

L.N. 10 of 2006

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)**

Employee (Information and Consultation) Regulations, 2006

IN exercise of the powers conferred by article 35 of the Employment and Industrial Relations Act, the Minister of Education, Youth and Employment has made the following regulations:–

Title, scope and
coming into force.

1. (1) The title of these regulations is the Employee (Information and Consultation) Regulations, 2006.

(2) These regulations establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings thereby giving effect to the relevant provisions of Directive 2002/14/EC of the European Parliament and of the Council of the 11th March, 2002.

(3) These regulations shall apply to undertakings established in Malta and shall enter into force as follows:

(a) for undertakings employing 150 employees and over, on the date of publication in the Gazette;

(b) for undertakings employing between 100 and 149 employees, on the 23rd March, 2007; and

(c) for undertakings employing 50 employees and over, on the 23rd March, 2008.

Cap. 234.

(4) These regulations shall not apply to personnel employed on vessels which fall under the provisions of the Merchant Shipping Act.

Definitions.

2. (1) For the purpose of these regulations:

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

“consultation” means the exchange of views and establishment of dialogue between the employees’ representatives and the employer;

“information” means transmission by the employer to the employees’ representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it;

“Member States” means a member state of the European Union, or of the European Economic Area;

“undertaking” means a public or private undertaking carrying out an economic activity, whether or not operating for gain.

(2) Subject to the provisions of sub-regulation (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) The employer shall make the practical arrangements necessary at the appropriate level to allow his employees to effectively exercise the right to information and consultation in accordance with these regulations through the standard information and consultation provisions set out in regulation 4.

General duty to inform, consult and co-operate.

(2) When defining or implementing practical arrangements for information and consultation, the employer and the employees’ representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking and of the employees.

(3) The provisions in sub-regulations (1) and (2) hereof are without prejudice to any written agreement in force on 23rd March, 2005 which, whilst respecting the minimum requirements set out in these regulations, is more favourable to employees, provided that:

(a) the agreement applies to the whole workforce;

(b) the agreement clearly sets out how the employer is to give information to the employees or their representatives and to seek their views on such information;

(c) the agreement has been applied effectively.

(4) Nothing in these regulations shall prevent the employer and employees from negotiating agreements on the practical arrangements for informing and consulting employees, provided that these respect the minimum requirements set out in these regulations.

Standard
information and
consultation
provisions.

4. (1) The employer must provide the information and consultation representatives with information on –

(a) the recent and probable development of the undertaking's activities and economic situation;

(b) the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking; and

(c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the provisions referred to in regulation 10 sub-regulation (1) hereof.

(2) The information referred to in sub-regulation (1) hereof must be given at such time, in such fashion and with such content as are appropriate to enable, in particular, the information and consultation representatives to conduct an adequate study and, where necessary, to prepare for consultation.

(3) The employer must consult the information and consultation representatives on the matters referred to in sub-regulation (1) paragraphs (b) and (c).

(4) The employer must ensure that the consultation referred to in sub-regulation (3) is conducted -

(a) in such a way as to ensure that the timing, method and content of the consultation are appropriate;

(b) on the basis of the information supplied by the employer to the information and consultation representatives and of any opinion which those representatives express to the employer;

(c) in such a way as to enable the information and consultation representatives to meet the employer at the relevant level of management depending on the subject under discussion and to obtain a reasoned response from the employer to any such opinion; and

(d) in relation to matters falling within sub-regulation (1) paragraph (c), with a view to reaching agreement on decisions within the scope of the employer's powers.

5. (1) The employer shall ensure that information and consultation of employees shall be carried out:

Appointment or election of information and consultation representatives.

(a) in the case of undertakings where there is one or more recognized trade union covering all categories of employees, with the representatives of the recognized trade union or unions;

(b) in the case of undertakings where the recognized trade union or unions do not represent all categories of employees, with the representatives of the recognized trade union or unions, together with the elected or appointed representatives of the workers in the unrepresented categories:

Provided that in the case of election or appointment of these representatives, only employees within the unrepresented category or categories shall be entitled to take part in a secret ballot to select their representatives:

Provided further that, notwithstanding what is stated in sub-regulation (2) paragraph (g), if the category or categories of employees which were previously unrepresented by a recognized trade union start being represented by a recognized trade union, the term of office of any representative or representatives elected or appointed on behalf of such category or categories shall be

automatically terminated on the date of the granting of recognition of the respective category of employees to the trade union concerned by the employer;

(c) in the case where there is no recognized trade union, with the representatives of the employees elected or appointed by means of a secret ballot from amongst all employees:

Provided that, notwithstanding what is stated in sub-regulation (2) paragraph (g), if the category or categories of employees which were previously unrepresented by a recognized trade union start being represented by a recognized trade union, the term of office of any representative or representatives elected or appointed on behalf of such category or categories shall be automatically terminated on the date of the granting of recognition of the respective category of employees to the trade union concerned by the employer.

