



ADVOCATES
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Maltese Employment Law

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GENERAL OUTLINE



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- Sources of Employment Law
- Categories of Employment Contract
- Form and Content Of Employment Contracts
- Minimum Conditions of Employment
- Termination of Contract of Employment:
 - Causes
 - Compensation
- Protection of Employees when a Business is Transferred

SOURCES OF EMPLOYMENT LEGISLATION

■ Primary Legislation

- Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta) (EIRA)
- Employment Commission Act (Chapter 267 of the Laws of Malta)
- Employment and Training Services Act (Chapter 343 of the Laws of Malta)
- Occupational Health and Safety Authority Act (Chapter 424 of the Laws of Malta)
- EU Regulations and Directives

SOURCES OF EMPLOYMENT LEGISLATION



- **Secondary Legislation**
 - Regulations made under the EIRA
- **Public Service Management Code**
- **Collective Agreements**
- **Judicial Decisions**
- **Arbitration Awards**
- **Custom and Practice**
- **Foreign Legislation and International Statutes**

CATEGORIES OF EMPLOYMENT CONTRACT



- **Applicable Legislation**

- EIRA
- Contracts of Service For a Fixed Term Regulations 2002 (Subsidiary Legislation 452.81 of the Laws of Malta)

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CATEGORIES OF EMPLOYMENT CONTRACT



▪ **Contract for a Definite Period of Time (also referred to as a Fixed Term Contract)**

- Drawn up according to the duration or term of the contract of employment.
- Can be renewed up to a maximum period of 4 cumulative years after which the employee is considered to be under a contract of indefinite duration unless employer has justifiable reasons for retaining the employee on a fixed term contract
- An employee whose fixed term contract has expired is retained in employment will be considered to be under an indefinite contract if the employer does not produce a new contract of service within 12 days following the expiry of the previous contract.

▪ **Contract for an Indefinite Period of Time**

- Drawn up according to the hours worked during a calendar week.

CATEGORIES OF EMPLOYMENT CONTRACT



- **Non-discrimination between employees on a fixed term contract and employees on a contract for an indefinite period**
 - **General Principle**
 - Employer may not differentiate between the conditions of employment of an employee on a fixed term contract and a comparable employee on a contract for an indefinite period.

CATEGORIES OF EMPLOYMENT CONTRACT



➤ Exception

- Article 4 of the Contracts of service for a Fixed Term Regulations 2002 – employer may differentiate between the conditions of employment of an employee on a fixed term contract and a comparable employee on a contract for an indefinite period if:
 - i. The difference arises in view of
 - a. The recognition of length of service;
 - b. The experience; or
 - c. The qualifications.
 - ii. The task for which the employee has been employed for is specific and includes objective considerations which justify discrimination.

FORM AND CONTENT OF EMPLOYMENT CONTRACTS



- **Applicable Legislation**

- EIRA
- Information to Employees Regulations 2002 (Subsidiary Legislation 452.83 of the Laws of Malta)

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FORM AND CONTENT OF EMPLOYMENT CONTRACTS



- **Form**

- Written; or
- Verbally agreed upon – employer is obliged to give employee ‘a letter of engagement or a signed statement’ by not later than 8 working days from commencement of employment.

FORM AND CONTENT OF EMPLOYMENT CONTRACTS



Content

- i. Designation
- ii. Duties
- iii. Employee's Warranties
- iv. Duration
- v. Probationary period
- vi. Disciplinary rules and Procedures
- vii. Termination and Suspension
- viii. Working Hours
- ix. Overtime (if applicable)
- x. Remuneration
- xi. Holidays
- xii. Vacation Leave
- xiii. Sick Leave/Absence
- xiv. Confidentiality
- xv. Conflict of interest
- xvi. Additional training (if applicable)
- xvii. Data Protection
- xviii. Severability/Waiver
- xix. Jurisdiction/operative Law
- xx. Expenses (if applicable)
- xxi. Notice Periods
- xxii. Competition Clause
- xxiii. Copyright and Inventions of Employees Clause

MINIMUM CONDITIONS OF EMPLOYMENT



▪ Applicable Legislation

- EIRA
- Regulations made under the EIRA
- Occupational Health and Safety Authority Act (OHSA)
- Wage Regulations Orders (WRO)
- Any Regulations made under the OHSA and WRO

MINIMUM CONDITIONS OF EMPLOYMENT



- **Working Time**

- not more than 48 hours including overtime in every 7 day period
- Exception – individual employees may opt to exclude the working time regulations.

