

National Labour Law Profile: Malta

General information

Officially the Republic of Malta or Repubblika Ta'Malta, is a small though strategically important archipelago in the central Mediterranean Sea. The Maltese Archipelago is not a federal state and therefore has no provincial structure. It has traditionally been administered exclusively from Valletta, the capital city. Historically, experiences of local government have been brief and transitory, such as during the French Occupation of the islands (1798-1800) and the Civic Council on the smaller island of Gozo (1960-1973). Villages or Towns were communities and decision-making units in a non-secular sense, as parishes of the Catholic Church. Since November 1993, the first in a series of local council elections were introduced.

The territory of the Maltese Islands is now divided into 67 different localities (53 in Malta; 14 in Gozo & Comino) each with its own democratically elected local council. By means of a gradual process of devolution, local councils are now responsible for the upkeep of public spaces and gardens, fixing and maintenance of road signs and markings; communication services. They will in future be also responsible for tourist and transport services; and the setting up and running of nurseries, child care facilities, kindergartens, state schools, health centres, state pharmacies and senior citizen homes.

Since Gozo is a separate geographical component of the Maltese state, it enjoys a fair degree of administrative autonomy. Gozo has its own Bishop since 1865; its own Minister in the Cabinet of Ministers since 1992; and will be entitled to separate Objective 1 Status when and if Malta as a whole loses that status as an eventual member of the European Union.

The country gained independence from the UK in September 1964. Its first Constitution of 1964 was substantially amended in December 1974 and again in 1987. Its legal system is based on English common law, with however many elements of Roman civil law. The 1964 Independence Constitution, under which Malta was a constitutional monarchy and parliamentary state, was amended in 1974 to make Malta a republic within the Commonwealth.

The total area of Malta is 316 square kilometres. Its population in 2004 was slightly less than 400,000.

Malta became a Member of the European Union on 1st May 2004.

Constitution

Though still a British colony at the time, Malta was granted its first constitution in 1835, although the English Governor maintained political control, assisted by a prominent group of Maltese business people. Under the Constitution of 1964 Malta became an independent which recognised a monarchical form of government. The Head of State of Malta remained Her Majesty Queen Elizabeth II of the United Kingdom and her executive representative in Malta was the Governor General. This

arrangement was amended as from 13th December 1974 with the coming into force of a Republican Constitution. Then, the monarchical element was replaced by a local and civil one; the President of the Republic, now a Maltese national, became the Head of the Maltese State.

The [Maltese Constitution](#) consists of eleven separate chapters as follows:

The Republic of Malta - the distinguishing characteristics of the Maltese Republic: language, territory, religion, national anthem, national flag and the constitution to be the supreme law.

Declaration of Principles - the obligations of the State to its citizens with respect to right to work; promotion of culture; compulsory and free education; protection of artisan trades; social assistance and insurance; encouragement for entrepreneurs and co-operatives; protection of work, hours of work and of women workers.

Citizenship – its regulation via birth, descent and registration.

Fundamental Rights and Freedoms of the Individual –the basic protection and guarantees a Maltese citizen enjoys by right: protection from discrimination, forced labour, deportation, inhuman treatment, lack of privacy, hindered freedom of movement, worship and expression; respect for right to life.

The President – the office and its functioning when the post is vacant.

Parliament - its composition via the election process; its powers and procedures; its summoning, prorogation and dissolution.

The Executive – matters relating to the role and functions of the President, Cabinet, Prime Minister, Ministers, Parliamentary Secretaries, Leader of the Opposition and Attorney General.

The Judiciary – appointment, tenure and function of Judges, and Magistrates.

Finance – regulation of financial matters, including the Public Debt, the Consolidated Fund and Contingencies Fund; the office of the Auditor General.

The Public Service – regulation of appointment of public officers and certain conditions of their service; protection of pension rights; the Public Service Commission.

Miscellaneous – other matters, including the Broadcasting Authority and the Employment Commission.

Amendments: Most articles in the Constitution require a two-thirds majority in the House of Representatives in order to be repealed or revised. The key amendment to the 1974 Constitution is Article 52 – enacted via Act 4 of 1987 and refined by Act 11 of 1996. This guarantees that a political party which has obtained an absolute majority of first count votes in a general election will always get a majority of seats in the House of Representatives. Such an amendment was agreed upon by the two political parties represented in Parliament after the anomalous 1981 general election results –where the Nationalist Party obtained some 51% of the votes cast; but a minority of elected deputies.

Head of the State

The Head of the State is a President appointed by the Maltese Parliament, which is elected by universal adult suffrage for a term of five years and is basically derived from the British model. Local features include a single chamber with 69 members, while election is by proportional representation from 13 electoral divisions. An amendment adopted in 1987 guarantees a majority of seats to a party receiving more than 50 percent of the total votes in the general election. The two major parties are the Nationalist Party (PN) and the Malta Labour Party (MLP). The last elections were held in April 2003, and gave a majority to the PN.

Head of the Government

The Head of the Government is the Prime Minister. He or she is appointed by the President and must be a Member of the House of Representatives who, in the judgement of the President *is that person who is seen by the President to command the support and loyalty of a majority of deputies elected to the House of Representatives*. The President invites such a person to form a government after the results of a general election are announced. Parliament must be summoned within two months of the announcement of the result of a general election; and the maximum length of its mandate is five years after the date of its first sitting.

The Legislative

Malta has a unicameral legislative assembly, with 65 seats since 1976. Since 1971, only two political parties have been represented in Parliament. No independent candidate has managed to secure election to Parliament since 1962. The country's electorate is neatly cleft between support for the Malta Labour Party (MLP) and the Nationalist Party (NP). The largest number of votes separating the two parties over the last 30 years has been 13,000. Malta is the only European country with such a bipolar situation. The loyalty of deputies to the party line is very strong and no discrepancies from party policy are tolerated. This means that the Prime Minister has an automatic, though slim, majority in the House of Representatives, unless there is a rebel in the party ranks. This also means that the passage of all legislation, as well as the nomination of the Head of State may proceed without the support of the Opposition – except for amendments to the Constitution, which require a two-thirds majority.

