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# Employment Law & the Various Entitlements: Part 1

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- Under Maltese law, leave entitlements are generally provided for on the basis of a 40 hour week
- Entitlements for persons working part time or on reduced hours must be calculated *pro rata* depending on their regular hours of work calculated over a specific reference period

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## Leave Entitlements

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How much?

- 27 working days

When?

- By mutual agreement between the employer and employee

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## Vacation Leave

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- The default vacation leave entitlement is based on a 40h week, and so must be calculated pro rata for persons who do not work full-time
- Pay attention to **carry-over arrangements**
- The entitlement will increase to 28 working days per year as from 2021, as announced in the Budget

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## Vacation Leave

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These Regulations, enacted in 2008, lay down a series of leave entitlements which provide for a series of special leave entitlements allowed to employees.

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## The Minimum Special Leave Entitlement Regulations

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- Sectoral WROs (Wage Regulation Orders) regulate specific industries as regards, wage, hours of work and even entitlements
- It is essential to note that WROs may provide for different entitlements depending on the applicable industry

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## Wage Regulation Orders

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How much?

- 10 working days

When?

- During "any period of incapacity for work"

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## Sick Leave

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- Professional Offices: 20 days on full pay, 20 days on half pay
- Wholesale & Retail: 15 days on full pay, 36 days on half pay
- Hotels and other holiday accommodation (including catering establishments within them): 18 days on full pay
- Construction: 15 days on full pay, 15 days on half pay (applicable after the completion of **1 year of service)**

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## Sick Leave – some common WRO examples

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How much?

- For as long as necessary

When?

- For any period of quarantine as may be determined by the Superintendent of Public Health or by any other public authority

NB: WROs do not cover Quarantine Leave

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## Quarantine Leave

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Some questions to consider – what if:

- an employee is under an obligatory quarantine order (but not COVID positive) but is able to work from home?
- an employee is COVID positive and so is under an obligatory quarantine order? Quarantine Leave or Sick Leave?
- an employee is COVID positive but displays no symptoms and can therefore work from home (where possible)?

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## Quarantine Leave vs Sick Leave

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How much?

- 1 working day

When?

- On the death of the spouse, parent (or ex-legal custodian), child (or person over whom employee has custody), brother or sister of the employee

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## Bereavement Leave

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How much?

- 1 working day

When?

- On the birth of one's child (the law currently provides the entitlement specifically to a 'father')

## Birth Leave

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How much?

- 2 working days

When?

- Upon the occasion of marriage

## Marriage Leave

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How much?

- Up to 1 year

When?

- Upon injuring oneself at the place of work or upon contracting an occupational disease (provided that the injury/disease is not brought upon by the employee's contributory negligence)

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## Injury Leave

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How much?

- For as long as necessary

When?

- Upon being called up to serve as a juror by the Court

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## Jury Leave

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- For employees to avail of the special leave provided for under the Minimum Special Leave Entitlement Regulations, the employer may request evidence of the occurrence of the relevant event, either before or after such occurrence, depending on the situation

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## Entitlement for Special Leave

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How much?

- 18 uninterrupted weeks

When?

- Around the time of the expected due date

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## Maternity Leave

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- The employee is to inform the employer at least **4 weeks** before the maternity leave is to begin (as far as is reasonably practicable)

- How is maternity leave to be availed of?
  - 6 weeks immediately after date of confinement
  - 4 weeks before the expected date of confinement unless agreed otherwise, in which case the remainder would be availed of after confinement
  - Remaining balance – as **the employee** may request

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## Maternity Leave

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- Time-off work without loss of pay where visits can only take place during working hours.

- Employer may request documentation to prove above.

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## Ante-Natal Checkups

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*"leave for absence from work granted by the employer to an employee who is pregnant, breastfeeding or has recently given birth, when despite the employer taking steps there exists or would still exist, a risk that could jeopardise the health or safety of the employee; such leave is to be granted for as long as the risk exists and on terms referred to in the regulation."*

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## Special Maternity Leave

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- The temporary adjustment of the working environment and, or the hours of work of the employee concerned;
- The assignment of the employee to suitable alternative work in the event that the above is not objectively and technically feasible;
- If employee refuses without justification she forfeits her right to payment.

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## Steps to take

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- During the whole period of SML the employee shall be entitled to special allowance equivalent to the rate of sickness benefit payable in terms of the Social Security Act.