- **Periods of Rest**

- Employee is entitled to two periods of 11 consecutive hours of daily rest per 24 hour period of work.

- **Breaks**

- After a minimum of 6 hours of work, employees are entitled to a break.

MINIMUM CONDITIONS OF EMPLOYMENT

➤ Exception

- the provisions on daily rest, breaks, weekly rest, weekly working time and night work shall not apply to a worker where on account of the specific characteristics of the activity in which a worker is engaged, working time is:
 - Not measured or
 - Not predetermined or
 - Can be determined by the worker.
 - Instances where the employee's residence is distant from his/her place of work
 - Security and surveillance activities
 - Activities requiring continuity of service or production
 - Foreseeable surge of activity
 - In cases of 'emergency' and exceptional events.

MINIMUM CONDITIONS OF EMPLOYMENT



- This includes but is not limited to:
 - a) managing executives;
 - b) Other persons with autonomous decision taking powers;
 - c) family workers; and
 - d) Those involved in religious ceremonies.

MINIMUM CONDITIONS OF EMPLOYMENT



- **Annual Vacations**
 - 192 hours per annum
- **Holidays**
- **Overtime**
 - Overtime hours are to be paid 1.5 times the normal hourly rate.
- **Sunday Duty**
 - Employees working the Sunday duty are usually paid double the normal hourly rate.
- **Parental and Maternity Leave**
 - Parental Leave- 3 months unpaid leave
 - Maternity Leave – 14 weeks with full wages

MINIMUM CONDITIONS OF EMPLOYMENT



■ Wage Levels

➤ Full-time Employees

Age bracket	National	Retail & Wholesale
18 yrs and over	€146.47 per week	€ 147.64 per week
17 years	€139.69 per week	€140.32 per week
Under 17 years	€136.85 per week	€137.74 per week

MINIMUM CONDITIONS OF EMPLOYMENT



➤ Part-time Employees

Normal working hours €4.60 per hour

Sundays & Public Holidays €6.28 per hour

MINIMUM CONDITIONS OF EMPLOYMENT



- **Bonuses and Benefits**

- Employee is entitled to the statutory bonuses and income supplements as may be established by a legal notice.

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TERMINATION OF A CONTRACT OF EMPLOYMENT



- **Applicable Legislation**

- EIRA

- Collective Redundancies Regulations 2002 (Subsidiary Legislation 452.80 of the Laws of Malta)

TERMINATION OF A CONTRACT OF EMPLOYMENT



- **Termination of an Indefinite Contract of Employment**
 - May be terminated by:
 - The employee by giving notice of resignation
 - The employer for:
 - a) Reasons of redundancy; or
 - b) A good and sufficient cause

TERMINATION OF A CONTRACT OF EMPLOYMENT



A. Redundancy

- General Rule – Last in first out
- Exception – if employee who is to be made redundant is related to the employer by consanguinity or affinity up to the 3rd degree, the employer may, instead of terminating the employment of such person, terminate that of the person next in turn.
- Employees must be informed of the redundancy in writing and must be given the opportunity to consult within 7 days of the notice of the redundancy.
- Written statement and copy of notification of the redundancy must be given to the Director responsible for Employment and Industrial Relations.
- The redundancies shall then take effect 30 days after notification to the Director.

TERMINATION OF A CONTRACT OF EMPLOYMENT



▪ Notice Periods

- Notice Periods to be given by employee for termination of employment and by the employer for the termination of employment contract for an indefinite period for reasons of redundancy

Length of service	Mandatory notice period
1 month to 6 months	1 week
6 months to 2 years	2 weeks
2 years to 4 years	4 weeks
4 years to 7 years	8 weeks
7 years or more	an additional 1 week per year of service up to a maximum of 12 weeks

TERMINATION OF A CONTRACT OF EMPLOYMENT



- Longer notice periods are only enforceable against the employee if such employee holds the following posts
 - i. Administrative
 - ii. Technical
 - iii. Executive or
 - iv. Managerial

TERMINATION OF A CONTRACT OF EMPLOYMENT



- Upon receipt of the notice of resignation the employer may:
 - a) Keep the employee in employment for the duration of the notice period; or
 - b) Release the employee with immediate effect by paying the employee an amount equal to all the wages which the employee would have earned during the notice period or part of which is unexpired.
- If employee fails to work all or part of the notice period which has to be given to the employer, the employer has the right to demand the employee to pay him an amount equal to half of the wages that the employee would have earned during the notice period or part of which is unexpired.

