

CB4MicBEs

Information Booklet



Capacity Building

FOR EQUIPPING AND REPRESENTING
MICRO BUSINESS EMPLOYERS

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CHAPTER

01

INTRODUCTION



The Malta Employers' Association is a constituted body which brings together employers from all sectors of industry and commerce in Malta. Its members currently employ 30% of the Maltese labour force

The changing economic and legal environment is highlighting the need for companies to be informed and well-gearred to face the challenges that emerge from the fact that they employ people. Malta's accession to the European Union has introduced considerable legal obligations which all employers, irrespective of size have to abide with. These responsibilities entail such critically sensitive elements as employee relations, relations with government bodies and interpretation of legislation. The consequences of non-compliance can be costly in terms of lost productivity, fines, and industrial unrest. The majority of cases of non-compliance occur because of insufficient awareness of the complexity of legal obligations that all businesses are expected to respect, and not due to willful negligence.

Micro-businesses, in particular, need to have access to knowledge and training in order to function effectively as employers, since they do not have a set up that includes a human resources department or specialist.

It is for this reason that the Malta Employers' Association has embarked on this capacity building programme for micro business employers.

This project is being funded by the European Social Fund and its main objectives are:

- To create public awareness about the need of micro business employers to be informed and active in policies and good employment practices
- To equip, involve and facilitate the participation of micro business employers for this purpose
- To have more informed and active micro business employers in related policy development and implementation in Malta.



The Malta Employers' Association and its Functions

The Malta Employers' Association (MEA) is a constituted body which brings together employers from all sectors of industry and commerce in Malta. It is, in effect, the 'trade union' of employers, formally registered and recognised as such under the Industrial Relations Act (1976).

The MEA seeks to promote:

- A unity of purpose among all employers in Malta in a modern, pro-business climate.
- Optimum relations between employers and their employees, as well as between individual employers.
- A good working relationship between government and employers.

Since it was first created in 1965, the MEA has successfully represented its members' interest in all aspects of industrial relations and trade union disputes. It is the acknowledged leader in its specialised field of industrial relations and is highly respected by the Government, the trade unions and other constituted bodies with whom it enjoys close working relationships.

The MEA is represented in various national organisations and fora amongst which:

- Employment Relations Board
- Malta Council for Economic and Social Development (MCESD)
- Employment and Training Corporation (ETC)
- Social Security Umpire's Office

- Health and Safety Commission
- National Employment Authority
- National Commission for the Promotion of Equality (NCPE)

The MEA maintains contact with the more important labour-oriented international organisations and is a member of the following organisations:

- International Labour Organisation (ILO)
- Association of Business Organisation in European Capital Cities (OPCE)
- European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)
- International Organisation of Employers (IOE)

- Representation in national fora.
- Access to the online Human Resources Handbook. The HR handbook consists of various chapters on human resources matters. These chapters are constantly updated to reflect any changes in legislation.
- You will receive all publications and newsletters published by MEA.
- Discounted rates on courses, seminars and information sessions organized by MEA.

A FIRST STEP

This project is the first step through which you can establish a relationship with MEA to benefit from its services even after the project is completed. MEA already counts a healthy and increasing number of micro enterprises among its members. Becoming a member of MEA offers you with a number of advantages:

- Personal consultancy services of a professional calibre, drawing upon the accumulated field experience of experts. This means that you have available to you free advice on all aspects of conditions of work, labour law and social policy.
- Representation and assistance in conciliation, mediation, arbitration and Industrial Tribunal cases.



The Human Resource Handbook - FAQs about employing people

CONTRACTS OF EMPLOYMENT

1. Are contracts of employment obligatory for all employees?

Contracts of employment are not obligatory. Nevertheless Article 4 of LN 431 of 2002 states that in those cases where no contract of employment has been signed between the employer and the employee, and, or in those cases where a written contract does not cover all or some of the information required to be notified to the employee by these Regulations, the employer shall be bound to give or send to the employee a letter of engagement or a signed statement. The statement should include the basic conditions of employment stipulated in the Legal Notice, and should be given to the employee by not later than eight working days from the commencement of employment (vide Chapter 4).

2. Can a contract of employment include confidentiality clauses with penalties?

According to LN 431 of 2002, it would be advisable to inform the Director of Employment and Industrial Relations of such penalty.

3. Can conditions of employment change once there is a contract of employment?

The conditions of employment can be changed by mutual agreement or due to statutory requirement.

4. What is the minimum/obligatory information that has to be included in a contract of employment?

There are minimum requirements established by the Legal Notice including the name, registration number and registered place of business of the employer and the identity card number, sex and address of the employee and the place of work as well as

- b. the date of commencement of employment
- c. the period of probation
- d. normal rates of wages payable
- e. the overtime rates of wages payable
- f. the normal hours of work
- g. the periodicity of wage payments
- h. in the case of a fixed term contract of employment, the expected or agreed duration of the contract period
- i. the paid holidays, and the vacation, sick and other leave to which the employee is entitled
- j. the conditions under which fines may be imposed by the employer
- k. the title, grade, nature or category of the work for which the employee is employed
- l. the notice periods to be observed by the employer and the employee should it be the case
- m. the collective agreement, if any, governing the employee's conditions of work and
- n. any other relevant or applicable condition of employment

Provided that if any of the above information is regulated by any law, regulation, national standard order, sectoral regulation order or

collective agreement, the information may, where appropriate, be given in the form of a reference to the laws, regulations, orders or collective agreements governing that same agreement.

5. Is there a procedure to change conditions of a contract of employment?

Article 42 of the EIRA stipulates that where conditions are less favourable than those stipulated in the Act, then this must be put down in writing and the Director of Employment and Industrial Relations must be informed.

6. Should bonus schemes be a part of a contract of employment?

The bonus scheme may or may not be included in the contract of employment. In any case it should have a time frame.

7. Can a contract of employment include conditions that are different than the legal minimum?

This is permissible only if the conditions are more favourable to the employee. Otherwise the employee can contest their validity.

8. Can hours of work (e.g. shifts) stipulated in a contract of employment be changed unilaterally?

If the company reserves the right to change the working hours and the exigencies of the company warrants a change, then they can be changed after due notice is given. Care must be given to include a wording in the contract of employment to allow for changes in hours of work to avoid problems.

9. If a new contract is issued, does it necessarily imply that there is, in fact, a fresh employment?

Provided that there is no six month break between one contract of employment and another, then it is deemed to be a continuation of employment. If there is a break of any duration, ETC termination and engagement forms have to be filled in. But for purposes of employment continuity it will still be regarded as continuous employment if the break is less than six months.

Therefore a new contract issued for purposes, say, of promotion or reassignment of duties, does not necessarily imply fresh employment. In such cases no notice period is due, neither is the probationary period applicable if probation had been completed successfully in the previous position. In fact employers can impose a trial period but not a probationary period in the new post if there is a continuation of employment.

10. Does a properly filled ETC engagement form substitute a contract of employment?

The purpose of the ETC form is to inform the authorities of labour movements and not to act as a contract of employment. The ETC form does not satisfy the requirements laid in L.N. 431 of 2002.

DEFINITE PERIOD CONTRACTS

1. What is a fixed term contract?

A fixed term contract is a contract with a specified beginning and a specified end.

2. What happens if an employer terminates the contract before its expiry date?

One has to distinguish between termination during probation, termination after probation and dismissal for good and sufficient cause.

Termination during probation

During probation the employer may terminate employment without incurring any liability. He is however obliged to give one weeks' notice if more than one month's employment has elapsed.

Termination after probation

Once the probationary period has elapsed, half the remaining rule applies. This means that the employer would be obliged to pay half the salary of the unexpired period, unless the employee is dismissed for good and sufficient cause. This rule applies only to the basic salary (i.e. it excludes bonuses, allowances, commissions and any other benefits.)

Termination for good and sufficient cause

If employment is terminated for good and sufficient cause, then half the remaining rule does not apply - meaning that the employer does not incur any liability. For an explanation of what does not constitute good and sufficient cause please refer to Article 36 (14) of the Employment and Industrial Relations Act.

3. What happens if an employee terminates the contract before its expiry date?

This depends whether the employee terminates employment during probation or after probation has expired.

Termination during probation

During probation the employee does not incur any liability provided that one week's notice is given if the employee has been in employment for a continuous period of one month.

Termination after probation

If the employee terminates employment after the probationary period has elapsed and before the contract expires, then the employee will have to pay to the employer half the wages of the remaining unexpired time, unless the employee terminates employment for good and sufficient cause (for example allegations of discrimination, harassment or victimisation).

4. Are employees on a definite period contract entitled to maternity leave?

As a general rule all female employees are entitled to maternity leave, however the employers' obligations end with the expiry of the contract. For example if an employee is employed on a definite period contract of employment goes out on maternity 5 weeks before the contract expires, the employer is not bound to pay maternity leave beyond the expiry of the contract i.e. in this case, 5 weeks.

The provision stating that the employee would have to refund the maternity leave money if not working for a continuous period of six months (as per Article 36 (20) of the Employment and Industrial Relations Act) following return to work does not apply. For example if, following the 14 week maternity leave period, the returning employee only has four weeks till the expiry of the contract, the employer cannot oblige the employee to pay back the maternity leave money. Nor can the employer coerce the employee into renewing the contract for an additional period that would cover the six months (this is stipulated in Article 10 of Legal Notice 439 of 2003).

5. Are part time employees on a definite contract entitled to maternity leave?

All part-time employees are entitled to maternity leave on a pro-rata basis.

6. Can an employee on fixed term contract apply for promotions?

Yes. The law states that employee on fixed term contracts cannot be treated less favourably than comparable employees. (Article 4 of L.N. 51 of 2007)

7. Can a fixed term contract be extended?

Yes, however on the lapse of four year's employment, the contract would automatically be deemed to be one of indefinite duration.

8. Does the probationary period apply for fixed term contracts?

Yes Article 36 of the Employment and Industrial Relations Act clearly states that the first six months of any employment shall be probationary.

9. If an employee is terminated on disciplinary grounds during a fixed term contract, is she/he bound to pay half the remaining period?

Half the remaining period rule does not apply in the case of a breach of contract for good and sufficient cause.

10. Can an employee on a definite period contract be made redundant?

No, but half the remaining period rule still applies.

11. What can constitute an objective reason for extending a fixed term contract beyond 4 years?

It is up to the Director of Employment and Industrial Relations to determine.

12. How much notice has to be given to notify the employee of a contract's termination?

It is at the employers' discretion however it is advisable to follow that stipulated by the EIRA in Article 36.

13. What happens if such notice is not given?

Nothing, but ethically it should be given.