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## SML Payment

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- Employee shall remain entitled to all benefits which may accrue to other employees of same class/category
- If given to an employee who is breastfeeding - SML terminated when breastfeeding stops
- If risk for which SML was given no longer exists, then SML terminates

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## Termination of SML

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- The employee is to (at the earliest practical time) notify her employer in writing of her intention to avail of SML – the employer must ensure that no risks exist
- The employer must take all reasonable measures to give the employee her previous job back and notify her in writing that she can resume work (once all risks are extinguished)
- The SML shall end 7 days after the notification to return is received by the employee, or if it is earlier, when she returns to work

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## Mutual Obligations

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- The employer must transfer the employee to day work if she provides a medical certificate saying she cannot do night work during pregnancy or while breastfeeding for H&S reasons
- If not technically and objectively feasible to not transfer her from night work, the employee shall be given SML

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## Night Work

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- During absence due to ML or SML the employee is entitled to **ALL** rights and benefits that may accrue to other employees of the same class or category of employment
- On return to work she is entitled to the same job or (if not possible for a valid reason) to equivalent or similar work
- During this leave she has NO right to any bonus or allowance related to performance or production

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## Other Rights

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- If the employee abandons her employment within 6 months from the end of maternity leave, she must repay all wages received during the period of maternity leave
- The above shall not apply if the employee is on a fixed term contract and the employer does not renew it and so the employee cannot complete the 6 month period

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## Termination of Employment

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Some considerations:

- Probation
- Good & sufficient cause
- Redundancy

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## Dismissal

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- If the probationary period has not been exhausted when the employee starts maternity leave:

  *"Probation is suspended until she is back from maternity leave or incapacity for work (owing to pathological condition arising out of confinement the 5 weeks following the end of maternity leave)"*

- SML – probation is also suspended until the employee returns to work

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## Dismissal - Probation

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In cases where there is a good and sufficient cause the employer shall:

- Cite duly substantiated grounds for her dismissal in writing in her notice of termination
- Send a copy of such notice to the Director

The reason must be unrelated to the employee's condition. Failure to give written reason or failure to justify the reason will give employee the right to lodge a claim at the Tribunal. If she proves that there was direct/indirect discrimination, the employer needs to prove that there was a good and sufficient cause.

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## Dismissal – Good & Sufficient Cause

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If the reason (or, if more than one, the principal reason) for the dismissal is that the employee:

- Refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of these regs.
- Refused (or proposed to refuse) to forgo a right conferred on her by these regs.

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## Grounds for Unfair Dismissal

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How much?

- 4 months (unpaid)

When?

- Any time until one's child is 8 years old

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## Parental Leave

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Applicability:

- Both male and female parents
- Whole time employees
- Part-timers who are entitled to pro rata leave

and for all of the above, the employee must have been in the employment of the same employer for a cumulative period of at least 12 months

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## Parental Leave Regulations

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- Such leave is to be availed of in established periods of 1 month each
- This is applicable to birth, adoption, fostering or legal custody of a child
- Employees are to give 3 weeks notice in writing specifying the beginning and end of the period of leave
- The employer together with the employee may decide whether to grant the parental leave on a full time or a part-time basis, in a piecemeal way or in the form of a time credit system.

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## Parental Leave Entitlement

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- Parental leave not taken may be transferred from one employer to another
- In fact, employers are to keep records of parental leave availed of until the employee's child is 8 years old, even if such employee has terminated their employment, in case the employee requests it
- Employers are to submit written statements of the parental leave balance even after termination, upon request of the employee

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## Change of Job

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Justifiable reasons include:

- Places where the work is on a seasonal nature
- Where a replacement cannot be found within the notice given by the employee
- Where the specific employment of the employee requesting parental leave is of strategic importance to the undertaking or place of business
- Where the business does not employ more than ten persons
- Where a significant proportion of the workforce applies for parental leave simultaneously

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## Postponement of Parental Leave

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An employer who decides to postpone the granting of parental leave shall:

- inform the employee in writing of the reasons for postponement within 2 weeks of receipt of the employee's notice
- not prejudice the employee's right to take parental leave entitlement at the latest before the child reaches 8 years of age

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## Postponement of Parental Leave

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- Parental Leave shall start from when adoptive parents provide employer with necessary evidence (the regulations list the evidence required by the employer)
- This shall also include official documentation from the Fostering Board or Central authority.

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## Adoptive/Foster Parents

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- To return to same job and if not possible for a valid reason to an equivalent or similar job consistent with the original contract of employment.
- To request changes to working hours and patterns for a specified period of time. Every employer shall consider and respond to such requests, taking into account the needs of both.

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## Other rights

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- The Director of Labour is to act as a mediator in cases of disagreement between employer and employee in view of entitlements mentioned

## disagreements

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How much?

- 15 unpaid hours (to be deducted from VL entitlement)

When?

