

# 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 six officers serving as Inspectors and four officers in the Customer Care Section. Additionally four 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 two 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 four officers.
- f) Administrative Branch, falling under the responsibility of an Assistant Director with a total complement of four 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. This Branch also administers minor staff who carry out maintenance, messengerial, reception and cleaning duties.

## Human Resources Issues

The Department of Industrial and Employment Relations started 2013 with only three officers carrying out inspectorate duties within the Inspectorate Section of the Department. This number increased to five in March and hence to seven in June. One of the newly engaged EIRA Inspectors however resigned from his position after a few months and thus the number of officers with specific duties to carry out inspections at workplaces presently stands at six. This number however also includes an EIRA Inspector who had to be placed temporarily within the Terminations Section following the transfer in November of an officer in Scale 7 who was serving as Terminations Officer and for whom a replacement has not yet been provided. Also in 2013 the Enforcement Branch lost the services of another two clerical officers, one due to retirement and the other opted to make use of one year unpaid leave to try an alternative employment. With regards to the remaining sections within the DIER, the only development worth noting is the termination of contract of the Secretary of the Industrial Tribunal who was an officer working on a personal of trust basis beyond the age of 61 who has been replaced internally by a public officer.

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 1211 inspections throughout the year covering 25,515 employees out of whom 2486 were interviewed. During such inspections a total of 458 irregularities were observed.

Officials within this section dealt with an average of 15,647 enquiries regarding conditions of employment – both on the phone and through personal visits at the Office. Another 1,594 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 85 monetary claims were issued whilst 551 cases each possibly including a number of irregularities were settled and another 38 unresolved cases were referred for legal action consideration.

The Inspectorate Section also processes Posted Workers Notifications; during 2013 a total of 249 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 €4,496,159.20. 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 213 requests were made to the police for prosecution whilst court hearings in Malta totalled 47.

Two appeals against Court judgements were made throughout 2013.

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

The number of Licensed Employment Agencies at the end of December 2013 was 64.

During the period under review, 59 Employment Agencies renewed their licence. Five new Employment Agencies were granted a licence to operate as such while six Employment Agencies had their licence withdrawn.

The total amount received as License fees amounted to € 22,711.65.

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 2013 the Board held six meetings and discussed various issues relating to employment and labour conditions such as the granting of recognition to a union or unions by the employer, the process to be used to verify the union's or unions' claims of majority membership at the place of work and the granting of collective representation rights to members of the disciplined forces.

During these Board Meetings 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 four Legal Notices were published:-

Adaptation of Laws (Wages Council Wage Regulation Orders) Order, 2013,

National Minimum Wage National Standard Order (L.N.441 of 2013),

Wage Increase (Employees) National Standard Order (L.N. 442 of 2013,)

Adaptation of Laws (Wages Council Wage Regulation Orders) Order No. 2, 2013

## **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 57 occasions throughout the year. Agreement was successfully reached in 47 cases one case was referred to the Industrial Tribunal while such agreement failed to be reached in only nine cases.

### ***Industrial Tribunal***

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

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

Throughout 2013, 118 new cases of alleged unfair dismissals and 8 other cases of alleged discrimination/harassment/victimisation were received. Eight (8) cases of trade disputes were also introduced. The Tribunal also received 1 Interpretation of Decision.

The Industrial Tribunal disposed of 76 cases of alleged unfair dismissals, 5 cases of alleged discrimination/harassment/victimisation and 12 cases referring to a Trade Dispute.

There were 564 pending cases on 31<sup>st</sup> December 2013 of which 502 refer to alleged unfair dismissal.

### ***Industrial Actions***

No strikes were recorded in 2013, thus the only industrial action of note is a lock-out that affected 7 workers and resulted in 154 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 2013: -

Type of Agreement	Qty
New Collective Agreements	8
Renewals/Extensions	39
Side Agreements/Addendums	4
Amendments	Nil

Table 1: Number of Agreements between industrial establishments and trade unions registered at the DIER in 2013

### *Registrar of Trade Unions*

On 1<sup>st</sup> January 2013, there were 31 registered trade unions and 15 employers' associations.

During this period no trade union or employers association was registered and no trade union or employers' association was cancelled.

Thus, on 31st December 2013 the Register of Trade Unions was composed of 31 trade unions and 15 employers' associations. Nine verification exercises for union recognition were also carried out.