How are laws adopted?

Law Drafts are prepared by the Office of the Attorney General and may be preceded by a period of public consultation as a White Paper. Once placed on the agenda of Parliament, they proceed through different stages of plenary and sectoral debates with typically detailed discussions taking place in the Committee Stage. The President, on the advice of the Prime Minister, eventually signs laws, or parts thereof, into force. Such laws are promulgated via the Government Gazette.

The impact of international law in internal law

Being a small open island economy dependent on foreign investment and on participation in international trade, Malta is invariably exposed to overseas developments and is obliged to update its legislative corpus to take on board international developments, thus maintaining or improving its competitiveness and quality of its services. In this vein, amendments to legislation on competition, companies, business promotion and removal of levies/quota barriers are a reflection of a need to ensure conformity to international benchmarks as well as to honour Malta's obligations as a member of the World Trade Organisation. The large majority of changes and additions to local legislation since 1990 have been related to the country's alignment to the *acquis communautaire* of the European Union, given Malta's application for EU membership. This application was lodged on July 16th 1990, and Malta became member of the EU on 1st May 2004.

The judiciary

Consisting of professionally trained judges and magistrates, the judiciary enjoys security of tenure, other than in cases of proven abuse. The Constitutional Court has, on occasion, obliged a repeal of legislation.

Labour rights in the Constitution

The right of all citizens to work and the state's role in promoting the conditions to make this right effective is recognised by Malta's 1974 Republican Constitution. The Constitution also upholds a number of workers' rights, such as the maximum number of daily working hours, a weekly rest day, minimum working age, gender equality, professional and vocational training for workers, contributory social insurance and the provision of the means of subsistence for those unable to work.

Labour regulation

The Stevedores and Port Workers Ordinance of 1939 and the Factories Ordinance of 1940 were the first attempts at establishing the wages and working hours applicable to specific industrial activity in Malta. But it was the dramatic setting up of the General Workers' Union in 1943, which spearheaded a spate of overdue labour legislation. The GWU, set up during wartime on 5th October 1943, already commanded some 22,000 members in 1944 when the national labour force was around 80,000. In this way, trade unions in Malta, which had been registered officially since 1919, were only provided a legal code of operation for the first time with the Trade Unions and Trade Disputes Ordinance of 1945. In particular, trade unions and their members were provided with immunity from actions of tort in respect of any offence committed in contemplation or furtherance of a trade dispute. In the meantime, the then Director of Labour & Social Services took on the duties of Registrar of Trade Unions. Health, Safety & General Welfare Regulations to complement the Factories Ordinance were promulgated in 1945. These were eventually followed by other regulations, including those relating to building and steam boiler safety and to night work for women, in 1951.

Following the election of Malta's first-ever Labour Government in 1947, a Conciliation & Arbitration Act was promulgated in 1948. This laid down the machinery to be used for the settlement of trade disputes, including a Court of Inquiry and an Arbitration Tribunal; but it excluded all military and civil service personnel from its remit. This statutory exclusion of public officers from the scope of specific labour law is still maintained. The Essential Supplies and Services (Settlement of Disputes) Regulations of 1952 were intended to protect citizens from any attempt by trade unions to hamper the provision of essential supplies or services. An Employment Service Act in 1955 gave birth to a National Employment Board which stipulated the conditions for the registration of the unemployed.

Legislation on individual employment relations

The key piece of legislation on individual labour relations, replacing the already outdated Trade Unions and Trade Disputes Ordinance, has been the Conditions of Employment (Regulation) Act of 1952. Known as CERA, This fundamental piece of

legislation survived half a century laying down a broad range of policies concerning the regulation of the relationship between employers and employees, now considered as a contract of service. It protected employment with rules for payment of wages, overtime, sick leave and vacation leave; as well as from its abusive termination. Wages were considered as privileged debts. The Department of Labour was boosted with the additional duties of inspection and enforcement. Under CERA, a whole range of wages council orders, set up by specifically constituted Wages Councils, started fixing specific conditions of employment as were deemed applicable in specific sectors. Amongst the first, one finds those governing Cinemas & Theatres as well as Public Transport. Another novelty was the Labour Board, a national advisory body intended to submit recommendations for statutory provisions to the Minister, including advice on the number and constitution of Wages Councils. Thus, the Wages Councils and the Labour Board were pioneers in the operation of legally-backed tripartism and social dialogue in Malta. Interestingly, the first official international involvement by Malta in labour relations took place with the formal participation of Government, employer and trade union representatives at annual Geneva Conference of the International Labour Organisation in 1955.

Legislation on collective labour relations

The key piece of legislation on collective labour relations has been the Industrial Relations Act of 1976, known as IRA. This Act consolidated the Trade Unions and Trade Disputes Ordinance of 1945 and the Conciliation & Arbitration Act of 1948, while introducing new features which reflected developments in national collective labour relations: these included the issue of union recognition; the possibility of ordering reinstatements in cases of unjustified dismissals; the separate registration of trade unions and employer associations; and the setting up of an Industrial Tribunal. A schedule of medical personnel expected to provide service at all times was included with the Act. A section setting up a Joint Negotiating Council for the regulation of disputes in the public sector was included in the Act – but was never brought into force.

Recent reforms

Since 1990, a new set of labour legislation has been promulgated. This has had the effect of adjourning the legislative machinery to current challenges – such as the flexibilisation of employment patterns, including a-typical work; the key role of training in facilitating return to employment; a concern with occupational health and safety; and the full details of the social policy regime of the European Union's *acquis communautaire*. With Act 35 of 1990, an Employment & Training Corporation took over the Database (Work Book), Training & Inspectorate Functions of the former Labour Department; and a National Employment Authority replaced the former National Employment Board. With Act 7 of 1994, a Commission for Occupational Health and Safety was set up, and then replaced by an Occupational Safety & Health Authority by means of Act 28 of 2000. A Protection of Persons with Disability Act (2000) and a Gender Equality Act (2002) ensure special mechanisms for the elimination of discrimination.

