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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The Employment and Industrial Relations Act (hereinafter referred to as the 'EIRA'), Chapter 452 of the Laws of Malta, provides the basic legal framework, regulating the main conditions of employment in Malta. Specific areas of employment law are in turn regulated by various subsidiary legislations promulgated under the EIRA, as the latter transposed a number of different directives of the European Union.

The EIRA is complemented by the Wage Regulation Orders, which determine the minimum entitlement of specific sectors including the specific leave entitlements applicable to each particular sector.

Another important source of Maltese employment law is the Health and Safety at Work Act, Chapter 646 of the Laws of Malta, which came into force on 26 November 2024. This Act establishes the Occupational Health and Safety Authority ('OHSA') to ensure that the physical, psychological and social well-being of all workers in all workplaces are promoted and safeguarded by whosoever has such a duty. Furthermore, the Employment and Training Services Act, Chapter 594 of the Laws of Malta, regulates employment and training services, including traineeships and the employment of third country nationals. The National Employment Authority and Jobsplus are also established in virtue of this Act.

Decisions of the Industrial Tribunal, the Court of Appeal and the European Court of Justice of the European Union also constitute an important source of Maltese employment law, despite the fact that Malta does not follow the doctrine of precedent.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Maltese employment law seeks to protect all types of employees, despite the various categories which an employee might be classified under. One may classify workers into two categories, that is employed or self-employed.

In virtue of Section 2 of the EIRA, a worker is classified as an employee if such worker has entered into or works under a contract of service or has undertaken personally to execute any work or service for and under the immediate direction and control of another person, including an outworker. However, any work or service performed by a person in a professional capacity or in the capacity of a contractor for another person when such work or service is not regulated by a specific

contract of service is excluded from the definition of an employee under the EIRA.

This definition is complemented by the Employment Status National Standard Order (Subsidiary Legislation 452.108), which provides specific criteria on the basis of which one might determine whether they may in actual fact be classified as employed or self-employed. In fact, an employment relation is established if an employee satisfies at least five of the following criteria:

1. s/he depends on one single person for whom the service is provided for at least 75% of his income over a period of one year;
2. s/he depends on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;
3. s/he performs the work using equipment, tools or materials provided by the person for whom the service is provided;
4. s/he is subject to a working time schedule or minimum work periods established by the person for whom the service is provided;
5. s/he cannot sub-contract his work to other individuals to substitute himself when carrying out work;
6. s/he is integrated in the structure of the production process, the work organisation or the company's or other organisation's hierarchy;
7. the person's activity is a core element in the organisation and pursuit of the objectives of the person for whom the service is provided; and
8. s/he carries out similar tasks to existing employees, or, in the case when work is outsourced, he performs tasks similar to those formerly undertaken by employees

Employees may also fall under any of the following three categories: full-timers; whole-timers; or part-timers. Maltese employment law stipulates that part-timers shall not be treated less favourably than full-time or whole-time employees in so far as remuneration and benefits are concerned, as the latter would need to be calculated on a *pro rata* basis.

1.3 Do contracts of employment have to be in writing? If not, are employers required to give employees specific information in writing?

Upon the engagement of any employee, the employer is obliged to provide the employee with a written statement about the conditions of work and the essential aspects of the employment relationship. In line with the Transparent and Predictable Working Conditions Regulations, Subsidiary Legislation 452.126, the employer is obliged to provide each worker with

the information required by the same Subsidiary Legislation in writing, which information shall be provided and transmitted on paper. Alternatively, such information can also be provided in electronic form as long as the information is accessible to the worker, can be stored and printed, and provided that the employer retains proof of transmission or receipt.

The information provided to the employee must include, amongst others: the name, registration number and registered place of business of the employer; the place of work; the title, grade nature or category of work for which the worker is employed; a brief specification or description of the work, the commencement date; and in the case of a fixed-term agreement, the end date or the expected duration of such agreement.

1.4 Are there any minimum employment terms and conditions that employers have to observe?

The EIRA and the subsidiary legislations issued under it set out the minimum employment terms and conditions which employers and employees must follow, irrespective of any agreement to the contrary. Employers in specific sectors of employment might also be obliged to observe more specific terms and conditions of employment as might be set out in the applicable Wage Regulations Orders.

