

Digital Platform Workers & Transparent and Predictable Working Conditions – New Regulations October 2022

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Digital Platform
Delivery Wages
Council Wage
Regulation Order

Digital Platform Workers

- "platform worker" means: (a) any person performing digital platform work and who has entered into a contract of employment or an employment relationship or any other form of arrangement irrespective of the contractual designation with any digital labour platform or multiple digital labour platforms and who is engaged, whether on a regular or on an irregular basis, to provide services consisting of the delivery of any product;
- and (b) any person performing digital platform work and who has entered into a contract of employment or an employment relationship or any other form of arrangement irrespective of the contractual designation with a work agency and who is assigned to, or placed at the disposal of, whether on a regular or on an irregular basis, any digital labour platform or multiple digital labour platforms to provide services consisting in the delivery of any product

Presumption of Employment

- Applicable only to those engaged in delivery of products not all platform workers.
- Presumption – person performing platform work is presumed to be an employee of the digital platform or of the work agency which engaged him.
- Presumption can be challenged by the digital platform / the work agency / the platform worker himself.
- Difference from the Employment Status National Order – employee needs to prove satisfaction of the criteria to be deemed an employee.

Presumption of Employment

- To challenge the presumption – proof on the person challenging the presumption that the digital platform or work agency does not control directly or indirectly the performance of the digital platform work because it does not fulfil at least 4 of the following criteria in relation to the platform worker.
- I.E. → if there is satisfaction of at least 2 of the criteria, then there is an employment relationship.

Presumption of Employment

- **Criteria:**
- (a) the effective determination of, or stipulating the maximum limits for the level of remuneration;
- (b) the requirement that the person performing digital platform work respects specific binding rules with regard to appearance and conduct towards the recipient of the service or performance of the work;
- (c) the supervision of the performance of the work or the verification of the quality of the results of the work, including by electronic means;
- (d) the effective restriction of the freedom, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use sub-contractors or substitutes;
- (e) the effective restriction of the possibility to build a client base or to perform work for any third party:

Presumption of Employment


- Proceedings to challenge – no suspensive effect on the application of the legal presumption.
- Claims – directed to the Director of DEIR not Industrial Tribunal.
- Power of Director to enforce without any claim being made.

Employment of Platform Workers

- Date of engagement by virtue of the regulations for those who were self-employed – date of entry into force of the order.
- Probation – deemed to have commenced on the date of initial continuous service by the platform worker.
- Employer must provide at his expense appropriate vehicles for use by the platform worker, as well as other equipment and uniforms at no fee.
- Overtime at double the rate for one day of rest and 2 working weeks sick leave and other minimum special leave.
- Work on a PH – one additional day of leave.

Automation

- Platform workers need to be informed of any automated monitoring systems and automated decision-making systems that affect their working conditions.
- Employer is to monitor and evaluate impact of individual decisions taken or supported by automated monitoring and decision-making systems.



Transparent and Predictable Working Conditions



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Transparent and Predictable Working Conditions

- Aim → ensure minimum requirements relating to working conditions applicable to every worker in the EU.
- Provision of information by the employer – in writing – on paper or if it can be accessible to the worker, that it can be stored and printed and employer retains proof of transmission or receipt, in electronic form.
- Employers must provide information to workers (*not clear why this term is used instead of employees) of the essential aspects of the employment relationship.

Transparent and Predictable Working Conditions

- Cut-off date – 1st August 2022
- 1/8/22 onwards – contracts need to comply with the new requirements.
- Prior to this date – contracts need to comply with the Information to Employees Regulations (now repealed) BUT employee can make a request to receive the additional information.
- However – still entitled to the minimum rights established in the regulations.

Information to be provided...

- (a) the name, registration number and registered place of business of the employer and a legally valid identification document number, gender, and address of the employee and the place of work:
- Provided that in the absence of a fixed place of work it should be stated that the employee will be employed at various places together with the registered place of business:
- Provided further that if there is no registered place of business, the domicile of the employer is to be stated

Continued...

- (b) the place of work. Where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his place of work, and the registered place of business or, where appropriate, the domicile of the employer;
- (c) the title, grade, nature or category of work for which the worker is employed;
- (d) brief specification or description of the work;
- (e) the date of commencement of the employment relationship;

Continued...

- (f) in the case of a fixed-term employment relationship, the end date or the expected duration thereof;
- (g) in the case of temporary agency workers, the identity of the user undertakings, when and as soon as known;
- (h) the duration and conditions of the probationary period;
- (i) the training entitlement provided by the employer, if any;

Continued...