As far as national structures for social dialogue are concerned, a Malta Council for Economic and Social Development Act was promulgated by means of Act 15 of 2001,

setting up the MCESD on a legal footing for the first time. The MCESD had been operating as a national vehicle for social dialogue and consultation amongst Government, employers and trade unions for a number of years, with the first formal attempt during an incomes policy accord over the period 1990-1993.

But by far the most momentous reform of all has been the passage of the [Employment & Industrial Relations Act \(Act 22 of 2002\)](#). This is a consolidated piece of legislation which replaces both CERA (now Title I of the new Act) and IRA (now Title II). The Act arrives after almost a decade of consultation and debate, including moments of high drama; it is divided in the following manner:

Title I - Employment Relations

Part I - Employment Relations Board

Part II - Recognised Conditions of Employment

Part III - Protection of Wages

Part IV - Protection against Discrimination related to Employment

Part V - Termination of Contracts of Service

Part VI - Enforcement and Non-Compliance related to Employment

Part VII - Administration related to Employment

Title II - Industrial Relations

Part I - Organization of Workers and Employers

Sub-Part 1 Status, registration and conduct of trade unions and employer's associations

Sub-Part 2 Restrictions in legal liability and proceedings and on union membership

Part II - Voluntary Settlement of Disputes

Part III - The Industrial Tribunal

Title III - Supplementary Provisions

Schedule to the Act

Other sources of labour regulation

Apart from the law there are other sources of labour regulation in Malta today. These consist of:

Administrative regulations

Public officers have their conditions of employment regulated by means of EstaCode, a series of Circulars issued by the Management and Personnel Office (the former Establishments Division) within the Office of the Prime Minister.

Collective agreements

Some 230 collective agreements regulate the conditions of employment of around 25,000 employees in the Maltese private sector- around a third of the total gainful employment in this sector. Most of these agreements are enterprise specific.

Arbitration awards

The awards of the Industrial Tribunal serve as a benchmark to future awards, especially in the clear absence of any provision prescribed at law. For example, ever since 1977, specific occupational groups within enterprises have been able to negotiate their own specific collective agreements, following a ruling of the Industrial Tribunal.

Judicial decisions

A number of landmark judicial decisions also regulate the practice of labour regulation. The latest such ruling was by the Court of Appeal in May 2001, overturning a decision of the Inferior Courts and confirming that industrial action taken by a trade union at Malta Freeport in January 1998 against measures announced in the Government's Budget was legitimate; however, the blockade of the Malta Freeport was abusive and illegal as this did not constitute peaceful picketing.

Web links to major sources of the labour law

Ministry of Justice web site

Employment and Training Services Act, 1990

Equal Opportunities [Persons with Disability] Act (Act 1 of 2000): Chapter 413 of the Laws of Malta.

Business Promotion Act (originally Act 21 of 1988): Chapter 325 of the Laws of Malta.

Occupational Health and Safety [Authority] Act (Act 28 of 2000): Chapter 424 of the Laws of Malta

Malta Council for Economic and Social Development Act (Act 15 of 2001): Chapter 431 of the Laws of Malta.

Employment and Industrial Relations Act (Act 22 of 2002): Chapter 451 of the Laws of Malta.

Contract of employment

References to legislation in the text and text windows below are all to the [Employment & Industrial Relations Act](#), 2002. This law defines the contract of employment or "contract of service" as *an agreement, (other than service as a member of a disciplined force) whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for wages*. The law adds to in so far as conditions of employment are concerned the definition of contract of employment includes an agreement of apprenticeship.

Unlimited and fixed-term contracts of employment

The parties to a contract of employment can freely determine whether the contract will be agreed upon for an unlimited period of time or for a fixed-term. However, where an employee has been retained in employment after the date of termination of a contract of service for a specified time or has been re-employed by the employer for a fixed or indefinite term within one year from the date of termination of a contract of service for a specified time, the conditions of employment shall not be less favourable than those which would have been applicable had the contract of service been for an indefinite time and the aggregate probationary period shall in no case be longer than six months.

Furthermore, the conditions of employment in a fixed term contract shall not be less favourable than those which would have been applicable had the same contract of employment at the same place of work been for an indefinite time, unless different treatment is justified on objective grounds. The law also states that any employee on a fixed term contract of service whose contract has expired and is retained by his employer shall be deemed to be retained on an indefinite period contract if the said employee is not given a new contract of service within the first twelve working days following the expiry of the previous contract (arts. 33 and 34 of the Employment and Industrial Relations Act).

Special contracts of employment

There is no scope for recognising special contracts of employment, as may occur in relation to persons who are notionally self-employed but who are dependent for their income on one main contractor.

Probation

The probationary period base line is six months throughout, but extended to one year for salaried positions of responsibility. During probation the employment may be terminated at will by either party without assigning any reason, provided that a week's notice of the termination of employment is given to the other party in the case of an employee who has been in the employment of the same employer continuously for more than one month.

Suspension of the contract of employment

The suspension of one or more employees constitutes legitimate ground for declaring a trade dispute. Any such suspension must be instigated by a "good and sufficient cause". Workers' earnings are protected at law; so any deduction affected to wages in the eventuality of a suspension is actually a fine imposed on the gross wage packet, as is explained below.

Termination of the contract of employment

Under the Law an employer may dismiss the employee and the employee may abandon the service of the employer, without giving notice and without any liability to pay compensation ***if there is good and sufficient cause*** for such dismissal or abandonment of service. However, the law also specifies that the following may not be considered as a good and sufficient cause:

that the employee at the time of the dismissal was a member of a trade union, or is seeking office as, or acting or has acted in the capacity of an employees' representative; or
except in the case of a private domestic employee, that the employee no longer enjoys the employer's confidence; or
that the employee contracts marriage; or
that an employee is pregnant with child or is absent from work during maternity leave; or
that the employee discloses information, whether confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by his employer or by persons acting on the employer's name and interests; or

that the employee has filed a complaint or is participating in proceedings against the employer involving alleged violation of laws or regulations or is having recourse to competent administrative authorities; or

that the business in which the employee is engaged has undergone a transfer of ownership, unless he proves that the termination is necessary for economic, technical or organisational reasons entailing changes in the workforce.