The Organisation of Working Time Regulations, Subsidiary Legislation 452.87, regulates the hours of work of employees, setting out the minimum daily rest, weekly rest, rest breaks and vacation leave with full pay, amongst others. The maximum hours of work and night work is also regulated in virtue of this legislation. The Minimum Special Leave Entitlement Regulations, Subsidiary Legislation 452.101, lays down the minimum leave entitlements for employees who are not regulated by any Wage Regulation Order, including sick leave, bereavement leave, birth leave, marriage leave, injury leave, jury leave and quarantine leave. Other minimum terms and conditions which employers would be legally obliged to observe would also include the payment of a national minimum wage and the granting of maternity leave and national and public holidays to employees.

1.5 Are terms and conditions of employment normally agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Despite several Wage Regulation Orders setting out the minimum pay and working conditions in specific sectors of employment, the EIRA still allows for terms and conditions of employment to be negotiated through collective bargaining, as long as such conditions of employment are in accordance with the provisions of any law in force in Malta. Collective bargaining in the private sector takes place predominately at company level, whereas in the public sector it is generally carried out at industry level.

The terms and conditions concluded in terms of a collective agreement will be applicable to the employer and those employees forming part of the trade union negotiating on behalf of those same employees. However, employees not forming part of the trade union in question may also opt to be bound by the terms and conditions as set out in the collective agreement.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Trade unions and employers' associations are formed in order to protect the collective interest of their members, particularly in the event of collective bargaining. The EIRA regulates the status, registration and conduct of trade unions and employers' associations and in virtue of the Recognition of Trade Unions Regulations, Subsidiary Legislation 452.112, a trade union may be recognised by an employer as the sole collective bargaining union at the place of work, following a verification process which must be carried out by the Director of Employment and Industrial Relations in accordance with the main rules established by these regulations.

2.2 What rights do trade unions have?

In virtue of the Recognition of Trade Unions Regulations, trade unions have the right to request recognition from the employer, as the sole collective bargaining union, in respect of employees of the same employer. Once recognised, trade unions shall have the right to negotiate and carry out collective bargaining with the employer in question. In fact, the EIRA recognises that, as an association of persons, a trade union is capable of entering into contracts. Furthermore, it is also within the right of trade unions to act in contemplation or furtherance of trade disputes. Subject to certain restrictions imposed by law, a trade union is also capable of suing and being sued.

2.3 Are there any rules governing a trade union's right to take industrial action?

The EIRA grants statutory protection to trade unions and all of its members from liability when taking industrial action pursuant to a trade dispute.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies and do they have co-determination rights?

The European Works Council (Further Provisions) Regulations, Subsidiary Legislation 452.107, provides that work councils shall be set up by a community-scale undertaking or community-scale group of undertakings. A community-scale undertaking is defined as an undertaking with at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States. Community-scale group of undertakings means a group of undertakings of at least 1,000 employees within the Member States, at least two group undertakings in different Member States and at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State.

The scope of the work councils is for its members to collectively have the right to promote the interests and improve the right to information and consultation of the employees of the community-scale undertaking or community-scale group of undertakings.

A Special Negotiating Body is to be set up to negotiate with the central management regarding the establishing of a European Works Council or a procedure for informing and consulting employees. The members of the Special Negotiating Body shall be elected or appointed in proportion to the number of employees employed in each Member State by the community-scale undertaking or community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State, amounting to 10% or a fraction thereof of the number of employees employed in all the Member States taken together.

2.5 Are employees entitled to representation at board level?

Under Maltese law, employees do not have a right to board-level representation, and such right may only be granted at the discretion of the employer.

3 Discrimination

3.1 Are employees protected against discrimination? What types of discrimination are unlawful and on what grounds?

The right to protection from discrimination on the grounds of race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity is enshrined in Article 45 of the Constitution of Malta. The Maltese Constitution further promotes equal rights of men and women, whereby the State has a particular duty to ensure that women workers enjoy equal rights and the same wages for the same work as men.

