VERŻJONI ELETTRONIKA

L.N. 540 of 2010

EMPLOYMENT AND TRAINING SERVICES ACT (CAP. 343)

Employment Agencies (Amendment) Regulations, 2010

IN exercise of the powers conferred by article 25 of the Employment and Training Services Act, the Minister of Education, Employment and the Family has made the following regulations –

Title.

1. The title of these regulations is the Employment Agencies (Amendment) Regulations, 2010 and they shall be read and construed as one with the Employment Agencies Regulations, 1995, hereinafter referred to as "the principal regulations".

L.N. 127 of 1995.

Amends regulation 2 of the principal regulations.

2. In regulation 2 of the principal regulations:

(a) in the definition "Director", for the words "means the Director of Labour and includes any officer of the Department of Labour who is authorised by the Director to act on his behalf;" there shall be substituted the words "means the Director of Industrial and Employment Relations and includes any officer of the Department of Industrial and Employment Relations who is authorised by the Director to act on his behalf"; and

(b) in the definition "licencee", for the words "includes also any person to whom a licence is transferred upon the death of the holder in terms of article 23 (9) of the Act;" there shall be substituted the words "means the holder of a licence to conduct an employment agency or an employment business;".

Amends regulation 3 of the principal regulations.

3. In regulation 3 of the principal regulations:

(a) for sub-regulation (1) thereof there shall be substituted the following:

"(1) In terms of article 23 of the Act, no person shall carry on an employment agency or an employment business unless:

(a) he is the holder of a valid licence granted by the Director authorizing him to carry on such

an agency or business in premises specified in the licence; or

(b) he is lawfully established to conduct business as an employment agency in a Member State, and has informed the Director that he is providing services of an employment agency in Malta within five working days from the date of the commencement of such activity.

Provided that for the purposes of these regulations, "lawfully established" shall be read and construed in terms of the Services (Internal Market) Act: Cap. 500.

Provided further that the Director may impose any necessary requirements on persons referred to in paragraph (b) in terms of the Services (Internal Market) Act and it shall be an obligation on persons referred to in paragraph (b) to comply.";

(b) For sub-regulation (2) thereof, there shall be substituted the following:

"(2) No person shall be qualified to be granted a licence to conduct any employment agency or employment business in terms of paragraph (a) of sub-regulation (1) of this regulation unless he is twenty-five years of age or over and has displayed a notice of his intention to run the employment agency and has advertised notice of the application in accordance with sub-regulation (2A) of this regulation."; and

(c) Immediately after sub-regulation (2) thereof, there shall be inserted the following new sub-regulation:

"(2A) The procedure which is to be followed in terms of subregulation (2) of this regulation shall be as follows:

(a) an applicant for a licence in terms of paragraph (a) of sub-regulation (1) of this regulation shall, not less than twenty-one days before making his application –

(i) display notice of the application in a place where it can conveniently be read by the public on or near the premises at which the employment agency or employment business is or is to be carried out and take such steps as he reasonably can to keep that notice so displayed for a period of twenty-one days; and

(ii) advertise notice of the application in two daily newspapers; and

(b) a notice under this regulation shall state the name and address of the applicant and, where the applicant is a company or other body of persons, the company's number and registered office and the address of the premises at which the employment agency or employment business is or is to be carried out, which premises must be suitable in terms of regulation 7A of these regulations.".

Amends regulation 4 of the principal regulations.

4. In regulation 4 of the principal regulations:

(a) in sub-paragraph (iv) of paragraph (c) of sub-regulation (1) thereof, for the words "as required by the provisions of article 23 of the Act" there shall substituted the words "as required by the provisions of regulation 3 (2A) of these regulations"; and

(b) immediately after sub-regulation (3) thereof, there shall be inserted the following new sub-regulation:

"(4) Every notification forwarded to the Director in terms of regulation 3 (1) (b) shall include:

(a) the name of the employment agency and its registered address which have to be in a Member State;

(b) the name, the address and the number of a personal identification document of a contact person authorized by the employment agency or business to carry out the functions of the employment agency or business in Malta and proof

that the person is legally established in another Member State; and

(c) the address of the place in Malta where the activity is proposed to be carried out.".

