

What are the Employment Agencies Regulations and the Temporary Working Regulations?

The Employment Agencies Regulations came into effect on the 1 January 1996. These Regulations are intended to regulate Employment agencies who are engaged in an activity of bringing together and matching people looking for employment and job opportunities.

On the other hand, the Temporary Working Regulations stems out from the Directive 2008/104/EC of the European Parliament and the Council of 19 November 2008 on temporary agency work and was transposed into Maltese law on the 5 December 2011. These Regulations regulate Temporary Work Agencies who assigns, whether on a regular or on an irregular basis, the temporary agency workers to user undertakings to work there temporarily under their supervision and direction, whether or not such activity is the main or ancillary activity of the temporary work agency.

What is the purpose of the new changes in these regulations?

The purpose of the new changes is to standardise the conditions of employment agencies, to establish clear procedures, to enforce licence conditions and to ensure that qualified and competent individuals are committed to this endeavour. The new regulations shall come into force on 1 April 2024.

Which agencies will be affected by these regulations?

The new regulations will affect employment agencies who render the following services to user undertakings:

- Recruitment services
- Temporary work services
- Outsourcing services (contracting and sub-contracting)

What do recruitment services entail?

Recruitment services encompass any activity in bringing together and matching people looking for employment and job opportunities. In other words, employment agencies carrying out recruitment services solely focus on recruitment and selection of workers and do not enter into a contract of employment or an employment relationship with the worker.

What are temporary work services?

Temporary work services refer to the provision of workers with a view to making them available to a third party which assigns their tasks and supervises the execution of these tasks.

What are outsourcing services?

Outsourcing services refer to the provision of workers with a view to making them available to a third party under the supervision, direction and control of the outsourcing agency (contractors and sub-contractors).

Who is exempted from these licences?

These regulations shall not apply to:

- Employers who carry out any recruitment related activity for employment in own undertakings.
- Any recruitment on behalf of any employer whose identity is clearly specified in an advertisement inviting applicants for employment.
- Any outsourcing agencies providing professional services by warranted professionals, technical services in relation to the installation, maintenance and repair of equipment and machinery, and surveying services in relation to machinery and vessels.
- Jobsplus when carrying out the functions of an employment agency.

Who is covered by these regulations?

These regulations apply to all employees who have entered into a contract of employment with a temporary work agency or an outsourcing agency.

Who can operate an employment agency?

Holders of a valid licence granted by the Director of the DIER can operate as employment agency in relation to either the recruitment of persons for employment, or temporary work agency, or outsourcing agency.

Are separate licences needed to render different employment agency services?

The licence may be granted for either the recruitment of persons for employment or to render one or both activities in relation to temporary work agency and outsourcing agency. This means that in case the applicant intends to carry out both recruitment services and to render activities in relation to temporary work agency and outsourcing agency, two separate licences are required.

What if an employment agency charges or demands any payments from applicants for employment?

In the eventuality that an employment agency or any other person responsible for the running of the employment agency charges any fees or demands any payment from applicants for employment shall be guilty of an offence which may lead to the refusal or revocation of the licence of the said agency.

Can an employment agency render any of its services on terms of exclusivity?

No, any agreement or arrangement providing for a form of exclusivity shall be null and void.

Will there be a transitional period in respect to the new regulations?

Yes, transitional arrangements for existing or newly established employment agencies amid regulatory changes. During the transition from old to new licensing, the employment agencies are required to adhere to any directives and conditions imposed by the Director.

What happens to existing recruitment licences?

Employment agencies currently providing recruitment of persons who are in possession of a valid licence may continue to perform such activities as authorised under their existing licence conditions until such existing licence expires. In such case, the application for a new licence must be submitted at least two months before the expiration of the licence or, if the licence expires earlier than two (2) months from the day of the entry into force of these regulations not later than one (1) month from the day of the entry into force of these regulations.

When can first-time applicants submit their applications?