Notice

A contract of employment for an indefinite time may be terminated, by giving notice, by the employee without assigning any reason and by the employer, only on grounds of redundancy: However, notice of termination of employment may not be given during maternity leave or during the period of incapacity for work or during such other period as the Minister may prescribe.

The period of notice varies depending upon the worker's length of service, as following:

for more than one month but not more than six months of service: one week;

for more than six months but not more than two years of service: two weeks;

for more than two years but not more than four years of service: four weeks;

for more than four years but not more than seven years of service: eight weeks;

for more than seven years of service, an additional 1 week for every subsequent year of service up to a maximum of twelve weeks;

longer periods of notice may be agreed by the employer and employee in the case of technical, administrative, executive or managerial posts.

Severance payment

There is no statutory provision for severance payments at law. However, it is common practice for trade unions or individual employers to negotiate or offer severance payments in specific cases, especially in matters of collective redundancy. Such measures may also be enshrined within extant collective agreements.

Termination upon retirement

According with the law an employer can terminate the employment of an employee when the employee reaches retirement age as defined in the Social Security Act.

Unfair dismissal

The law defines *unfair dismissal* in the following terms:

(a) the termination by the employer in respect of that worker of a contract of employment for an indefinite time (other than probationary employment as defined in this Act) being a termination which is not made solely on the grounds of redundancy or for a good and sufficient cause in accordance with the relevant provisions of this Act or any regulations prescribed hereunder; or

(b) which is made in contravention of the provisions of article 64(4) (refers to acts done by a person in contemplation or furtherance of a trade dispute and in pursuance of a directive issued by a trade union); or

(c) which, though made on grounds of redundancy or for a good and sufficient cause, is discriminatory as defined in this Act or any regulations prescribed hereunder;

and includes any failure by the employer to re-employ such person or to re-employ him as provided in article 36(3).

Remedies in case of unjustified dismissal

The Industrial Tribunal now enjoys exclusive jurisdiction to consider and decide all cases of alleged unfair dismissals, including those of employees under a fixed-term contract of employment. In cases where the Industrial Tribunal finds in favour of the dismissed employee it may order reinstatement when it considers that it would be practicable and in accordance with equity, for the complainant to be reinstated or re-engaged by the employer. In other cases the Tribunal will order compensation only. Typically it will not order reinstatement when the employee occupied a position of special trust nor in cases where the employee has not made a specific request for reinstatement. In such cases the Tribunal will order adequate compensation only. To this end the law prescribes that *in determining the amount of compensation, the Tribunal is to take into consideration the real damages and losses incurred by the worker who was unjustly dismissed, as well as other circumstances, including the worker's age and skills as may affect the employment potential of the said worker.*

Termination at the initiative of the employee

A contracted employee is bound to give notice to the employer, in accordance with the notice periods already specified.

Hours of work

Legal Working Time. Usual working time. Overtime and Overtime Rates: The Constitution of Malta (Article 13[2]) lays down that all workers shall have, and indeed may not renounce to, one day of rest per week as well as paid leave; the same article also states that national legislation shall stipulate the maximum statutory number of normal working hours. While the provision to do so does exist at law, no nationally defined 'working week' across the board exists.

The new labour code comes along at a time when the conditions of employment of many specific sectors continue to be regulated by specific wage regulation orders. These still allow specific occupational groups to have a normal working week in excess of 40 hours. Examples include cinemas and theatres (46 hours); drivers of hired cars (46 hours); paper, plastics, chemicals and petroleum (44 hours); public transport (48 hours). In the case of other occupations, such as teachers, the normal working week for full-timers is of 28 hours.

Specific working time patterns and arrangements, as well as payment terms, are negotiated and included in a variety of collective agreements. Overtime rates are typically calculated at 'one and a half' times the normal hourly rates on weekdays (150%) and at twice the normal hourly rate on Sundays and public holidays (200%).

According to a 2001 survey by the European Foundation for Living & Working Conditions, the average length of the working week in Malta is 40.4 hours.

The ratification of the '48 Hour' Directive (93/104/EC) will oblige employers to refrain from engaging employees on overtime against their will, where and if they exceed a 48 hour week. So far, employees have not been able to refuse overtime requests from employers.

Paid leave

The number of days of paid vacation leave is not legally codified: it has rather been the subject of national standard orders. Currently, employees enjoy the equivalent of five working weeks plus four days of paid vacation leave per annum. They also benefit from 14 public holidays with pay per year : should any public holiday fall on a day of rest, employees are compensated by an additional day of vacation leave.

In specific industries, such as manufacturing, banking, wholesale, education and hospitality, it is not uncommon for employees to take all or part of their vacation leave during company/statutory shutdowns.

Maternity leave and maternity protection

The minimum provisions outlined below will be updated at law by new regulations being enacted by the Minister in exercise of the powers of Article 10 of the Employment & Industrial Relations Act (2002), and which will repeal existing regulations.

Protection of women workers during pregnancy and after childbirth

By means of Legal Notice 92 of 2000 which came into force on January 1st 2001 and which replaces Legal Notice 184 of 1996, Malta has implemented the provisions of Council Directive 92/85, which establishes measures intended to improve the health and safety of working women who are pregnant, have just delivered a baby or are breastfeeding. It protects such workers from dismissal resulting from their condition; and obliges a minimization of exposure to risks through the adjustment of working conditions or through the temporary transfer to another activity. If any of these two measures is not possible or feasible, then special paid leave must be made available. A non-exhaustive list of physical, chemical and biological agents, processes and working conditions to which such women workers must not be exposed or must not be allowed to perform is provided. Night work is also not allowed during pregnancy and up to 13 weeks following childbirth.

Maternity leave, cash benefits and other entitlements during pregnancy and maternity leave

The same Directive provides for a period of 14 weeks of uninterrupted maternity leave, to be taken before or after delivery. Maltese working women have long enjoyed the right to thirteen weeks of fully paid maternity leave. With the latest extension, they now enjoy 14 weeks of maternity leave, of which 13 are fully paid. A period of six weeks of the maternity leave shall in all cases be availed of after delivery.

Daily breaks for breastfeeding

There are no specific provisions to facilitate breastfeeding for working women in the law in Malta.

