

# DEPARTMENT OF INDUSTRIAL & EMPLOYMENT RELATIONS

## INTRODUCTION

### Mission Statement

The mission statement of the Department of Industrial and Employment Relations is “to protect the interests of workers holding employment contracts while, in a spirit of social partnership, actively promoting a healthy relationship, and to contribute towards stable industrial relations”.

### Functions

The principal functions of the Department of Industrial and Employment Relations are:-

- Providing effective machinery for the establishment of standard conditions of employment, in consultation with the social partners, and their eventual promulgation as legal instruments;
- Providing the necessary monitoring and enforcement of employment conditions as established by law;
- Regulating employment contracts in an equitable manner so as to ensure that rights and obligations pertaining to each party in the contract are observed;
- Protecting workers whose employment relationship has been terminated by an employer;
- Eliminating discriminatory practices;
- Providing support services to the Industrial Tribunal, National Employment Authority, Guarantee Fund Administration Board and Employment Relations Board;
- Providing effective mediation and conciliation in order to reduce industrial actions and trade disputes;
- Promoting good relationship between employers’ and workers’ representatives.

### Department Structure

In December 2002, Parliament approved the Employment and Industrial Relations Act, Cap 452 of the Laws of Malta, which set out the framework for the adoption of the EU Labour Acquis and the responsibilities of the Director responsible for the implementation and enforcement of the Act and subsidiary legislation. The Director has overall responsibility for the operations carried out by the Department.

These activities are carried out by the following Units: -

- a) Director's Office, with a complement of one officer, responsible for the:-
- strategic overview of the Department's operations;
  - proper functioning of the three divisions of the Department;
  - registration of trade unions;
  - provision of the machinery for the voluntary settlement of trade disputes in terms of the Act and promoting such settlement;
  - preparation of draft employment legislation.
- b) International Affairs and Research Branch, falling under the responsibility of an Assistant Director with a complement of five officers, allowing the Department to fulfil its role as the National Focal Point on issues relating to Industrial and Employment Relations. This Branch is divided into two sections:
- i. International Relations Section whose tasks are mainly to:
    - coordinate closely with local associations or organisations which have a role to fulfil in protecting the interests of parties engaged under an employment contract;
    - maintain contacts at the technical level with Governments and other international bodies including the EU and I.L.O.
  - ii. Research Unit having responsibility for Library and Archives, Labour Research, Registration of Trade Unions and Employment Agencies. Particular research projects undertaken by this section during 2011 include a study on false self-employment.
- c) Enforcement Branch, falling under the responsibility of an Assistant Director and two Managers, carrying out the core inspection functions of the Department. This Branch is staffed by officers working in the Terminations, Inspectorate and Customer Care Sections. Besides the managerial staff there are presently two officers in the Terminations Section, three officers in the Inspectorate Section and five officers carrying out Customer Care duties. Additionally three Registry officers and one Junior Legal Officer serve both sections. Two of these officers are on reduced hours whereas one is due to retire in September 2012.
- i. The Terminations Section processes queries and investigates complaints of clients, primarily related to employees whose employment has been terminated, whether of their own accord or by the employer. The Terminations Section is also responsible for referral of cases to the Law Courts.
  - ii. The Inspectorate Section is responsible for monitoring conditions of employment and processing complaints of workers who are still in employment. This involves an ongoing programme of inspections to target particular sectors or to investigate specific complaints. Complaints can be received directly from the person concerned, through correspondence, email or even anonymously.
  - iii. The Customer Care Section handles all queries received by e-mail, through telephone calls and in person relating to employment conditions. It is the first point of reference for the general public in seeking information on employment relations. If a certain query gives rise to further investigation it is hence referred to either the Inspectorate or Termination Sections.

- d) Administrative Branch, falling under the responsibility of an Assistant Director with a total complement of thirteen personnel including six minor staff, three officers overseeing all operating and/or administrative functions of the Industrial Tribunal and two officers providing administrative support services to the Department including the administration of the department's budget, revenue and expenditure, issuance and adjustment of salaries, issuance of honoraria payments to ERB members and Tribunal Chairpersons, administration of PMPs, progressions, allowances, Engine Driver licenses, the departmental inventory, supplies' stores etc.