14. If an employee on a definite period contract becomes indefinite, does it constitute new employment?

No. In accordance with Art 7 (2) of L.N. 51 of 2007 the effective date when an employee shall be considered to have been employed on an indefinite basis is the date following that when the four-year period has expired, but the period in continuous employment on one or more fixed-term contract or contracts of service shall be taken into account for all other purposes, including seniority and redundancy.

15. Does the time spent on successive periods count for purposes of seniority and notice periods?

Yes. Refer to question 14.

16. Can conditions of employment during a definite period contract be re-negotiated?

If the conditions of employment are more favourable for the employee then yes they may be re-negotiated.

If however the conditions of employment are less favourable for the employee then the employer cannot impose them unilaterally but there has to be mutual agreement.

INJURY LEAVE

1. What classifies as an occupational injury?

Article 36 (15) of the Employment and Industrial Relations Act refers to personal injury. Personal injury is defined by the Act as that injury which includes any disease and any impairment of a person's physical or mental condition. For any claims to classify as injury leave the personal injury must arise out of or in the course of the employee's employment.

2. Are employees always entitled to injury leave if the incident occurs at the workplace or in the course of the employees' duties?

Although there is no mention of this in the Employment and Industrial Relations Act, the Wage Regulation Orders clearly mention that employees shall be entitled to injury leave if the employee is injured during the actual discharge of his/her duties and not due to contributory negligence on his/her part or to any contravention of safety rules laid down by the management. There are similar provisions in many collective agreements.

In cases of contributory negligence the absence from the place of work shall be considered as sick leave not injury leave.

3. What if the incident happens when the employee was doing unauthorized work at the work place?

If the employee is injured whilst carrying out duties which do not form part of the regular job description and/or which the employee

was not authorized to do, then the incident is not eligible for consideration as injury leave.

4. What procedure has to be followed in the eventuality of an incident at the workplace in which an employee suffers an injury?

First and foremost, priority should be given to any medical assistance that may be required to assist the employee or employees involved. It is important to have contact numbers of: doctors, clinics and/or hospitals at hand.

Secondly the employer should request a written report from the supervisor or other employees present with specific details about the accident including any witnesses that were present.

Thirdly the company should fill in the NI 13 form. This form will include the accident report and other relevant details and must be signed by both the treating doctor as well as the employer. In accordance with Article 97 (2) (a) of the Social Security Act the official form required by law, that is the NI 13 is to be submitted to the Department for Social Security within 10 days from the date the incident occurred.

Lastly the employer must also ensure that the OHSa accident report is filled and submitted to the OHSa. Although this is only obligatory for incidents where the injury subsists for more than three days, it is still advisable for the employer to notify the OHSa.

5. What are the implications of submitting the NI 13 form?

The NI 13 form is an obligatory administrative measure with which the employer has to comply. Nevertheless by filling the NI 13 the employer is not assuming any kind of responsibility for the injury but is simply stating the facts to the best of his/her knowledge.

It is advisable that if the employer believes that there are reasons why the case should not be treated as injury at work, this should be stated in the NI 13.

6. Does injury leave cover transport to and from work?

Accidents incurred during transportation to and from work only count as injury leave if the transportation is organized or paid for by the company. In this case the DSS following investigations can issue an injury benefit.

7. What is an industrial disease?

Industrial disease is a term used to describe an ailment or injury resulting from long term exposure to an occupational hazard. For example: long term exposure to asbestos.

The Fourth Schedule of the Social Security Act includes a list of the occupational diseases.

It is to be noted that the Legal Notices pertaining to the OHS Act also include regulations preventing occupational diseases. For example noise levels, use of VDU's etc.

8. What is the maximum injury leave entitlement?

The maximum injury leave entitlement is of 12 months from date of injury.

During this period employees who pay social security contributions in that employment are entitled to injury benefits. The employers shall pay the full salary/wage for the first three days after injury. Subsequently the employer shall deduct the injury benefit from the basic pay.

The rate of injury benefit is announced annually in the government gazette and/or the update issued by the MEA.

9. What happens when the injury leave entitlement is exhausted?

If following twelve months injury leave the employee is still not fit to resume his/her duties, the employer has the option to terminate employment.

It is advisable that during periods of prolonged injury (or sickness) the employer keeps contact with either the company doctor or a medical specialist to keep abreast of the likelihood of the employee returning to work.

This will enable the employer to plan ahead and avoid making hasty decisions at a critical stage.

10. What happens when the employee is fit to return to work?

Once the employee has been certified fit for work, the employee is obliged to notify his/her employer within seven days of the cessation of the incapacity to work (Art 36 (16) of the Employment and Industrial Relations Act).

In such circumstances the employer is expected to reinstate the employee to his previous work or if this is no longer possible to other suitable work within a period of twenty one days from application.

11. What happens if following the application by the employee to return to work, such employee is not fully fit to resume his/her previous duties and the employer does not have any other alternative posts available?

In this case, if the company has absolutely no alternative work to offer as required by the Employment and Industrial Relations Act, then the employer has no other option than to terminate employment on medical grounds once the one year injury leave elapses.

12. In case of termination of employment what are the employee's entitlements

If the employment is going to be terminated, the employee is entitled to statutory bonuses and payment for vacation leave which has accrued up till the last day of employment.

The Malta Employers' Association is lobbying to remove accrual of leave during periods of absence due to injury, sickness and maternity. In the Schultz-Hoff v Deutsche Rentenversicherung Bund case decided on the 27th January 2009 the ECJ held that employees remain entitled during such periods.

Employees are entitled to any wage scale increments that accrue during the injury period. However employees are not automatically entitled to allowances (for example car petrol allowance) or any bonuses related to individual performance.

13. Can an employee be offered a different job at lower pay upon returning to work if he/she is not fully fit to resume previous duties?

The Employment and Industrial Relations Act (Article 36 (16)) does not specify that any alternative work has to carry the same terms and conditions as the previous post.

14. What happens if the employee who is not fully fit to resume his/her previous duties refuses alternative work which the employer offers?

Since the employer is satisfying the requirement to offer suitable employment, then in such cases the employer may terminate employment.

15. What happens if the symptoms of the accident manifest themselves after the incident? Is it still considered as an injury?

In this case, if it is proven that the symptoms are related to the injury, then the employee shall be entitled to injury leave up to a maximum of one year from actual date of injury provided that the injury had been reported at that time.

Please note that in cases of injury, whenever there is an alleged permanent disability the employee may within two years from date of injury/accident, file a suit for civil damages, irrespective of whether the employee is still employed with the company or not.

16. Can an employer dismiss a person on injury leave during probation?

Since according to the Employment and Industrial Relations Act the employee injured is entitled to a maximum period of one year injury leave, then the employee may not be terminated during the probationary period if the injury subsists for a period longer than that of probation.

However it is to be noted that if there is contributory negligence on the part of the employee then the employer can terminate employment during the probationary period since the employee will not technically be on injury leave and the DSS will not issue an injury benefit.

17. Employers' should take note of the following:

All accidents should be documented, including statements from any witnesses if any;

All measures necessary are taken to adhere to occupational health and safety regulations. This includes periodical risk assessments and the appointment of the health and safety representative; It is advisable for employers to be covered by an employer's liability insurance.

The above points are important as these will all be taken into account if civil and/or criminal proceedings are instituted.

Civil proceedings are initiated by the complainant or his/her heirs in case of death. Criminal proceedings can be initiated by the Police in two instances:

- Whenever there is a breach of OHS regulations
- Whenever a serious occupational injury occurs. In such instances a criminal inquiry will be conducted by the Police Department involving the OHSA.

MATERNITY LEAVE

1. What is the duration of maternity leave?

An employee is entitled to 14 weeks paid maternity leave. The fourteenth week till December 2007 was unpaid, but by means of budget 2008 it is now paid. However the employer will be credited for the amount paid during the fourteenth week by deductions of the equivalent amount from the National Insurance Contributions payable by the employer on behalf of the employee concerned.

2. Are all employees eligible to maternity leave?

All female full time employees are entitled to maternity leave. Part time employees, irrespective of whether their employment is their principle employment or not (i.e. they pay social security contributions in that part time work) are also entitled to maternity leave pro-rata to the number of hours they work.

3. Is a female employee who has just adopted a child entitled to maternity leave?

Neither maternity leave nor Birth Leave applies in the case of adoption since it refers to the birth of a child. Nevertheless the employee shall be entitled to parental leave which is unpaid leave.

4. Are employees on definite period contracts entitled to maternity leave?

An employee on a fixed term contract shall have the same rights as a full time employee for the duration of the fixed term contract.

5. Are employees on probation entitled to maternity leave?

Yes, female employees on probation are also entitled to maternity leave. Although there is no legislation to this effect, there have been cases whereby, in agreement with the employee, the period of probation was suspended for the duration of maternity leave.

6. How can maternity leave be distributed before and after birth?

- Six weeks of the maternity leave are to be taken immediately after the date of confinement. This is compulsory;
- Four weeks are to be availed of immediately before the expected date of confinement (unless agreed otherwise with the employer);
- The remaining balance is to be taken in whole or in part immediately before or after the above periods.

7. Can an employer oblige an employee to go out on maternity leave?

The Employer is obliged to send the employee on maternity leave as provided by legislation (refer to question 5).

8. What are the conditions for taking special maternity leave during pregnancy or after having given birth or during breastfeeding?

When a risk assessment has indicated that a risk exists to the health/ safety of the employee and/or her baby, in her present work, the employer is to provide an alternative post. If such alternative post

is not possible, the employee is entitled to 'special maternity leave' for a maximum period of eight weeks. During this 'special maternity leave' the employer is to pay the employee a special allowance equivalent to the rate of sickness benefit in terms of the Social Security Act.

9. (a) Is the employer obliged to offer alternative employment if the job presents a danger to the employee?

If a risk assessment has revealed a risk to the safety/health of the employee and/or her baby, the employer shall offer an alternative job or adjust the hours of work in order to eliminate the risk.

9. (b) What if the employee refuses a suitable alternative job?

If the employee, without justification, refuses to perform an alternative job which does not represent a hazard to her health and safety, she will not be entitled to payment mentioned in Question 7 above.

9. (c) What if there is no alternative job available?

If the employer shows to the satisfaction of the OHSa, that he is unable to offer alternative employment, then the employer shall grant the employee 'special maternity leave' as stipulated by legislation (refer to question 7).

10. How much notice has to be given to take maternity leave?

A pregnant employee shall notify the employer in writing of the date she intends to avail herself of the maternity leave at least four weeks before the maternity leave begins.

11. Does vacation leave accumulate during periods of maternity leave?

Yes, the employee will still be entitled to vacation leave for the duration of the paid maternity leave.

12. If the maternity leave overlaps a shutdown period, is the foregone leave added to the leave entitlement?

Yes, the leave is added.

