

L.N. 443 of 2004

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

**Posting of Workers in Malta (Amendment)
Regulations, 2004**

IN exercise of the powers conferred by article 31 of the Employment and Industrial Relations Act, the Minister of Education, Youth and Employment has made the following regulations:–

1. The title of these regulations is the Posting of Workers in Malta (Amendment) Regulations, 2004 and they shall be read and construed as one with the Posting of Workers in Malta Regulations, 2002, hereinafter referred to as “the principal regulations”.

Title.

L.N. 430 of 2002.

2. For regulation 1 of the principal regulations, there shall be substituted the following:–

Amends regulation 1 of the principal regulations.

“Title and scope.

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

(2) The object of these regulations is to give effect to the relevant provisions of EU Council Directive 96/71/EC.”.

3. Sub-regulation (1) of regulation 2 of the principal regulations shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) in the definition “comparable employee”, for the words “Maltese employee in the same establishment” wherever they occur there shall be substituted the words “employee in a local undertaking” and in the proviso thereto for the words “Maltese employees in other establishments” there shall be substituted the words “employees in other local undertakings”;

(b) immediately after the definition “Act” there shall be inserted the following new definition:–

“Commission” means the Commission of the European Union;”;

(c) immediately after the definition “foreign undertaking”, there shall be inserted the following new definitions:

“ “local undertaking” means an undertaking operating in Malta;

“Member State” means a Member State of the European Union or of the European Economic Area;”

Amends regulation 3 of the principal regulations.

Cap. 234.

4. In sub-regulation (2) of regulation 3 of the principal regulations, for the words “personnel on seagoing vessels” there shall be substituted the words “personnel employed on vessels which fall under the provisions of the Merchant Shipping Act”.

Amends regulation 4 of the principal regulations.

5. Regulation 4 of the principal regulations shall be amended as follows:-

(a) in the English text only of sub-regulation (1) for the words “or any regulations issued thereunder or by virtue of any other regulations issued thereunder” there shall be substituted the words “or any regulations issued thereunder, ”;

(b) in sub-regulation (2) thereof, for the words “comparable Maltese employees” there shall be substituted the words “comparable employees”; and

(c) in sub-regulation (3) thereof, in paragraph (g) thereof, for the words “ at work:” there shall be substituted the words “at work;” and immediately thereafter there shall be inserted new paragraph (h) as follows:

“(h) the conditions of hiring out of workers, in particular the supply of workers by temporary employment undertakings:”.

Renumbering and amendment of Regulation 6 of the principal regulations.

6. Regulation 6 of the principal regulations shall be renumbered as regulation 7 thereof and in the English text thereof after the word “fine” there shall be added the word “(*multa*)”.

Substitutes regulation 5 of the principal regulations.

7. For regulation 5 of the principal regulations there shall be substituted the following:

“Notification of posting a worker to Malta.

5. (1) It shall be the duty of the undertaking posting the worker to Malta to notify the Director of the intention to post a worker to Malta prior to the date of posting of the worker. This notification shall include:

(a) the name, date of birth and nationality of the posted worker,

(b) the address in the country where the worker habitually carries out his work,

(c) the dates of commencement and anticipated termination of his posting in Malta, and the type of work to be carried out,

(d) the address of the undertaking in Malta to which the worker is to be posted,

(e) a copy of a document containing the information which is to be provided to the employee pursuant to regulations 3 and 4 of the Information to Employees Regulations, 2002.

(L.N. 431 of 2002)

(2) A copy of the notification referred to in sub-regulation (1) of this regulation, 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 worker.

(3) When a posted employee alleges that he has been treated in a manner which infringes any right conferred on him by these regulations, such employee may submit a written request to the employer to provide him with a written statement in which shall be listed the reasons, if any, for any difference in treatment and such statement shall be provided by the employer within ten days from the date of the request.”.

8. Immediately after regulation 5 of the principal regulations there shall be added new regulation 6 as follows:-

Adds new regulation 6 to the principal regulations.

“ Compliance with E.U. Directive.

6. (1) The Director responsible for employment and industrial relations shall be responsible for the enforcement of the provisions of these regulations and for liaising and co-operating with the European Commission and the authorities having corresponding responsibilities in other Member States on issues relating to the application of EU Council Directive 96/71/EC.

(2) The co-operation with other authorities referred to in sub-regulation (1) hereof shall include the

request for or the provision of information, as the case may be, on the transnational hiring-out of workers.

(3) The Director shall facilitate access to information on the terms and conditions of employment referred to in regulations 4 and 5 of these regulations.

(4) Without prejudice to any other right regarding the institution of proceedings in another state, a posted worker shall have the right to institute proceedings in the courts of Malta to safeguard any right granted to him by virtue of these regulations.”.