During 2011, this Branch through its Green Leader also oversaw environmental issues and promoted eco-friendly measures within the DIER. Similar to previous years measures such as the use of energy-saving lighting, separation within offices of waste material and recycling of paper were implemented. With regard to Health & Safety in March this Branch organised information sessions for all DIER concerning fire safety and prevention issues and on the use of fire fighting equipment. Other tasks taken up by this Branch include the implementation of the Freedom of Information Act and Directives arising from the Public Administration Act.

## Human Resources Issues

In 2011 a Junior Legal Officer and a Clerk were engaged by the DIER whilst another Senior Clerk resumed duties following a career break. The same Junior Legal Officer however later on opted to be transferred from this Department whilst three other officers in the grades of Principal, Senior Clerk and Casual Substitute Clerk left their employment due to resignation, retirement and termination of contract respectively. This means that similar to previous years, during 2011 the staff complement of the DIER continued shrinking to the detriment of its general operations especially within its Enforcement Branch where most of the outgoing officers performed duties relating to the most essential enforcement function. In fact, at present only three officers are serving s EIRA Inspectors. This shortfall in personnel however should not be analysed on its own. Valuable officers have been leaving the DIER since 2008 without any replacements being forthcoming. This means that the DIER presently has ten pending requests for officers in the grade of Principal most of whom are replacements for outgoing staff. All such requests have already been communicated to the Public Administration HR Office and indicated in the Capacity Building exercise.

During the period under review, staff from within the Department attended various courses organised by the Centre for Development of Research and Training. Such courses were especially related to Information Technology, office procedures, customer care etc.

## **ACHIEVEMENTS**

### **Employment Relations**

#### ***Inspectorate Section***

The Inspectorate Section carried out 902 inspections throughout the year covering 24,361 employees out of whom 2,027 were interviewed. During such inspections a total of 244 irregularities were observed.

Officials within this section dealt with an average of 16,205 enquiries regarding conditions of employment – both on the phone and through personal visits at the Office. Another 908 e-mails requesting information were received and answered with immediate effect. In most cases concerning outstanding dues and other irregularities in connection with contract of employment, rectification was effected through the Section Officers' direct efforts. Other cases were followed up through court action. In this regard a total of 41 monetary claims, amounting to €150,232.77 were issued whilst 380 cases each possibly including a number of irregularities were settled and another 26 unresolved cases were referred for legal action consideration.

The Inspectorate Section also processes Posted Workers Notifications; during 2011 a total of 1,298 notifications were received.

#### ***Terminations Section***

Throughout the year, officials in the Terminations Section served a total of 351 claims against employers in Malta. The total amount for such claims amounted to €505,434.48. During the period under review 143 cases amounting to € 154,112.09 were amicably settled out of Court, as a result of the direct efforts of officers within this Section. A positive outcome in court action during 2011 resulted in the collection of €204,385.50, however these monies do not necessarily represent claims that originated in 2011.

Another 25 cases, amounting to €32,181.96 were closed on request of the claimant.

A total of (213) requests were made to the police for prosecution whilst court hearings in Malta totalled 32

Nine appeals against Court judgements were made throughout 2011.

#### ***Employment Agencies***

The number of Licensed Employment Agencies at the end of December 2011 was 60.

During the period under review, 54 Employment Agencies renewed their licence. Six new Employment Agencies were granted a licence to operate as such while five Employment Agencies had their licence withdrawn.

The total amount received as License fees amounted to € 21,314.01.

The section also co-ordinated closely with local newspapers who publish advertisements for the recruitment of personnel, by providing them with an updated list of Licensed Employment Agencies who are permitted to place advertisements on behalf of their clients for the recruitment of personnel. This initiative hinders unlicensed organisations from placing newspaper adverts for recruitment and assists them seeking formal registration.