(2) In the case of a ballot referred to in sub-regulation (1) paragraphs (b) and (c) for the election of representatives of employees in categories not represented by a recognized trade union:

(a) the employer shall make such arrangements as are reasonably practicable to ensure that the ballot is fair; and shall supply the Director with the procedure to be followed at least one month before the projected date of the ballot;

(b) all employees employed by the undertaking on the date of the ballot who are entitled to vote in the ballot are allowed to do so;

(c) the ballot must be conducted so as to secure that –

(i) so far as is reasonably practicable, those voting do so in secret; and

(ii) the votes given at the ballot are accurately counted;

(d) any employee who is not in his probationary period on the date of the holding of the ballot shall be entitled to stand as a candidate in such a ballot;

(e) in the event that at the end of the period allowed for the submission of nominations to stand as candidates in such a ballot only one employee who is entitled to do so stands as a candidate, such employee shall be considered to be automatically elected and shall be appointed as an information and consultation representative from the date of the end of the period set by the employer for the submission of such nominations;

(f) in the event that no employee in a category submits a nomination for candidature to take part in a ballot when called to do so by the employer, the employer shall have the duty to inform the employees in that category, at three month intervals from the initial call, of their right to have a representative to be informed and consulted and to invite them to submit nominations for candidates to take part in such a ballot within two weeks from the date of such communication: if nominations are submitted, the necessary arrangements shall be made to hold such a ballot within one month from the closing date for nominations;

(g) the number of representatives so appointed or elected shall be of not more than one representative per unrepresented category and shall hold office for a period of three years from their date of election or appointment;

(h) the employer shall take the necessary measures to hold another ballot in the event of the resignation of an elected or appointed representative or on the expiry of a representative's term of office.

(3) Following the election or appointment of the information and consultation representatives, the employer shall:

(a) inform the employees in writing of the identity of the information and consultation representatives; and

(b) hold a first information and consultation meeting within two months from their date of election or appointment;

(c) hold a minimum of at least one meeting within six months after the date of each preceding meeting.

(4) The employer shall take all the necessary measures to ensure, as far as is reasonably practicable, that the first meeting with the information and consultation representatives shall be held:

(a) in the case of an undertaking which meets the relevant threshold specified in regulation 1 sub-regulation (3) on the date of entry into force of these regulations, within nine months from the relevant date of entry into force of these regulations;

(b) in the case of an undertaking which meets the relevant threshold specified in regulation 1 sub-regulation (3) after the date of entry into force of these regulations, within nine months from the date when the undertaking meets the relevant threshold.

Complaints on any matter related to the ballot.

6. (1) A complaint may be presented to the Director on any matter related to the appointment or election of the information and consultation representatives or the holding of the ballot within 21 days of the date when the alleged infraction occurred and where the Director finds the complaint well-founded he shall make any order which in his opinion addresses the situation, including requiring the employer to arrange for the election or appointment of information and consultation representatives referred to in regulation 5 again within such period as that order shall specify as appropriate and any such order shall be final.

(2) The decision of the Director on any matter related to -

(a) the holding of a ballot required to be held under these regulations; and

(b) the representation of employees in a category or categories of employees not represented by a recognized trade union, as referred to in regulation 5 (1) paragraphs (b) and (c), shall be complied with within any timeframe which may be so specified by the Director and any such decision shall be final.

Confidential information.

7. (1) A person to whom the employer, pursuant to his obligations under these regulations, entrusts any information or

document on terms requiring it to be held in confidence shall not disclose that information or document except in accordance with those terms.

(2) In this regulation a person referred to in sub-regulation (1) to whom information or a document is entrusted is referred to as a “recipient”.

(3) The obligation to comply with sub-regulation (1) is a duty owed to the employer and a breach of the duty is actionable accordingly.

(4) A recipient whom the employer has entrusted with any information or document on terms requiring it to be held in confidence may refer the dispute to the Industrial Tribunal for a declaration as to whether it was reasonable for the employer to require the recipient to hold the information or document in confidence.

(5) If the Industrial Tribunal considers that the disclosure of the information or the document by the recipient would not, or would not be likely to, prejudice or cause serious harm to the undertaking, it shall make a declaration that it was not reasonable for the employer to require the recipient to hold the information or document in confidence.

