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Employment Law & the Various Entitlements: Part 2

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The law allows payment of wages to be made:

- In cash
- Via bank transfers
- Via cheque

Wages and the Law

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Wages may not be **assigned** (i.e. payable to anyone else other than the employee) except in the case of a claim for maintenance from family members.

However, if a salary exceeds €698.81 per month, any amount above that value may be assigned. However, the Court may make alternative orders establishing a higher threshold for a particular individual.

Wages and the Law

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The Employment and Industrial Relations Act provides that:

- Wages must be paid within periods of a maximum of 4 weeks
- Outstanding wages and other compensation due to an employee who is terminated **must** be paid by the following payroll date
- Statutory bonuses must be paid out and cannot be 'included' within a pay package

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Wages and the Law

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Over and above the minimum wage, employers may pay employees in kind in various ways, such as meals, accommodation etc. However, the law prohibits such payment in kind to be made with "intoxicating liquor or noxious drugs".

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Wages and the Law

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Always check your industry's **Wage Regulation Order**, as these may provide for specific minimum wage rates for each individual industry.

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Wages and the Law - WROs

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Wages **may not be deducted** except in the following cases:

- Where required by law
- Subsequent to a Court order
- By agreement between an employer/employers and trade unions (not individual employees)

Wages may not be deducted **even if an individual employee agrees to it in writing.**

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Deduction of Wages

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To impose fines on employees, **employees must agree** to them in writing and **authorisation (in the form of a permit) from the DIER must be obtained**. You must provide a list of grounds upon which fines may be imposed. Otherwise, such deductions from wages may **never** be made.

If an employee does not work their assigned hours, a deduction may be made, but a fine may not be imposed for this reason.

Fines

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- These Regulations set out what a payslip but **legally contain as a minimum.** Basic details must cover:
  - Employer and employee name
  - Employer address
  - Employee designation
  - Total wages paid
  - Breakdown of the wages

The Itemised Payslip Regulations

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Other items to be included in the payslip:

- Number of normal hours worked
- Number of normal hours worked on Sundays and public holidays
- Number of overtime/special rate hours worked
- Hours of leave used and remaining balance
- Basic wage received
- A breakdown of bonuses, commissions or allowances
- Deduction effected, including tax, NI contributions etc.

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The Itemised Payslip Regulations

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Employees may request their remaining sick leave entitlement balance for up to **4 times per year.** Upon such a request being made, the information must be given to the employee within **5 working days** from the request.

Where 2 or more payslips are presented for the same period of payment, the latest one given shall apply.

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The Itemised Payslip Regulations

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Fines for any violation of provisions of the Regulations may be liable to a fine ranging from €500 to €1,165

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The Itemised Payslip Regulations

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You don't have a fines permit.

An employee was negligent and broke an expensive piece of machinery. How will you recover the costs for repair?

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Question

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Contracts may be of 2 types:

- Fixed term
- Indefinite

Employees may work:

- Full-time
- Part-time
- Casual

Types of Employment Contracts

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- Fixed term (also known as definite) contracts run for a specified period of time, which may or may not be renewed.
- The Contract of Service for a Fixed Term Regulations (SL 452.81) state that employees on fixed term contracts must be treated **equally** to comparative employees on indefinite contracts.
- Employees on fixed term contracts must be informed of indefinite posts which become available.
- You cannot change from an indefinite to a definite contract.

Fixed Term Contracts

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- Either party may terminate the contract by paying a penalty amounting to half the remaining salaries to be paid.
- If a new fixed term contract is entered into within **6 months from the termination** of a previous one with the same employe, it consitutes **continuous employment** if the main tasks and duties remain essentially the same.

