**Nru. 1445**

# DIPARTIMENT GĦAR-RELAZZJONIJIET INDUSTRIJALI U TAL-IMPJIEGI

## Noti ta' Spjegazzjoni

### 1. Introduzzjoni

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| **Titolu ta' Regolamenti** | Ir-Regolamenti tal-2022 dwar Kondizzjonijiet tax-Xogħol Trasparenti u Prevedibbli |
| **Attività regolata** | Kondizjonijiet ta' xogħol |
| **Entità Responsabbli** | Dipartiment tar-Relazzjonijiet Industrijali u tal-Impjieg |

### 2. Sommarju u sfond

L-għan ta' dawn ir-regolamenti hu li jittrasponu d-Direttiva (UE) 2019/1152 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar kondizzjonijiet tax-xogħol trasparenti u prevedibbli fl-Unjoni Ewropea (TPWCD).

It-TPWCD tħassar id-Direttiva 91/533 KEE tal-14 ta' Ottubru 1991 rigwardanti l-obbligu tal-prinċipal illi jgħarraf l-impjegati bil-kundizzjonijiet applikabbli għal kuntratt jew relazzjoni ta' impjieg, u għaldaqstant, biex jipprovdi aktar tagħrif sħiħ fuq l-aspetti essenzjali dwar ix-xogħol li għandu jingħata lill-ħaddiem bil-miktub fil-bidu tar-relazzjoni ta' impjieg. Din id-Direttiva għandha kapitlu illi jikkonċerna drittijiiet materjali ġodda għall-ħaddiema fl-Unjoni Ewropea.

It-TPWCD taffettwa l-ħaddiema kollha fl-UE/ŻEE. Ħaddiem huwa kwalunkwe persuna illi tagħti servizzi lil ħaddieħor u taħt direzzjoni ta' persuna oħra, b'liema skambju għall-istess servizzi, jingħata rimunerazzjini (Każ 66/85, Lawrie-Blum para.17).

Dan is-servizz mogħti minn persuna kkunsidrat "ħaddiem" għandu jkun effettiv u ġenwin u li mhuwiex marġinali u anċillari (Każ 53/81, Levin para.17). Il-kunċett ta' remunerazzjoni huwa wiesa' u jista' jinkludi kemm ħlas kontanti u in-natura, u jista' jkollu oriġini varji u l-valur tiegħu huwa irrelevanti.

Il-klassifikazzjoni ta' ħaddiem fl-UE huwa bbażat fuq dawn il-fatturi: is-saħħa tal-maniġment fuq l-individwu, l-element ta' superviżjoni, il-possibilta' ta' sanzjonar fuq l-individwu f'każ ta' imġiba sovverżiva, il-ħtieġa ta' approvazzjoni qabel ma d-deċiżjonijiet jiġu eżegwiti, il-libertà ta' persuna illi tagħżel il-lok u l-ħin ta' ħidma; u li l-individwu iwettaq struzzjonijiet u josserva regolamenti mingħajr ma jkollu sehem mir-riskji kummerċjali tan-negozju u l-libertà biex ma jingaġġax l-assistenti tiegħu u illi l-ħlas u l-kondizzjonijiet ta' xogħol ikunu rregolati minn ftehim kollettiv.

Taħt il-liġi tal-UE l-istatus ta' ħaddiem mhuwiex affettwat bil-fatt illi persuna ġiet ingaġġata bħala persuna illi taħdem għal rasha taħt il-liġi nazzjonali għar-raġunijiet ta' taxxa jew raġunijiet amministrattivi, sakemm, dik il-persuna taġixxi taħt id-direzzjoni ta' prinċipal fir-rigward, partikolarment, il-libertà tiegħu illi tagħżel il-ħin, lok u l-kontenut tax-xogħol tagħha, ma jkollhiex sehem mir-riskji kummerċjali tal-prinċipal tiegħu, u matul iż-żmien tar-relazzjoni

ta' impjieg tagħha, tifforma integralment parti mill-intrapriża tal-prinċipal, u għalhekk isir unità ekonomika, ħaġa waħda ma' dik l-istess intrapriża (Każ C-413/13, FNV Kunsten, para.36).

Artiklu 3 TPWCD jagħmilha ċara l-ħtieġa illi l-informazzjoni trid tingħata bil-miktub. Tista' tingħata f'forma elettronika, dment illi a) l-informazzjoni hija aċċessibbli għall-ħaddiem; b) tista' tiġi merfugħha u stampata, u ċ) illi l-prinċipal jżomm prova ta' mittenza jew riċevuta.

Artiklu 4 TPWCD jistipula t-tagħrif illi għandu jingħata lill-impjegat fil-bidu tar-relazzjoni tiegħu ta' impjieg. Il-lista mhijiex eżawrijenti. It-TPWCD tintroduċi bidliet partikolari f'dan ir-rigward. It-TPWCD daħħlet l-obbligu kontinwu ta' tagħrif lill-impjegat anke f'każ ta' bidla fl-assenjament ta' *temporary agency worker*, rigward ir-rekwiżit ta' perjodu ta' prova, meta applikabbli, partikolarment it-tul ta' tali perjodu, meta prinċipal joffri intitolament għat-taħriġ, in-numru ta' jiem ta' taħriġ, jekk hemm, tagħrif dwar il-politka ġenerali ta' taħriġ tal-prinċipal, kif ukoll, il-komponenti kollha ta' remunerazzjoni, inklużi, jekk huma applikabbli, il-kontribuzzjonijiet f'kontanti u n-natura, ħlasijiet ta' saħra, bonuses u intitolamenti oħra, diretti jew indiretti li jingħataw lill-ħaddiem minħabba xogħolu/ha, u fil-każ ta' kuntratti fuq talba kif il-ħin tax-xogħol huwa stabbilit, kif ukoll, fil-każijiet l-oħra kollha ta' impjieg, l-iskemi ta' sigurtà soċjali kkonċernati.

Artiklu 5 jirreferi għal żewġ partijiet ta' tagħrif rilevanti "informazzjoni bażika" u "informazzjoni supplementari". Fl-ewwel każ, l-informazzjoni għandha tingħata lill-impjegat sa mhux aktar tard minn sebat (7) ijiem.

Artiklu 6 jistipula illi kwalunkwe bidla fil-kondizzjonijiet ta' impjieg fl-Artiklu 4(2) u fl-Artiklu 7 għandhom jiġu trażmessi lill-impjegat fl-inqas ħin possibbli u l-aktar tard fil-jum illi jsiru effettivi.

Bis-saħħa tal-Artiklu 7(1) u (2) it-tagħrif għandu jingħata meta l-ħaddiem jiġi mibgħut fuq xogħol barra minn Malta. Artiklu 7(1) japplika għall-ħaddiema li jiġi mibgħut barra minn Malta, jew fi Stat Membru ieħor, jew fis-Stat Terz. Artiklu 7(2) japplika għal ħaddiema stazzjonati fi stat Membru ai termini ta' Direttiva 96/71/KE fuq Stazzonar ta' Ħaddiema.

Artiklu 8 jistipula li, "meta relazzjoni tax-xogħol tkun soġġetta għal perijodu ta' prova, dak il-perijodu ma jaqbiżx is-sitt xhur". Id-Direttiva ma tipprovdix definizzjoni għal perjodu ta' prova tant illi tirreferi għal-liġi jew prattika nazzjonali. Huwa f'idejn l-Istat Membru illi jipprovdi definizzjoni ta' perjodu ta' prova. Il-perjodu ta' prova tkopri t-tul ta' prova sħiħ inkluż it-tiġdid tar-relazzjoni ta'impjieg.

Artiklu 9 jistipula illi Stati Membri għandhom jiżguraw li l-prinċipal ma jwaqqafx ħaddiem milli jaħdem ma' impjegaturi oħrajn, lil hinn mill-iskeda tax-xogħol stabbilita ma' dak l-prinċipal, u lanqas ma jimmaltratta lil ħaddiem talli jkun għamel hekk.

Stat Membru jista' jistabbilxxi kondizzjonijiet għall-użu ta' restrizzjonijet ta' inkompatibbiltà min-naħa tal-prinċipala, abbażi ta' raġunijiet oġġettivi, bħalma huma s-saħħa u s-sikurezza, il-

protezzjoni tal-kunfidenzjalità kummerċjali, l-integrità tas-servizz pubbliku jew l-evitar ta' kunflitti ta' interess. Dawn huma eżempji u mhumiex lista eżawrienti.

Artiklu 10 jintroduċi livell minima ta' prevedibbilità għal meta r-ritmu tax-xogħol ta' ħaddiem ikun għal kollox, jew fil-biċċa l-kbira, imprevedibbli fejn il-prinċipal ma għandux jobbliga lill-ħaddiem jaħdem sakemm ma jiġux issodisfati ż-żewġ kundizzjonijiet (a) u (b) tal-Artiklu 10(1). L-Artiklu 10(1) ma għandux derogi mid-dritt ta' rifjut ta' assenjament ta' xogħol. Dan jimplika illi ħaddiem għandu d-dritt jirrfjuta assenjament ta' xogħol ġaraladraba l-kundizzjonijiet taħt l-imsemmi Artiklu ma jkunux sodisfatti.

Artikolu 11 jitlob lill-Istati Membri illi jippermettu l-użu ta' xogħol fuq talba jew kuntratti ta' impjieg simili, li jieħdu tal-inqas wieħed mill-miżuri li ġejjin biex jimpedixxu prattiki abbużivi:

(a) limitazzjonijiet fuq l-użu u t-tul ta' kuntratti għal xogħol fuq talba jew kuntratti ta' impjieg simili;

(b) l-introduzzjoni ta' dritt għal ħaddiem li ħadem taħt kuntratt fuq talba għal ċertu perjodu definit, għal numru minimu garantit ta' sigħat imħallsa bbażat fuq il-ħin medju maħdum matul dak il-perjodu;

(ċ) l-introduzzjon ta' kwalunkwe miżura oħra b'effett protettiv ekwivalenti.

Artiklu 12 jipprova jillimita t-tul ta' forom t'impjiegi illi huma neqsin mis-sigurta' u l-istabbilta', bil-ħolqien ta' dritt ta' ħaddiem illi jitlob forma ta' impjieg b'kondizzjonijiet tax-xogħol aktar prevedibbli u siguri mill-prinċipal tiegħu wara illi jkun ilu jaħdem mal-istess prinċipal għal ta' l-anqas sitt (6) xhur. Dan il-perjodu m'għandux għalfejn ikun kontinwu. Ir-referenza "mill-inqas sitt (6) xhur" tagħmilha ċara illi d-dritt għandu jingħata wara l-perjodu ta' sitt (6) xhur iżda ma jiskadix wara li jkunu għaddew sitt (6) xhur.

L-essenza tad-dritt fl-Artiklu 12 huwa illi wieħed jirċievi tweġiba motivata mill-prinċipal. F'dan il-każ "motivata" tfisser illi jekk it-talba tiġi miċħuda, ir-raġunijiet għandhom jiġu spjegati. Dan l-Artiklu jippermetti l-Istati Membri biex jillimitaw il-frekwenza li biha ħaddiema jistgħu jitolbu b'mod frekwenti forma ta' impjieg aktar sigur u prevedibbli. Id-Direttiva ma tistipulax *timeframe,* iżda perjodi eċċessivament twal bejn talbiet jista' jmur kontra l-*effet utile*. L-Artiklu jkompli billi jirregola l-ħin u l-format tat-tweġiba motivata mill-prinċipal. Il-prinċipal għandu jipprovdi bil-miktub risposta fiż-żmien xahar (1) mit-talba. Iżda fir-rigward ta' persuni fiżiċi li jaġixxu bħala prinċipala u intrapriżi mikro, żgħar jew ta' daqs medju, dik l-iskadenza tista' tiġi estiża għal mhux aktar minn tliet (3) xhur u jippermettu li tingħata risposta bil-fomm għal talba sussegwenti simili mressqa mill-istess ħaddiem jekk il-ġustifikazzjoni għat-tweġiba fir-rigward tas-sitwazzjoni tal-ħaddiem tibqa' l-istess. Barra minn hekk, il-kliem "fiż-żmien xahar" għandu jinftiehem illi qiegħed jirreferi għal xahar kalendarju, jiġifieri, il-perjodu bejn data partikolari f'xahar wieħed (1) u l-istess data fix-xahar ta' wara.

Fl-Artiklu 13 ġie introdott id-dritt ta' provvediment ta' taħriġ bla ħlas, fejn il-prinċipal huwa mitlub illi jipprovdi dan it-taħriġ. Dan it-taħriġ ma jinkludix taħriġ vokazzjonali jew taħriġ meħtieġ biex wieħed iżomm jew iġedded il-kwalifiċi professjonali, sakemm il-prinċipal

mhuwiex obbligat illi jagħti dan it-taħriġ mil-liġi tal-Unjoni Ewropea, il-liġi nazzjonali, jew ftehim kollettiv. Dan l-Artiklu għandu x'jaqsam biss ma' taħriġ illi l-prinċipal huwa obbligat illi jipprovdi lil ħaddiema, u ma jkoprix taħriġ obbligatorju illi l-ħaddiem kellu jieħu biex jieħu l-impjieg partikolari tiegħu. Meta l-obbligu huwa fuq il-prinċipal biex jipprovdi dan it-taħriġ, l-ispejjeż ma jistgħux jitgħaddew fuq il-ħaddiem, la taħt forma ta' talba għall-ħlas, lanqas bħala tnaqqis mill-jew waqfien tal-paga, u lanqas permezz ta' tnaqqis ta' benefiċċji taħt forma oħra illi kieku jitħallsu lil ħaddiem.

Artiklu 14 jippermetti li s-sħab soċjali jistabbilixxu arranġamenti dwar il-kondizzjonijiet tax-xogħol tal-ħaddiema li jkunu differenti minn dawk imsemmija fl-Artikli minn 8 sa 13. L-Artiklu 14 huwa flessibli u l-Istati Membri għandhom l-għażla li jew jitrasponuh, jew li ma jitrasponuhx. Fil-każ tal-Artiklu 14, is-sħab soċjali għandhom id-diskrezzjoni tagħhom limitata minn:
(a) l-obbligu tar-rispett tal-liġi tal-Unjoni Ewropea u l-prinċipji ġenerali tagħha (inklużi dawk tal-proporzjonalità u ċ-ċertezza legali) u d-drittijiet fundamentali;
(b) l-obbligu illi ma jiġix stultifikat l-oġġettiv ċentrali tad-Direttiva (Artikolu 1(1));
(ċ) l-assigurazzjoni tal-livell ġenerali tal-protezzjoni tal-ħaddiema.

### *2.2 L-Importanza ta' dawn ir-regolamenti*

Ir-regolamenti, li huma l-materja ta' dawn in-Noti ta' Spjegazzjoni, jikkonċerna drittijiet materjali ġodda illi ġew spjegati fis-sezzjoni preċedenti.