### **Employment Relations Board**

The Employment and Industrial Relations Act provides for the setting up of the Employment Relations Board. During 2011 the Board held seven meetings and discussed various issues relating to employment and labour conditions such as maternity leave, transfer of businesses, European Works Councils, Guarantee Fund, Dependent Self-Employed and Banking of Hours.

During these Board Meetings various draft Legal Notices prepared by the Department's officers and forwarded to the Board by the Parliamentary Secretary responsible for industrial and employment relations were also discussed and forwarded to the Prime Minister for his consideration.

Following this consultation process, the following thirteen Legal Notices were published:-

Transfer of Business (Protection of Employment) (Amendment) Regulations, 2011 (L.N. 129 of 2011)

Protection of Maternity (Employment) (Amendment) Regulations, 2011 (L.N. 130 of 2011)

Parental Leave Entitlement (Amendment) Regulations, 2011 (L.N. 204 of 2011)

Posting of Workers in Malta (Amendment) Regulations, 2011 (L.N. 205 of 2011)

European Works Council (Further Provisions) Regulations, 2011 (L.N. 217 of 2011)

European Works Council (Amendment) Regulations, 2011 (L.N. 218 of 2011)

Transfer of Business (Protection of Employment) (Amendment) (No.2) Regulations 2011 (L.N. 443 of 2011)

Equal Treatment in Employment (Amendment) Regulations, 2011 (L.N. 444 of 2011)

Guarantee Fund (Amendment) Regulations, 2011 (L.N. 445 of 2011)

Wage Increase (Employees) National Standard Order, 2011 (L.N. 501 of 2011)

National Minimum Wage National Standard Order, 2011 (L.N. 502 of 2011)

Protection of Maternity (Employment) (Amendment) (No. 2) Regulations, 2011 (L.N.503 of 2011)

Domestic Service Wages Council Wage Regulation Order (Amendment) Order, 2011 (L.N 504 of 2011)

## **Industrial Relations**

### ***Conciliations and the Settlement of Trade Disputes***

The Department always strives to take an increasingly more proactive approach towards the settlement of trade disputes to the mutual satisfaction of both the Enterprise and the Union involved. This mediation in the field of industrial unrest has largely contributed towards an increasingly stable industrial climate, avoiding strikes and other costly forms of litigation. The Department intervened on 78 occasions throughout the year. Agreement was successfully reached in 68 cases, two cases were referred to the Industrial Tribunal while such agreement failed to be reached in only eight cases.

### ***Industrial Tribunal***

The Industrial Tribunal is an independent tribunal, set up in terms of the Employment and Industrial Relations Act and has a variable composition established by the law, depending on the nature of the case. This is either of a Chairperson [who is selected by rotation from a panel of Chairpersons] alone, or a Chairperson and two members, one selected from a panel of persons representing employers' interests, and the other from a panel of persons representing the trade unions. The Industrial Tribunal hears and decides trade disputes referred to it by the Minister responsible for employment and industrial relations, at the request of either one, or both of the parties involved in a dispute. It also hears cases of alleged unfair dismissal, discrimination, harassment and different remuneration for work of equal value. Sessions of the Industrial Tribunal are held at the Courts of Law.

The Department provides administrative support services for the Industrial Tribunal, to ensure its proper functioning.

Throughout 2011, 89 new cases of alleged unfair dismissals and 19 other cases of alleged discrimination/harassment/victimisation were received. Eleven cases of trade disputes were also introduced.

The Industrial Tribunal disposed of 88 cases of alleged unfair dismissals, six cases of alleged discrimination/harassment/victimisation and seven cases referring to a Trade Dispute. The Industrial Tribunal also disposed of another case introduced in terms of other provisions of the Employment and Industrial Relations Act.

There were 541 pending cases on 31<sup>st</sup> December 2011 of which 473 refer to alleged unfair dismissal.

