24 days

- **Employees working 6 days Monday to Sunday?**

4 weeks and 32 hours based on a 6-day week i.e. 28 days

- **What if the working day is more or less than 8 hours?**

Then vacation leave entitlement shall be of 4 weeks and 32 hours just the same but shall be multiplied by the actual number of hours worked.

13. What is the annual vacation leave entitlement for part timers?

Pro-rata entitlement of a full time employee.

14. Is vacation leave accumulated during notice periods?

Yes, during the notice period an employee is still entitled to vacation leave for that period.

15. Are employees entitled to vacation leave during probationary periods?

Vacation leave also accumulates during the probationary period.

16. Is vacation leave accumulated during periods of maternity leave?

Vacation leave accumulates during the paid maternity leave.

17. Can an employer demand an annual leave plan from employees?

Employers are within their rights to request a vacation leave plan from their employees (except for urgent family leave).

18. Can an employer order a stop leave?

Yes, employers may order 'stop leave' during periods of heavy workload.

19. Is an agreement to pay part of the vacation leave valid?

Current legislation only allows payment in lieu of vacation leave for four (4) days in one (1) year and in the case of termination of employment.

20. What happens in the case of an over utilisation of vacation leave?

Vacation leave always has to be authorised. If it is authorised then no compensation can be requested unless it is made clear that over utilisation is an advance.

The Malta Employers' Association strongly disputes this point with the Authorities and advises its Members that the best way to safeguard their interests is to authorise any over utilisation of vacation leave on an unpaid basis.

Overtime

Related legislation:

Article 2, 6 and 18 of the Employment and Industrial Relations Act, 2002, Chapter 452 of the Laws of Malta
Article 7 – 8 of the Organisation of Working Time Regulations, L.N. 247 of 2003
Wage Regulation Orders

1. What is an opt-out clause?

The Working Time Directive seeks to protect employees from being asked to perform excessive working hours on a regular basis. The principle underlying the restriction on working hours is that of occupational health and safety. However the employer and the employee are provided the option whereby, by mutual agreement the employee can work in excess of an average of 48 hours per week.

Therefore the opt-out clause authorises the employer to allocate, if necessary, more than an average of forty eight (48) hours per week.

2. Is the opt-out agreement mandatory?

The opt-out agreement is not part of the contract of employment. However, employees can be presented with such an agreement once they are engaged and they can decide whether to accept or not the condition.

3. Does the opt-out agreement apply for the duration of the employment?

The employee may withdraw the opt-out agreement at any point during his/her employment provided that he/she gives notice.

4. What is over time?

The EIRA defines overtime as being any hours of work in excess of the normal hours of work.

5. Can an employee refuse to work overtime?

Provided that adequate notice is given the employee cannot refuse to work less than an average of 48 hours per week.

6. Is there a minimum notice that has to be given for an employee to work overtime?

Normally it is expected that an employee is given at least 24 hours notice to work overtime. This is stipulated in various collective agreements. However this does not preclude the employer from giving shorter notice in cases of force majeure.

7. If an employee has been absent for a day, and is asked to work beyond 8 hours on another day during the week, which makes the weekly total less than 40, is the employee entitled to overtime pay for those hours?

Any hours worked in excess of the normal daily hours for full timers qualify for overtime rates.

8. Can overtime payment be substituted with time in lieu at single rate?

For employees to be given time off in lieu of payment there has to be mutual agreement, moreover the time-off has to be proportionate to the payment, that is, time and a half or double time for every extra hour worked.

9. Are part timers entitled to overtime payment?

No part timers are not entitled to overtime payment unless they exceed 40 hours per week.

10. Can contracts of employment include clauses that offer a remuneration package that is inclusive of overtime?

It is common practice that in executive, administrative, managerial and technical posts, contracts of employment include clauses that stipulate that the remuneration package covers all hours necessary to carry out the assigned tasks or to achieve defined targets.

It is clear that the remuneration package should reflect the level of responsibility involved.

It is also to be noted that there are many examples of employees earning relatively high salaries yet they are still paid at overtime rates for hours in excess of the normal hours of work.

11. Is there a maximum number of hours in a given week that an employee can work overtime?

Employees are obliged to work up to an average of 48 hours per week. The employer cannot force employees to work beyond the 48 hours, unless there is agreement with the employee and the opt-out clause has been signed.

12. Is there a difference between a part timer and a casual worker for the purpose of overtime?

A part time employee will only be eligible for payment of overtime rates if the employee works in excess of forty hours in any one week or if the employee exceeds the number of working hours for the day as stipulated in the relevant Wages Council Regulation Order (WRO). The same applies to casual workers.

13. Can an employee be asked to work overtime if s/he is out on leave?

An employee may be asked to work overtime in cases of force majeure.

Injury Leave

Related Legislation:

Chapter 452 - Employment and Industrial Relations Act, 2002

Chapter 318 - Social Security Act

Wage Regulation Orders

1. What classifies as an occupational injury?

Article 36 (15) of the Employment and Industrial Relations Act refers to personal injury. Personal injury is defined by the Act as that injury which includes any disease and any impairment of a person's physical or mental condition. For any claims to classify as injury leave the personal injury must arise out of or in the course of the employee's employment.

2. Are employees always entitled to injury leave if the incident occurs at the workplace or in the course of the employees' duties?

Although there is no mention of this in the Employment and Industrial Relations Act, the Wage Regulation Orders clearly mention that employees

shall be entitled to injury leave if the employee is injured during the actual discharge of his/her duties and not due to contributory negligence on his/her part or to any contravention of safety rules laid down by the management. There are similar provisions in many collective agreements.

In cases of contributory negligence the absence from the place of work shall be considered as sick leave not injury leave.

3. What if the incident happens when the employee was doing unauthorized work at the work place?

If the employee is injured whilst carrying out duties which do not form part of the regular job description and/or which the employee was not authorized to do, then the incident is not eligible for consideration as injury leave.

4. What procedure has to be followed in the eventuality of an incident at the workplace in which an employee suffers an injury?

First and foremost, priority should be given to any medical assistance that may be required to assist the employee or employees involved. It is important to have contact numbers of: doctors, clinics and/or hospitals at hand.

Secondly the employer should request a written report from the supervisor or other employees present with specific details about the accident including any witnesses that were present.

Thirdly the company should fill in the NI 13 form. This form will include the accident report and other relevant details and must be signed by both the treating doctor as well as the employer. In accordance with Article 97 (2) (a) of the Social Security Act the official form required by law, that is the NI 13 is to be submitted to the Department for Social Security within 10 days from the date the incident occurred.

Lastly the employer must also ensure that the OSHA accident report is filled and submitted to the

OHSA. Although this is only obligatory for incidents where the injury subsists for more than three days, it is still advisable for the employer to notify the OHSA.

5. What are the implications of submitting the NI 13 form?

The NI 13 form is an obligatory administrative measure with which the employer has to comply. Nevertheless by filling the NI 13 the employer is not assuming any kind of responsibility for the injury but is simply stating the facts to the best of his/her knowledge.

It is advisable that if the employer believes that there are reasons why the case should not be treated as injury at work, this should be stated in the NI 13.

6. Does injury leave cover transport to and from work?

Accidents incurred during transportation to and from work only count as injury leave if the transportation is organized or paid for by the company. In this case the DSS following investigations can issue an injury benefit.

7. What is an industrial disease?

Industrial disease is a term used to describe an ailment or injury resulting from long term exposure to an occupational hazard. For example: long term exposure to asbestos.