Any person applying as a first-time applicant shall submit an application to the Director of the DIER as from the 1 January 2024. First-time applicants will be being granted a transitional period of two (2) months from the coming into force of these regulations in order to fulfil their obligations in accordance with these regulations.

Further information on the administrative procedure and payment method for applications submitted during the first quarter of 2024 will be announced on the DIER's website in the coming weeks.

What is the validity of a licence under the new regulations?

A new employment licence is valid for a period of one year. However, for first-time renewals, the Director may specify a period not exceeding two years based on the department's operational system.

Is a notice of intention required for the submission of an application?

Before submitting a request, an applicant must display a notice of intention for public view for a period of twenty-one days and advertise a notice of the application in two daily newspapers.

What must be included in the notice of intention?

The notice of intention must state the name and address of the applicant, and in cases where the applicant is a legal person, the applicant's registration number, its registered office, and the address of the premises from which the employment agency is to be carried out.

What documents must be submitted for each application?

Each application shall include the following particulars:

- In the case of a natural person, the name, address and a legally valid identification document number.
- In the case of a legal person, the name of that legal person, its registered address and the registration number.
- The Value Added Tax registration number, Income Tax registration number of the applicant.
- In the case of a legal person a good standing certificate in respect of the applicant issued by the Malta Business Registry, not earlier than one (1) month from the date of application.
- The address of the place where the activity is proposed to be carried out including a copy of the permit showing that the premises can be used for commercial purposes.
- Detailed information about the activities to be carried out:
 - o description of the services to be provided;
 - o the method of financing of the employment agency;
 - o a declaration of notice of intention and newspapers advertisements;
 - o personal details and the curriculum vitae of the competent person.
- A recent tax compliance certificate not dated earlier than one (1) month prior to the date of application, issued by the Commissioner for Tax and Customs showing the registration details and tax compliance status of the competent person, the applicant and of each of the applicant's directors and shareholders where the applicant is a legal person.
- An application for a licence for Temporary work services and Outsourcing services shall be accompanied by evidence that the applicant shall be able to provide a **bank guarantee** of €20,000 and a sum equivalent to two percent (2%) of the total annual payroll, up to a max of €300,000. In the case of agencies employing less than 20 employees a bank guarantee of €20,000 shall apply.
- Applicants shall also be required to submit payroll documentation and salary records.

What is the purpose of the bank guarantee?

The bank guarantee is intended to ensure compliance by any temporary work agency or outsourcing agency throughout the term of the licence.

Who is eligible for the guarantee fund?

Any employee whose employment is terminated by a temporary work agency or outsourcing agency because of the revocation or non-renewal of a licence.

What should an employee do if he/she has been terminated due to the revocation or non-renewal of a licence?

Affected employees may claim from this fund if an agency's license is revoked or not renewed. Employees affected by license revocation or non-renewal are to notify the Administration of the Employment Agencies Guarantee Fund within two months to make a claim.

How will the funds be allocated?

The Administration of the Employment Agencies Guarantee Fund shall distribute the amount of the bank guarantee among all the employees of the same employer whose employees have been terminated because of the revocation or non-renewal of the licence.

Is the bank guarantee refundable?

In the case that the temporary work agency or outsourcing agency has no longer the intention to carry on with any activities requiring such licence in terms of these regulations, and that all obligations under the licence and these regulations have been met, the bank guarantee shall be released within three (3) months from the notification of the Director of the DIER.

How much will it cost to apply for a licence?

A licence for Recruitment services costs €3,000 and a fee of €1,500 is to be paid with every application for the renewal of the licence.

A licence for Temporary work services and Outsourcing services costs €3,000 and a fee €1,500 is to be paid with every application for the renewal of the licence.

Are licence fees refundable?

No, fees shall not be refunded to the applicant if the application or any renewal is refused or revoked.

What other requirements must be in place in terms of these regulations before applying for a licence?

The employment agency must employ a competent person on full-time basis to manage the employment agency. In addition, the competent person is allowed to occupy such position with one (1) employment agency only.

In the case where a competent person cannot fulfil such position anymore, can the employment agency appoint a new one?

