

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”.

Functions

The principal functions of the Department of Industrial and Employment Relations are:-

- Providing effective machinery for the establishment of standard conditions of employment, in consultation with the social partners, and their eventual promulgation as legal instruments;
- Providing the necessary monitoring and enforcement of employment conditions as established by law;
- Regulating employment contracts in an equitable manner so as to ensure that rights and obligations pertaining to each party in the contract are observed;
- Protecting workers whose employment relationship has been terminated by an employer;
- Eliminating discriminatory practices;
- Providing support services to the Industrial Tribunal, National Employment Authority, Guarantee Fund Administration Board and Employment Relations Board;
- Providing effective mediation and conciliation in order to reduce industrial actions and trade disputes;
- Promoting good relationship between employers’ and workers’ representatives.

Department Structure

In December 2002, Parliament approved the Employment and Industrial Relations Act, Cap 452 of the Laws of Malta, which set out the framework for the adoption of the EU Labour Acquis and the responsibilities of the Director responsible for the implementation and enforcement of the Act and subsidiary legislation. The Director has overall responsibility for the operations carried out by the Department.

These activities are carried out by the following Units: -

- a) Director's Office, with a complement of one officer, responsible for the:-
 - strategic overview of the Department's operations;
 - proper functioning of the three divisions of the Department;
 - registration of trade unions;
 - provision of the machinery for the voluntary settlement of trade disputes in terms of the Act and promoting such settlement;
 - preparation of draft employment legislation.

- b) International Affairs and Research Branch, falling under the responsibility of an Assistant Director with a complement of five officers, allowing the Department to fulfil its role as the National Focal Point on issues relating to Industrial and Employment Relations. This Branch is divided into two sections:
 - i. International Relations Section whose tasks are mainly to:
 - coordinate closely with local associations or organisations which have a role to fulfil in protecting the interests of parties engaged under an employment contract;
 - maintain contacts at the technical level with Governments and other international bodies including the EU and I.L.O.
 - ii. Research Section having responsibility for Library and Archives, Labour Research, Registration of Trade Unions and Employment Agencies. Particular research projects undertaken by this section during 2010 include a study on working time practices within microenterprises.

- c) Enforcement Branch, falling under the responsibility of an Assistant Director and two Managers, carrying out the core inspection functions of the Department. This Branch is staffed by officers working in the Terminations, Inspectorate and Customer Care Sections. Besides the managerial staff there are presently two officers in the Terminations Section, five officers in the Inspectorate Section and four officers carrying out Customer Care duties. Additionally four Registry officers and one Junior Legal Officer serve both sections. Three of these officers are on reduced hours whereas one is due to retire early in 2011.
 - i. The Terminations Section processes queries and investigates complaints of clients, primarily related to employees whose employment has been terminated, whether of their own accord or by the employer. The Terminations Section is also responsible for referral of cases to the Law Courts.
 - ii. The Inspectorate Section is responsible for monitoring conditions of employment and processing complaints of workers who are still in employment. This involves an ongoing programme of inspections to target particular sectors or to investigate specific complaints. Complaints can be received directly from the person concerned, through correspondence, email or even anonymously.

- d) Administrative Branch, falling under the responsibility of an Assistant Director with a total complement of twelve personnel including six minor staff, three 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.

During 2010, this Branch through its Green Leader also oversaw environmental issues and promoted eco-friendly measures within the DIER. Similar to previous years measures such as the use of energy-saving lighting, separation within offices of waste material and recycling of paper were implemented. In addition, in November and December information sessions concerning eco-friendly waste management procedures were carried out with WasteServ Ltd for all DIER staff. Other tasks taken up by this Branch include the implementation of the Freedom of Information Act and Directives arising from the Public Administration Act.

Human Resources Issues

Similar to previous years, during 2010 the DIER experienced a steady drain of human resources making important goals and targets more challenging than ever to reach. In total, seven officers left the Department either due to being transferred elsewhere, retirements or resignations. These losses were partly compensated by four officers, namely an Assistant Principal, one Junior Legal Officer and two Casual Substitute Clerks. However the same Assistant Principal later opted to move on to another Department. The other outgoing officers included two Junior Legal Officer/Legal Officers, an Assistant Principal, a Clerk, one Casual Substitute Clerk and an Officer i/c Minor Staff. Another Senior Clerk, not included in the total of seven outgoing officers is due to retire from work in the first week of 2011. This shortfall in personnel is certainly affecting all sections within the Department especially the Enforcement Branch where most of the outgoing officers performed duties relating to the most essential enforcement function. This shortfall in personnel however should not be analysed on its own. Valuable officers have been leaving the DIER since 2008 without any replacements being forthcoming. This means that the DIER presently has nine pending requests for replacements of officers within the middle-management and clerical grades. All such requests have already been communicated to the Public Administration HR Office and the Corporate Services Directorate at OPM.