### ***Industrial Actions***

During 2011, 3 strikes were recorded involving around 1323 workers and resulting in around 606 man days were lost. Another industrial action involved a lock-out which affected 800 employees.

### ***Collective Agreements***

Article 5(2) of the Employment and Industrial Relations Act states that where conditions of employment are prescribed in a collective agreement, the employer is obliged to send to the Director of Industrial and Employment Relations an authenticated copy of said agreement, within fifteen days of signing. In

accordance with this article, the following agreements between industrial establishments and trade unions were registered at the Department during 2011: -

Type of Agreement	Qty
New Collective Agreements	5
Renewals/Extensions	17
Side Agreements/Addendums	2
Amendments	Nil

Table 1: Number of Agreements between industrial establishments and trade unions registered at the DIER in 2011

### **Registrar of Trade Unions**

On 1<sup>st</sup> January 2011, there were 32 registered trade unions and 19 employers' associations.

During this period no Trade Unions or Employers Associations were registered and only one Trade Union was cancelled.

Thus, on 31<sup>st</sup> December 2011 the Register of Trade Unions was composed of 31 trade unions and 19 employers' associations. Twelve verification exercises for union recognition were also carried out.

## **OTHER ACTIVITIES**

### **Participation in Seminars, Conferences & Working Party Meetings Abroad**

Between 1<sup>st</sup> and 17<sup>th</sup> June 2011, the Director led a tripartite delegation at the 100th Session of the I.L.O. Conference in Geneva. The Parliamentary Secretary for Consumers, Fair Competition, Local Councils and Public Dialogue attended and addressed this Conference. The Maltese delegation included a number of high-ranking officials from Trade Unions and Employers' Associations. As required by the I.L.O. Constitution, the Department paid the travel and accommodation expenses for two workers' representatives and two employers' representatives to attend the Conference. The issues considered at this Conference included discussions on decent work for domestic workers, labour inspection systems and on the strategic objective of social protection (social security). During the Conference, a Convention and a Recommendation on decent work for domestic workers were adopted.

Prior to the I.L.O. Conference, an official of the Department attended an EU Member States expert meeting in Brussels dedicated to prepare for the International Labour Conference to discuss EU member states common positions on issues being discussed at the Conference etc.

The DG for Employment, Social Affairs and Equal Opportunities of the European Union organized two meetings for Directors General responsible for Industrial Relations. These two meetings were held in Warsaw and Copenhagen and were attended by DIER officials. During these meetings participants shared information on recent developments regarding industrial relations in Member States. Discussions were also held on the Posting of Workers and Working Time Directives, Temporary Agency Workers, Single Open Ended Contracts and Transnational Collective Agreements.

The Director and Assistant Director attended a European Labour Forum on the role of labour administration in overcoming the economic crises. This forum was organised by the International Training Center of the ILO. They also attended the 4<sup>th</sup> Annual Legal Seminar organised by the European Network of Legal Experts. The theme of this seminar was "Protection Against Dismissal in Europe – Basic Features and Current Trends". They also attended the Industrial Relations in Europe Conference which the European Commission organises every two years. This Conference provided an overview of industrial relations developments in Europe in the last two years.

The Director also attended a Conference on Inequalities in the World of Work: The Effects of the Crisis. This Conference, which was organised by the ILO in cooperation with the European Commission dealt with work inequalities in a multi-dimensional fashion and looked at the effects of the crisis in different and complementary areas such as employment, wages and incomes, working conditions and social dialogue.

Officials of the Department attended the following Expert Meetings organized by the Directorate General for Employment, Social Affairs and Inclusion:

#### *Two meetings of the Expert Group on Transnational Company Agreements:*

During these meetings, the latest developments on the implementation of transnational company agreements were discussed together with the legal effects of transnational company agreements. During the sixth and final meeting of this Expert Group the draft report on the workings of the Expert group and its conclusions were discussed.

