Welcome to Issue number 11 of our newsletter / Review.

On the 21st of May 2014 the DIER will be organising a national conference on the Conditions of Employment and the Level of Integration of Third Country Nationals at their Place of Work. The conference is part of a project financed by the European Union European Fund for the Integration of Third Country Nationals (IF). On this occasion in his article, the Director Dr. Noel Vella tackles a number of salient aspects concerning the integration of TCN’s. Labour immigration is one of the aspects that is challenging the strong Norwegian labour market, as researcher Ms. Anne Mette Ødegård, points out in her contribution. This issue include the first contribution of Dr. Lynn Spiteri Dalmas which covers the important issue of Family Friendly Measures. We hope that you shall find this to be an interesting and informative issue of our newsletter.

Integration of Third Country Nationals (TCNs) at the Workplace

Even within a relatively homogenous population with regards to social norms, religion and culture which Malta had up till about 20 years ago, there were always people at the workplace who feel more at ease, are more accepted, and who get on better with others than some of their colleagues. The feeling that some workers feel and are readily considered as ‘insiders’ and others as ‘outsiders’ exists and will remain. This needs to be tackled so that every employee’s contribution is encouraged and appreciated for the better functioning of the enterprise.

Our history, location and economy have made contact with persons of different cultures inevitable and this has caused little fuss in our society. Over the past two decades the exposure of increasing numbers of foreign workers and the multitude of diverse cultures they brought with them, together with possibly longer stays with us now evoke different sentiments. On the one hand they enrich our society by opening our minds to new ideas and viewpoints. With a dwindling birth rate they are also necessary for our economic growth. On the other hand their presence may stir up the idea that foreign nationals are taking jobs away from locals or that they are undercutting normal wages especially insofar as low skilled jobs are concerned. Being wary of things which are different or ‘foreign’ is not something found only in Malta, but our insular, small island mentality and colonial past do not help. Additionally, the presence of foreign nationals may be interpreted or manipulated by persons or groups in a positive or negative way depending on their particular agenda.

It must be emphasised that integration is a two way street. It involves adjustments by both the foreign national and the local population. A foreigner has to accept the norms and values of the society that he is working in and be ready to interact with the locals. However locals have to show understanding of the different ideas, cultures and customs of the foreign national so long as these are not contrary to the societal norms and laws.

Stereotyping by both sides exists. It is unfair and counter-productive.

Over the past 2 decades, the number of foreign nationals working in Malta, whether from EU member states or from third countries has increased dramatically. At end 2010, there were 8,963 active employment licences. Of the 3,917 issued to non EU nationals, 1,388 were issued to persons having refugee status and a further 2,529 were issued to other TCNs and long term residents (ETC annual Report 2010). The figures for 2013 show that
apart from 1,980 licences to asylum seekers and beneficiaries of international protection there were 4,015 other TCNs and long term residents, a total of 6,027 representing 3.7% of persons in employment. Of the latter, 1,944 were of Asian origin, 1,871 were from Africa, and 1,169 were of eastern European origin. Of interest is that the gender proportion varied considerably, females comprising 57% of Asian nationals, decreasing to 34% in the case of Eastern European ones and to 15% in the case of Africans.

In terms of employment law, all persons who have a right to work are to be treated equally and in a non-discriminatory manner both during employment as well as during any recruitment process leading to possible employment. Rights are important but of little practical use if they are not observed by all and enforced appropriately. Enforcement is vital if employees are to get a fair deal and not be exploited. The working conditions established by law are applicable to all employees with no distinction. They are there to provide a socially acceptable level of basic rights which also provides a level playing field for employers. Apart from treating their employees unfairly, any unscrupulous employers who contravene the law are also fostering resentment amongst other similarly skilled workers in the labour market as well as taking an unfair competitive edge over law abiding employers.

It is thus important that employees in general, but more so foreign nationals working in Malta, have appropriate access to information about where they can obtain assistance regarding problems at work, whether related to social security, occupational health or employment conditions. And while awareness about a person’s rights at work should always be promoted, the fact that an employee, whether a local or a TCN, is unaware of his particular rights should in no way affect the employer’s observance of the law or, worse, encourage him to become non-compliant.

