

2024

WORKATION IN: MALTA

Overview of Mandatory Employee Protection Law



Workation in Malta – Mandatory employee protection law

In a connected world, mobile delivery of work performance is becoming increasingly more common. The most popular phenomenon here is probably the so-called "workation". When employers allow work from abroad, it is not uncommon for mandatory employee regulations to be ignored, regularly unintentionally and out of lack of knowledge.

However, according to Art. 8 (1) 2 and Art. 9 (1) Rome I Regulation, mandatory employee regulations must be taken into account. Usually, these concern personal occupational health and safety law enacted in the public interest for reasons of public welfare.

When allowing an employee to work temporary in **Malta** the following mandatory regulations are to be observed by any employer based in an EU member state regardless of the applicable laws in that state and any contractual choices of law.

The following list is only intended as an overview and cannot replace a specific case assessment.

1. Minimum Wage

The current national minimum wage per week related to a normal working week in Malta is €213.54, in accordance with Legal Notice 287 of 2023 (the National Minimum Wage National Standard Order)¹.

Nonetheless, where any Wages Council Wage Regulation Order applies to any employee, the wages payable to such employee in respect of 2024 shall not be less than those laid down by such Wages Council Wage Regulation Order applicable for 2023, adjusted for cost of living by any increases of wages declared to be generally applicable to all whole-time employees in accordance with article 8 of the Employment and Industrial Relations Act ("EIRA"), or by any wage increases for cost of living laid down by any national standard order applicable in respect of 2024².

In the case of part-time employees, the national minimum wage shall be calculated pro rata at the same hourly rate of a comparable whole-time employee as applicable in accordance with the minimum wage of the relevant Wage Regulation Order, or in cases where a Wage Regulation Order is not applicable, at an hourly rate not below the national standard minimum wage mentioned above and divided by 40³.

2. Minimum paid leave

Vacation Leave

Every worker shall be entitled to paid annual leave of at least the equivalent in hours of four weeks and four working days calculated on the basis of a 40-hour working week, and an 8-hour working day and out of this paid annual leave entitlement, a minimum period

¹ Article 3 of L.N. 287 of 2023

² Article 5 of L.N. 287 of 2023

³ Article 4 of L.N. 287 of 2023

equivalent to four weeks may not be replaced by an allowance *in lieu*, and any agreement to the contrary shall be null and void⁴. In cases where the average weekly working time, calculated based on a reference period of 17 weeks, is below or exceeds 40 hours per week, the annual leave entitlement in hours shall be adjusted accordingly⁵.

In addition to the above, every whole-time employee shall be entitled to the national holidays and to all public holidays with full pay⁶. In 2024, an employee with a 40-hour working week is entitled to 240 hours of paid vacation leave; that is, the 192 hours basic leave entitlement plus 48 hours *in lieu* of the six public holidays which are falling on a weekend. The entitlement is pro-rated in the case of reduced working hours.

Other leave

Apart from vacation leave, every worker may be entitled to other leave, such as marriage leave, parental leave, carers leave, sick leave, injury leave and bereavement leave.

3. Public holidays In Malta, employees are entitled to paid 5 national holidays and 9 paid public holidays:

Name	Date	Scope of application
New Year	January 1 st	Nationwide
Feast of St. Paul's Shipwreck	February 10 th	Nationwide
Feast of St. Joseph	March 19 th	Nationwide
Freedom Day	March 31 st	Nationwide
Good Friday	Friday before Easter	Nationwide
Workers' Day (National Holiday)	March 31 st	Nationwide
Sette Giugno (National Holiday)	June 7 th	Nationwide
Feast of St. Peter and St. Paul	June 29 th	Nationwide
Feast of the Assumption	August 15 th	Nationwide
Feast of Our Lady of Victories	September 8 th	Nationwide

⁴ Article 8 (1) of S.L. 452.87, Organisation of Working Time Regulations

⁵ *Ibid.*

⁶ Article 5 of S.L. 452.87

(National Holiday)		
Independence Day (National Holiday)	September 21 st	Nationwide
Immaculate Conception	December 8 th	Nationwide
Republic Day (National Holiday)	December 13 th	Nationwide
Christmas Day	December 25 th	Nationwide

Moreover, pursuant to the National Holidays and other Public Holidays Act,⁷ national holidays are deemed to be public holidays⁸. It is noteworthy to mention that where, in the case of whole-time employees, a public holiday other than a Sunday, falls on a weekly day of rest to which such employee is entitled, such employee shall be entitled to an additional day of vacation leave during the calendar year when such public holiday so falls on a weekly day of rest or on a Sunday in respect of each such public holiday⁹.