#### *Two meetings of the Working Group on Information and Consultation of Workers:*

The Commission has started to review three EU Directives on information and consultation of employees through "fitness checks" in order to keep current regulation "fit for the purpose". The goal is to identify excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared

over time. The purpose of the fitness check is not deregulation but rather better regulation and making EU legislation more responsive to current and future challenges. The role of the Working Group is to bring out the different national experiences as regards the implementation of these directives, present relevant research and findings in this area and be actively involved in the “fitness check” exercise.

*Meeting of the Expert Group on the transposition of Directive 2008/104/EC on Temporary Agency Work:*

During this final meeting, the state of transposition of this Directive in Member States was discussed. Information on rulings of the European Court of Justice on the subject were also disseminated.

*Two meetings of the Committee of Experts on Posting of Workers:*

The meetings mainly dealt with the presentation of several recent studies carried out in the field of posting of workers and the final results of the studies launched by the Commission in 2010 on the comparative legal aspects and economic and social effects associated with posting of workers. The preliminary results of the Impact Assessment study and the Complementary Legal Study were also discussed.

*Meeting of the Technical Committee on Free Movement of Workers:*

The objective of this Committee is to assist the European Commission to prepare, promote and follow up technical work and measures for giving effect to Regulation 1612/68, which deals with matters concerning freedom of movement for workers within the Union. During the meeting, the results of a questionnaire sent to Member States on the measures implemented regarding frontier workers were discussed. The law concerning free movement of workers and social security was also assessed.

*Meeting of the Advisory Committee on Free Movement of Workers:*

The objective of this Committee is to assist the European Commission in the examination of any questions arising from the application of the Treaty and measures taken in pursuance thereof, in matters concerning freedom of movement for workers within the Union. During the meeting, the possibility of an assessment to determine whether more initiatives are to be undertaken to enhance the right of free movement, possibly through better enforcement of existing regulations was discussed.

Also during 2011 DIER representatives attended three meetings of the High Level Group of National Representatives on Corporate Social Responsibility. On 25<sup>th</sup> October 2011, the European Commission published a new communication *A Renewed CSR Strategy 2011-14 for Corporate Social Responsibility*. Two meetings, one in January and the other in May, dealt amongst other issues with the communication, whilst another meeting in November was principally characterised with reactions to the new communication.

## **Guarantee Fund Administration Board**

The Employment and Industrial Relations Act (Cap. 452) and the Guarantee Fund Regulations (L.N. 432 of 2002 as amended by L.N. 444 of 2004, 413 of 2005, 427 of 2007 and 445 of 2011) provides for the setting up of the Guarantee Fund Administration Board. This Board is composed of the Director of Industrial and Employment Relations who acts as Chairperson, four representatives of employees and four representatives of employers who are appointed on the Employment Relations Board, a member nominated by the Minister of Finance, the Chairperson of the Employment and Training Corporation and a person appointed by the Minister who shall be a member of the legal profession. The Guarantee Fund is endowed with a fund to be utilized, at the Administration Board’s discretion, to guarantee payment of valid claims for employees’ outstanding wages when the Administration Board is satisfied that the employer has become insolvent.

During 2011, 2 sittings of the Administration Board were held in which 52 claims were processed and the sum of €4,4677.96 were paid out of the Fund. In accordance to Regulation 6(7) of the Guarantee Fund Regulations, an audit exercise by a qualified auditor was undertaken to review the Board's financial statements for 2010. To date the balance of this fund stands at €477,882.80.

### **Informational Leaflets**

In December 2011, the DIER undertook from its budgetary savings to publish eight different sets of informational leaflets on different aspects of employment, namely Hours of Work, Leave, Maternity Leave, Fixed-Term Contracts, Telework, Part-Time Employment, Young Persons in Employment and Termination of Employment.

### **Self-Employed (Loan) Scheme**

The process of recouping funds from persons who had applied for, and benefited from, the Self-Employed Loan Scheme was continued. For the year under review €4,208.93 were recovered. In December 2011 judicial letters as per Article 466 of the Code of Organisation and Civil Procedure were sent to all defaulters who fell back on their payment of instalments of said loan scheme.

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