Yes, a new competent person can be appointed on the approval of the Director of the DIER subject to the same criteria established for the competent person in these regulations.

Who can fulfil the role of a competent person?

A competent person shall be:

- a Maltese citizen or someone who is entitled to equal treatment to Maltese citizens residing in Malta;
- have not less than six (6) years experience in human resources or have not less than three (3) years experience in human resources and be in possession of a University degree that is relevant to management;
- provide a reference letter from a warranted professional or their previous employer which must include an attestation of good moral character and in the case of the letter being provided by their previous employer, of the relevant experience in human resources.

On which grounds may the Director refuse or revoke an application or a renewal of a licence?

A licence application or a renewal maybe be refused and revoked on:

- Failure to comply with any of the provisions of the Act or of these regulations and not remedied within 30 days from the date of a communication of the Director.
- The activities of the applicant are not compatible with those of an employment agency and has failed to remedy such default within thirty (30) days.
- The applicant does not have a clean record of compliance with tax and social security obligations and has failed to remedy such default within thirty (30) days.
- Based on a **full vetting process** undertaken by the Malta Police Force, the applicant, competent person or directors are deemed not to be individuals of a fit and proper person.
- In case of conviction for the first time since the date of publication of these regulations and the violation is not remedied within thirty (30) days from the date of conviction by the court.
- If convicted in respect of the violation of any law relating to employment for a second time.

- The applicant, competent person or directors have been convicted by a Court in respect of the breach of any law relating to immigration including human trafficking.
- The applicant, competent person or directors responsible for the running of the employment agency have charged any fees or demanded any payment from applicants for any employment services.
- The applicant, competent person or directors or every person who directly or indirectly owns or controls twenty-five (25%) or more of the capital have been convicted by any Court of any criminal offence under these regulations.
- The licensee has failed to keep the Director informed of any change in the nature of the activities carried out and/or to furnish the Director with the particulars of the competent person to manage the employment agency.
- The applicant has furnished information or made declarations or statements to the Director in relation to the application for the grant of a licence or its renewal which were known to be inaccurate, false or misleading.
- The applicant has failed to provide, or maintain throughout the applicability of any granted licence, a bank guarantee.

What does a full vetting process constitute?

A full vetting process is a background check carried out by the Malta Police to detect if the applicant, competent person or directors or every person who directly or indirectly owns or controls twenty-five (25%) or more of the capital have at any time been found guilty of or have criminal charges brought against them amongst others for any criminal offence punishable with more than two (2) years imprisonment other than involuntary offence.

What other actions will the Director take in case a licence is revoked or not renewed on the grounds listed above?

On revocation or non-renewal, the following information shall be publicly announced by the Department:

- the name of the person or persons sanctioned
- the particular breach of the provisions of these regulations
- the penalty or measure imposed

In addition, such information shall be shared with the:

- Department of Contracts
- Identity Malta Agency
- Malta Police Force

How does a person redress such sanction?

The recipient of a sanction shall have the opportunity to make representations in writing to the Director giving reasons why the proposed decision should not be taken by not later than thirty (30) days from such notice.

What information the employment agencies are required to keep as records?

In the case of an employment agency carrying the activity for the recruitment of persons such records must include:

1. Names, address, a legally valid identification document number, qualifications and job experience of applicants for employment.
2. Name, address, Value Added Tax registration number and Income Tax registration number of the users of such employment services.

In the case of temporary work agencies or outsourcing agencies, records need to be kept in terms of:

1. The Transparent and Predictable Working Conditions Regulations. Such records shall be subject to inspection at any time by inspectors appointed under the Act.

What are the consequences of any infringement of these regulations?

If a person is convicted of such infringement such person will be liable to a fine of not less than five thousand (€5,000) but not exceeding seven thousand Euro (€7,000).

If the offence consists of the operation of an employment agency without being in possession of a valid licence under these regulations, any person found guilty shall be liable to a fine of not less than twenty-five thousand Euros (EUR 25,000) but not more than thirty thousand Euros (EUR 30,000).