13. Can an employee opt to remain in her job even if it might present a health hazard to the pregnancy? Can the employer be held liable? Who can determine whether a job presents a health hazard?

Only through a risk assessment can a particular job be established as posing a safety/health hazard. The ultimate authority in such cases is the OHSa. The employer can engage an independent assessor to determine the suitability of a job, or whether adjustments have to be implemented.

An employer cannot and should not allow an employee to remain in her job if a risk assessment has established that the particular job poses a risk to mother and/or baby. An employer can be held liable only if an employee is kept in her work, after a risk assessment has established that a safety/health risk exists.

14. If a pregnant employee, who is on a definite period contract, cannot continue performing her work for the duration of the pregnancy what are the options available to the employer?

The conditions explained in question 7 of this chapter also apply to employees on definite period contracts.

It should be noted that the employer may at any time during the definite period contract terminate employment and pay half the wages/salary that would have been payable for the unexpired period.

15. If the employee gives notice of resignation before six months after returning to work, how can the employer obtain the refund for the payments issued during maternity leave?

An employee who has availed herself of maternity leave is obliged to work for a continuous period of six months upon her return to work. The employer is entitled to request payment from the employee for refund of payments made to her during the maternity leave if the employee does not work for a continuous period of six months. If the employee refuses to pay, the employer may take legal action against the employee.

16. Is post natal depression considered as sick leave?

An employee on post natal depression is considered to be sick and is therefore entitled to sick leave as stipulated by legislation or a collective agreement or contract of employment. The employer however has the right to refer the employee to a specialist for a second opinion.

17. Can the period of maternity leave be immediately followed by a request for parental leave?

An employee may request parental leave immediately following the period of maternity leave. However an employer may postpone the timing of the parental leave in accordance with the provisions of clause 7 of L.N. 225 of 2003 (Parental Leave).

18. If an employee takes parental leave immediately following the maternity leave does this exempt her, partly or wholly, from working for a continuous period of six months upon her return to work?

The employee would still have to work for a continuous period of six months upon her return to work even if she would have taken parental leave following the maternity leave.

19. Are employees who have given birth eligible for birth leave over and above maternity leave?

No, an employee is not entitled to birth leave in addition to maternity leave. Birth leave is only applicable to the father on the birth of a child.

20. Can an employee ask for payment in lieu of part of the maternity leave? Can the employer accept such a request?

Employers should not accept any request for payment in lieu of maternity leave. Besides being against the law the employer would be exposing himself to damages in case of any mishap.

21. Are public holidays falling during periods of maternity leave added to the leave entitlement?

No. An employee on maternity leave is already being paid for the public holiday.

22. Can a pregnant employee continue to work on night shift?

Unless an employee notifies the employer by means of a medical certificate that she should not perform night duties, or where a risk assessment establishes that night work is detrimental to the safety/health of the mother or baby, a pregnant employee may continue to work night shift.

Employers are however advised to be extremely cautious and should ideally carry out a risk assessment themselves to ensure that they will not be liable to any damages in future. Employers are reminded that if any alternative work is given during pregnancy, the employee's wages shall not be less favourable than those stipulated in the contract of employment.

OVERTIME

1. What is an opt-out clause?

The Working Time Directive seeks to protect employees from being asked to perform excessive working hours on a regular basis. The principle underlying the restriction on working hours is that of occupational health and safety. However the employer and the employee are provided the option whereby, by mutual agreement the employee can work in excess of an average of 48 hours per week.

Therefore the opt-out clause authorises the employer to allocate, if necessary, more than an average of forty eight (48) hours per week.

2. Is the opt-out agreement mandatory?

The opt-out agreement is not part of the contract of employment. However, employees can be presented with such an agreement once they are engaged and they can decide whether to accept or not the condition.

3. Does the opt-out agreement apply for the duration of the employment?

The employee may withdraw the opt-out agreement at any point during his/her employment provided that he/she gives notice.

4. What is over time?

The EIRA defines overtime as being any hours of work in excess of the normal hours of work.

5. Can an employee refuse to work overtime?

Provided that adequate notice is given the employee cannot refuse to work less than an average of 48 hours per week.

6. Is there a minimum notice that has to be given for an employee to work overtime?

Normally it is expected that an employee is given at least 24 hours notice to work overtime. This is stipulated in various collective agreements. However this does not preclude the employer from giving shorter notice in cases of force majeure.

7. If an employee has been absent for a day, and is asked to work beyond 8 hours on another day during the week, which makes the weekly total less than 40, is the employee entitled to overtime pay for those hours?

Any hours worked in excess of the normal daily hours for full timers qualify for overtime rates.

8. Can overtime payment be substituted with time in lieu at single rate?

This is possible provided there is mutual agreement between management and employees.

9. Are part timers entitled to overtime payment?

No part timers are not entitled to overtime payment unless they exceed 40 hours per week.

10. Can contracts of employment include clauses that offer a remuneration package that is inclusive of overtime?

It is common practice that in executive, administrative, managerial and technical posts, contracts of employment include clauses that stipulate that the remuneration package covers all hours necessary to carry out the assigned tasks or to achieve defined targets.

It is clear that the remuneration package should reflect the level of responsibility involved.

By custom and practice such a condition cannot be applied to persons earning less than twice the minimum wage.

It is also to be noted that there are many examples of employees earning relatively high salaries yet they are still paid at overtime rates for hours in excess of the normal hours of work.

11. Is there a maximum number of hours in a given week that an employee can work overtime?

Employees are obliged to work up to an average of 48 hours per week. The employer cannot force employees to work beyond the 48 hours, unless there is agreement with the employee and the opt-out clause has been signed.

12. Is there a difference between a part timer and a casual worker for the purpose of overtime?

A part time employee will only be eligible for payment of overtime rates if the employee works in excess of forty hours in any one week. The same rule applies to casual workers.

13. Can an employee be asked to work overtime if s/he is out on leave?

An employee may be asked to work overtime in cases of force majeure.

PART TIME EMPLOYMENT

1. Who is deemed to be a part time employee?

A part time employee is an employee whose normal hours of work calculated on a weekly basis or on an average period of employment of up to one year, are less than the hours of work of a comparable whole time employee and who is not a whole time employee with reduced hours.

2. What is a comparable employee?

A comparable employee is a whole time employee in the same establishment who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualifications and skills.

3. What is the distinction, if any, between a part timer and a whole timer with reduced hours?

A whole time employee with reduced hours is an employee who in agreement with the employer works for less than the number of hours applicable to a whole timer, provided that such employment is the principal employment of the employee in respect of which social security contributions are paid. This might be a temporary arrangement.

4. Is the probationary period applicable to part time employees?

Yes. The EIRA does not distinguish between part time and full time employees given that it clearly states that the first six months of any employment are probationary.

5. Are notice periods applicable to part time employees?

Yes. Article 36 of the EIRA does not distinguish between part time and full time employees. The same provisions apply.

6. Do the employers' obligations vary if the part time employment is the sole/principal employment or additional employment?

By means of Legal Notice 117 of 2010, both those employees, whose part time work is their principal employment, meaning they pay Social Security Contributions in that employment, as well as those employees in secondary employment shall be eligible for all entitlements, bonuses and benefits pro rata temporis, that is based on the average number of hours worked.

7. Do part time employees have any entitlements?

If it is the principal employment (refer to question 9) in which the employee pays Social Security Contributions then the employee shall be entitled to all benefits on a pro rata basis. The benefits and entitlements shall be based on the average number of hours worked.

Part time employees who were engaged in their secondary employment prior to 12th March 2010 shall start accruing in their favour pro rata benefits and entitlements as from the 12th September 2010. As to part time employees in secondary employment, engaged with a company after the 12th March 2010, accrue in their favour pro rata benefits and entitlements with immediate effect.

In the case of employees working variable hours, the pro rata entitlement shall be based on the average number of hours worked in a quarter (13 weeks) or part thereof.

8. Do part time employees pay National Insurance Contributions? If yes how much?

If the part time employment is the principal employment then the employee has to pay NI Contributions. By means of Budget 2007 the employee is entitled to choose whether to pay 10% of wages earned or a flat rate which is the same rate applicable to full time employees not exceeding the national minimum wage.

Part time employees do not pay NI Contributions in their secondary employment.

9. What is principal employment?

Principal employment means that employment in respect of which social security contributions are payable under the Social Security Act. Employees who have more than one employment are obliged to pay social security contributions in that job where they work the most basic hours. (i.e. excluding overtime.)

10. Does the employer of a part time employee pay NI Contributions?

The employer always has to pay NI contributions for his employees if it is the employee's principal employment and the employee is paying social security contributions in that employment. However

with respect to employees who earn less than the minimum wage, the employer is obliged to pay the flat rate applicable to those earning the minimum wage, whilst the employee has the option of either paying the flat rate applicable to those earning a minimum wage or paying 10% of the earning.

11. Should part time employees have a written contract of employment?

Yes in accordance with local legislation, all employees should have a written contract of employment. (See the chapter on contracts of employment)

12. Can the employer terminate employment of a part time employee?

The employer has vis-a-vis part timers the same rights and obligations applicable to whole/full timers. Therefore the employer may terminate employment of a part time employee during the probationary period without assigning any reason. Nevertheless on the expiry of the probationary period the employer may only terminate for good and sufficient cause. A part time employee has the right of recourse at the Industrial Tribunal.

13. What happens if there are internal calls for full time employment?

In accordance with L.N. 427 of 2002, the part time employee has to be notified by the company of such vacancy.

14. What happens if there are external calls for full time employment?

The same provisions apply. In accordance with L.N. 427 of 2002, the part time employee has the right of first preference.

15. What happens if the part time employee rejects an offer for full time employment?

Rejection of an offer for full time employment does not constitute a valid reason for termination of employment or any form of discrimination/victimisation.

16. Can the employer offer part time workers less favourable conditions of employment than comparable full time employees?

No. The Equal Pay for Work of Equal Value principle applies vis-a-vis a comparable employee.

17. Can the employer offer part time employees more favourable conditions of employment than comparable full time employees?

No. The Equal Pay for Work of Equal Value principle applies vis-a-vis a comparable employee.

18. In the case of redundancies should the employer differentiate between part time and full time employees?

The law does not differentiate between part time and whole time/full timers. Therefore the 'last in first out principle' applies within each category of employees irrespective of whether the employees

are full or part timers and regardless of whether it is the principal or secondary employment.

19. Can a full time employee have part time employment with the same employer?

No. Any additional hours worked for the same employer shall be deemed to be overtime, payable at overtime rates and not part time employment even if the two jobs are distinct from each other.

20. Can an employee have two part time jobs with the same employer rather than one full time job?

This question arises when employees are employed with two or more companies having the same owners/shareholders. In such cases, this is legal because the companies are separate juridical persons.