## OTHER ACTIVITIES

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

Between the 5<sup>th</sup> and 20<sup>th</sup> June 2013, the Director led a tripartite delegation at the 102<sup>nd</sup> Session of the I.L.O. Conference in Geneva. The Minister for Social Dialogue, Consumer Affairs and Civil Liberties 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 general discussions on employment and social protection in the context of demographic change and sustainable development, decent work and green jobs. Participants also took part in the recurrent discussion on the strategic objective of social dialogue under the follow-up to the 2008 ILO Declaration on Social Justice for a Fair Globalization.

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 Vilnius and Athens and were attended by DIER officials. During these meetings participants shared information on recent developments regarding industrial relations in Member States. Participants also discussed the respective Lithuanian and Greek Presidencies' priorities in the social affairs field, and issues relating to employment and industrial relations such as undeclared work, temporary agency work and zero hour contracts, .

The Director and Assistant Director attended the 6<sup>th</sup> Annual Legal Seminar organised by the European Network of Legal Experts. The theme of this seminar was "Undeclared Work".

The Director and Assistant Director attended a conference organised by DG Employment, Social Affairs and Inclusion on Industrial Relations and Social Dialogue in Europe. During this conference, the state of industrial relations and social dialogue in the EU was discussed on the basis of the Industrial Relations in Europe 2012 Report issued by the Commission.

Two Assistant Directors attended a Conference on EU Labour Law organised by DG Employment, Social Affairs and Inclusion. During this Conference, stakeholders and participants engaged in an open debate about future priorities of the Commission in the field of EU labour law.

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

#### *One meeting of the Committee of Experts on Posting of Workers*

During this meeting, the Commission provided information on recent and pending cases of the European Court of Justice, the developments in the STX judgement of the Supreme Court in Norway and the introduction of the system of joint and several liability in Switzerland. The Commission also gave an overview of the state of play of the negotiations on the proposal of the Enforcement Directive and discussed cross border enforcement issues in relation to the classification of sanctions.

#### *Three Meetings 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. These three meetings were organised by the Commission in the framework of the preparation of the report on the application of this Directive.

Officials of the Department attended eleven 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 2013, officials of the Department attended a meeting of the High Level Group of National Representatives on Corporate Social Responsibility. During this meeting, the Social Investment Package and its implications for the private sector, a feasibility study on corporate social responsibility in the field of human rights were discussed. The participants from each Member State had also the opportunity to give presentations on national activities recently implemented or planned. Officials of the Department attended the CSR European Annual Review Meeting. During this meeting, Member States and stakeholders took stock of the state of implementation of the 2011 CSR Communication. Malta also took part in a Peer Review on CSR activities. Peer review is a tool for exchanging and benchmarking information on policy development, implementation and evaluation. Two officials of his Department took part and gave a presentation on CSR practices in Malta

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### **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 2013 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 2012. To date the balance of this fund stands at € 489,376.00.

### **Implementation of Project financed by the Fund for Decent Work and Tripartite Dialogue under the Norwegian Financial Mechanism 2009 – 2014**

In 2013 the DIER implemented a project partly financed under the Fund for Decent Work and Tripartite Dialogue under the Norwegian Financial Mechanism 2009-14 entitled *Enhancing Social Dialogue and Labour Institutions*. This project principally included a research study leading to two papers on Social Dialogue and Flexible Employment Contracts and a conference for all stakeholders involved in the employment and industrial relations field organised in December, which was hosted by the Minister for Social Dialogue, Consumer Affairs and Civil Liberties in the presence of HE Mr. Bjorn Greydeland, the Norwegian ambassador to Malta. The aim of the conference was also to gauge the views of the stakeholders on matters relating to social dialogue and flexible employment with a view to contribute to the two research papers due to be completed and presented by the contracted researcher in January 2014.

### **Participation in Events & Publication of Online Journal**

Apart from the organisation of the conference indicated above where an information stand was also set up to distribute informational leaflets on employment conditions in addition to the departmental journal *I Review*, the DIER participated in another major event in 2013: the one day Annual Conference of the Foundation for Human Resources Development (FHRD) at the Mediterranean Conference Centre in Valletta. During this event, similar to previous editions, the Department set up an informational stand and distributed informational booklets on minimum wages to participants in addition to its informational leaflets and departmental journal. In December 2012 a Leaflet Stand Holder had also been installed by the Department for permanent exhibition at MCAST thereby facilitating the availability of informational leaflets on employment conditions to students. This Stand Holder during the current year continued being updated with such leaflets mainly applicable to students such as Hours of Work, Leave, Fixed-Term Contracts, Telework, Part-Time Employment, Young Persons in Employment and Termination of Employment.

In 2013 two 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 €2,498.30 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 and 2013 further reminders were sent to such defaulters.

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