# Lecture 4:

# Employment Law & the Various Entitlements:

**Part 2**

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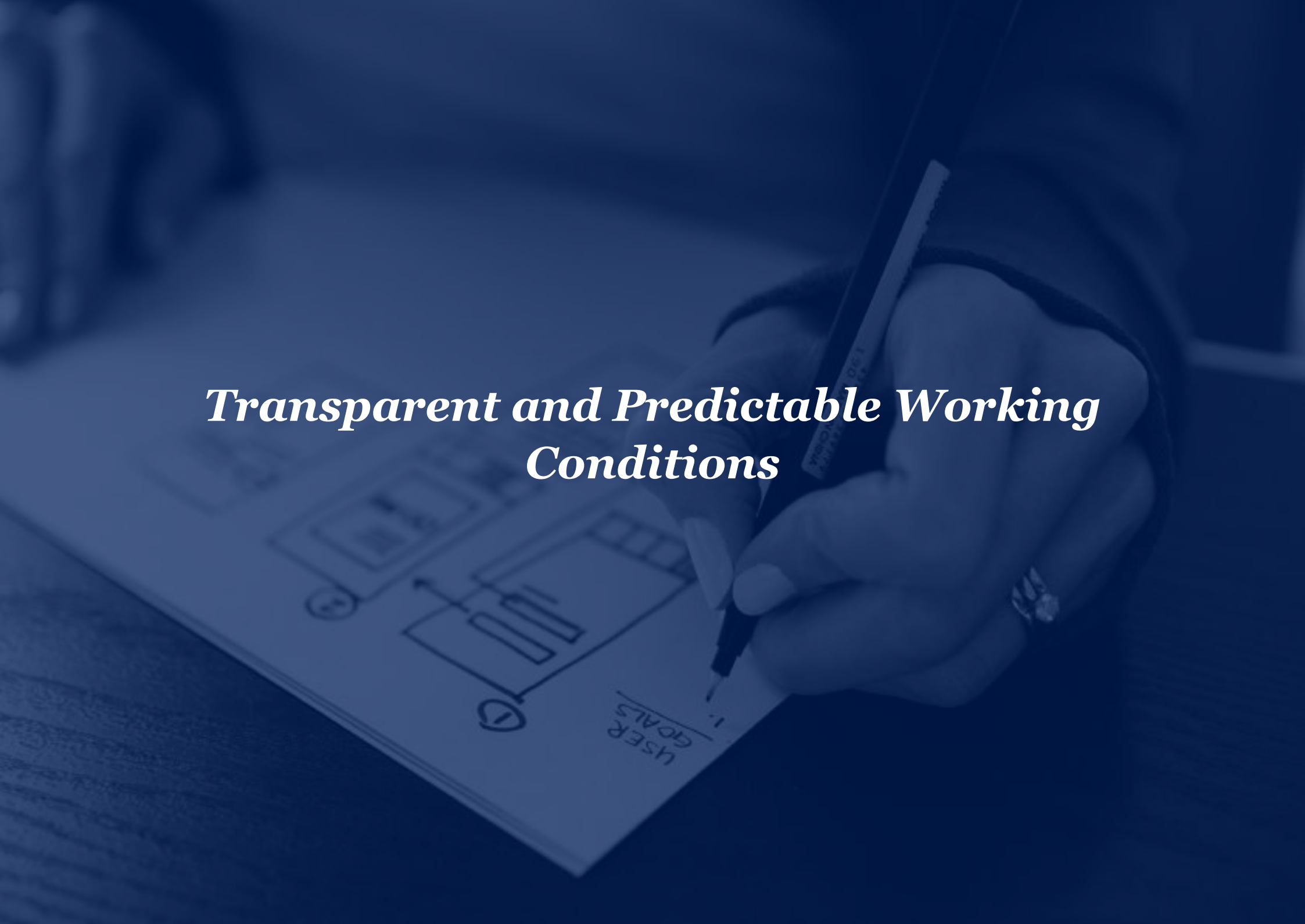
**Date: 27th October 2025**

# Agenda

1. Transparent and Predictable Working Conditions
2. Different elements of contracts of employment
3. Different types of contracts
    I. Fixed term contracts
    II. Indefinite term contracts
4. Different types of workers




# *Transparent and Predictable Working Conditions*

# *Transparent and Predictable Working Conditions (S.L. 452.126)*

Ensure minimum requirements relating to working conditions applicable to every worker in the EU. 'Directive on transparent and predictable working conditions (EU/2019/1152)';

Replaces the Information to Employees Regulations of 2003 which had implemented the Written Statement Directive (91/553/EEC);

Provision of information by the employer to the employee –**in writing** –on paper or if it can be accessible to the worker, that it can be stored and printed and employer retains proof of transmission or receipt, in electronic form;

**Employers must provide information to employees of the essential aspects of the employment relationship**.

# *Transparent and Predictable Working Conditions*

- Cut-off date –1st August 2022;
- 1/8/22 onwards –contracts need to comply with the new requirements;
- Prior to this date –contracts need to comply with the Information to Employees Regulations (now repealed) BUT employee can make a request to receive the additional information.

