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Malta: Wage guarantee in case of insolvency

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Malta

Phase:

Management

Type:

Wage guarantee in case of insolvency

Last modified: 29 June, 2021

Native name:

Kap. 452 - Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, 2002; Regolamenti dwar Fond ta' Garanzija (Avviż Legali 432 tal-2002, kif emendat bl-Avvizi Legali 444 tal-2004 u 413 tal-2005 u Avviż Legali 283 of 2017)

English name:

Cap. 452 - Employment and Industrial Relations Act, 2002; Guarantee Funds Regulations (Legal Notice 432 of 2002, amended by Legal Notices 444 of 2004 and 413 of 2005 and L.N. 283 of 2017)

Article

Employment and Industrial Relations Act - Articles 20 and 21; Guarantee Fund Regulations- (Whole regulation) as amended by L.N. 432 of 2002 as amended by L.N. 44 of 2004; L.N.413 of 2005; L.N. 427 of 2007; L.N. 445 of 2011; L.N. 283 of 2017 L.N. 283 of 2017

Description

Article 20 of the Employment and Industrial Relations Act states that any claim by any employee in respect of a maximum of three months wage, as well as compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary. In every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.

The Guarantee Fund Regulations amounts to €582,343.35 which shall be paid out of the Consolidated Fund. In accordance with Article 102 of the Constitution of Malta all revenues and other moneys raised or received by Malta (not being revenues or other moneys payable into some other fund) shall, unless the parliament provides otherwise, be paid into and from one Consolidated Fund.

The amount of €582,343.35 shall be paid over a maximum period of five years, at a minimum rate of €116,468.67 per year. The fund is administered by a Guarantee Fund Administration Board. This is composed of the chairperson who is the Director General of Employment and Industrial Relations; four representatives of employees and four representatives of employers appointed on the Employment Relations Board (ERB); a member nominated by the Minister of Finance; the Chairperson of [Jobs+](#); and a member of the legal profession appointed by the Minister responsible for Employment and Industrial Relations.

The fund shall be utilised to guarantee payment of valid claims for employees' outstanding wages and for contributions to be paid by the employer in respect of occupational pension schemes resulting from contracts of service when the Administration Board is satisfied that the employer of an employee has become insolvent.

According to the Guarantee Fund Regulation for a claim to be valid the employee must have:

- registered a valid claim for unpaid wages with the Administration Board within two months from the insolvency of the employer;
- the employee provides certified evidence that he has registered a valid claim for the unpaid wages in the insolvency proceedings of the employer and with the Department for Industrial and Employment Relations;
- the claim registered by every individual employee shall be limited to the unpaid amounts due for unpaid wages, which shall consist of the basic wage for the relevant unpaid period, any unpaid overtime, arrears for any leave entitlement for the current and preceding calendar year, and any notice money payable in accordance with the provisions of the Act; and
- the claim registered by every individual employee refers to unpaid amounts which were due for wages payable within six months preceding the date of insolvency of the employer or preceding the termination of employment.

The employee binds himself to reimburse the Guarantee Fund. The sum reimbursed has to be equivalent to the amount paid out of the fund by the Administration Board. This amount can be derived from any amounts retrieved from any court proceedings or from any settlement received from a liquidator.

Any person who is found guilty of registering a false claim for unpaid amounts or who is found guilty of acting in collusion with an employer or an employee in order to obtain payments from the fund, shall be guilty of an offence and shall be liable on conviction to a fine (multa) which is equivalent to 10 times the amount paid out of the Guarantee Fund, together with any other punishment to which the offender shall be liable according to any other applicable law.

The Guarantee Fund Regulation does not indicate a minimum duration of the employment relationship for beneficiaries to be eligible to benefit from this fund. In order to recover money owed by the employer (which might include unpaid basic wage, overtime, compensation in lieu of notice and arrears for any leave entitlement for the current and preceding calendar year), the employee can register a valid claim with the Administration Board of the Guarantee Fund. The beneficiary is eligible to receive a total amount of money that does not exceed the equivalent amount of 13 weeks of the national minimum wage, payable at the time of the dismissal or termination. As of 1 January 2019, for an employee aged 18 years and over the national minimum wage is of €175.84 per week; for an employee who is aged 17 years the minimum wage is of €169.06 per week; and for an employee who is below 17 years of age the minimum wage is of €166.22 per week.

This regulation does not apply to private domestic servants and an employee who, on his/her own or together with members of his immediate family, was the owner or part owner of the employer's undertaking or business and had a considerable influence on its activities.

Comments

Article 21 of the Employment and Industrial Relations Act sets up the Guarantee Fund. Data for the years 2010-2015 show that the fund was only used in 2011 and 2014. During 2011, 52 claims were processed and the sum of €44,667.96 was paid out of the fund. During 2014, one claim was processed and the sum of €2,108.47 was paid out. In 2010, 2012, 2013 and 2015 no claims were made.

According to the Department of Industrial and Employment Relations (DIER), in 2016 the Guarantee Fund was used on three separate occasions where the employer was declared insolvent. In total, 31 claims were processed and the sum of €57,657 was paid out from the Guarantee Fund. Between 2018 and May 2020 the guarantee fund was used once due to insolvency declared by the employer. This sole claim was processed and the sum of €2,184 was paid out. The Department of Industrial and Employment Relations (DIER) believes that the wage guarantee fund is likely to increase its relevance due to the COVID-19 crisis as it is expected that more companies would be declared insolvent.

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

Cost covered by

National government

Involved actors other than national government

Employer organisation
Trade union
Other

Involvement others

Liquidator; Guarantee Fund; Employment Relations Board

Thresholds

No, applicable in all circumstances

Sources

- ▣ Sargent, M., 2007, Implementation Report Directive 80/987 EEC amended by Directive 2002/74/EC [protection of employees in the event of the insolvency of their employer], Human European Consultancy/Middlesex University Business School
- ▣ [EMCC support of restructuring](#)
- ▣ [Chapter 452 Employment and Industrial Relations Act, 2002](#)
- ▣ [Subsidiary Legislation 452.84 Guarantee Fund Regulations, 2002](#)
- ▣ [ERM database on restructuring support instruments - Wage guarantee fund](#)

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