

## Employment Status National Standing Order

### Malta

| GENERAL INFORMATION          |   |
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| Name of the organisation     | Department for Industrial and Employment Relations (DIER)   |
| Type of organisation         | Labour Inspectorate   |
| Address                      | DIER, 121 Melita St, Valletta, Malta  |
| Web page                     | <a href="https://www.dier.gov.mt">https://www.dier.gov.mt</a>   |
| Contact person               | Name and surname: Diane Vella Muscat<br>Job position: Director General<br>E-mail: <a href="mailto:diane.vella-muscat@gov.mt">diane.vella-muscat@gov.mt</a>  |
| Topic of the good practice   | National practices (legal and administrative) to detect and prevent bogus self-employment   |
| Geographical focus           | Nation-wide<br><br>The good practice applies to all the country of Malta, including both islands of Malta and Gozo.   |
| Duration                     | 1/1/2012  |
| Summary of the good practice | The Employment Status National Standard Order (Subsidiary Legislation 452.108) is a Maltese regulation designed to clarify the distinction between employment and self-employment, aiming to prevent the misclassification of workers and ensure appropriate employment rights and protection. This legislation was introduced to address situations where individuals are engaged as self-employed contractors but, in practice, function as employees. Such misclassification can lead to the denial of employment benefits and protections. The Order establishes criteria to determine when a person should be considered an employee rather than self-employed. Key Criteria for Employment Status<br>The legislation outlines specific conditions under which an individual is presumed to be an employee. These are that |

the person:

- a) depends on one single person for whom the service is provided for at least 75% of his income over a period of one year;
- b) depends on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;
- c) performs the work using equipment, tools or materials provided by the person for whom the service is provided;
- d) is subject to a working time schedule or minimum work periods established by the person for whom the service is provided;
- e) cannot sub-contract his work to other individuals to substitute himself when carrying out work;
- f) is integrated in the structure of the production process, the work organisation or the company's or other organization's hierarchy;
- g) the person's activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided; and
- h) carries out similar tasks to existing employees, or, in the case when work is outsourced, he/she performs tasks similar to those formerly undertaken by employees.

If at least 5 out of 8 criteria are met, the individual is presumed to be an employee. However, a person may request the Director for an exemption from being classified as an employee before starting the employment relationship if there are special reasons (e.g. short-term work). By clearly defining employment status, the legislation ensures that individuals performing work under conditions typical of employment are recognized as employees.

This recognition entitles workers to:

- Wages equal to a comparable employee, or
- The same pay as previously received on a self-employed basis (if no comparison available).
- Standard employment conditions also apply.

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|  | <p>Employers found misclassifying employees as self-employed may face legal consequences or a criminal nature, punishable by a fine of at least €1,000 per affected employee. The full text of the Employment Status National Standard Order is available on: <a href="https://legislation.mt/eli/sl/452.108/eng/pdf">https://legislation.mt/eli/sl/452.108/eng/pdf</a>.</p>   |
| <b>OBJECTIVES AND ACTIVITIES</b>   |  |
| <p><b>Background/context</b></p> <p>What challenge, need or gap were you trying to solve or respond to?</p> <p>Why was this issue relevant or urgent in your context (sector, region, country)?</p>  | <ul style="list-style-type: none"> <li>► The main challenge in the area was to give a legal status to those types of work that fall into a grey area. There was a lack of parameters to distinguish what is to be considered as employment and what not. Over the course of years this has been an issue in many areas and sectors. This meant that it protected employees from having their status misclassified as self-employed rather than employees. In recent years, this law brought the necessary legal clarity and support to couriers in the food and household items sectors, to be able to classify them as employees and give them fair treatment including all basic working conditions as every employee deserves.</li> <li>► Thanks to this law several gaps of workers being classified elsewhere were uncovered and action taken in accordance. This law also promoted for further laws to be considered. For example after classifying the food couriers as employees (by means of this law) another law was enacted that focuses more on specific conditions of platform workers in the food industry. The law was only possibly thanks to the Employment Status law.</li> </ul> |
| <p><b>Objectives</b></p> <p>What were the main goals of this practice (e.g. better compliance, faster processing, improved worker protection)? (Please limit to three)</p> <p>Who or what were these goals intended to help or change? (Please limit to three)</p> | <p>The 3 main goals of this legislative instrument are:</p> <ul style="list-style-type: none"> <li>► The goal is to have introduction of criteria that are objective that standardise the way of assessing whether a person shall be considered as an employee or otherwise. The assessment lists 8 criteria and an employment relationship will be presumed to exist if 5 or more criteria are met.</li> <li>► Through this law there is a guarantee that whomever meets the criteria of employment is granted at least the</li> </ul>  |