# *Information to be provided*

A. The name, registration number and registered place of business of the employer and a legally valid identification document number, gender, and address of the employee and the place of work:

# *Information to be provided*

B. The place of work. Where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his place of work, and the registered place of business or, where appropriate, the domicile of the employer;

C. The title, grade, nature or category of work for which the worker is employed;

D. Brief specification or description of the work;

E. The date of commencement of the employment relationship;

F. In the case of a fixed-term employment relationship, the end date or the expected duration thereof;

G. In the case of temporary agency workers, the identity of the user undertakings, when and as soon as known;

H. The duration and conditions of the probationary period;

I. The training entitlement provided by the employer

J. The amount of paid leave to which the worker is entitled, including but not only, vacation leave, paternal leave, parental leave, maternity leave, carer's leave, urgent family leave, bereavement leave, marriage leave, quarantine leave, jury service leave, sick leave and injury leave, or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;

# *Information to be provided*

K. The procedure to be observed by the employer and the worker, including the formal requirements and the notice periods, where their employment relationship is terminated or, where the length of the notice periods cannot be indicated when the information is given, the method for determining such notice periods;

L. The remuneration including the initial basic amount, any other component elements, if applicable, indicated separately, the frequency and method of payment of the remuneration to which the worker is entitled and the conditions under which fines maybe imposed by the employer and their quantum;

# *Information to be provided*

M. If the work pattern is entirely or mostly predictable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration and, where applicable, any arrangements for shift changes;

N. If the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of:

i. the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours;

ii. the reference hours and days within which the worker may be required to work;

iii. the minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation of the work assignment;

The Law provides that where a worker's work pattern is entirely or mostly unpredictable the worker shall not be required to work by the employer unless both of the following conditions are fulfilled:

(a) the work takes place within predetermined reference hours and days as referred to and agreed by and between the parties in terms of their contract/statement/engagement; and

(b) the worker is informed by his employer of a work assignment within a reasonable notice period as referred to agreed by and between the parties in terms of their contract/statement/engagement:

Where one or both of these conditions are not met, a worker shall have the right to refuse a work assignment without adverse consequences.

# Minimum Predictability

- "work pattern“: means the form of organisation of the working time and its distribution according to a certain pattern determined by the employer;
- "reference hours and days“: means time slots in specified days during which work can take place at the request of the employer.

Notice period

| Notice Period | Assignment Duration |
|---|---|
| 30 Days | 6+ Weeks |
| 15 Days | 2-5 Weeks |
| 7 Days | 1-2 Weeks |
| 3 Days | 5-7 Days |
| 1 Day | 0-5 Days |

A worker who has carried out work on an **unpredictable work pattern** with the same employer for at least **6 months** and who has completed his probationary period, if any, **may request his employer a form of employment with more predictable and secure working conditions where available and is eligible to receive a reasoned written reply**.

The employer shall provide the reasoned written reply within 1 month of the request(the law provides for exceptions).

# *Information to be provided*

O. Any collective agreements governing the worker's conditions of work or in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of such bodies or institutions within which the agreements were concluded;

P. Where it is the responsibility of the employer, the identity of the social security institutions receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.

Q. Any other relevant or applicable condition of employment.

# *Information to be provided*

**Timing**

• Information from a to e and g k l m – to be provided between the 1st working day and not later than the 7th calendar day;

• Other information mentioned – within one month of the first working day.

In the case of workers working outside of Malta for more than 4 consecutive weeks, the following information should be provided to the worker before leaving Malta:

a) The country/ies where the employee is to work abroad and the anticipated duration;

b) The currency the employee will be paid in;

c) Benefits in cash/in kind relating to the work assignment abroad (if any);

d) Any information regarding repatriation if this is included and if so, the conditions relating to such repatriation.

Where the worker has not received all or part of the relevant information the employee has a right to receive, the worker may submit a complaint to the Director of Labour who shall investigate the matter and order the employer to provide the worker with the missing information.

# Records to be kept by Employers:

A. Copies of written contracts/statements/letters of engagement of each worker
B. Employee register including the following information for each employee:
   i. the name, address, gender, a legally valid identification document number and date of birth of the worker;
   ii. the occupation of the worker;
   iii. the date of commencement of employment;
   iv. the nature of the contract of employment namely whether the contract is indefinite or fixed term and if fixed term the date of termination;
   v. the time, paid for at ordinary time rates;
   vi. the time, paid for overtime or higher rates;
   vii. the periods of daily and weekly rest accorded to the worker;
   viii. the periods of leave accorded to the worker;
   ix. the total wages paid to the worker each week; and
   x. any change or update in the conditions of the worker's occupational status.
   xi. the Employer has a duty to provide the Director with any information requested relating to conditions of work.

