

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”.

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 aided by five Assistant Directors.

These activities are carried out by the following branches:-

- 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 & Industrial Relations Branch, falling under the responsibility of an Assistant Director with a complement of two officers, allowing the Department to fulfil its role as the National Focal Point on issues relating to Industrial and Employment Relations. This Branch responsible for:
 - coordination with local associations or organisations which have a role to fulfil in protecting the interests of parties engaged under an employment contract;
 - maintaining contacts at the technical level with Governments and other international bodies including the EU and I.L.O.
- c) Enforcement Branch, falling under the responsibility of an Assistant Director carrying out the core inspection functions of the Department. This Branch is staffed by three officers serving as Inspectors and six officers in the Customer Care Section. Additionally three Registry officers provide administrative back-up to both the Enforcement and the Terminations and Legal Office branches. An important section within this branch is the Inspectorate Section, which is responsible for monitoring conditions of employment and processing complaints of workers who are still in employment. The Customer Care Section on the other hand 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.

- d) The Termination and Legal Office Branch headed by an Assistant Director 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. This branch is also responsible for referral of cases to the Law Courts. It is staffed by three Terminations officers and two Junior Legal Officers who provide legal services and implement the whole court procedure.
- e) The Research and IT Branch falling under the responsibility of an Assistant Director having responsibility for Library and Archives, Labour Research, Registration of Trade Unions and Employment Agencies. It also oversees any IT-related issues and works in coordination especially with Chief Information Officer of line ministry. This Branch has a total complement of three officers.
- f) Administrative Branch, falling under the responsibility of an Assistant Director with a total complement of fourteen personnel including six minor staff, five 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.

Human Resources Issues

One Senior Principal was transferred from the Department and two Junior Legal Officers and two Clerks joined the Department to replace other officers in the same grade who had previously resigned, retired or been transferred from this Department. In this regard it is important to note that despite the staff complement in 2012 did not continue to shrink as it did in the previous four years, the Department continued operating with a huge shortfall in personnel. This shortfall is especially evident in the crucial Inspectorate Section where only three officers remain to carry out inspectorate duties and thus enforce EIRA at workplaces. This situation led the DIER to request in its Capacity Building nine officers to serve as EIRA Inspectors besides other officers in different grades, all being principally replacements for outgoing personnel. From such requests only three EIRA Inspectors were approved and thus the Department is presently in the final stages of recruiting such officers.

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 757 inspections throughout the year covering 22,711 employees out of whom 1656 were interviewed. During such inspections a total of 161 irregularities were observed.

Officials within this section dealt with an average of 17,503 enquiries regarding conditions of employment – both on the phone and through personal visits at the Office. Another 1,478 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 80 monetary claims, amounting to €150,232.77 were issued whilst 589 cases each possibly including a number of irregularities were settled and another 35 unresolved cases were referred for legal action consideration.

The Inspectorate Section also processes Posted Workers Notifications; during 2011 a total of 438 notifications were received.

Terminations Section

Throughout the year, officials in the Terminations Section served a total of 343 claims against employers in Malta. The total amount for such claims amounted to €496,159.20. During the period under review 172 cases amounting to € 200,684.38 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 2012 resulted in the collection of €279,695.18, however these monies do not necessarily represent claims that originated in 2012.

Another 38 cases, amounting to € 54,882.78 were closed on request of the claimant. A total of 178 requests were made to the police for prosecution whilst court hearings in Malta totalled 30. Nineteen appeals against Court judgements were made throughout 2012.

Employment Agencies

The number of Licensed Employment Agencies at the end of December 2012 was 65. During the period under review, 59 Employment Agencies renewed their licence. Five 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 €23,760.38.

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 2012 the Board held five meetings and discussed various issues relating to employment and labour conditions such as precarious work, the employment status, transfer of business and employment of young persons.

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 Prime Minister for his consideration.

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

Employment Status National Standard Order (L.N. 44 of 2012)

Extension of applicability to Service with Government (Employment Status) Regulations (L.N. 45 of 2012)

Overtime Regulations (L.N. 46 of 2012)

Employment Status National Standard (Amendment) Order (L.N.110 of 2012)

Young Persons (Employment) (Amendment) Regulations (L.N.257 of 2012)

Protection of Maternity (Employment) (Amendment) Regulations (L.N.258 of 2012)

Organisation of Working time (Amendment) Regulations (L.N. 259 of 2012)

Transfer of Business (Protection of Employment) (Amendment) Regulations (L.N. 363 of 2012)

Employment Status (Amendment No. 2) National Standard Order (L.N. 364 of 2012)

Transfer of Business (Protection of Employment) (Amendment No.2) Regulations (L.N.467 of 2012)

National Minimum Wage National Standard Order (L.N.491 of 2012)

Wage Increase (Employees) National Standard Orders (L.N. 492 of 2012)

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 56 occasions throughout the year. Agreement was successfully reached in 49 cases, one case was referred to the Industrial Tribunal while such agreement failed to be reached in only six 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 Department provides administrative support services for the Industrial Tribunal, to ensure its proper functioning.