TERMINATION OF A CONTRACT OF EMPLOYMENT



B. Termination for a good and sufficient cause

- An employer may dismiss an employee and the employee may abandon the service of the employer without giving notice, if there is good and sufficient cause for such dismissal or abandonment of service.
- Article 36 of the EIRA lists 13 instances which may not be set up as good and sufficient causes for dismissal

TERMINATION OF A CONTRACT OF EMPLOYMENT



- **Procedure of Termination of a Contract of Employment for an Indefinite Period**
 - The Industrial Tribunal requires a number of procedural requirements for dismissal
 - i. Warnings (preferably in writing) prior to the dismissal;
 - ii. Employee is given an opportunity to state his case prior to dismissal; and
 - iii. Reasons for termination on the required ETC termination form have to reflect the truth.

TERMINATION OF A CONTRACT OF EMPLOYMENT



- **Termination of a Fixed Contract of Employment**
 - Excluding redundancy, the employer or the employee may terminate a contract of definite duration on the same grounds as a contract of indefinite term.

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TERMINATION OF A CONTRACT OF EMPLOYMENT



Contract of Employment for a Fixed Term

- The party terminating the contract has to pay to the other party the full wages that would have accrued to that party in respect of the remainder of the time specifically agreed upon.

Contract of Employment for an Indefinite Period

- The determination of the amount of compensation payable to the employee in cases of unfair dismissal is in the Tribunal's competence.

TERMINATION OF A CONTRACT OF EMPLOYMENT



- **Probation**

- During the period of probation, the contract of employment may be terminated without assigning any reason and without giving any notice as long as 1 week's notice is given if the employee has been employed with the employer for more than 1 month.

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TERMINATION OF A CONTRACT OF EMPLOYMENT



- **Enforcement and non-compliance**

- Any employer who contravenes or fails to comply with any recognised conditions of employment or with any provisions of the EIRA or any regulations made thereunder shall, unless otherwise provided in the act, on conviction be liable to a fine (multa) of not less than €232.94 and not exceeding €2,329.37.

TRANSFER OF UNDERTAKINGS – PROTECTION OF EMPLOYEES



- **Applicable Legislation**

- EIRA

- Transfer of Business (Protection of Employment) Regulations (Subsidiary Legislation

- 452.85 of the Laws of Malta)

TRANSFER OF UNDERTAKINGS – PROTECTION OF EMPLOYEES



➤ **General rule**

- When a business or undertaking is transferred in whole or in part, any employee in the employment of the transferor shall be deemed an employee of the transferee.

➤ **Exception**

- rule shall not apply to any transfer where the transferor is subject to bankruptcy proceedings or in a winding up by court or other insolvency proceedings instituted with a view to the liquidation of the assets of the transferor and are under the supervision of a court appointed liquidator.

TRANSFER OF UNDERTAKINGS – PROTECTION OF EMPLOYEES



▪ **Rights of the Employees**

- The transferor and the transferee shall inform the employees' representatives of their respective employees affected by the transfer, by means of a written statement, with:
 - a. The date or proposed date of transfer;
 - b. The reasons for the transfer;
 - c. The legal, economic and social implications of the transfer for the employees; and
 - d. The measures envisaged in relation to the employees.

- **Exception**
 - this rule shall not apply to those undertakings that employ more than 20 employees, including all full-time and part-time employees.

TRANSFER OF UNDERTAKINGS – PROTECTION OF EMPLOYEES



- Transferor and Transferee are bound to forward a copy of the written statement to the Director responsible for employment and industrial relations.
- Where transfer affects the conditions of employment, consultations between transferor and employees' representatives shall commence within 7 days from the day upon which the employees' representatives have been notified.
- **Exception:** These rules shall NOT apply to:
 - a. An administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities; and
 - b. Sea-going vessels.

TRANSFER OF UNDERTAKINGS – PROTECTION OF EMPLOYEES



- **Transfer of undertaking shall not constitute sufficient grounds for dismissal** of employees unless dismissal takes place for the following reasons:
 - a. Economic;
 - b. Technical; or
 - c. Organizational.

TRANSFER OF UNDERTAKINGS – PROTECTION OF EMPLOYEES



- **Enforcement and non-compliance**

- Any person contravening the provisions of the regulations shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than € 1,164.69 for every employee that is affected by the transfer.



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