The Director may request information including but not limited to:

i. the name, gender, a legally valid identification document number and address;
ii. the occupation;
iii. the date of birth;
iv. the wages paid;
v. the hours of work;
vi. the date of engagement;
vii. a copy of the employee's registers or part thereof;
viii. any other information regarding conditions of workers' employment.

No condition of employment can be modified or amended after the commencement of employment, unless such modification or amendment is a result of a change in laws, regulations or a collective agreement.

An employer may not prohibit a worker from taking up employment with other employers, outside the work schedule established with that employer, nor subject a worker to adverse treatment for doing so.

However, an employer may prohibit a worker from taking up employment with other employers on the basis of **objective grounds**, such as **health and safety**, the **protection of business confidentiality**, the **integrity of the public service** or the **avoidance of conflicts of interest**.

# Legal Notice 112 of 2025

Main points to consider –

Amended the Transparent and Predictable Working Conditions last August

Implements some legal provisions of the Pay Transparency Directive;

Defines "applicant for employment" as any person seeking employment and who is being considered for engagement with a prospective employer.

Defines “pay level” as gross annual pay and the corresponding gross hourly pay.

# Legal Notice 112 of 2025

Applicants for employment shall have the right to receive from the prospective employer information about:

The initial pay, or its range, to be attributed to the position concerned; and
Where applicable, the relevant pay provisions of the collective agreement as applied by the employer in relation to the position: Provided that such information shall be provided to the workers before the commencement of their employment.

Workers shall have the right to request from the employer at any time during their employment their individual pay level and the pay levels for categories of workers performing the same work as them: Provided that the employer shall provide such information upon written request by the worker within a reasonable period of time but in any event not exceeding two (2) months from the date on which the request is made.

# DIFFERENT TYPES OF EMPLOYMENT CONTRACTS

# Different types of employment contracts

What is the  main difference?

## Definite Contract

- A definite contract is a contract of service where the end of the contract is determined by either:

  i. reaching a specific date;
  ii. by completing a specific task;
  iii. through the occurrence of a specific event.

## Indefinite Contract

- An indefinite term contract has a fixed commencement date, but no pre-determined date of termination.

Difference in term and duration

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Difference in termination

# Definite Contracts

# Definite contracts

Duty of employer to:

1. inform employees on a definite contract of vacancies of indefinite term positions which become available at work and
2. give employees the same opportunity as other employees;

Termination :

- If one party wishes to terminate a definite term contract **prior to the expiry of the established term**, without good and sufficient cause, the terminating party has to pay to the other a penalty:

A sum equal to half the wages that the employee would have earned in the remaining period of employment.

- Employee whose definite contract has **expired but remains in employment** is considered to be under an indefinite contract if employer does not produce a new contract within 12 working days following the expiry of previous contract.
- Definite contract is transformed into indefinite term contract if;
  - i. The employee has been continuously employed under such definite contract for over 4 years (even if there is more than 1 fixed term contract); and
  - ii. The employer cannot provide objective reasons to justify the limitation of renewal of the definite term contract into an indefinite one.

# Indefinite term

# Indefinite term

- Employment without time limit/expiration date
- Cannot change from an indefinite to a definite term contract

An employee: By providing my employer with notice

i. for more than one month but not more than six months ..... one week;

ii. for more than six months but not more than two years ..... two weeks;

iii. for more than two years but not more than four years ..... four weeks;

iv. for more than four years but not more than seven years ..... eight weeks;

v. for more than seven years, an additional 1 week for every subsequent year of service up to a maximum of twelve weeks;

v. or such longer periods as may be agreed by the employer and employee in the case of technical, administrative, executive or managerial posts.

# Indefinite term

The Employer may only terminate a contract of employment on the basis of:

- Good and Sufficient Cause
- Redundancy; or
- the employee reaching Retirement age.

# Probation

# Probation

- Purpose of probation: employer keeps his right to confirm employment after a specified period;
- Probation by law –6 months or shorter by agreement / 1 year in the case of employees holding technical, executive, administrative or managerial posts and wages at least double minimum wage;
- Termination without assigning reason (except in cases where the employee is pregnant) but 1 week's notice if employment longer than 1 month.

# Probation

- Cannot be extended – not even by agreement;
- No new probationary period in the case of promotions – trial periods with reversal to prior position.

Comments from Tribunal:

i. Employer has the right to terminate without giving a reason;

ii. Even if reason is given, Tribunal has no competence to "judge" that reason.

- Tribunal advised employers NOT to give reasons for termination during probation.