There are various factors which affect integration at the workplace. Differences in language, religion, culture, clothing, outlook, expectations, and even eating preferences play a considerable part in the formulation of perceptions. The influence of creed and ethnic origin cannot be underestimated. But these are not simply differences between foreign nationals and Maltese. There are considerable differences between the different nationalities themselves and also differences within groups of the same nationality. These realities further complicate matters but are not insurmountable so long as there is reciprocal understanding, respect and a willingness to tolerate, if not celebrate, diversity. The duration of the stay in the host country is also important when it comes to integration at work: someone coming for 3 months work will have a different outlook towards integration compared to a long term resident and conversely may be tolerated, if not accepted, with more ease by locals.

The skills level of a TCN also has a bearing with TCNs who may be highly qualified or highly skilled, having been recruited on the international market to fill a specific post. Others may have little or no education or skills. An additional hurdle to integration at the workplace exists in the case of persons seeking asylum, where a lack of documentation certifying levels of
Norway is a small country with five million people, an open economy and is “the top of the world” when it comes to international economic and social rankings. In the last decade, the labour market model has been challenged by increasing market competition, including labour migration from the Central- and Eastern-European countries. In addition, there is now a political discussion about how to increase flexibility in the working time regime.

The Norwegian working life model is established on high employment rates (both among men and women), strong collective actors, compressed wage-structure and a well-developed welfare state. Permanent employment is also a basic feature of this system. The model can be characterized as a compromise between labour, capital and the welfare state, where the worker’s job security is balanced against employers’ need for labour adjustment flexibility. Safety and flexibility are two keywords in order to ensure productivity. And further, productivity and quality are necessary preconditions for our industry to sell goods home and abroad.

Important features of the Norwegian labour market model are the cooperation between employers and workers representative, both at company level and industry level. There is also cooperation between a strong trade union movement, central employer organisations and the state at national level. Most politicians in Norway are satisfied with tri-partite social dialogue. The model makes it possible to arrange settlements, e.g.

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The principal aim of the Department of Industrial and Employment Relations (DIER) is to protect the interests of workers in any form of employment relationship, whilst promoting a healthy employment relationship, contributing towards stable industrial relations in a spirit of social partnership.

SL 452.95, the Equal Treatment in Employment Regulations, lays down the minimum requirements to combat any discriminatory treatment in employment, on the grounds of religious belief, disability, age, gender, sexual orientation, race or ethnic origin. Article 5A of these regulations states that The Department of Industrial and Employment Relations, laid down by such organisations. Without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7 (2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;

conducting independent surveys about discrimination;

publishing independent reports and making recommendations on any issue relating to such discrimination.

In February 2013 the DIER, in partnership with the International Organisation for Migration (IOM) has submitted a project proposal to be co-financed from the European Fund for the Integration of Third Country Nations (IF). This project, entitled The Study and Conference on the Conditions of Employment and the Level of Integration of TCNs at their Place of Work was accepted for financing and it kick started in September 2013.

The conference will involve the participation of four experts from other EU member states. This conference will provide a suitable platform to discuss the main findings of the research report, and put forward best-practises from other Member States who are facing – or have faced – similar problems over the past two decades, or who share common characteristics with Malta and the Maltese labour market. Several embassies and consulates accredited to Malta have also been invited. These embassies represent several TCN workers employed in Malta. Thus their input and participation for this conference is an asset.

Effort has been made to invite all relevant experts in this field however if any of the stakeholders do not receive an invite for this conference, they are encouraged to contact the DIER.

After the conference all stakeholders will be furnished with the research report. This report will be sent by post to all stakeholders.

Way forward

This project is a commendable initiative so that the DIER learns from the challenges and success stories relating to the integration of TCNs at their workplace in Malta. Stakeholders, particularly those who have never been in contact with the DIER are encouraged to get in touch with the DIER and seek our assistance on any matter relating to conditions of employment and industrial relations.
Night Work

Night work is working time that includes more than 50% (or a lower proportion as provided for in collective agreement) of the annual working time between 22.00hrs and 06.00hrs, or at least three hours of the daily working time as a normal course during night time (between 22.00hrs and 06.00hrs).

A night worker’s normal hours of work shall not exceed an average of eight hours in any 24-hour period. Such average should be calculated over a reference period of 17 weeks or as specified in an applicable collective agreement.

If a risk assessment, which the employer is obliged to carry out, reveals special hazards, apart from the employer being obliged to take the necessary measures to ensure that the worker concerned undergoes a suitable health assessment to determine the worker’s health status, the working hours of the employee, including night hours, should not exceed 8 hours of work in any period of 24 hours.