It is to be noted, particularly in some service sectors, that employers have engaged persons doing similar work in more than one company. By means of Legal Notice 17 of 2010 even employees in secondary employment shall accrue benefits and entitlements.

21. Can part time workers be given a definite period contract?

Yes. The same regulations applicable to full time employees still apply to part timers.

22. Can part time employees on an indefinite contract be offered full time employment for a definite period of time? Would the

employee have any entitlements?

If there is mutual agreement then the number of hours may be extended provided that the employee gets pro rata entitlements, benefits, bonuses etc.

23. What happens in the case that a part time employee has an occupational injury in employment which is not the principal employment?

For the purpose of social benefits, the Social Security Department does not consider this as injury in the part time employment but as sickness in the principal employment.

PROBATION

1. What is the probationary period established by law?

The EIRA establishes a six month probationary period. However in the case of executive, technical, managerial and administrative posts whose salary exceeds twice the minimum wage a one year probationary period applies.

2. Can the probationary period be more than that stipulated by law?

A one year probationary period applies in the case of executive, technical, managerial and administrative posts whose salary exceeds twice the minimum wage.

3. Can the probationary period be less than that stipulated by law?

The parties may agree to a shorter probationary period. Nevertheless it is not advisable for the employer to do so since certain issues may arise during the probationary period. Employers should make full use of the probationary period to monitor performance and attitude, and also to identify any training requirements.

4. Can the probationary period established by a collective agreement differ from that stipulated by law?

Yes it can differ, but it can only be for a shorter period and cannot exceed the maximum stipulated by law.

5. Can the probationary period be extended?

The probationary period may not extend beyond the six months or one year as the case may be. However in cases where the employee has been engaged on a shorter probationary period than that stipulated by law (say, 3 months) the employer does have the option - by mutual agreement - to extend the probationary period for a further period which does not exceed the maximum stipulated in Article 36 of the EIRA.

In case where an employer wishes to retain the employee beyond the probationary period without incurring the risk of giving him/her a full time indefinite period employment an option is to terminate employment before the expiry of the probationary period and, by agreement with the employee, offer a short definite period contract of employment. In such cases the full provisions of legislation related to definite period contracts apply. (Refer to the Chapter on Definite Period Contracts in this handbook).

6. Does the probationary period apply to definite period contracts and part time employment?

The law states that the first six months of any employment are probationary without making any distinction between definite and indefinite contracts, part time and full time employment.

7. What happens if the employee is given an employment contract for six months or less?

Since the law states that the first six months of any employment are probationary, if the contract is for six months or less, then the entire period shall be probationary.

8. Does notice period apply if employment is terminated during the probationary period?

If the employee exceeds one month's employment then one week's notice will apply to both parties.

9. Is the party terminating employment during the probationary period obliged to give a reason for such termination?

No. The law clearly states that either party may terminate employment without assigning any reason. Therefore it is advisable to stipulate 'terminated during probation' on the ETC termination form.

10. If employment is terminated during probation should such termination be put in writing?

It would be advisable for record purposes for the employer to put in writing the fact that employment is being terminated during probation.

11. If an employee is given a promotion does the probationary period apply again?

There is a distinction between a probationary period and a trial period. The difference between new employment and a promotion

is that if the employee is unsuccessful during the trial period he/she will not lose their employment but will revert back to their previous position under the same terms and conditions they previously held.

12. Are employees put on probation if there is a transfer of business?

No since the law states that once there is a transfer of business, the employer will assume the previous employer's rights and obligations and employees will retain seniority rights etc.

13. Once the probationary period expires, does employment have to be confirmed in writing?

The employer is not obliged to give anything in writing upon successful completion of the probationary period. However it is ethical to do so.

14. Are there instances when an employer cannot terminate employment during probation?

The employer of an employee who gets injured during probation cannot terminate his employment prior to the lapse of one year injury leave.

15. Are there instances where the employer may refuse an employee's resignation during the probationary period?

No. The probationary period allows both parties to terminate the employment relationship.

16. Should notice of termination of employment be given one week before the expiry of the probationary period or can it be given on the very last day?

The law is not clear on the matter however it is advisable for the employer who intends to terminate employment, to tender notice prior to its expiration.

17. What happens if employment is terminated during the probationary period and the same employee is re-engaged? Does the probationary period continue running or does it start afresh?

This depends very much on how much time elapses between termination and re-engagement.

If re-engagement takes place prior to the lapse of six months then it will be deemed to be one continuous period and the probationary period had been interrupted.

However if re-engagement takes place after six months then it will be deemed to be a new employment and the six month or one year probationary period will start afresh.

18. Are employees entitled to sickness and other benefits during the probationary period?

Various Wage Regulation Orders stipulate that employees may only avail themselves of sick leave after the lapse of a specified time period. For example Article 9 (1) of the Construction WRO states that sick leave entitlement starts after the completion of one

year's continuous service. This varies from one industry to another according to its respective WRO.

It is to be noted that irrespective of the entitlement during the probationary period, all benefits accrue as from the first day of employment.

RESIGNATION AND NOTICE PERIODS

1. What is the duration of notice of termination of employment?

The duration of notice of termination of employment is specified in Article 36 of the EIRA as follows:

- a. for more than one month but not more than six months one week;
- b. for more than six months but not more than two years two weeks;
- c. for more than two years but not more than four years four weeks;
- d. for more than four years but not more than seven years eight weeks;
- e. for more than seven years, an additional 1 week for every subsequent year of service up to a maximum of twelve weeks;
- f. or such longer periods as may be agreed by the employer and employee in the case of technical, administrative, executive or managerial posts.

2. Can a contract of employment include longer notice periods specified by the legislation?

Longer notice periods only apply in the case of executive, administrative, technical or managerial posts and if there is mutual agreement between the employer and the employee.

3. What happens if the employee expresses the wish not to work the full notice period?

The EIRA in section 36 contemplates various scenarios.

- a. If the employer gives notice then the employee will have the option either to work the notice or not to. If the employee does work the notice period then he/she will be entitled to full wages. If the employee does not work the notice period then the employee shall be entitled to half the notice period.
- b. If on the other hand the employee gives notice of termination of employment, the employer shall have the option either to allow the employee to work the notice or not to work the notice period. In either case the employee is entitled to full wages for the notice period.
- c. If the employee fails to give notice to the employer then the employee shall have to pay the employer a sum equivalent to half the wages of the notice period.
- d. If the employer fails to give notice then the employer shall have to pay the employee full wages for the notice period.
- e. No notice period is due if the employee is being dismissed.

4. Do part timers have notice periods?

The law does not distinguish between part time and whole time employees. The regulations apply to all, even if it is not the principal employment of the part time employee.

5. Do notice periods apply in cases of definite period contracts of employment?

In the case of definite period contracts, notice periods only apply during the probationary period. Once the employee has been successful in completion of the probationary period and either party wants to rescind the contract then that party would have to pay half the wage/salary of the unexpired period.

6. Is the probationary period included in the calculation of the notice period?

Yes, the probationary period has to be calculated as well since employment is calculated from first day of employment. During probation either party has to give one week's notice of termination if one month's service has been completed.

7. (a) What happens if the employer asks the employee not to work the notice period?

In such cases, the employer will still be obliged to pay full wages for the notice period.

7. (b) What happens if the employee refuses to work the notice period?

It depends who has terminated employment. If the employee has resigned then the employee has to pay to the employer half the wages. If on the other hand the employer has terminated employment then the employee shall be entitled to full wages.

8. Are employees entitled to sick leave during notice periods?

Since the employee is still in employment during the notice period, then the employee is entitled to sick leave.

9. Can pay be deducted if the employee does not turn up to work the notice period due? If not, what recourse does the employer have?

The EIRA is very clear in stating that no amount may be deducted from the wages. The employer has to seek civil redress if the employee fails to settle any amounts due to the company.

10. Does leave entitlement accrue during notice periods?

Yes, leave entitlement accrues till the last day of employment.

11. Does the employee have the right to take unavailed of leave instead of working part or all of the notice period?

The employer should draw the employee's attention that unutilized leave should be availed of or else it will be forfeited. Leave should always be subject to authorization. The employer still has the right to withhold vacation leave. For example the person who has resigned may be required to give a hand over to a new employee during the notice period. In such cases the employee will be paid for the balance of unutilized leave.

12. How can a break in employment affect the notice period?

It depends on how long the break is. If the break is shorter than 6 months then the two periods will be deemed to be one continuous period.

13. From which date does the notice period begin to apply?

The notice period starts running from the very next day that notice is given.

14. Is a verbal notice legitimate?

Yes but it is advisable to have it put down in writing. In cases where notice has been given verbally by the employee, it pays to produce a written reply to make it official.

15. Can an employee withdraw a notice of resignation?

The employer is not obliged to accept withdrawal of resignation if it has already been accepted.

16. Is an employee entitled to fringe benefits during the notice periods?

Yes.

17. Is an employee entitled to pro rata annual bonuses once notice is given?

The employee is entitled to the pro rata statutory bonuses. With respect to company bonuses, it will depend on the nature of the bonus. For example, if it is specified that the bonus is based on the

results achieved on the completion of a calendar/financial year, then the bonus may be forfeited.

On the other hand if the bonus is based on ongoing performance and paid periodically during the year, then the employee will be entitled to the pro rata. This applies also in the case of commission based on sales unless the commission is based on cash collected.

18. Is vacation leave a pro rata entitlement? Can an employer deduct payment for over utilised leave if employee resigns during the year? (see vacation leave)

Vacation leave entitlement is pro rata provided that the employee works on average at least twenty (20) hours per week and it is the principal employment (meaning that national insurance contributions are paid in that employment).

Example an employee working a 40 hour week is entitled to 4 weeks and 4 days (24 days) vacation leave an employee working 20 hours per week is entitled to 12 days and so on and so forth.

Vacation leave always has to be authorised. If it is authorised then no compensation can be requested unless it is made clear that over utilisation is an advance.

The Malta Employers' Association strongly disputes this point with the Authorities and advises its Members that the best way to safeguard their interests is to authorise any over utilisation of vacation leave on an unpaid basis.

SICK LEAVE

1. Does the law stipulate a minimum amount of sick leave entitlement?

Sick leave is regulated by the various “wages regulation orders” issued through legal notices. The EIRA has no mention of obligatory sick leave. Collective agreements and contracts of employment normally stipulate the entitlement of sick leave for employees.

2. If a class of employees is not covered by a wage regulation order, are they entitled to sick leave?

Legal Notice 432 of 2007 has introduced a minimum entitlement of sick leave for employees not falling under any WRO and who may not be covered by any collective agreement.

In such cases, and provided that the employee does not already have more favourable conditions regulating sick leave entitlements in his/her contract of employment, the Legal Notice grants a minimum entitlement of two working weeks sick leave in every calendar year without loss of wages, less any sickness benefit to which the employee may be entitled under the Social Security Act. This entitlement is calculated in hours.