Parental leave

With the coming into force of the new Act, the natural or adoptive working parent of a child will become entitled to three months of parental leave without pay, as long as the child is not older than 8 years of age. Since April 1996, one year of unpaid parental leave has been allowed to public officers. An additional three years of unpaid parental leave was also made available to public officers as a career break. Since December 1999, public officers could also benefit from special unpaid leave of one year in order to foster a child.

Other leave entitlements

Sick leave

Public officers have their sick leave and sick leave benefit entitlements regulated by the Estacode (Chapter 5.3.2.6). The sick leave entitlement of other workers in the para-statal and private sectors is regulated by the provisions of the respective collective agreements. Otherwise, sick leave is determined on the basis of the wage regulation orders specific to particular employment sectors.

Urgent leave

All employees, whether full-time or part-time, are now entitled to time off from work on grounds of force majeure for urgent family reasons in those cases of sickness or accident where the immediate presence of the employee is indispensable. An employer is bound to grant to every employee a minimum of ten hours with pay per year as time off from work for urgent family reasons as specified in the respective regulations.

Educational leave, leave for trade union purposes or because of the holding of public office

Malta has not ratified ILO Convention No. 140 (Paid Educational Leave). However, provisions in most collective agreements at enterprise level allow designated trade union officials in such enterprises to participate on full pay in educational activities organised by their trade union during their working time. The Public Service regularly grants time off for educational purposes to designated officers; and in most cases encourages educational pursuits by rewarding the successful completion of certain recognised courses with financial rewards (such as allowances).

Minimum age and protection of young workers

Schooling is compulsory in Malta until the completion of one's sixteenth year; although around 800 young persons at any time obtain permission from the Education Division to forego schooling and seek employment due to particular family reasons. A certain amount of informal child labour is tolerated in small family businesses, especially in the summer months.

Special measures of protection for young workers

By means of Legal Notice 91 of 2000 which came into force on January 1st 2002, Malta has ratified the provisions of Council Directive 94/33/EC regarding the safety and health of young workers up to the age of 18 years. This includes: the prohibition of all night work between 12.00 mid-night and 4 a.m.; the importance of adequate supervision at work; the guarantee of a minimum rest period of 30 minutes if daily working time is 4½ hours or more; and an entitlement to two, preferably consecutive, days of rest which shall, in principle, include a Sunday. The maximum length of a working day and of a working week for young workers are 8 hours and 40 hours respectively.

The legal provisions in place also prohibit youths from working in those situations where the work is objectively beyond their physical or psychological capacity; involves harmful exposure to a variety of agents and chemicals – including toxins, carcinogens, biological agents and radiation; involves risk of accident which finds youths particularly ill-prepared; and involves health risks because of extreme cold or heat or from noise or vibration. Derogations from any such prohibitions are possible only in cases where such exposures form an indispensable and supervised component of certified vocational training.

By the powers at law, the Prime Minister may prescribe specific working conditions, including terms of remuneration, for workers who are less than 18 years of age. The national minimum wage applicable for workers aged 16 years and 17 years is slightly less than that of workers of age 18 or above.

Equality

Prohibition to discriminate: The right of Maltese citizens to non-discrimination on the basis of sex, race, nationality, religion and political opinion is enshrined in the Constitution. Non-discrimination is extended by the Act beyond the remit defined by the Constitution to include: marital status, pregnancy or potential pregnancy, sex, colour (meaning race), disability, political opinion, religious conviction or membership in a trade union or employers' association – but does not include age.

Other grounds for discrimination

Maltese legislation now includes a specific reference to protection from discrimination in the case of pay for work of equal value; other than and distinct from equal pay for equal work. The provision of equal pay for equal work has been established at law in Malta since 1976.

Furthermore, other categories of employees, including 'whistle-blowers', are also protected from discrimination or victimization. This includes protection from the possibility of unfair dismissal.

Sexual harassment

There is no definition of sexual harassment at law. However, provision for protection of employees from sexual, including non-physical, harassment is duly provided in the new Act.

Pay issues

Minimum wage

Malta has had a national minimum wage since 1974. This is adjusted by 'cost of living' increases based on the inflation of the previous 12 months, which are legislated via National Standard Orders. The minimum wage has gone up from Lm 10 (approx. € 23.50) per week in 1974 to Lm 53.13c (approx. €124.86) as of 1st January 2003.

Wage-fixing machinery

There is no national or sectoral wage fixing machinery, other than that for the weekly minimum wage as described above. Otherwise, remuneration is determined on the basis of collective bargaining at enterprise level or, in the absence of recognised trade unions, by free individual bargaining.

Protection of wages

Part 3 (Articles 11 to 25) of the Employment & Industrial Relations Act addresses this issue in detail. Wages are to be paid in full, at regular (4 weekly) intervals and directly to the employee concerned, unless the employee determines otherwise, and in legal tender. In case of insolvency of the employer, any claim by any employee in respect of a maximum of three months of the current wage payable by the employer to the employee, and compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary. However, the maximum amount of worker's claim protected by the privilege shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.

Furthermore, in accordance with European Directive 80/987/EC, a Guarantee Fund is being set up to provide funds, initially paid for by the state, when such privileged claims due to employees cannot be paid out of the insolvent employer's estate.

Trade unions

Trade union registration

The Act stipulates the manner in which a trade union is registered with the Director of Employment & Industrial Relations, who doubles up as the Registrar of Trade Unions. The obligations of registration include: a minimum of seven members; the endorsement and deposition of a statute; an updated membership list on an annual

basis; annually audited accounts; and access to its membership records by the Registrar.

Trade union recognition

Trade Union recognition is referred to, but remains undefined at law. Practice has it that a trade union which can command the support of a simple majority (50% plus 1) of the workers in a constituency can be reasonably expected to claim to represent such a constituency; employers would then be reasonably expected to recognise such a trade union for the purposes of collective bargaining, on behalf of the same constituency.

