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# The Legal 500 Country Comparative Guides

## Malta

# EMPLOYMENT & LABOUR LAW

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This country-specific Q&A provides an overview of employment & labour law laws and regulations applicable in Malta.

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## MALTA EMPLOYMENT & LABOUR LAW



### 1. What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

Over the course of the COVID-19 pandemic, the Maltese Government focused primarily on introducing temporary incentives/measures to assist employers and/or employees. The COVID Wage Supplement, a basic wage cover for employees depending on sector is still currently in place with the aim of averting redundancies.

The Department of Employment and Industrial Relations also saw an increase in demand for the application of an already-existing Article-42 procedure which allows for temporary amendments to conditions of employment to avoid redundancies. This requires prior authorization, consent of the employees, and must be reviewed every four weeks.

The government had also introduced ad-hoc paid quarantine leave which remains in force.

### 2. Following the covid-19 pandemic, have new employee rights or protections been introduced in respect of flexible or remote working arrangements?

No new employee rights or protections have been introduced following the pandemic in this regard however, provisions already in place pre-pandemic in respect to teleworking by virtue of Subsidiary Legislation 452.104 remain in place. In the coming months, Malta is also expected to transpose the EU Work-Life Balance Directive which will introduce additional rights in this regard.

### 3. Does an employer need a reason in order to lawfully terminate an employment relationship? If so, state what reasons are

#### lawful in your jurisdiction?

Rules on termination of employment vary depending on whether the employee is engaged for an indefinite or for a definite period of time, and whether the employee is still on probation.

#### Termination During Probation

For both definite as well as indefinite contracts of employment, Maltese law provides for a probationary period during which both the employer and the employee may terminate the employment relationship at any time without providing a reason. One-week prior notice must be given by the terminating party should the employee have been in employment for more than one month.

Special rules are applicable to employees who are pregnant, on maternity leave or who have suffered a work injury.

Parties to the employment contract may decide to contract out of such probationary period.

#### Termination of Indefinite Contracts of Employment

On expiry of the applicable probationary period, an indefinite contract may be terminated by the employer on the grounds of either of the following:

1. good and sufficient cause;
2. redundancy;
3. reaching retirement age.

With regards to the latter, the employment relationship may be terminated by the employer once the employee reaches pensionable age.

Termination of employment by the employer for a “good and sufficient cause” is not defined at law, however, the law outlines some examples of what cannot constitute a “good and sufficient cause”. In such cases, the employer is not required to give (or pay in lieu of) notice.

With regards to termination for redundancy, the

employer must be able to demonstrate that the redundancy is genuine and follow the Last-In-First-Out rule, in that, the employer must terminate the employment of that person who was last engaged in the class of employment affected by such redundancy. In such cases, the employer must give prior notice of termination, depending on the employee's length of employment. Should the employee not wish to work the full notice period, the employee may require the employer to pay him/her a sum equal to half the wages due for the unexpired period of notice. If the employer fails to give notice, the employee will be entitled to a payment in lieu thereof.

Furthermore, should the post formerly occupied by the employee who was rendered redundant be made available within a year, such person shall be entitled to be reinstated in that post.

#### **Termination of Definite Contracts of Employment**

Fixed-term contracts cannot be terminated prior to the lapse of the stipulated term, except by reason of "a good and sufficient cause". Should either party terminate prior to the lapse of the specified term, the terminating party would be liable to pay the other party half of the wages that would have accrued to the employee in respect of the remainder of the time specifically agreed upon.

#### **4. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?**

Collective Redundancies are regulated specifically under Maltese law by means of Subsidiary Legislation 452.80. The rules on collective redundancies come into play should any of the following redundancy criteria be fulfilled:

- a. ten or more employees in establishments normally employing more than twenty employees but less than one hundred employees;
- b. 10% or more of the number of employees in establishments employing one hundred or more but less than three hundred employees; and
- c. thirty employees or more in establishments employing three hundred employees or more.

In such cases, Maltese law necessitates an information and consultation process with the appropriate representatives. Such consultations ought to assess

means of averting such redundancies or, at least, reducing the number of employees affected by such, as well as ways of mitigating the consequences thereof.

Employers must also provide the employee representative with a written statement detailing all pertinent information. A copy of the written notification and a copy of the written statement must also be provided to the Director of Employment and Industrial Relations.

#### **5. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?**

When dealing with a business sale or service provision change, consideration may need to be given, if applicable, to the transfer of business rules which have been transposed into the laws of Malta.

