

A.L. 430 ta' l-2002

**ATT TA' L-2002 DWAR L-IMPIEGI U R-RELAZZJONIJIET
 INDUSTRIJALI**

(ATT NRU. XXII TA' L-2002)

Regolamenti ta' l-2002 dwar Impjegati Stazzjonati f'Malta

BIS-SAHHA tas-setghat moghtija bl-artikolu 31 ta' l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, il-Viçi Prim Ministru u Ministru ghall-Politika Soċjali ghamel dawn ir-regolamenti li ġejjin:-

1. It-titolu ta' dawn ir-regolamenti hu **Regolamenti ta' l-2002** Titolu.
 dwar Impjegati stazzjonati f'Malta

2. (1) F'dawn ir-regolamenti - Tifsiriet.

“Att” tfisser l-Att ta' l-2002 dwar l-Impiegi u r-Relazzjonijiet Industrijali;

“azjenda barranija” tfisser azjenda stabbilita fi stat li ma jkunx Malta;

“impjegat komparabbli” tfisser impjegat Malti fl-istess stabbiliment li jkun impjegat fl-istess xoghol jew xoghol jew okkupazzjoni simili, waqt li jinghata każ ta' konsiderazzjonijiet ohra inklużi anzjanità, kwalifiki u hiliet:

Izda meta ma jkun hemm ebda impjegat Malti komparabbli fl-istess stabbiliment, it-tqabbil ghandu jsir b'riferenza ma' kull ftehim kollettiv li jkopri impjegati Maltin komparabbli fi stabbilimenti ohra;

“impjegat stazzjonat” tfisser impjegat ta' azjenda barranija li normalment ma jkunx jopera f'Malta imma li ghal perjodu ta' żmien limitat jintbaghat minn azjenda barranija biex jahdem Malta.

(2) Bla hsara ghad-disposizzjonijiet tas-subregolament (1) ta' dan ir-regolament, frażijiet u espressjonijiet uzati f'dawn ir-regolamenti ghandu jkollhom, kemm-il darba r-rabta tal-kliem ma tkunx tehtieg xort'ohra, it-tifsira assenjata lilhom fl-Att.

Applikabilità.

3. (1) Dawn ir-regolamenti ghandhom japplikaw safejn l-azjendi barranin msemmija fl-artikolu precedenti;

(i) jibaghtu impjegati stazzjonati f'Malta biex jaghmlu xoghol taghhom u taht id-direzzjoni taghhom, bis-sahha ta' kuntratt maghmul bejn l-azjenda li tistazzjona u l-parti l-ohra li s-servizzi huma mahsuba ghaliha, sakemm ikun hemm relazzjoni ta' impieg bejn l-azjenda li tistazzjona u l-haddiem tul il-perjodu ta' l-istazzjonar; jew

(ii) jibaghtu impjegati stazzjonati fi stabbiliment jew f'azjenda f'Malta li tkun propjeta ta' azjenda barranija, sakemm ikun hemm relazzjoni ta' impieg bejn l-azjenda li tistazzjona u l-haddiem tul il-perjodu ta' l-istazzjonar; jew

(iii) ghax ikunu azjendi li joffru impieg temporanju jew aġenziji li jsibu x-xoghol, jikru haddiem lil azjenda stabbilita li tużah jew li tkun topera f'Malta, sakemm ikun hemm relazzjoni ta' impieg bejn l-azjenda li toffri impieg temporanju, jew l-aġenzija li ssib ix-xoghol, u l-haddiem tul il-perjodu ta' l-istazzjonar.

(2) Dawn ir-regolamenti m'ghandhomx japplikaw ghal ekwipaġġ ta' bastimenti li jbahhru.

(3) Xejn f'dawn ir-regolamenti m'ghandu jimpedixxi l-applikazzjoni ta' pattijiet u kondizzjonijiet ta' impieg li huma aktar favorevoli ghall-haddiema.

Ugwaljanza ta' trattament.