- (j) the amount of paid leave to which the worker is entitled, including but not only, vacation leave, paternal leave, parental leave, maternity leave, carer's leave, urgent family leave, bereavement leave, marriage leave, quarantine leave, jury service leave, sick leave and injury leave, or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
- (k) without prejudice to article 36 of the Act, the procedure to be observed by the employer and the worker, including the formal requirements and the notice periods, where their employment relationship is terminated or, where the length of the notice periods cannot be indicated when the information is given, the method for determining such notice periods;

Continued...

- (1) without prejudice to Title I of Part III of the Act, and every other legislation in force laying down the minimum remuneration, overtime and special rates of pay, the remuneration including the initial basic amount, any other component elements, if applicable, indicated separately, the frequency and method of payment of the remuneration to which the worker is entitled and the conditions under which fines maybe imposed by the employer and their quantum;

Continued...

- (m) without prejudice to the Organisation of Working Time Regulations, and other more specific provisions relating to the organisations of working time for certain occupations or occupational activities, if the work pattern is entirely or mostly predictable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration and, where applicable, any arrangements for shift changes;

Continued...

- (n) if the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of:
 - (i) the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours;
 - (ii) the reference hours and days within which the worker may be required to work;
 - (iii) the minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation of the work assignment;

Continued...

- (o) any collective agreements governing the worker's conditions of work or in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of such bodies or institutions within which the agreements were concluded;
- (p) where it is the responsibility of the employer, the identity of the social security institutions receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.
- (q) any other relevant or applicable condition of employment.

Timing

- Information from a to e and g k l m – to be provided between the 1st working day and not later than the 7th **calendar** day.
- Other information mentioned – within one month of the first working day.

Workers working outside Malta

- Workers working outside Malta in excess of 4 consecutive weeks – need to be in possession of required information before departure and must also include:
 - (a) the country or countries in which the work abroad is to be performed and its anticipated duration;
 - (b) the currency to be used for the payment of remuneration;
 - (c) where applicable, the benefits in cash or in kind relating to work assignments abroad; and
 - (d) information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation.

Records to be kept by the employer...

- Employer is to keep a copy of the contract or statement or letter of engagement and is to keep a register with the information listed in regulation 9.
- May be requested to furnish the Director of the DEIR with certain information as listed in the same regulation 9.

No changes allowed...

Cannot amend employment conditions after commencement of employment unless this is the result of a change in the law, or collective agreement or is a temporary measure to prevent redundancies and approved by the Director.

What about changes to the benefit of the employee? What about changes by agreement?

On Demand Contractors

- Prohibition of zero hour contracts:
- What is a zero hour contract?

A contract of employment or other work arrangement under which a worker is required to be available for work or services as and when needed by the employer, and where the employer promises payment on the basis of hours so worked without guaranteeing a minimum number of hours to the worker.

Zero Hour contracts prohibition...

- (a) where the nature of the activity concerned requires the availability of replacement workers on short notice; and as long as the zero-hour contract is not the whole-time employment of the worker;
- (b) where the worker is a full-time student, subject to any applicable laws, regulations and administrative or statutory provisions.

Parallel Employment

- The employer cannot prevent a worker from taking up employment with other employers, outside the work schedule established with that employer, nor subject a worker to adverse treatment for doing so... BUT – an employer may prohibit a worker from taking up employment with other employers on the basis of objective grounds, such as health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interest.

Minimum Predictability

- If work pattern is mostly unpredictable, the following conditions need to be satisfied:
 - i. Work takes place within predetermined reference hours and days;
 - ii. Worker is informed of a work assignment within a reasonable notice period.
- Law provides for specific notice periods depending on length of work assignment.
- Conditions not satisfied – employee can refuse the work assignment without adverse consequences.

Transition to other form of employment

- Employee with at least 6 months service AND completed probation → can request employer employment with more predictable and secure working conditions if available.
- Employer must provide a written reply within 1 month from request.
- Natural persons or SMEs – within 3 months.

Mandatory Training

- If a law requires the employer to provide training to the employee to carry out the work for which is employed, training needs:
 - 1. to be free of charge;
 - 2. count as working time;
 - 3. and when possible take place during working hours.
- What about refund of training costs? Mandatory v Optional training.

Failure to provide information...

- Can submit a complaint to the Director – can impose a fine on the employer.
- Unfair dismissal if the reason for dismissal is that worker refused to comply with a requirement of the employer in contravention to these regulations.
- May request employer in case of dismissal to provide duly substantiated grounds in writing for the dismissal.

Questions?

Thank you for your attention.

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