4. Maximum working time

The Organisation of Working Time Regulations¹⁰ is the relevant legislation concerning the working hours of employees. Whilst the said regulations are to be construed as a National Standard Order and lay down the minimum requirements for the organisation of working time, one is to note that there may be other legislation laying down more specific provisions relating to the organisation of working time for certain occupations or occupational activities are in force, in which case the latter legislation will apply¹¹.

Pursuant to article 7, the average working time for each seven-day period of a worker, including overtime, shall not exceed 48 hours. Provided that:

- (a) the average weekly working time shall be calculated from the total number of hours worked in a reference period as specified in sub regulation (3).
- (b) the periods of paid annual leave, granted in accordance with regulation 8, the periods of sick leave as specified in any relevant legislation issued in terms of the EIRA or as may be specified in a relevant collective agreement and any other leave to which a worker shall be entitled pursuant to any relevant legislative provision issued in terms of the EIRA shall not be included in the calculation of the average. It shall be the duty of the employer to ensure that the limit specified above, shall be complied with, in the interests of the health and safety of the workers.

⁷ Chapter 252 of the Laws of Malta

⁸ Article 3 of Cap 252 of the Laws of Malta

⁹ Article 17 of the EIRA

¹⁰ S.L. 452.87

¹¹ Article 3(3)(a) of S.L. 452.87

5. Minimum rest periods

Under Maltese law, periods of daily rest and weekly rest are regulated by the Organisation of Working Time Regulations¹² which lays down the minimum requirements of the organisation of working time as per the EU Working Time Directive¹³.

Employees are entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period during which employees perform work for their employer¹⁴.

In addition, employees entitled to a rest break¹⁵ of an uninterrupted period of not less than 15 minutes, which are not required to be paid by employers, in the case that their working day is longer than 6 hours¹⁶, unless a longer period of rest is provided by any other regulation or agreement.

Subject to a few exceptions, in addition to the above, employees are entitled to a minimum uninterrupted weekly rest period of 24 hours, for each 7-day period, during that week or that time when the employees work for the employer¹⁷.

6. Occupational safety laws

The protection of occupational health and safety is considered of public interest¹⁸. Employers are to ensure the health and safety of all employees at all times¹⁹.

Inter alia, the measures that need to be taken by an employer to prevent physical and psychological occupational ill-health, injury or death, shall be taken on the basis of the following general principles of prevention, that is by:

- a) the avoidance of risk;
- b) the identification of hazards associated with work;
- c) the evaluation of those risks which cannot be avoided;
- d) the control at source of those risks which cannot be avoided;
- e) the taking of all the necessary measures to reduce risk as much as reasonably practicable, including the replacement of the hazardous by the non-hazardous or by the less hazardous;
- f) giving collective protective measures priority over individual protective measures;

¹² S.L. 452.87

¹³ Directive 2003/88/EC of the European Parliament and of the Council

¹⁴ Article 4 of S.L. 452.87

¹⁵ Article 5 of S.L. 452.87

¹⁶ Article 5(3) of S.L. 452.87

¹⁷ Article 6(1) of S.L. 452.87

¹⁸ Article 4 of the Occupational Health and Safety Authority Act (OHSAA), Chapter 424 of the Laws of Malta

¹⁹ Article 6(1) of the OHSAA

- g) adapting the work to the worker, particularly in so far as the design of workplaces, the choice of work equipment and the choice of working and production methods are concerned, in particular with a view to alleviating monotonous work and work at a predetermined work-rate, and to reducing their effect on health;
- h) adapting to technical progress in the interest of occupational health and safety; and
- i) by the development of a coherent overall prevention policy which covers technology, the organisation of work, working conditions, social relationships and the influence of factors related to the working environment²⁰.

7. Maternity Protection provisions

Subsidiary legislation 452.91 covers maternity protection provisions. The purpose of these regulations is to lay down minimum requirements designed to safeguard the employment rights of pregnant employees, employees who have recently given birth and breastfeeding employees, thus, facilitating improvements in the safety and health of these employees and to give effect to the relevant provisions of Council Directive 92/85/EEC²¹.

