

90-minutes webinar



Mastering Disciplinary Procedures: Key Considerations

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In collaboration with:



Agenda

1. Reasons for which Employment may be Terminated;
2. Overview of the Disciplinary Process in Malta;
3. Case-Law;
4. Recommendations;
5. Conclusion.

REASONS FOR WHICH EMPLOYMENT MAY BE TERMINATED

Reason for Termination: Probation

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

Duration:

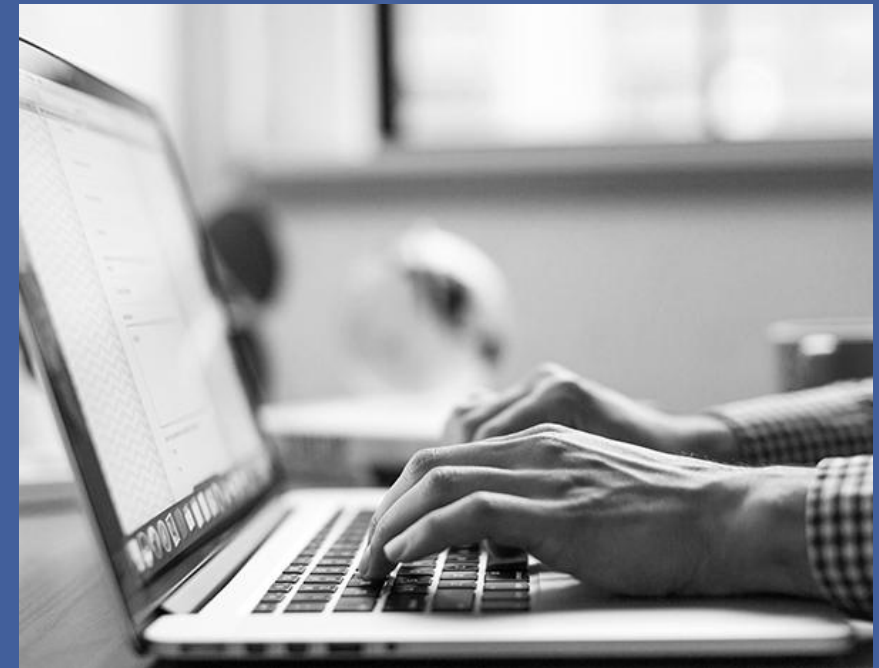
- Standard: 6 months
- Managerial or Technical Roles: 1 year

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.



Reason for Termination: Expiry of FTC

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

Automatic Expiry: The contract ends automatically on the specified date without the need for notice, and the Employer is not obligated to provide severance

Early Termination (unless there is good and sufficient cause for termination / abandonment):

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

Conversion to Indefinite Contract:

1. If renewed beyond 4 years without justification;
2. If employee is retained and not give a new contract of service within the first 12 working days following expiry of previous contract

Reason for Termination: Constructive Dismissal

Definition: occurs when an employee resigns due to their employer's actions, which would have made employment intolerable. Instead of being explicitly dismissed, the employee is effectively forced to resign because of a serious breach of contract by the employer.

Case-law:

1. While constructive dismissal is not explicitly defined in Maltese employment law, it has been recognized through case law and falls under the principle of unfair dismissal as covered by the Employment and Industrial Relations Act (EIRA), Chapter 452 of the Laws of Malta.
2. Examples:
 1. Unfair working conditions, namely excessive work pressure leading to acute anxiety and regular depressive moods in the employee (**Charichelon Company Ltd v. Amanda Greaves, IT, 2016**);
 2. Employee had no staff or resources to support him, making his job impossible (**Perit Andrew Ellul v. Fondazzjoni għall-iskejjel ta' Ghada, IT, 2022**).



Reason for Termination: Redundancy

Definition:

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

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.



Reason for Termination: Retirement

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

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

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.



Reason for Termination: Resignation

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

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.
- Failure to give notice: Employee may need to pay compensation equal to half the unserved notice period.
- Employer can waive the notice and 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

Reason for Termination: Good & Sufficient Cause

Definition: 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.*

Reason for Termination: Good & Sufficient Cause

Where there subsists a good and sufficient cause:

- No obligation to give notice / pay for notice in lieu;
- Dismissal is not unfair, and therefore there is no entitlement to compensation by the Industrial Tribunal;
- Requirement of a Disciplinary Process;

OVERVIEW OF THE DISCIPLINARY PROCESS IN MALTA

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Overview of the Disciplinary Process in Malta

- **Legal Framework**

- Disciplinary Process in Employment matters not catered for by the law – a lacuna.
- Case law only source of principles: Employers must adhere to procedural fairness when taking disciplinary action against an employee.

- **Key Objective:**

- Ensure transparency and fairness in addressing misconduct.

CASE-LAW

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Case Law – Lacuna in Maltese Law

- **James Buhagiar v. Jani Limited (CA, 2018)**
 - Malta lacks a formal code of practice outlining procedural fairness before termination (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.



