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Editorial Note

We are pleased to publish the third issue of I Review, our electronic newsletter dealing with current industrial and employment issues in Malta and abroad.

May we take the opportunity to inform you that we have just uploaded in our website www.industrialrelations.gov.mt a Frequently Asked Questions section where one can find useful and practical information on Maltese labour law.

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Wage Regulation Orders

The Conditions of Employment (Regulations) Act [CERA], was an enabling Act which allowed the Minister to establish wages councils when it was considered that there was no adequate machinery for the effective regulation of conditions of employment in a particular sector. This was composed of up to three persons representing employers, up to three persons representing employees in that sector and up to three independent persons, one of whom was appointed Chairman. The Council's function was to tender advice to the Minister and to submit proposals for the regulation of the conditions of employment of employees within a particular sector. Of interest is the requirement that the Council was obliged to publish a notice of its proposals in the Government Gazette, giving a period of at least twenty-one days within which written representations were to be made to the Council. This consultative process had to take place before the Council could submit its proposals to the Minister.

With the repeal of CERA on the entry into force of the Employment and Industrial Relations Act [EIRA], thirty-one Wage Regulation Orders which were in force under CERA were kept, and remain in force to date in terms of EIRA. Of these, the WRO which was enacted earliest is the Public Transport WRO, LN 34 of 1969, whilst the last WRO which was published is the Private Cleaning Services WRO, LN 15 of 2001. Whilst there is no provision in EIRA for the setting up of Wages Councils, EIRA provided for the establishment of the Employment Relations Board, a tripartite body with the function to make recommendations to the Minister on National Standard Orders sectoral regulation orders and to tender advice on conditions of employment to the Minister. Thus the functions of the Wages Councils have been passed on to the Employment Relations Board.

WROs still provide the minimum conditions of employment of employees to which they apply and regulate:

• various leave entitlements [sick, bereavement, paternity, jury],

• issues relating to remuneration [weekly wage in relation to hours of work, minimum wages for part-time employees, overtime rates]

• daily and weekly rest provisions.

Dr. Noel Vella
Director

The accent on these statutory entitlements is that they are minimum requirements, and nothing stops the granting of better conditions of employment, whether agreed collectively through a collective agreement or through an individual contract. It is also pertinent to point out that the minimum wages established in the various WROs are automatically updated every year by the addition of COLA as established by the relevant Wage Increase (Employees) National Standard Order.

Conditions of employment, as regulated by the WROs, vary considerably in the minimum entitlements they confer. This is in fact one of the criticisms often leveled

"…. a review of the Wage Regulation Orders is due, in part to ensure that laws made ten or twenty years ago are still adequate and relevant today.

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New impetus to Social Dialogue at enterprise level

Mr. Ian Meli
Employment Relations Officer

Many organisations are facing the implications of continuous change driven by a complex combination of political, economic, social and technological factors. Their ability to manage change will be fundamental to growth or survival, especially in the face of globalisation. Legal Notice 10 of 2006 Employee (Information and Consultation) regulations, published on the 13th January 2006 is a breakthrough in Maltese employment relations. It supports organisations in developing a suitable system for partnership style problem solving, organisational learning and co-operation. Pre-empting risks, seeking new opportunities, product innovation and managing change are today's necessary ingredients to keep up competitive advantage.

Directive 2002/14/EC of the European Parliament establishes a general framework of informing and consulting with employees. Its roots lie deep in the European Union's drive for a greater competitive advantage based on maximisation of the human resource potential whilst promoting the concept of social dialogue. The Directive has been funnelled from the rights given to employees to be informed and consulted, by the Community Charter of the Fundamental Social Rights for Workers of 1989, the European Social Charter and the Treaty establishing the European Communities. Article 27 of the Charter of Fundamental Rights of the European Union reinforces the right and levels the workers' right to information and consultation a fundamental right at par with the rights to collective bargaining, fair and just working conditions and protection in the event of unjustified dismissal.

