

Overview of Employment Law

Award in Introduction to Business Law

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5th May 2021



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The Employment and Industrial Relations Act

ARRANGEMENT OF ACT

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Sources of Employment Law – some examples

- Working hours & overtime
 - Organisation of Working Time Regulations
 - Overtime Regulations
- Written statement of particulars
 - Information to Employees Regulations
- Occupational Health & Safety
 - OHS Act and its Regulations
- Collective Agreements
- Any orders and regulations made under the EIRA - non-compliance is an offence



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Protection of Wages

- Can conditions be put on wages?
- Can wages be deducted or attached?
- Is wage deduction permissible? What about fines?
- When are statutory bonuses paid out?
- What about whole-time employees on reduced hours, or part-time workers?
- What if an employee is not paid their wage?



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Discrimination & Employment

'Discrimination' in the EIRA:

" ... 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."

- Gender inequality
- **Equal** pay for **Equal** work of **Equal** value
- Harassment
- Victimisation



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Termination of Employment

- Probation
 - No need to provide a reason for termination
 - 1 week's notice
- Redundancy
 - No need to provide a reason
 - Notice must be paid as usual
 - Last in first out (LIFO) rule
 - Re-employment within 1 year if possible
- Termination of Fixed Term vs Indefinite Contracts



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Notice Periods

The law sets down **minimum** notice periods for indefinite contracts:

- 1 month - 6 months: **1 week**
- 6 months - 2 years: **2 weeks**
- 2 years - 4 years: **4 weeks**
- 4 years - 7 years: **8 weeks**
- Over 7 years: **8 weeks + an additional week for each year, up to a maximum of 12 weeks**

A contract may however provide for **longer (but not shorter!)** notice periods.



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Termination of Employment

- What happens when the employer gives notice, or fails to do so?
- What happens when the employee gives notice, or simply abandons his service?
- In what case can one terminate without notice?
- Can termination occur during a period of **incapacity** to work, or during **maternity leave**?
- Can a woman not return to work after maternity leave, or resign shortly after returning to work?



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Transfer of Business

- Specific regulations exist on the subject
- Employee representatives must necessarily be consulted
- Employees of the business being transferred must be retained on the same conditions as with their previous employer
- The transferee must continue observing any existing collective agreements, at least until they expire



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Certificate of Service

- An employee whose employment is terminated may request a certificate of service indicating:
 - The duration of employment
 - The nature of work carried out
 - The reason for termination (if requested)
 - Rate of wages paid (if requested)



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Article 42 - Conditions Less Favourable

- Employers cannot impose conditions on employees which are less favourable than those provided for in the law
- **An exception** exists where the employer can prove that such action is taken to avoid effecting redundancies (the employees affected must acceded to any proposed changes)
- A permit needs to be formally obtained from the DIER (with justifications), which must be renewed every 4 weeks
- Prior to effecting changes, such as reduction of working hours/days, available leave balances should be used up (forced leave)



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Enforcement

- Inspectors have the power to:
 - To enter employer premises for inspections
 - To carry out any inspection necessary to ensure compliance with the law, including interrogation of employer or employees, and the requirements to present any books, registers or other documents as required by the EIRA
- Inspectors should give notice, unless it may be prejudicial
- No person may give false answers, fail to produce required documentation, prevent persons from appearing before the inspectors, or in any way obstruct the inspection
- A fine *multa* of between €232.94 and €2,329.37 may be imposed on any employer contravening the EIRA or other regulations



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The Contract of Employment



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The Information to Employees Regulations

Subsidiary Legislation 452.83

These Regulations apply to employees who:

- Have been employed with an employer for over a month
- Work more than 8 hours a week

The Regulations may in some cases not apply to employees appointed to perform a specific task.



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The Transparent and Predictable Working Conditions Directive

The new Transparent and Predictable Working Conditions Directive is similar to the Information to Employees Regulations, with some new provisions which employers should take into account.

The Directive is planned to come into force in August 2022.



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Have it in Writing!

Preferably, provide a **written agreement**

If not, a **letter of engagement** or a **statement** signed by the employer may suffice

- How to decide which to provide?
- What do I need to include?
- Can I do away with having a written agreement or statement?



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Type of Contracts

Contracts may be of 2 types:

- Fixed term
- Indefinite

Employees may work:

- Full-time
- Part-time
- Casual



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Fixed Term Contracts

- Fixed term (definite) contracts run for a **specified period of time**
- May be renewed
- The Contract of Service for a Fixed Term Regulations (SL 452.81) - employees on fixed term contracts must be treated **equally** to comparative employees on indefinite contracts.
- Employees on fixed term contracts must be informed of indefinite posts which become available.
- You cannot change from an indefinite to a definite contract.



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Fixed Term Contracts

- Either party may terminate the contract by paying a penalty amounting to **half the remaining salaries to be paid**.
- If a new fixed term contract is entered into within **6 months from the termination** of a previous one with the same employee, it constitutes **continuous employment** if the main tasks and duties remain essentially the same.
- Successive definite contracts cannot last for **longer than 4 years**, at which point the employment becomes indefinite (save for some exceptions)



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Details of the Employer and Employee

Employer details:

- Name
- Registration number
- Place of business (address)

Employee details:

- Identification document number
- Sex
- Address



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Commencement Date

Having the **commencement date** noted in the contract is essential. Note that the commencement date may not always be the same as the date on which the contract is signed.