Għal din ir-raġuni, dawn ir-regolamenti se jabolixxu l-kuntratti *zero-hour* ħlief fis-sitwazzjonijiet kkontemplati f'dawn l-imsemmija regolamenti. Barra minn hekk, se jkun hemm protezzjoni kontra l-bidla ta' kundizzjonijiet ta' kuntratti ta' impjieg b'mod arbitrarju, u l-impjieg parallel ma jistax jiġi pprojbit jekk mhux għal raġunijiet oġġettivi speċifikati f'dawn ir-regolamenti, relatati ma' kunflitt ta' interess, saħħa u sigurtà, reputazzjoni tas-servizz pubbliku, u kunfidenzjalità tan-negozju.

Dawn ir-regolamenti għandhom fihom dak kollu li huwa konsistenti mat-TPWCD illi jinsabu fl-L.S. kurrenti, il-L.S. 452.83, Regolamenti Dwar Informazzjoni lill-Impjegati, flimkien ma' provvedimenti oħra illi żdiedu ma' dawk ta' S.L. 452.83, illi jirriflettu l-emendi mdaħħla mit-TPWCD, partikularment affarijiet relatati mat-trażmissjoni tal-informazzjoni lill-ħaddiema li llum jista' jsir b'mod elektroniku, l-iskadenza li fiha wieħed għandu jgħaddi informazzjoni lill-impjegati, illi issa trid tingħata fi żmien sebat ijiem (7) għall-kundizzjonijet essenzjali ta' kuntratt t'impjieg, u tibdiliet fl-informazzjoni illi irid jiġi trażmess lil impjegati li huma mitluba li jaħdmu barra minn Malta u li mhumiex ħaddiema stazzjonati.

### *2.3 Konsultazzjoni Pubblika*

Saru xi konsultazzjonijiet mal-Bord tar-Relazzjonijiet tal-Impjiegi. Il-Bord tar-Relazzjonjiet tal-Impjiegi huwa bord tripartitiku illi jikkomprendi fih *trade unions*, l-assoċjazzjonijiet ta' min

iħaddem kif ikkontemplat fl-Att dwar l-Impjiegi u r-Relazzjonijiet Industrijali (Kap 452).

**3. Ħarsa ġenerali lejn l-istruttura tal-instrument**

Regolament 1 - Titolu
Regolament 2 - Għan u applikabbilità
Regolament 3 - Tifsir
Regolament 4 - Għoti ta' informazzjoni, kuntratt ta' impjieg
Regolament 5 - Obbligu li tingħata informazzjoni
Regolament 6 - Żmien u mezzi ta' informazzjoni
Regolament 7 - Ħaddiema meħtieġa jaħdmu barra minn Malta
Regolament 8 - Kopja ta' kuntratti tax-xogħol jew ta' dikjarazzjonijiet
Regolament 9 - Rekords li għandhom jinżammu mill-prinċipal
Regolament 10 - Bidla fir-relazzjoni tax-xogħol
Regolament 11 - Miżuri kumplementari għall-kuntratti fuq talba
Regolament 12 - Impjieg parallel
Regolament 13 - Prevedibbilità minima tax-xogħol
Regolament 14 - Tranżizzjoni għal forma oħra ta' impjieg
Regolament 15 - Taħriġ obbligatorju
Regolament 16 - Mekkaniżmu għal soluzzjoni bikrija
Regolament 17 - Dritt għal rimedju u protezzjoni kontra trattament ħażin jew konsegwenzi negattivi
Regolament 18 - Protezzjoni mit-tkeċċija u oneru tal-provi
Regolament 19 - Reati
Regolament 20 - Dispożizzjonijiet aktar favorevoli
Regolament 21 - Tħassir u riżervi

**4. Kummentarju fuq il-partijiet u l-artikoli**

Il-prinċipal għandu jipprovdi lill-ħaddiema kollha l-informazzjoni mitluba bil-kitba. L-informazzjoni għandha tingħata u tiġi trażmessa fuq karta jew, sakemm dik l-informazzjoni tkun aċċessibbli għall-ħaddiem, li tista' tinħażen u tiġi stampata, u li l-prinċipal iżomm prova tat-trażmissjoni jew tal-wasla f'forma elettronika.

Bis-saħħa tar-regolamenti 5 u 6 il-prinċipala għandhom jgħarrfu lill-ħaddiema bl-elementi essenzjali tal-kuntratt ta' impjieg illi jinsabu fis-subparagrafi (1) (a) sa (e), (g), (k) u (l) matul perjodu li jibda fl-ewwel (1) jum ta' xogħol u li jispiċċa mhux aktar tard mis-seba'(7) jum tal-kalendarju.

Ir-regolament 7 jinkludi tagħrif illi jkollu jiġi kkommunikat lill-ħaddiema mitluba illi jaħdmu f'pajjiż barra minn Malta (li ma jkunux ħaddiema stazzjonati).

Bis-saħħa tar-regolament 10 ebda bidla jew modifika fil-kondizzjonijiet tal-impjieg ma tista' issir wara l-bidu tal-impjieg sakemm tali bidla jew modifika ma tkunx minħabba bidla fil-liġijiet, regolamenti jew ftehim kollettiv li jirregola l-post tax-xogħol jew, bla ħsara għad-dispozizzjonijiet ta' dan ir-regolament, jekk mhux minħabba t-tħaddim tad-dispożizzjonijiet tal-proviso għall-artikolu 42 tal-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali (Kap. 452).

Bis-saħħa tar-regolament 11, kuntratti *zero-hour* għandhom ikunu pprojbiti ħlief meta jkunu konnessi ma' attività li n-natura tagħha teħtieġ id-disponibbilità ta' ħaddiema sostituti f'qasir żmien u sakemm il-kuntratt *zero-hour* mhuwiex il-ħidma ta' ħaddiem *whole-time* jew fejn il-ħaddiem huwa student *full-time*. Iżda jekk student *full-time* ikun ukoll ħaddiem *whole-time*, l-istatus ta' ħaddiem *whole-time* għandu jipprevali, li jfisser illi jibqa' igawdi mill-benefiċċji kollha ta' ħaddiem *whole-time*. L-oneru tal-prova ta' kwalunkwe mill-fatti materjali msemmija fir-regolament 11 għandu jaqa' fuq il-prinċipal.

Bis-saħħa tar-regolament 12 prinċipal ma jistax jipprojbixxi ħaddiem milli jaħdem ma' prinċipala oħra barra mill-iskeda stabbilita mal-istess imsemmi prinċipal u l-anqas jissoġġetta lill-ħaddiem għall-trattament ħażin minħabba li jkollu impjieg parallel. L-impjieg parallel jista' jiġi pprojbit mill-prinċipal minħabba raġunijiet oġġettivi bħas-saħħa u s-sigurta', il-protezzjoni tal-kunfidenzjalita' tan-negozju, l-integrita' tas-servizz pubbliku, jew l-evitar ta' kunflitti ta' interess.

Bis-saħħa tar-regolament 13 ħaddiema illi jkollhom ir-ritmu tax-xogħol li jkun imprevedibbli għal kollox jew fil-biċċa l-kbira, il-ħaddiem ma għandux ikun meħtieġ li jaħdem sakemm ix-xogħol isir f'sigħat u jiem ta' referenza determinati minn qabel kif imsemmi fir-regolament 5(1)(n)(ii) u l-ħaddiem ikun infurmat mill-prinċipal tiegħu dwar inkarigu ta' xogħol f'perjodu ta' avviż raġonevoli, kif imsemmi fil-paragrafu fir-regolament 5(1)(n)(iii). Perjodu ta' avviż raġonevoli ma għandux ikun inqas minn:

(i) tletin (30) jum għal inkarigu ta' xogħol għal perjodu ta' sitt (6) ġimgħat jew aktar;
(ii) ħmistax-il (15) jum għal inkarigu ta' xogħol għal perjodu ta' aktar minn ġimgħatejn (2) sa ħames (5) ġimgħat;
(iii) sebat (7) ijiem għal inkarigu ta' xogħol għal perjodu ta' aktar minn ġimgħa (1) sa ġimgħatejn (2);
(iv) tlett ijiem (3) għal inkarigu ta' xogħol għal perjodu ta' bejn ħames (5) u sebat (7) ijiem; u
(v) jum wieħed (1) għal inkarigu ta' xogħol għal perjodu ta' inqas minn ħamest (5) ijiem. F'dan il-każ ħaddiem għandu jkollu, meta waħda mill-kundizzjonijiet jew iż-żewġ kundizzjonijiet imsemmija hawn fuq huma assenti, id-dritt illi jirrifjuta inkarigu ta' xogħol mingħajr konsegwenzi negattivi.

Bis-saħħa tar-regolament 14 ħaddiem li jkun ħadem mill-inqas sitt (6) xhur mal-istess prinċipal, illi jkun temm il-perjodu ta' prova, jekk ikun il-każ, jista' jitlob lill-prinċipal tiegħu forma ta' impjieg b'kondizzjonijiet tax-xogħol aktar prevedibbli u siguri fejn disponibbli u jirċievi risposta motivata bil-miktub. Il-prinċipal għandu jipprovdi r-risposta motivata bil-miktub fi żmien xahar (1) mit-talba. Iżda fir-rigward ta' persuni fiżiċi li jaġixxu bħala prinċipala u intraprizi mikro, żgħar jew ta' daqs medju, l-iskadenza għar-rispota motivata bil-miktub għandha tkun mhux aktar tard minn tliet (3) xhur mit-talba u tista' tingħata risposta bil-fomm

għal talba sussegwenti simili mressqa mill-istess ħaddiem jekk il-ġustifikazzjoni għat-tweġiba fir-rigward tas-sitwazzjoni tal-ħaddiem tibqa' l-istess.

Bis-saħħa tar-regolament 15 fejn prinċipal ikun meħtieġ mil-liġi tal-Unjoni Ewropea, minn dik nazzjonali jew mill-ftehimiet kollettivi jipprovdi taħriġ lil ħaddiem sabiex ikun jista' jwettaq ix-xogħol li jkun ġie impjegat għalih, dan it-taħriġ għandu jkun ipprovdut lill-ħaddiem mingħajr ħlas, għandu jgħodd bħala ħin tax-xogħol u, fejn possibbli, għandu jsir waqt il-ħinijiet tax-xogħol.

Bis-saħħa tar-regolament 16 fejn ħaddiem ma jkunx irċieva fil-ħin id-dokumenti rilevanti kollha, jew parti minnhom skont ir-regolamenti 5 jew 7, il-ħaddiem jista' jagħmel ilment mad-Direttur li għandu jinvestiga l-każ u jordna lill-prinċipal biex jipprovdi lill-ħaddiem l-informazzjoni nieqsa. F'kull każ bħal dan il-prinċipal li jkun kiser dan id-dritt tal-ħaddiem għandu jeħel multa kif stipulat fir-regolament 19.

Bis-saħħa tar-regolament 17 kull ħaddiem, inkluż dawk li r-relazzjoni tal-impjieg tagħhom tkun intemmet, għandu dritt għal riżoluzzjoni tat-tilwim u dritt għal rimedju fil-każ ta' ksur tad-drittijiet tiegħu li jirriżultaw minn dawn ir-regolamenti billi jressaq ilment lill-awtoritajiet kompetenti.Għandu jkun illegali illi jiġi vittimizzat, li kwalunkwe ħaddiem jew kwalunkwe rappreżentant tal-ħaddiema u jkun soġġett għal xi trattament ħażin jew li kwalunkwe ħaddiem jew kwalunkwerappreżentant tal-ħaddiema jsofru xi konsegwenzi ħżiena li jirriżultaw minn ilment imressaq lill-prinċipal jew li jirriżulta minn kwalunkwe proċeduri mibdija bil-għan li tiġi nfurzata l-konformità mad-drittijiet provduti f'dawn ir-regolamenti.

Bis-saħħa tar-regolament 18, ħaddiem li jkun imkeċċi għandu jitqies għall-finijiet ta' dawn ir-regolamenti illi kien imkeċċi b'mod inġust jekk ir-raġuni għat-tkeċċija tal-ħaddiem hija li l-ħaddiem irrifjuta, jew ippropona li jirrifjuta milli jikkonforma ma' rekwiżit illi l-prinċipal impona jew ippropona illi jimponi, illi jmur kontra dawn ir-regolamenti, jew irrifjuta jew ippropona li jirrifjuta milli jċedi dritt mogħti lilu minn dawn ir-regolamenti, jew bi kwalunkwe mod ieħor, eżerċita d-drittijiet tiegħu kif provduti f'dawn ir-regolamenti.

Ħaddiema li jqisu li tkeċċew, jew illi kienu soġġetti għall-miżuri b'effett ekwivalenti għal tkeċċija, minħabba illi eżerċitaw id-drittijiet tagħhom provduti f'dawn ir-regolamenti, jistgħu jitolbu lill-prinċipal jagħti raġunijiet sustanzjati għal tali tkeċċija jew miżuri ekwivalenti. Il-prinċipal għandu jipprovdi dawk ir-raġunijiet bil-miktub.

Meta ħaddiem quddiem it-Tribunal Industrijali jistabbilixxi fatti illi minnhom wieħed jista' jifhem illi kien hemm tali tkeċċija jew miżura ekwivalenti, għandu jkun il-prinċipal li jrid jipprova illi t-tkeċċija kienet mibnija fuq raġunijiet illi mhumiex dawk imsemmija fis-subregolament (1) tar-regolament 18.

**5. Sezzjoni konklużiva**

Dawn ir-regolamenti għandhom jidħlu fis-seħħ mal-pubblikazzjoni tagħhom fil-Gazzetta.

**N.B. Dawn in-Noti ta' Spjegazzjoni mhumiex maħsuba biex ikunu deskrizzjoni eżawrjenti tal-istrument legali u lanqas sostitut tiegħu jew suppliment leġiżlattiv għall-istess. Dawn in-Noti ta' Spjegazzjoni mhumiex intiżi bħala deċiżjoni awtorevoli fuq l-interpretazzjoni tal-leġiżlazzjoni.**

**Anness**

(għall-fini tal-paragrafu (vi) ta' Skeda III tal-Kap. 512 tal-Liġijiet ta' Malta)

**Noti għat-traspożizzjoni tal-elementi prinċipali tad-Direttiva (EU) 2019/1152 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar kondizzjonijiet tax-xogħol trasparenti u prevedibbli fl-Unjoni Ewropea.**

| **Artikolu tad-Direttiva** | **Numru tar-regolament li jittrasponi** |
|---|---|
| Artiklu 1(2) | Regolament 2(2) |
| Artiklu 1(8) | Regolament 2(3) |
| Artiklu 22 | Regolament 2(4) |
| Artiklu 2 | Regolament 3 |
| Artiklu 3 | Regolament 4 |
| Artiklu 4 | Regolament 5 |
| Artiklu 5(1) | Regolament 6 |
| Artiklu 7(1) (3) | Regolament 7 |
| Artiklu 6 | Regolament 10 |
| Artiklu 11 | Regolament 11 |
| Artiklu 9 | Regolament 12 |
| Artiklu 10 | Regolament 13 |
| Artiklu 12 | Regolament 14 |
| Artiklu 13 | Regolament 15 |
| Artiklu 15 | Regolament 16 |
| Artiklu 16 | Regolament 17 |
| Artiklu 17 | Regolament 17 |
| Artiklu 18 | Regolament 18 |
| Artiklu 19 | Regolament 19 |

**No. 1445**

# DEPARTMENT FOR INDUSTRIAL AND EMPLOYMENT RELATIONS

## Explanatory Notes

### 1. Introduction

| | |
|---|---|
| **Title of Regulations** | Transparent and Predictable Working Conditions Regulations, 2022 |
| **Activity to be regulated** | Working Conditions |
| **Responsible entity** | Department for Industrial and Employment Relations |

### 2. Summary and background

The scope of these regulations is to transpose Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (TPWCD).