The Fourth Schedule of the Social Security Act includes a list of the occupational diseases.

It is to be noted that the Legal Notices pertaining to the OHS Act also include regulations preventing occupational diseases. For example noise levels, use of VDU's etc.

8. What is the maximum injury leave entitlement?

The maximum injury leave entitlement is of 12 months from date of injury.

During this period employees who pay social security contributions in that employment are entitled to injury benefits. The employer shall pay the full salary/wage for the first three days after injury. Subsequently the employer shall deduct the injury benefit from the basic pay.

The rate of injury benefit is announced annually in the government gazette and/or the update issued by the MEA.

9. What happens when the injury leave entitlement is exhausted?

If following twelve months injury leave the employee is still not fit to resume his/her duties, the employer has the option to terminate employment.

It is advisable that during periods of prolonged injury (or sickness) the employer keeps contact with either the company doctor or a medical specialist to keep abreast of the likelihood of the employee returning to work.

This will enable the employer to plan ahead and avoid making hasty decisions at a critical stage.

10. What happens when the employee is fit to return to work?

Once the employee has been certified fit for work, the employee is obliged to notify his/her employer within seven days of the cessation of the incapacity

to work (Art 36 (16) of the Employment and Industrial Relations Act).

In such circumstances the employer is expected to reinstate the employee to his previous work or if this is no longer possible to other suitable work within a period of twenty one days from application.

11. What happens if following the application by the employee to return to work, such employee is not fully fit to resume his/her previous duties and the employer does not have any other alternative posts available?

In this case, if the company has absolutely no alternative work to offer as required by the Employment and Industrial Relations Act, then the employer has no other option than to terminate employment on medical grounds once the one year injury leave elapses.

12. In case of termination of employment what are the employee's entitlements?

If the employment is going to be terminated, the employee is entitled to statutory bonuses and payment for vacation leave which has accrued up till the last day of employment.

The Malta Employers' Association is lobbying to remove accrual of leave during periods of absence due to injury, sickness and maternity. In the Schultz-Hoff v Deutsche Rentenversicherung Bund case decided on the 27th January 2009 the ECJ held that employees remain entitled during such periods.

Employees are entitled to any wage scale increments that accrue during the injury period. However employees are not automatically entitled to allowances (for example car petrol allowance) or any bonuses related to individual performance.

13. Can an employee be offered a different job at lower pay upon returning to work if he/she is not fully fit to resume previous duties?

The Employment and Industrial Relations Act (Article 36 (16)) does not specify that any alternative work has to carry the same terms and conditions as the previous post.

14. What happens if the employee who is not fully fit to resume his/her previous duties refuses alternative work which the employer offers?

Since the employer is satisfying the requirement to offer suitable employment, then in such cases the employer may terminate employment.

15. What happens if the symptoms of the accident manifest themselves after the incident? Is it still considered as an injury?

In this case, if it is proven that the symptoms are related to the injury, then the employee shall be entitled to injury leave up to a maximum of one year from actual date of injury proved that the injury had been reported at that time.

Please note that in cases of injury, whenever there is an alleged permanent disability the employee may within two years from date of injury/accident, file a suit for civil damages, irrespective of whether the employee is still employed with the company or not.

16. Can an employer dismiss a person on injury leave during probation?

Since according to the Employment and Industrial Relations Act the employee injured is entitled to a maximum period of one year injury leave, then the employee may not be terminated during the probationary period if the injury subsists for a period longer than that of probation.

However it is to be noted that if there is contributory negligence on the part of the employee then the employer can terminate employment during the probationary period since the employee will not technically be on injury leave and the DSS will not issue an injury benefit.

17. Employers' should take note of the following:

All accidents should be documented, including statements from any witnesses if any;
All measures necessary are taken to adhere to occupational health and safety regulations. This includes periodical risk assessments and the appointment of the health and safety representative;
It is advisable for employers to be covered by an employer's liability insurance.

The above points are important as these will all be taken into account if civil and/or criminal proceedings are instituted.

Civil proceedings are initiated by the complainant or his/her heirs in case of death. Criminal proceedings can be initiated by the Police in two instances:

- Whenever there is a breach of OHS regulations
- Whenever a serious occupational injury occurs.

In such instances a criminal inquiry will be conducted by the Police Department involving the OHSA.

Resignation and Notice Periods

Related Legislation:

Article 36 of the Employment and Industrial Relations Act, 2002, Chapter 452 of the Laws of Malta

1. What is the duration of notice of termination of employment?

The duration of notice of termination of employment is specified in Article 36 of the EIRA as follows:

- (a) for more than one month but not more than six months one week;
- (b) for more than six months but not more than two years two weeks;
- (c) for more than two years but not more than four years four weeks;
- (d) for more than four years but not more than seven years eight weeks;
- (e) for more than seven years, an additional 1 week for every subsequent year of service or part thereof up to a maximum of twelve weeks;
- (f) or such longer periods as may be agreed by the employer and employee in the case of technical, administrative, executive or managerial posts.

2. Can a contract of employment include longer notice periods specified by the legislation?

Longer notice periods only apply in the case of executive, administrative, technical or managerial posts and if there is mutual agreement between the employer and the employee.

3. What happens if the employee expresses the wish not to work the full notice period?

The EIRA in section 36 contemplates various scenarios.

- a. If the employer gives notice then the employee will have the option either to work the notice or not to. If the employee does work the notice period then he/she will be entitled to full wages. If the employee does not work the notice period then the employee shall be entitled to half the notice period.
- b. If on the other hand the employee gives notice of termination of employment, the employer shall have the option either to allow the employee to work the notice or not to work the notice period.

In either case the employee is entitled to full wages for the notice period.

- c. If the employee fails to give notice to the employer then the employee shall have to pay the employer a sum equivalent to half the wages of the notice period.
- d. If the employer fails to give notice then the employer shall have to pay the employee full wages for the notice period.
- e. No notice period is due if the employee is being dismissed.

4. Do part timers have notice periods?

The law does not distinguish between part time and whole time employees. The regulations apply to all, even if it is not the principal employment of the part time employee.

5. Do notice periods apply in cases of definite period contracts of employment?

In the case of definite period contracts, notice periods only apply during the probationary period. Once the employee has been successful in completion of the probationary period and either party wants to rescind the contract then that party would have to pay half the wage/salary of the unexpired period.

6. Is the probationary period included in the calculation of the notice period?

Yes, the probationary period has to be calculated as well since employment is calculated from first day of employment. During probation either party has to give one week's notice of termination if one month's service has been completed.

7. (a) What happens if the employer asks the employee not to work the notice period?

In such cases, the employer will still be obliged to pay full wages for the notice period.

7. (b) What happens if the employee refuses to work the notice period?

It depends who has terminated employment. If the employee has resigned then the employee has to pay to the employer half the wages. If on the other hand the employer has terminated employment then the employee shall be entitled to full wages.

8. Are employees entitled to sick leave during notice periods?

Since the employee is still in employment during the notice period, then the employee is entitled to sick leave.

9. Can pay be deducted if the employee does not turn up to work the notice period due? If not, what recourse does the employer have?

The EIRA is very clear in stating that no amount may be deducted from the wages. The employer has to seek civil redress if the employee fails to settle any amounts due to the company.

10. Does leave entitlement accrue during notice periods?

Yes, leave entitlement accrues till the last day of employment.

11. Does the employee have the right to take unavailed of leave instead of working part or all of the notice period?

The employer should draw the employee's attention that unutilized leave should be availed of or else it will be forfeited. Leave should always be subject to authorization. The employer still has the right to withhold vacation leave. For example the person who has resigned may be required to give a hand over to a new employee during the notice period. In such cases the employee will be paid for the balance of unutilized leave.

