

Termination of Employment

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Agenda

1. Contracts of Service
2. Reasons for Termination – Termination during probation, termination by expiry of fixed term contract, termination by resignation, termination by retirement, termination by redundancy, termination by constructive dismissal
3. Collective Redundancies
4. Dismissal – not a good and sufficient cause
5. Disciplinary Procedures
6. Disciplinary Warnings
7. Industrial Tribunal – Unfair dismissal
8. Amicable Exits and Terminations Agreements
9. Termination Agreement



A dark blue background with a faint, semi-transparent image of a hand holding a pen and signing a document. The text is centered in a white, serif font.

Contract of Service vs Contract of Employment

Contract of Service vs Contract of Employment

- Main distinction as found in the definition of employee: works under the direction and control of another person with regard to the manner in which the work is done.
- Difficult to determine in the case of highly skilled workers/professionals.

Employment Status National Standard Order (S.L.452.108) –criteria to determine whether a person is an employee or self-employed;

- Independently of the intention of the parties or the designation in the contract;
- Presumption of an employment relationship if at least 5 out of 8 criteria are satisfied.
- Exemption maybe granted by the Director.



Criteria

- (a) **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;**
- (b) 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;**
- (c) he performs the work **using equipment, tools or materials provided by the person** for whom the service is provided;



Criteria

- (d) he is **subject to a working time schedule** or minimum work periods established by the person for whom the service is provided;
- (e) he **cannot sub-contract his work** to other individuals to substitute himself when carrying out work;
- (f) he is **integrated in the structure** of the production process, the work organisation or the company's or other organization's hierarchy;
- (g) **the person's activity is a core element** in the organization and pursuit of the objectives of the person for whom the service is provided; and
- (h) **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.





Terminations

- During probation -

Termination during probation

Definition: Probation is a trial period at the start of employment, allowing both employer and employee to assess suitability.

Legal Basis: Governed by the **Employment and Industrial Relations Act (EIRA)**.

Duration:

- **Standard:** 6 months
- **Managerial or Technical Roles:** 1 year



Termination during probation

Rights of the Employer:

- Can terminate the employment without the need for a reason.
- Must provide a **one-week notice** if employment exceeds 1 month.

Rights of the Employee:

- Can resign without providing a reason.
- Also required to give a **one-week notice** if employed for over 1 month.





Terminations

- Expiry of a fixed term contract -

Termination by expiry of a fixed term contract

Understanding Fixed-Term Contracts

Definition: A fixed-term contract is an employment agreement set for a specific duration (time or condition), automatically ending upon expiry.

Legal Basis: Governed by the **Employment and Industrial Relations Act (EIRA)**.

Key Features:

- Must specify a clear **start and end date** or a **condition needs to be satisfied**.
- Can be renewed, but if **exceeded for over 4 years**, it may convert into an **indefinite contract** (unless objectively justified).



Termination by expiry of a fixed term contract

Expiry & Termination Rules

Automatic Expiry:

- The contract **ends automatically** on the specified date **without the need for notice**.
- Employer is not obligated to provide severance pay.

Early Termination:

- **By Employer:** Must compensate the employee for the remaining contract period.
- **By Employee:** Employee will be liable to pay damages if they resign before expiry.

Conversion to Indefinite Contract:

- If renewed beyond **4 years without justification**, it **automatically converts** into an indefinite contract.



Termination by expiry of a fixed term contract

Example: Expiry of a Fixed-Term Contract Scenario:

Emma was hired by a marketing firm on a **one-year fixed-term contract** from **1st January 2024 to 31st December 2024**. The contract clearly stated that it would **automatically end on the expiry date** unless renewed.

Outcome:

- Since the employer **does not renew the contract**, it **automatically terminates on 31st December 2024**.
- **No notice or compensation** is required from either party.
- Emma **cannot claim unfair dismissal**, as the contract expired per the agreed terms.



Terminations

- Resignation -

Termination by resignation

Definition: Resignation is when an employee voluntarily ends their employment contract.

Legal Basis: Governed by the **Employment and Industrial Relations Act (EIRA)**.

Key Considerations:

- Employees have the right to resign at any time.
- They must give **the correct notice period**, unless resignation is due to **constructive dismissal**.



Termination by resignation

Notice Period & Employee Obligations

Notice Period Requirements (*Based on Length of Service*):

Key Rules:

❏ **Failure to Give Notice** – Employee may need to pay compensation equal to half the unserved notice period.

❏ **Employer's Right to Waive Notice** – The employer can allow the employee to leave earlier but must still pay for the full notice period.