The Directive attempts to provide a framework for improved social dialogue at enterprise level in the European Union. It has a major impact on Malta since it pushes the system away from the voluntarist tradition of trade union membership, collective bargaining and the support role offered by the government. The directive acknowledges the culture of labour relations of the particular countries, the role of trade unions and union representatives in the information and consultation process. It adds a new dimension to the present culture by requiring elected representatives in the information and consultation process, to represent unrepresented employees.

Main points of the legal notice

Potential representatives are nominated to stand for election. Employees whose probation period has expired prior to the day of ballot are allowed to be nominated. Only one representative may be elected for each unrepresented category. The procedure by which the balloting will be held is to be sent at least one month in advance to the Director of Industrial and Employment Relations.

If only one employee is nominated for a particular category, the nominee is automatically appointed as representative without the need for an election for that category. The ballot must be fair and secret. All employees are to be informed in writing about the elected or appointed representative/s. Following which the first meeting should be held within two months from the date of election/ appointment. Information and consultation meetings should be held with the information and consultation representatives on a regular basis but not longer than 6 months from the preceding meeting.

> The Directive attempts to provide a framework for improved social dialogue at enterprise level in the European Union.

The process of information entails that the representatives are informed regularly about the recent and probable development of the undertaking's activities and economic situation. The information should be given to the representatives sufficiently before the consultation meetings to allow enough time to study and prepare for the consultation.

Benefits

The consultation process provides a platform for discussion between management and representatives about probable development of employment, measures where there is a threat to employment and decisions which may lead to changes in work organisation or in contractual relations.

The Legal Notice offers a challenge to all the stakeholders while offering the opportunity to cultivate partnership-style advancement of their enterprise. Traditionally management seldom consult with employees before taking decisions. Few employees are informed when changes occur and even fewer are given any reasons for the changes.

This law sets up a working link between the employer and the employees to improve the organisational performance through employee involvement. The EU Directive is very clear and acknowledges its intention to:

strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organisation more flexible and facilitate employee access to training make employees more aware of adaptation needs promote employee involvement in the operation and future of the undertaking and increase its competitiveness.

Several studies show that the process

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Money Vs Social Responsibility — Who Wins?

Mr. Roderick Mizzi
Manager (Research Unit)

In this age of significant technological advancement we are moving towards a knowledge society. Technology is fuelling corporate expansion, leading corporations to win more influence on the society. This trend is complemented by the shrinking government influence, whereby governments are sharing some of their responsibilities with the private sector. Technological advancement has established knowledge as a key resource. Due to the characteristics of knowledge, particularly borderlessness and its ease of availability, people have more access to information. The great corporate scandals that shocked the world, as it moved through the new millennium, elicited eagerness for more reliable information on which decisions can be made. This has made public to look more closely on enterprises' operations triggering certain social concerns to break the surface. In a globalised business environment, where ethical, social and environmental concerns are gaining more weight, an enterprise survives if it successfully builds and maintains a positive corporate reputation. Although corporate reputation takes time to build, it is proofed to be highly vulnerable particularly to the social responsibility of the enterprise. Therefore corporate social responsibility (CSR) got into the boardrooms and the achieved results are channelled through available communication channels for public awareness.

It is acknowledged that besides being profitable for its owners - the economic obligation - corporations have other social and environmental obligations. Some of these obligations have been legislated and are incorporated in national laws while others are at the discretion of corporate executives. Discretionary obligations include both ethical business practices and philanthropic assistance. Whereas businesses are expected to operate in an ethical manner, philanthropic responsibilities are perceived to be more discretionary. At a European level, the European Commission defines CSR as *a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.*

> … corporations have other social and environmental obligations. Some of these obligations have been legislated and are incorporated in national laws while others are at the discretion of corporate executives.

However other social partners, particularly the European Trade Union Confederation (ETUC), claim that this voluntary nature may position CSR as an alternative to codes of conduct, charters and labels, or put aside trade unions and collective bargaining.