The EIRA then defines discriminatory treatment as “any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers’ association”. This list is not an exhaustive one and, therefore, the law does not preclude the possibility of other acts constituting discriminatory treatment. A number of subsidiary legislations enacted under the EIRA further strengthen the prohibition against discrimination. These include the Equal Treatment in Employment Regulations, Subsidiary Legislation 452.95, the Persons with Disability Act, Chapter 210 of the Laws of Malta, and the Equal Opportunities (Persons with a Disability) Act, Chapter 413 of the Laws of Malta. Sexual and gender discrimination is further prohibited in virtue of the Equality for Men and Women Act, Chapter 456 of the Laws of Malta.

3.2 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

Sexual harassment is explicitly prohibited under Maltese law, particularly in virtue of the EIRA, the Equal Treatment in Employment Regulations and the Equality for Men and Women Act. In fact, Maltese law explicitly prohibits an employer or employee from sexually harassing another employee or employer by:

1. subjecting the victim to an act of physical intimacy;
2. requesting sexual favours from the victim;
3. subjecting the victim to any act or conduct with sexual connotations, including spoken words, gestures or the

production, display or circulation of written words, pictures or other material where the act, request or conduct is unwelcome to the victim and could reasonably be regarded as offensive, humiliating or intimidating to the victim; or

4. treating the victim differently, or it could reasonably be anticipated that the victim could be so treated, by reason of the victim’s rejection of or submission to the act, request or conduct.

Although Maltese law does not explicitly impose any mandatory training requirements against sexual harassment, an employer is legally obliged to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment at the workplace, in access to employment, vocational training and promotion. In fact, an employer is deemed to have discriminated against a person by neglecting the obligation to suppress sexual harassment.

3.3 Are there any defences to a discrimination claim?

An employer may argue that a discriminatory act is not unlawful by proving that it is reasonably justifiable to advertise or recruit particular classes of people for a particular job, on grounds relating to the nature of the vacancy to be filled or the employment offered or on grounds related to previous work performance and experience. Furthermore, the employer may argue that unlawful discrimination did not take place where a required characteristic constitutes a genuine and determining occupational requirement or where the requirements are established by applicable laws or regulations.

3.4 How do employees enforce their discrimination rights and what remedies are available? Can employers settle claims before or after they are initiated?

Employees may lodge a complaint before the Industrial Tribunal within four months of the alleged breach of their discrimination rights. If the Industrial Tribunal concludes that the complaint lodged by the employee on grounds of discrimination is justified, then the Industrial Tribunal may take such measures as it may deem fit, including the cancellation of any contract of service, or any clause in a contract or collective agreement which is discriminatory. The Industrial Tribunal may also order reasonable monetary compensation to the aggrieved party.

Employers may settle any claim before or after proceedings have been initiated by the employee by reaching a settlement agreement with the same employee.

3.5 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?

The EIRA explicitly safeguards whistleblowers or employees who raise concerns about corporate malpractices from termination of employment. In fact, the EIRA states that it shall not constitute a good and sufficient cause of termination when an employee discloses information, whether confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by his employer or by persons acting on the employer’s name and interests.

Furthermore, the Whistleblower Act, Chapter 527 of the Laws of Malta provides for procedures in terms of which employees in both the private sector and the public administration may disclose information regarding improper practices by their employers or other employees in the employ of their employers and to protect employees who make said disclosures from detrimental action.

3.6 Are employers required to publish information about their gender, ethnicity or disability pay gap, or salary or other diversity information?

As of now, employers in Malta are not legally required to publish information regarding gender, ethnicity or disability pay gaps, or other diversity-related information. However, this is set to change with the forthcoming implementation of the European Union's Pay Transparency Directive, which must be transposed into Maltese law by June 2026. This will be particularly the case in relation to the gender pay gap since, at this stage, this Directive does not yet impose the obligation to publish pay gap data related to ethnicity, disability, or other diversity factors.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last? Is a woman entitled to return to the same job after maternity leave?

In virtue of the Protection of Maternity (Employment) Regulations, Subsidiary Legislation 452.91, an employee is entitled to an uninterrupted period of 18 weeks of maternity leave.