12. How can a break in employment affect the notice period?

It depends on how long the break is. If the break is shorter than 6 months then the two periods will be deemed to be one continuous period.

13. From which date does the notice period begin to apply?

The notice period starts running from the very next day that notice is given.

14. Is a verbal notice legitimate?

Yes but it is advisable to have it put down in writing. In cases where notice has been given verbally by the employee, it pays to produce a written reply to make it official.

15. Can an employee withdraw a notice of resignation?

The employer is not obliged to accept withdrawal of resignation if it has already been accepted.

16. Is an employee entitled to fringe benefits during the notice periods?

Yes.

17. Is an employee entitled to pro rata annual bonuses once notice is given?

The employee is entitled to the pro rata statutory bonuses. With respect to company bonuses, it will depend on the nature of the bonus. For example, if it is specified that the bonus is based on the results achieved on the completion of a calendar/financial year, then the bonus may be forfeited.

On the other hand if the bonus is based on ongoing performance and paid periodically during the year, then the employee will be entitled to the pro rata. This applies also in the case of commission based on sales unless the commission is based on cash collected.

18. Is vacation leave a pro rata entitlement? Can an employer deduct payment for over utilised leave if employee resigns during the year? (see vacation leave)

Vacation leave entitlement is pro rata provided that the employee works on average at least twenty (20) hours per week and it is the principal employment

(meaning that national insurance contributions are paid in that employment).

Example an employee working a 40 hour week is entitled to 4 weeks and 4 days (24 days) vacation leave an employee working 20 hours per week is entitled to 12 days and so on and so forth.

Vacation leave always has to be authorised. If it is authorised then no compensation can be requested unless it is made clear that over utilisation is an advance.

The Malta Employers' Association strongly disputes this point with the Authorities and advises its Members that the best way to safeguard their interests is to authorise any over utilisation of vacation leave on an unpaid basis.

19. If an employee is promoted to a new post and given a new contract of employment, does the notice period commence from the initial date of employment or from when the recent contract came into effect? (see contracts of employment Q.15)

The notice period commences from the first day of employment and not the first day of the new post.

Contract of Employment

Hereunder one finds a specimen contract of service:

An agreement entered into today (date) between of the one part (company name and registration no and registration place of business) hereinafter referred to as the employer and XXX who resides at XXX hereinafter referred to as the employee.

The Company appoints the Employee and the Employee agrees to serve as XXX at (address of place of work)

The post is a full time one and for an indefinite duration. The employee may not take up any other

part-time employment without obtaining prior written consent

The duties attached to the post of XXX include but are not limited to the following:

- The employee shall perform his duties in a flexible approach and shall carry out all other or different responsibilities as may be allocated to him by the employer from time to time and moreover the said employee stipulates that he is aware that he shall be assigned duties at the premises

and under the direction of such persons as the employer may direct from time to time.

- The employee shall work the hours necessary for the efficient and effective accomplishment of his/her duties; in any case such hours shall not be less than forty (40) in any five (5) days, Monday to Friday.
- The employment shall be deemed to have commenced as from the date of this agreement and shall be of an indefinite duration.
- The employer shall pay the employee a gross salary of XXX per annum, payable monthly in arrears plus all statutory bonuses. Due to the fact that this remuneration comprises all hours worked, the employee shall not be eligible for any overtime rates. Cost of living increases of general application will be automatically added to the salary herein agreed when and if effective.
- The employee will enjoy the conditions of employment generally established by law.
- The employee shall be entitled to vacation leave as established by law, pro rata the period of

employment of the employee for the first calendar year of employment and provided further that the employee shall make use of her/his vacation leave in accordance with the exigencies of the employer.

- The employee shall be entitled to X days sick leave on full pay (and X days sick leave on half pay per annum, pro rata the period of employment of the employee for the first calendar year of employment), all entitlements being reduced by any social benefits the employee may be entitled to receive, provided that payment of sick leave is subject to certification and confirmation, at the sole option of the employer, by the company doctor of the employer.
- The employee undertakes during the term of his/her employment and for a period of one (1) year following the termination of employment by resignation or by dismissal for just cause, that he shall **not** in any way use for his/her own benefit or gain or divulge to any present or former clients or persons, firm, company or

other organization whatsoever any confidential information belonging to the Company or relating to the affairs or dealings which may come to his/her knowledge during his/her employment.

- All records, documents and other papers considered to be confidential, together with any copies or extracts thereof, made or acquired by the employee in the course of his/her employment shall be the property of the Company and must be returned to the Company on termination of employment.
- The Employee agrees to refrain, during his employment and for a period of XXX (X) years following his termination, from soliciting or accepting, or attempting to solicit or accept,

directly or by assisting others, any business from any of the Employer's customers, including actively sought prospective customers, with whom the employee had material contact during his employment for purposes of providing products or services that are competitive with those provided by the employer's business.

- The duties of XXX extend to other companies in which XXX has a shareholding in them.
- The role of the XXX in these companies is determined by the Managing Director.
- This agreement shall be governed by the laws of Malta.
- The parties declare they have read, understood and agree to the provisions of this agreement.

Employee

HR Manager

STATEMENT BY THE EMPLOYER

In accordance with regulation 4 of the 'Information to Employees Regulations, 2002' (LN 431 of 2002), if the period of employment exceeds one month and exceeds eight hours of work a week, this statement should be given by employers to all employees within eight working days from engagement.

Employer Name: _____

Address: _____

Reg. Co. number: _____

Employee Name: _____

I.D. No: _____ Male / Female

Address: _____

Place of Work: _____

Job Title: _____

(preferably attach job description)

Date of Employment _____

Duration of Employment _____

(state whether Indefinite or Definite. If of a definite duration, state date of termination)

Nature of Employment _____

(state whether on a Full-time or Part-time basis)

Probation Period _____

Wages

1. Full-time Basic Weekly Wage: _____

or

2. Part-time Basic Hourly Rate: _____

**Normal hours of work
(excluding overtime)**

(list the total number of hours worked per week and the relative schedule of work)

Overtime Rates

**Periodicity of wage
payment**

(state at what intervals wages are to be paid, preferably indicating payment date)

Public Holidays

Vacation Leave

Sick Leave

Other Leave

Notice Periods

(applicable only if employment is indefinite)

Special Conditions

Collective Agreement

(if applicable, attach copy of relevant collective agreement)

Fines

(if applicable, attach details as approved by the Director of Industrial and Employment Relations)

Date

Signature of Employer/Representative

Position: _____

I.D. Number: _____

N.B. An employer may in lieu of the above declaration enter into a written contract of service with the employee, provided that the contract should include the above details. In terms of regulation 8 of the above mentioned regulations, an employer is required to keep a copy of any written contract of service or statement containing the same details.

Occupational Health & Safety

Are you an employer? If the answer is yes then in accordance with Maltese Law you have a number of responsibilities. Employers must:

1. Make the workplace safe and eliminate or control health by means of a risk assessment. Assess the risks by engaging a competent person which you will find on the list of registered competent persons on the OHSA website. The Person conducting the risk assessment will tell you what could harm people and what precautions to take. This is your risk assessment. You must act on the findings of your risk assessment, by putting sensible controls in place to prevent accidents and ill health and making sure they are followed.
2. Appoint a competent person. The law says you must appoint a competent person to help you meet your health and safety duties. This does not have to be an external consultant.

