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Malta: Working time flexibility

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Malta

Phase:

Management

Type:

Working time flexibility

Last modified: 18 June, 2021

Native name:

Kap. 452 - Att dwar l-Impiegi u r-Relazzjonijiet Industrijali; Legislazzjoni Sussidjarja 452.110 - Regolamenti dwar is-Sahra (Avviż Legali 46 tal-2002, kif emendat bl-Avviżi Legali 109 tal-2012 u 81 tal-2015)

English name:

Chapter 452 - Employment and Industrial Relations Act, 2002; Subsidiary Legislation 452.110 - Overtime Regulations, 2012 (Legal Notice 46 of 2012 as amended by Legal Notices 109 of 2012 and 81 of 2015)

Article

Article 42 of Chapter 452; Legal Notice 46 - whole legislation

Description

Article 42 of the Employment and Industrial Relations Act 2002

In order to avoid redundancies this article allows for agreements between the employer and the employee or union representatives that provide for different conditions of employment as a temporary measure. These temporary measures which must always be approved by the director responsible for employment and industrial relations may include among others a shorter working week.

Banking of Hours

Legal Notice 46 of 2012, namely the 'Overtime Regulations 2012', introduced a system of annualised hours. In each calendar year, this system allows an employer to bank overtime hours to a maximum of 376 of the normal annual working hours per employee. This practice allows employees to bank overtime hours and above the normal weekly working hours in the periods of higher work activity, which would then be redeemed during periods of lower activity, by having working hours below the normal weekly working hours. Prior to introducing such a system the employer should obtain the approval of the Director responsible for Employment and Industrial Relations. Unless otherwise agreed between the parties, any scheme shall not prejudice the provisions of any collective agreement present at the workplace.

This legislation among others protects employees whose contract of employment is terminated by providing the following measures:

- If the contract is terminated before the banked overtime hours could be redeemed, such hours are to be paid by the date of the next pay day at the applicable overtime rate in force on the date of termination. In the case of termination of part-time employees or full-time employees with reduced hours, any banked overtime hours shall only be paid at the applicable overtime rate if the total hours worked by such employees when averaged exceed the normal hours of work of a comparable full-time employee.
- If the contract is terminated and the employee worked less hours than the yearly average, the employer cannot claim a refund in respect of hours not actually worked.

Comments

Labour legislation and relating amendments are discussed at formulation stage in the tripartite Employment Relations Board (ERB). Members forming this board come from trade unions, employers' associations and the government.

Article 42 of the Employment and Industrial Relations Act 2002

The provisions in article 42 have been resorted to in various occasions as to avoid redundancies such as in the recent global financial crisis that affected the manufacturing industry. Past agreements involved temporary recourses to a four day week which meant a reduction in the weekly wage.

Banking of Hours

Social partners are aware of the importance of having flexible working time arrangements particularly in activities

which are conditioned by seasonality such as those associated with tourism, which is a very significant sector in the Maltese economy. The importance that social partners attach to flexible working hours can be seen in the fact that over the years, they unanimously defended the opt-out clause in the Working Time Directive that was negotiated by Malta before joining the EU. This clause permits workers in Malta to work more than the prescribed maximum of 48 hours per week if they consent to do so in writing.

Cost covered by

Not applicable

Involved actors other than national government

Employer organisation
Trade union
Works council
Other

Involvement others

Employment Relations Board; Department of Industrial and Employment Relations

Thresholds

No, applicable in all circumstances

Sources

-  DG Employment, Social Affairs and Equal Opportunities/Héra, Selected companies' legal obligations regarding restructuring, 2011
-  [Chapter 452 - Employment and Industrial Relations Act, 2002](#)
-  [Subsidiary Legislation 452.110 - Overtime Regulations, 2012](#)
-  [Malta - Department for Industrial and Employment Relations - Banking of working hours \(updated 2019\)](#)
-  [ERM database on restructuring support instrument - Different conditions of employment in exceptional circumstances](#)

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