An employee who is pregnant, breastfeeding or has recently given birth will also be entitled to special maternity leave, in the event that such employee could be exposed to a risk at work which could jeopardise her health and safety, and/or the pregnancy or the child. Furthermore, if an employee needs to attend ante-natal examinations during her hours of work, then such employee would also be entitled to time off without loss of pay or any other benefit.

Upon her return to work from maternity leave, a woman has the right to return to the same role with the same wages that she would have been entitled to prior to the maternity leave. Should this no longer be possible for a valid reason, then the employee shall be entitled to equivalent or similar work that is consistent with her employment contract.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

During the first 14 weeks of maternity leave, a woman is entitled to full pay by the employer. If a woman avails herself of an additional four weeks of maternity leave, then she will not receive payment from the employer; however, she will be entitled to the Maternity Leave Benefit in accordance with the provisions of the Social Security Act.

Furthermore, an employee on maternity leave shall be deemed to have been in employment during such leave. She shall also be entitled to all rights and benefits which may accrue to other employees of the same class or category of employment at the same place of work, including the right to apply for promotion opportunities at her place of work. However, during the period of maternity leave the employee shall have no right to any bonus or allowance related to performance or production.

A pregnant employee, an employee who has recently given birth or a breastfeeding employee may not be dismissed by the employer from the date in which such employee informs her employer, by means of a certificate issued by a registered medical practitioner or midwife, of her pregnancy to the end of her maternity leave, or during any period of special maternity leave, because of her condition or because she avails herself or seeks to avail herself of any rights in terms of law. Furthermore, if an employee has still not exhausted her probationary period, then such period is suspended during the maternity leave or special maternity leave. Should the employer need to dismiss an employee during the probationary period after having been notified of the employee's condition, then such employer would be legally obliged to provide the employee with a valid reason in writing in order to confirm that the dismissal is not due to the employee's condition.

4.3 Do fathers have the right to take paternity leave?

The Work-Life Balance for Parents and Carers Regulations, Subsidiary Legislation 452.125, has introduced the right of paternity leave, consisting of 10 working days. This may be availed of by fathers and equivalent second parents, where and insofar as they are recognised as such by national law, on the occasion of the birth or the adoption of the employee's child. Paternity leave will be awarded irrespective of marital or family status. Paternity leave shall be paid in full and it may be availed off irrespective of the period of work or length of service undertaken by the employee.

4.4 Are employees entitled to other types of parental leave or time off for caring responsibilities?

In terms of the Work-Life Balance for Parents and Carers Regulations, Subsidiary Legislation 452.125, parents each have an individual right to parental leave per child, on the grounds of the birth or adoption of a child for the purpose of taking care of that child. This parental leave entitles each parent to four months of leave from work, which may be availed of until the child has attained eight years of age. All employees, whether male or female, full-time or part-time, and whether employed on an indefinite or fixed-term contract, shall be entitled to parental leave, provided that the employee has been in employment with the same employer for a continuous period of at least 12 months. The first two months of parental leave shall be paid at the same rate established for the sickness benefit entitlement under the Social Security Act. Parental leave shall be paid as follows:

- 50% of the entitlement will be paid, where the child or children for whose care parental leave was granted has or have not attained four years of age;
- 25% of entitlement will be paid, where the child or children for whose care parental leave was granted, has or have attained the age of four years but has or have not yet attained the age of six years; and
- 25% of entitlement will be paid, where the child or children for whose care parental leave was granted has or have attained the age of six years but has or have not yet attained the age of eight years.

In virtue of this Subsidiary Legislation, two months of parental leave cannot be transferred from one parent to another.

An employee who applies for parental leave must give at least two weeks' notice in advance to the employer, specifying

the beginning and end of parental leave. An employer who receives such notice of parental leave may only postpone such leave for justifiable reasons related to the operations of the place of work. Employers are also obliged to keep a record of the parental leave for every employee and shall, on the demand of the worker which may be made even after the termination of employment, deliver to the employee a written statement of the leave to the worker, within two weeks of such written request. Parental leave shall be availed of by the employees in established periods of at least two weeks each, unless an agreement to the contract is reached by the employer and employee or collective agreement. Employees who make use of parental leave shall retain the right to apply for promotional opportunities and may have the possibility of making arrangements for appropriate reintegration measures, which must be agreed between the parties.