An employee on maternity leave shall be deemed to have been in employment during such leave.

In addition to other rights, the said persons are:

- entitled to an uninterrupted period of 18 weeks of maternity leave;
- Able to attend antenatal examinations during her hours of work, without loss of pay or any other benefit; and
- upon returning to work, the employees will have the same role. If this is no longer possible, the employee shall be entitled to equivalent or a similar role as specified in the employment agreement.

8. Protection of young people at work

The Young Persons (Employment) Regulations²², seek to:

- a) prohibit work by children;
- b) establish that the minimum employment age shall not be lower than the minimum age at which compulsory full-time schooling ends;

²⁰ Article 6(2) of the OHSAA

²¹ Article 2 of S.L. 452.91

²² S.L. 452.92

- c) regulate work by adolescents and young persons; and
- d) ensure that employers guarantee that young people have working conditions which suit their age and are protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education²³.

Young persons include:

- persons under the age of eighteen;
- adolescents, which are defined as those persons between the compulsory school age of sixteen and under eighteen years; and
- children, which are defined as those persons under 16 years of age²⁴.

Depending on the age of the minor, the work involved and the sector which the employer is involved in, employers would need to, among other things:

- ensure that proper approvals or notifications are sought from parents of the minor or the Director General, Educational Services and the Director of Employment and Industrial Relations;
- Understand whether a risk assessment is required prior to the employment; and
- Understand the obligations to be adhered to relating to maximum working time, the daily and weekly rest periods to be granted, night work, etc.

9. Anti-discrimination provisions

Maltese legislation promotes anti-discrimination vis-à-vis employees. The EIRA defines discriminatory treatment as “any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers’ association”. It is noteworthy to point out that the list is not an exhaustive one, and therefore, the law does not preclude the possibility of other acts constituting discriminatory treatment.

Moreover, the right to protection from discrimination on the grounds of race, place of origin, political opinions, colour, creed, sex, sexual

²³ Article 1 of S.L. 452.92

²⁴ Article 2 of S.L. 452.92

orientation or gender identity is enshrined in Article 45 of the Constitution of Malta.

In the event that Employees feel discriminated against, they may enforce their rights by lodging a complaint before the Industrial Tribunal within four months of the alleged breach. Employers may settle any claim before or after proceedings have been initiated by the employee through a settlement agreement.

10. Reporting obligations to authorities when taking up work

Employers in Malta are to notify the authorities in Malta prior to the date of posting of the worker, at the latest at the commencement of the posting, which notification shall contain the relevant information necessary in order to allow factual controls at the workplace. This notification, effected in the English language, shall include:

- (a) the identity of the foreign employer;
- (b) the address in the country where the worker habitually carries out his work;
- (c) the anticipated number of clearly identifiable posted workers;
- (d) the name, date of birth and nationality of the posted worker;
- (e) a designated person to liaise with the competent authority in Malta, and to send out and receive documents and, or notices, where appropriate, in line with regulation 6 of Article 6 (1), and a designated person to act as a representative in Malta through whom the social partners may seek to engage the foreign employer to enter into collective bargaining during the period in which the services are provided. It is not required that such contact person is present in Malta but he has to be available on a reasonable and justified request, in line with regulation 7 of Article 6 (1);
- (f) the anticipated duration, envisaged beginning and end date of the posting;
- (g) the nature of the services justifying the posting, including the type of work to be carried out; and
- (h) the name and address of the undertaking in Malta to which the worker is to be posted²⁵.

A copy of the notification referred to above, together with updated records sufficient to show that the provisions of these regulations are being complied with, shall be kept at the undertaking in Malta making use of the services of the posted worker²⁶.

In the case of non-EU employees, further obligations are to be adhered to by the employer, including obtaining the relevant permits/ visas.

²⁵ Article 6 (1) of S.L. 452.82

²⁶ Article 6(2) of S.L. 452.82

11. Miscellaneous Malta recently introduced the 'Nomad Residency Permit' through which third country nationals excluding EU, EEA and Switzerland can work remotely from Malta, using telecommunications technologies, for a duration of one year, which can be extended for two further periods of one year. The said applicants must earn at least two thousand and seven hundred Euro (€2,700) gross monthly income. The nomad residence permit holder would not pay tax or social security in Malta but must continue to be a resident of a foreign jurisdiction.

Feel free to contact us if you have any questions about Malta labour law.

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