There is a public misconception that the concept of CSR is developing in response to the social and environmental concerns of modern society. However, good business practices and literature on social responsibility shows that this goes further back in time. Following the industrial revolution, societies experienced radical changes in their social lives. Formerly, local communities and the church used set moral standards and guaranteed a certain degree of social protection, however ever since the early twentieth century the influence of these social networks has decreased. Industrialisation provided more employment opportunities, therefore abuses, which were previously already prevalent, accompanied employment expansion. Laws were formulated to limit abuses such as in child labour, and some manufacturers also felt the need to participate voluntarily in further social protection initiatives by creating funds such as sickness and pension funds, work committees, and green initiatives. This environment set ground for the establishment of the International Labour Organisation (ILO) in 1919. Environmental concerns hit the headlines almost a century later. Following the UN Conference on Environment and Development (UNCED), informally known as the Earth Summit held in 1992 in Rio de Janeiro, various environmental concerns particularly climate change and the loss of bio-diversity were brought to public awareness.

Trade liberalisation, that dominated the latter two decades of the twentieth century, fuelled technological advancement and expanded business transactions beyond national borders. This access to a wider market has forged larger companies with enhanced influence on the society in which they operated. In developed and developing countries, the private sector has been taking responsibilities that were previously reserved for the state: from the provision of key services such as education and health

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of information and consultation leads to notable improvements in work systems performance and innovative work practices. Some direct benefits include pooling of ideas, joint ownership of new initiatives, accumulation of knowledge and experience, improved vertical communication, easing of expression of views, and decisions are accepted more easily.

Even work practices resonate with benefits. Improvements may be felt in the quality of work life, influence in organisational thinking, transparency and openness, commitment to solving problems, informed decisions, business strategy formulation, and sense of ownership. Progress to the organisational performance may include reduced staff turnover, and improved recruitment reputation, team performance, customer service, problem anticipation and stakeholder participation.

The legal notice currently applies to all organisation employing 100 employees or over. From 27th March 2008 it will also apply to the organisation employing more than 50 employees. Should any organisation require any assistance to implement the legal notice, they may contact the Department of Industrial and Employment Relations on ind.emp.relations@gov.mt

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care to infrastructure services. National regulatory systems were not capable to develop quickly enough to keep pace with these developments. Hence this scenario elicited eagerness for institutionalised companies that are more accountable for the consequences of their actions.

Since the last decade of the twentieth century CSR has been penetrating the political circles. The United Nations' (UN) report *Our Common Future* (also known as the Brundtland Report) published in 1987, led to the UN Conference for Environment and Development (the Earth Summit) in 1992, and secured Sustainable Development, particularly environmental issues, on the political agendas. However, by the end of the century, the UN's main focus has spread wider than the mere environmental concerns, incorporating other social issues. In 1995, these developments urged business leaders and Jacques Delors, then President of the European Commission, to sign the European Declaration of Business against Social Exclusion. This declaration was a voluntary initiative taken by the corporate sector to enhance their social responsibility. Five years later the European Heads of State at the Lisbon European Summit agreed on a new strategic goal for the following decade, aimed at directing the European Union to *become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion*. Social Responsibility was identified as a means for reaching the set goal through best practices in lifelong learning, work organisation, equal opportunities, social inclusion and sustainable development. This strategy was eventually reviewed in 2005, stressing that in order to *encourage investment and provide an attractive setting for business and work, the European Union must complete its internal market and make its regulatory environment more business friendly, while business must in turn develop its sense of social responsibility*.