4. (1) Il-kondizzjonijiet tax-xoghol li jinghataw lil impjegati stazzjonati li huma awtorizzati jahdmu Malta m'ghandhomx ikunu inqas mill-kondizzjonijiet ta' xoghol minimi moghtija lil impjegat komparabbli bis-sahha ta' l-Att, jew bis-sahha ta' xi regolamenti mahruġin tahtu, jew bis-sahha ta' xi ftehim kollettiv li jirregola l-klassi ta' impieg ta' l-impjegat stazzjonat fl-istess post tax-xoghol:

Iżda kull *allowance* speċifika li tinghata lill-impjegat stazzjonat ghandha titqies bhala parti mill-paga li tithallas lill-impjegat komparabbli, sakemm daww l-*allowances* ma jithallsux bhala rimborż ta' spejjeż attwali maghmulin minhabba l-istazzjonar, inklużi spejjeż ta' vvjaġġar, ikel u allogġ.

(2) L-impjegati stazzjonati kollha koperti b'dawn ir-regolamenti ghandhom id-dritt jirċievu trattament ugwali daqs impjegati stazzjonati komparabbli u b'mod partikolari ghandu jkollhom aċċess ugwali ghal drittijiet dwar l-impieg u drittijiet dwar is-sahha u s-sigurtà taht il-liġi ta' Malta.

(3) Il-frazi “trattament ugwali” tinkludi għall-finijiet ta’ dawn ir-regolamenti:

(a) perjodi massimi ta’ xogħol u perjodi minimi ta’ mistrieh kif applikati għal diversi klassijiet ta’ impjegati;

(b) vaganzi annwali mhallsin minimi kif applikati għal diversi klassijiet ta’ impjegati;

(ċ) rati ta’ paga minimi, inklużi rati tas-sahra kif applikati għal diversi klasijiet ta’ impjegati;

(d) trattament ugwali bejn irġiel u nisa u disposizzjonijiet ohra dwar li ma għandu jkun hemm ebda diskriminazzjoni konformi mal-liġijiet ta’ Malta;

(e) miżuri protettivi konformi mal-liġijiet ta’ Malta fir-rigward ta’ pattijiet u kondizzjonijiet ta’ impieg li jharsu lil nisa tqal jew nisa li jkunu welldu ftit żmien qabel;

(f) miżuri protettivi konformi mal-liġijiet ta’ Malta fir-rigward ta’ pattijiet u kondizzjonijiet ta’ impieg li jharsu tfal u żgħażaġh;

(g) miżuri konformi mal-liġijiet ta’ Malta fir-rigward ta’ sahha, sigurtà u iġjene fuq ix-xogħol:

Iżda f’każijiet ta’ immuntar tal-bidu u, jew l-ewwel stallazzjoni ta’ oġġetti meta din l-attività tkun parti integrali mill-kuntratt għall-fornitura ta’ l-oġġetti meħtieġa biex l-oġġetti furnuti jitqiegħdu fl-użu u jsiru mill-haddiema tas-sengħa u, jew mill-haddiema speċjalizzati ta’ l-organizzazzjoni li tissupplixxi, is-subregolament 4(3)(b) u (ċ) m’għandux japplika jekk il-perjodu ta’ stazzjonar ma jaqbiżx it-tmint ijiem, sakemm ix-xogħol involut ma jkollux x’jaqsam ma’ kostruzzjoni, tiswija, manutenzjoni, alterazzjoni jew twaqqiġh ta’ bini, u b’mod partikolari, skavar, ġarr ta’ materjal, xogħol tal-bini attwali, immuntar u żmuntar ta’ elementi prefabbricati, attrezzażżar jew stallazzjoni, alterazzjonijiet, rinnovazzjoni, tiswijiet, hatt, manutenzjoni, tiżmim fi stat tajjeb, xogħol ta’ żebgħa u tindif u titjib:

Iżda wkoll is-subregolament (3)(c) m’għandux japplika fil-każijiet imsemmija fir-regolament 3(1)(i) u (ii) meta t-tul ta’ l-istazzjonar ma jkunx jaqbeż ix-xahar.

(4) It-tul ta’ l-istazzjonar għandu jiġi kkalkulat fuq il-bażi ta’ perjodu ta’ referenza ta’ sena mill-bidu ta’ l-istazzjonar:

Iżda għall-finijiet ta' tali kalkoli, għandu jinghata każ ta' kull perjodu preċedenti li tulu l-post kien mimli minn impjegat stazzjonat.

Infurzar.

5. Id-Direttur ta' l-Impiegi u Relazzjonijiet Industrijali għandu jkun responsabbli għall-infurzar ta' dawn ir-regolamenti.

Reat.

6. Kull persuna li tikser id-disposizzjonijiet ta' dawn ir-regolamenti tkun hatja ta' reat u tista', meta tinsab hatja, tehel multa ta' mhux inqas minn hamsin lira u mhux iżjed minn hames mitt lira.