Furthermore, the Work-Life Balance for Parents and Carers Regulations, Subsidiary Legislation 452.125, introduced the entitlement of five unpaid working days as carers' leave, which may be utilised by employees who need to provide personal care or support to a relative, or to a person who lives in the same household as the employee, and who is in need of care and support for a serious medical reason. A relative in need of such personal care and support may be the employee's son, daughter, parent, spouse or a partner in a civil partnership. This leave may be granted to employees upon presentation of medical proof that the relative, or person who lives in the same household as the worker and in relation to whom carers' leave is requested, is suffering from an illness and is in need of care and support.

4.5 Are employees entitled to work flexibly or remotely, for example if they have responsibility for caring for dependants?

With the introduction of the Work-Life Balance for Parents and Carers Regulations, Subsidiary Legislation 452.125, employees with children up to the age of eight years, and carers, may request flexible working arrangements from their employer for caring purposes. Such flexible working arrangements include remote working, working reduced hours and flexi-time. Employers are bound by law to consider and respond to such requests within two weeks and must provide reasons for any refusal or postponement of such arrangements. Such flexible arrangements may, however, be limited in duration, and the employee shall always retain the right to request to return to the original working conditions where justified or due to changes in circumstances.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer), do employees automatically transfer to the buyer?

In terms of the Transfer of Business (Protection of Employment) Regulations, Subsidiary Legislation 452.85, employees are automatically transferred to a transferee upon the transfer of a business.

In terms of these regulations, a transfer of business will be deemed to have taken place, even if such transfer is carried out through more than one transaction and may also take place if any property, whether movable or immovable, is transferred by the seller to the buyer.

In this case, the contract of employment of each employee initially employed by the seller shall have the same effect as if originally made between the employee and the seller.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

All employee rights as outlined in the employment contracts will be transferred together with the transfer of business. Any collective agreements concluded with the prior employer will likewise be transferred to the new employer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

When an undertaking, or part of an undertaking, employing more than 20 employees (including all full-time and part-time employees) is being transferred, such employees will have the right to information and consultation on the transfer of business.

The transferor and the transferee are both obliged to inform the employees' representative of the respective employees affected by the transfer and provide them with the following information:

1. the date or proposed date of the transfer;
2. the reason for the transfer;
3. the legal, economic and social implications of the transfer for the employees; and
4. the measures envisaged in relation to the employees.

This information is to be provided by means of a written statement within at least 15 working days before the transfer is carried out, or before the employees are directly affected by the transfer with respect to their conditions of employment, whichever is the earliest. The Director responsible for Employment and Industrial Relations shall also be informed on the same day as the employee's representatives.

The transferor and the transferee are also obliged to consult with the employees' representatives in those cases where the transfer of business includes measures affecting the conditions of employment of the transferred employees. Such consultations shall begin within seven working days from the day on which the employees' representatives have been notified of the intended transfer.

The obligations of informing and consulting subsist irrespective of whether the decision resulting in the transfer is taken by the employer or an undertaking controlling the employer. Failure to comply with this obligation shall, on conviction, result in a fine of not less than €1,164.69 for every employee that is affected by the transfer.

5.4 Can employees be dismissed in connection with a business sale?

Dismissing an employee in connection with a business sale is construed as an unfair dismissal, since a transfer of business will not constitute a good and sufficient cause for termination in terms of Maltese law.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Upon a transfer of business, the contracts of employment are transferred to the new employer. The terms and conditions of employment may not change for any reason related to the transfer of business.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Employees are only given notice of termination of their employment in the case of indefinite contracts. Such notice period must be given in the case of redundancies or resignations; however, no notice period is applicable when the termination of employment is done for a good and sufficient cause. The notice period given is based on the duration of employment of the employee; however, it may never exceed a total of 12 weeks. Longer notice periods may be agreed in the contract of employment when the employee holds a technical, executive, administrative or managerial role.