Interest in CSR has been gaining momentum due to the idea that there is a business case for engaging in socially responsible business practices. Being responsible does not solely result in social benefits but there are also economic gains. Research proofs that CSR-driven companies are in a better position to attract additional capital if their practices and related intangible assets are valued by the market. Companies, who maintain a good relationship with their staff, are likely to attract and retain efficient motivated personnel, enhancing the implementation of flexible work practices and organisational change. At the other end, customers also value CSR practices and use their consumer power in favour of the 'responsible' company and punish the 'less responsible'. NGOs and their access to media, have blown up the importance of consumer power. Criticism by NGOs regarding unethical corporate behaviour in particular companies was eventually translated in negative financial performance for the concerned companies, stimulating a reconsideration of their strategies. These criticisms ranged from labour issues, particularly Nike's contracting with factories that use sweatshops labour in China, Vietnam, Indonesia and Mexico, to environmental concerns, particularly the case of Royal Dutch Shell that was stopped from scuttling the Brent Spar oil platform in deep Atlantic waters. Thus, at a micro level, CSR establishes a more positive brand image for which a premium is ready to be paid, resulting in better economic performance and well-performing market shares.

On a national level, healthy employment relations are directly linked to innovation, productivity and hence economic growth. In The Competitive Advantage of Nations, Michael Porter discusses the success of Denmark and Sweden. Sweden managed to secure a competitive industry focusing on special needs, while Danish companies involved in water pollution control have also been established as world leaders in their market. Industries in Denmark and Sweden were capable of leading innovation that captures specialised consumer needs in their home markets. At a macro level there are other drivers for CSR, particularly the image of business amongst society. However these may be hard to quantify and thus they are most of the time undervalued.

Employment Agency Regulations, 1995

Mr. Anthony Buttigieg
DRO

The Employment Agencies Regulations, 1995 came into effect on the 1st January, 1996. These regulations fall under the remit of the Employment and Services Act 1990.

The term 'employment agency' or 'employment business' referred to in the said regulations means "any activity carried out in Malta for the recruitment of persons for employment in Malta or outside Malta".

The conduct of an employment agency or the running of any employment business requires a licence except where the employer himself seeks to recruit employees for his own business or for a subsidiary Company in which his company has a majority shareholding or for a business of which he is an active partner.

Such licence is renewed annually and is granted by the Director of the Industrial & Employment Relations. No person shall carry out any agency or business in this regard unless having the necessary licence.

1) Applications for Licence

1.1 Notice of intention

Before applying for a licence the applicant is required in terms of section 23 of the Employment and Training Services Act 1990 to:

- Publish a notice of intention in two daily newspapers and
- Display such notice in a prominent place on the premises where the business is intended to be carried out.

Section 23 of the Employment and Training Services Act, 1990 lays down the form which the notice should take. The notice should:

- Specify the name and address of applicant
- If the applicant is a Company or Partnership, include names and addresses of the Directors or Partners.
- Specify the situation of the premises and
- The class of activity proposed to be carried out.

◊ Keeping an Employment Register - (of applicants for employment – job seekers).

◊ Recruitment Consultancy Services - (placing of advertisement, interviewing, selecting and placements)

◊ Temping Services - (temping services are not permissible for Government Departments, Parastatal Bodies and for Companies in which Government has a controlling interest.)

◊ Recruitment Services (Outside Malta) – (all services relating to the recruitment for employment outside Malta – including offshore of persons who remain domiciled in Malta).

◊ Other services – (advertising for job-seekers when there is no specific vacancy in view).

The notice of intention should be published and displayed not less than twenty-one (21) days prior to the date of application.

1.2 Advertisements

a) Advertisements published in any of the media to invite applications for the filling of vacancies should:

- specify clearly the identity of the employer or
- be placed through a licensed employment agency whose license number should be quoted in the advert.

b) Advertisements without specific vacancies in view.

- When a person places an advertisement for job-seekers, without any specific vacancy in view, the fact should be stated in the advertisement.

Those employers who place anonymous advertisements through licensed employment agencies are required to reply to applicants within one month disclosing their identity.

Editors are responsible to ensure that advertisements comply with the regulations.