Employment Duration	Notice Period
1 - 6 months	1 week
6 months - 2 years	2 weeks
2 - 4 years	4 weeks
4 - 7 years	8 weeks
7 - 8 years	9 weeks
8+ years	10 weeks





Terminations

- Retirement -

Termination by retirement

Definition: Retirement is the termination of employment upon reaching pensionable age.

Legal Basis: Governed by the **Employment and Industrial Relations Act (EIRA) & Social Security Act.**

Retirement Age in Malta:

- **Born before 1962** → 61 years
- **Born between 1962-1968** → 62 years
- **Born between 1969-1971** → 63 years
- **Born between 1972-1974** → 64 years
- **Born after 1974** → 65 years



Termination by retirement



Mandatory or Voluntary?

- Employment **cannot be terminated solely due to age** unless the employee has reached the statutory retirement age.
- Employees **can continue working** beyond retirement age if both parties agree.



Termination by retirement

Termination Process & Notice Requirements

Retirement by Employer (Reaching Pensionable Age):

- Employer can **terminate the employment** when the employee reaches statutory retirement age.

Pension Entitlement:

- Upon retirement, employees may claim a **state pension** from the **Department of Social Security**, subject to eligibility.





Terminations

- Redundancy -

Termination by redundancy

Definition: Redundancy occurs when an employer terminates employment due to business needs rather than employee performance.

Legal Basis: Governed by the **Employment and Industrial Relations Act (EIRA)**.

Common Reasons for Redundancy:

- Closure of business or downsizing.
- Reorganization or restructuring.
- Technological advancements reducing workforce needs.
- Economic downturn affecting operations.

Key Principle: Redundancy **must be genuine** and **not used to unfairly dismiss an employee**.



Termination by redundancy

Redundancy Process & Employee Rights

Selection Criteria for Redundancy:

- **Last In, First Out (LIFO):** Employees with **less seniority** are usually made redundant first.
- **Skills & Business Needs:** Employers can retain employees with essential skills.

Employer's Responsibilities:

- Must provide **reasonable notice** based on years of service unless there is contractual notice.
- Must explore **alternative employment** within the company where possible.

Employee Rights:

- **Right to Re-Employment:** If a vacancy arises in the same role within 1 year, the redundant employee must be **offered re-employment**.
- **Severance Pay?** Not legally required.





Constructive Dismissal

Constructive Dismissal

Understanding Constructive Dismissal

Definition: Constructive dismissal occurs when an employee resigns due to the employer's serious breach of contract or intolerable working conditions.

Legal Basis: Governed by the **Employment and Industrial Relations Act (EIRA)**.

Key Elements:

- Employer's actions must amount to a **fundamental breach of contract**.
- Employee must resign **because of the breach** (not for other reasons).
- Resignation should be **without undue delay** after the breach.

Difference from Unfair Dismissal:

- In constructive dismissal, the **employee resigns** due to employer's conduct.
- In unfair dismissal, the **employer directly terminates** the employee.



Constructive Dismissal

Common Causes of Constructive Dismissal

Serious Breach of Contract:

- Non-payment or reduction of salary without justification.
- Sudden and unjustified changes in job role, location, or working hours.

Toxic Work Environment:

- Harassment, bullying, or discrimination.
- Creating intolerable working conditions that force resignation.

Unlawful Pressure or Retaliation:

- Forcing an employee to resign instead of facing termination.
- Retaliation for whistleblowing or reporting workplace misconduct.



Constructive Dismissal

Employee Rights & Employer Responsibilities

✅ Employee Rights:

- Can claim **compensation** for unfair dismissal if constructive dismissal is proven.
- Can file a complaint before the **Industrial Tribunal** within **4 months** of resignation.

✅ Employer Responsibilities:

- Maintain **fair treatment** and a **healthy work environment**.
- Address complaints before they escalate to legal action.

✅ Best Practice for Employees:

- **Document everything** (emails, messages, complaints).
- **Attempt resolution** before resigning (e.g., reporting issues to HR).



Constructive Dismissal

Scenario:

Sarah worked as a **Finance Executive** at a company in Malta for three years. In early 2024, the company underwent management changes, and her work environment drastically worsened.

Employer's Actions (Breach of Contract):

- 1.Unilateral Salary Reduction** – The employer **cut her salary by 20%** without consultation or a valid reason.
- 2.Change in Job Role** – She was reassigned to a **lower-level position** without agreement.
- 3.Harassment by New Management** – Sarah was frequently **publicly criticized** and given **impossible deadlines**.
- 4.Hostile Work Environment** – Despite multiple complaints to HR, no action was taken.