The TPWCD repeals Directive 91/533 EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, therefore, providing for more complete information on the essential aspects of the work, to be received by the worker in writing at the beginning of the employment relationship. This Directive contains a chapter on new material rights for the workers in the European Union.

The TPWCD affects all workers within the EU/EEA. A worker is any person performing services for and under the direction of another person in return for which they receive remuneration (Case 66/85, Lawrie-Blum, para.17).

The service offered by a person who is considered to be a "worker" must be effective and genuine not marginal and ancillary (Case 53/81, Levin para.17). The concept of remuneration is very wide and may include both in cash and kind, and may have various origins and its value is irrelevant.

The classification of a worker in the EU is based on these factors: the power of management on the individual, the element of supervision, possibility of sanctioning an individual for subversive conduct, prior approval of decisions before they are exercised, freedom of a person to choose time and place of work; and that an individual carries out instructions and observes rules without sharing of the commercial risks of the business and freedom not to engage own assistants, and work and pay conditions are governed by a collective agreement.

Under EU law the status of a worker is not affected by the fact that a person has been hired as a self-employed person under national law for tax or administrative reasons, as long as that person acts under the direction of the employer as regards, particularly, his freedom to choose the time, place, and content of his work, does not share in the employer's commercial risks, and for the duration of that relationship, forms an integral part of the employer's undertaking, forming an economic unit with that undertaking (Case C-413/13, FNV Kunsten, para.36)

Article 3 TPWCD makes clear the requirement that the information has to be given in writing. It may be transmitted in electronic form provided that a) the information is accessible to the worker; b) it can be stored and printed, and c) that the employer retains proof of transmission or receipt.

Article 4 TPWCD lists the information that must be given to the employee before the commencement of the employment relationship. The list is not exhaustive. The TPWCD introduced particular changes in this regard. The TPWCD introduces an ongoing obligation of information to the employee even in changes of assignment of the temporary agency worker, about the requirement concerning the probation period, when applicable, particularly its duration, when the employer offers training entitlement, the number of training days, if any, and information about the employer's general training policy, as well as, all elements of the remuneration, including, if applicable, contributions in cash or kind, overtime payments, bonuses and other entitlements, directly or indirectly received by the worker in respect of his or her work, and in the case of on-demand work contracts how the working time is established, as well as, in all other cases of employment the social security schemes concerned.

Article 5 refers to two parts of the relevant information the "basic information" and the "supplementary information". In the first case, the information has to be given to the employee no later than seven (7) days.

Article 6 stipulates that any change to the working conditions referred to in Article 4(2) and Article 7 must be communicated to the employee at the earliest opportunity and at the latest on the day on which it takes effect.

Under Article 7(1) and (2) information is to be provided when the worker is posted abroad. Article 7(1) applies to all workers sent abroad, either to another Member State or a third country. Article 7(2) applies in addition to workers posted to another Member State under the terms of Directive 96/71/EC on Posting of Workers.

Article 8 states that where an "employment relationship is subject to a probationary period, that period shall not exceed six months". The Directive does not provide for any definition of probationary period such that it refers to the definition used in national law or practice. It is up to the Member States to provide this definition. This article covers the duration of the probationary period as a whole including any possible renewal. The probationary period must be proportionate to "the time the contract is expected to last, and the nature of the work". In the case of a renewal of a contract for the same function and tasks, does not bring with it a new probationary period.

Article 9 states that the Member States shall ensure that an employer does not prohibit "a worker from taking up parallel employment outside the work schedule established with that employer"and neither mistreats him/her if he or she takes up parallel employment". Article 9(2) constitutes an exception, wherein, a Member State may allow the use of incompatibility restrictions by 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 interests. These are examples and not a comprehensive list.

Article 10 introduces a minimum level of predictability for workers whose work pattern is entirely or mostly unpredictable. Both points (a) and (b) of Article 10(1) have to be fulfilled cumulatively for the worker to be required to work. Article 10(1) does not contain a derogation from the right to decline a work assignment. This implies that a worker has the right to refuse a work assignment for not meeting the preconditions under the same mentioned Article.

Article 11 requires those Member States that permit on-demand or similar employment relationships to take at least one of the following types of measures to prevent their abuse:

(a) limitations to the use and duration of on-demand contracts or similar employment relationships;
(b) introducing a right for a worker who has worked under an on-demand employment relationship for a certain defined period, to a guaranteed minimum number of paid hours based on the average time worked during that period;
(c) introducing any other measure with an equivalent protective effect.

Article 12 seeks to limit the duration of less secure forms of employment, by creating a right for a worker to request more predictable and secure employment, by creating a right for a worker to request more predictable and secure employment from his or her employer after a qualifying period of six (6) months. This period does not have to be continuous. The reference to "at least" six (6) months' service makes clear that the right should be granted after six (6) months but does not expire once those six (6) months have elapsed.

The essence of the right in Article 12 is to receive a reasoned written reply from the employer. In this case, *"reasoned"* should be understood to mean that, if the request is rejected, the grounds should be explained. This Article permits the Member States to limit the frequency with which workers can repeatedly request a more predictable and secure form of employment. The Directive does not say any particular timeframe, but excessively long periods between requests may be contrary to the principle of *effet utile*. Article 12 continues by regulating the timing and format of the reasoned reply by the employer. The employer shall provide the reply within one (1) month of the request. However, in the case of SMEs and single-person employers, the deadline for the reply may be extended to three (3) months, and the format of the subsequent responses may be oral where the situation and hence the original reasoning are unchanged. Furthermore, "within one month" should be understood as a calendar month, i.e. the period between a particular date in one (1) month and the same date in the next month.

In Article 13 there is introduced a right of the provision of training to the worker free of charge, where the employer is required to provide such training. This obligation does not cover vocational training or training required for workers to maintain or renew a professional qualification as long as the employer is not required by European Union or national law or collective agreement to provide it to the worker. This Article relates solely to training which the employer is obliged to provide to workers for the job and does not cover obligatory training that the worker must have completed being qualified to take up a particular post. When the obligation is placed on the employer to provide this training, the cost may not be passed on the worker, neither in the form of a request for payment of all or part of the training, nor as a

deduction from nor stopping of salary, nor by way of a reduction of benefits in any other form that would otherwise be paid to the worker.

Article 14 permits social partners in certain sectors and situations to establish arrangements on work conditions which differ from those set out in Articles 8 to 13. Article 14 is permissive and Member States have a choice to transpose it or not. In the case of Article 14, the social partners' discretion is limited by:

a) the obligation to respect EU law and its general principles (including proportionality, legal certainty) and fundamental rights;
b) the obligation not to frustrate the core objective of the Directive (Article 1(1));
c) ensuring the overall level of protection of workers.

### *2.2 Importance of these Regulations*

These regulations, subject of these Explanatory Notes, contain the new material rights explained in the previous section.

For this reason, these regulations will abolish zero-hour contracts except for specific situations contemplated in the same mentioned regulations. Moreover, there is granted greater protection against the arbitrary change of conditions of employment in an employment contract, and parallel employment may not be prohibited except for objective reasons specified in these regulations related to conflict of interest, health and safety, reputation of the public service, and business confidentiality.

These regulations contain all the regulations consistent with the TPWCD found in the current S.L. 452.83, the Information to Employees Regulations, together with other provisions that have been added to what was existent in S.L.452.83, reflecting amendments introduced by the TPWCD, particularly, matters related to the transmission of the information to employees which today can be done electronically, the deadline within which information has to be transmitted to employees, which presently has to be done within seven (7) calendar days for the essential conditions in a contract of employment, and changes in the information that is to be transmitted to employees who are expected to work abroad, not being posted workers.

### *2.3 Public Consultation*

Consultations were held with the Employment Relations Board. The Employment Relations Board is a tripartite Board which comprises also trade unions and employers' associations representatives as stipulated in the Employment and Industrial Relations Act (Cap 452).

**3. Overview of the structure of the instrument**

Regulation 1 - Citation
Regulation 2 - Scope and applicability
Regulation 3 - Interpretation
Regulation 4 - Provision of information,contract of employment
Regulation 5 - Obligation to provide information
Regulation 6 - Timing and means of information
Regulation 7 - Employees required to work outside Malta
Regulation 8 - Copy of contracts of employment or of declarations
Regulation 9 - Records to be kept by employer
Regulation 10 - Modification of the employment relationship
Regulation 11 - Complementary measures for on-demand contracts
Regulation 12 - Parallel employment
Regulation 13 - Minimum predictability of work
Regulation 14 - Transition to another form of employment
Regulation 15 - Mandatory training
Regulation 16 - Early settlement mechanism
Regulation 17 - Right to redress and protection against adverse treatment or consequences
Regulation 18 - Protection from dismissal and burden of proof
Regulation 19 - Offences
Regulation 20 - More favourable provisions
Regulation 21 - Repeal and saving.

**4. Commentary on parts and regulations of the legislation**

The employer shall provide each worker with the information required in writing. Th information shall be provided and transmitted on paper or, provided that the information accessible to the worker, that it can be stored and printed, and that the employer retains proc of transmission or receipt, in electronic form.

By virtue of regulations 5 and 6 employers are required to inform workers with the essenti elements of the contract of employment which are listed in sub-paragraphs (1)(a) to (e), (g (k), (l) and (m) not later than seven (7) calendar days starting from the first day of work.

Regulation 7 contains the information that needs to be communicated to the workers who a required to work in a country other than Malta (not being posted workers).

By virtue of regulation 10 no condition of employment can be modified or amended after th commencement of employment, unless such modification or amendment is a result of a chang in laws, regulations or a collective agreement regulating the place of work or, without prejudic to the generality of the foregoing, as a result of the application of the proviso to article 42 the Employment and Industrial Relations Act (Cap. 452).

By virtue of regulation 11, zero-hour contracts shall be prohibited except for those contracts connected with activity requiring availability of replacement workers on short notice, unless the zero-hour contract is not the whole-time employment of the worker, or where the worker is a full-time student, provided that if a full-time student is a whole-time worker, the status of his employment as a whole-time worker prevails, meaning that he shall enjoy the full-benefits of a whole-time worker. The burden of proof concerning the subsistence of any of the material facts mentioned in regulation 11 shall lie with the employer.

By virtue of 12 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 because of parallel employment. Parallel employment may be prohibited by an employer on the basis of objective grounds, such as, health and safety, the protection of business confidentiaity, the integrity of the public service or the avoidance of conflicts of interest.

By virtue of 13 workers having their work pattern mostly unpredictable or entirely unpredictable, the worker shall not be required to work by the employer unless the work takes place within predetermined reference hours and days as referred to in paragraph (n)(ii) of regulation 5(1), and the worker is informed by his employer of a work assignment within a reasonable notice period as referred to in paragraph (n)(iii) of regulation 5(1). A reasonable notice period is defined in detail under regulation 13, namely that a reasonable notice period shall be not less than:

i. thirty (30) days for a work assignment having a duration of six (6) weeks or more,

ii. fifteen (15) days for a work assignment having a duration of more than two (2) weeks and up to five (5) weeks,

iii. seven (7) days for a work assignment having a duration of more than one week and up to two (2) weeks,

iv. three (3) days for an assignment having a duration of between five (5) and seven (7) days, and

v. one (1) day for an assignment having a duration of less than five (5) days.

In this case, when any one or both of the conditions mentioned above is absent the worker has the right to refuse a work assignment without adverse consequences.

By virtue of regulation 14 a worker with at least six (6) months' service with the same employer, who has completed his or her probationary period, if any, may request his or her employer a form of employment with more predictable and secure working conditions where available and receive a reasoned written reply. The employer shall provide the reasoned written reply within one (1) month of the request. However, with respect to natural persons acting as employers and micro, small, or medium enterprises, the deadline for the provision of the reasoned written reply shall be no more than three (3) months of the request and an oral reply may be provided to a subsequent similar request submitted by the same worker if the justification for the reply as regards the situation of the worker remains unchanged.

By virtue of regulation 15 where an employer is required by European Union law, national law or by collective agreements to provide training to a worker to carry out the work for which he is employed, such training shall be provided to the worker free of cost, shall count as working time, and where possible, shall take place during working hours.

By virtue of regulation 16 where a worker has not received in due time all or part of the relevant information according to regulations 5 or 7, the worker shall have the possibility to submit a complaint to the Director who shall investigate the matter and order the employer to provide the worker with the missing information. In any such case the employer in breach of such worker's right shall be liable to a fine (*multa*) as stipulated in regulation 19.

By virtue of regulation 17 each worker, including those whose employment relationship has ended, shall have a right to dispute resolution and a right to redress in the case of infringements of their rights arising from these regulations by lodging a complaint to the competent authorities. It shall be unlawful to victimise, to subject any worker, or any workers' representative to any adverse treatment or for any worker, or any workers' representative to suffer any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in these regulations.

By virtue of regulation 18 a worker who is dismissed shall be regarded for the purposes of these regulations as having been unfairly dismissed if the reason for the dismissal of the worker is that the worker refused or proposed to refuse to comply with a requirement which the employer imposed or proposed to impose, in contravention of these regulations, or refused or proposed to refuse to forgo a right conferred on him by these regulations, or in any other manner, exercised his rights provided for in these regulations. Workers who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in these regulations, may request the employer to provide duly substantiated grounds for the dismissal or the equivalent measures. The employer shall provide those grounds in writing.

When a worker establishes before the Industrial Tribunal facts from which it may be presumed that there has been such a dismissal or an equivalent measure, it shall be for the employer to prove that the dismissal was based on grounds other than those referred to in sub-regulation (1) of regulation 18.

## 5. Concluding section

These regulations shall come into force upon their publication in the Gazette.

**N.B. These Explanatory Notes are not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. These Notes do not purport to be an authoritative ruling on the interpretation of the legislation.**

## Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

**Transposition Notes for the transposition of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.**

| **Directive article number/s** | **Transposing Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.** |
|---|---|
| Article 1(2) | Regulation 2(2) |
| Article 1(8) | Regulation 2(3) |
| Article 22 | Regulation 2(4) |
| Article 2 | Regulation 3 |
| Article 3 | Regulation 4 |
| Article 4 | Regulation 5 |
| Article 5(1) | Regulation 6 |
| Article 7(1) (3) | Regulation 7 |
| Article 6 | Regulation 10 |
| Article 11 | Regulation 11 |
| Article 9 | Regulation 12 |
| Article 10 | Regulation 13 |
| Article 12 | Regulation 14 |
| Article 13 | Regulation 15 |
| Article 15 | Regulation 16 |
| Article 16 | Regulation 17 |
| Article 17 | Regulation 17 |
| Article 18 | Regulation 18 |
| Article 19 | Regulation 19 |

21st October, 2022

**Nru. 1446**

# DIPARTIMENT GĦAR-RELAZZJONIJIET INDUSTRIJALI U TAL-IMPJIEGI

## Noti ta' Spjegazzjoni

### 1. Introduzzjoni

| | |
|---|---|
| **Isem tal-Abbozz** | Att sabiex jemenda l-Att Dwar l-Impjiegi u R-Relazzjonjiet Industrijali (Kap 452) |
| **Attivita' regolata** | Il-perjodu ta' prova għar-relazzjonijiet tax-xogħol b'terminu fiss u korrezzjoni ta' referenzi. |
| **Entita' Responsabbli** | Dipartiment tar-Relazzjonijiet Industrijali u tal-Impjieg |

### 2. Taqsira u Sfond

#### *2.1 Skop u Oġġettivi ta' din il-liġi*

Dawn l-emendi għandhom żewġ objettivi:

L-ewwel objettiv huwa sabiex jemenda l-artikolu 45 fil-verżjoni Ingliża biex it-terminoloġija tkun konsistenti mal-verżjoni Maltija u biex jiġu aġġornati paragrafi partikulari minħabba emendi oħra preċedenti għaċ-ċertezza legali u biex jkunu evitati interpretazzjonijiet differenti.