(6) If a declaration is made under sub-regulation (5), the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the application under paragraph (4), or to any other recipient, on terms requiring it to be held in confidence.

(7) The employer is not required to disclose any information or document to a recipient when the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to the undertaking.

(8) Where there is a dispute between the employer and a recipient as to whether the nature of the information or document which the employer has failed to provide is such as is described in sub-regulation (7), the employer or a recipient may apply to the Industrial

Tribunal for a declaration as to whether the information or document is of such a nature.

(9) If the Industrial Tribunal makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, seriously harm the functioning of, or be prejudicial to the employer, the Industrial Tribunal shall order the employer to disclose the information or document, and the order shall specify:

- (a) the information or document to be disclosed;
- (b) the recipient or recipients to whom the information or document is to be disclosed;
- (c) any terms on which the information or document is to be disclosed; and
- (d) the date before which the information or document is to be disclosed.

Protection of
Information and
Consultation
representatives.

8. (1) An employee who is an information and consultation representative, shall enjoy the same protection and guarantees provided for employees' representative in the Act in the exercise of his functions.

(2) The protection and guarantees referred to in sub-regulation (1) shall apply in particular to attendance at meetings and to the entitlement to be permitted to such employee by his employer to take reasonable time off with pay during his working hours in order to perform his functions as such a representative.

Unfair dismissal.

9. (1) An information and consultation representative or a candidate in an election in which any person elected will, on being elected, be such a representative shall have the right not to suffer any detriment, including dismissal by any act or deliberate failure to act by the employer, if the reason (or, if more than one, the principal reason) for this is that -

- (a) the employee performed any functions or activities as such a representative or candidate;

Provided that this shall not apply if the employee disclosed any information or document in breach of the duty in regulation 7;

(b) the employee or a person acting on his behalf made a request to exercise an entitlement conferred on the employee by regulation 8 or proposed to do so;

(2) The reason in sub-regulation (1) paragraph (a) does not apply where the reason (or principal reason) for the subjection to detriment, including dismissal, is that in the performance, or purported performance, of the employee's functions or activities, he has disclosed any information or document in breach of the duty in regulation 7.

(3) Any employee, whether or not he is an employee to whom sub-regulation (1) applies, shall have the right not to suffer any detriment including dismissal by any act or deliberate failure to act by the employer, if the reason (or, if more than one, the principal reason) for this is one or more of the reasons is that the employee -

(a) took, or proposed to take, any proceedings before the Industrial Tribunal to enforce a right or secure an entitlement conferred on him by these regulations;

(b) exercised, or proposed to exercise, any entitlement to apply or complain to the Director or the Industrial Tribunal conferred by these regulations;

(c) stood as a candidate in an election in which any person elected would, on being elected, be an information and consultation representative;

(d) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in a ballot arranged under these regulations;

(e) voted in such a ballot;

(f) expressed doubts, as to whether such a ballot had been properly conducted; or

(g) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in paragraphs (d) to (g).

(4) In the case of a dismissal for such reasons as referred to in sub-regulations (1) and (3), this shall constitute an unfair dismissal.

(5) It is immaterial for the purpose of sub-regulation (3) paragraph (a) –

(a) whether or not the employee has the right; or

(b) whether or not the right has been infringed; but for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

(6) An employee may present a complaint to the Industrial Tribunal that he has been subjected to a detriment in contravention of this regulation.

Link to other laws.

10. (1) These regulations shall be without prejudice to the specific information and consultation procedures set out in:

L.N. 428 of 2002.

(a) regulations 4 to 8 of the Collective Redundancies (Protection of Employment) Regulations, 2002; and

L.N. 433 of 2002.

(b) regulations 6 and 8 of Transfer of Business, (Protection of Employment) Regulations, 2002.

L.N. 324 of 2004.

(2) These regulations shall be without prejudice to provisions adopted in accordance with the European Works Councils Regulations, 2004.

(3) These regulations shall be without prejudice to other rights to information, consultation and participation under any other law.

(4) Implementation of these Regulations shall not be sufficient grounds for any regression in relation to the situation which already prevails on the date of entry into force of these Regulations and

in relation to the general level of protection of workers in the areas to which it applies.

11. Any person who fails to comply with any obligation imposed under these regulations shall be guilty of an offence and shall, on conviction, be liable:- Enforcement.

(a) to a fine (*multa*) of not less than ten liri and not more than fifty liri for every employee of the undertaking in relation to a failure by the employer to:

(i) to set up an information and consultation procedure in accordance with regulation 11;

(ii) to omit to do anything which he is under an obligation to do under these regulations; and

(b) in relation to any other offence, a fine (*multa*) of not less than five hundred liri and not more than five thousand liri.