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 1,696 inspections throughout the year covering 20,930 employees out of whom 3,598 were interviewed. During such inspections a total of 685 irregularities were observed.

Officials within this section dealt with an average of 18,475 enquiries regarding conditions of employment – both on the phone and through personal visits at the Office. Another 578 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 133 monetary claims, amounting to €309,329.87 were issued whilst 527 cases each possibly including a number of irregularities were settled and another 77 unresolved cases were referred for legal action consideration.

The Inspectorate Section also processes Posted Workers Notifications; during 2010 a total of 524 notifications were received.

Terminations Section

Throughout the year, officials in the Terminations Section served a total of 310 claims against employers in Malta. The total amount for such claims amounted to €500,305.54., During the period under review 22 cases amounting to € 314,003.30 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 2010 resulted in the collection of €43,731.19, however these monies do not necessarily represent claims that originated in 2010.

Other 43 cases were closed on request of the claimant which amount to €54,143.06.

A total of (143) requests were made to the police for prosecution whilst court hearings in Malta totalled 22.

Ten appeals against Court judgements were made throughout the year 2010.

Employment Agencies

The number of Licensed Employment Agencies at the end of December 2010 was 57.

During the period under review, 47 Employment Agencies renewed their licence. Ten 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 €19,916.37.

The section also co-ordinated closely with local newspapers who publish advertisements of Employment Agencies not least by forwarding lists of Licensed Employment Agencies who are permitted to place advertisements on the local press.

Employment Relations Board

The Employment and Industrial Relations Act provides for the setting up of the Employment Relations Board. During 2010 the Board held six meetings and discussed various issues relating to employment and labour conditions such as parental leave, maternity leave, and temporary agency work. The Board also discussed the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions on the Working Time Directive. The aim of this Communication was to seek the views of the social partners on the possible way forward as regards this Directive.

Upon the invitation of the Board, the Hon. Dr. Chris Said, Parliamentary Secretary responsible for the Consumer and Competition Affairs, Local Government and Public Dialogue attended one of the Board meetings where issues regarding industrial relations were discussed.

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

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

L.N. 117 of 2010 – Part-Time Employees (Amendments) Regulations, 2010

L.N. 118 of 2010 – Minimum Special Leave Entitlement (Amendment) Regulations, 2010

L.N. 175 of 2010 – Parental Leave Entitlement (Amendment) Regulations, 2010

L.N. 195 of 2010 – Transfer of Business (Protection of Employment) (Amendment) Regulations, 2010

L.N. 460 of 2010 – Extension of Applicability to Service with Government (Protection Maternity (Employment) Regulations) Regulations, 2010

L.N. 461 of 2010 – Temporary Agency Workers Regulations, 2010

L.N. 526 of 2010 – Wage Increase (Employees) National Standard Order, 2010

L.N. 527 of 2010 – National Minimum Wage National Standard Order, 2010

L.N. 528 of 2010 – Domestic Service Wages Council Wage Regulation Order (Amendment) (No. 2) Order, 2010

L.N. 529 of 2010 - Tobacco Manufacture Industry Wages Council wage Regulation Order (Amendment) (No. 2) Order, 2010

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 54 occasions throughout the year. Agreement was successfully reached in 45 cases 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 2010, 105 new cases of alleged unfair dismissals and five other cases of alleged discrimination/harassment/victimisation were received. Ten cases of trade disputes were also introduced.

The Industrial Tribunal disposed of 86 cases of alleged unfair dismissals, four cases of alleged discrimination/harassment/victimisation and six cases referring to a Trade Dispute. The Industrial Tribunal also disposed of two cases introduced in terms of other provisions of the Employment and Industrial Relations Act.

There were 524 pending cases on 31st December 2010 of which 472 refer to alleged unfair dismissal.

Industrial Actions

During 2010 there were 28 partial industrial actions that took place in both the public and private sectors. There was no incident of total industrial action.

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 2010: -

Type of Agreement	Qty
New Collective Agreements	8
Renewals/Extensions	14
Side Agreements/Addendums	4
Amendments	3

Table 1: Number of Agreements between industrial establishments and trade unions registered at the DIER during 2010

Registrar of Trade Unions

On 1st January 2010, there were 30 registered trade unions and 18 employers' associations.