3. What is the function of an occupational health practitioner?

The occupational health practitioner’s function is to determine whether the employee is fit for work or otherwise. The Occupational health practitioner is not authorised to prescribe medicines.

4. If there is a difference of opinion between the occupational health practitioner and the private doctor, which opinion prevails? (The occupational health practitioner is referred to as the company doctor.)

An employer is within his rights to accept the opinion of the company’s occupational health practitioner even if it is in conflict with the employee’s doctor’s opinion. In such rare cases it is advisable for both practitioners to communicate and discuss each case on its own merits.

Collective agreements normally have provisions regulating such incidents.

5. What action can be taken in cases where sick leave is not certified?

The employer may request certification for sick leave. An employer has the right to deduct wages for any period of uncertified sickness. Moreover, the employer may consider such days as “unauthorised absence” which may lead to disciplinary action.

6. Are there stipulated times when an occupational health practitioner can visit an employee?

There are no stipulated times for a visit by an occupational health practitioner although one should follow prudence.

Most collective agreements contain provisions on the timings of occupational health practitioner’s visit to employees’ homes.

It is recommended that where no collective agreement exists, the employer informs the employees of both the time when the employees are expected to advise the employer that they are sick and the times when an occupational health practitioner may visit them at home.

7. Can an employer terminate employment upon expiry of sick leave?

When an employee utilises all his/her paid sick leave, he/she is normally allowed to utilise his/her remaining vacation leave. If following the utilisation of the vacation leave the employee remains on sick leave and does not indicate a reasonable date when he/she is expected to return to work, an employer may terminate the employment of the employee concerned.

8. Are benefits payable during periods of sick leave?

During periods of paid sick leave, (full pay or half pay) leave entitlements and statutory bonuses are due to the employee. An employer has no obligation to pay any such benefits during periods of unpaid sick leave.

9. Does the employer pay social security contributions during periods of unpaid sick leave?

An employer has no obligation to pay social security contributions during periods of unpaid sick leave.

10. Is the duration of unpaid sick leave at the discretion of the employer?

Unpaid sick leave is at the total discretion of the employer who often seeks the advice of the occupational health practitioner.

11. Can unutilised sick leave be carried forward by mutual agreement between employer and employee?

The use of unutilised sick leave is at the total discretion of the employer. There are collective agreements that regulate such instances in cases of serious illness and/or hospitalisation.

12. Does occupational disease classify as sick leave?

When an employee is certified by a occupational health practitioner or the OHSA as having an illness caused through “an occupational disease”, then the period of absence will qualify as injury leave.

13. Can an employee refuse to be visited by an occupational health practitioner?

An employee cannot refuse to be visited by a occupational health practitioner, provided he/she is aware that the employer may make use of such services. Employers are advised that they should inform their employees of the company’s right to send its own doctor to visit employees reporting sick.

It is advisable that the procedure of reporting sick and controlling sick leave be included in a sick leave policy, particularly when there is no collective agreement.

14. What happens when an occupational health practitioner calls and the employee does not answer the door?

In such cases the employer is within his/her rights to consider the absence as “unjustified absence” and may withhold payment for the period of unauthorised absence. In repeated cases the employer may consider other appropriate disciplinary measures.

15. Can an employer enquire about the sick leave record of an employee from previous employment?

No. Medical records are confidential in nature and may not be divulged by one employer to another. This would be in breach of the Data Protection Act.

16. Is sick leave a pro rata entitlement?

This varies according to the respective Wage Council Wage Regulation Orders. Many of these do not allow sick leave during the probationary period. Otherwise sick leave is an annual entitlement and the full entitlement may be utilised at any time of the year. During the first year of employment the sick leave entitlement is a pro-rata entitlement for the portion of the calendar year that is worked.

17. Can an employer insist on a pre medical examination?

The employer is within his/her rights to ask a prospective employee to undergo a medical examination.

18. Can an employer ask about a prospective employee’s medical history?

No. It is only through a medical examination conducted by a medical practitioner that an employer may have information on a prospective employee’s ability to carry out the tasks entailed in the job. Nevertheless the employee is obliged to answer in good faith to all questions asked by the medical examiner.

19. Is an employee obliged to tell an employer about his medical history?

An employee is obliged to answer in good faith to all questions asked by the medical examiner.

20. Are all part timers entitled to sick leave?

Yes. All part timers are entitled to pro-rata sick leave.

21. Can an employee report sick during periods of vacation leave?

While there is no provision in legislation on the matter, it is the practice that if an employee has already started his vacation leave, then he cannot report as being sick.

22. Do hospital visits count as sick leave?

As long as it is certified and it is for the employee’s own examination, then hospital visits are included as sick leave, unless the appointment can be fixed after working hours.

Visits to the hospital to collect free medicine is not to be considered as sick leave.

23. Is absence due to cosmetic surgery (e.g. nose job, breast implants) considered as sick leave?

This is a point of contention between employers, unions and government authorities. Clearly one has to use judgement to determine whether the nature of the intervention is entirely aesthetic or else whether it is linked to other physical or psychological disorders. The Association's position is that in case of the former, the employer is not obliged to authorise paid sick leave.

24. Is absence on drug rehabilitation programmes considered as sick leave?

Employers may consider to grant time off for such programmes, but it is at their total discretion whether it is with pay or not.

25. Can an employer be selective in sending an occupational health practitioner to visit employees?

Visits by occupational health practitioners are at the discretion of employers who are free to decide whether to send practitioners or not.

26. Do periods of unpaid sick leave count for seniority purposes?

Periods of unpaid sick leave should not count for seniority purposes.

27. Is self inflicted injury at the workplace/not at work place considered as sick leave?

If an employer is convinced and can prove that a particular injury was self inflicted, he may refuse to consider the absence as sick leave. (An example of self inflicted injury/illness is sunburn).

28. Is regular absence due to alcoholism/drug abuse considered as sick leave?

Absence due to excessive consumption of alcohol or drug abuse is not considered as sick leave. Employers should advise any employee who has alcohol/drug problems to seek professional advice.

29. Is sunburn, hangover considered as sick leave?

As stated in question 27, such sickness may be considered as self inflicted and therefore should not qualify as sick leave.

30. What should be the role of the occupational health practitioners?

The occupational health practitioner advises employers on the suitability or otherwise of the employees' ability to fulfil their jobs.

31. Can an employer appoint an independent medical board?

In circumstances which may lie beyond the competence of the occupational health practitioner to determine the suitability of an employee to assume his/her current or revised tasks in the company, it may be decided to set up an independent medical board for more detailed professional advice.

32. Can an employer initiate procedures for an employee to be medically boarded out?

The process of being medically boarded out depends on the employee and the Department for Social Security. The employer can only advise an employee to start such procedures, particularly in cases where there is a strong likelihood that an employee with a serious sickness/injury will not be returning to work or else in cases where it is not medically advisable for the employee to remain in employment.

VACATION LEAVE

1. Is there a minimum entitlement of vacation leave?

The minimum amount of annual vacation leave stipulated by legislation is four weeks and four working days (equivalent to 192 hours) on paid annual leave based on a forty-hour week. This entitlement is to be computed in hours.

2. Can vacation leave be carried forward?

An amount not exceeding 50% of the annual leave entitlement may, by mutual consent between employer and employee be carried forward (only once) to the next calendar year.

3. Can an employee refuse time in lieu as payment for overtime?

Yes, an employee may refuse time off in lieu and insist on payment for overtime worked.

4. What happens when an employee is called in to work while out on vacation leave?

In such cases the vacation leave for the period in question is cancelled and should be availed of at a later date. Normally these are cases of force majeure.

5. How much notice must an employee give before vacation leave is authorised? Is there a legal notice to which notice of vacation leave has to be given?

There is no specific legislation on the matter. Normally notice of vacation leave is regulated by provisions in a collective agreement or contract of employment. If there is no reference then it is by mutual agreement although the employee is expected to give adequate notice (except in the case of urgent family leave). Some companies have policies which lay down the procedures for applying for leave.

6. Is vacation leave a pro rata entitlement? (see notice periods)

In cases where a full calendar year is not worked, such as in cases of commencement and termination of employment annual vacation leave entitlement is calculated on a pro rata basis.

7. (a) Does vacation leave accumulate during periods of sick and injury leave?

Yes, during periods of both sick and injury leave, the employee is still entitled to annual leave which is accumulated. The same applies to periods of paid maternity leave.

7. (b) Does vacation leave accumulate during periods of unpaid leave?

No, during period of unpaid leave, there is no entitlement for annual leave or any other leave.

8. Can an employee insist for payment for unutilised vacation leave?

According to local legislation, an employee may request payment for up to four days for unutilised vacation leave. The decision is however at the discretion of the employer who may insist that all vacation leave is availed of.

9. Can vacation leave be taken in fractions of a working day?

Vacation leave may be taken as a fraction of a working day by mutual consent between employer and employee. Such provisions are found in many collective agreements. In accordance with the Organisation of Working Time Regulations computation of vacation leave entitlement is calculated in hours.

10. Can an employer refuse applications for vacation leave?

An employer may refuse an application for vacation leave for justifiable reasons. Employers however need to keep in mind that 20 days vacation leave have to be availed of. Only four days can be paid in lieu.

11. Can an employer withdraw authorisation of vacation leave?

Employers are within their rights to withdraw authorisation for vacation leave for justifiable reasons. This shall only be resorted to in case of force majeure.

12. What is the annual vacation leave entitlement for:

- **Employees working Monday to Friday?**
4 weeks and 4 days based on a 5-day week i.e. 24 days
- **Employees working 5 days Monday to Saturday?**
4 weeks and 4 days based on a 5-day week i.e. 24 days
- **Employees working 5 days Monday to Sunday?**
4 weeks and 4 days based on a 5-day week i.e. 24 days
- **Employees working 6 days Monday to Sunday?**
4 weeks and 4 days based on a 6-day week i.e. 28 days
- **What if the working day is more or less than 8 hours?**
Then vacation leave entitlement shall be of four weeks and four days just the same but shall be multiplied by the actual number of hours worked.

13. What is the annual vacation leave entitlement for Part timers:

- Pro-rata entitlement of a full time employee.

14. Is vacation leave accumulated during notice periods?

Yes, during the notice period an employee is still entitled to vacation leave for that period.

15. Are employees entitled to vacation leave during probationary periods?

Vacation leave also accumulates during the probationary period.

16. Is vacation leave accumulated during periods of maternity leave?

Vacation leave accumulates during the paid maternity leave.

17. Can an employer demand an annual leave plan from employees?

Employers are within their rights to request a vacation leave plan from their employees (except for urgent family leave).