Case Law – Collective Agreements



- **Inginier Joseph Agius v. GO plc (CA, 2018)**
 - A private company bound by a collective agreement must ensure disciplinary procedures follow principles of natural justice:
 - No one can be a judge in their own case.
 - Both parties must be allowed to make their case.
 - If not observed, an employee has the right to request the procedure be 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.

Case Law – No Collective Agreement

- Even if there is **no collective agreement**, private companies must still adopt disciplinary procedures that respect natural justice:
 - **Antoinette Vella v. CareMalta Limited (IT, 2011)**
 - It was held that the defendant private company could adopt any disciplinary procedure it wanted as long as this observes the principles of natural justice.
 - Indeed, failing to give the employee an adequate opportunity to defend his case renders dismissal unfair.

Case Law – Principles of Natural Justice

- **Joan Montanaro v. BayStreet Hotel Complex Ltd et (IT, 2008)**
 - Dismissal occurred over the phone, with no chance for the employee to respond.
 - 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.
 - Dismissal held to be unfair since the employee was not formally informed of accusations nor given a chance to present her side.

Case Law – “Good Faith” Requirement

- The Court of Appeal in the **BayStreet Hotel Complex** case confirmed:
 - Observance of *audi alteram partem* (hearing the other side) is rooted in the principle of good faith.
 - By extension, **all contracts** must be carried out in good faith, implying that *audi alteram partem* applies broadly to all employers.



Case Law – Disciplinary Policy must be in place

- **Maryanne Vella v. Da Vinci Healthcare Ltd (IT, 2025)**
 - The Employee, a Head Nurse, was dismissed for reasons which included bullying at the workplace.
 - Not only was the Employee never given any warnings, but she was consistently given performance bonuses every 3 months.
 - Tribunal held that warnings, where needed, are beneficial for both the Employer and the Employee, who has his shortcomings brought to his attention and given a chance to rectify them.
 - The Tribunal held that warnings are to be signed by the employee himself.
 - Employer stated that the Employee was terminated because she did not want to admit to her inappropriate behaviour – Tribunal objected to this approach, the employee was to be given an opportunity to make his case, and not simply requested to make a formal admission.
 - The Tribunal held that it is reassuring for both parties that there is a disciplinary process established black on white to be followed in disciplinary cases.
 - Employees must also be informed of their right to appeal.



Case Law – Small Businesses



- **Maria Rosaria Farrugia v. Catherine Schembri (IT, 2024)**
 - Even a small grocery shop must follow a disciplinary procedure before termination.
 - Warnings that are not registered in writing are invalid.
 - When an employer feels that an employee has defaulted in his obligations, he is to inform the employee in writing of his failures (by means of a charge letter), and give him a date and time when his disciplinary case will be heard, where he will be given an opportunity to defend himself.
 - Since in this case employment was abruptly terminated, dismissal was unfair.
- **Robert Seguna v. Associated Marketing Ltd (IT, 2024)**
 - Dismissal must be for serious and grave reasons following a formal disciplinary procedure, irrespective of how big or small the Company is.

Case Law – Valid Reason for Dismissal

Michelle Zammit v. Gutenberg Press Ltd (IT, 2023)

- The employee had been a full-time clerk on an indefinite contract since 2014, but was terminated for wasting time at work.

Disciplinary Procedures

- No thorough disciplinary hearing was held; the employee was essentially handed a dismissal letter without the chance to respond in a formal meeting.

• Tribunal's Finding

- Found the termination was **unfair**, largely because the employer did not follow any proper disciplinary protocol (no hearing, no formal charges, no chance of defense).
- Despite a valid reason for dismissal, failure to follow a proper disciplinary procedure led to the dismissal being deemed unjust.
- Awarded €5,000 in compensation.

Case-Law: Warnings alone Insufficient

Victor Palma v. Saviour Camilleri Interior Design & Architecture Ltd Tribunal's Finding (IT, 2023)

- The employee (a “Junior Architect” on an indefinite contract) was dismissed verbally by the owner after disputes about tardiness and personal issues.

Disciplinary Procedures

- Three warnings were issued—two regarding lateness and one final warning about hosting gatherings in the employer’s apartment (during COVID restrictions).
- The employer summarily fired him on the spot, with no formal disciplinary meeting or chance to respond.
- The employer did not provide a termination letter stating reasons, nor did the employee receive a fair hearing.

- The warnings for tardiness and hosting personal gatherings were not serious enough to warrant dismissal.
- Warnings should not be sent by a simple email.
- The employer did not conduct any proper disciplinary hearing or follow a structured protocol: employee not given reasons for termination or opportunity to defend himself.
- Awarded €7,000 compensation.

Case-Law: Hearing must be Genuine

Anna Zawistowska v. BML Group Ltd (IT, 2023)

- The employee (Senior Legal Counsel) was accused of sending confidential or sensitive internal company information from her work email to her personal email account.

