

Ministry for Social Policy



DEPARTMENT OF INDUSTRIAL AND 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, Wages Council, 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 fulfill 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 fulfill 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 Section having responsibility for Library and Archives, Labour Research and Registration of Trade Unions.
- c) **Enforcement and Employment Agencies 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 inspectors working in two sections: the Terminations and Inspectorate Sections. 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. 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 or email or even anonymously. There are five officers in the Terminations Section and twelve officers in the Inspectorate Section.
- d) **Administrative Branch**, with a total complement of sixteen personnel including ten minor staff under the direction of an Assistant Director provides administrative support services to the Department and the Industrial Tribunal. Such services entail 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, the departmental inventory, supplies' stores etc. During 2008, a Green

Leader was also appointed to oversee environmental issues and promote eco-friendly procedures within the DIER. Besides other measures, eco-friendly initiatives undertaken included the further use of energy-saving lighting, separation within offices of waste material, recycling of paper etc.

HUMAN RESOURCES ISSUES

During 2008, the DIER experienced a substantial reduction in its workforce in view of resignations, retirements or transfers to other departments. A total of ten officers in fact, including two Principals, two Executive Officers, one Junior Legal Officer, three Clerks and two Casual Substitute Clerks left the DIER. To compensate for this depletion only three officers (one Senior Principal and two Clerks) were transferred to the DIER whilst a new Legal Officer was recruited to replace the outgoing Junior Legal Officer but only took up duties as from 2nd January 2009. In the meantime, requests have been lodged by the Department for the provision of four personnel to serve as direct replacements for the outgoing officers. The replacements required include two Principals, an Employment Relations Officer and a Clerk. The DIER is also working closely with MSOC for the issuance as soon as possible in 2009 of a Call for Application for an Assistant Director at the Enforcement Unit. This Call referring to a post vacated in early 2007 has already been issued twice, on the first occasion, no candidate was found suitable whilst on the second officers chosen took up posts elsewhere.

During the period under review, members of this Department's staff attended various courses organised by the Staff Development Organisation. These included Information Technology, Employment & Social Policy and Training for Messengers courses.

Achievements

EMPLOYMENT RELATIONS

Inspectorate Section

The Inspectorate Unit carried out 1,304 inspections throughout the year covering about 35,332 employees, out of whom 3,061 were interviewed.

Seven hundred and thirty-seven irregularities were observed, issuing 126 claims amounting to €22,809.58. On the other hand a total of 125 cases were settled whilst 20 unresolved cases were referred for legal action consideration.

Officials in this section dealt with an average of 25,681 enquiries regarding conditions of employment – both on the phone and through personal visits at the Office. Another 464 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.

The Inspectorate Section also processes Posted Workers Notifications; during 2008 a total of 452 notifications were received.

Terminations Section

Throughout the year, officials in the Enforcement Unit served a total of 357 claims against employers in Malta covering 365 claimants. The total amount for such claims amounted to €93,185.041. Of these, 149

cases amounting to €143,589.13 were amicably settled out of Court, as a result of the direct efforts of the officers of the Enforcement Section. €125,647.82 were collected through Court intervention.

Two hundred and sixty-six (266) requests were made to the police for prosecution. Court hearings in Malta totalled 414 cases.

Five appeals against Court judgements were made throughout the year 2008.

Employment Agencies

The number of Licensed Employment Agencies at the end of December 2008 was 52.

During the period under review, 49 Employment Agencies renewed their licence. Three new Employment Agencies were granted a licence to operate as such while two Employment Agencies had their licence withdrawn.

The total amount received as License fees amounted to €18,169.32.

The section also vetted 258 advertisements placed by the Licensed Employment Agencies in the local press as job vacancies.

Employment Relations Board

The Employment and Industrial Relations Act provides for the setting up of the Employment Relations Board. During 2008, the Board held six meetings and discussed various issues relating to employment and labour conditions such as part-time work, fixed-term work, equal treatment in employment and telework.