Remedies in case the public authority refuses registration or recognition

The Registrar of Trade Unions may refuse to register a trade union if the applicants have not been duly authorized, the purposes of the trade union are unlawful, or if the application for registration or the rules of the trade union are deemed not to be in conformity with the provisions of the Act. Similarly, the Registrar of Trade Unions shall cancel the registration of an existing trade union if: the said union has ceased to exist; has less than seven members; is not in conformity with the Act; or has itself applied for cancellation. In any case, a notice of cancellation will only take effect two months after it is issued, and after the involved party is duly informed. This allows the trade union concerned the opportunity to choose to make any amends that may be necessary to avoid the cancellation. Remedies available to an aggrieved trade union in the case of cancellation exist in the form of a complaint lodged in the Court of Appeal.

Unfair labour practices

The reference to unfair practices in Maltese Labour Law is restricted to that of unfair dismissals. However, the Industrial Tribunal as well as the Civil and Criminal Courts have, over the years, pronounced themselves on this issue.

A bone of contention concerns the use of the sympathy strike. Employers have complained ad nauseam about the (ab)use of this legitimate instrument, particularly when it affects employers who are not in any way involved in the primary trade dispute. Furthermore, there is no obligation at law for the workers in the primary trade dispute to be themselves on strike for there to be a sympathy strike by other workers on the same dispute. The Act here merely states loosely that:

Another delicate issue is that of trade union indemnity from damages. There have been cases of industrial action during which equipment has been damaged or broken, possibly willfully, and during which people have been hurt or injured. Under article 63 of the Law a trade union or an employers' association can be made liable in respect of

(a) any negligence, nuisance or breach of duty, resulting in personal injury to any person, or (b) breach of a duty imposed in connection with the ownership, possession, control or use of property, whether movable or immovable.

Collective bargaining and agreements

The Employment and Industrial Relations Act defines the "collective agreement" as an agreement entered into between an employer, or one or more organisations of employers, and one or more organisations of employees regarding conditions of employment in accordance with the provisions of any law in force in Malta. However, the law goes no further in defining what collective agreements are, what they should contain, and how they are meant to be achieved. The Act's only reference is to the applicability of the minimum wage and the sector-specific provisions of the Employment Relations Board, in the absence of collective agreements. However, under article 5 of the Law it is stated that *The conditions of employment prescribed in a national standard order, or in a sectoral regulation order, or a collective agreement or determined by voluntary settlement or award under the Title II of this Act, or required to be observed by or under this Act, shall be the recognised conditions of employment for the employees concerned.* This means that the law recognizes legally binding effects to collective agreements, something which departs from the British approach whereby collective agreements are not legally binding.

There existed in April 2002 some 300 collective agreements in the private sector, affecting the conditions of employment of about 30% of Maltese private sector labour. Some 80 other agreements regulate the conditions of employment in the whole public and quasi-statal sectors. Most are worked out with the whole enterprise as the constituent base, excluding only top management from its deliberations. In a few other cases however, the basis of the constituency is that of a 'specific occupational category' such as industrial workers or highly specialized staff (pilots, air traffic controllers) or professional employees (architects in the state's employ; engineers with the energy corporation). In such cases, there may be more than one collective agreement in force in the same enterprise.

Parties to collective bargaining

These are typically trade unions on one hand and the management of the respective enterprise on the other. In the case of public or quasi-public entities, the Ministry of Finance has the final word on the endorsement of decisions which have a bearing on public finance.

Negotiation procedures

The procedure is fairly loose and ill-defined; but the kick-off is usually the notification by a trade union that it commands the majority of the workers it seeks to represent as its members. Once this is settled (sometimes after industrial action), there is tacit agreement that the parties recognise each other for the purposes of collective bargaining. Parties may conclude bargaining rounds with an agreement amicably, or after industrial action. Such agreements usually have a duration of three years, but may be extended by agreement between both sides, and will remain valid in the absence of a new agreement coming into force.

An employer may withdraw recognition of a trade union, and therefore suspend collective bargaining, if the membership of the said union falls below that of a simple majority of the workers whom it seeks to represent.

A typical collective agreement in the private sector would have the following clauses:

Introduction

1. Preamble
2. Recognition and Scope
3. Period
4. Subject Matter
5. Management Clause
6. Union Security and Functions
7. Interpretation
8. Collection of Union Dues
9. Probationary Period
10. Resignation or Termination of Employment
11. Rates of Pay
12. Hours of Work
13. Payment of Wages
14. Overtime
15. Annual Leave
16. Public Holidays
17. Special Leave
18. Surplus Leave
19. Absences
20. Sickness
21. Injury While on Duty
22. Time Recording and Lateness
23. Notice Boards
24. Social and Welfare Fund
25. Security
26. Promotions and Filling of Vacancies
27. Demotions and Redundancy
28. Reckoning of Seniority
29. Past Service
30. Long Service Awards
31. Attendance Bonus
32. Normal Retiring Age
33. Report On Unsatisfactory Work or Conduct
34. Disciplinary Procedure
35. Grievance Procedure
36. Temporary Suspension of Work
37. Cessation of Work
38. Legislation
39. Exclusion of New Demands
- App. 'A' Categories of Employees
- App. 'B' Weekly Wage Rates (Clerical and Indirect)
- App. 'C' Basic Wage and Base Rates (Direct)
- App. 'D' Collection of Union Dues
- App. 'E' Medical Certificate
- App. 'F' Plant Rules

Workers' representation in the enterprise

Malta has a very limited tradition or experience of worker participation other than through trade unions. For some time, worker committees were appointed in a number of government departments within the civil service in 1978-79, but they fell foul very soon to a competition between the GWU and the UHM, with accusations of such manoeuvres operating within an overall partisan political agenda. A period of co-determination (1971-1974) followed by fully-fledged self-management (1975-1997) existed at Malta's then largest firm, Malta Drydocks; but, after chronic losses and the

absence of operational reform, the fully-elected board of directors was replaced by a state-appointed board and has today just one elected worker-director. Other, sole, directors elected by and from the workforce occupy positions on a dozen state or trade union owned or majority-controlled organisations. There are no workers' councils or workers' committees in Malta today. There are today no experiences of co-determination either.