During this period two Trade Unions and one Employers Associations were registered. However there were no cancellations.

Thus, on 31st December 2010 the Register of Trade Unions was composed of 32 trade unions and 19 employers' associations.

Two verification exercises for union recognition were carried out, all of which were conducted by interview.

OTHER ACTIVITIES

Participation in Seminars, Conferences & Working Party Meetings Abroad

Between the 2nd and 18th June 2010, the Director led a tripartite delegation at the 99th Session of the I.L.O. Conference in Geneva. The Parliamentary Secretary for Consumers, Fair Competition, Local Councils and Public Dialogue attended and addressed this Conference. The Maltese delegation included a number of high-ranking officials from Trade Unions and Employers' Associations. As required by the I.L.O. Constitution, the Department paid the travel and accommodation expenses for two workers' representatives and two employers' representatives to attend the Conference. The issues considered at this Conference included discussions on decent work for domestic workers, with a view to the possible adoption of a Convention supplemented by a Recommendation, and on the strategic objective of employment. During the Conference, a Recommendation on HIV/AIDS and the world of work was adopted.

Prior to the I.L.O. Conference cited above, an official of the Department attended an EU Member States expert meeting in Brussels dedicated to prepare for the International Labour Conference 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 Commission organized two meetings for Directors General responsible for Industrial Relations. These two meetings were held in Brussels and Budapest 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 Directive, the Working Time Directive, the European Works Councils recast Directive and Directives concerning Information and Consultation. The Commission also gave presentations on the functioning and potential of European sectoral social dialogue and on its forthcoming activities in the fields of social dialogue at community level, restructuring and adaptation to change and labour law.

The Director, as the Maltese Government member on the Governing Board of the European Foundation for the Improvement of Living and Working Conditions attended the 82nd Meeting of the Governing Board which was held in Dublin.

The Director attended a bilateral meeting with the Belgian Presidency to discuss Malta's position on the proposed amendments to the Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers who have recently given birth or are breastfeeding.

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

Three Expert Meetings of the Committee of Experts on Posting of Workers:

In these meetings discussion centred on problems regarding cross-border enforcement, the feasibility of establishing a European platform for cooperation between labour inspectorates and the development of an information exchange system.

Two meetings of the Expert Group on Transnational Company Agreements:

During these meetings, the latest developments on the implementation of transnational company agreements were discussed. Issues on the form and transparency of transnational company agreements and the links between transnational company agreements and other levels of social dialogue were discussed.

An Expert Meeting Concerning the Implementation of Directive 94/2008/EC:

During this meeting delegates gave their feedback on the report prepared by the Commission on the implementation of this Directive. Case law from the European Court of Justice on the Insolvency Directive was discussed.

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

During these meetings delegates gave feedback on the state of transposition of the Directive in their respective Member States and continued to discuss outstanding issues related to various articles of the Directive.

Four Meetings of the Expert Group on Employee Involvement Dedicated to the Implementation of Recast Directive 2009/38/EC on European Works Councils:

During these meetings delegates gave feedback on the state of transposition of the Directive in their respective Member States and continued to discuss outstanding issues related to various articles of the Directive.

Two meetings of the EU Member States High-Level Group on Corporate Social Responsibility (CSR):

During these meetings, delegates discussed CSR developments in their respective countries, such as sustainable innovation in CSR and how the recession affected CSR activities.

Two meetings of the Subgroup on the Development of an Information Exchange System:

During these meetings the Commission gave presentations on the layout and content of the information exchange system. Discussions were also held as regards the identification of the national competent authorities which will be involved and the content of information to be made available.

Guarantee Fund Administration Board

The Employment and Industrial Relations Act (Cap. 452) and the Guarantee Fund Regulations (L.N. 432 of 2002 as amended by L.N. 444 of 2004 and 413 of 2005) provides for the setting up of the Guarantee Fund Administration Board. This Board is composed of the Director of Industrial and Employment Relations who acts as Chairperson, four representatives of employees and four representatives of employers who are appointed on the Employment Relations Board, a member nominated by the Minister of Finance, the Chairperson of the Employment and Training Corporation and a person appointed by the Minister who shall be a member of the legal profession. The Guarantee Fund is endowed with a fund to be utilized, at the Administration Board's discretion, to guarantee payment of valid claims for employees' outstanding wages when the Administration Board is satisfied that the employer has become insolvent.

During 2010, 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 2009. To date the balance of this fund stands at € 522,560.76.

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 €4,026.78 were recovered. In May 2010 warning letters were issued to all defaulters who fell back on their payment of instalments of said loan scheme.

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