Substitution of regulation 5 of the principal regulations.

5. Regulation 5 of the principal regulations shall be substituted by the following:

"5. No application for a licence under these regulations shall be entertained by the Director unless it is accompanied by a certificate, signed by or on behalf of the applicant, stating that the applicant has complied with the provisions of regulation 3 (2A) and a copy of the newspapers containing notice of the application in accordance with the same regulation.".

Amends regulation 6 of the principal regulations.

6. In regulation 6 of the principal regulations:

(a) for sub-regulation (1) thereof, there shall be substituted the following:

"(1) A licence to carry on an employment agency or an employment business in terms of regulation 3 (1) (a) of these regulations shall be issued by the Director for a period of one year (or for such longer period, not exceeding five years, as the Director may specify in any particular case) beginning with the date specified therein for its commencement. Such licence shall be renewed for further periods each of one year subject to the continuous fulfilment of the requirements laid down in the Act and in these regulations:

Provided that when a request for renewal has been received prior to the expiry of a licence in force, the licence shall remain in force until a decision is taken by the Director with regard to the request for renewal of the licence.";

(b) Immediately after sub-regulation (2) thereof, there shall be inserted the following proviso:

"Provided that licences shall be issued by the Director within the period of twenty working days from the receipt of the application and the necessary

documents in terms of these regulations provided that all the requirements laid down by the Act and by these regulations have been complied with. A lack of response within the aforementioned period of twenty working days shall not be deemed to imply a tacit approval of the applicant's application.";

(c) for sub-regulation (3) thereof, there shall be substituted the following:

"(3) The holder of a licence granted by virtue of these regulations or the person mentioned in regulation 3 (1) (b) of these regulations shall keep displayed on the premises to which the licence relates or at which the business of an employment agency is carried out, as the case may be, in such a position that it can be readily seen by persons resorting to those premises –

(a) the licence granted by virtue of these regulations, if applicable; and

(b) a copy of these regulations which shall be available for inspection by any interested person:

Provided that failure to comply with the provisions of this sub-regulation constitutes an offence against these regulations.";

(d) for sub-regulation (4) thereof, there shall be substituted the following:

"(4) It shall be a condition of any licence that a competent person is available at all times to manage the employment agency or employment business, provided that the licensee may nominate one or more competent persons to act as substitutes for the person nominated by him, if such person is not at any time available for any justifiable reason. Failure to comply with the provisions of this sub-regulation constitutes an offence against these regulations.";

(e) immediately after sub-regulation (4) thereof, there shall be inserted the following new sub-regulation:

"(4A) The person mentioned in regulation 3 (1) (b) of these regulations shall ensure that a competent person is available at all times to manage the employment agency or employment business, provided that such person may nominate one or more competent persons to act as substitutes for the person nominated by him, if such person is not at any time available for any justifiable reason. Failure to comply with the provisions of this sub-regulation constitutes an offence against these regulations.";

(f) in sub-regulation (5) thereof:

(i) immediately after the words "the licensee", there shall be inserted the words "or the person mentioned in regulation 3 (1) (b) of these regulations"; and

(ii) immediately after the sub-regulation, there shall be inserted the following provisos:

"Provided that nothing in this sub-regulation shall be taken as authorising the holder of a licence to carry on any business in accordance with regulation 3 (1) (a) of these regulations otherwise than in accordance with the provisions of the said licence:

Provided further that every licence granted in terms of these regulations shall be endorsed with notice of the effect of this regulation."; and

(g) sub-regulations (6) and (7) thereof shall be deleted and sub-regulations (8) and (9) shall be renumbered as sub-regulations (6) and (7) respectively.

7. In regulation 7 of the principal regulations:

Amends regulation 7 of the principal regulations.