3. Write your health and safety policy. Your health and safety policy sets out the arrangements you have put in place for managing health and safety in your business. It is a unique document that says who does what, when and how.
4. Ensure that all plant and machinery are safe and that safe systems of work are set and followed. Also ensure that articles and substances are moved, stored and used safely.
5. Provide adequate welfare facilities. You must provide a safe and healthy environment for all your employees. This includes toilets, washing facilities and drinking water, and appropriate lighting and temperature.
6. Give workers the information, instruction, training and supervision necessary for their health and safety;
7. Provide free health and safety training and supervision. Everyone who works for you, including self-employed people, needs to know how to work safely and without risks to health. So you need to train them and supervise their work.

Questions and answers for everyone

What is health and safety all about?

Preventing people from being harmed by work or becoming ill by taking the right precautions and providing a satisfactory working environment.

Why are there health and safety laws?

Because health and safety at work is so important, there are rules which require all of us not to put ourselves or others in danger. The law is also there to protect the public from workplace dangers.

Do health and safety laws apply to me?

Yes. Health and Safety Rules and Regulations apply to all businesses, however small; also to the self-employed and to employees.

Who enforces health and safety law?

Inspectors from the Occupational Health and Safety Authority.

What do inspectors actually do?

They visit workplaces to check that employers and employees are sticking to the rules. They investigate some accidents and complaints but mainly they help you to understand what you need to do. They enforce only when something is seriously wrong.

Do I need to register my business?

It's likely you will if you have a registered company.

Do I need to have employers' liability compulsory insurance?

Unlike other Member States, including the UK, to date this is not compulsory.

Do I have to report injuries at work?

Yes, you have to fill in an NI 13 form and ideally inform the OHSA.

Engagement & Termination Forms

The following are mandatory forms which must be sent to the ETC (now Jobs Plus) whenever there is new employment or a termination of employment. There is a separate form for the beginning of employment and termination of employment.

It is important to fill in all data fields properly. For example, the reason for termination could play an important role in industrial tribunal proceedings and thus the termination form must reflect the actual reason why an employment relationship was terminated. Likewise, an engagement form must indicate the type of employment, e.g. whether it is full time or part time, or whether the employment is on a definite or indefinite period. These details should conform with those included in the contract of employment.

To download the Engagement form follow this link - <http://etc.gov.mt/Resources/file/Resources/2015/hriuforms/Engagement%20Form%20-%20English%20Version.pdf>

To download the Termination form follow this link - <http://etc.gov.mt/Resources/file/Resources/2015/hriuforms/Termination%20Form%20-%20English%20Version.pdf>

ENGAGEMENT FORM



EMPLOYMENT AND TRAINING CORPORATION

(Act. No. XXVIII 1990)

Declaration of Commencement of Employment
(Employed Persons)

Notes for Employers:

- This form should be filled in for each employee.
- In every case of new employment, this form, duly filled in, is to be sent to this Corporation on the **SAME DAY** of commencement of employment.
- If this is the first-time job of the person who is to be employed such person should provide you with:
 - A formal birth certificate from the Public Registry (if under 21 years of age).
 - Identity Card.
 - Form NI 3 from the Department of Social Security or, in the case of non-Maltese nationals, a certificate from the same Department regarding exemption from Social Security contributions.
- Children who have not attained the age 16 or who attained the age of 16 between the scholastic year (15th September to 16th July) should provide employer with a school certificate. This certificate is obtainable from the Department of Educational Services, Triq Fra Gaetano Pace Forno, Hamrun HMR 1000. To obtain this certificate the applicant must present the said Department with:-
 - A formal birth certificate from the Public Registry.
 - A declaration from the applicant's intending employer.
 - A certificate from the school last attended and
 - A letter from the parents stating that they agree that their son/daughter is to start work.

This also applies to persons of compulsory school age who intend working during their summer months or who are starting a Part-time job.

The employer shall also seek clearance from the Director of the Department of Industrial and Employment Regulations prior to recruitment of minor as per Young Persons (Employment) Regulations.
- A non-Maltese national requires an Employment Licence (obtainable from the Employment and Training Corporation and the Employment Licences Unit) before being employed.
- The certificates indicated in paragraph 3 and if applicable, the certificates indicated in paragraphs 4 and 5 are to be sent to this Corporation together with this form.

7. The terms used in the second column of Part II of this declaration (Employment details) should be interpreted as follows:

- "Definite Contract" refers to temporary employment where a predetermined termination date is agreed to by both employer and employee;
- "Indefinite Contract" refers to permanent employment, meaning that employment remain valid one of the parties concerned decides to terminate it;
- "Casual Worker" is a person called up for duty when required not on a fixed basis;
- "Outworker" is a person working from his/her own residence and who is paid on a per item basis and not with fixed salary;
- "Apprentice" is a person still enrolled in an educational or training scheme and at the same time is attached to the employer as part of that scheme;
- "Student" is a person:
 - studying full-time and receiving a stipend, and
 - working and/or training during the school holidays.

8. Part III (Employer Details), "Employer No." is a number given to you by the Corporation when you registered as a company or as a self-employed with employees. If this is the first time that you are employing anybody and you still do not have this number, leave it blank. In the meantime all other details have to be filled in.

9. Declaration forms should be sent:

Malta:

Employment & Training Corporation
Human Resources Information Unit
Birzebbugia BBG 3000

In case of difficulty phone 22201952/3/8
E-mail: hrta.etc@gov.mt

Gozo:

Employment & Training Corporation
Sir Arturo Mercieca Street
Victoria VCT 2024

In case of difficulty phone 22201957

A receipt will be issued for each form accepted.

10. Any employer who does not send in this declaration within the stipulated time is liable to a fine as envisaged in Legal Notice 110 of 1993.

11. Engagement Forms can also be submitted through ETC's website- www.etc.gov.mt

12. These notes are for information purposes only.

ENGAGEMENT FORM

IMPORTANT: BEFORE FILLING IN THIS FORM PLEASE READ NOTES ON PAGES 1-2

PART I: EMPLOYEE DETAILS

Identity Card Number Social Security Number Surname: Name: Date of Birth
Day Month Year

Address:

No./Name of Residence Street Town/Village Post code

Gender:

Citizenship:

State:

Male ☐Maltese ☐Single ☐Divorced/Annulled ☐Female ☐Foreign ☐Married ☐Widow/er ☐Dual ☐Separated ☐Nationality: Father's Name and Surname: Maiden Surname
(In case of married woman)Name and Surname of wife/husband:

PART II: EMPLOYMENT DETAILS

Type of Work:

(Be sure that you Tick one from column A and one from column B)

A. Full-time ☐B. Definite Contract ☐Outworker ☐Part-time ☐Indefinite Contract ☐Trainee/Apprentice ☐Full-time ☐

(Reduced Hours)

Casual worker ☐Student ☐

Designation

Trade of Profession

Place of employment

Date of Commencement

Day Month Year

If Employment is on a Definite Contract,
please insert expiry date

Day Month Year

PART III: EMPLOYER DETAILS

Employer No. Name and Surname Company Name Address: No./Name of Residence Street Town/Village Post code Telephone Fax P.E. No. V.A.T. No. E-Mail Mobile Main Activity of business

Tick where applicable:

Self-Employed without employees ☐ Partnership ☐Self-Employed with employees ☐ Company / Co-operative ☐Non Profit-Making organization ☐ Government Department or Entity ☐

If Employer is a company:

Company, that forms part of a group ☐ Company, that does not form part of a group ☐Holding Company ☐

Sector:

Government Department ☐ Company with Government / Private equal shareholding ☐Corporation/Authority ☐ Company - Maltese owned ☐Government majority shareholding ☐ Company - Foreign owned ☐

PART IV: DECLARATION

I, whose particulars appear below, in my own name or as duly authorized, declare that the details given in this form are true and correct, and that the employee has been made aware of the details contained in this form.