Why is this important?

- Charlene Vella vs. Banif Bank (Malta) plc (2012) - application of commencement date over agreement date is a definite answer



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Probation

- 6 or 12 months? (the latter applies for technical, executive, management or administrative roles whose pay is at least double the minimum wage)
- The probationary period can be shorter, **but not longer**
- Renewals of fixed term contracts may not provide for renewed probationary periods.



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Probation & the TWC Directive

- The Directive provides that the probationary periods of fixed term contracts must be **proportionate to the expected period of duration of the contract**.
- Member States may legislate to provide for longer probationary periods where necessary by virtue of the nature of a given role.
- Where a worker has been absent from work during the probation period Member States may provide that the probationary period can be extended correspondingly in relation to the duration of the absence.



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Wages

Will you provide for:

- An hourly rate?
 - A weekly rate?
 - A monthly rate?
- ✓ How is overtime to be paid?
- ✓ When will wages be paid? In what manner?



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Hours & Place of Work

Working time:

- Will employees be working rigid hours, or on flexi-time?
- Will you provide breaks? Paid or unpaid?
- Will you set a time recording system?

Place of work:

- Will employees be working at several locations?
- Will employees be working abroad?



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Holidays & Vacation Leave

Employees must be informed of:

- All paid holidays – covering public and national holidays
- Vacation leave
- Budget 2020 – one more day of leave from 2021!

Will you allow carry-over of vacation leave?



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Sick Leave

Employees must be informed of:

- Sick leave entitlements (which may differ depending on your applicable Wage Regulation Order)
- When they have to submit a doctor's certificate
- If you may send a company doctor to check on them
- Provisions on longer periods of leave



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The Job

An outline of the employee's role, including:

- Job title
- Job grade
- Nature and category of work (where applicable)
- Reporting lines

What about providing a job/role description? Substantial changes to the employee's role post-signature may require the employee's express consent.



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Handbook

Your contract should provide that the employee must adhere to the content of the handbook, which should contain basic policies and procedures (such as disciplinary and grievance procedures, anti-harassment and bullying policies, leave policies etc.)

Employers should not include handbook content in the contract for ease of amendment. Furthermore, in this way a breach of a policy won't result in a direct breach of contract.



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Fines

- What fines will you impose?
- When may an employee be liable to a fine?

- **IMPORTANT** – to be able to impose fines on employees, you must be in possession of a fines permit issued from the DIER. Without it, the imposition of fines is illegal.



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Collective Agreements

Is the employee (in one's role or grade) covered by a collective agreement?



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IMPORTANT NOTICE

It is **essential** to check out whether your industry falls under the competence of a **Wage Regulation Order**, which may provide for distinct conditions of employment depending on the sector or industry.



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Employees Working Abroad

When an employee works abroad for over a month, they must have their contract or statement in hand before they leave!

- They must also be informed about:
- How long they will work abroad
- In what currency they'll be paid
- Any benefits (cash or kind)
- Any conditions regarding return to Malta



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Confidentiality

Confidentiality is a crucial element in various businesses as employees may be exposed to a significant amount of **confidential business information**.

Ensure that employees are obliged to **return or delete (from own devices) any company property or information** which they possess upon termination.



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Other Work

Employees may sometimes find a second job, or be engaged in a self-employed venture

- How, if at all, will you limit employees from having second jobs?
- Will such limitation be limited to jobs in the same industry?
- Will you oblige employees to request written authorisation from you?

The new Directive provides for a prohibition from such restrictions where the other work is done outside of the employee's work hours with you. Such employees cannot be treated less favourably due to such circumstances.



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Termination of Employment - Definite

Fixed term contracts **must include:**

- A provision on the expected termination date of the contract

Fixed term contracts **may include:**

- Information on penalties if a party terminates the contract before the envisaged termination date



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Termination of Employment - Indefinite

Indefinite contracts should include **notice periods**, which may be:

- As per law
- As agreed between the parties

You may also include:

- Grounds for dismissal (and examples)
- Obligations upon dismissal



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Obligations on Termination

Ensure that your employees are informed that they are obliged to delete or erase any employer information which they possess.

The clause should also include a reservation of the employer's right to take legal action in case of non compliance.



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Other Clauses

- Data Protection
- Restraint of Trade
- Non-Solicitation & Non-Compete
- Training
- Governing Law & Jurisdiction



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Changes to Conditions

If you want to make changes to conditions laid out in employment agreements or statements, changes must be made **in writing** via a **signed statement or annex**.

Changes in writing must be delivered within **8 working days** from the change.

These instructions also apply to changes in conditions in the law.