(a) in sub-regulation (1) thereof, immediately after the words "nominated by a licensee" there shall be inserted the words "or by the person mentioned in regulation 3 (1) (b) of these regulations";

(b) in sub-regulation (2) thereof, immediately after the words "or by the licensee" there shall be inserted the words

"or by the person mentioned in regulation 3 (1) (b) of these regulations";

(c) in sub-regulation (3) thereof, immediately after the words "or of the licensee" there shall be inserted the words "or of the person mentioned in regulation 3 (1) (b) of these regulations", and for the words "It shall be a condition of every licence" there shall be substituted the words "In cases falling under regulation 3 (1) (a), it shall be a condition of every licence"; and

(d) in sub-regulation (4) thereof, after the words "or any licensee" there shall be inserted the words "or any person mentioned in regulation 3 (1) (b) of these regulations", and immediately after the words "or the licensee" there shall be inserted the words "or the person mentioned in regulation 3 (1) (b) of these regulations".

Adds new regulation 7A to the principal regulations.

8. Immediately after regulation 7 of the principal regulations, there shall be inserted the following new regulation:

"Suitability of Premises.

7A. For the purposes of these regulations, premises shall be deemed to be suitable if the premises concerned have access for persons with disability, have a segregated area designated as a waiting room and also include an office room where interviews could be carried out in private.".

Amends regulation 8 of the principal regulations.

9. In regulation 8 of the principal regulations:

(a) for the words "The Director may refuse or revoke an application, as the case may be," there shall be substituted the words "The Director may refuse an application for a licence or revoke a licence, as the case may be,";

(b) for paragraph (b) thereof, there shall be substituted the following:

"(b) that the applicant or the person nominated by him as a competent person to manage the employment agency or employment business does not possess the qualifications as provided by these regulations or is not in possession of a clean police conduct; or";

(c) paragraph (c) thereof shall be deleted and substituted by the following:

"(c) that the premises where the employment agency or employment business is proposed to be carried out are unsuitable in terms of regulation 7A of these regulations, or where any of the employment services contemplated in the application for a licence or in the licence is proposed to be carried out, as the case may be, is in breach of any law or regulation; or"; and

(d) immediately after paragraph (g) thereof, there shall be inserted the following new paragraph:

"(h) that the employment agency or employment business has been or is being improperly conducted.".

Substitution of regulation 10 of the principal regulations.

10. For regulation 10 of the principal regulations there shall be substituted the following:

"10. (1) No payments or charges shall be demanded or levied on any applicant for employment in consideration of such employment or in consideration of registration therefor.

(2) No deductions shall be made from the wages of any employee for any services rendered by an employment agency or employment business.".

Amends regulation 11 of the principal regulations.

11. In regulation 11 of the principal regulations:

(a) in paragraph (a) thereof, immediately after the words " the licence number" there shall be inserted the words "or any other identification number issued by the Director";

(b) in paragraph (b) thereof:

(i) after the words "may exempt the licensee" there shall be inserted the words "or the person mentioned in regulation 3 (1) (b) of these regulations", and

(ii) after the words "The licensee", there shall be inserted the words "or the person mentioned in regulation 3 (1) (b) of these regulations".

(c) in paragraph (d) thereof, in both instances, after the words "The licensee", there shall be inserted the words "or the person mentioned in regulation 3 (1) (b) of these

VERŻJONI ELETTRONIKA

regulations, as the case may be, or in the absence of the licensee or the person mentioned in regulation 3 (1) (b) of these regulations, the competent person".

Amends regulation 15 of the principal regulations.

12. In regulation 15 of the principal regulations, for the words "The Director shall have at any time the right to examine the books, including any records of any licensed employment agency or employment business," there shall be substituted the words "The Director shall have at any time the right to examine the books, including any records of any licensed employment agency or employment business or of any other employment agency or employment business carrying out its activities in Malta in terms of the Act and these regulations".

Amends regulation 16 of the principal regulations.

13. In regulation 16 of the principal regulations, the words "in virtue of a license issued under these regulations" shall be deleted.

Amends the First Schedule to the principal regulations.

14. In paragraph 11, sub-paragraph (i) of the First Schedule to the principal regulations, the words "as required in terms of article 23 of the Act" there shall be substituted the words "as required in terms of regulation 3 (2A) of these regulations".

VERŻJONI ELETTRONIKA

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) – Valletta – ***Published by the Department of Information (doi.gov.mt) – Valletta***
Mitbugħ fl-Istamperija tal-Gvern – ***Printed at the Government Printing Press***

Prezz/*Price*
€0.93