18. Can an employer order a stop leave?

Yes, employers may order 'stop leave' during periods of heavy workload.

19. Is an agreement to pay part of the vacation leave valid?

Current legislation only allows payment in lieu of vacation leave for four (4) days in one (1) year and in the case of termination of employment.

20. What happens in the case of an over utilisation of vacation leave?

Vacation leave always has to be authorised. If it is authorised then no compensation can be requested unless it is made clear that over utilisation is an advance.

The Malta Employers' Association strongly disputes this point with the Authorities and advises its Members that the best way to safeguard their interests is to authorise any over utilisation of vacation leave on an unpaid basis.



Contract of Employment

Hereunder one finds a specimen contract of service:

An agreement entered into today (date) between of the one part (company name and registration no and registration place of business) hereinafter referred to as the employer and XXX who resides at XXX hereinafter referred to as the employee.

The Company appoints the Employee and the Employee agrees to serve as XXX at (address of place of work)

The post is a full time one and for an indefinite duration. The employee may not take up any other part-time employment without obtaining prior written consent

The duties attached to the post of XXX include but are not limited to the following:

The employee shall perform his duties in a flexible approach and shall carry out all other or different responsibilities as may be allocated to him by the employer from time to time and moreover the said employee stipulates that he is aware that he shall be assigned duties at the premises and under the direction of such persons as the employer may direct from time to time. The employee shall work the hours necessary for the efficient and effective accomplishment of his/her duties; in any case such hours shall not be less than forty (40) in any five (5) days, Monday to Friday.

The employment shall be deemed to have commenced as from the date of this agreement and shall be of an indefinite duration.

The employer shall pay the employee a gross salary of XXX per annum, payable monthly in arrears plus all statutory bonuses. Due to the fact that this remuneration comprises all hours worked, the employee shall not be eligible for any overtime rates. Cost of living increases of general application will be automatically added to the salary herein agreed when and if effective.

The employee will enjoy the conditions of employment generally established by law.

The employee shall be entitled to vacation leave as established by law, pro rata the period of employment of the employee for the first calendar year of employment and provided further that the employee shall make use of her/his vacation leave in accordance with the exigencies of the employer.

The employee shall be entitled to X days sick leave on full pay (and X days sick leave on half pay per annum, pro rata the period of employment of the employee for the first calendar year of employment), all entitlements being reduced by any social benefits the employee may be entitled to receive, provided that payment of sick leave is subject to certification and confirmation, at the sole option of the employer, by the company doctor of the employer.

The employee undertakes during the term of his/her employment and for a period of one (1) year following the termination of employment by resignation or by dismissal for just cause, that he shall **not** in any way use for his/her own benefit or gain or divulge to any present or former clients or persons, firm, company or other organization whatsoever any confidential information belonging to the Company or relating to the affairs or dealings which may come to his/her knowledge during his/her employment.

All records, documents and other papers considered to be confidential, together with any copies or extracts thereof, made or acquired by the employee in the course of his/her employment shall be the property of the Company and must be returned to the Company on termination of employment.

The Employee agrees to refrain, during his employment and for a period of XXX (X) years following his termination, from soliciting or accepting, or attempting to solicit or accept, directly or by assisting others, any business from any of the Employer's customers, including actively sought prospective customers, with whom the employee had material contact during his employment for purposes of providing products or services that are competitive with those provided by the employer's business.

The duties of XXX extend to other companies in which XXX has a shareholding in them. The role of the XXX in these companies is determined by the Managing Director.

This agreement shall be governed by the laws of Malta.
The parties declare they have read, understood and agree to the provisions of this agreement.

Employee

HR Manager

STATEMENT BY THE EMPLOYER

In accordance with regulation 4 of the 'Information to Employees Regulations, 2002' (LN 431 of 2002), if the period of employment exceeds one month and exceeds eight hours of work a week, this statement should be given by employers to all employees within eight working days from engagement.

Employer Name: _____
Address: _____
Reg. Co. number: _____

Employee Name: _____
I.D. No: _____ Male / Female
Address: _____
Place of Work: _____
Job Title: _____
(preferably attach job description)

Date of Employment _____

Duration of Employment _____
(state whether Indefinite or Definite. If of a definite duration, state date of termination)

Nature of Employment _____
(state whether on a Full-time or Part-time basis)

Probation Period _____

Wages 1. Full-time Basic Weekly Wage: _____
or
2. Part-time Basic Hourly Rate: _____



Are you an employer?

If the answer is yes then in accordance with Maltese Law you have a number of responsibilities. Employers must:

- 1 Make the workplace safe and eliminate or control health by means of a risk assessment. Assess the risks by engaging a competent person which you will find on the list of registered competent persons on the OHSa website. The Person conducting the risk assessment will tell you what could harm people and what precautions to take. This is your risk assessment. You must act on the findings of your risk assessment, by putting sensible controls in place to prevent accidents and ill health and making sure they are followed.
- 2 Appoint a competent person. The law says you must appoint a competent person to help you meet your health and safety duties. This does not have to be an external consultant.
- 3 Write your health and safety policy. Your health and safety policy sets out the arrangements you have put in place for managing health and safety in your business. It is a unique document that says who does what, when and how.
- 4 Ensure that all plant and machinery are safe and that safe systems of work are set and followed. Also ensure that articles and substances are moved, stored and used safely.
- 5 Provide adequate welfare facilities. You must provide a safe and healthy environment for all your employees. This includes toilets, washing facilities and drinking water, and appropriate lighting and temperature.

- 6 Give workers the information, instruction, training and supervision necessary for their health and safety;
- 7 Provide free health and safety training and supervision
Everyone who works for you, including self-employed people, needs to know how to work safely and without risks to health. So you need to train them and supervise their work.

QUESTIONS AND ANSWERS FOR EVERYONE

What is health and safety all about?

Preventing people from being harmed by work or becoming ill by taking the right precautions and providing a satisfactory working environment.

Why are there health and safety laws?

Because health and safety at work is so important, there are rules which require all of us not to put ourselves or others in danger. The law is also there to protect the public from workplace dangers.

Do health and safety laws apply to me?

Yes. Health and Safety Rules and Regulations apply to all businesses, however small; also to the self-employed and to employees.

Who enforces health and safety law?

Inspectors from the Occupational Health and Safety Authority.

What do inspectors actually do?

They visit workplaces to check that employers and employees are sticking to the rules. They investigate some accidents and complaints but mainly they help you to understand what you need to do. They enforce only when something is seriously wrong.

Do I need to register my business?

It's likely you will if you have a registered company.

Do I need to have employers' liability compulsory insurance?

Unlike other Member States, including the UK, to date this is not compulsory.

Do I have to report injuries at work?

Yes, you have to fill in an NI 13 form and ideally inform the OHSA.

CHAPTER

06

ENGAGEMENT AND TERMINATION FORMS





EMPLOYMENT AND TRAINING CORPORATION

(Act. No. XXVIII 1990)

Declaration of Commencement of Employment Employment Persons

Notes for Employers:

1. This form should be filled in for each employee.
2. In every case of new employment, this form, duly filled in, is to be sent to this Corporation on the same day of commencement of employment.
3. If this is the first-time job of the person who is to be employed such person should provide you with:
 - (a) A formal birth certificate from the Public Registry (if under 21 years of age).
 - (b) Identity Card.
 - (c) Form NI 3 from the Department of Social Security or, in the case of non-Maltese nationals, a certificate from the same Department regarding exemption from Social Security contributions.
4. Children who have not attained the age 16 or who attained the age of 16 between the scholastic year (15th September to 16th July) should provide employer with a school certificate. This certificate is obtainable from the Welfare section of the Education Department, The Mall, Floriana. To obtain this certificate the applicant must present the said Department with:
 - (a) A formal birth certificate from the Public Registry.
 - (b) A declaration from the applicant's intending employer.
 - (c) A certificate from the school last attended and
 - (d) A letter from the parents stating that they agree that their son/daughter is to start work.

This also applies to persons of compulsory school age who intend working during their summer months or who are starting a Part-time job.

(1)

5. A person born outside Malta who has not yet reached the age of 21 years and who holds dual nationality (Maltese and that of another country), requires a certificate regarding his or her nationality from the Department of Citizenship and Expatriates Affairs.
6. A non-Maltese national requires an Employment Licence (obtainable from the Employment and Training Corporation and the Employment Licences Unit) before being employed.
7. The certificates indicated in paragraph 3 and if applicable, the certificates indicated in paragraphs 4.5 and 6 are to be sent to this Corporation together with this form.
8. The terms used in the second column of Part II of this declaration (Employment details) should be interpreted as follows:
 - (a) "Definite Contract" refers to temporary employment where a predetermined termination date is agreed to by both employer and employee;
 - (b) "Indefinite Contract" refers to permanent employment, meaning that employment remains valid until one of the parties concerned decides to terminate it;
 - (c) "Casual Worker" is a person called up for duty when required not on a fixed basis;
 - (d) "Outworker" is a person working from his/her own residence and who is paid on a per item basis and not with fixed salary;
 - (e) "Apprentice" is a person still enrolled in an educational or training scheme and at the same time is attached to the employer as part of that scheme;
 - (f) "Student" is a person:
 - (i) studying full-time and receiving a stipend, and
 - (ii) working and/or training during the school holidays.
9. Part III (Employer Details), "Employer No." is a number given to you by the Corporation when you registered as a company or as a self-employed with employees. If this is the first time that you are employing anybody and you still do not have this number, leave it blank. In the instances all other details have to be filled in.
10. Declaration forms should be sent:

Malta:

Employment and Training Corporation
Human Resources Information Unit
P.O. Box 20, BIRKBEKKIA BBG 01

(In case of difficulty phone 22200 250-260)
E-mail: hr@etc.org.mt

Gozo:

Employment and Training Corporation
Mgarr Road
VICTORIA VCT 111

(In case of difficulty phone 21 561513)

A receipt will be issued for each form accepted.

11. Any employer who does not send in this declaration within the stipulated time is liable to a fine as envisaged in Legal Notice 110 of 1993.
12. Engagement Forms can also be submitted through our website - www.etc.gov.mt
13. These notes are for information purposes only.

(2)

IMPORTANT: BEFORE FILLING IN THIS FORM PLEASE READ NOTES ON PAGES 1-2

PART I: EMPLOYEE DETAILS

Identity Card Number Social Security Number

Surname

Name Date of Birth
Day Month Year

Address No./Name of Residence

Street

Town/Village Post Code

Gender: Male Female
Citizenship: Maltese Foreign Dual
Marital Status: Single Married Divorced/Annulled Widower Separated

Marital status: _____

Father's Name and Surname

Maternal Surname (in case of married woman)

Name and Surname of wife/widow

PART II: EMPLOYMENT DETAILS

Type of Work:

(Be sure that you Tick one from column A and one from column B)

A. Full-time Part-time Full-time (Reduced Hours)
B. Definite Contract Indefinite Contract Casual worker
Overseas Trainee/Apprentice Student

Designation Date of Commencement
Day Month Year

Trade or Profession

Place of employment

If Employment is on a Definite Contract, please insert expiry date
Day Month Year

(3)

PART III: EMPLOYER DETAILS

Employer No.