L.N. 430 of 2002

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002
(ACT NO. XXII OF 2002)**

Posting of Workers in Malta Regulations, 2002

IN exercise of the powers conferred by article 31 of the Employment and Industrial Relations Act, 2002, the Deputy Prime Minister and Minister for Social Policy has made the following regulations :-

1. The title of these regulations is the Posting of Workers in Malta Regulations, 2002. Title.

2. (1) In these regulations - Definitions.

“Act” means the Employment and Industrial Relations Act, 2002;

“comparable employee” means a Maltese employee in the same establishment who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualification and skills:

Provided that where there is no comparable Maltese employee in the same establishment, the comparison shall be made by reference to collective agreements covering similar comparable Maltese employees in other establishments;

“foreign undertaking” means an undertaking which is established in a state other than Malta;

“posted employee” means an employee of a foreign undertaking who does not normally work in Malta but who for a limited period of time is sent by the foreign undertaking to work in Malta.

(2) Subject to the provisions of subregulation (1) of this regulation, terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. (1) These regulations shall apply to the extent that the foreign undertakings referred to in the preceding article- Applicability.

(i) send posted employees in Malta on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

(ii) send posted employees to an establishment or to an undertaking in Malta which is owned by the foreign undertaking, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

(iii) being temporary employment undertakings or placement agencies, hire out a worker to a user undertaking established or operating in Malta, provided there is an employment relationship between the temporary employment undertaking, or placement agency, and the worker during the period of posting.

(2) These regulations shall not apply to personnel on seagoing vessels.

(3) Nothing contained in these regulations shall prevent application of terms and conditions of employment which are more favourable to workers.

Equality of
treatment.

4. (1) The conditions of work which are given to posted employees who are authorised to work in Malta shall not be less than the minimum conditions of work given to a comparable employee by virtue of the Act, or any regulations issued thereunder or by virtue of any other regulations issued thereunder or any other legislation or by virtue of a collective agreement regulating the class of employment of the posted employee in the same place of work:

Provided that any allowances specific to the posting granted to the posted employee, shall be considered to be part of the wage payable to a comparable employee, unless they are paid as reimbursement of expenses actually incurred on account of the posting, including expenditure on travel, board and lodging.

(2) All posted employees covered by these regulations shall be entitled to receive equality of treatment as the comparable Maltese employees and in particular they shall have equal access to employment rights and health and safety rights under Maltese law.

(3) The term “equality of treatment” shall, for the purposes of these regulations, include:

(a) maximum work periods and minimum rest periods as applied to various classes of employees;

(b) minimum paid annual holidays as applied to various classes of employees;

(c) minimum rates of pay, including overtime rates as applied to various classes of employees;

(d) equality of treatment between men and women and other provisions of non-discrimination in accordance with the laws of Malta;

(e) protective measures with regards to terms and conditions of employment protecting pregnant women or women who have given birth a short while before;

(f) protective measures in accordance with the laws of Malta with regards to terms and conditions of employment protecting children and young people;

(g) measures in accordance with the laws of Malta relating to health, safety and hygiene at work:

Provided that in cases of initial assembly and, or first installation of goods where such activity is an integral part of contract for the supply of goods necessary for taking the goods supplied into use and carried out by the skilled and, or specialist workers of the supplying organisation, subregulation 4(3)(b) and (c) shall not apply if the period of posting does not exceed eight days, so long as the work involved is not related to all building work relating to construction, repair, upkeep, alteration or demolition of buildings, and in particular excavation, earth moving, actual building work, assembly and dismantling of prefabricated elements, fitting out or installation, alterations, renovation, repairs, dismantling, demolition, maintenance, upkeep, painting and cleaning work and improvements:

Provided further that subregulation (3)(c) shall not apply in the cases referred to in regulation 3(1)(i) and (ii) when the length of the posting does not exceed one month.

(4) The length of the posting shall be calculated on the basis of a reference period of one year from the beginning of the posting:

Provided that for the purpose of such calculation, account shall be taken of any previous periods for which the post has been filled by a posted worker.

Enforcement.

5. The Director responsible for employment and industrial relations shall be responsible for the enforcement of the provisions of these regulations.

Offences.

6. Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than fifty liri (Lm50) and not more than five hundred liri (Lm500).