Throughout 2012, 80 new cases of alleged unfair dismissals and 18 other cases of alleged discrimination/harassment/victimisation were received. Eleven cases of trade disputes were also introduced.

The Industrial Tribunal disposed of 105 cases of alleged unfair dismissals, five cases of alleged discrimination/harassment/victimisation and ten cases referring to a Trade Dispute. The Industrial Tribunal also disposed of another two case introduced in terms of other provisions of the Employment and Industrial Relations Act.

There were 249 pending cases on 31st December 2012 of which 176 refer to alleged unfair dismissal.

Industrial Actions

During 2012, 2 strikes were recorded involving around 565 workers and resulting in around 90 man days lost. Another industrial action involved a lock-out which affected 7 employees and resulted in 336 man days 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 2011: -

Type of Agreement	Qty
New Collective Agreements	7
Renewals/Extensions	36

Side Agreements/Addendums	Nil
Amendments	Nil

Table 1: Number of Agreements between industrial establishments and trade unions registered at the DIER in 2012

Registrar of Trade Unions

On 1st January 2012, there were 31 registered trade unions and 19 employers' associations.

During this period 2 trade unions and 1 employers association were registered and 3 trade union and 4 employers' association were cancelled.

Thus, on 31st December 2012 the Register of Trade Unions was composed of 31 trade unions and 15 employers' associations. Twelve verification exercises for union recognition were also carried out.

OTHER ACTIVITIES

Participation in Seminars, Conferences & Working Party Meetings Abroad

Between the 30th May and 15th June 2012, the Director led a tripartite delegation at the 101st Session of the I.L.O. Conference in Geneva. The Minister for Justice, Dialogue and the Family attended and addressed this Conference. The Maltese delegation included a number of high-ranking officials from Trade Unions and Employers' Associations. The issues considered at this Conference included the elaboration of an autonomous Recommendation on the Social Protection Floors, the youth employment crisis and a recurrent discussion on the strategic objective of fundamental principles and rights at work. During the Conference, a Recommendation on Social protection Floors was 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 Nicosia and Dublin 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, on the European platform for the fight against undeclared work, on transnational company agreements and on the fixed term and part-time Directives.

The Assistant Director attended the 5th Annual Legal Seminar organised by the European Network of Legal Experts. The theme of this seminar was "Labour Law in a Greying Labour Market – Challenges of Active Ageing".

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

Three meetings of the Committee of Experts on Posting of Workers

During these meetings, the Commission presented a study on the protection of workers' rights in subcontracting processes, and presented also a proposal for a Directive on the enforcement of Directive 96/71/EC, a proposal for a Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services and an impact assessment on the revision of the legislative framework concerning the posting of workers in the context of the provision of services.

Meeting of the Working Group on Information and Consultation of Workers:

The Commission had 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 Working Group had the opportunity to discuss the findings of two studies commissioned by the Commission and by Eurofound on the evaluation of the operation and effects of the EU Directives.

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

Directive 2008/104/EC on temporary agency work has been fully applicable since 5 December 2011. The Commission will draw up in 2013 a report on the application of Directive 2008/104/EC. This meeting was one of a series of meetings which the Commission will be organising on the way forward as regards the preparation of this report.

Expert Meeting concerning the Implementation of Directive 2008/94/EC

During this meeting, the national experts gave information on the transnational situations regarding the Insolvency of the Employer Directive and how this Directive is being implemented in the respective Member States.

Officials of the Department attended six meetings of the Social Questions Working Party where the proposal for a Directive of European Parliament and the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services were discussed.

Also during 2012, officials of the Department attended three meetings of the High Level Group of National Representatives on Corporate Social Responsibility. These meetings dealt with, amongst other issues, on the implementation of UN Guiding Principles on business and human rights and on the preparation of the CSR national action plans. The participants from each Member State had also the opportunity to give presentations on national activities recently implemented or planned.

Also during 2012 DIER representatives attended three meetings of the High Level Group of National Representatives on Corporate Social Responsibility.

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 2012 no claims were received and thus, no sittings of the Administration Board were held. 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 2011. To date the balance of this fund stands at € 477,882.80.

Participation in Events & Publication of Online Journal

The DIER participated in two major events in 2012 by setting up information stands to provide knowledge and guidance to visitors and other participants on industrial and employment relations. In October it participated in the Foundation for Human Resource Development (FHRD) one-day Annual Conference at the San Gorg Corinthia Hotel in St. Julians. In late November the DIER hence participated in the Business and Careers Forum at the University of Malta organised by the University Students' Council where an effort was made to inform students of basic rights in employment arising from EIRA. In December a Leaflet Stand Holder was also installed for permanent exhibition at MCAST thereby facilitating the availability of informational leaflets published by the DIER 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.

In 2012 four different editions of the online departmental journal *I Review* were also published comprising interesting and well-researched articles on different aspects relating to labour law and industrial relations

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 €8,094.35 were recovered. Whilst in December 2011, judicial letters were sent to all defaulters who fell back on their payment as per Article 466 of the Code of Organisation and Civil Procedure, in 2012 further reminders were sent to such defaulters.

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