2) **Applications for Licence**

Applications should be made on the prescribed form – copies available from the Department of Industrial & Employment Relations, 121, Melita Street, Valletta – or downloaded from the department's website – www.industrialrelations.gov.mt. Applications should be accompanied by:

- Birth Certificate and recent Police Conduct Certificates of applicant and of the competent person nominated by him to run the agency/business. The applicant may also nominate more than one person as substitutes in which case birth certificates and police conduct certificates of each substitute need to be submitted.
- Certificates of Qualifications and testimonials of experience.
- The application form includes a declaration to be signed by applicant confirming that he had complied with the provisions of section 23 of the Employment and Training Services Act regarding notice of intention.

Applications not

'employment agency'…."any activity carried out in Malta for the recruitment of persons for employment in Malta or outside Malta".

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on the prescribed forms or not accompanied by the necessary documentation cannot be entertained.

An application fee of LM150 has to be paid. The fee is non refundable.

3) Conditions of Licence

The conditions of licence are laid down in the Employment Agencies regulations. Such conditions include the following main provisions

- The licence is issued for one year. An application for renewal has to be made before expiry. A fee of Lm150 is payable when asking for renewal
- Changes have to be notified to the Director in writing one month in advance.
- No fees are to be charged to applications for employment and no arrangement may be made for deducting any fees from earnings due to them
- The competent person or an approved substitute shall be responsible for the management of the agency/business and should be available at all times.
- The service should be provided in a professional manner and the premises should include suitable facilities and be well kept.
- Personal information furnished by applicants for employment and business information furnished by users is to be protected and properly guarded.
- No service is to be provided to Government Department, parastatal bodies and Companies in which the Government has a controlling interest. Section 110 of the Constitution requires such bodies to make use of the Employment Service of the Employment and Training Corporation
- Where recruitment outside Malta is involved, the licensee is expected to verify the reliability of the employer and to forward conditions of employment accompanied with specimen contract of service to the director of Industrial and Employment Relations for approval.
- The provisions of the Act, the regulations and the conditions of the licence shall be complied with.

4) Refusal of Application of Transfer or Revocation of Licence

Section 24 of the Employment and Training Services Act prescribes the procedure to be followed. The Director for Industrial and Employment Relations is required to:

- Notify in writing the applicant or licensee of his intention stating grounds. (The reasons giving ground for rejection of application of revocation of licence are prescribed at section 23 (5) of the act and at paragraph 8 of the regulations. The applicant or licensee shall have thirty days to submit representations in writing to the Director of Industrial and Employment Relations.
- Consider any representatives received and inform in writing the applicant or licensee of his decision.
- If the applicant or licensee is aggrieved with the Director's decision he may lodge an appeal to the National Employment Authority within fifteen days from the date of notification.

5) Enforcement

The law provides for enforcement by the Department of Industrial and Employment Relations and lays down penalties for people convicted of offences.

Temporary Agency Workers

Any worker is regulated by the Employment & Industrial Relations Act, 2002, and working conditions vary according to the Wage Regulation Orders and National Standard Orders. Working conditions can be subject to individual contracts if no collective agreements exist.

Three different situations can be identified where relationship exists between an employment agency or employment business and workers for employment or recruitment.

CASE 1 - A prospective worker who becomes a direct employee of the user company must observe the user company's conditions for which services are rendered during his/her working period and must be treated equally from the first working day, as those other regular employees of the user company – brokering-model

CASE 2 - A direct employment agency worker must have at least the standard minimum wage paid by the agency itself and has to adhere to the working conditions of the employment agency when rendering services to an user company – employer-model.

CASE 3 - Employment agencies can provide workers to a user company to carry out services for the latter. Such workers can either draw up contracts for provision of services either directly with the management of the user company or with the employment agency itself. Such workers are considered to be 'self-employed' and therefore fall under neither of the two above- mentioned systems – vis brokering-model or employer-model

Statistical Information:

Since 1st January 1996 more than 68 Employment Agencies were issued with a licence to operate. It is interesting to note that on the very first day that the Employment Agency Regulations came into force, 13 applications were approved and started their operations under these new regulations.