It-tieni objettiv huwa sabiex jemenda l-artikolu 36 rigwardanti il-perjodu ta' prova tar-relazzjonijiet ta' xogħol b'terminu fiss biex jiġi konformi mad-Direttiva (UE) 2019/1152 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar kondizzjonijiet tax-xogħol trasparenti u prevedibbli fl-Unjoni Ewropea.

#### *2.2 Il-ħtieġa tal-Abbozz*

Huwa importanti li l-verżjoni bl-Ingliż tal-artikolu 45 tkun konsistenti mal-verżjoni bil-Malti u sabiex jiġu emendati partikularitjiet fl-artikolu 75 tal-Att Dwar l-Impjiegi u r-Relazzjonjiet Industrijali fir-rigward ta' tkeċċija inġusta biex tiġi assigurat ċ-ċertezza legali. L-artikolu 36 huwa emendat fit-termini tad-dispożizzjonijiet illi jirregolaw perjodu ta' prova u ċerti sub-artikoli ġodda ġew miżjuda sabiex jirregolaw il-perjodu ta' prova ta' kuntratti t'impjieg ta' terminu fiss biex jiġu konformi mad-Direttiva (UE) 2019/1152 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar kondizzjonijiet tax-xogħol trasparenti u prevedibbli fl-Unjoni Ewropea.

#### *2.3 Konsultazzjoni Pubblika*

Saru konsultazzjonijiet mal-Bord tar-Relazzjonijiet tal-Impjiegi. Il-Bord tar-Relazzjonjiet tal-Impjiegi huwa bord tripartitiku li jikkomprendi ukoll trade unions u r-rappreżentanti tal-assoċċjazzjonjiet ta' min iħaddem kif ikkontemplat fl-Att dwar l-Impjiegi u r-Relazzjonijiet Industrijali (Kap 452).

**3. Ħarsa Ġenerali tal-Istruttura tal-Istrument**

Abbozz emendatorju tal-Att Dwar l-Impjiegi u R-Relazzjonjiet Industrijali (Kap 452):

1 – Titolu fil-qosor u skop;
2 – Emenda tal-artikolu 2 tal-Att prinċipali sabiex ġiet miżjuda tifsira ġdida ta' 'relazzjoni ta' xogħol';
3 – Emenda tal-artikolu 36 tal-Att prinċipali:
Il-klawzola 3(1) ssostitwixxit is-subartikolu 36(1) sabiex tintroduċi il-perjodu massimu ta' prova ta' sitt xhur.

(3) Is-subartikolu 36(1a) ġdid ġie miżjud. Dan is-subartikolu jintroduċi l-proporzjonalita' tal-perjodu ta' prova mad-durata tal-kuntratt t'impjieg.

(3) Is-subartikolu 36(1b) ġdid ġie miżjud. Dan is-subartikolu jistipula l-istanzi meta l-perjodu ta' prova jista' jkun ta' tnax il-xahar.

(4) Is-subartikolu 36(1ċ) ġdid ġie miżjud. Dan is-subartikolu jikkonċerna is-sospensjoni tal-perjodu ta' prova.

4 – Emenda tal-artikolu 45 tal-Att prinċipali;
5 – Emenda tal-artikolu 73 tal-Att prinċipali; u
6 – Emenda tal-artikolu 82 tal-Att prinċipali.

**4. Kummentarju dwar regolamenti jew partijiet minnhom**

Il-Klawżola 3(1)(2) tintroduċi l-artikolu 36(1a) – f'każ ta' kuntratti ta' durata fissa, it-tul tal-perjodu ta' prova irid ikun proporzjonat mat-tul mistenni tal-kuntratt u n-natura tax-xogħol. It-tul ta' kuntratt ta' terminu fiss ma għandux ikun iqsar minn sitt xhur, sakemm perjodu iqsar mhuwiex ġustifikat minħabba raġunijiet tekniċi jew ġustifikazzjonijiet oħra oġġettivi. Għal kuntratt ta' terminu fiss ta' sitt xhur, il-perjodu ta' prova ma għandux jaqbeż xahrejn. Għal kuntratti ta' terminu fiss ta' bejn sitt xhur u ħmistax il-xahar, il-perjodu ta' prova għandu ikun ekwivalenti jew inqas minn xahar għal kull tliet xhur. Għal kuntratti ta' terminu fiss li jeċċedu xahar il-perjodu ta' prova ma għandux jeċċedi sitt xhur.

**5. Sezzjoni konklużiva**

Il-miżuri hawn fuq imsemmija ser jidħlu fis-seħħ bis-saħħa tal-Abbozz propost.

**N.B: Dawn in-Noti Spjegattivi mhumiex maħsuba biex ikunu deskrizzjoni eżawrjenti tal-istrument legali u lanqas sostitut tiegħu jew suppliment leġiżlattiv għall-istess. Dawn in-**

**Noti Spjegattivi mhumiex intiżi bħala deċiżjoni awtorevoli fuq l-interpretazzjoni tal-leġiżlazzjoni.**

## Anness

(għall-fini tal-paragrafu (vi) ta' Skeda III tal-Kap. 512 tal-Liġijiet ta' Malta)

**Noti għat-traspożizzjoni tad-Direttiva (EU) 2019/1152 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar kondizzjonijiet tax-xogħol trasparenti u prevedibbli fl-Unjoni Ewropea.**

| Artikolu tad-Direttiva | Numru tal-Artikolu li jittrasponi |
|---|---|
| Artiklu 8(1) | Artiklu 36(1) |
| Artiklu 8(2) | Artiklu 36(1a) |
| Artiklu 8(3) | Artiklu 36(1b) |

Il-21 ta' Ottubru, 2022

**No. 1446**

# DEPARTMENT FOR INDUSTRIAL AND EMPLOYMENT RELATIONS

## Explanatory Notes

### 1. Introduction

| | |
|---|---|
| **Title of Bill** | An Act to amend the Employment and Industrial Relations Act (Cap 452) |
| **Activity to be regulated** | Probation period of fixed term contracts and correction of cross references. |
| **Responsible entity** | Department for Industrial and Employment Relations |

### 2. Summary and background

#### *2.1 Aims & Objectives of the legislation*

These amendments have two objectives.

The first objective is to amend article 45 in the English version so that the terminology is consistent with the Maltese version and to update certain paragraphs due to other previous amendments for legal certainty to avoid the possibility of different interpretations.

The second objective is to amend article 36 regarding probation of fixed term contracts to bring it in line with the requirements of Directive (EU) 2019/1152 of European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

#### *2.2 Importance of Bill*

It is important that the English version of article 45 of Cap 425 is consistent with the wording used in the Maltese version and to amend particular specificities in article 75 with regard to unfair dismissal to guarantee legal certainty. Article 36 is amended in terms of provisions governing probationary period, and certain subarticles were added so as to regulate probation of fixed term contracts to bring it in line with the requirements of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union.

#### *2.3 Public Consultation*

Consultations were held with the Employment Relations Board. The Employment Relations Board is a tripartite Board which comprises also trade unions and employers' associations representatives as stipulated in the Employment and Industrial Relations Act (Cap 452).

**3. Overview of the structure of the instrument**

This is an amending Bill of the Employment and Industrial Relations Act (Cap 452):

1 -Short title and scope;
2 – Amendment of article 2 of the principal Act to add a new definition of 'employment relationship';
2 – Amendment of article 36 of the principal Act
Clause 3(1) substitutes sub-article 36 (1) to introduce the maximum probationary period being that of 6 months.

(2) A new sub-article 36(1a) is added. This sub-article introduces the proportionality of the probationary period with the duration of the contract of employment.

(3) A new sub-article 36(1b) is added. This sub-article stipulates the instances when the probationary period can be of 12 months.

(4) A new sub-article 36(1C) is added. This sub-article concerns the suspension of the probationary period.

4 – Amendment of article 45 of the principal Act;
5 – Amendment of article 73 of the principal Act; and
6 – Amendment of article 82 of the principal Act.

**4. Commentary on parts and regulations**

Clause 3(1)(2) introducing new sub-article 36(1a) - in the case of fixed-term contracts, the length of the probationary period shall be proportionate to the expected duration of the contract and the nature of the work. The duration of fixed-term contracts shall not be shorter than six months, unless a shorter duration is due to technical reasons or other objective justifications. For a fixed term contract of six months, the probation period cannot exceed two months. For fixed term contracts between six months and fifteen months, the probation period shall be equivalent or less than one month for every three months. For fixed term contracts exceeding fifteen months, the probation period shall not exceed six months.

**5. Concluding section**

By virtue of this Bill, the measures mentioned above shall enter into force.

**N.B. This Explanatory Note is not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. This Note does not purport to be an authoritative ruling on the interpretation of the legislation.**

## Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

**Transposition Notes for the transposition of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.**

| Directive article number | Transposing article |
|---|---|
| Article 8(1) | Article 36(1) |
| Article 8(2) | Article 36(1a) |
| Article 8(3) | Article 36(1b) |

21st October, 2022

**Nru. 1447**

# DIPARTIMENT GĦAR-RELAZZJONIJIET INDUSTRIJALI U TAL-IMPJIEGI

## Noti ta' Spjegazzjoni

### 1. Introduzzjoni

| | |
|---|---|
| **Titolu ta' Regolamenti** | Regolamenti tal-2022 li jemendaw ir-Regolamenti dwar Impjegati Stazzjonati f'Malta |
| **Attività regolata** | Kondizzjonijiet ta' Xogħol tal-Impjegati Stazzjonati f'Malta |
| **Entità Responsabbli** | Dipartiment tar-Relazzjonijiet Industrijali u tal-Impjieg |

### 2. Sommarju u sfond

#### *2.1 L-Għan ta' dawn ir-Regolamenti*

L-għan ta' dawn ir-regolementi hu illi jemenda r-Regolamenti dwar Impjegati Stazzjonati f'Malta (S.L. 452.82) sabiex iġibhom konformi mal-provvedimenti rilevanti tad-Direttiva (UE) 2019/1152 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar kondizzjonijiet tax-xogħol trasparenti u prevedibbli fl-Unjoni Ewropea.

#### *2.2 L-Importanza ta' dawn ir-Regolamenti*

Dawn l-emendi qegħdin jiġu proposti sabiex jittrasponu rekwiżiti ġodda rigward l-obbligu tal-prinċipali sabiex jgħarrfu lill-impjegati stazzjonati b'kundizzjonijiet speċifiċi fil-kuntratt t'impjieg tagħhom.

#### *2.3 Konsultazzjoni Pubblika*

Il-konsultazzjonijiet saru mal-Bord tar-Relazzjonijiet tal-Impjiegi. Il-Bord tar-Relazzjonjiet tal-Impjiegi huwa bord maqsum fi tliet partijiet u li jinkludi fih rappreżentanti tat-*trade unions* u l-assoċċjazzjonjiet ta' min iħaddem skont l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali (Kap 452).

### 3. Ħarsa Ġenerali tal-istruttura tal-instrument

Ir-regolamenti emendatorji jikkonsistu f'żewġ (2) regolamenti, sabiex iżidu regolament ġdid.

### 4. Kummentarju dwar il-partijiet u r-regolamenti

Biż-żieda tar-regolament 6A fir-Regolamenti tal-2022 li jemendaw ir-Regolamenti dwar Impjegati Stazzjonati f'Malta, ħaddiem stazzjonat għandu jkun mgħarraf ukoll bir-remunerazzjoni illi bħala ħaddiem huwa intitolat skont il-liġi applikabbli tal-Istat Membru

ospitanti, u fejn hu applikabbli, kull *allowance* marbut mal-istazzjonar u kwalunkwe arranġamenti għar-rimborż ta' spejjeż konessi mal-ivvjaġġar, ikel u akkomodazzjoni u l-ħolqa għal websajt nazzjonali uffiċjali uniku żviluppat mill-Istat Membru ospitanti skont l-Artikolu 5(2) tad-Direttiva 2014/67/UE tal-Parlament Ewropew u tal-Kunsill.

**5. Sezzjoni konklużiva**

Dawn ir-regolamenti għandhom jidħlu fis-seħħ mal-pubblikazzjoni tagħhom fil-Gazzetta.

**N.B: Dawn in-Noti Spjegattivi mhumiex maħsuba biex ikunu deskrizzjoni eżawrjenti tal-istrument legali u lanqas sostitut tiegħu jew suppliment leġiżlattiv għall-istess. Dawn in-Noti Spjegattivi mhumiex intiżi bħala deċiżjoni awtorevoli fuq l-interpretazzjoni tal-leġiżlazzjoni.**

**Anness**

(għall-fini tal-paragrafu (vi) ta' Skeda III tal-Kap. 512 tal-Liġijiet ta' Malta)

**Noti għat-traspożizzjoni tal-elementi prinċipali tad-Direttiva (EU) 2019/1152 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar kondizzjonijiet tax-xogħol trasparenti u prevedibbli fl-Unjoni Ewropea.**

| Artikolu tad-Direttiva | Numru tar-regolament li jittrasponi |
|---|---|
| Artikolu 7(2) | Regolament 6A |

Il-21 ta' Ottubru, 2022

**No. 1447**

# DEPARTMENT FOR INDUSTRIAL AND EMPLOYMENT RELATIONS

## Explanatory Notes

### 1. Introduction

| | |
|---|---|
| **Title of Regulations** | The Posting of Workers in Malta (Amendment) Regulations, 2022 |
| **Activity to be regulated** | Working Conditions of Posted Workers |
| **Responsible Entity** | Department for Industrial and Employment Relations |

### 2. Summary and background

#### *2.1 Scope of these regulations*

The scope of these regulations is to amend the Posting of Workers in Malta Regulations (S.L. 452.82) to bring them in line with the relevant provisions of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

#### *2.2 Importance of Regulations*

These amendments are being proposed to transpose new requirements concerning the obligation on the employers to inform posted workers of conditions specific to their contract of employment.

#### *2.3 Public Consultation*

Consultations were held with the Employment Relations Board. The Employment Relations Board is a tripartite board which comprises also trade unions and employers' associations representatives in accordance with the Employment and Industrial Relations Act (Cap 452).

### 3. Overview of the structure of the instrument

The amending regulations consist of two (2) regulations, adding a new regulation.