Constructive Dismissal

Sarah's Response:

- She **formally complained** in writing, but the company ignored her concerns.
- Due to **severe stress and financial instability**, she **resigned** and filed a claim for **constructive dismissal** with the **Industrial Tribunal**.

Outcome:

- The Tribunal ruled that Sarah's **resignation was justified** due to the employer's **fundamental breach of contract**.
- She was awarded **compensation for unfair dismissal**.



Constructive Dismissal

Key take aways

- ✅ **Constructive dismissal occurs when an employer forces an employee to resign through serious contract breaches.**
- ✅ **Employees should document incidents and attempt internal resolution before resigning.**
- ✅ **Legal action must be taken within 4 months of resignation.**



Good and Sufficient Cause



Good and Sufficient Cause

No clear definition in terms of law – but – the law tells us what cannot be considered as a good and sufficient cause:

- a) at the time of the dismissal, employee was a member of a trade union, or is seeking office as, or acting /acted in the capacity of an employees' representative; or*
- (b) employee no longer enjoys the employer's confidence (except in the case of a private domestic employee); or*
- (c) employee contracts marriage; or*
- (d) employee is pregnant or is absent from work during maternity leave; or*
- (e) employee discloses information, whether/not confidential, to a regulating body, regarding alleged illegal or corrupt activities being committed his employer; or*
- (f) employee has filed a complaint or is participating in proceedings against the employer re. alleged violation of laws or is having recourse to competent administrative authorities; or*
- (g) business where the employee is engaged has undergone a transfer of ownership, unless he proves that the termination is necessary for economic, technical or organisational reasons entailing changes in the workforce.*



A blue-tinted photograph of a person's hands working at a desk. The left hand is positioned over a computer keyboard, and the right hand is using a calculator. The image is semi-transparent, allowing the text to be clearly visible in the center.

Collective Redundancies

Collective Redundancies

What are collective redundancies?

Termination of employment on grounds of redundancy,
over a period of 30 days.

When do they apply?

10+ employees where > 20

10% of work force for 100 – 299 employees

30+ employees if > 300 employees



Collective Redundancies



What are the employer's obligations?

The employer cannot terminate before notifying the employees' representative in writing and providing an opportunity to consult.

To provide written statement within 7 days from notice including all the relevant information, including:

- Reasons
- Number of affected employees
- Number of employees employed
- Criteria for the proposed selection
- Details regarding payments
- Period over which redundancies will take place



Collective Redundancies

The process

1. DIER are notified with a copy of the notice (on the same day)
2. Consultations are to be carried out over a period of 30 days
3. Possibility of DG DIER extending by a further 30 days in exceptional circumstances or where there is an opportunity for resolution or solution to the benefit of the affected employees.



A person is seated at a desk, with their hands clasped together in front of them. The person is wearing a dark, long-sleeved shirt. The desk is light-colored and has some papers and a small object on it. The background is slightly blurred, showing what appears to be a window or a wall. The overall tone of the image is professional and serious.

Disciplinary Procedures

Disciplinary procedures



Overview of the Disciplinary Process in Malta

Legal Framework:

- The **Employment and Industrial Relations Act (EIRA)** provides guidelines on employee conduct and disciplinary actions.
- Employers must adhere to **procedural fairness** when taking disciplinary action against an employee.



Disciplinary procedures

Key Steps in the Disciplinary Process:

1. Investigation and Charge Letter:

- a) Gather facts and evidence regarding the alleged misconduct.
- b) The employee should be informed of the investigation by means of a charge letter and given a chance to explain.

2. Disciplinary Hearing:

- a) A **formal hearing** is conducted where the employee can present their case.
- b) The employee may be accompanied by a colleague or union representative during this hearing.

3. Formal Warning:

- a) After having listened to the explanation a **written warning** may be issued outlining the violation and the expected improvement.
- b) **Verbal warnings** are also allowed for first-time or less serious offenses.



Disciplinary procedures

Key Disciplinary Outcomes:

- **Suspension:** Temporary suspension with pay, typically for serious misconduct while an investigation is ongoing.
- **Termination:** In cases of severe misconduct, after all procedures have been followed and after taking into account the 3 warning rule, dismissal may occur. **Fair dismissal** must meet legal standards.

Employee Rights:

- Employees have the right to be **informed of allegations** and **given an opportunity to respond**.

Best Practices for Employers:

- Ensure **clear policies** on behavior and conduct are outlined in the employment contract.
- Maintain **consistency** in enforcing disciplinary actions.
- Follow **procedural fairness** to avoid legal disputes.