Name and Surname

Company name

Address No./Name of Residence

Street

Town/Village Post Code

Telephone Fax E-Mail

Vat Number

Mobile

Main Activity of Business _____

Tick where applicable:

Self-Employed without employees Partnership
Self-Employed with employees Company / Co-operative
Non Profit-Making organization Government Department or Entity

If Employer is a company:

Company, that forms part of a group Company, that does not form part of a group
Holding Company

Sector:

Government Department Company with Government / Private equal shareholding
Corporation/Authority Company - Maltese owned
Government majority shareholding Company - Foreign owned

PART IV: DECLARATION

I, whose particulars appear below, in my own name or as duly authorized, declare that the details given in this form are true and correct, and that the employee has been made aware of the details contained in this form.

Signature of Employer _____ Signature of Employee _____

Designation _____

Identity Card Number Date: Day Month Year

If the Employer fills in this form he should ensure that the data required is filled in this form in duplicate (in as far as possible, one hand from the employee). Whenever data about the employee is obtained from a third party, the employer should be informed in due accuracy of the data so reported.
Personal data is collected and held by ETC and is used by ETC and/or transferred to third parties in order to fulfil ETC's functions according to law and in line with the provisions of the Data Protection Act. The individual should be informed of their right to access, to have a right to receive your personal data as well as to request that any incorrect personal data be rectified. We should not be contacted if you have any queries.

(4)

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EMPLOYMENT AND TRAINING CORPORATION

(Act. No. XXVIII 1990)

Declaration of Termination of Employment

Explanatory notes:

- This declaration should be filled in by:
 - The employer when a contract of employment has been **terminated**.
 - The employer when an employee's employment status is **changed**, e.g. from part-time to full-time and vice-versa, or from a definite contract, to an indefinite contract or for any other reason.
 - The self-employed person on **ceasing** to be self employed.
 - This declaration should be used in both full-time and part-time employment and/or self-employment.
 - It is very important that this form is fully filled, especially the termination date. The latter date should include, as well, the notice money period (if any). If no notice money/period was given, kindly insert date of termination instead.**
 - This declaration should be sent, within **FOUR DAYS** from the date of termination, to:
Malta: Employment and Training Corporation
Human Resources Information Unit
P.O. BOX 20,
BIRZEBBUGA BBG 1000
Email: hriu.etc@gov.mt
In case of difficulty phone 22201259-260
Email: hriu.etc@gov.mt
Gozo: Employment and Training Corporation
Mgarr Road
VICTORIA VCT111
In case of difficulty phone 21561513
- Persons who are obliged to send in this declaration and do not do so within the stipulated time, are liable to a fine as envisaged in Legal Notice 144 of 1999.
 - Termination Forms can also be submitted through our website: www.etc.gov.mt
 - The Corporation is obliged to issue an acknowledgment once this form is processed. If the employer does not receive an acknowledgment, it is up to him/her to inform the Corporation to send an other acknowledgment.
 - These notes are for information purposes only.

"If the Employer fills in this form she should ensure that the data required to fill in this form is obtained in so far as possible, first hand from the employer. Wherever data about the employee is obtained from a third party, the employee should be informed and the accuracy of the data ascertained."

Personal data is collected and held by ETC and is used by ETC and/or transferred to third parties in order to fulfill ETC's functions according to law and in line with the provisions of the Data Protection Act. You should disclose to ETC personal data which is correct. You have a right to access your personal data as well as to request that any incorrect personal data be rectified. You should ask for assistance if you have any queries."

PART I – DETAILS OF EMPLOYEE

Identity Card Number Social Security Number

Surname:

Name: Date of Birth

Address: No./Name of Residence

Street

Town/Village Post code

Gender: Male Female Citizenship: Maltese Foreign Dual

Marital Status: Single Married Separated Divorced/Annulled Widow(er)

Father's Name and Surname:

Name and Surname of wife/husband:

PART II – EMPLOYMENT DETAILS

Employment of the person concerned was from to

Day Month Year Day Month Year

Insert date of Termination if no notice period was given

Notice money was paid up to (Tick where appropriate)

Day Month Year Full-time Part-time

Occupation, Trade or Profession of employee

Reason for termination (Tick one of the reasons listed below)

Business closed down Dismissed on disciplinary grounds End of contract

Lack of work / Redundant Health reasons Pensioner

Terminated during probationary period Resigned Employed elsewhere

Abroad Deceased

PART III – DETAILS OF EMPLOYER

Employer Number Email:

Name and Surname of employer

Name of firm

Address: No./Name of Residence

Street

Town/Village Post Code

Telephone Fax V.A.T Number

Mobile

I declare that all information given in this form is true and correct.

Signature of Employer _____

Signature of Employee _____

Designation _____

Identity Card Number

Date

81/2008

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POLICIES AND PROCEDURES

Policies and Procedures are a set of documents that describe an organization's policies for operation and the procedures necessary to fulfill the policies.

Policies and procedures have many names including but not limited to business policies and procedures, standard operating procedures or SOP, or department operating procedures or DOP.

Procedures follow on from policy - how you do it in practice - and can be a separate document or a section of the same. It is often worth trying to be clear, as a policy change may or may not alter the procedure, while a necessary change in procedure should not be allowed to change the policy by default. It should be clear in a procedure which policy or policies it relates to.

There are four very basic reasons that necessitate writing policies and procedures:

- Operational needs - Policies and procedures ensure that fundamental organizational processes are performed in a consistent way that meets the organization's needs.
- Risk management - Established policies and procedures are identified as a control activity needed to manage risk.
- Continuous improvement - Procedures can improve processes by implementing a Plan-Do-Check-Act approach by building important internal communication practices.
- Compliance - Well-defined and documented processes (i.e. procedures, training materials) along with records that demonstrate process capability can demonstrate an effective internal control system compliant with regulations and standards.

A company may have, for example, one or more of the following policies. This is a non exhaustive list:

1. Staff Disciplinary Procedure.
2. Staff Grievance Procedure.
3. Staff Appraisal Procedure.
4. Sick Leave Policy and Procedure.
5. Leave Policy and Procedure.
6. Health & Safety Policy and Procedure
7. Sexual Harassment Policy & Procedure
8. Confidentiality Policy
9. Data Protection Policy
10. Risk Assessment
11. Training Policy
12. Whistleblowing.
13. Public Duties.
14. Supervision.
15. Union recognition Policy.
16. Redundancy Policy.
17. E-mail/internet use Policy
18. Exit interviews.
19. Job evaluation.
20. Retirement Policy.
21. Staff expenses
22. Staff loans



Opportunities for Micro Enterprises

Micro Business Employers may avail themselves of various schemes provided by Government entities. Hereunder one finds the main schemes available at present

MALTA ENTERPRISE SCHEMES

Malta Enterprise Incentive Schemes are divided into five groups targeting at specific areas of business:

1. Innovation Aid;
2. SME Development;
3. Enterprise Support;
4. Access to Finance; and
5. R&D and Innovation.

1. INNOVATION AID

The following two schemes available are of particular interest to micros:

Investment Tax Credit

- **Beneficiaries** - those engaged in manufacturing, ICT development activities, call centres, pharmaceuticals, bio-technology, filming and audio-visual.
- **Aim** -To stimulate investment and employment creation by attracting new investment projects and promoting expansion/diversification of existing enterprises.
- **Mechanics** - Computed as percentage of either value of capital invested or value of wages for 24 months covering new employment opportunities created as result of new project.
- **Tax Credit Percentage** - 50% for small enterprises.

Gozo Regeneration Scheme

- **Beneficiaries** - those engaged in manufacturing, ICT development activities, call centres, pharmaceuticals, biotechnology, filming and audio-visual, undertaking investment projects in Gozo.
- **Aim** - To address unemployment in Gozo by facilitating investment projects that create new job opportunities and ensure their durability.
- **Mechanics** - Enterprises have the possibility of converting tax credits into cash grants covering the first 24 months of new jobs created (€11,600 per job created), in relation to investment projects commencing after 1st January 2007.
- **Percentage** - 50% for small enterprises.

2. SME DEVELOPMENT

Innovative Start-Ups Grant

- **Beneficiaries** - Start-ups in initial five years of operation.
- **Aim** - differentiates between two types of start-ups: (a) innovative start-ups - engaged in existing local markets offering new perspectives, and with potential to compete in international markets, and (b) highly-innovative start-ups, engaged in new markets, new technologies novel products/ services, demonstrating potential growth and employment opportunities
- **Mechanics** - Provides part-financing of up to €15,000 to cover costs incurred during setting-up period - procurement of services provided by outside consultants, investment in tangible and intangible assets.

- **Percentage** - up to 45% of costs

SME Development Grants (First Time Trade Fair and Expert Support)

- **Beneficiaries** - Small enterprises participating for the first time in trade fairs and procuring experts in relation to new development projects.
- **Aim** - Aid in participating in trade fairs and procurement of expert advice.
- **Mechanics** - The total cost of which must not exceed €10,000 in one calendar year.
- **Percentages** - Up to 50% of the total costs incurred.

ERDF Innovation Actions Grant Scheme (Innovation)

ERDF Schemes are part of the EU “20 Million For Industry” European Regional Development Fund

- **Beneficiaries** - SMEs
- **Aim** - Helps SMEs meet today’s business challenges by stimulating innovative process, products and services. Part-finances consultancy services, consultancy services required to implement Innovation Management Techniques (IMTs) and investment costs in tangible and intangible assets.
- **Mechanics** - Projects should be completed within 24 months and a minimum value of , €50,000 in eligible costs.
- **Percentage** - 50% eligible costs for small enterprises, (40% for small enterprises in the transport sector).

ERDF Innovation Actions Grant Scheme (Environment)

- **Beneficiaries** - SMEs
- **Aim** - Supports SMEs invest in improving their environmental performance through eco-innovation. Part-finances consultancy, plant, machinery and equipment, licensing and certification.
- **Conditions** - Projects should be completed within 24 months and a minimum value of €50,000 in eligible costs.
- **Percentage** - 50% of eligible costs to small enterprises.

ERDF Small Start-Up Grant Scheme

- **Beneficiaries** - Start-ups in less than 3 years of operation in the manufacturing, ICT, R&D and Innovation, waste treatment, biotechnology and environmental solutions sectors.
- **Aim** - Supporting the growth of new enterprises having less than 50 employees.
- **Mechanics** - Aid provided will cover a period of 24 months which should fall in the first five years of establishment. Must have a minimum project value of €50,000 in eligible costs.
- **Percentage** - 25% of costs incurred for wages, rent, water and electricity bills, legal, consultancy and administrative services.