### 4. Commentary on parts and regulations

With the addition of regulation 6A in the Posting of Workers in Malta (Amendment) Regulations, a posted worker shall in addition be notified of the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State, where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging and the link to the single official national website

developed by the host Member State pursuant to Article 5(2) of Directive 2014/67/EU of the European Parliament and of the Council.

**5. Concluding section**

These regulations shall come into force upon the publication of the regulations in the Gazette.

**N.B. This Explanatory Note is not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. This Note does not purport to be an authoritative ruling on the interpretation of the legislation.**

**Annex**

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

**Transposition Notes for the transposition of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.**

| **Article in Directive** | **Transposing Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.** |
|---|---|
| Article 7(2) | Regulation 6A |

21st October, 2022

**Nru. 1448**

## DIPARTIMENT GĦAR-RELAZZJONIJIET INDUSTRIJALI U TAL-IMPJIEGI

### Noti ta' Spjegazzjoni

### 1. Introduzzjoni

| | |
|---|---|
| **Titolu tal-Ordni** | Ordni tal-2022 tal-Kunsill tal-Pagi dwar il-Pagi tal-Pjattaforma Diġitali għall-Konsenja (l-"ordni") |
| **Attività li għandha tiġi regolata** | Kondizzjonijiet tax-Xogħol tal-Ħaddiema tal-Pjattaforma |
| **Entità responsabbli** | Dipartiment għar-Relazzjonijiet Industrijali u tal-Impjiegi |

### 2. Sommarju u sfond

L-għan ta' dan l-ordni, li huwa bbażat fuq il-Proposta għal Direttiva tal-Parlament Ewropew u tal-Kunsill dwar it-titjib tal-kondizzjonijiet tax-xogħol fir-rigward tax-xogħol fuq pjattaforma diġitali maħruġ permezz ta' Avviż Legali huwa li jiġi żgurat li l-persuni mqabbda sabiex jipprovdu servizzi bi ħlas li jikkonsisti fil-konsenja ta' kwalunkwe prodott, jiksbu aċċess għad-drittijiet tax-xogħol u tal-protezzjoni soċjali billi tiġi żgurata d-determinazzjoni korretta tal-istatus tal-impjieg tagħhom, billi jippromwovu t-trasparenza, l-ekwità, u r-responsabbiltà fil-ġestjoni algoritmika fir-rigward tagħhom u billi jtejbu t-trasparenza, it-traċċabbiltà u l-għarfien tal-iżviluppi fir-rigward tal-imsemmija attività.

### 2.1 L-importanza tal-ordni

Dan l-ordni jkopri:

ħaddiema, irġiel u nisa, li daħlu —

(i) f'kuntratt ta' impjieg, relazzjoni ta' impjieg jew arranġament ieħor, ma' aġenzija tax-xogħol, u li huma assenjati jew imqiegħda għad-dispożizzjoni ta' pjattaforma tax-xogħol diġitali, sabiex jipprovdu servizzi ta' konsenja ta' prodotti, jew

(ii) f'kuntratt ta' impjieg, jew relazzjoni ta' impjieg ma' pjattaforma tax-xogħol diġitali, sabiex jiġu pprovduti servizzi ta' konsenja ta' prodotti, u

impriżi li huma jew aġenziji tax-xogħol jew pjattaformi tax-xogħol diġitali,

u fejn huwa legalment preżunt li dawn il-ħaddiema daħlu f'relazzjoni ta' impjieg mal-aġenzija tax-xogħol jew mal-pjattaforma tax-xogħol diġitali bis-saħħa tal-issodisfar taż-żewġ (2) kriterji kif stabbilit fl-istess strument legali, skont il-każ.

Il-kunċetti ewlenin li huma inklużi fl-ordni huma kif ġej:

*2.1.1 Prežunzjoni legali*

Il-kunsiderazzjoni tal-preżunzjoni legali tar-relazzjoni ta' impjieg bejn il-persuna li twettaq ix-xogħol diġitali u l-pjattaforma tax-xogħol diġitali li għaliha jiġi pprovdut ix-xogħol tal-pjattaforma jew l-aġenzija tax-xogħol li assenjat tali persuna jew tqiegħedha għad-dispożizzjoni ta' kwalunkwe pjattaforma diġitali għandha tiġi preżunta awtomatikament.

Minkejja kwalunkwe dispożizzjoni fi kwalunkwe liġi jew ftehim kollettiv jew kuntratt individwali, ħaddiem li jipprovdi servizzi ta' konsenja ta' kwalunkwe prodott għandu, irrispettivament mir-relazzjoni jew id-denominazzjoni kuntrattwali tar-relazzjoni li dan il-ħaddiem jista' jkollu mal-aġenzija tax-xogħol jew mal-pjattaforma diġitali, jitqies li jkun daħal f'relazzjoni ta' impjieg mal-aġenzija tax-xogħol jew mal-pjattaforma diġitali, skont il-każ.

Kwalunkwe dikjarazzjoni għall-kuntrarju, għandha titqies bħala nulla u bla effett.

Madankollu, f'każijiet fejn il-pjattaforma tax-xogħol diġitali jew l-aġenzija tax-xogħol jew il-ħaddiem tal-pjattaforma jiddikjaraw li ma hemm l-ebda relazzjoni kuntrattwali, skont il-każ, għandu jintwera li mill-inqas erba' (4) mill-kriterji li ġejjin mhumiex qed jiġu ssodisfati:

(a) id-determinazzjoni effettiva, jew l-iffissar ta' limiti massimi għal-livell ta' remunerazzjoni;
(b) tirrikjedi li l-persuna li twettaq ix-xogħol tal-pjattaforma tirrispetta regoli vinkolanti speċifiċi fir-rigward tal-apparenza, l-imġiba lejn ir-riċevitur tas-servizz jew it-twettiq tax-xogħol;
(c) is-superviżjoni tal-prestazzjoni tax-xogħol jew il-verifika tal-kwalità tar-riżultati tax-xogħol inkluż b'mezzi elettroniċi;
(d) ir-restrizzjoni effettiva tal-libertà, inkluż permezz ta' sanzjonijiet, li jiġi organizzat ix-xogħol, b'mod partikolari d-diskrezzjoni li jagħżel is-sigħat tax-xogħol jew il-perjodi ta' assenza tiegħu, li jaċċetta jew jirrifjuta kompiti jew li juża sottokuntratturi jew sostituti;
(e) ir-restrizzjoni effettiva tal-possibbiltà li tinbena bażi ta' klijenti jew li jitwettaq xogħol għal kwalunkwe parti terza.

*2.1.2 Il-kondizzjonijiet tal-impjieg*

L-ordni tirregola d-data tal-bidu, iż-żmien ta' prova, l-avviż li għandu jingħata f'każ ta' terminazzjoni u t-tul ta' żmien tal-impjieg.

Il-ħaddiema preżunti li huma impjegati bis-saħħa tal-ordni għandhom ikunu intitolati għat-termini u l-kondizzjonijiet kollha tal-impjieg mogħtija mil-liġi, sal-punt li ma jkunx provdut mod ieħor mill-ordni nnifisha.

Il-ħaddiema huma intitolati li jiġu pprovduti mill-prinċipal b'vetturi, tagħmir u telefonija mobbli xierqa fir-rigward tal-qadi ta' dmirijiethom.

Ir-rati tal-paga minima u s-sahra nazzjonali huma wkoll speċifikament koperti mill-ordni.
Il-ħaddiema huma intitolati għal leave għall-mard u intitolamenti oħra ta' leave kif speċifikat fl-ordni.

L-ordni tirregola wkoll b'mod speċifiku x-xogħol fi btajjel pubbliċi.

*2.1.3 Ma għandu jintalab l-ebda ħlas u ma għandu jsir ebda tnaqqis*

Skont l-ordni, mhux permess li jintalab kwalunkwe ħlas jew drittijiet bħala konsiderazzjoni ta' impjieg ma' aġenzija tax-xogħol jew pjattaforma tax-xogħol diġitali. Barra minn hekk, ma għandu jsir l-ebda tnaqqis mill-pagi tal-ħaddiema.

*2.1.4 Informazzjoni lill-ħaddiema*

L-ordni timponi obbligu fuq il-prinċipal li jipprovdi lill-ħaddiem b'ittra ta' ingaġġ jew dikjarazzjoni ffirmata li tinkludi informazzjoni speċifika. Jekk il-ħaddiem jonqos milli jaqbel mal-kondizzjonijiet speċifikati inklużi l-pagi, u jitlaq mill-impjieg, għandu jkollu d-dritt li jistitwixxi proċeduri quddiem it-Tribunal Industrijali għal tkeċċija inġusta.

*2.1.5 Sistemi awtomatizzati ta' monitoraġġ u teħid awtomatizzati ta' deċiżjonijiet*

L-ordni tobbliga lill-prinċipala jinfurmaw lill-ħaddiema tagħhom dwar l-użu ta' sistemi ta' monitoraġġ awtomatizzati u sistemi awtomatizzati ta' teħid ta' deċiżjonijiet. L-ipproċessar ta' data personali li mhijiex intrinsikament konnessa ma' jew meħtieġa għat-twettiq ta' xogħol huwa projbit. L-impatt tad-deċiżjonijiet ibbażati fuq sistemi awtomatizzati ta' monitoraġġ u teħid ta' deċiżjonijiet dwar il-kundizzjonijiet tax-xogħol għandhom jiġu mmonitorjati regolarment u l-impatt tagħhom għandu jiġi evalwat.

*2.1.6 Informazzjoni u konsultazzjoni*

Ir-rappreżentanti uffiċjali kif imfissra fl-ordni għandhom jinżammu infurmati u kkonsultati dwar deċiżjonijiet li x'aktarx iwasslu għall-introduzzjoni jew bidliet sostanzjali fl-użu tas-sistemi awtomatizzati ta' monitoraġġ u teħid ta' deċiżjonijiet.

*2.1.7 Aċċess għall-informazzjoni*

Il-prinċipala huma marbuta li jagħmlu ċerta informazzjoni disponibbli għad-Direttur Ġenerali responsabbli għall-Impjiegi u r-Relazzjonijiet Industrijali u awtoritajiet rilevanti oħra.

Fejn il-ħaddiema jkunu impjegati minn aġenziji tax-xogħol u jiġu assenjati jew imqiegħda għad-dispożizzjoni ta' pjattaformi diġitali tax-xogħol, dawn tal-aħħar għandhom jipprovdu lill-aġenziji tax-xogħol b'tali informazzjoni dwar il-ġestjoni algoritmika li tkun meħtieġa sabiex l-aġenziji tax-xogħol ikunu jistgħu jikkonformaw mal-obbligi li jirriżultaw mill-ordni.

**2.2 Konsultazzjoni Pubblika**

Saru konsultazzjonijiet mal-Bord tar-Relazzjonijiet dwar l-Impjiegi. Il-Bord tar-Relazzjonijiet tal-Impjiegi huwa Bord tripartitiku li jinkludi wkoll rappreżentanti tat-trade unions u tal-assoċjazzjonijiet ta' min iħaddem kif stipulat fl-Att dwar l-Impjiegi u r-Relazzjonijiet Industrijali (Kap 452).

**3. Ħarsa ġenerali lejn l-istruttura tal-istrument**

L-artikolu 1 jikkonċerna t-titolu tal-ordni, l-għan u bidu fis-seħħ.

L-artikolu 2 jikkonċerna t-tifsir tal-kunċetti legali fokali f'dan l-ordni.

L-artikolu 3 jikkonċerna l-applikabilità ta' dan l-ordni.

L-artikolu 4 jintroduċi l-preżunzjoni legali tar-relazzjoni tal-impjieg.

L-artikolu 5 jikkonċerna d-data effettiva tal-bidu, iż-żmien ta' prova, l-avviż u t-tul ta' żmien tal-impjieg.

L-artikolu 6 jikkonċerna l-kondizzjonijiet tal-impjieg u part-timers.

L-artikolu 7 jikkonċerna l-vetturi, it-tagħmir u t-telefonija mobbli.

L-artikolu 8 jikkonċerna r-rati minimi ta' sahra applikabbli meta l-ħaddiema tal-pjattaformi jaqbżu l-erbgħin (40) siegħa fil-ġimgħa jew meta jaħdmu f'jum determinat minn qabel ta' mistrieħ.

L-artikolu 9 jikkonċerna l-intitolament għal-leave għall-mard.

L-artikolu 10 jikkonċerna l-intitolament għal-leave ieħor, jiġifieri l-leave għal-luttu, il-leave għal żwieġ, leave  għall-korrimenti, leave għal servizz bħala ġurat u l-leave għall-kwarantina

L-artikolu 11 jirregola x-xogħol fi btajjel pubbliċi.

L-artikolu 12 jikkonċerna t-trattament ugwali fl-impjiegi.

L-artikolu 13 jirreferi għas-saħħa u s-sigurtà fuq il-post tax-xogħol.

L-artikolu 14 jikkonċerna l-projbizzjoni li jintalab ħlas mill-ħaddiema tal-pjattaformi jew li jsir tnaqqis mill-pagi tagħhom.

L-artikolu 15 jikkonċerna l-informazzjoni li għandha tiġi pprovduta lill-ħaddiema tal-pjattaformi.

L-artikolu 16 jikkonċerna d-dritt li wieħed jirċievi raġunijiet bil-miktub għad-differenza fit-trattament.

L-artikolu 17 jikkonċerna t-trasparenza u l-użu ta' sistemi awtomatizzati ta' monitoraġġ u teħid ta' deċiżjonijiet.

L-artikolu 18 jikkonċerna l-monitoraġġ uman tas-sistemi awtomatizzati.

L-artikolu 19 jikkonċerna r-reviżjoni umana ta' deċiżjonijiet sinifikanti.

L-artikolu 20 jikkonċerna l-informazzjoni u l-konsultazzjoni.

L-artikolu 21 jikkonċerna l-obbligu li jingħata aċċess għal informazzjoni rilevanti dwar ix-xogħol fuq pjattaforma diġitali lid-Direttur Ġenerali responsabbli għall-Impjiegi u r-Relazzjonijiet Industrijali u lil awtoritajiet rilevanti oħra.

L-artikolu 22 jikkonċerna l-obbligu li jingħata aċċess għal informazzjoni rilevanti dwar il-ġestjoni algoritmika lill-aġenziji tax-xogħol fir-rigward tal-ħaddiema tal-pjattaformi assenjati jew imqiegħda għad-dispożizzjoni ta' pjattaformi tax-xogħol diġitali.

L-artikolu 23 jikkonċerna l-proċeduri f'isem jew b'appoġġ għall-ħaddiema tal-pjattaformi.

L-artikolu 24 jikkonċerna l-ħolqien ta' mezzi ta' komunikazzjoni bejn il-ħaddiema tal-pjattaformi u meta jiġu kkuntattjati mir-rappreżentanti tagħhom.

L-artikolu 25 jikkonċerna l-protezzjoni kontra kwalunkwe trattament jew konsegwenzi negattivi.

L-artikolu 26 jikkonċerna l-protezzjoni mit-tkeċċija u l-oneru tal-prova.

L-artikolu 27 jikkonċerna kwistjonijiet relatati ma' dispożizzjonijiet aktar favorevoli.

L-artikolu 28 jikkonċerna kwistjonijiet relatati ma' dispożizzjonijiet inqas favorevoli.

