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 :-

Title.

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

Definitions.

2. (1) In these regulations -

"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.

Applicability.

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

(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).

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – 3, Pjazza Kastilja – *Published by the Department of Information – 3, Castille Place*
Mitbugh fl-Istamperija tal-Gvern – *Printed at the Government Printing Press*

Prezz 8c – *Price 8c*