# Probation

New Provisions in the law:

- Fixed-term contract – probation needs to be proportionate to the expected duration of the contract;
- Renewal of a contract – if there are same functions and tasks – no new probationary period.

- Fixed term contract – **cannot be shorter than 6 months** UNLESS a shorter period is justified by objective reasons based on precise and concrete circumstances characterising a given activity;

- Contract for a shorter period – must list in writing the objective reasons for which the contact is entered into for less than 6 months;

- Probation period can be shorter;

- Probation period shall be suspended in the case of any two weeks or more approved leave – probation shall be extended to a corresponding duration of the leave;

- Employer cannot dismiss a worker during period of suspension of probation.

# New provisions for probation of a fixed term contract

- Contract is for  less than 6 months – probation shall be 1/3 of the duration of the contract – 2 months;
- Contract of between 6 months to 15 months duration – two months for 6 months contract duration;
- Contracts exceeding 15 months duration – probation shall be of six months.

# Terminations

# Good and Sufficient Cause

No clear definition in terms of law – but – the law tells us what cannot be considered as a good and sufficient cause:

(a) that the employee at the time of the dismissal was a member of a trade union, or is seeking office as, or acting or has acted in the capacity of an employees' representative; or

(b) except in the case of a private domestic employee, that the employee no longer enjoys the employer's confidence; or

(c) that the employee contracts marriage; or

(d) that an employee is pregnant with child or is absent from work during maternity leave; or

(e) that the employee discloses information, whether confidential or otherwise, to regulating body, regarding alleged illegal or corrupt activities being committed his employer or by persons acting on the employer's name and interests; or

# Good and Sufficient Cause

(f) that the employee has filed a complaint or is participating in proceedings against the employer involving alleged violation of laws or regulations or is having recourse to competent administrative authorities; or

(g) that the business in which the employee is engaged has undergone a transfer of ownership,

unless he proves that the termination is necessary for economic, technical or organisational reasons entailing changes in the workforce.

# Restrictions on Termination |Injury

A contract of service shall not, except with the consent of the employee, be terminated by the employer during any period of incapacity for work of the employee caused by personal injury by accident arising out of and in the course of employment or by any of the occupational diseases specified in the Social Security Act in each case occurring in the service of that employer.

# Terminations continued

(i) Retirement Age

(ii) Redundancy

(iii) Collective Redundancy

(iv) Constructive dismissal

(v) Good and sufficient cause vs unfair dismissal

# Other employment notions

(i) Settlement Agreement

(ii) TUPE

(iii) Restrictive Covenants

# Contract for Service vs Contract of Service/Employment

# Contract for Service vs Contract of Service/Employment

- Main distinction as found in the definition of employee: works under the direction and control of another person with regard to the manner in which the work is done.
- Difficult to determine in the case of highly skilled workers/professionals.

# Contract for Service vs Contract of Service/Employment

- Employment Status National Standard Order (S.L.452.108) – criteria to determine whether a person is an employee or self-employed;
- Independently of the intention of the parties or the designation in the contract;
- Presumption of an employment relationship if at least 5 out of 8 criteria are satisfied.
- Exemption maybe granted by the Director.

# Criteria

(a) he depends on one single person for whom the service is provided for at least 75% of his income over a period of one year;

(b) he depends on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;

(c) he performs the work using equipment, tools or materials provided by the person for whom the service is provided;

(d) he is subject to a working time schedule or minimum work periods established by the person for whom the service is provided;

(e) he cannot sub-contract his work to other individuals to substitute himself when carrying out work;

# Criteria

(f) he is integrated in the structure of the production process, the work organisation or the company's or other organization's hierarchy;

(g) the person's activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided; and

(h) he carries out similar tasks to existing employees, or, in the case when work is outsourced, he performs tasks similar to those formerly undertaken by employees.

# Different types of workers

Full time: A worker who works an average of 40 hours per week and generally 8 hrs a day for 5days a week.

Part- time: A part-time contract is a form of employment that carries fewer hours per week than a full-time job. Part-time workers are entitled to the same rights of full-time workers on a pro-rata basis.

Full time reduced: a whole-time employee who in agreement the employer works for less than the number of hours of work applicable in terms of the recognized conditions of employment to a whole-time employee, provided that such employment is the principal employment of the employee, in respect of which social security contributions are payable.

# Zero Hours Contract

- What is a zero hour contract?

A contract of employment or other work arrangement under which a worker is required to be available for work or services as and when needed by the employer, and where the employer promises payment on the basis of hours so worked without guaranteeing a minimum number of hours to the worker.

# Zero Hour contracts are generally prohibited unless ....

(a) where the nature of the activity concerned requires the availability of replacement workers on short notice; and as long as the zero-hour contract is not the whole-time employment of the worker;

(b) where the worker is a full-time student, subject to any applicable laws, regulations and administrative or statutory provisions.

21 ACADEMY