L-artikolu 29 jikkonċerna reati u pieni għall-ksur tal-ordni.

**4. Kummentarju dwar l-ordni.**

**4.1 L-applikabilità tal-ordni**

L-ordni jipprovdi fl-artikolu 3 li japplika għal dawn li ġejjin:

a) persuni li jkunu daħlu (i) f'kuntratt ta' impjieg jew (ii) f'relazzjoni ta' impjieg jew (iii) fi kwalunkwe forma ta' arranġament, ikun xi jkun l-isem ta' dan l-arranġament, ma' aġenzija tax-xogħol, u li jkunu assenjati jew imqiegħda mill-aġenzija tax-xogħol għad-dispożizzjoni ta' pjattaforma diġitali tax-xogħol jew ta' aktar minn pjattaforma tax-xogħol diġitali waħda, kemm jekk fl-istess ħin kif ukoll jekk suċċessivament lil xulxin, u kemm jekk b'mod konsistenti kif ukoll jekk le, bil-ħsieb li jiġi pprovdut servizz li jikkonsisti fil-konsenja ta' prodott;

b) persuni li jkunu daħlu (i) f'kuntratt ta' impjieg jew (ii) f'relazzjoni ta' impjieg jew (iii) fi kwalunkwe forma ta' arranġament, ikun xi jkun l-isem ta' dan l-arranġament, ma' pjattaforma tax-xogħol diġitali jew ma' aktar minn pjattaforma diġitali tax-xogħol waħda, sew jekk b'mod konsistenti, bil-ħsieb li jiġi pprovdut servizz li jikkonsisti fit-twassil ta' prodott;

ċ) persuni li jkunu daħlu f'relazzjoni kuntrattwali fuq bażi li tkiun dikjarata bħala self-employed ma' pjattaforma tax-xogħol diġitali jew aġenzija tax-xogħol li tikkontrolla direttament jew indirettament l-prestazzjoni tax-xogħol u li huma preżunti li jinsabu f'relazzjoni ta' impjieg; u

d) impriżi li jwettqu attivitajiet ekonomiċi, kemm jekk għall-qligħ kif ukoll jekk le, li jikkonsistu minn (i) jew aġenziji tax-xogħol jew (ii) pjattaformi tax-xogħol diġitali.

Il-pjattaformi tax-xogħol diġitali jeħtieġ li jkunu persuna fiżika jew ġuridika li tipprovdi servizz kummerċjali li jippermetti l-konsenja ta' kwalunkwe prodott u li għandha tissodisfa t-tliet (3) kriterji li ġejjin:

a) għandha tiġi pprovduta, tal-inqas parzjalment, mill-bogħod permezz ta' mezzi elettroniċi, pereżempju, websajt jew applikazzjoni tal-mowbajl;
b) hija pprovduta meta tintalab mill-persuna jew l-entità li tirċievi s-servizz; u
ċ) tinvolvi l-organizzazzjoni ta' xogħol imwettaq minn persuni (li jinkludi iżda mhuwiex limitat għal food couriers) bl-użu tat-trasport tal-vetturi.

Aġenzija tax-xogħol hija persuna fiżika jew ġuridika li tassenja jew tqiegħed għad-dispożizzjoni ta' pjattaformi diġitali tax-xogħol, ħaddiema li kienet tingaġġa permezz ta' kuntratt ta' impjieg jew relazzjoni ta' impjieg jew oħra, biex tipprovdi s-servizz ta' konsenja ta' prodotti.

**4.2 Preżunzjoni legali**

L-artikolu 4 tal-ordni jistipula l-kondizzjonijiet li abbażi tagħhom għandu jkun hemm preżunzjoni legali ta' relazzjoni ta' impjieg. Dan l-Artikolu jistipula li l-pjattaforma tax-xogħol diġitali li għaliha jiġi pprovdut ix-xogħol tal-pjattaforma, jew l-aġenzija tax-xogħol, li tassenja ħaddiem tal-pjattaforma jew

tpoġġih għad-dispożizzjoni ta' kwalunkwe pjattaforma tax-xogħol diġitali, skont il-każ, tikkontrolla, direttament jew indirettament, il-prestazzjoni tax-xogħol tal-pjattaforma awtomatikament tippreżumi relazzjoni ta' impjieg. Madankollu, f'każijiet fejn ikun hemm persuni li jaħdmu għal rashom ġenwini, il-pjattaforma tax-xogħol diġitali li għaliha jiġi pprovdut ix-xogħol tal-pjattaforma, jew l-aġenzija tax-xogħol, li tassenja ħaddiem tal-pjattaforma jew tpoġġih għad-dispożizzjoni ta' kwalunkwe pjattaforma tax-xogħol diġitali jew tal-ħaddiem tal-pjattaforma, skont il-każ, li jiddikjara li m'hemm l-ebda relazzjoni ta' impjieg, għandu jkollu l-oneru tal-prova li mill-inqas erba' (4) kriterji kif stabbiliti fir-regolamenti u kif inhuma spjegati fit-Taqsima 2.1.1 ta' dan id-dokument mhumiex qed jiġu ssodisfati. F'każijiet bħal dawn, il-pjattaforma tax-xogħol diġitali jew l-aġenzija tax-xogħol, skont il-każ, għandha titqies bl-operat tal-liġi bħala l-impjegatur ta' dak il-ħaddiem tal-pjattaforma.
Kwalunkwe dikjarazzjoni magħmula minn kwalunkwe persuna li tipprovdi li l-istatus mhuwiex dak ta' impjieg tkun nulla u bla effett.

Barra minn hekk, kwalunkwe penalitajiet li setgħet ġiet miftiehma kuntrattwalment ma' kwalunkwe ħaddiem tal-pjattaforma li, qabel id-dħul fis-seħħ ta' din l-ordni, kien impjegat fuq bażi self-employed, għandha titqies nulla u bla effett mad-dħul fis-seħħ ta' din l-ordni, sakemm ma tkunx awtorizzata mod ieħor mid-Direttur Ġenerali responsabbli għall-Impjiegi u r-Relazzjonijiet Industrijali. Dan bla ħsara għad-dritt li tiġi istitwita kwalunkwe proċeduri ċivili għad-danni li jistgħu jkunu disponibbli.

**4.3 Id-data tal-impjieg effettiv, iż-żmien ta' prova, l-avviż u t-tul ta' żmien.**

Skont l-artikolu 5 tal-ordni, f'dawk il-każijiet fejn persuna hija preżunta li hija impjegata, id-data tal-impjieg titqies bħala d-data tad-dħul fis-seħħ tal-ordni.

Madankollu, iż-żmien ta' prova jitqies li beda fid-data tal-ewwel darba li ġie provdut kontinwament is-servizz mill-ħaddiem tal-pjattaforma. L-ordni tipprovdi għal preżunzjoni ta' provvista kontinwa ta' servizzi fejn il-perjodu bejn kuntratt jew relazzjoni ta' impjieg jew forma oħra ta' arranġament ma taqbiżx is-sitt (6) xhur. F'dan il-każ, il-perjodu ta' bejniethom għandu jitqies għall-fini tal-komputazzjoni tal-perjodu ta' prova.

Fir-rigward tal-perjodi ta' anzjanità u ta' avviż, għandha titqies ukoll id-data tal-provvista kontinwa inizjali tas-servizzi.

**4.4 Bażi indefinita / żmien fiss u whole-time / part-time**

L-artikolu 6 jipprovdi li, b'mod awtomatiku, l-impjieg preżunt għandu jitqies bħala indefinit u fuq bażi whole-time, sakemm ma jkunx miftiehem mod ieħor bil-miktub skont l-artikolu 15 tal-ordni. L-ordni tikkjarifika li l-kuntratti konklużi wara d-data tad-dħul fis-seħħ, jistgħu jkunu jew għal żmien fiss jew fuq bażi indefinita u fuq bażi whole-time jew part-time.

Madankollu, ma jista' jsir l-ebda impjieg whole-time meta ħaddiem tal-pjattaforma jkun diġà impjegat fuq bażi whole-time ma' prinċipal ieħor.

Il-ħaddiema tal-pjattaformi għandhom jitħallsu, għas-sigħat kollha maħduma l-istess pagi pagabbli lil impjegati komparabbli impjegati mal-istess prinċipal. Fl-ebda każ, dawn il-pagi ma jistgħux ikunu inqas mill-paga minima nazzjonali. Jekk ma jkun hemm l-ebda impjegat komparabbli ieħor, allura l-pagi m'għandhomx ikunu inqas mill-paga minima nazzjonali.

Jekk il-prinċipal u l-impjegat jonqsu milli jaqblu dwar il-pagi, u l-impjegat itemm l-impjieg tiegħu, l-impjegat għandu jkollu dritt għal rimedju quddiem it-Tribunal Industrijali.

Il-kondizzjonijiet l-oħra kollha ta' impjieg li jgawdu l-impjegati kollha skont l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali (Kap. 452) u r-regolamenti u l-ordnijiet maħruġa taħtha huma applikabbli bħala minimu, sakemm ma jkunx stabbilit speċifikament mod ieħor fl-ordni. Dawn jinkludu bonusijiet statutorji, supplimenti tad-dħul, sahra, leave għall-vaganzi, leave għall-mard, u żieda ġenerali fil-pagi.

Jekk impjegat ikun impjegat għal inqas minn erbgħin (40) siegħa fil-ġimgħa, huwa jkun intitolat għall-kondizzjonijiet tal-impjieg fuq bażi *pro rata*.

L-ordni tistipula b'mod speċifiku fl-artikolu 6(3) li l-ħaddiema tal-pjattaforma ma jistgħux jirrifjutaw li jwettqu kwalunkwe konsenja ta' prodotti kif jista' jiġi assenjat lilhom b'mod raġonevoli. L-assenjazzjonijiet jistgħu jiġu rrifjutati biss jekk ikun hemm bażi oġġettiva.

**4.5 Forniment ta' vetturi, tagħmir u telefonija mobbli**

Skont l-artikolu 7, il-prinċipala huma responsabbli sabiex jipprovdu vetturi xierqa lill-ħaddiema tal-pjattaformi tagħhom. Dawn jeħtieġ li jkunu adegwati u kwalunkwe spiża mġarrba b'rabta ma' tali vetturi, inklużi l-assigurazzjoni, il-miżati tal-liċenzji u l-karburant, għandhom jitħallsu mill-prinċipal. Dawn il-vetturi jistgħu jinkludu vetturi elettriċi, sakemm dawn ikunu adattati għat-tip ta' xogħol.

It-tagħmir, il-materjal u l-għodod kollha li l-ħaddiema tal-pjattaformi jistgħu jkunu meħtieġa jużaw b'rabta mad-dmirijiet tagħhom, inklużi l-uniformijiet u l-elmi tas-sikurezza, għandhom jiġu pprovduti mill-prinċipal għas-spejjeż tal-prinċipal. Ma għandu jitħallas l-ebda depożitu mill-ħaddiema tal-pjattaformi fir-rigward ta' tali tagħmir, materjal jew għodda. Madankollu huma marbuta li jżommuhom sikuri.

Il-prinċipala huma obbligati wkoll li jipprovdu bi spejjeż tagħhom servizz tal-mowbajl u tal-internet b'rabta mad-dmirijiet li għandhom jitwettqu, sakemm ma jkunx miftiehem mill-prinċipal u l-ħaddiem tal-pjattaforma li dan tal-aħħar għandu jagħmel użu mill-apparat tiegħu stess. F'dan il-każ, il-prinċipal jew ikopri l-ispejjeż inkorsi jew jipprovdi allowance xierqa sabiex ikopri dawn l-ispejjeż.

**4.6 Sahra**

L-artikolu 8 jipprovdi li kwalunkwe ħin maħdum li jaqbeż l-erbgħin (40) siegħa fil-ġimgħa għandu jitħallas bir-rata ta' 1:1.5 u kwalunkwe ħin maħdum f'jum ta' mistrieħ għandu jitħallas bir-rata ta' 1:2.

**4.7 Leave għall-mard**

Skont l-artikolu 9, il-ħaddiema tal-pjattaformi taħt il-preżunzjoni ta' relazzjoni ta' impjieg huma intitolati għal ġimagħtejn (2) ta' xogħol bi ħlas sħiħ anqas mill-ammont ekwivalenti stabbilit għas-somma stabbilita għall-intitolament għall-benefiċċju tal-mard bir-rata stabbilita taħt l-Att dwar is-Sigurtà Soċjali. Part-timers huma intitolati għall-istess leave għall-mard, iżda fuq bażi *pro rata*.

**4.8 Leave ieħor**

Il-ħaddiema tal-pjattaformi taħt il-preżunzjoni ta' relazzjoni ta' impjieg huma intitolati wkoll għal leave għal-luttu, leave għal żwieġ, leave għall-korrimenti, leave għal servizz bħala ġurat u leave għall-kwarantina kif provdut aħjar fl-artikolu 10.

**4.9 Xogħol fuq btajjel pubbliċi**

Kif provdut fl-artikolu 11, kwalunkwe xogħol imwettaq fi btajjel pubbliċi għandu jitħallas b'rata normali. Madankollu, f'każijiet bħal dawn, għandu jiżdied numru addizzjonali ta' sigħat maħduma b'dan il-mod mad-dritt għal-leave tal-impjegat.

**4.10 Trattament ugwali**

Skont l-artikolu 12, il-ħaddiema preżunti li huma impjegati skont l-ordni mill-aġenziji tax-xogħol huma intitolati għall-istess kondizzjonijiet bażiċi tax-xogħol u tal-impjieg tal-ħaddiema tal-pjattaformi impjegati mill-pjattaformi tax-xogħol diġitali li huma assenjati lilhom jew imqiegħda għad-dispożizzjoni tagħhom, daqslikieku kienu ġew ingaġġati direttament minn tali pjattaforma tax-xogħol diġitali.

Madankollu, dan id-dritt ma jirriżultax jekk il-perjodu li fih l-impjegati ma jiġux assenjati jew imqiegħda għad-dispożizzjoni ta' pjattaforma tax-xogħol diġitali ma jkunx inqas minn ġimagħtejn (2). F'dan il-każ, huma jibqgħu intitolati għall-kondizzjonijiet tax-xogħol u tal-impjieg mogħtija mill-Gvern lill-impjegati kollha bħal dawk li jgawdu l-impjegati komparabbli li ma jistgħux ikunu inqas mill-kondizzjonijiet minimi tal-impjieg applikabbli bil-liġi jew meta ma jkunx hemm tali impjegati komparabbli mal-kondizzjonijiet minimi tal-impjieg applikabbli mil-liġi.

**4.11 Is-saħħa u s-sigurtà fuq il-post tax-xogħol**

L-artikolu 13 jipprovdi li l-prinċipala huma marbuta li jipprovdu ambjent tax-xogħol sikur billi jiżguraw li r-riskji relatati mad-dmirijiet tal-ħaddiema tal-pjattaformi għandhom jiġu identifikati u li jittieħdu miżuri sabiex tali riskji jiġu evitati kemm jista' jkun. Dan bla ħsara għall-obbligi ġenerali skont l-Att dwar l-Awtorità tas-Saħħa u s-Sigurtà fuq il-Post tax-Xogħol.