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Employment Status

Self-
Employed/
Contractor



Satisfies 5
out of 8
criteria in the
Regulation



EMPLOYEE



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The Employment Status Criteria

- 75% of the worker's annual income comes from the person for whom the service is carried out
- One person determines what work is assigned, how and from where it is to be carried out
- Equipment, tools and materials are provided by the person for whom the service is carried out
- The worker is subject to a schedule or minimum work periods established by the person receiving the service



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The Employment Status Criteria

- The worker cannot sub-contract to other individuals
- The worker is integrated into the service receiver's work structure (or hierarchy) and production process
- The worker's activity is a core element in the organisation and pursuit of objectives in the service receiver's business
- The worker carries out similar tasks to those of existing employees (or former ones)



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The Employment Status Criteria

Albert Falzon vs. Melita Mobile Ltd – Court of Appeal, 2017

- The employee was responsible for taking care of a mobile trailer for Melita as a **contractor, not an employee**
- The Tribunal found that he satisfied only 3 of the 8 criteria and therefore dismissed the case
- The plaintiff appealed, claiming that he satisfied at least another 3 criteria, however the Court of Appeal only found he satisfied 1 other criterion, which still did not reach the threshold of 5



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The Industrial Tribunal

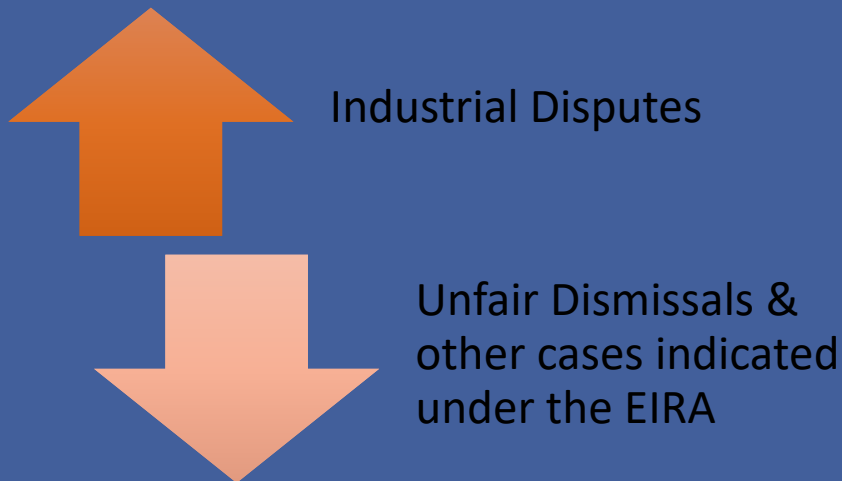
- Composition
 - Chairpersons
- Reference
- Jurisdiction
 - Unfair dismissals & Discrimination
- Procedure
- Powers
 - Bear great similarity to those of the superior courts (particularly as regards the calling of witnesses to testify under oath)



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The Tribunal's Functions



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Jurisdiction

Article 30 EIRA & Article 10 Equal Treatment in Employment Regulations:

- Discrimination
- Harassment

Article 30 EIRA:

- Victimisation
- Action for equal pay for equal work



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Jurisdiction

Article 73 EIRA:

- Trade disputes which are not resolved via amicable settlement

Article 75 EIRA:

- Cases of alleged unfair dismissals
- Cases falling within the jurisdiction of the Tribunal as per the provisions of the EIRA



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Unfair Dismissal

The EIRA defines unfair dismissal as the termination of **employment of an indefinite time** by the employer:

- Not based on a good & sufficient cause
- Not only based on grounds of redundancy
- Is discriminatory
- For reasons in furtherance to a trade dispute



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The Employer

- As the defendant party, the employer has a right of reply to the worker's declaration
- The employer must also follow the rules of submission of evidence before hearings commence as established vis-a-vis the worker



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Decisions – Unfair Dismissal

Reinstatement:

- Only if requested by the worker

Compensation:

- Real damages and losses
- Worker's age
- Effect on potential re-employment



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Decisions - Discrimination

- Cancellation of any contract of employment or collective agreement or any clause therein which is discriminatory
- Payment of compensation



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Publius Davison vs. De La Rue Currency and Security Print Ltd (27/04/2016)

- A security guard placed a tube of glue (company property) in his pocket to fix a broken power plug he had brought from home when he had some free time
- His superiors saw the tube in his shirt pocket and dismissed him on grounds of theft (an act which he was meant to prevent!), although he tried to explain himself
- The applicant filed a claim, and the Tribunal concluded that the dismissal was fair and just
- The applicant appealed, claiming that the evidence presented was insufficient to justify his termination



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Publius Davison vs. De La Rue Currency and Security Print Ltd (27/04/2016)

- The Court of Appeal reversed the decision, basing itself on the employee's loyalty and good behaviour, the reason for the applicant's actions and the low value of the object
- The Court considered the dismissal disproportionate and referred the case back to the Tribunal to award compensation
- The Tribunal first awarded €18,000 but the applicant appealed since the Tribunal had provided no reasoning for this
- The Tribunal then adjusted the award to €93,374.43 (loss of salary until the applicant found another job, wage discrepancy in the new job and lost benefits)
- The employer appealed the compensation but the Court of Appeal rejected the appeal



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