Since then the number of Employment Agencies has increased. Presently there are 48 licensed employment agencies covering most sectors of industry.

During the past 11 years the Department of Industrial & Employment Relations has monitored all advertisements that have appeared in the printed media which were placed by the licensed employment agencies or employment businesses. In all, there were more than 5,500 advertised vacancies.

For further information one can either contact Mr.Anthony J. Buttigieg on telephone number 21235301 or send an e-mail to anthony.j.buttigieg@gov.mt .

Constructive Dismissal

Matul l-aħħar snin ingħataw diversi deċiżjonijiet, kemm mill-Qrati tagħna u kemm mit-Tribunal Industrijali, fejn impjegat ingħata kumpens mingħand min kien iħaddmu għaliex irriżulta li r-riżenja ta' l-istess impjegat mill-post tax-xogħol tiegħu kienet sfurzata fuqu u, għalhekk, kienet tammonta għal tkeċċija inġusta bażata fuq il-kunċett ta' constructive dismissal. Kunċett li, għalkemm mhux imsemmi fil-liġijiet tagħna – l-anqas fil-Kap. 452 (l-E.I.R.A.) – ġie applikat fuq l-iskorta tas-sistema Ingliża għax hu aċċettabbli fil-kamp industrijali.

Riċentement it-Tribunal Industrijali ppronunzja żewġ deċiżjonijiet li ttrattaw fit-tul il-kawżali ta' constructive dismissal. Fil-kawża "Anne Bharwani kontra MIM Training and Development Services Limited" (3 ta' Lulju 2007 - Deċiżjoni Nru 1791 - Chairman Dr Leslie Cuschieri) ir-rikorrenti nvokat il-kunċett ta' constructive dismissal wara li rriżenjat mill-post tax-xogħol meta min kien jimpjega biddel ir-rati tal-kummissjoni li kienet ġiet imwiegħda fil-kuntratt tax-xogħol tagħha. L-istess kunċett ġie wkoll invokat fil-kawża "Geniev Zerafa kontra Phone Direct Ltd" (27 ta' Lulju 2007 - Deċiżjoni Nru 1802 – Chairman Dr Joseph Bonnici) wara riżenja mill-post tax-xogħol minħabba għoti ta' fastidju. Dawn iz-żewġ deċiżjonijiet, barra milli jikkowtaw diversi deċiżjonijiet tal-Qrati tagħna u tat-Tribunal Industrijali, jiċċitaw ukoll awturi Ingliżi.

Fid-deċiżjoni numru 1791 ġie citat il-ktieb Industrial Law ta' I. T. Smith u J. C. Wood fejn jingħad: -

> *"Although the theory behind constructive dismissal is that it is the employer who terminates the contract for statutory purposes, in practice it will usually be the employee who takes the final step by resigning and walking out, thus showing that he has accepted the employer's repudiation as concluding the contract. If the employee does not take such action, or does so after a delay, there is the danger (particularly in cases where the employer's conduct consists of a unilateral proposal to change the terms of employment) of this being constructed as an agreement by the employee to a variation in the contract; if this is so there is no constructive dismissal, even if the employee later resigns. To avoid this danger, the employee should make up his mind quickly whether to leave, or, if his economic circumstances are such that he feels he has to continue working for a short period following the conduct in question, he should let it be known that he does not agree to that conduct and is working under protest".*

Fid-deċiżjoni numru 1802 ġie citat il-ktieb Law of Employment fejn l-awtur Ingliż Sewlyn jiddefinixxi constructive dismissal b'dan il-mod: -

> *"Where the employee himself terminates the contract with or without notice in circumstances where he is entitled to terminate without notice by reason of the employee's conduct, this is known as constructive dismissal. For although the employee resigns, it is the employer's conduct which contribute the repudiation of the contract and the employee accepts that repudiation by resigning. The employee must clearly indicate that he is treating the contract as having been repudiated by the employer and if he fails to do so by word or conduct he is not entitled to claim that he has been constructively dismissed".*