Disciplinary Procedures

- The company launched an internal investigation after noticing her name advertised as “Data Protection Officer” at a conference without formal approval and discovered that she had forwarded certain internal documents to a personal account (which she admitted doing).
- She was suspended with pay, confronted with the findings, and ultimately faced a formal disciplinary meeting (attended by HR, a director, and external legal advisors).
- The employee was allowed representation (an attorney) only after she filed for a prohibitory injunction.
- The Disciplinary Committee concluded she breached company policy and decided to dismiss her.

Tribunal's Finding

- Ruled the dismissal was **unfair**.
- Although the company had a process, the Tribunal observed factual considerations (e.g., alleged bullying on the Employee by the HR decision-maker, multiple warnings in close succession) which led it to the conclusion that the Employer had already decided on the dismissal of the Employee before the disciplinary process even started.
- Reason given for termination (emails) was not actual reason for termination.
- Awarded the employee compensation of €50,000.

Case-Law: Example of Proper Procedure

Claudia Nannetti v. Malta Public Transport (2023)

- The employee worked as a bus driver (with indefinite contract) and accumulated several disciplinary warnings for alleged misconduct or poor performance.

Disciplinary Procedures

- The company had a collective agreement spelling out a formal disciplinary process, including charge letters and disciplinary board hearings.
- The employee received multiple written warnings and attended disciplinary board sessions, each time found guilty of various infractions (e.g., lateness, operational errors, or serious driving mistakes).
- The final charge led to a disciplinary hearing. Given the extensive record of warnings still “active” under the collective agreement, the company dismissed her.

Tribunal's Finding

- The company followed the disciplinary procedures in the collective agreement (charge letters, board hearings, right to appeal).
- Given the repeated misconduct and the multiple final warnings, the Tribunal held that the dismissal was justified and not unfair.

Case-Law: Exceptional Approach

Buhagiar v. Jani Limited (CA, 26 January 2018)

- Non-observance of *audi alteram partem* alone does not automatically render dismissal unfair; the employee must still prove innocence before the Industrial Tribunal.
- Contradicts decision in Michelle Zammit v. Gutenberg Press Ltd (IT, 2023), which states that even when the employee is guilty before the Tribunal, not giving him an opportunity to make his case renders dismissal unfair.



Case-Law: Exceptional Approach

Frederick Attard v. Malta International Airport plc et (CA, 2021)

- Employers in the private sector must observe the rules of natural justice.
- However, internal disciplinary boards do not have the same autonomy as is expected from courts and tribunals established by law.
- Reference to English author Selwyn: While disciplinary hearings must be conducted fairly, internal appeals procedures in commercial concerns should not be cramped by legal requirements imposing impossible burdens.

Case-Law: Exceptional Approach

How does this measured approach apply in practice?

Johanna Agius v. HSBC Bank Malta plc (CCFH, 2016)

- 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.
- The Court found this arrangement unacceptable. It violated the fairness standards outlined by Selwyn, which require balancing the needs of a private commercial employer with the employee's right to a fair procedure.

RECOMMENDATIONS

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Key Steps in the Disciplinary Process

1. Investigation and Charge Letter

- Gather facts and evidence regarding the alleged misconduct.
- Conducted internally by the Company itself.
- The employee must be informed of investigation and allegations via a charge letter.
- The employee must be given a chance to explain.

2. Disciplinary Hearing

- A formal hearing is conducted where the employee can present their case.
- The employee may be accompanied by a person of his trust, and allowed to bring evidence.

3. Decision

- After hearing the employee's explanation, a written warning may be issued, to be signed by the employee, outlining the violation and expected improvement, or a written termination letter clearly explaining the reason for termination and right of appeal.
- Decision must be taken by someone not previously involved in the investigation or the issue of the charge letter.
- Verbal warnings are also allowed for first-time or less serious offenses.

Key Disciplinary Outcomes

- **Suspension**
 - Temporary suspension with pay, typically for serious misconduct while an investigation is ongoing.
 - Must be envisaged in contract of employment or collective agreement.
- **Termination**
 - In cases of severe misconduct, after the proper procedures and the “3 warning rule” are followed, dismissal may occur.
 - Fair dismissal must meet legal standards.



Employee Rights

- **Right to Be Informed**
 - Employees must be informed of allegations in a timely manner.
- **Right to Respond**
 - They must be given an opportunity to present their case and defend themselves.



Best Practices for Employers

- **Clear Policies**
 - Outline expected behavior and conduct in employment contracts.
- **Consistency**
 - Apply disciplinary actions uniformly across all employees.
- **Performance Assessments and PIPS**
 - **Allegations of poor performance must be based on periodic assessments.**
 - **Employee must have had the opportunity to rectify poor performance by a Performance Improvement Plan.**
- **Procedural Fairness**
 - Follow fair procedures to avoid legal disputes.



Conclusion



- **Key Takeaways**

- There is no formal Maltese code of practice, but courts will apply principles of natural justice.
- Disciplinary Policy required by Maltese judgements.
- Proper procedure includes a written charge letter, a fair hearing, and consistent disciplinary measures.
- Failure to adhere can lead to unfair dismissal rulings—even if misconduct is proven.

- **Questions & Discussion**



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