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

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

LN 137 of 2008 – Equal Treatment in Employment (Amendment) Regulations, 2008

LN 165 of 2008 – Employee Involvement (Cross-Border Mergers of limited Liability Companies) Regulations, 2008

LN 239 of 2008 – Contracts of Service for a Fixed Term (Amendment) Regulations, 2008

LN 240 of 2008 – Part-time Employees (Amendment) Regulations, 2008

LN 312 of 2008 – Telework National Standard Order, 2008

LN 339 of 2008 – National Minimum Wage National Standard Order, 2008

LN 340 of 2008 – Wage Increase (Employees) National Standard Order, 2008.

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 62 occasions throughout the year. Agreement was successfully reached in 54 cases while such agreement failed to be reached in only seven cases. Another case was referred to the Industrial Tribunal.

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 2008, 84 new cases of alleged unfair dismissals and five other cases of alleged discrimination/harassment/victimisation were received. Four cases of trade disputes were also introduced.

The Industrial Tribunal disposed of 57 cases of alleged unfair dismissals, one case of alleged discrimination/harassment/victimisation and one case referring to a Trade Dispute. The Industrial Tribunal also disposed of two cases introduced in terms of other provisions of the Employment and Industrial Relations Act.

There were 529 pending cases on 31st December 2008 of which 478 refer to alleged unfair dismissal.

Industrial Actions

During the year 2007, four strikes were ordered involving 1522 workers. Strike action resulted in around 1771 man-days being lost.

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 2008: -

| | |
|---------------------------|-----|
| New Collective Agreements | 14 |
| Renewals/Extensions | 24 |
| Side Agreements/Addendums | 3 |
| Amendments | nil |

Eighteen verification exercises for union recognition were carried out of which 11 were conducted through interviews by inspectors.

Registrar of Trade Unions

On 1st January 2008, there were 30 registered trade unions and 17 employers' associations.

One (1) Trade Union – The Middle Sea Insurance Staff Union – was cancelled in July of the year under review.

On the other hand, the *Ghaqda Xufiera tal-Coaches* and the Union Technical and Clerical (UTAC) MEPA applied for registration as Trade Unions, and were as such recognised by the Registrar. No new Employers Associations were created.

As a result, on 31st December 2008 the Register of Trade Unions was composed of 31 trade unions and 17 employers' associations.

Other Activities

Twinning Light Project

During 2008 the DIER was involved in the implementation of a 7-month Twinning Light project in partnership with the Education, Training and Employment of the Regional Government Authority of Tuscany (Tuscany Region) Italy. This project enabled DIER personnel to receive training on various areas of EU Labour Law and to learn from the Twinning Partners' experience on practical problems in implementing EU Directives. As a result the DIER is now in a better position to implement, monitor and enforce the transposed EU labour legislation while having its conciliation (Industrial Relations) function strengthened.

The project was mainly divided in three parts.

In-House Training – comprising a series of training sessions held at the DIER premises exclusively for DIER staff and delivered by selected experts from the Region of Tuscany. The following topics were discussed:

- Posted Workers Directive

- European Company, Information and Consultation and European Works Council Directives
- Protection of Employees from Insolvency Directive
- Disputes Resolution Mechanisms
- Temporary Workers and Employment Agencies
- Strategic Goals and administrative experience of competent authorities
- Equal Treatment
- Union Recognition / Registration

Study Visits – Such visits served to complement the In-House Training; officers from the Department visited counterpart offices in the Tuscany Region with the aim to gain first hand experience on practice and problems encountered in the implementation of various directives. The topics covered during these visits were identical to those covered in the In-House Training.

Seminars – comprising a total of seven sessions open to DIER staff and all stakeholders involved in employment and industrial relations. Such seminars each organized over a 3 day period were held away from the Department's premises and overall enabled key players within the employment and industrial relations field to gain more insight on novel aspects of EU Labour Legislation. The following topics were discussed during these seminars:

- Work-life Balance (Equal Treatment and Maternity)
- Discrimination (Part-Time, Fixed Term, Posting of Workers)
- Employee Protection (Collective Redundancies, Transfer of Business, Protection from Insolvency)
- Information (European Works Council, SE Directive, Information and Consultation)
- Increasing awareness of EU Labour Legislation (Impact of EU Labour Law on national law)
- Increasing awareness of EU Labour Legislation (Impact of ECJ rulings on interpretation of EU Directives)
- Pitfalls and Problems in Collective Bargaining

The programme also served to provide knowledge for two DIER officials in the dynamics of setting up and managing a Research Unit. This Unit is now functioning within the DIER and has responsibility for supplying the required data for decision making. Two officers from the DIER attended a study visit in Tuscany for this purpose.