Signature of Employer Signature of Employee Designation Identity Card Number Date
Day Month Year

If the Employer fills in this form he should ensure that the data required to fill in this form is obtained in so far as possible, first hand from the employee. Wherever data about the employee is obtained from a third party, the employee should be informed and the accuracy of the data ascertained. Personal data is collected and held by ETC and is used by ETC and/or transferred to third parties in order to fulfill ETC's functions according to law and in line with the provisions of the Data Protection Act. You should declare to ETC personal data which is correct. You have a right to access your personal data as well as to request that any incorrect personal data be rectified. You should ask for assistance if you have any queries.

ETC 101

ENGAGEMENT FORM



EMPLOYMENT AND TRAINING CORPORATION

(Act. No. XXVIII 1990)

Declaration of Termination of Employment

Explanatory notes:

- This declaration should be filled in by:
 - The employer when a contract of employment has been terminated.
 - The employer when an employee's employment status is changed, e.g. from part-time to full-time and vice-versa, or from a definite contract, to an indefinite contract or for any other reason.
 - The self-employed person on ceasing to be self-employed.

- This declaration should be used in both full-time and part-time employment and/or self-employment.

- It is very important that this form is fully filled, especially the termination date. The latter date should include, as well, the notice money period (if any). If no notice money/period was given, kindly insert date of termination instead.

- This declaration should be sent, within FOUR DAYS from the date of termination, to:

Malta:

Employment & Training Corporation
Human Resources Information Unit
Birzebbugia BBG 3000

In case of difficulty phone 22201952/5/8
Email: hria.etc@gov.mt

Gozo:

Employment & Training Corporation
Sir Arturo Mercieca Street
Victoria VCT 2024

In case of difficulty phone 22201957.

- Persons who are obliged to send in this declaration and do not do so within the stipulated time, are liable to a fine as envisaged in Legal Notice 110 of 1993.

- Termination Forms can also be submitted through our website: www.etc.gov.mt

- The Corporation is obliged to issue an acknowledgment once this form is processed. If the employer does not receive an acknowledgment, it is up to him/her to inform the Corporation to send an other acknowledgment.

- These notes are for information purposes only.

"If the Employer fills in this form she should ensure that the data required to fill in this form is obtained in so far as possible, first hand from the employee. Wherever data about the employee is obtained from a third party, the employee should be informed and the accuracy of the data ascertained."

Personal data is collected and held by ETC and is used by ETC and/or transferred to third parties in order to fulfil ETC's functions according to law and in line with the provisions of the Data Protection Act. You should disclose to ETC personal data which is correct. You have a right to access your personal data as well as to request that any incorrect personal data be rectified. You should ask for assistance if you have any queries."

PART I - DETAILS OF EMPLOYEE

Identity Card Number Social Security Number

Surname: Date of Birth

Name: Day Month Year

Address: No./Name of Residence

Street

Town/Village Post code

Gender: Male ☐ Female ☐ Citizenship: Maltese ☐ Foreign ☐ Dual ☐

Marital Status: Single ☐ Married ☐ Separated ☐ Divorced/Annulled ☐ Widower ☐

Father's Name and Surname:

Name and Surname of wife/husband:

PART II - EMPLOYMENT DETAILS

Employment of the person concerned was from Day Month Year to Day Month Year

Insert date of Termination if no notice period was given

Notice money was paid up to Day Month Year (Tick where appropriate)

Full-time ☐ Part-time ☐

Occupation, Trade or Profession of employee

Reason for termination (Tick one of the reasons listed below)

Business closed down ☐ Dismissed on disciplinary grounds ☐ End of contract ☐

Lack of work / Redundant ☐ Health reasons ☐ Pensioner ☐

Terminated during probationary period ☐ Resigned ☐ Employed elsewhere ☐

Abroad ☐ Deceased ☐

Provide reason for your choice (if necessary):

PART III - DETAILS OF EMPLOYER

Employer Number Email:

Name and Surname of employer

Name of firm

Address: No./Name of Residence

Street

Town/Village Post Code

Telephone Fax V.A.T Number

Mobile

I declare that all information given in this form is true and correct.

Signature of Employer Signature of Employee

Designation

Identity Card Number Date Day Month Year

Employing Persons with Disability

Related Legislation: Chapter 210: The persons with Disability Employment Act

Is there a definition of a person with a disability?
Article 2 of Chapter 210, the Persons with Disability Employment Act stipulates that “person with disability” means a person, being over compulsory school age, who, by reason of injury, disease, congenital deformity or other physical or mental incapacity, is substantially handicapped in obtaining or keeping employment or in undertaking work on his own account, of a kind which apart from that injury, disease, deformity or incapacity would be suited

to his age, experience and qualifications; and the word “disability”, in relation to any person, shall be construed accordingly.

How does a person register himself/herself as disabled?

Chapter 210 stipulates that the Employment and Training Corporation shall set up and maintain a Register of Persons with Disability. Every person whose name is entered in the register shall be

provided with a certificate of registration and such document shall, until the contrary is proved, be sufficient evidence of the facts shown therein.

What happens if an individual applies to be recognised as a person with a disability but this is refused?

When an application for the entry or retention of a person's name in the register has been refused by the Corporation, or where the name of a person is not for the time being in the register no further application may be made for the entry or retention of such person's name in the register unless the circumstances relevant to that decision or determination, as the case may be, have since changed.

Once an individual is registered as a person with a disability, is this status for life?

Any person whose name is entered in the register shall be entitled to have his name removed from the register on making a written application therefor to the Corporation.

When is an employer legally obliged to employ persons with a disability?

As the law stands today, employers employing 20 persons or more has to have within the workforce 2% registered as disabled.

The Act specifies that in the computation of the number of persons employed, no account shall be taken of any employees who are related to the employer by consanguinity or affinity up to the third degree.

Where an employer has in his employment, or takes into his employment, a registered person being a severely disabled person as certified by a placement medical officer, he shall, for the purposes of complying with the quota applicable to him, consider each such registered person as two units.

Are there any additional obligations for employers who satisfy the 2% quota?

Every employer who reached the quota shall keep a register showing:

- a. the number and the names of persons employed by him;
- b. the number and the names of registered persons employed by the company;
- c. such other matter as shall be necessary to show compliance by the employer with the provisions of this Act.

What happens if an employer employs 20 persons or more but fails to respect the 2% quota?

Article 16 (5A) of the Act which was introduced in 2015 as a result of Budgetary Measure 2015 stipulates that any person who fails to respect the quota shall be asked by the ETC to make an annual contribution of two thousand and four hundred euro (€2,400) for every person with disability that should be in his employment, to a maximum of ten thousand

euro (€10,000) for any one person who so fails to respect the quota.

Article 16 (5B) states that for the year 2015, the person shall pay the equivalent of one-third of the contribution, referred to in sub-article (5A), which is to be paid; during the year 2016 the amount of the contribution shall be increased to two-thirds of the amount which is to be paid, and during the year 2017 the full amount of contribution to be paid shall apply.

Article 16 (6) states that the Minister responsible for Labour may, in consultation with the ETC, and after application is made in that behalf by any person to whom the quota applies, reduce the standard percentage or special percentage, as the case may be, applicable to him if it is proved that his quota would be too great having regard to the particular circumstances in which all or any of the persons employed by him, are employed, which reduction shall be for a term not greater than twelve months.