Otherwise, worker representation is strong and resilient through the ramifications of trade union organisations. Each trade union would have its own representatives (called shop stewards, in the British tradition) in each enterprise, or part thereof, where it commands representation. These shop stewards are the points of reference for the rank and file membership and serve as the communication link between the individual member and the central organisation. A steward would also liaise with a Union Group Committee, nominally active at each workplace. This Group Committee would be responsible for the coordination of day-to-day issues, as well as for laying the grounds for a new, or revised, collective agreement.

Trade union delegates represent the components of the decision making organs of trade unions, especially in the larger union organisations. A delegate is elected by the membership in proportion to membership strength and these delegates attend and vote at general meetings or conferences of the trade union.

Worker representatives – such as shop stewards, delegates and members on the group committee – are usually elected for two-year periods. A call for nominations is issued, formally and informally in the respective workplaces. As is typical in voluntary, democratic organisations, there is no contestation for the majority of the posts and the incumbents tend to get re-appointed without contest. Delegates and shop stewards are identified and known to enterprise management and are usually allowed to go about their union work, both on and off the premises, with reasonable freedom. In the case of the largest unions: GWU, MUT and UHM – a number of senior officials – such as section secretaries - are employed by the trade union, although they need to be reaffirmed in their office every four years. The state also finances the salary of a number of public officers who are detailed to work as senior union officials “on grounds of public policy”. The state’s financial support depends on the membership base of the pertinent trade union.

Strikes and lock-outs

The pursuit of industrial action – or, in legal jargon, “an act done by a person in contemplation or furtherance of a trade dispute” – is both protected and defined in the Employment & Industrial Relations Act. Industrial action in pursuit of a trade dispute is legitimate and sanctioned by law, as long as it concerns one of the following:

Within the preamble of collective agreements, it is normal to find references to the readiness and commitment of both parties to explore amicable ways of conflict resolution and to the tacit recognition of any strike action as legitimate action of the last resort.

Only registered trade unions or employer associations can convene a strike or a lock-out. However, they are first expected to register the existence of a trade dispute. With

this indication, and even if the dispute is merely ‘apprehended’, the Director of Employment & Industrial Relations can take the initiative to seek to reconcile the parties. The Director, or the parties to the dispute, may also refer the matter to a member of a 5-person Conciliation Panel appointed by the Minister responsible for industrial relations. Should this recourse to voluntary conciliation fail, then the Director informs the Minister who, in turn, has a choice:

Both parties to a trade dispute may agree at any time to refer the matter to the Minister requesting arbitration (that is, adjudication by the Industrial Tribunal); in which case, the Minister is obliged to refer the matter to the said Tribunal within twenty-one days of receipt. In the case where a conciliatory process is already under way, then it is enough for one of the parties to request a resort to arbitration for the same recourse to the Tribunal to take effect. The suspension of industrial action is usually a pre-condition for the resort to arbitration; but this is not established at law.

Strikes in essential services

After a long and often tense debate, Article 64 of the new Act includes a range of persons who are not protected if they act in contemplation or furtherance of a trade dispute. These include: (a) Air Traffic Controllers and at the Airport Fire Fighting Section, both at the Malta International Airport; (b) members of the Assistance and Rescue Force set up in terms of the Civil Protection Act; (c) minimum staff required to guarantee provide port safety and emergency services, including pilotage, mooring, tug services, fire-fighting, medical health services and pollution-combat services; and (d) minimum staff required to guarantee that life is not endangered through the non-importation and discharge into Malta of wheat, grain, domestic gas, aviation fuel, diesel, petrol and oil fuel for the operation of air transport facilities, power generation and water; (e) such minimum number of persons to guarantee the continued production, provision and distribution of water and electricity; and (f) such number of public officers listed in the First Schedule of the Act and engaged in offices which are required to be manned at all times. This Schedule now features some 370 medical, administrative and para-medical grades.

Should a dispute arise about the conditions of work of the workers identified as performing an essential service (as above), the matter will be deliberated by a special Joint Negotiating Council and referred to arbitration in the case of a failure by the JNC to achieve a unanimous vote.

Effects of legal and illegal strikes

Excesses in industrial action are significant test cases of a democratic society. In the case of the legal but especially illegal actions, the state is usually under strong pressure from specific political factions on the ideological right, as well as in the name of order and justice, to clamp down hard on union freedoms. On the other hand, such initiatives by the state may be disturbing in a society where, as reported in a February 2002 sample survey, 74% of respondents think that Maltese workers have benefited from the activity of trade unions; 68% agree with the right to a sympathy strike; less than 12% think that trade unions hinder progress; and only 17% think that trade unions obstruct restructuring or protect lazy workers who deserve to be punished. Indeed, following industrial action in Malta in August 1999, during which some 20 GWU senior officials illegally blocked a public road, they were all taken to

court and accused of criminal action. The much-publicized event led to various court sittings but eventually was abrogated by the granting of a Presidential pardon to the 'criminals'.

Lock-outs

Although rare, lock-outs are legal and constitute legitimate industrial action by employer associations, and usually justified on the basis of protection of capital assets. The main resort to lock-outs in Maltese industrial relations history has been by the State as an employer with respect to public servants (such as teachers and medical doctors). there is no definition of a 'lock-out' at law; however, an employers' association enjoys the same rights and indemnities as a trade union with respect to a trade dispute; and it is subjected to a registration procedure similar to that of a trade union.

The industrial tribunal

The Industrial Tribunal is an independent entity that hears and decides trade disputes referred to it by the Minister for Social Policy at the request of one or both parties in dispute. According with the law the term "trade dispute" means a dispute between employers and workers, or between workers and workers, which is connected with any one or more of the following matters:

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment as between workers or groups of workers;
- (d) matters of discipline;
- (e) facilities for officials of trade unions;
- (f) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;
- (g) the membership or non-membership of a worker in a particular trade union;

The Tribunal also has exclusive jurisdiction to consider and decide all cases of alleged unfair dismissal.

The Tribunal works in panels which are made up of a chairperson and two other members, who shall be selected by the Chairperson from panels consisting of persons nominated respectively by trade unions and employers' associations represented on the Malta Council for Economic and Social Development.