Conversely, when terminating a definite contract prior to the agreed termination date, the party effecting such termination must pay the other party a sum equal to half of the wages that would have been due to the employee for the remaining period of the contract.

However, when the probationary period is still in force and the employees would have been in employment for at least one continuous month with the same employer, then a notice period of one week would be applicable in the case of both indefinite and definite contracts.

6.2 What protection do employees have against dismissal? Do employers have to get consent from a third party before dismissing an employee?

An employee employed on the basis of an indefinite contract may only be dismissed in the case of redundancy or for a good and sufficient cause. In order to dismiss an individual on the grounds of an individual redundancy, then an employer must follow the 'last in first out' rule, whereby the latest person to be engaged in a specific class of employment is to be dismissed first. Furthermore, should the post formerly occupied by the redundant employee be made available again within a period of one year, then the employer is obliged to offer such post to that employee.

When it comes to dismissal on the basis of a good and sufficient cause, Maltese law does not explicitly define what constitutes such a cause. However, it provides some of the reasons for which employees may not be dismissed, such as if an employee is a member of a trade union, contracts marriage or is pregnant or absent from work during maternity leave. When an employee is dismissed for a good and sufficient cause, then the employee will not be entitled to a notice period.

In the case of a definite contract, if an employer dismisses an employee without a good and sufficient cause, then such employer would be obliged to pay the employee an amount equal to half the wages that the employee would have earned in the remaining period.

Should an employee be unfairly dismissed without a good and sufficient cause, then such employee will have the right to contest the dismissal before the Industrial Tribunal.

Although the consent of a third party is not required for an employer to dismiss an employee, in the case of collective redundancies, an employer is obliged to notify the employees' representatives and the Director of Employment and Industrial Relations of the said collective redundancy, in order to provide an opportunity for consultation. This consultation should cover ways and means to avoid such collective

redundancies, reduce the number of employees affected by such redundancies or mitigate the consequences thereof.

6.3 Do any categories of employee enjoy special protection against dismissal?

Employees who would have notified their employer, by means of a certificate issued by a registered medical practitioner or midwife, of her pregnancy may not be dismissed by the employer from the date of such notification until the end of the maternity leave, or during any period of special maternity leave, due to such employee being pregnant or due to the employee availing or seeking to avail herself of any rights in terms of law. Furthermore, the law also protects employees who are pregnant or on maternity leave from dismissal during their probationary period. In this case, the employer would have to provide a good and sufficient reason in writing in order to dismiss the employee and send a copy of such notice to the Director of Employment and Industrial Relations, in order to ensure that such employees are not terminated due to their pregnancy or due to them having availed themselves of maternity leave or any other entitlement due to them by law.

Employees who are on injury leave may not be terminated from employment during such period.

Furthermore, employers may not dismiss a person for having contracted marriage. The law also safeguards employees from being dismissed due to such employees being or having been employees' representatives or members of a trade union. Employees who act as whistle-blowers and divulge information, whether confidential or otherwise, to a designated public regulating body, or who have filed a complaint or are participating in proceedings against their employer before competent administrative authorities are also safeguarded from being terminated on such grounds.

6.4 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business-related reasons? Are employees entitled to compensation on dismissal and if so, how is compensation calculated?

An employee may be dismissed due to reasons pertaining to him individually only if such reasons constitute a good and sufficient cause according to law. In this case, the employee will not be entitled to any compensation or to a notice period.

However, an employee may be dismissed for business-related reasons only in the case of a redundancy. A transfer of business is not deemed to be a valid reason for dismissing an employee. In the case of redundancy, the employer would be obliged to either keep the employee in employment for the duration of the notice period or, if the employee is not required to attend work during such period, the employee is to receive compensation in an amount equal to the wages that such employee would have accrued during the notice period.

6.5 What claims can an employee bring if they are dismissed? What are the remedies for a successful claim and can employers settle claims?

An employee may bring a claim before the Industrial Tribunal for unfair dismissal, that is when the termination is not done for a good and sufficient cause. Such a claim must be brought before the Industrial Tribunal within four months of the alleged breach.