- For urgent *force majeure* family reasons

## Urgent Family Leave

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Shall include:

- Accidents to members of the immediate family of the employee
- The sudden illness or sickness of any member of the immediate family of the employee requiring assistance or the presence of the employee
- The presence during births and deaths of members of the immediate family of the employee

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## Circumstances for Urgent Family Leave

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- No advance notification is required to be given by the employee **except** in those cases where it is possible for an employee to give 24 hours notice of when they shall be absent for urgent family reasons

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## Notification

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- The employer shall have the right to establish the maximum number of hours of time off from work in each particular case, yet the minimum time should not be less than one hour per case unless there is specific agreement of the employee.
- The employer shall have the right to demand such evidence as may be necessary to verify and confirm the request for urgent leave by the employee

## Employer's Rights

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How much?

- 60 hours (receiving person) & 40 hours (other parent/party) – with exceptions

When?

- For the purposes of medically assisted procreation

## Leave for Medically Assisted Procreation

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- This means the process whereby an embryo would develop following the bringing together of gametes, which process would have been aided or assisted by means which go beyond the workings of the natural process, and which includes all types of intervention, be they intracorporeal or extracorporeal that help the bringing together of gametes, and their implanting or the implanting of the embryo that could have developed from this intervention within the reproductive system of the receiving person.

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## Medically Assisted Procreation

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According to the MAP Leave regulation, this means the two persons who are united in marriage, civil union, cohabitation or who have attained the age of majority and are in a stable relationship with each other.

According to the Embryo Protection Act, this means either of two persons of the opposite sex who are united in marriage, or who have attained the age of majority and are in a stable relationship with each other.

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## Prospective Parents

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Such leave shall be utilised at any time during the process of medically assisted procreation.

- Receiving person – 60 hours of leave
- Other prospective parent – 40 hours of leave

The entitlement may be utilised in a non-continuous manner and is granted for every process on full pay for up to a maximum of 3 processes

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## Availing of the Entitlement

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If only one prospective parent is in employment during the process:

- 60 hours of leave shall be enjoyed by that prospective acting as the receiving person;
- 40 hours of leave shall be enjoyed by the prospective parent who is not acting as the receiving person.

If both parents are in employment (same or different employer) leave may be enjoyed concurrently by both prospective parents.

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## Availing of the Entitlement

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The employee is to notify the employer in writing of intended dates – the notification:

- is to include written certification by medical practitioner in charge of procedure;
- must be given at least 2 weeks before the leave is to start, in so far as is reasonably practicable
- for non-continuous utilisation – notification at least 2 days before each part of the leave commences

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## Notification

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- The leave is to be granted independently and irrespectively of any other kinds of leave.

- Hence an employee may have by way of example this leave and also apply for parental leave.

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## An Independent Entitlement

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- An employee who is a prospective parent shall not be dismissed by the employer for the intention or availing of such leave

- Any person contravening the law shall be guilty of an offence and shall be liable on conviction to a fine (*multa)* of not less than €500

## Protection

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How much?

- 18 weeks (uninterrupted)

When?

- From when the child passes into the care and custody of the adoptive parent or parents by means of a judgement of a court of law in the country of origin

## Adoption Leave

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- In the case of a single parent the leave is to be enjoyed by that parent
- In the case of more than one parent the leave to be enjoyed by the parent who is working and if both parents are working (whether same or different employer) each parent shall be entitled to such part of the adoption leave as they may agree in writing

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## Adoption Leave

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- To provide proof that other parent is not working (to avail of the full entitlement)
- To provide proof there is agreement showing which part of the adoption leave is going to be enjoyed by one parent and the other parent (where both parents work)

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## Employee's Obligations

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- The employee must notify the employer in writing of date s/he intends to use such leave
- Notification: a written statement by the employee's accredited adoption agency certifying that a court date has been set for the hearing of the adoption case in the country of origin
- To be given to the employer at least 2 weeks before the adoption leave beings, in so far as is reasonably practicable

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## Notification

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- Right to return to same position or analogous if post no longer available
- Cannot be dismissed because of intention of having availed him/her self of such leave
- Probation is suspended if adoption leave commences during this period.

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## Other Rights and Obligations

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- If after adoption leave, the employee does not go back to work or goes back and abandons the service within 2 calendar months from the date of such resumption the employee will have to pay the employer a sum equivalent to the 14 weeks on basic wage.
- If only part of the 2 months is worked then such equivalent sum shall be reduced by a proportionate amount, taking into account the period worked.
- An employee on a fixed term contract is not obliged to pay it back if contract is not extended at the employer's discretion to cover the period of time which is sufficient for him to fulfil the obligation.

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## Other Rights and Obligations

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## Question Time

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