The decisions of the Industrial Tribunal are not subject to appeal, except on points of law; its awards are binding and cannot be revised prior to the elapsing of at least one year after the issue of any such award.

The Tribunal regulates its own procedures, holds meetings which are open to the public, and has such powers as are vested in the Civil Court, First Hall; these include the power to summon witnesses, to administer the oath and to appoint assessors.

ILO Conventions ratified by Malta

See [APPLIS \(ILO database of ratifications, CEACR comments, reporting schedule\)](#)

Web links

[Government of Malta](#)

[Employment & Training Corporation \(ETC\)](#)

[Department of Employment & Industrial Relations](#)

[General Workers Union \(GWU\)](#)

[Malta Employers' Association](#)

[Ministry of Justice](#)

[National Statistics Office](#)

[Malta Workers' Union](#)

Bibliography

Attard, A. (2000), *Social Partnership: The Experience of Malta*, unpublished dissertation submitted for Diploma in Management Studies, Malta, University of Malta, Faculty of Economics, Management and Accountancy.

Attard, J. (1984), *Industrial Relations in Malta*, Malta, Gulf Publishing.

Attard, L. (1995), *Malta Council for Economic Development*, unpublished dissertation submitted for Master's Degree in Business Administration, U.K., Brunel University.

Baldacchino, G. (1990), *A Review of Maltese Trade Unionism: 1976-1989*, Economic & Social Studies (New Series), Malta, University of Malta, Vol. 5, pp. 64-82.

Baldacchino, G. (1994), *Workers' Participation and the Control of Labour*, in R.G. Sultana & G. Baldacchino, (eds.) *Maltese Society: A Sociological Inquiry*, Malta, Mireva, pp. 573-589.

Baldacchino, G. (1995), *Towards Fragmented Enterprise Unionism?*, *The Malta Independent on Sunday*, Malta, Standard Publications, 14th May, pp. 46-47.

Baldacchino, G. (1997), *Global Tourism and Informal Labour Relations: The Small Scale Syndrome at Work*, London, Mansell.

Baldacchino, G. (2000), *Malta and the European Union: A Comparative Study on Social Policy*, Employment and Industrial Relations, Malta, Malta Employers Association.

Baldacchino, G., S. Rizzo & E. L. Zammit (2003), *Evolving Industrial Relations in Malta*, Malta, Agenda Publishers and Workers'Participation Development Centre, University of Malta.

Bonnici, V. (1996), *Industrial Conflicts related to the Collective Agreement at Air Malta*, unpublished dissertation, Diploma in Labour Studies, University of Malta, Workers'Participation Development Centre.

Delia, E. P. (1994), *The Maltese Labour Market* in R.G. Sultana & G. Baldacchino, eds. *Maltese Society: A Sociological Inquiry*, Malta, Mireva, pp.461-482.

Ellul Galea, K. *It-Trejdunjonizmu f'Malta*, Malta, Independence Print, various volumes.

Fino, J. (1984), *B'Rihet il-Ghaqda*, Malta, Union Press.

- Grixti, A. (1994a), *The Locus and Distribution of Power: The Phoenicia Hotel Dispute* in R.G. Sultana & G. Baldacchino, eds., *Maltese Society: A Sociological Inquiry*, Malta, Mireva, pp. 537-552.
- Grixti, A. (1994b), *Fragmented Future for Maltese Unions*, The Malta Business Weekly, Malta, Standard Publications, 8-14th December, p. 9.
- Joint Assessment Paper (2001), *Joint Assessment of the Employment Policy Priorities of Malta*, Malta, Ministry for Social Policy and Brussels, European Commissioner for Employment and Social Affairs, 39pp.
- Kester, G. (1980), *Transition to Workers' Self-Management: Its Dynamics in the Decolonizing Economy of Malta*, The Hague, The Netherlands, Institute of Social Studies.
- Manduca, A. (2002), *Issues in Industrial Relations in Malta*, The Malta Independent on Sunday, Malta, Standard Publications, 24th February 2002, p. 4.
- Mifsud, R. (1998), *Maltese Management Culture*, unpublished dissertation, University of Malta, Faculty of Arts, Department of Sociology.
- Rizzo, S., ed. (1996), *Workers' Participation at Malta Drydocks: 20 Years After*, Malta, University of Malta, Workers'Participation Development Centre.
- Rizzo, S., ed. (1997), *Diretturi Eletti mill-Haddiema*, Malta, University of Malta, Workers'Participation Development Centre.
- Spiteri, L. (1994), *Union Power in Malta: Determinants and Extent*, unpublished dissertation, University of Malta, Department of Economics.
- United Nations Development Programme (UNDP) (1996), *Malta Human Development Report*, Malta, Media Centre Print.
- Zammit, E. L. (1984), *A Colonial Inheritance: Maltese Perceptions of Work, Power and Class Structure with reference to the Labour Movement*, Malta, Malta University Press.
- Zammit, E. L. ed. (1993), *Trejd Unjonizmu f'Malta: Harsa Lura u 'l Quddiem*, Malta, University of Malta, Workers' Participation Development Centre.
- Zammit, E. L. (1994), *Maltese Orientations to Work* in R.G. Sultana, & G. Baldacchino, (eds.) *Maltese Society: A Sociological Inquiry*, Malta, Mireva, pp. 483-504.
- Zammit, E. L. (1996), *The Labour Market* in J. Inguanez, ed., *Malta Human Development Report 1996*, Malta, Media Centre Print, pp. 35-41.
- Zammit, E. L. & G. Baldacchino (1989), *Workers on the Board: A Sociological Comment on Recent Developments in Workers' Participation in Malta*, *Economic Analysis & Workers'Management*, Vol. 23, No. 1, pp. 79-94.
- Zammit, E. L. & S. Rizzo (2002), *The Perceptions of Trade Unions by their Members: A Survey Report on Trade Unions in Malta*, *Employee Relations*, Vol. 24, Nos. 1-2, pp. 53-68.
- Zammit, E. L., E. J. Scicluna, A. Gauci & P. Miceli (1982), *Transition to Workers' Self Management*, The Hague, The Netherlands and Malta, Institute of Social Studies & the University of Malta.

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