If successful, the Industrial Tribunal may order the re-engagement or re-instatement of the employee with the employer. The re-engagement or re-instatement of the employee may only be ordered if the employee specifically makes a request for such re-engagement or re-instatement. However, the latter remedy is not available in the event that the employee would have occupied a managerial or executive post which requires a special trust in the employee as the holder of that post or in his ability to perform the duties thereof.

Otherwise, the Industrial Tribunal may order monetary compensation in favour of the employee.

Employers may settle any claim before or after proceedings have been initiated by the employee by reaching a settlement agreement with the same employee.

6.6 Does an employer have any additional obligations if it is dismissing several employees at the same time?

Maltese law imposes a specific procedure which an employer must follow in the case of collective redundancy. The employer must first inform the employees' representatives by means of a notice in writing about the collective redundancy which is about to take place. This notice shall provide the said representatives with an opportunity to consult and discuss this collective redundancy with the employer. The law then obliges the employer to have this consultation with the employees' representatives within seven days from notifying them in writing about the redundancies. The purpose of this consultation should be to determine ways in which: the collective redundancy is avoided; the number of employees affected by such redundancy is reduced; or the consequences thereof may be mitigated.

Within this seven-day period, the employer would also be obliged to supply the employees' representatives with a written statement outlining all relevant information in relation to the redundancy. This shall include, namely:

- the reason for the redundancy;
- the number of employees intended to be made redundant by the employer;
- the number of employees normally employed by the employer;
- the criteria proposed for the selection of the employees to be made redundant; and
- the details regarding any redundancy payments which are due and the period over which redundancies are to be affected.

Employers are also obliged to present a copy of the above-mentioned written notification and written statement to the Director responsible for the Employment and Industrial Relations on the same day in which these are notified to the employees' representatives. It is important to note that the collective redundancy may only take place upon the lapse of 30 days from this notification to the Director responsible for the Employment and Industrial Relations. This period of time may be shortened or extended by the Director, should he deem it fit to do so, in light of a potential resolution.

6.7 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer breaches its obligations?

Employees may enforce their rights in relation to mass dismissals through the employees' representatives. If the employer fails to follow the proper procedure imposed for

collective redundancies, employees may make a claim in court. The Department for Employment and Industrial Relations may also bring an employer to court for civil damages and criminal actions. In fact, if found in breach of the Collective Redundancy (Protection of Employment) Regulations, the employer will be guilty of an offence and may become liable to a fine of not less than €1,164.69 for every employee that is declared redundant.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Restrictive covenants such as non-compete and non-solicitation clauses are not regulated by Maltese law. The recognition of such clauses by Maltese courts is limited in nature and jurisprudence has held that such clauses may only be enforced if their applicability is proportional in nature.

7.2 When are restrictive covenants enforceable and for what period?

Restrictive covenants may be enforceable by Maltese courts if they are proportional in nature. Maltese jurisprudence has held that for restrictive covenants to be enforceable, such clauses must be reasonable and limited in nature, particularly with respect to their scope, duration and the applicable market.

7.3 Do employees have to be provided with financial compensation in return for covenants?

Given that restrictive covenants are not regulated by Maltese law, employers are not obliged to provide financial compensation in return for such covenants. However, the offer of financial compensation will be taken into account by Maltese courts when determining the enforceability or otherwise of such clauses, particularly in light of their proportionality and reasonableness.

7.4 How are restrictive covenants enforced?

Since restrictive covenants are not regulated by Maltese law, their enforceability or otherwise is determined through judicial proceedings before the Maltese courts.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

In an employment relationship, employers and employees take on the roles of data controllers and data subjects, respectively. An employer would be under the obligation to process any personal data pertaining to the employee in virtue of the Data Protection Act (hereinafter referred to as 'DPA'), Chapter 586 of the Laws of Malta and the European Union General Data Protection Regulations (hereinafter referred to as 'GDPR').

Due to the unequal negotiation power between employers and employees, it is almost impossible to obtain voluntary

consent from an employee which permits the said employer to obtain, process and/or transfer employee data. Consequently, in order for an employer to legitimately process employee data, such processing needs to be done on grounds of the performance of an employment contract to comply with legal obligation, for the vital interests of the employee or of another natural person, or to further a legitimate interest of the employer.