Disciplinary procedures – case law

Procedure to be observed during termination

- As held in **James Buhagiar v. Jani Limited (CA, 26 January 2018)**, in Malta we do not have a code of practice on the principles of procedural fairness to be followed before termination: this is a serious lacuna in our law.
- The courts filled this lacuna by culling the principles of natural justice lock stock and barrel from public law.



Disciplinary procedures

In **Inginier Joseph Agius v. GO plc (CA, 26 January 2018)**, the Court held the following with respect to the defendant private company: once said company was bound by its collective agreement to exercise its disciplinary functions through a disciplinary board, it must ensure that said procedures are conducted fairly, transparently, and with observance to the principles of natural justice (one cannot be a judge in his own case, and both parties must be allowed to make their case). If these principles are not going to be observed, the employee has a right to request that the procedure is stopped.

This pronouncement suggests that if the private company is not bound by a collective agreement to exercise its disciplinary function through a disciplinary board, then the principles of natural justice do not apply.



Disciplinary procedures

However, where in **Antoinette Vella v. CareMalta Limited (Industrial Tribunal, 6 December 2011)**, there was no collective agreement that spoke of disciplinary procedure, it was still held that the defendant private company could adopt any disciplinary procedure it wanted '*basta din tinkwadra fil-ħarsien tal-gustizzja naturali*'.

Indeed, failing to give the employee an adequate opportunity to defend his case renders dismissal unfair.



Disciplinary procedures

This was so in **Joan Montanaro v. BayStreet Hotel Complex Ltd et (Industrial Tribunal, 7 October 2008)**:

The defendant private companies dismissed the plaintiff over the phone, denying her an opportunity to give her version of events.

The Industrial Tribunal held that where the management intends to take disciplinary measures against an employee, it must first formally inform her of the accusations then give her an opportunity to make her case.

The Court of Appeal confirmed the decision, adding that observance of audi alteram partem is required by '*the well-known principle of correctness and good faith*'.

This finding is itself an avenue for the principles of natural justice to apply to private entities: since all contracts must be carried out in good faith, and according to the Court in this judgement, good faith demands adherence to audi alteram partem, then by way of syllogism, all contracts must be executed in observance of audi alteram partem.



Disciplinary procedures

This was also the case in **Maria Rosaria Farrugia vs Catherine Schembri (IT) (6.2.2024)**:

Even in the case of a grocery shop, before terminating an employee, the employer is bound to issue a charge letter informing the employee of his shortcomings and giving him an opportunity to defend the allegations made.

The Tribunal in this case also established that warnings that are not made in writing are not valid.

In **Michelle Zammit vs Gutenberg Press Limited (IT) (6.2.2023)**:

The Tribunal found that the employee had indeed been wasting time at work instead of being productive, and that this was sufficient grounds for her employer to dismiss her.

However, just because the employer dismissed the employee without adopting a disciplinary procedure, the dismissal was held to be unjust, and the employee was compensated with 5,000Eur.



Disciplinary procedures

Recent judgements, however, have opted to undermine the application of the principles of natural justice to discipline, in employment.

Buhagiar v. Jani Limited (CA, 26 January 2018) considered that unless the employee proves his innocence before the Industrial Tribunal, non-observance of audi alteram partem alone does not render dismissal unfair.

Frederick Attard v. Malta International Airport plc et, (CA, 17 March 2021) emphasised the employers' private and commercial nature. The Court in that judgement premised that even if not so bound by a collective agreement, every board must observe the rules of natural justice. However, it added that this was not to mean that such internal disciplinary boards were to have the same autonomy as is expected from courts and tribunals established by law. The Court quoted English author Selwyn to the effect that while disciplinary hearings must be conducted fairly, internal appeals procedures in commercial concerns should not be cramped by legal requirements imposing impossible burdens.



Disciplinary procedures

How this diminished application of the principles of natural justice to private entities operated in practice was illustrated in **Johanna Agius v. HSBC Bank Malta plc.** (CCFH, 4 July 2016.) Here, the court considered it detrimental to bind the employer, the defendant private bank, to engage an independent person to investigate and decide disciplinary cases. However, the Court found that the bank official chairing the Board of Appeal, which heard plaintiff's disciplinary procedure, was involved in the initial decision to suspend and investigate her. This meant that the bank failed to meet the standards established by Selwyn to balance the needs of a commercial company and the rights of an employee employed with a private company.