The occurrence of a transfer does not, in itself, constitute a valid ground for termination unless such termination takes place for economic, technical or organizational reasons entailing changes in the workforce.

Essentially, when a business/undertaking (or part thereof) is taken over from the current employer, the employees are likely to be deemed transferred together with the business, thus employed by the 'new' employer. The new employer takes on all the rights and obligations which the employee had prior to the transfer.

If employees were made redundant prior to the transfer of business, the new employer would be required to re-employ such employees with their same conditions of employment if their previous posts become available within one year from the notice of redundancy.

#### **6. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?**

Notice periods apply in relation to indefinite term contracts, either if the employer terminates for redundancy, or where the employee resigns. In such cases the terminating party is obliged to provide the other party with notice of termination.

The applicable statutory notice periods are based on the length of continuous employment with the employer,

increasing from 1 week, up to a maximum 12 weeks.

The law provides that employees holding a technical, administrative, executive or managerial post, may agree to longer notice periods. Typically, the parties would agree to a minimum 12 weeks or more.

An employee who fails to give notice will be liable to pay the employer a sum equal to half the wages that would have been due in respect of the notice period. An employer who fails to give the required notice will be liable to pay the employee a sum equal to the full wages that would have been payable in respect of the notice period.

### **7. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

If the employee resigns from an indefinite-term contract, the employer may choose for the employee to work the full notice, or to terminate without working the notice. In the latter case, the employer must pay the employee a sum equal to the full wages that would have been payable in respect of the notice period.

Employers are not obliged by law to pay any severance pay over and above the wages covering the relevant notice period. Generally, severance pay is only rewarded if the employer gives enhanced payments or wishes to have a settlement agreement signed.

### **8. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?**

Maltese Law neither defines nor regulates garden leave.

There is an increasing practice for contracts to include 'garden leave' clauses. The extent of their enforceability remains subject to test before Maltese Courts.

### **9. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.**

Although not expressly mandated by law, employers must be able to demonstrate that a fair and just process

was undertaken prior to a dismissal or redundancy. In the case of a redundancy, a form of consultation process is expected. In the case of dismissal, the employee must be informed of the charges raised, and allowed a due process to defend himself, before any decision to terminate is taken.

Employers must also abide by statutory procedures which vary depending on the cause for termination, and this could include procedures relating to prior notice, information and consultation and/or collective redundancies.

All terminations must be registered by the employer with Jobsplus, the Maltese Employment Authority.

### **10. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?**

An aggrieved employee may file a claim before the Industrial Tribunal within four months from termination. There have been cases where the Tribunal awarded compensation to employees when the employer failed to apply due process. However, in recent years, the Court of Appeal has clarified that whilst the Tribunal ought to assess the procedures used, compensation should only be awarded when the dismissal did not constitute a good and sufficient cause, or if the rules on redundancy were breached. A defective procedure alone does not necessarily mean that an employee will be due compensation.

If an employer fails to give the required notice to an employee, the employer shall be liable to pay the employee a sum equal to the full wages that would have been payable in respect of the notice period.

Failure on the part of the employer to abide by certain statutory provisions, including on transfer of business or collective redundancies, may also render the employer guilty of a criminal offence and, on conviction, liable to a fine (*multa*).

### **11. How, if at all, are collective agreements relevant to the termination of employment?**

Under Maltese Law, collective agreements are recognised as binding agreements between the employer, the union, and the employees to which they apply, in so far as they are duly registered. They cannot provide for conditions which are less favourable than the

minimum provided by law.

Such agreements generally regulate, amongst others, employees' terms and conditions of employment and often also prescribe the applicable procedural rules for dismissals, including disciplinary proceedings. The Tribunal and Courts will expect strict compliance with the contractual provisions of a collective agreement.

**12. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?**

Except for information and consultation obligations, and the requirement to inform the authorities in specific cases (such as collective redundancy, transfer of business, or cross-border mergers) there is no obligation to inform or seek permission from third-parties before terminating employment.

Failure to carry out information and consultation procedures and/or notify the authorities (when required) is an offence which may give rise, on conviction, to a fine (multa).

**13. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?**

Workers enjoy protection from discrimination and harassment under Maltese law.

Employers have a duty to take effective measures to prevent all forms of discrimination on the grounds of sex - in particular, harassment and sexual harassment in the workplace. Furthermore, any provisions contrary to the principle of equal treatment in any law, individual or collective contract or contracts, internal rules of undertakings or rules governing any registered organisation in terms of the Act will be considered null and void in terms of these regulations.