**4.12 L-ebda ħlas ma għandu jintalab u ma għandu jsir l-ebda tnaqqis**

L-artikolu 14 jipprovdi li l-ħaddiema tal-pjattaformi ma jistgħux jintalbu jħallsu kwalunkwe miżata b'konsiderazzjoni tar-reklutaġġ jew konklużjoni ta' kuntratt ta' impjieg minn aġenzija tax-xogħol ta' pjattaforma tax-xogħol diġitali. Barra minn hekk, ma jista' jsir l-ebda tnaqqis mill-pagi tagħhom b'konsiderazzjoni tal-istess, sakemm ma jkunx permess mill-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali jew mir-regolamenti magħmula taħtu.

**4.13 Informazzjoni lill-ħaddiema tal-pjattaformi**

L-artikolu 15 jimponi obbligu fuq il-prinċipala meta jkun hemm preżunzjoni ta' impjieg li l-ħaddiema tal-pjattaforma rilevanti jingħataw ittra ta' ingaġġ jew dikjarazzjoni ffirmata biex jinkludu l-informazzjoni kollha stabbilita fir-Regolamenti dwar il-Kondizzjonijiet tax-Xogħol Trasparenti u Prevedibbli. Dan għandu jiġi pprovdut mill-aktar fis possibbli iżda, fi kwalunkwe każ, mhux aktar tard minn sebat (7) ijiem kalendarji mid-data tad-dħul fis-seħħ tal-ordni.

Jekk impjegat jonqos milli jaqbel mal-informazzjoni ddikjarata fl-ittra jew fid-dikjarazzjoni, inklużi l-pagi, u jitlaq mill-impjieg, huwa jista' jistitwixxi proċeduri quddiem it-Tribunal Industrijali fuq tkeċċija inġusta.

**4.14 Dritt li jirċievi raġunijiet għal differenza fit-trattament**

Skont l-artikolu 16, jekk ħaddiem tal-pjattaforma jqis li seta' ġie ttrattat b'mod li jikser dritt mogħti mill-ordni, huwa jista' jitlob lill-prinċipal jipprovdi raġunijieti bil-miktub li tiddikjara r-raġunijiet għal kwalunkwe differenza fit-trattament fi żmien wieħed u għoxrin (21) jum mid-data tat-talba. Din id-dikjarazzjoni se tkun ammissibbli bħala evidenza fi kwalunkwe proċediment skont l-ordni.

**4.15 Sistemi awtomatizzati ta' Monitoraġġ u Teħid awtomatizzat ta' Deċiżjonijiet**

L-artikolu 17 jimponi obbligu fuq il-prinċipala li jinfurmaw lill-ħaddiema tal-pjattaformi dwar dan li ġej:

a) sistemi awtomatizzati ta' monitoraġġ użati għall-monitoraġġ, is-sorveljanza jew l-evalwazzjoni tal-prestazzjoni tax-xogħol permezz ta' mezzi elettroniċi;
b) sistemi awtomatizzati ta' teħid ta' deċiżjonijiet li jintużaw biex jittieħdu jew jappoġġjaw deċiżjonijiet li jaffettwaw b'mod sinifikanti l-kondizzjonijiet tax-xogħol tal-ħaddiema tal-pjattaformi — dawn jinkludu l-aċċess għall-assenjar ta' xogħol, il-qligħ tagħhom, is-saħħa u s-sigurtà fuq il-post tax-xogħol, il-ħin tax-xogħol, il-promozzjonijiet u l-istatus fir-rigward tal-impjieg tagħhom inkluż kwalunkwe restrizzjonijiet, sospensjonijiet jew terminazzjoni tal-kont diġitali tagħhom.

Kwalunkwe data personali dwar il-ħaddiema tal-pjattaformi li mhijiex strettament konnessa ma' jew meħtieġa fir-rigward tal-impjieg tagħhom ma tistax tiġi pproċessata.

**4.16 Reviżjoni umana ta' deċiżjonijiet sinifikanti**

L-artikolu 18 jimponi obbligu fuq il-prinċipala biex jimmonitorjaw u jevalwaw regolarment l-impatt tad-deċiżjonijiet meħuda jew appoġġjati permezz tal-użu ta' sistemi awtomatizzati ta' monitoraġġ u teħid ta' deċiżjonijiet dwar il-kondizzjonijiet tax-xogħol. Huma għandhom jevalwaw ir-riskji għas-sigurtà u s-saħħa tal-ħaddiema tal-pjattaformi, jivvalutaw l-adegwatezza tas-salvagwardji għar-riskji identifikati u jintroduċu miżuri preventivi u protettivi xierqa. Dawn is-sistemi ma jistgħux jintużaw biex jagħmlu pressjoni żejda fuq il-ħaddiema tal-pjattaformi jew ipoġġu f'riskju s-saħħa fiżika u mentali tagħhom. Għandu jkun hemm biżżejjed riżorsi umani għall-monitoraġġ tal-impatt ta' dawn id-deċiżjonijiet. Il-persuni inkarigati mill-monitoraġġ għandu jkollhom il-kompetenza meħtieġa, ikunu mħarrġa u jkollhom l-awtorità meħtieġa sabiex jeżerċitaw il-funzjoni tagħhom.

L-artikolu 19 jipprovdi li l-ħaddiema tal-pjattaforma huma intitolati għal spjegazzjoni mill-prinċipal tagħhom għal kwalunkwe deċiżjoni meħuda jew appoġġjata minn sistema awtomatizzata ta' teħid ta' deċiżjonijiet li taffettwa b'mod sinifikanti l-kondizzjonijiet tax-xogħol tagħhom.

**4.17 Informazzjoni u konsultazzjoni**

L-artikolu 20 jipprovdi li l-prinċipala għandhom jinfurmaw u jikkonsultaw lir-rappreżentanti tal-ħaddiema tal-pjattaforma, jew fejn ma jkunx hemm tali rappreżentanti, lill-ħaddiema tal-pjattaformi direttament dwar deċiżjonijiet li x'aktarx iwasslu għall-introduzzjoni ta' jew bidliet sostanzjali fl-użu tas-sistemi awtomatizzati ta' monitoraġġ u teħid ta' deċiżjonijiet.

**4.18 Disponibbiltà ta' informazzjoni rilevanti dwar ix-xogħol fuq pjattaforma diġitali**

Skont l-artikolu 21, il-prinċipala huma marbuta li jagħmlu ċerta informazzjoni disponibbli għad-Direttur Ġenerali responsabbli għall-Impjiegi u r-Relazzjonijiet Industrijali u awtoritajiet rilevanti oħra.

**4.19 Aċċess għal informazzjoni rilevanti dwar il-ġestjoni algoritmika lil aġenziji tax-xogħol**

Sabiex l-aġenziji tax-xogħol ikunu jistgħu jikkonformaw mal-obbligi tagħhom taħt l-ordni, il-pjattaformi tax-xogħol diġitali huma obbligati li jagħtu aċċess għal tali aġenziji tax-xogħol għall-informazzjoni rilevanti kollha dwar il-ġestjoni algoritmika relatata mal-ħaddiema tal-pjattaformi assenjati minn tali aġenziji tax-xogħol f'ħin reali. Dan huwa skont l-artikolu 22.

**4.20 Proċeduri f'isem jew b'appoġġ għall-persuni li jwettqu xogħol fuq pjattaforma diġitali**

Skont l-artikolu 23, kwalunkwe rappreżentant uffiċjali ta' persuni li jwettqu xogħol fuq pjattaforma diġitali jew entitajiet legali oħra li għandhom interess leġittimu li jiddefendu d-drittijiet ta' persuni li

jwettqu xogħol fuq pjattaforma diġitali jista' jinvolvi ruħu fi kwalunkwe proċedura ġudizzjarja jew amministrattiva fl-infurzar ta' dan l-ordni.

**4.21 Mezzi ta' komunikazzjoni għall-ħaddiema tal-pjattaformi**

L-artikolu 24 jitlob li l-prinċipala joħolqu l-possibbiltà għall-ħaddiema tal-pjattaformi li jikkuntattjaw u jikkomunikaw ma' xulxin u li jiġu kkuntattjati mir-rappreżentanti tagħhom permezz tal-infrastruttura diġitali tal-prinċipal jew simili. Il-prinċipala ma jistgħux jaċċessaw jew jimmonitorjaw tali kuntatti u komunikazzjonijiet.

**4.22 Protezzjoni kontra trattament jew konsegwenzi negattivi/Protezzjoni mit-tkeċċija u l-oneru tal-provi**

L-artikolu 25 jistipula li ma huwiex legali li persuna li twettaq xogħol fuq pjattaforma diġitali tiġi vittimizzata jew soġġetta għal trattament negattiv jew għal kwalunkwe rappreżentant tal-ħaddiema tal-pjattaformi li jsofri kwalunkwe konsegwenza negattiva li tirriżulta minn kwalunkwe lment imressaq quddiem il-prinċipal jew li jirriżulta minn kwalunkwe proċedimenti mmirati sabiex jinfurzaw il-konformità mal-ordni.

Skont l-artikolu 26, jekk persuna li twettaq xogħol fuq pjattaforma diġitali titkeċċa u r-raġuni għal tali tkeċċija tkun li eżerċitat id-drittijiet provduti fl-ordni, tali tkeċċija għandha titqies bħala tkeċċija inġusta. F'każ bħal dan, il-ħaddiem tal-pjattaforma jista' jitlob lill-prinċipal jipprovdi raġunijiet debitament sostanzjati għat-tkeċċija jew miżuri ekwivalenti oħra. Dawn għandhom jiġu provduti bil-miktub.

Meta ħaddiem tal-pjattaforma jistabbilixxi quddiem it-Tribunal Industrijali fatti li minnhom jista' jiġi preżunt li kien hemm tkeċċija jew miżuri ekwivalenti meħuda, l-prinċipal se jkollu l-oneru tal-prova li t-tkeċċija jew il-miżuri ekwivalenti kienu bbażati fuq raġunijiet oħra.

**4.23 Dispożizzjonijiet aktar favorevoli**

L-artikolu 27 jipprovdi li kwalunkwe kuntratt individwali jew ftehim kollettiv jista' jipprovdi termini aktar favorevoli għall-ħaddiema tal-pjattaformi mill-ordni. Skont l-artikolu 28, l-ordni tieħu post id-dispożizzjonijiet fi kwalunkwe liġi oħra li tipprovdi dispożizzjonijiet inqas favorevoli, u fil-każ ta' kwalunkwe dispożizzjoni inkonsistenti, l-ordni għandu jipprevali.

**4.24 Reati**

Skont l-artikolu 29, persuna li tinstab ħatja li kisret id-dispożizzjonijiet tal-ordni għandha meta tinsab ħatja teħel multa ta' mhux aktar minn elfejn Ewro (€2,000).

**5. Sezzjoni ta' konklużjoni**

L-ordni għandha tidħol fis-seħħ fi żmien tliet (3) xhur mill-pubblikazzjoni tagħha fil-Gazzetta.

**N.B. Din in-Nota ta' Spjegazzjoni mhix maħsuba biex tkun deskrizzjoni eżawrjenti tal-istrument u lanqas sostitut tiegħu jew suppliment leġiżlattiv għalih. Din in-Nota ma tfissirx li hija deċiżjoni awtorevoli dwar l-interpretazzjoni tal-leġiżlazzjoni.**

Il-21 ta' Ottubru, 2022

**No. 1448**

# DEPARTMENT FOR INDUSTRIAL AND EMPLOYMENT RELATIONS

## Explanatory Notes

## 1. Introduction

| | |
|---|---|
| **Title of Order** | Digital Platform Delivery Wages Council wage Regulation Order, 2022 (" the order") |
| **Activity to be regulated** | Working Conditions of Platform Workers |
| **Responsible entity** | Department for Industrial and Employment Relations |

## 2. Summary and background

The scope of this order, which is based on the Proposal for a Directive of the European Parliament and of the Council on improving working conditions in digital platform work issued through a Legal Notice is to ensure that persons engaged to provide paid services consisting of the delivery of any product, gain access to labour and social protection rights by ensuring correct determination of their employment status, by promoting transparency, fairness, and accountability in algorithmic management in respect thereof and by enhancing transparency, traceability and awareness of developments in relation to said activity.

### 2.1 Importance of the order

This order covers:

workers, men and women, who have entered into –

(i) an employment contract, employment relationship or other arrangement, with a work agency, and who are assigned or placed at the disposal of, a digital labour platform, to provide services of delivery of products, or

(ii) an employment contract, or employment relationship with a digital labour platform, to provide services of delivery of products, and

undertakings which are either work agencies or digital labour platforms,

and whereby it is legally presumed that such workers have entered into an employment relationship with the work agency or digital labour platform in virtue of the fulfilment of the two (2) criteria as set out in the same legal instrument, as the case may be.

The main concepts that are included in the order are as follows:

*2.1.1 Legal presumption*

The consideration of the legal presumption of employment relationship between the person performing the digital work and the digital labour platform for whom the platform work is provided or the work

agency who assigned such person to or places him at the disposal of any digital platform shall be presumed automatically.

Notwithstanding any provision in any law or collective agreement or individual contract, a worker providing services of delivery of any product shall, irrespective of the relationship or contractual designation of the relationship such worker may have with the work agency or digital platform, be deemed to have entered into an employment relationship with the work agency or digital platform, as the case may be.

Any declaration to the contrary, shall be deemed to be null and void.

However, in cases where either the digital labour platform or the work agency or the platform worker claim that there is no contractual relationship, as the case may be, proof has to be produced that at least four (4) of the following criteria are not being fulfilled:

(a) effectively determining, or setting upper limits for the level of remuneration;

(b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work;
(c) supervising the performance of work or verifying the quality of the results of the work including by electronic means;
(d) effectively restricting the freedom, including through sanctions, to organize one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;
(e) effectively restricting the possibility to build a client base or to perform work for any third party.

As the case may be, the pending decision from the proceedings of such claim shall not have a suspensive affect on the application of the legal presumption.

*2.1.2 Conditions of employment*

The order regulates the date of commencement, probation period, notice to be given in case of termination and the duration of the employment.

Workers presumed to be employees by virtue of the order shall be entitled to all terms and conditions of employment afforded by law, to the extent that it is not otherwise provided by the order itself.

Workers are entitled to be provided by their employer with appropriate vehicles, equipment and mobile telephony in relation to the performance of their duties.

National minimum wage and over-time rates are also specifically covered by the order.

Workers are entitled to sick leave and other leave entitlements as specified in the order.

The order also specifically regulates work on public holidays.

*2.1.3 No payment to be demanded and no deductions*

In accordance with the order, it is unlawful to demand any payments or charges in consideration of employment with a work agency or digital labour platform. Moreover, no deductions are to be effected from the wages of the workers.

*2.1.4 Information to workers*

The order provides for an obligation on the employer to provide the worker with a letter of engagement or a signed statement including specific information. Should the worker fail to agree with the conditions specified including the wages, and leaves employment, he shall have the right to institute proceedings before the Industrial Tribunal and claim unfair dismissal.

*2.1.5 Automated monitoring and decision-making systems*

The order obliges employers to inform their workers of the use of automated monitoring systems and automated decision-making systems. The processing of personal data that is not intrinsically connected to or necessary for the performance of work is prohibited. The impact of decisions based on automated monitoring and decision-making systems on working conditions are to be regularly monitored and their impact evaluated.