If a registered medical practitioner informs the employer that the employee is suffering from a health condition which is connected to night work, the employer should, if possible, transfer the employee to more suitable work during daytime.

In cases where night work is regular, the employer is obliged to keep records related to night work. (see L.N. 247 of 2003 - Organisation of Working Time Regulations)
moderate wage increases and systems for temporary lay-offs in times of crises in the economy. The more long-term cooperation can be illustrated by "The Inclusive Working Life Agreement (2001- )", which aims to reduce sickness absence and extend active employment after the age of 50.

Norway is a part of EU’s inner market through the EEA-agreement (European Economic Area), with free flow of goods, capital, services and persons. One consequence of the enlargement was the dismantling of barriers between national labour markets with substantial differences in working- and living conditions. Since the enlargements of the EU in 2004 and 2007, there has been a large inflow of workers and companies from the Central- and Eastern-European countries to Norway. High wages and high demand for labour were the main causes. 140,000 people from the new EU member-states have established in Norway during these years.

In many ways this development has been an eye-opener for central actors in the Norwegian labour market. The rising cross-border flow of service providers and low paid posted workers have triggered social dumping and circumvention of wages and working conditions, and weaknesses related to the labour market model have surfaced after the EU-enlargement.

For instance, this development has challenged the notion of permanent employment as the basis in our model such as the case of the shipyard-industry. In the four year-period 2005 to 2008, shipyards’ sales were up by nearly 100 per cent. Simultaneously, the number of permanently employed in the shipyards only increased by 6 per cent. The explanation is that large groups of foreign workers, either hired or employed by a subcontractor, came to do the job. In the shipyards, and also in the fishing-industry and construction, this has led to a state of “permanent temporary employment”. This represents a quite new trend in Norway. In the year 2000, the Manning business was deregulated, which meant that from then on, all branches have been allowed to hire workers for temporary needs but on specific conditions. This deregulation coupled with the opening of the EEA-area and a high demand of labour in Norway, are important explanations to this story of enhanced flexibility in certain branches. Another challenge in the years to come is the low coverage for collective agreements in vulnerable parts of the labour market (cleaning, transport, hotels & restaurants).

So what have been done to combat the negative consequences of the labour immigration? New forms of regulations have been introduced to combat social dumping. The most important measure is general application of collective agreements in construction, farming, shipyards and cleaning. In practice, this means a statutory minimum wage in these sectors. Traditionally wages are handled by the social partners and no one else should interfere. The cause is the notion that legislation interferes in the autonomy of collective bargaining partners and that the normative effect of collective agreements can be weakened. The system with general application of collective agreements is, in other words, a brand new instrument in the Norwegian model. Other measures worth mentioning are: obligatory id-cards for all workers in construction and cleaning, and tripartite branch-programs in cleaning, hotels & restaurants and transportation.

Important features of the Norwegian labour market model are the cooperation between employers and workers representative, both at company level and industry level.

After the general election in September 2013, two right-wing parties have formed a coalition-government. One of its goals is to enhance flexible employment and working time. This discussion follows the traditional divisions between right and left among the political parties and between the employers and workers organisations. Whether or not the new government will manage to carry out major changes is still an open question. This comes also for whether a more flexible working time regime will imply serious changes for the Norwegian labour market model. But, together with the other patterns that have emerged after 2004, this might be a threat to the traditional regime.

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The Adoption of Family Friendly Measures at the Maltese Work Place — Part 1

Gone are the days when the majority of families had only one breadwinner per household wherein the men work and in turn their wives look after their children and perform all the domestic chores. With today’s lifestyle of both men and women struggling to cope in creating the ideal balance between job and family responsibilities, the European Union felt the need to boost and raise awareness of the so called “Family Friendly Measures” for an improved way of life and better working conditions of its citizens. This matter had been given considerable importance at European Union level in order to enhance participation in the labour market and iron out the rising quandary of low birth rates in a number of European Union Member States.

In this respect, the Government of Malta is following suit by promoting the adoption of family friendly measures by bringing into force various Maltese Subsidiary Legislations and affecting a number of amendments to employment legislation. This move has been deemed by many as being essential due to the fact that according to statistics published by EUROSTAT, Malta is one of the EU28 with the lowest rate of working females. However, on a more positive note, the abovementioned rate has increased to 49.8% in 2013 when compared to 32.1% in the year 2001.