Employees are protected from discrimination and harassment throughout the employment cycle, from recruitment stage to termination stage. Discriminatory treatment is broadly defined as any distinction, exclusion or restriction which is not justifiable in a democratic society.

Even if an employer had a good cause for termination,

the termination may still be deemed to be an 'unfair dismissal' if the employee was subjected to discrimination. In addition, the Tribunal/Courts also recognise the right of employees to claim 'constructive dismissal' when the circumstances forced the employee to resign.

The law provides various remedies to an employee who alleges discrimination or harassment. Intervention of the competent authorities may be sought, and the worker may also seek compensation.

**14. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?**

In such cases, an employee may opt to file a claim before the Industrial Tribunal within four months from the termination. An employee claiming discrimination must merely establish a prima facie case sufficient to indicate discriminatory treatment, it is then up to the employer to prove the contrary.

Should an employee succeed in their claim against the employer, the employee would be entitled to monetary compensation. The Industrial Tribunal is not bound by any statutory formula for compensation but must take into consideration the real damages and losses incurred by the employee as well as other circumstances, including the employee's age and skills, as such may affect the employee's employment potential.

The Act also stipulates that an employer who contravenes or fails to comply with any of its provisions or regulations made thereunder shall, on conviction, be liable to a fine (multa) of not less than €232.94 and not exceeding €2,329.37, and further provides that any person who contravenes the provisions against harassment shall be guilty of an offence, and shall be liable on conviction to imprisonment for a term between six months to two years or to a fine (multa) between €5,000 and €10,000, or both. Breaches of SL 452.95 may also give rise to fines not exceeding €2,329.37, imprisonment for up to six months or both.

Such claims may therefore give rise to criminal proceedings directed against anyone who, at the time of the commission of the offence was a director, manager, secretary or other similar officer or was purporting to act in any such capacity. Such person would be deemed guilty of the offence unless it is proven that the offence was committed without such individual's knowledge and that all due diligence was exercised to prevent the commission of the offence. Proceedings for an offence

may be commenced at any time within one year of the commission of the offence.

Depending on the case, employees may also be eligible to seek redress in terms of Chapter 456. Victims of unlawful acts defined under this act may file a complaint with the Commissioner for the promotion of equality, who has the power to investigate and who, upon finding that a complaint is proven, may file a report with the Commissioner of Police for criminal action to commence.

An employee may also file an action requesting the court to order the defendant to desist from unlawful acts and, where applicable, order payment of compensation for such damage suffered. The court must uphold the complaint if the defendant fails to prove that no illegal act was committed.

**15. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

Special categories of workers who enjoy protection include:

- i. Fixed-term workers;
- ii. Temporary Agency Workers;
- iii. Workers who suffered work injuries;
- iv. Persons with a disability;
- v. Workers on (or requesting) family leave (including pregnant, maternity, parental, IVF);
- vi. Union members;
- vii. Employees in the context of a transfer of business;
- viii. Employee Representatives;
- ix. Whistle-blowers.

**16. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

Maltese employment law includes a general protection for employees against victimisation, which is also an offence at law. It is unlawful to victimise any person for having made a complaint to the lawful authorities or for having initiated or participated in proceedings for redress on grounds of alleged breach of the provisions of employment law, or for having disclosed information, confidential or otherwise, to a designated public

regulating body, regarding alleged illegal or corrupt activities being committed by his employer or by persons acting in the employer's name and interests

Maltese law also includes a specific law, Chapter 527, to protect whistle-blowers. In December 2021, this law was amended to transpose Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. The amendments have extended the scope of the Act and introduced new obligations including the requirement for employers having more than 50 employees to roll out an internal reporting channel, have a whistleblowing policy in place and designate a whistleblowing officer.

In terms of law, protection is granted to persons who acquire and disclose information on certain defined breaches in a work related context, this irrespective of the size of the entity and/or whether the entity is in the private or public sector. Protection applies to persons having the status of a worker, including, self-employed persons, contractors, and civil servants, shareholders, persons in management (as well as non-executive members), volunteers and unpaid trainees. Protection may extend to circumstances where the work-based relationship has ended or is yet to begin and protection will also extend to persons who facilitate the report and/or who are connected with the reporting person and could suffer retaliation in a work-related context (such as colleagues and relatives).

Further to the amendments, the conditions required for the protection of a whistleblower have changed. A disclosure made by a whistleblower shall be a protected one where (a) the whistle-blower had reasonable grounds to believe that the information on breaches disclosed was true at the time of the disclosure, (b) that such information fell within the scope of the Act, and (c) the whistle-blower disclosed internally or externally, or made a public disclosure as permitted in terms of law. These conditions must all be satisfied in order for protection to be granted.