*2.1.6 Information and consultation*

Official representatives as defined by the order are to be kept informed and consulted on decisions likely to lead to the introduction or substantial changes in the use of the automated monitoring and decision-making systems.

*2.1.7 Access to information*

Employers are bound to make certain information available to the Director General responsible for Employment and Industrial Relations and other relevant authorities.

Where workers are employed by work agencies and assigned or placed at the disposal of digital labour platforms, the latter are to provide the work agencies with such information on algorithmic management as will be necessary to enable the work agencies to comply with obligations arising from the order.

**2.2 Public Consultation**

Consultations were held with the Employment Relations Board. The Employment Relations Board is a tripartite Board which comprises also trade unions and employers' associations representatives as stipulated in the Employment and Industrial Relations Act (Cap. 452).

**3. Overview of the structure of the instrument**

Article 1 concerns the title of the order, its scope and its commencement date.

Article 2 concerns the definitions of the focal legal concepts in this order.

Article 3 concerns the applicability of this order.

Article 4 introduces the legal presumption of an employment relationship.

Article 5 concerns the effective date of commencement, probation, notice and duration of employment.

Article 6 concerns conditions of employment and part-timers.

Article 7 concerns the vehicles, equipment and mobile telephony.

Article 8 concerns the minimum over-time rates applicable when platform workers exceed forty (40) hours per week or work on a pre-determined day of rest.

Article 9 concerns sick leave entitlement.

Article 10 concerns other leave entitlement, namely bereavement leave, marriage leave, injury leave, jury leave and quarantine leave.

Article 11 regulates work on public holidays.

Article 12 concerns equal treatment in employment.

Article 13 refers to occupational health and safety.

Article 14 concerns the prohibition of demanding payment from platform workers or effecting deductions from their wages.

Article 15 concerns information to be provided to platform workers.

Article 16 concerns the right to receive reasons in writing for any difference in treatment from the employer.

Article 17 concerns transparency on and the use of automated monitoring and decision-making systems.

Article 18 concerns human monitoring of automated systems.

Article 19 concerns human review of significant decisions.

Article 20 concerns information and consultation.
Article 21 concerns the obligation to grant access to relevant information on digital platform work to the Director General responsible for Employment and Industrial Relations and other relevant authorities.

Article 22 concerns the obligation to grant access to relevant information on algorithmic management to work agencies in relation to platform workers assigned or placed at the disposal of digital labour platforms.
Article 23 concerns proceedings on behalf or in support of platform workers.

Article 24 concerns the creation of communication channels between platform workers and when contacted by their representatives.

Article 25 concerns protection against any adverse treatment or consequences.

Article 26 concerns protection from dismissal and burden of proof.

Article 27 concerns matters related to more favourable provisions.

Article 28 concerns matters related to other less favourable provisions;

Article 29 concerns offences and punishments for contravening the order.

**4. Commentary on the order**

**4.1 Applicability of the order**

The order provides in article 3 that it applies to the following:

a) persons who have either entered into (i) a contract of employment or (ii) an employment relationship or (iii) any form of arrangement, whatever such arrangement is called, with a work agency, and who are assigned or placed by the work agency at the disposal of a digital labour platform or more than one digital labour platform, whether at the same time or in succession to each other, and whether consistently or not, with the view of providing a service consisting of the delivery of a product;

b) persons who have either entered into (i) a contract of employment or (ii) an employment relationship or (iii) any form of arrangement, whatever such arrangement is called, with a digital labour platform or more than one digital labour platform, whether consistently, with the view of providing a service consisting of the delivery of a product;

c) persons who have entered into a contractual relationship which is declared as on self-employed basis with a digital labour platform or a work agency that controls directly or indirectly the performance of work and who are presumed to be in an employment relationship; and

d) undertakings carrying out economic activities, whether for gain or not, consisting of (i) either work agencies or (ii) digital labour platforms.

Digital labour platforms need to be a natural or legal person providing a commercial service enabling the delivery of any product and which must meet the following three (3) criteria:

a) it has to be provided, at least partially, at a distance through electronic means, for example, a website or mobile application;
b) it is provided when so requested by the person or entity receiving the service; and
a) it involves the organisation of work performed by persons (which includes but is not limited to food couriers) using vehicle transportation.

A work agency is a natural or legal person that assigns to or places at the disposal of digital labour platforms, workers whom it would have engaged either through a contract of employment or employment relationship or other, to provide the service of delivery of products.

**4.2 Legal presumption**

Article 4 of the order stipulates the conditions on which basis there shall be a legal presumption of an employment relationship. This article stipulates that the digital labour platform for whom the platform work is provided, or the work agency, who assigns a platform worker to or places him at the disposal

of any digital labour platform, as the case may be, controls, directly or indirectly, the performance of platform work automatically presumes an employment relationship. However, in cases where there are genuine self-employed, the digital labour platform for whom the platform work is provided, or the work agency, who assigns a platform worker to or places him at the disposal of any digital labour platform or the platform worker, as the case may be, who claims that there is no employment relationship, shall have the burden of proving that at least four (4) criteria as set out in the regulations and as they are explicated in section 2.1.1 of this document are not being fulfilled. In such cases, the digital labour platform or the work agency, as the case may be, shall be considered by operation of law not to be the employer of that platform worker.

Any declaration made by anyone providing that the status is not that of employment shall be null and void.

Moreover, any penalties that may have been contractually agreed to with any platform worker who, prior to the coming into force of this order, was engaged on self-employed basis, shall be deemed to be null and void upon the coming into force of this order, unless it is otherwise authorised by the Director General responsible for Employment and Industrial Relations. This is without prejudice to the right to institute any civil procedures for damages which may be available.

**4.3 Date of effective employment, probation, notice and duration.**

In terms of article 5 of the order, in those cases where a person is presumed to be an employee, the date of employment shall be deemed to be the date of the coming into force of the order.

However, probation shall be considered to have started on the date of the initial provision of continuous services by the platform worker. The order provides for a presumption of continuous provision of services where a gap in between a contract or employment relationship or other form of arrangement does not exceed six (6) months. In this case, the period in between shall be taken into account for the purpose of computing the probationary period.

As for seniority and notice periods, the date of initial continuous provision of services shall also be taken into account.

**4.4 Definite / Indefinite and Full-time / Part-time Basis**

Article 6 provides that, by default, the presumed employment will be deemed to be indefinite and on full-time basis, unless it is otherwise agreed in writing in accordance with article 15 of the order. The order clarifies that contracts entered into following the date of coming into force, may be either definite or indefinite and on full-time or part-time basis.

However, no full-time employment can be entered into where a platform worker is already employed on full-time basis with another employer.

Platform workers are to be paid, for all hours worked, the same wages payable to comparable employees employed with the same employer. In no case, can such wages be less than the national minimum wage. If there is no other comparable employee, then the wages must not be less than the national minimum wage.

If the employer and the employee fail to agree on the wages, and the employee terminates their employment, the employee shall have a right of redress before the Industrial Tribunal.

All other conditions of employment enjoyed by all employees under the Employment and Industrial Relations Act (Cap. 452) and regulations and orders issued thereunder, shall be applicable as a minimum, unless it is otherwise specifically stipulated in the order. These include statutory bonuses, income supplements, overtime, vacation leave, sick leave, and general increase in wages.

If an employee is employed for less than forty (40) hours per week, shall be entitled to the conditions of employment on a *pro rata* basis.

The order has specifically stipulated in article 6(3) that the platform workers may not refuse to perform any delivery of products as may be reasonably assigned to them. The assignments can only be refused if there is an objective ground.

**4.5 Provision of vehicles, equipment and mobile telephony**

In terms of article 7, employers are responsible to provide appropriate vehicles to their platform workers. These need to be adequate and any expenses incurred in connection with such vehicles, including insurance, licence fees and fuel, are to be borne by the employer. Such vehicles may include electric vehicles, as long as these are suitable for the type of work.

All equipment, material and tools that the platform workers may be required to use in connection with their duties, including uniforms and safety helmets, are to be provided by the employer at the employer's expense. No deposits are to be paid by the platform workers in respect of such equipment, material or tools. They are however bound to keep them safe.

The employers are also bound to provide at their expense a mobile phone and internet service in relation to the duties to be undertaken, unless it is agreed by the employer and the platform worker that the latter should make use of their own devices. In that case, the employer shall either cover the costs incurred or provide a suitable allowance to cover such costs.

**4.6 Over-time**

Article 8 provides that any time worked in excess of forty (40) hours per week is to be paid at the rate of 1:1.5 and any time worked on a day of rest is to be paid at the rate of 1:2.

**4.7 Sick leave**

In terms of article 9, platform workers under the presumption of an employment relationship are entitled to two (2) working weeks on full pay less an amount equal to the sum set for sickness benefit entitlement at the rate established under the Social Security Act. Part-timers are entitled to the same sick leave, but on a *pro rata* basis.

**4.8 Other leave**

Platform workers under the presumption of an employment relationship are also entitled to bereavement leave, marriage leave, injury leave, jury service leave and quarantine leave as better provided in article 10.

**4.9 Work on public holidays**

As provided in article 11, any work carried out on public holidays is to be paid at normal rate. However, in such cases, an additional number of hours so worked are to be added to the employee's vacation leave entitlement.

**4.10 Equal treatment**

In terms of article 12, workers presumed to be employed in terms of the order by work agencies are entitled to the same basic working and employment conditions of platform workers employed by the digital labour platforms to whom they are assigned or places at the disposal of, as if they had been engaged directly by such digital labour platform.

However, this right does not arise if the period in which employees are not assigned to or placed at the disposal of a digital labour platform is not less than two (2) weeks. In such case, they would, however, still be entitled to the working and employment conditions granted by the Government to all employees as those enjoyed by comparable employees which may not be less than the minimum conditions of employment applicable by law or where there are no such comparable employees to the applicable minimum conditions of employment applicable by law.

**4.11 Occupational health and safety**

Article 13 provides that employers are bound to provide a safe working environment by ensuring that risks relating to platform workers' duties are to be identified and measures taken for such risks to be avoided as much as possible. This is without prejudice to the general obligations in terms of the Occupational Health and Safety Authority Act.

**4.12 No payment shall be demanded, no deductions shall be made**

Article 14 provides that the platform workers cannot be asked to pay any fees in consideration of their recruitment or conclusion of a contract of employment by a work agency of digital labour platform. Moreover, no deductions can be made from their wages in consideration of the same, unless allowed by the Employment and Industrial Relations Act or regulations made thereunder.

**4.13 Information to platform workers**

Article 15 imposes an obligation on employers where there is a presumption of employment to give the relevant platform workers a letter of engagement or a signed statement to include all information stipulated in the Transparent and Predictable Working Conditions Regulations. This is to be provided as soon as possible but, in any case, not later than seven (7) calendar days from the date of coming into force of the order.

If an employee fails to agree with the information stated in the letter or declaration, including the wages, and he leaves employment, he may institute proceedings before the Industrial Tribunal claiming unfair dismissal.

**4.14 Right to receive reasons in writing for difference in treatment**

In terms of article 16, if a platform worker considers that he may have been treated in a manner which infringes a right granted by the order, he may request the employer to provide written reasons for any difference in treatment within twenty one (21) days from date of request. The written reasons shall be admissible as evidence in any proceedings under the order.

**4.15 Automated Monitoring and Decision-Making Systems**

Article 17 imposes an obligation on employers to inform platform workers of the following:

a) automated monitoring systems used to monitor, supervise or evaluate work performance through electronic means;
b) automated decision-making systems which are used to take or support decisions which significantly affect the platform workers' working conditions – these include access to work assignments, their earnings, occupational health and safety, working time, promotions and status regarding their employment including any restrictions, suspensions or termination of their digital account.

Any personal data concerning platform workers that is not strictly connected to or necessary in relation to their employment cannot be processed.

**4.16 Human review of significant decisions**

Article 18 imposes an obligation on employers to regularly monitor and evaluate the impact of the decisions taken or supported through the use of automated monitoring and decision-making systems on working conditions. They are to evaluate the risks to the safety and health of platform workers, assess the appropriateness of safeguards for the risks identified and introduce appropriate preventive and protective measures. Such systems cannot be used to put undue pressure on platform workers or put at risk their physical and mental health. There must be sufficient human resources to monitor the impact of these decisions. The persons in charge of monitoring are to have the necessary competence, be trained and have the necessary authority to exercise their function.

Article 19 provides that platform workers are entitled to an explanation from their employer for any decisions taken or supported by an automated decision-making system that affects significantly their working conditions.

**4.17 Information and consultation**

Article 20 provides that employers are to inform and consult the platform workers' representatives, or where there are no such representatives, the platform workers directly on decisions that are likely to lead to the introduction of or substantial changes in the use of the automated monitoring and decision-making systems.

**4.18 Availability of relevant information on digital platform work**

In terms of article 21, employers are bound to make certain information available to the Director General responsible for Employment and Industrial Relations and other relevant authorities.

**4.19 Access to relevant information on algorithmic management to work agencies**

In order for work agencies can be able to comply with their obligations under the order, the digital labour platforms are obliged to grant access to such work agencies to all the relevant information on algorithmic management relating to the platform workers assigned by such work agencies in real time. This is in terms of article 22.

**4.20 Procedures on behalf or in support of persons performing digital platform work**

In terms of article 23, any official representative of persons performing platform work or other legal entities which have a legitimate interest in defending the rights of persons performing digital platform work may engage in any judicial or administrative procedures in enforcement of this order.

**4.21 Communication channels for platform workers**

Article 24 requires employers to create the possibility for platform workers to contact and communicate with each other and to be contacted by their representatives through the employer's digital infrastructure or similar. Employers may not access or monitor such contacts and communications.

**4.22 Protection against adverse treatment or consequences / Protection from dismissal and burden of proof**

Article 25 stipulates that it is not lawful to victimise or subject any person performing platform work to adverse treatment or for any platform workers' representative to suffer any adverse consequence resulting from any complaint lodged with the employer or resulting from any proceedings aimed to enforce compliance with the order.

According to article 26, if a person performing platform work is dismissed and the reason for such dismissal is that they exercised the rights provided for under the order, such dismissal shall be regarded as unfair dismissal. In such case, the platform worker may request the employer to provide duly substantiated grounds for the dismissal or other equivalent measures. These are to be provided in writing.

Where a platform worker established before the Industrial Tribunal facts from which it may be presumed that there has been a dismissal or equivalent measures taken, the employer will have the burden to prove that the dismissal or equivalent measures were based on other grounds.

**4.23 More favourable provisions**

Article 27 provides that any individual contract or collective agreement may provide more favourable terms to the platform workers than the order. According to article 28 the order supersedes provisions in any other law that provides less favourable provisions, and in case of any inconsistent provisions, the order shall prevail.

**4.24 Offences**

According to article 29, a person found guilty of contravening the provisions of the order shall on conviction be liable to a fine (*multa*) of not more than two thousand euro (€2,000).

**5. Concluding section**

The Order shall come into force within three (3) months of its publication in the Gazette.

**N.B. This Explanatory Note is not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. This Note does not purport to be an authoritative ruling on the interpretation of the legislation.**

21st October, 2022