Ġiet ukoll ċitata d-deċiżjoni fl-ismijiet "Carmelo Farrugia kontra Alexandra Palace Hotel Ltd" (Qorti Ċivili - 7 ta' Lulju 2003) li stabbilit li fejn jirriżulta li r-riżenja ta' ħaddiem mill-post tax-xogħol tiegħu kienet kawżata minn constructive dismissal "ir-riżenja ta' l-impjegat għandha titqies bħala tkeċċija mingħajr raġuni valida".

Mr. Vincent Micallef
Industrial Tribunal Secretary

> ..... riżenja ta' impjegat mill-post tax-xogħol tiegħu kienet sfurzata fuqu u, għalhekk, kienet tammonta għal tkeċċija inġusta bażata fuq il-kunċett ta' *constructive dismissal*.

B'referenza għad-drittijiet u d-dmirijiet reċiproki ta' l-impjegat u ta' min iħaddmu u, b'mod partikolari, għad-dover impliċitu ta' rispett reċiproku bejniethom, l-imsemmija deċiżjoni numru 1802 tgħid li n-nuqqas ta' dan ir-rispett, kif ukoll l-użu ta' lingwaġġ abbużiv u ħażin, aġir offensiv u kondotta xejn dekoruża tal-prinċipal fuq il-post tax-xogħol huma kawżali ta' constructive dismissal. F'dan ir-rigward, fejn jirriżulta li r-riżenja ta' l-impjegat kienet kawża ta' xi "kommissjoni jew ommissjoni min naħa tal-prinċipal" l-istess riżenja għandha titqies bħala terminazzjoni forzata jew indotta.

L-istess deċiżjoni tagħmel diversi osservazzjonijiet dwar dan il-ħsieb u tgħid li: -

"Il-ħaddiem għandu kull dritt li jiġi rispettat fid-dinjita tiegħu minn min iħaddmu."

"Sabiex treġi l-allegata eżistenza ta' constructive dismissal in-nuqqas tal-prinċipal m'għandux ikun wieħed minuri. Dana ġie soffermat fl-kawża fl-ismijiet 'William Saliba vs Dr. Louis Cassar Pullicino noe' (Qorti ta' l-Appell - 9 ta' Mejju 1997); 'Jacqueline Higgins et noe -vs- Joseph Galea, (Prim' Awla Qorti Ċivili - 13 ta' Ġunju 1997) u 'Joe Sammut vs Malta International Airport' (Prim' Awla Qorti Ċivili - 28 ta' Mejju tas-sena 2003."

"Li huwa importanti huwa n-nuqqas ta' prinċipal li jara li l-kundizzjonijiet tax-xogħol ikunu dawk ottimarji miftehma u l-ksur ta' tali kundizzjonijiet u/jew nuqqas ta' ottemperanza tal-kundizzjonijiet ikunu jintitolaw lil impjegat illi, jekk ikun kostrett f'tali nuqqas, jittermina l-impjieg tiegħu u jiddipartixxi minn fuq il- post ix-xogħol."

"Il-Qorti ta' l-Appell, fid-deċiżjoni fl-ismijiet 'Anthony Schavione -vs- Emmanuel Bajada noe' (1 ta' Frar, 1988), enunċjat illi meta l-imgħallem jipprovdi ambjent ta' xogħol totalment differenti minn dawk miftiehem l-impjegat ikun intitulat li jirrifjuta l-imjieg mogħti u jittermina l-istess impjieg".

"Fid-deċiżjoni fl-ismjiiet 'Falcon Tours Ltd vs Marvin Mizzi' (Prim' Awla tal-Qorti Ċivili - 8 Ġunju, 2001), fuq l-iskorta tal-ġurisprudenza Ingliża, ġie stabbilit illi l-kondotta ta' l-imgħallem għandha tkun diretta lejn ottemporanza ċentrali, sostanzjali u fundamentali sabiex l-kuntratt tax-xogħol ta' bejn l-imgħallem u l-impjegat jkun jista' ireġi".