The law prohibits detrimental action and occupational detriment against the employee, including dismissal of the employee, and clearly establishes that whistleblowers who make a protected disclosure will not be subject to any civil or criminal proceedings or to a disciplinary proceeding for having made such a disclosure.

A person who believes that detrimental action has been taken or will be taken imminently due to a protected disclosure having been made may apply to the Civil Court for an order to remedy the action or an injunction. The court, pending the final determination, may make an interim order or grant an interim injunction.

Compensation (including moral damages) may also be granted by the court on final determination.

**17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?**

Employers are only required to pay the wages covering the relevant notice period, when applicable. They are not required to pay any severance pay over and above the wages covering the relevant notice period.

In practice, contractual severance pay is sometimes rewarded if the employer gives enhanced payments or wishes to have a settlement agreement signed.

**18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.**

Employers are not prohibited from reaching an agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment. This is done regularly in practice on the strength of a negotiated settlement agreement, or compromise agreement.

The law does not expressly regulate the procedure for settlement agreements to be signed. To mitigate against the risk of contestation, employers are advised to entertain written correspondence which demonstrates that the employee was duly assisted and given sufficient time to evaluate the terms before acceptance.

Such agreements would typically include clauses regulating confidentiality and non-disclosure. These would be subject to the limitations at law, including for instance the limitation arising from the Trade Secrets Act, which provides that the protection afforded to trade secrets cannot be used to infringe on the right to reveal misconduct, wrongdoing or illegal activity to protect the general public interest, or to limit disclosures by a whistle-blower.

**19. Is it possible to restrict a worker from working for competitors after the**

**termination of employment? If yes, describe any relevant requirements or limitations.**

Post-termination restrictive covenants are not expressly regulated under Maltese law.

Over the years Maltese Courts have generally interpreted such clauses restrictively, on occasion declaring them to be unenforceable *fines* and/or clauses of *restraint of trade* which are in breach of *public policy*, in that a former employee cannot be forced to leave the country to be able to pursue his vocation/profession.

Where the Courts indicated a willingness to enforce post-termination restrictions (including non-compete clauses, non-solicitation clauses, and a restriction from working for the employer's clients), the Courts have always emphasised reasonableness, with strict limitation of time and scope, taking into consideration Malta's geographic limitations. To improve the chances of enforceability, restrictive covenants must be in writing, necessary to protect the employer's legitimate interests and must be certain as regards object, time and place and tied to the business/clients with whom the former employee had dealings with during the period of his employment. Compensation payable for said obligations will also significantly improve the chances of enforceability.

**20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

Maltese Courts and Tribunals recognise that during employment employees have an implied duty of confidentiality as well as an implied duty to act in the best interest of the employer.

These obligations are also intended to survive termination of employment but in a limited manner.

Employers typically impose specific obligations in the contract, requiring the employee to retain business information confidential also after the termination of employment, save for any limitations at law.

Employers should implement Non-Disclosure Agreements and establish clear practices promoting confidentiality and secrecy vis-a-vis their secret information which they reasonably deem to constitute Trade Secrets and, impose a duty of secrecy on persons having access, together with strict access rights and controls according to the specific circumstances of the information in question to satisfy the requirements of the

Act.

With certain employees (mainly those having an executive and decision-making function) one may also invoke fiduciary duties regulated by the Maltese Civil Code, in which case the fiduciary is expected to act with utmost good faith, including with an obligation of confidentiality.

**21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?**

Employers are bound to give employees, upon their request, a certificate of service (stating the nature of the work or services performed, the duration of employment and if the employee requests, the reason for termination and rate of wages paid). However, the employer is under no legal obligation to provide departing employees with a reference letter. It is, however, common practice (albeit in decline) for employers to give a reference letter in cases of redundancy.

**22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?**

One could argue that the most common difficulty is the assessment and determination on the part of the employer as to whether the reason/s for dismissing an employee amount to a “good and sufficient cause” in the eyes of the law.

Employers are often too quick to resolve that a sufficient reason to terminate exists. However, in employment the situation is seldom black or white and therefore an objective approach is crucial.

The decision to terminate should never be rushed and a second opinion is often key. Advance planning is also important especially when dealing with restructuring entailing redundancies or a transfer of business.

**23. Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?**

At the time of drafting there are no announced legal changes which are likely to impact the way employers in Malta approach termination of employment.

We are aware of lobbying efforts geared towards the introduction of private arbitration to resolve employment disputes. However, this has not reached the legislative stage as yet.

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