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Fixed Term Contracts

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- Indefinite contracts establish an employment relationship without any limitation of time
- Different termination provisions apply to such contracts as opposed those applicable to fixed term contracts

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Indefinite Contracts

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- Employees may be made redundant in a situation where their role and responsibilities have been abolished and there is no need for them to remain employed anymore.
- An employee who is made redundant retains the right to be called back to his previous employment if the role becomes available again within the period of 1 year from the date of termination.
- The Last In First Out (LIFO) rule must be respected.

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Redundancy

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- Maltese law provides that an employee who is made redundant is only due his notice period pay
- You may opt to:
  - Pay redundant employees some extra money
  - Organise a voluntary redundancy scheme, where employees resign voluntarily in exchange for a sum of money (tax free)

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Redundancy Compensation

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Notice Periods

The law sets down **minimum** notice periods for indefinite contracts:

- 1 month - 6 months: **1 week**
- 6 months - 2 years: **2 weeks**
- 2 years - 4 years: **4 weeks**
- 4 years - 7 years: **8 weeks**
- Over 7 years: **8 weeks + an additional week for each year, up to a maximum of 12 weeks**

A contract may however provide for **longer (but <u>not</u> shorter!)** notice periods.

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A contract may however provide for **longer (but <u>not</u> shorter!)** notice periods.

Notice begins to be calculated from the day **after** the notice of termination is served.

Notice Periods

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Notice payment value shall be calculated on the average earning of the employee during the three months immediately preceding the day on which notice is given or the abandonment or termination of employment takes place

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Notice Periods

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On termination, you must also pay the employee:

- Any outstanding salary
- Remaining bonuses, allowances etc
- Unused accrued vacation leave entitlement

What if the employee has overused the accrued vacation leave?

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Other Termination Payments

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- What happens when the employer gives notice, or fails to do so?
- What happens when the employee gives notice, or simply abandons his service?
- In what case can one terminate without notice?
- What is the 6 month-gap rule? (only applies to indefinite employment)
- Can termination occur during a period of **incapacity** to work, or during **maternity leave**?
- Can a woman not return to work after maternity leave, or resign shortly after returning to work?

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Termination of Employment

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If an employer dismisses and employee OR an employee resigns/abandons the place of work with a **good and sufficient cause,** no notice payment is due

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When is notice payment not due?

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The law provides what may **not** constitute a good and sufficient cause, namely:

- Trade union membership
- Employee representative role
- Marriage
- Pregnancy or maternity leave

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Good and Sufficient Cause

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- Disclosure of illicit activity of the employer
- Filing of a complaint
- Participation in action against the employer against illicit action
- Transfer of ownership of the business

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Good and Sufficient Cause

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- Employers cannot impose conditions on employees which are less favourable than those provided for in the law
- **An exception** exists where the employer can prove that such action is taken to avoid effecting redundancies (the employees affected must acceded to any proposed changes)

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Article 42 – Conditions less favourable

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- A permit needs to be formally obtained from the DIER (with justifications), which must be renewed every 4 weeks
- Prior to effecting changes, such as reduction of working hours/days, available leave balances should be used up (forced leave)

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Article 42 – Conditions less favourable

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- Reminder – a reduction of salary is **never permitted** (save for the exceptions already discussed)
- If you reduce working hours, salaries must be paid out pro rata
- During the pandemic period, Article 42 permits issued by the DIER were providing that the remaining 'unworked' hours following the deduction must be given as Vacation Leave, according to the amount of leave accrued

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Article 42 – Payroll Implications

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The Employment and Industrial Relations Act provides that employees may bring an action against their employer to seek compensation against alleged unfair dismissal.

However, to avoid any such contentious issues the employer and ex-employee may decide to enter into a settlement agreement wherein the parties agree to not take any action against each other and the employee is paid a settlement fee.

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Issues with Termination of Employment

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- Settlement payments are generally calculated in terms of wage, for example: 2 weeks' pay or 2 months' pay
- Such payments are generally also made tax free
- It is **essential** that the payment period established in the agreement is adhered to
- Such payments are not made via payslips

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Settlement Payments

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Question Time

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