In konklużżjoni, hija ferm interessanti (u naħseb li għandha tiġi nnutat b'mod partikolari) l-osservazzjoni miġbura fid-deċiżjoni tas-27 ta' Lulju 2007, fejn it-Tribunal Industrijali rrakkomanda li "dan il-kunċett ta constructive dismissal għandu jingħata l-post li jixraqlu fis-sistema legali tagħna u jiġi nkluż fil-Kapitlu 452 sabiex, darba għal dejjem, jiġi enunċjat b'mod leġislattiv sabiex ma jitħalla l-ebda dubju kif għandu jiġi applikat. Dan il-kunċett, għalkemm t-Tribunali tagħna segwew dak Ingliż u applikawh kif suppost għal kundizzjonijiet lokali tagħna, issa wasal il-mument illi dan isib post li jixraqlu fis-sistema legali nostrali u jiġi inkluż fl-istess Kapitlu 452."

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at these regulations. However one must remember that the different conditions of employment were tailor-made for particular sectors and it was considered necessary at the time to introduce varying requirements. This might still be of relevance today.

There is no doubt that a review of the Wage Regulation Orders is due, in part to ensure that laws made ten or twenty years ago are still adequate and relevant today. The considerable number of WROs covering prescribed sectors in itself is not particularly relevant – indeed further industry specific WROs may be required e.g. ICT. It is the actual content, rather than the profusion and variability of conditions, which need reviewing to ensure their continuing relevance.

Different routes may be followed in this regard. This could ultimately lead to the standardization and reduction of WROs to a smaller number, or the retention of the current number of WROs, possibly augmented by new sector specific WROs, updated as and where necessary. While standardization of conditions of employment may have positive features, this is inherently associated with a certain cost which may in some cases be significant. Given the complexity and interests involved, this will be a task of considerable magnitude. In any such exercise, which would require the full and active participation of the social partners, due care has to be taken to ensure that any fine-tuning of legislation is limited to what is considered to be strictly essential.

Any problems with regards to the application of the WROs may be referred to the Department. The WROs may be viewed and downloaded at http://www.education.gov.mt/employment/ind_relations/legislation/work_regulations/work_regulations.htm

Practical information

Part-time Work

Generally, where the part-time work is the principal employment of the employee in respect of which social security contributions are payable, the employee concerned is entitled to entitlements on a pro-rata basis. However the pro-rata entitlements also apply to:

- a person who has reached pension age, or a widow, who is in receipt of a pension in respect of widowhood under the Social Security Act, provided that the weekly wage does not exceed the national minimum weekly wage.
- a Casual Social Assistant employed by the Department for the Care of the Elderly of the Government of Malta.
- A person who works for less than eight hours a week and pays the social security contributions as per the Social Security Act

Pro-rata entitlements for Part-times

Pro-rata entitlements include statutory bonus and weekly allowance, all public holidays, vacation leave, sick leave, birth leave, bereavement leave, marriage leave, injury leave and to any other leave in terms of law.

Calculating the Pro-rata Entitlement

The pro-rata is calculated as the proportion that the number of weekly hours worked by the part-time employee bears to the number of the normal weekly hours worked by a full-time employee performing same work.

(The vacation leave of a full timer working 40 hours per week is 192 hours. If the part-timer works 20 hours a week, the pro-rata vacation leave entitlement is 20/40x192 hours = 96 hours.)

In case where the working hours of a part-timer are based on irregular weekly working hours, the pro-rata is calculated over the average of hours worked over a period of 13 weeks (Quarterly:- January to March; April to June; July to September; October to December.

If you have further queries on your minimum conditions of employment **Department of Industrial and Employment Relations** for assistance.

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