For employers who do not comply with their obligations emanating from the Act are there any additional repercussions?

Apart from the contribution imposed by Article 16 of the Act, Article 29 (1) of the Act stipulates that where any person commits an offence against any of the provisions of this Act or of any regulations made thereunder he shall, on conviction, be liable to a fine (multa) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to imprisonment not exceeding three months or to both such fine and imprisonment.

(2) Where the offence consists in the failure to produce registers or records as provided under article 20(3) of the Act, the offender shall, in addition to the punishment prescribed under subarticle (1), be awarded a further penalty of eleven euro and sixty-five cents (11.65) for each day on which such failure continues unless he proves to the satisfaction of the court that the failure is due to his not having kept, or not having preserved, the required registers or records, as the case may be.

Are there any incentives for employers to employ registered persons with a disability?

An employer who employs a disabled person will be exempt from paying the Employer's share of social security contributions for such employee and can benefit for up to €125 per person per week in full time employment for up to 3 years (with a requirement to sustain employment for a further 12 months) through A2E Schemes funded by the ETC.

Employers are being encouraged to employ directly, and support their employees through training and specialist support also provided by the Foundation. The Lino Spiteri Foundation aims to provide the support to ensure that a) the individuals fit within the employers' needs and b) are supported until such time that they are fully included into the workforce.

The NGO Council of the Lino Spiteri Foundation will be working towards specialist training and preparation of the various groups represented by the Foundation, to ensure that

the potential employees are skilled and prepared for work, to be reliable and productive members of a team.

Employers can also utilise funding opportunities that refund National Insurance, incentivise employment as well as fund salaries for short periods of 'acclimatisation' including Job Reach programmes and Supported Employment programmes. NGOs will also be providing training to individuals that directly reflects the job openings becoming available by potential employers.

What is the Lino Spiteri Foundation?

The Lino Spiteri Foundation is a social purpose Foundation that was set up following the Maltese Governments' initiative to encourage companies to create greater employment opportunities for vulnerable groups in Malta & Gozo, and Empower's widening scope as the leading provider of such employment. Whilst the Equal Opportunities Act and Employment Quotas for Disabled Persons are legal requirements that should safeguard and promote

the inclusion of persons with a disability, mental health problems, other vulnerable groups from gainful employment, the need for greater support, empowerment, training and understanding of the complexities these issues bring is paramount to the successful inclusion in employment.

The Foundation was set up as a Public Social Partnership between the Employment & Training Corporation and the Empower Coop Ltd. The aim of the Foundation is to enhance inclusion through empowering individuals and working closely with civil society through a Council of NGOs that will support and guide the direction of the organisation.

In its ethos, it aims to give a voice to vulnerable groups within society and increase their potential as gainfully employed people contributing to society and the economy. It therefore aims to bridge the gap between companies and individuals in order to emerge untapped potential and create employment. Whilst the regulations will serve as an impetus for change, we believe that a win-win can be created through open communication, available expertise and

a will to make a difference by all stakeholders.

Central to this is the individual who aspires to employment, inclusion and greater independence. The foundation's role is to give them support and an opportunity to reach their fullest potential, whatever it may be.

As mentioned above employers that fail to comply with their legal obligations falling under Chapter 210 of the Laws of Malta, have to make an annual contribution of two thousand and four hundred euro (€2,400) for every person with disability that should be in his employment, to a maximum of ten thousand euro (€10,000). The contribution will be forwarded to the Lino Spiteri Foundation.

S.A.F.E. Programme

Substance Abuse Free Employee Programme (S.A.F.E.)

Sedqa's prevention strategy at the place of work focuses on raising awareness on substance abuse at the workplace through its programme called S.A.F.E. - Substance Abuse-Free Employees Programme. This programme focuses on the introduction or review of the company's Drug and Alcohol Policy and the training of managers/supervisors and employees on substance abuse prevention. It also provides a functional referral system to Sedqa's care services for employees who might be experiencing problems

related to substance misuse that may be having an impact on the place of work.

This programme is divided into the following phases:

- **Phase 1: Awareness.**
An exhibition is set up in a centrally-located place at the workplace, displaying preventive messages and preventive material.

- **Phase 2: Training sessions with middle and senior management including the following topics:**
Alcohol and its Effects; Drugs and their Effects; Stress Management; Approaching the Problem Employee. For more information [click here](#).
- **Phase 3: Informative sessions with employees at the place of work during which the effects of drug and alcohol abuse are presented and discussed.**
Employees are also informed about the various services related to addictions available in Malta.
- **Phase 4: Sedqa can also assist in the formulation of policies and procedures about the use of alcohol and other substances at the workplace.**
Such policies are normally negotiated with the employers and employees' representatives at the respective workplace.

Although ideally, each workplace would go through all the phases, the programme is designed to enable an enterprise to host one phase or more without going through the whole programme.

For information about the S.A.F.E. Follow-Up Programme [click here](#). All the S.A.F.E. and S.A.F.E. Follow-up sessions can be conducted in the form of a workshop if requested.

Policies and Procedures

Policies and Procedures are a set of documents that describe an organization's policies for operation and the procedures necessary to fulfill the policies.

Policies and procedures have many names including but not limited to business policies and procedures, standard operating procedures or SOP, or department operating procedures or DOP.

Procedures follow on from policy - how you do it in practice - and can be a separate document or a section of the same. It is often worth trying to be clear, as a policy change may or may not alter the procedure, while a necessary change in procedure

should not be allowed to change the policy by default. It should be clear in a procedure which policy or policies it relates to.

There are four very basic reasons that necessitate writing policies and procedures:

- **Operational needs** - Policies and procedures ensure that fundamental organizational processes are performed in a consistent way that meets the organization's needs.

- **Risk management** - Established policies and procedures are identified as a control activity needed to manage risk.
- **Continuous improvement** - Procedures can improve processes by implementing a Plan-Do-Check-Act approach by building important internal communication practices.
- **Compliance** - Well-defined and documented processes (i.e. procedures, training materials) along with records that demonstrate process capability can demonstrate an effective internal control system compliant with regulations and standards.

A company may have, for example, one or more of the following policies. This is a non exhaustive list:

1. Staff Disciplinary Procedure
2. Staff Grievance Procedure
3. Staff Appraisal Procedure
4. Sick Leave Policy and Procedure
5. Leave Policy and Procedure
6. Health & Safety Policy and Procedure
7. Substance Abuse Procedure
8. Sexual Harassment Policy & Procedure
9. Confidentiality Policy
10. Data Protection Policy
11. Risk Assessment
12. Training Policy
13. Whistleblowing
14. Public Duties
15. Supervision
16. Union recognition Policy
17. Redundancy Policy
18. E-mail/internet use Policy
19. Exit interviews
20. Job evaluation
20. Retirement Policy
21. Staff expenses
22. Staff loans

Apprenticeships

More companies are participating in the development of skills of our young people through offering apprenticeships. Through a recent reform, the apprenticeship scheme is being coordinated by MCAST.

For further information about apprenticeships, contact:

Email: apprenticeships@mcast.edu.mt

Tel: 2398 7155

Other Useful Info



MEA-SME Helpdesk

The SME Helpdesk which operates within the MEA administrative office, is offering additional services to those which were already being offered by the Association. These specialised services are mainly targeting SMEs and Micro enterprises.