For the aforesaid reasons, the Government of Malta as an employer has, in the past, and still is, setting an example to the private sector by granting a variety of family friendly measures to the public sector and service which include:

- Adoption leave;
- Birth leave;
- Maternity leave;
- Parental leave;
- Paternity leave;
- Responsibility leave;
- Teleworking;
- Urgent Family leave;
- Work flexible hours;
- Work on a reduced-hours basis.

As part of the initiative in promoting family friendly measures, the Public Administration HR Office has published, on 16th August, 2012, the “Family-Friendly Measures Handbook” in line with the policy of the Government of Malta which manual is applicable to all public employees. Nevertheless, in instances were these family friendly measures do not form an integral part of Maltese Legislation, such as working flexible hours and working on reduced-hours, any requests made by employees, may only be acceded to following evaluations and discussions between the Director (in the case of public service) or Employer (in the case of private sector) and the employee concerned and on condition that the exigencies of the service or company are not deterred.

Notwithstanding the above, the key scope of this manual is to act as a management tool for Human Resources Managers and Directors alike in assisting them in implementing the abovementioned family friendly measures whilst motivating and supporting employees in reaching the perfect equilibrium between work and family. Therefore, by setting an example to the private sector, the Government of Malta is striving in reminding all Maltese employers that ‘family’ is the core of our small nation.

In relation to the family friendly measures applicable to employees working within the public service, such measures are regulated by the Public Service Management Code which code is binding and enforceable on public officers. On the other hand, the following family friendly measures which are applicable to workers engaged in the private sector are regulated by national legislation as explained here below:

Adoption Leave

This family friendly measure is regulated by Regulations 4, 5 and 5A of Subsidiary Legislation 452.78 of the... (Continued on page 8)
Laws of Malta which was brought into force by means of Legal Notice 225 of 20003 on 2nd September, 2003. These Regulations apply to all employees whether working on full-time or part-time basis and irrespective of whether such are employed for a definite or indefinite term however, provided that the employee making such a request has been in employment with the same employer for a continuous period of a minimum of twelve months. As per Regulation 4(1) of the aforementioned subsidiary legislation, adoption leave is granted in the form of parental leave whereby employees of both genders have an individual right to be granted unpaid parental leave on the basis of adoption, fostering or legal custody of a child in order to enable such employee to look after the said child. Nevertheless, in order for an employee to avail of such a right, the child who is to be adopted or fostered must fall within the age bracket of 4 months up to the age of eight years. The employee concerned is also obliged to notify, in writing, his employer of the former’s intention to apply for parental leave at least three weeks in advance.

Birth Leave

This family friendly measure is defined in article 2(1) of the Minimum Special Leave Entitlement Regulations (Subsidiary Legislation 452.101 of the Laws of Malta ) as meaning “leave without loss of wages granted to a father on the occasion of the birth of his child”. In accordance with article 1(2) of the aforementioned legislation, such leave is granted to employees who have just become fathers and who work on a full-time basis. The scope of the said legislation is to create minimum standards which may be altered so long as these are more favourable than the minimum standards established by law. Regulation 4(1)(b) provides that employees are entitled to a minimum of “one working day of birth leave”. This regulation further provides that such leave “…shall be availed of on the next working day after the occurrence of the relevant event”. Such condition may, however, be varied so long as the employee requests a postponement of up to two weeks following the event due to compelling circumstances. However, employees working within certain sectors for instance the laundries industry, the construction industry and the private security industry, such are entitled to two days birth leave with full pay. Moreover, Regulation 6(1)(a) of Subsidiary Legislation 452.79 also provides that part-time employees are entitled to pro-rata birth leave.

“Gone are the days when the majority of families had only one breadwinner per household wherein the men work and in turn their wives look after their children and perform all the domestic chores.”

Due to the extensive provisions regulating the remaining family friendly measures, such will be dealt with in detail in the next issue of IReview.

Leaflets on Conditions of Employment

The Department of Industrial and Employment Relations (DIER) has published a set of 10 leaflets on different aspects of the Employment and Industrial Relations Act. These publications are presented in Maltese and English and are intended as a quick reference guides to employers and employees.

The leaflets only deal with the general conditions thus due to different specific situations the applicable conditions may be different from that presented in leaflets. It is highly recommended to contact the Conditions of Employment section with the DIER for more detailed advice. Any requests sent by email will also be dealt with.

You can also visit the DIER website dier.gov.mt for further information on different aspects of the Maltese labour law. The above mentioned leaflets can be downloaded from the About DIER section in the DIER website.

For printed copies of the leaflets contact the DIER on 2397 5150

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