

SUBJECT: Provision of temporary agency workers in Malta

QUESTIONS submitted during MARKET CONSULTATION held on 28/02/2020

Question	Information provided
<p>How is regulated the payment of sick leave and other special leaves (e.g. maternity leave) according to Maltese Labour Law? In particular are they covered entirely by social contributions or must be also covered by the employer?</p>	<p>According to the Subsidiary Legislation 452.39 Wage Regulation Order for Professional Offices, whole-time employees are entitled to 20 days sick leave at full pay and 20 days at half pay. The onus of payment is primarily on the employers as follows:</p> <ul style="list-style-type: none"> • The first three days of any sickness episode is fully paid by the employer; • If the sickness is longer than 3 days, then for the remaining period the employer pays the employee the full-pay (or half pay depending if this has been full pay sick leave entitlement is exhausted) less a fixed daily amount of sickness benefits which depends if you are married or single. (These can be found on https://dsss-services.gov.mt/BenefitPaymentRates.aspx). The employee can then claim these same deducted amounts from the government. <p>This effectively means that employee gets his full pay but from two sources for sick leave exceeding 3 days, part from the employer and part from the government in the form of short-term sickness benefits. When paid leave entitlement is exhausted the above also applies for half the pay amount and benefits for the sick leave at half pay.</p>
<p>How is regulated the payment of overtime according to Maltese Labour Law? Are the overtime rates fixed by law?</p>	<p>The normal hours of work for a whole-time employee, in the context of the interims, are 40 hours a week excluding overtime.</p> <p>Whole time employees shall be paid overtime at the following rates:</p> <ol style="list-style-type: none"> 1. On any one week, for all time worked outside normal hours of work in excess of 40 hours at x1.5 2. For all time worked on the weekly day/s of rest and on Public Holidays x2 <p>The employer can oblige an employee to work overtime</p> <ol style="list-style-type: none"> 1. when the total hours of work do not exceed an average of 48 hours a week, and 2. when an employee has consented in writing to work over such an average. An employee who chooses not to give his/her consent to work over an average of 48 hours a week cannot be asked to work beyond such an average. <p>Pay packages which include an unknown amount of overtime are not in conformity with the Information to Employees Regulations, in which there is specified that the employer has to inform the employee of the normal rates of wages payable and the normal hours of work.</p> <p>A contract of employment may, apart from specifying the basic wage, also contain a clause specifying that an allowance of 'X' euro is paid in respect of up to 'Y' number of hours worked in excess of the normal working week. Such overtime may exceed 8 hours in a particular week provided that on average the 48 hour maximum is not exceeded.</p>
<p>Is overtime compensation via flexi time recuperation allowed by Maltese</p>	<p>There is no specific legal restriction prohibiting the compensation of over-time in terms of time off. In practice it is often done and is typically referred to as Time-Off-In-Lieu. In the Government sector this is actually regulated by the Public Service Management Code which permits the practice.</p> <p>Legal Notice 46 of 2012, Overtime Regulations, refers to a mechanism in which an employer</p>

<p>Labour Law? Are there any limitations?</p>	<p>may introduce schemes to bank hours. (http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11846&l=1). See section 5 – Annualised Hours</p> <p>There are the following limitations:</p> <ul style="list-style-type: none"> • A maximum of 376 hours of the normal annual working hours in each calendar year may be banked; • The average weekly working time, including overtime, shall not exceed an average of 48 over the applicable reference period in terms of the Organization of Working Time Regulations, unless the employee concerned has given his/her consent in writing to work more than a weekly average of 48 hours; • The hours of work which may be banked shall be limited to those hours on any day in a week which attract the normal hourly rate of payment. Similarly, any hours of work which have been banked in order to be utilized during weeks of lower work activity, shall only be so utilized on a weekly day of work where the hours of work are paid at a normal rate; • Parties may also agree to include hours which attract a special rate of pay and in this respect, the hours to be banked shall reflect such special hourly rate of pay; • Part-time and whole-time employees with reduced hours shall not be obliged to participate in a scheme to bank hours; • For exact limitations concerning Vacation, sick, maternity and unpaid leave please refer to the above-mentioned LN 46; • Before introducing a banking of hours scheme, authorisation from the Department of Industrial and Employment Relations (DIER) is required. In its authorisation, DIER may impose any conditions deemed necessary.; • Any scheme of banking of hours shall comply with the following: <ul style="list-style-type: none"> • The employee is given prior written notice of the number of hours and roster to be worked in the following four weeks under the banking of hours scheme; • The employer shall have the possibility of making an alteration of the weekly hours to be worked in the following week as long as at least one week’s written notice is given of such a change; • The weekly basic wage shall remain constant throughout the year; • In cases where the contract of employment is terminated for whatever reason: <ul style="list-style-type: none"> ▪ before the banked hours could be redeemed, such outstanding banked hours are to be paid at the applicable overtime rate in force on the date of termination, by the date of the next pay day. In the case of participating part-time employees or whole-time employees with reduced hours, any banked hours shall only be paid at the applicable overtime rate if the total hours worked by such employees when averaged exceed the normal hours of work of a comparable whole-time employee. • Where lesser hours than the yearly average have been worked, the employer shall not be entitled to claim a refund in respect of hours not actually worked; • The employee may be required to work in excess of the scheduled hours of work on a particular day, such extra hours are to be paid at overtime rates at the applicable overtime rates; • If at the end of a calendar year there are outstanding banked hours which have not been redeemed, such hours are to be paid at the applicable overtime rate unless the employer and employee have agreed in writing to transfer up to one hundred and sixty banked hours to the next calendar year. Such banked hours carried forward from the previous year shall be utilised first and shall not be carried forward again;
<p>In case of missions of temporary agency workers</p>	<p>The provision of flat rate re-imburements of daily subsistence allowances is regulated by Fringe Benefit Rules published under the Income Tax Act, Subsidiary Legislation 123.55 and supported by Fringe Benefit Guidelines. These rules/guidelines regulate benefits provided or deemed to be provided by reason of an employment or office. Any taxation thereto is in</p>

<p>outside Maltese territory expenses other than travel and accommodation are reimbursed as a flat rate: is this possible according to Maltese Labour Law? Is the DSA allowance subject to taxation?</p>	<p>accordance with Article 4(1)(b) of the Income Tax Act. Payments or reimbursements of the costs of travel for a business purpose is deemed not to constitute a benefit provided by reason of an employment or office, therefore exempt from taxation, subject that it is for business purpose: "Business purpose" includes marketing a business or concluding business transactions or attending business seminars and business meetings . It also includes travelling for other purposes as long as it is approved as business travel by the Commissioner for Revenue. Costs of travel means the cost of a journey to a destination outside Malta and back, including related insurance, the costs of transport, accommodation and meals, incurred by a person outside Malta and a reasonable subsistence allowance. The guidelines stipulate that the maximum non-taxable subsistence allowance per day is €140. When the employee is accompanied by members of the family, or the duration of the stay is out of proportion to the business purpose of the journey, or whenever travel otherwise includes a private element, it will not be considered as business travel and the full cost will be treated as a private cost an fully taxable in the hands of the employee. When the private element is negligible, or purely incidental, it is will be disregarded. Costs of travel in the case of employees who work on a shift basis and return to Malta at least every four weeks and are refunded for cost of travel, are also exempt.</p>
<p>Is the duration of missions outside Maltese territory limited by Maltese Labour Law?</p>	<p>No, however the guidelines emphasize that the duration of the stay should be proportionate to the business purpose in order for the exemption to apply</p>