Amongst its first initiatives, the SME Helpdesk introduced a 24/7 telephone helpline (**T: 2122 2006**), which is a direct telephone line, open to all SME's, to

communicate with MEA, whenever they feel the need to do so.

The Helpdesk, besides giving advice and important information regarding how an SME will become fully compliant with all local work legislation, employment regulations, and other regulatory bodies, is also offering handholding services, when entrepreneurs decide to apply to benefit from any existing grant / assistance schemes.

The Helpdesk believes in regular contact, and communication with employers of small businesses with we communicate regularly, via an electronic publication.

Since it was founded in 2013, the SME Helpdesk already has already organised National Conferences, seminars, information sessions, and much more to keep SME's aware of all eventual changes in policies and regulations, and guide them accordingly.

In a nut shell the MEA's SME Helpdesk, is another tool in the hands of small business entrepreneurs, which can be used to empower their skills to achieve success in their business.

List of services offered by the SME desk:

- Assistance in applying for a new business licence, change of use, and other issues related with notification, registration or licensing procedures.
- Assistance in applying to participate in various current beneficiary schemes fit for SMEs
- Assistance in communicating with Govt. Departments, Authorities, and other regulatory bodies.

- Simplification and guidance on incentives being offered by Malta Enterprise / Business First
- Assistance in employment related issues with ETC and MCAST
- Facilitate access to general business information
- Guidance on fiscal related issues
- Lending an ear to Micro and SMEs on current problems, by advising and guiding accordingly
- Assistance in disseminating information of interest, to the SMEs sector.
- ...and much more.

Cap. 512 – Small Business Act

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11699&l=1>



MALTAENTERPRISE

Malta Enterprise

Malta Enterprise is the Government of Malta's investment promotion agency.

Malta Enterprise has the role of attracting new foreign direct investment towards the Maltese Islands, assist investors already operating in the country with their needs and requirements stimulate local industrial growth and provide assistance to start-up business. To this end, Malta Enterprise develops and manages incentives and schemes to cater for the different needs of industry and business operating in Malta.

Established by the Malta Enterprise Act of 2003, the history of Malta Enterprise goes back to the late 1950s, when the Malta Aid to Industries Board was set up to promote Malta as an industrial investment location. In the 1960s the Malta Development

Corporation was set up to take over the functions of the Board and expand its strategic objectives. During this period Malta managed to attract a number of foreign direct investments particularly in precision engineering, aviation services and medical devices. The large majority of these are still in operation on the islands.

Today Malta Enterprise is using the experience acquired through its history to promote and stimulate industrial growth in Malta and provide business and industry with a wide range of services to meet their needs. Currently Malta Enterprise is developing a Life Sciences Park and Digital Hub to create synergies between life sciences and information technology in such areas as bio-informatics. The Kordin Business Incubation Centre (KBIC) is a centre for start-up business, particularly those in the line of innovative technologies.

Malta Enterprise also manages Business First, specifically set up to meet the requirements and provide assistance to small enterprise.

<http://Maltaenterprise.com>.



Commerce Department

Services offered:

- Registration of trademarks, certification marks, collective marks and designs; patenting of inventions; issuing of supplementary protection certificates in respect of medicinals and plant protection products; Issuing of trade licences in respect of a variety of commercial activities;
- Authorising the export dual use goods and issuing of import licences and export licences; licensing of auctioneers;
- Hosting of the Malta EU SOLVIT Centre. (SOLVIT Europe is aimed at assisting when EU rights of a citizen or business in one EU country are breached in another EU country);
- Acting as the National Coordinator (NIMIC) of the Internal Market Information System (IMI) intended to facilitate in cooperation between intra EU regulators;

- Running of Malta Crafts Centre in St John Square, Valletta;
- Developing and managing various initiatives aimed to sustain the local crafts sector as well as providing support to the Malta Crafts Council;
- Organising the Gieħ l-Artiġjanat Awards; the National Enterprise Support Awards and the Malta Innovation and Creativity Awards and coordinating Malta's participation in the European Enterprise Promotion Awards.

Links

Commerce Department website:

www.commerce.gov.mt

Malta Crafts Portal: www.maltacrafts.gov.mt

SOLVIT: <http://ec.europa.eu/solvit/>

IMI: http://ec.europa.eu/internal_market/imi-net/

Cap. 441 - Trading Licences Act

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8907&l=1>

S. L. 441.07 - Trading Licences Regulations

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11063&l=1>



Jobs Plus (formerly the Employment and Training Corporation)

Jobs Plus offers the following services to employers:

- Matching of vacancies with jobseekers registering for work;
- Promotion of vacancies on its website, at Job Centres, and by email on jobseekers registered on our database; and
- The organisation of specific recruitment drives for employers who want to engage a large number of people.

Jobs plus also organises Job Fairs twice a year where employers can have stands to promote their vacancies and provide information about the jobs they have available.

All these services are free of charge.

Employers who want to open a vacancy with Jobs plus should fill in a 'Vacancy Profile Form' and send it by email to **vacancy.etc@gov.mt**. The 'Vacancy Profile Form' may be downloaded from the ETC website ('Resources' Section – 'Forms' Page).

Employers are legally bound to fill in an **Engagement Form** immediately upon employing a new employee. This also applies to those working as self-employed. Upon termination of employment, employers are obliged to inform Jobs Plus by filling the **Termination Form**. The registration of new employees and the termination from work can be made online through the Jobs Plus website.

Engagement and Termination Forms should be sent to Jobs Plus as follows:

- **Malta** – Human Resources Information Unit, Employment and Training Corporation, Head Office, Hal Far
- **Gozo** - Human Resources Information Unit, Employment and Training Corporation, Sir Arturo Mercieca Street, Victoria.

Jobs Plus offers the following services to jobseekers:

- Those registering for work are notified about the available vacancies by post and their details are sent to employers;
- We have a database of people and we send daily emails to notify jobseekers about these vacancies; and
- Jobseekers may view these vacancies at Job Centres and on our website;

As announced in the budget speech for 2015, Jobs Plus will soon be launching a number of initiatives aimed at assisting local enterprises in their recruitment needs, as well as in their efforts to invest in the training of their employees.

The ESF-funded 'Access to Employment' and 'Investing in Skills' schemes are two initiatives through which Jobs Plus will provide employment and training aid to enterprises in Malta and Gozo. The former is aimed at promoting the recruitment of the more challenged amongst jobseekers and inactive people, while the latter is aimed at having a more knowledgeable and skilled workforce.

More information about these schemes and on the other services that we have for local businesses can be found on our website **www.etc.gov.mt** or by calling us on **(+356) 2165 4940**.



EU Steering and Action Committee (MEUSAC)

MEUSAC is responsible for managing a structured consultation process on EU policies and laws. Consultation is structured on three main pillars, namely: Core Group Meetings, Sectoral Committee Meetings and Open Consultations. MEUSAC is also committed to provide assistance to local councils, private entities and NGOs in the process related to identifying and presenting project proposals for EU funding. Furthermore, MEUSAC is committed to bringing the EU closer to Maltese citizens.

SMEs may also benefit from MEUSAC's services, since they are an ideal way to keep in touch with EU affairs, even SME specific themes. MEUSAC also

offers advice on available EU funding options which can be used to improve an SME's performance.