Participation in Seminars, Conferences & Working Party Meetings Abroad

Department officials attended several conferences organised by various bodies, including the European Union and the International Labour Organisation, as follows:-

Between the 28th May 2008 and the 13th June 2008, the Director, Industrial & Employment Relations led a tripartite delegation at the 97th Session of the I.L.O. Conference in Geneva. The Minister for Social Policy 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 skills for improved productivity, employment growth and development and the strengthening of the I.L.O. capacity to assist its Member states' efforts to reach its objectives in the context of globalization.

Prior to the I.L.O. Conference cited above, an official of the Department attended an EU Member States expert meeting in Brussels dedicated to prepare for the International Labour Conference as regards EU coordination meetings, 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 Commission organized two meetings for Directors General responsible for Industrial Relations. These two meetings were held in Paris and Prague and were attended by the Director. During these meetings participants shared information on recent developments regarding industrial relations in Member States. Discussions were also held on the review of Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees and on the role of transnational company agreements in the context of increasing international integration.

The Director accompanied the Minister of Social Policy for an EPSCO meeting in Luxembourg where employment, social affairs and health items were discussed.

The Director also accompanied the Parliamentary Secretary for Health within the Ministry for Social Policy for the EPSCO meeting in Brussels where amongst other issues, possible amendments to the Working Time Directive were discussed. Other issues which were discussed were the Recasting of the European Works Council Directive and the Proposal for a directive on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast-feeding.

The Director, as the Maltese Government member on the Governing Board of the European Foundation for the Improvement of Living and Working Conditions attended the 79th Meeting of the Governing Board, which was held in Dublin.

An official of the Department attended an Expert Meeting concerning Directive 2001/86/EC (Employees' Involvement in the European Company) organized by DG Employment, Social Affairs and Equal Opportunities. During this meeting the Commission gave presentations on the implementation of this Directive and on relevant facts and data concerning the European Companies established so far. On the other hand participants commented on the implementation of the Directive in their respective Member States and discussed the Member States replies to the questionnaire sent by the Commission.

An official of the Department attended an Expert Meeting concerning the application of Directive 96/71/EC on the Posting of Workers in the Framework of the Provision of Services, organized by DG Employment, Social Affairs and Equal Opportunities. During this meeting the Commission Recommendation on the enhanced administrative cooperation between the Member States' Competent Authorities was discussed.

Two officials attended two meetings of the High-Level Group of National Representatives on Corporate Social Responsibility organized by DG Employment, Social Affairs and Equal Opportunities. During these meetings participants were updated by the Commission on developments regarding CSR and exchanges between participants regarding CSR national policies were affected.

An official attended a meeting of National Experts on the use of notification data in the Collective Redundancies Directive organized by the European Foundation for the Improvement of Living and Working Conditions. During this meeting the Foundation gave a presentation of its understanding of the potential of the notification data in various Member States. Participants gave feedback on this presentation and discussed the situation in Member States. Participants also discussed the setting up of reporting procedures.

In addition to the above-mentioned meetings, during 2008, officials from the DIER attended various Conferences/Seminars both locally and abroad.

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 and 413 of 2005) 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. To date, the balance of this fund stands at €546,527.37

During 2008, no claims were received by the Board. 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.

Newsletter

During 2008 a special edition of the newsletter, "I Review" was published. This issue apart from including routine articles written by DIER staff on matters related to industrial and employment relations also included details on the themes that were going to be discussed in seminars organised for DIER staff and stakeholders as part of the Twinning Light project with *Regione Toscana* of Italy.

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 €7,159.23 were recovered. Warning letters are regularly issued to defaulters who fall back on their payment of instalments of said loan scheme.

DR. N. VELLA
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