Industrial Tribunal



The Tribunal's Functions



Industrial Disputes



Unfair Dismissals & other cases
indicated under the EIRA



Unfair Dismissal at the Tribunal

Filing a Case with the Industrial Tribunal

Steps to Take After Unfair Dismissal:

1. **Submit a Complaint** – File a claim with the **Industrial Tribunal** within **4 months** of dismissal.
2. **Provide Evidence** – Collect emails, contracts, performance reviews, or witness statements.
3. **Attend Tribunal Hearings** – Both employee and employer present their case before the Tribunal.

Employer's Burden of Proof:

- The employer must show that the dismissal was **based on a valid reason** (e.g., misconduct, redundancy).

Possible Tribunal Outcomes:

- **Reinstatement** – Employee is given back their job.
- **Compensation** – Employee receives financial damages.
- **Case Dismissed** – If the Tribunal finds the dismissal was justified.



Example: Unfair Dismissal Case

Award in Employment and Industrial Relations Law

Scenario:

Mark worked as a **Sales Manager** at a retail company in Malta for five years. He had a **clean disciplinary record** and consistently met his sales targets. One day, he reported to HR that his manager was **favoring certain employees for promotions** and engaging in **unethical sales practices**.

Employer's Actions (Unfair Dismissal):

1. **Retaliation** – A few weeks after reporting the misconduct, Mark was **suddenly dismissed** without a clear explanation.
2. **No Due Process** – He was not given **a formal warning or the opportunity to defend himself**.
3. **False Justification** – The employer claimed his dismissal was due to "poor performance," despite his **positive sales records**.

Mark's Response:

- He filed a complaint with the **Industrial Tribunal** within **4 months** of dismissal.
- He provided **email evidence** showing his complaint to HR and **performance records** proving the employer's claims were false.
- Witnesses (colleagues) **testified** that Mark was dismissed in retaliation for whistleblowing.

Tribunal Outcome:

- The Tribunal ruled that Mark's **dismissal was unfair**.
- The employer was ordered to **pay compensation for lost wages and damages for wrongful termination**.



A close-up photograph of two hands shaking in a firm grip, set against a solid blue background. The hands are positioned centrally, with the fingers interlaced. The lighting is soft, highlighting the texture of the skin and the sleeves of the individuals. The overall mood is one of agreement or partnership.

Mutual Termination

Amicable Exits

Definition: An amicable exit occurs when both the employer and employee agree to terminate the employment relationship **mutually** and **cordially**, without disputes or legal conflicts.

Legal Basis: Governed by the **Employment and Industrial Relations Act (EIRA)**, though not specifically defined by law; it's based on mutual agreement and negotiation.

Key Features of an Amicable Exit:

- Both parties agree to end the employment relationship **voluntarily**.
- No claim for **unfair dismissal** or **constructive dismissal** arises.
- Both parties typically negotiate **terms of exit**, such as severance pay or other benefits.



Amicable Exits

Steps for Employers:

- **Discuss the Situation** – Have an open conversation with the employee regarding the reasons for ending employment.
- **Negotiate Terms** – Ensure a clear agreement on any **financial compensation**, **notice periods**, and **final payments**.
- **Formalize the Agreement** – Prepare a **mutual termination agreement** that outlines all terms.

Steps for Employees:

- **Request a Discussion** – Approach the employer if you wish to exit amicably.
- **Clarify Expectations** – Discuss **severance packages**, **outplacement support**, or other exit terms.
- **Document the Agreement** – Ensure that the terms are put into writing to avoid future disputes.

Best Practices:

- **Maintain professionalism** during negotiations.
- Keep the process **clear and transparent** to ensure both parties are satisfied with the outcome.



Termination Agreements

Key Components of a Termination Agreement

1. Identification of the Parties

- **Employer:** Name, address, and business details.
- **Employee:** Name, position, and personal details.

2. Date of Termination

- Clear indication of the **effective date** of termination.

3. Reason for Termination

- Explanation of why the employment is being ended (e.g., mutual agreement, redundancy, resignation).

4. Notice Period

- Specify the **length of the notice period** and if it is being waived or served.

5. Final Payments

- Details of the **final salary**, **accrued benefits**, and **severance pay**.

6. Return of Company Property

- List of items the employee must return (e.g., keys, equipment, documents).



Termination Agreements

7. Benefits Post-Termination

- Clarification of continued **pension plans**, **health benefits**.

8. Confidentiality and Non-Compete

- Include any **non-disclosure** or **non-compete clauses** to protect company interests.

9. Release of Claims

- Employee agrees to release the employer from any **future claims** relating to their employment.

10. Signatures

- **Employer's** and **Employee's** signatures to acknowledge agreement to the terms.



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