MEUSAC website: <http://www.meusac.gov.mt/>

Facebook link: <https://www.facebook.com/meusacmalta>

Twitter: <http://twitter.com/meusacmalta>

Linkedin: <http://linkedin.com/groups/meusac/maltaeu/steering-action-committee>

Youtube: <https://www.youtube.com/user/meusacmalta>



Local office of the European Commission in Malta

The local office of the European Commission in Malta's role is to:

- Explain how EU **policies** will affect businesses and individuals in Malta
- Be a source of **EU-related information** for government, other authorities, small and medium enterprises and other stakeholders
- Offer **press & media services** in Malta information on developments in EU policymaking
- Speak for the European Commission as its voice in Malta

- Report back to the Commission in Brussels on important political, economic and social developments in Malta.

The Commission has Representations in all 28 EU countries, as well as Regional Offices in some.

Website: http://ec.europa.eu/malta/about-us/the-eu/index_en.htm



OHSA

....Working with others to ensure healthier and safer workplaces in Malta

The Occupational Health and Safety Authority Act XXVII of 2000 places a general duty on employers to ensure the health and safety at all times of all persons who may be affected by the work carried out for such employers. In terms of such Act, employers must have in place an effective management system for the control of risks to prevent physical and psychological occupational ill-health, injury or death. Further legal obligations are imposed through the provisions of subsidiary legislation. Failure to comply with the relevant statutory obligations will expose employers to both criminal and civil liabilities.

SMEs can benefit from the 'Online interactive Risk Assessment Tool (OiRA)' which can be accessed through this link: <https://client.oiraproject.eu/>

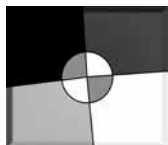
Moreover, one can also apply for the 'OHSA Sponsorship Fund' which is intended to encourage and assist constituted bodies (which are constituted by law according to the Employment and Industrial Relations Act, Chapter 452), to promote the benefits of having adequate levels of OHS and to disseminate information or guidance about different aspects of OHS. Further info can be obtained through this link: <http://ohsa.org.mt/Home/UsefullInformation/OHSASocialPartnersFund.aspx>

Also, one can find a number of information fact sheets / reports etc. through the European Agency for Safety and Health at Work's website: <https://osha.europa.eu/en>

With regards to Training, OHSA also offers a number of courses. Each course may be run upon a minimum request of 10 participants. For details on course content, bookings, venue, application forms, etc. or send an e-mail to: training.ohsa@gov.mt or phone **2124 7677**.

Further information can be found on the Occupational Health and Safety Authority's website: <http://www.ohsa.org.mt>

The Occupational Health and Safety (OHSA) is Malta's national regulator for workplace health and safety.



NCPD or (KNPD)

The National Commission for Persons with a Disability, NCPD (in Maltese Kummissjoni Nazzjonali Persuni b'Diżabilità' KNPD) was founded more than 25 years ago. Since the introduction of the Equal Opportunities Act (2000) this entity became statutory. Currently the Commission is still a service provider as it provides services such as the Blue Badge, and the Sonia Tanti Independent Living Centre amongst others. Since the ratification of the United Nations Convention for the Rights of Persons with a Disability (CRPD) in October of 2012 by the Maltese State, KNPD became the regulatory body

(independent mechanism) of the disability sector in Malta. The commission also serves as an awareness raising mechanism.

SME's can benefit from Disability Equality staff training by the Commission's CRPD team and also can be guided accordingly in access for all which regards accessibility.

More information can be found on our website **www.knpd.org**, Facebook page: **<https://www.facebook.com/knpdpage?fref=ts>** or by phone **2148 7789**.

Important telephone list

- **Malta Employers' Association (MEA)**
21237585, 21222992
- **Ministry for the Economy,
Investment and Small Business**
21226808 / 22209500
- **Malta Tourism Authority- Licensing section**
22915275/6, 22915278
- **Public Broadcasting Authority**
21221281
- **Malta Maritime Authority**
21222203 / 25608000
- **Transport Authority**
25608000, 80072309
- **Malta Communications Authority**
21336840
- **Civil Aviation Department (CAD)**
21245205
- **Malta Resources Authority**
22955000
- **Department of Fisheries and Aquaculture**
22921111
- **Plant Health and veterinary
regulation Department**
22925225
- **Independent Schools section**
25982473
- **Health Promotion Department**
23266000
- **Environmental Health Department**
21337333
- **Food and Safety commission**
21322305, 21336014/5
- **Health Directorate**
25953326
- **Medicines Authority**
23439000
- **Occupation Health and Safety Authority (OHSA)**
21247677/8

- **Jobs Plus**
(Employment Training Corporation (ETC))
21654940, 22201956/7, 22201959
- **Malta Financial Services Authority (MFSA)**
21441155
- **Customs Department**
25685120, 25685128
- **Malta Gaming Authority**
21316590, 25469000
- **Commerce Department**
21242270, 21243071
- **(Business Care Unit)**
21226688
- **Malta Police**
21224001
- **Industrial and Employment relations office**
21224245
- **NSO**
25997219, 25997000
- **Income Tax Department (inland revenue)**
22962296
- **VAT Department**
21499330, 80074404
- **Social Security Division – General**
25903000
- **Pensions**
25903286
- **Relief**
25903141
- **NI**
25903571
- **Sick leave / Employment benefits**
25903583
- **Injury benefits**
21551099
- **MEPA**
22900000
- **24/7 Reports on environment issues:**
- **Illegal dwellings**
22904005
- **Nature protection / pollution control**
22904006

- **Malta Competition and Consumer Affairs Authority (MCCAA)**
80074400, 23952000
- **Malta Enterprise / Malta Industrial Parks**
25420000
- **Business First (one stop shop for businesses)**
144
- **National Commission Persons with Disability (KNPD)**
22788555, 21487789
- **Aġenzija Appoġġ**
22959000
- **Aġenzija Sedqa**
23885110
- **Aġenzija Sapport**
21451868
- **National Commission for the promotion of equality**
25903850
- **Office of the Data Protection Commissioner**
23287100
- **Department tal-Infommazzjoni (DOI)**
21250550, 22000000
- **Telephone numbers enquiries**
1182
- **Department of Information**
153
- **Enemalta**
21223601, 80072224
- **Water Services Corporation (Arms Ltd)**
80072222
- **Malta International Airport**
21249600
- **MIA flight enquires**
21697800
- **Gozo channel**
21556114
- **Emergency**
112
- **24/7 Traffic accidents (Guard & Warden)**
21320202

- **Ambulance**
196
- **St John Ambulance Brigade**
21245740, 7924574
- **Malta Red Cross**
21388112, 79000112
- **Malta Mater Dei Hospital**
25450000
- **Gozo Hospital**
21561600
- **St James Hospital Malta**
21335235
- **StJames Hospital Gozo**
21564781
- **Civil Protection Department**
23930000, 21462610/3
- **AFM helicopter**
21244371, 21824212
- **AFM patrol boat**
21238797, 21225040

What is the European Social Fund (ESF)?

The European Social Fund (ESF) was set up to improve employment opportunities in the European Union and so help raise standards of living. It aims to help people fulfil their potential by giving them better skills and better job prospects. ESF funds amount to 10% of the EU budget.

Since 2000, the ESF has been a key part of the EU's Lisbon strategy for growth and jobs. It supports the EU's goal of increasing employment by giving unemployed and disadvantaged people the training and support they need to enter jobs. By focusing on those most in need of help, it contributes to policies to reduce inequality and build a fairer society. ESF also equips the workforce with the skills needed by business in a competitive global economy.

The ESF supports joint actions and networking of social partners in areas like lifelong learning or the integration of people furthest away from the labour market, but also the social partners themselves for the improvement of their capacity and their cooperation. This project falls within the aims of the ESF through enabling the social partners – employer associations and unions – to strengthen social dialogue in the EU.