3. ENTERPRISE SUPPORT

MicroInvest Tax Credits for Micro Enterprises and the Self-Employed

- **Beneficiaries** - Micro enterprises and the self-employed.
- **Aim** - Support businesses in investing in their business, innovate, expand, implement compliance directives and/or develop their operations.
- **Mechanics** - Will be supported through a tax credit representing a percentage of the eligible expenditure and wages of newly created employees and/or apprentices.
- **Percentage** - 40% of eligible expenditure, a total of 60% to Gozo based micro enterprises.

4. ACCESS TO FINANCE

- **Soft Loans** - Support enterprises through loans at low interest rates for part financing investment in qualifying expenditure.
- **Loan Interest Subsidy** - Help increase in competitiveness and innovative capacity of enterprises supporting the acquisition of tangible and intangible capital assets that lead to a more effective and efficient production and supply of service.

5. R&D AND INNOVATION

Offered to stimulate innovative enterprises to engage in research and development.

CONTACT DETAILS

Malta Enterprise (Malta) Incentive Schemes

Development and Administration - Tel: 2542 3363

EU Funding - Tel: 2542 3425

Compliance & Implementation Monitoring - Tel: 2542 3003

Finance - Tel: 2542 3321

More information can also be obtained by email:
info@maltaenterprise.com

Malta Enterprise (Gozo)

Tel: 2156 4700

More information can also be obtained by email:
gozo.office@maltaenterprise.com

ETC SCHEMES

1. TRAINING AID FRAMEWORK (TAF)

Through the Training Aid Framework, ETC gives financial assistance to those companies in the private sector and the subsidy varies according to the type and the size of the enterprise. In the case of micro and small companies the subsidy is 40% for specific training and 80% for general training. Training can be both in-house or outsourced can be given in Malta or abroad through distance learning. Training can also be a course at a University. Each company is eligible for a maximum of euro 250,000 each year.

More Info: Training Aid Framework Section
Tel: 2220 1312

2. EMPLOYMENT AID PROGRAMME (EAP)

Through this programme, ETC provides financial assistance to employers who opt to employ certain categories of persons. The financial assistance is in the form of a generous subsidy in the salary of such employees, as well as in the employer's NI contribution. This subsidy is given for a number of months, normally six months. In the case of workers employed in Gozo the subsidy is for a longer period and in the case of persons with disability the subsidy is given for up to three years.

More info: Employment Aid Programme Unit
Tel: 2220 1217

3. WORK TRIAL SCHEME (WTS)

Through this programme the ETC grants 50% of the national minimum wage per week . Participants are on a work placement for up to 12 consecutive weeks, with the work experience based on a 20 hour week.

The scheme is open to employers who offer to train the unemployed jobseekers.

More info: Employers' Services and Schemes
Tel 2220 1211

4. APPRENTICESHIPS

The ETC offers two different apprenticeship schemes namely:

- Technician Apprenticeship Scheme; and
- Extended Skill Training Scheme

The main difference between the two is that the TAS leads the apprentice to obtain an occupational competence at technician level, whereas ESTS offers the opportunity to young persons willing to learn a trade or skill at craftsperson level, which is a lower level than that offered by the TAS. Apprenticeships are available across a wide range of industries.

The apprenticeship lasts three years, during which the apprentice is considered to be an employee of the company in which s/he is working and one also receives a stipend from the employer.

5. OTHER SCHEMES AND SERVICES

The ETC, from time to time offers various other schemes which are of benefit to employers in general and micro employers in particular. Employers are encouraged to look for such schemes and approach the ETC for any help and guidance on how to benefit from such schemes.

Moreover The ETC offers various services to employers, including the advertising of vacancies on the ETC website and through its jobcentres.

More info: Tel: 2165 4940
Fax: 2220 1802
Email: etc@gov.mt
website: www.etc.gov.mt

GOVERNMENT SCHOLARSHIPS SCHEMES

The Directorate for Lifelong Learning within the Ministry of Education, Employment and the Family, is offering three scholarship schemes which are ultimately meant to increase the availability and employment of high-level graduates in the priority sectors of the knowledge-based economy in Malta.

More people from the industry are encouraged to apply for scholarships. It is understood that investment in human capital is our nation's key to success. Therefore the Directorate for Lifelong Learning is offering the possibility for scholarships to be pursued on a full-time, part-time basis or by distance learning.

Grants are offered up to maximum of €13,000 p.a. for Masters and up to a maximum of €22,000 p.a. for Doctoral degrees (certain conditions apply). There are additional allowances: for full-time studies abroad; married applicants; parents; and Gozo residents opting to study in Malta.

The conditions of these scholarships include the possibility that a company may top-up the scholarship grant. The conditions also allow that an employee works up to 19 hours per week when pursuing studies on full-time basis. There are no restrictions on working hours for those pursuing studies on part-time or through distance learning.

The three scholarship schemes are:

Which Scheme?	For whom?	Which Qualification is sponsored?	Which Date for Application?
1. Strategic Educational Pathways Scholarships (STEPS)	<p>Higher value added and expanding economic sectors (such as pharmaceuticals, aviation maintenance, financial services, health care, tourism and creative industries);</p> <p>Agricultural and fisheries sectors;</p> <p>Environmental sector;</p> <p>Quality High Value-added Manufacturing and Services;</p> <p>Health and Bio-technology;</p> <p>Information Communication Technology;</p> <p>Research in Science and Technology;</p> <p>Capacity building in Education.</p>	<p>Masters: Distance Learning, Part-Time and Full-Time.</p> <p>Doctoral: Full-Time only</p>	<p>1 May to 15 June</p> <p>1 November to 15 January (following year)</p>
2. Malta Government Scholarships Scheme (MGSS)	All areas especially those not listed for STEPS.	<p>Undergraduate</p> <p>Post Graduate: Masters: Distance Learning, Part-Time and Full-Time.</p> <p>Doctoral: Distance Learning, Part-Time and Full-Time.</p>	<p>July - August</p> <p>June - July</p>
3. Malta Arts Scholarships (MAS)	<p>Entertainment Industry</p> <p>Creative Industry</p> <p>Visual and Performing Arts</p>	Any course on full time basis at an institution abroad and which is between 9 and 48 months duration.	5 March - 30 April

For further information, these are the contact details:

STEPS

Tel: 2598 2263 or 2598 2513

Email: steps.medic@gov.mt

Website: www.education.gov.mt/steps.htm

MGSS

Tel: 2598 2230 or 2598 2250

Email: ugscholarships.medic@gov.mt (for Undergraduate)

pgscholarships.medic@gov.mt (for Postgraduate)

Website: www.education.gov.mt/mgss_ug.htm

(for Undergraduate Scholarships)

www.education.gov.mt/mgss_pg.htm

(for Postgraduate Scholarships)

MAS

Tel: 2598 2816

Email: artsscholarships.medic@gov.mt

Website: www.education.gov.mt/artsscholarships.htm

Lifelong Learning - Director

Tel: 2598 2520

Email: mario.d.azzopardi@gov.mt

Website: [www.education.gov.mt/edu/edu_division/
lifelong_learning.htm](http://www.education.gov.mt/edu/edu_division/lifelong_learning.htm)

CHAPTER

09

CONTACT DETAILS



Useful Contact Details

Malta Employers' Association

Tel: 2123 7585, 2122 2992

Email: admin@maltaemployers.com

Website: www.maltaemployers.com

Department of Industrial and Employment Relations

Tel: 2122 4245/6

Email: ind.emp.relations@gov.mt

Website: www.industrialrelations.gov.mt

Ministry of Finance, the Economy and Investment

Tel: 2599 8244

Email: info.mfin@gov.mt

Website: www.finance.gov.mt

Social Services Department

Tel: 2590 3236

Email: info.mfss@gov.mt

Website: www.msp.gov.mt

Inland Revenue Department

Tel: 2296 2296

Email: taxpayerservice.ird@gov.mt

Website: www.ird.gov.mt

Employment and Training Corporation

Tel: 2165 4940

Email: etc@gov.mt

Website: www.etc.gov.mt

VAT Department

Tel: 2149 9330/1/2/3/4

Email: vat@gov.mt

Website: www.vat.gov.mt

Occupational Health and Safety Authority

Tel: 2124 7677, 2124 7678

In case of emergency, the duty officer may be contacted on 9949 6786 (after office hours)

Email: ohsa@gov.mt

Website: www.ohsa.org.mt

Office of the Data Protection Commissioner

2, Airways House, High Street, Sliema SLM 16

Tel: 2328 7100

Fax: 2328 7198

Email: commissioner.dataprotection@gov.mt

Department Of Information

3, Castille Place, Valletta

Tel: 2125 0550

Fax: 212 37170

Email: info.doi@gov.mt

National Commission for the Promotion of Equality

Flat 4, Gattard House, National Road, Blata I-Bajda HMR 02

Tel: 2590 3850

Fax: 2590 3851

Email: equality@gov.mt

Kunsill Nazzjonali persuni b'dizabilita

Tel: 2278 8555

Email: helpdesk@knpd.gov

Website: www.knpd.org

Agenzija Appogg

36, St. Luke's Road, G'Mangia PTA 1318

Tel: 2295 9000

Fax: 2122 5354

Email: yvonne.mallia@gov.mt

Agenzija Sedqa

4, Braille Street, Santa Venera, SVR 1690

Tel: 2388 5131

Fax: 2388 5242

Email: jesmond.a.schembri@gov.mt

Agenzija Sapport

Block A, Town Centre, Triq ir-Regimenti Maltin, Mtarfa MTF 1540

Tel: 2145 1868

Fax: 2145 3164

Email: marcel.pisani@gov.mt

What is the European Social Fund (ESF)?

The European Social Fund (ESF) was set up to improve employment opportunities in the European Union and so help raise standards of living. It aims to help people fulfil their potential by giving them better skills and better job prospects. ESF funds amount to 10% of the EU budget.

Since 2000, the ESF has been a key part of the EU's Lisbon strategy for growth and jobs. It supports the EU's goal of increasing employment by giving unemployed and disadvantaged people the training and support they need to enter jobs. By focusing on those most in need of help, it contributes to policies to reduce inequality and build a fairer society. ESF also equips the workforce with the skills needed by business in a competitive global economy.

The ESF supports joint actions and networking of social partners in areas like lifelong learning or the integration of people furthest away from the labour market, but also the social partners themselves for the improvement of their capacity and their cooperation. This project falls within the aims of the ESF through enabling the social partners – employer associations and unions – to strengthen social dialogue in the EU.