In order to process employee data for a legitimate interest, an employer must ensure that such interest is not overridden by the interests or the fundamental rights and freedoms of the employee which require protection of personal data. To this end, an employer must perform a privacy impact assessment which balances his legitimate interests against the employees' privacy interests.

A transfer of employee data to a third party must take place in accordance with the GDPR. Data transfers to jurisdictions that are not within the European Economic Area (the 'EEA') can only take place if the transfer is to an 'Adequate Jurisdiction' as specified by the EU Commission, or if the employer has implemented one of the required safeguards as specified by the GDPR.

8.2 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Employers may carry out the necessary checks on prospective employees, provided that such checks shall be limited in scope and in accordance with what is required and permissible by law. An employer must also ensure that any data obtained and processed in virtue of such checks is done due to a legitimate interest.

8.3 Are there any restrictions on how employers use AI in the employment relationship (such as during recruitment or for monitoring an employee's performance or productivity)?

With the introduction of the EU Artificial Intelligence Act ('EU AI Act'), which came into force on the 1 August 2024, employers are restricted in their use of AI in the employment relationship.

This Act classifies AI systems into different risk categories and imposes corresponding obligations. AI systems used in employment contexts, such as those for recruitment, employee monitoring, or performance evaluation, are classified as high-risk. Employers deploying these systems must adhere to strict requirements, including:

1. implementing suitable technical and organisational measures to ensure adherence to the provider's instructions;
2. assign human oversight to natural persons who have the necessary competence, training and authority, as well as the necessary support;

3. supervise the workings of such technology and report any issues to the provider and national regulatory authorities;
4. maintain records of logs produced by the AI system (if managed by the deployer); and
5. inform workers' representatives and the affected employees of the use of such systems, before putting into service or using a high-risk AI system at the workplace, especially if such use will ultimately impact their employment.

Furthermore, employers are obliged to conduct a Fundamental Rights Impact Assessment ('FRIA') prior to using high-risk AI systems for the first time. The AI Act also explicitly prohibits certain AI practices in the workplace, including biometric categorisation and the use of emotion recognition, which is the practice of using AI to infer employees' emotions or intentions of natural persons on the basis of their biometric data. AI systems that manipulate or deceive employees are also prohibited.

Apart from the EU AI Act, the GDPR imposes additional constraints including automated decision-making. This is in line with Article 22 of the GDPR, which restricts decisions based solely on automated processing, including profiling, that significantly affect individuals. This is particularly relevant for AI-driven recruitment processes. Furthermore, the GDPR outlines data processing principles which oblige employers to ensure that personal data used by AI systems is processed lawfully, fairly, and transparently. Data minimisation and purpose limitation principles must also be observed.

9 The Future

9.1 What are the most significant labour market developments on the horizon in the next 12 months?

In the next 12 months, the Maltese labour market is expected to witness the transposition of the EU Pay Transparency Directive into Maltese law, which should strengthen the principle of equal pay for equal work between men and women by introducing new transparency and reporting requirements for employers.

Furthermore, the labour market in Malta might also witness the implementation of the Labour Migration Policy, which has been introduced by the Maltese government to address workforce challenges. The main aim of the Labour Migration Policy includes the reduction in high turnover rates among third-country national ('TCN') employees to ensure a more stable workforce. This policy also seeks to safeguard employee rights and enhance working conditions for TCN workers. With the implementation of this policy, the Maltese government is also trying to align labour migration with Malta's labour market demands, attracting migrants with skills that meet the country's economic requirements.



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Mifsud & Mifsud Advocates is a multidisciplinary law firm set up in 2007, with a particular focus on competition, commercial, litigation and maritime law. The top-tier professional team at Mifsud & Mifsud Advocates guarantees practical, effective advice to its local-based clients, whilst also providing innovative solutions to cater for complex issues in its multi-jurisdictional transactions. The firm prides itself in having always furnished its clients with effective solutions which always meet and exceed their expectations.

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