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|   | <p>minimum working conditions as guaranteed by law. These include paid vacation and sick leave, minimum wage, overtime rates, public holiday entitlements, statutory bonuses, social security contributions and others.</p> <p>► The third goal is to have a law that adapts to new labour realities whilst curbing and reducing the possibility of precarious employment and abuse of vulnerable employees. This is because this law allows for relationships such as project based contracts and freelancing, but closes the loophole for those who are not self-employed and thus are to be considered employees.</p>   |
| <p><b>Main activities</b></p> <p>What were the main steps or actions you carried out to put the practice into effect?</p> <p>Were any tools, materials, partnerships, or processes created?</p> | <p>► At the Department of Industrial and Employment Relations, we have investigated through the labour inspectorate a number of situations to see if self employed are to be considered as such or not. Some examples derive from the hospitality, construction and professional services. In few cases through the investigation and upon independent agreement by the employee, some exemptions were granted as allowed by the same law.</p>   |
| <p><b>Funding/organisational resources</b></p>  | <p>The Funding was obtained through national funds only. In terms of resources institutional, human resources and information resources as needed these are explained below.</p> <p>a) institutional resources - the Department for Industrial and Employment Relations is the Department responsible for overseeing the application of this law. As explained earlier the Department either through its own initiative or through complaints received investigated and enforced compliance.</p> <p>b) Human resources are needed in terms of knowledgeable inspectors who can investigate matters as needed. Then legal officers are also needed in the case where a case is escalated and goes to Court.</p> <p>c) Awareness through information is also another important resource. This is achieved both through the</p> |

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|   | <p>outreach programme that the Department hold on employment conditions and also through the Department's website <a href="http://www.dier.gov.mt">www.dier.gov.mt</a> Moreover those who wish to ask more information on this Law and its interpretation, can reach the Department through 2 freephones. These are 1575 dedicated to the employees and 1576 dedicated to the employers.</p>  |
| <b>PARTICIPATION</b>  |   |
| <p><b>Stakeholders involved</b></p> <p>Organisations or entities actively contributing to the design, implementation, monitoring, or support of the good practice (e.g. labour inspectorates, social security institutions, trade unions, employers' associations, or other).</p> | <p>► The main stakeholders are:</p> <ul style="list-style-type: none"> <li>a) the Department for Industrial and Employment Relations that oversees this law and its enforcement.</li> <li>b) the Industrial Tribunal and Court that will adjudicate a case and give the respective wages and conditions if an employee is considered as having such status.</li> <li>c) Workers/ Self Employed - who seek legal clarity on their working status and relationship.</li> <li>d) Trade Unions who may represent for example a group of employees who are being treated not as employees and want to represent their case.</li> <li>e) Employers' Associations that are registered with the Registrar of Trade Unions that can represent a particular employers. They also contribute to the fair implementation of the law, with the purpose of avoiding different interpretations especially when applying the criteria.</li> </ul> |
| <p><b>Target groups</b></p> <p>Main groups or categories that the practice is directly aimed at, who should receive its services or who engage with it (e.g. employers, mobile or posted workers, labour inspectors and social security officers, or other).</p>                  | <p>The main target groups are the following:</p> <ul style="list-style-type: none"> <li>a) Workers who seek redress and maybe are in a precarious situation because of bogus self employment. Such as platform workers to mention one example.</li> <li>b) Employers that may enter into service contracts (but not employment) and design bogus self employment schemes.</li> </ul>  |

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|   | <p>c) Labour inspectorate through the Department for Industrial and Employment Relations, which is the enforcement authority for this law.</p> <p>d) Employment/Legal Consultants that should engage in the fair interpretation of this criteria when providing advice to clients.</p> <p>e) Trade Unions who might lobby to protect the interest of a particular group of employees.</p> <p>f) Government and Policy Makers to review policies in accordance.</p>  |
| <p><b>Final beneficiaries</b></p> <p>Individuals or groups that ultimately benefit from the outcomes of the practice, even if they are not the direct target or user (e.g. mobile or posted workers, vulnerable workers at risk of exploitation, employers benefiting from clearer rules or reduced admin burdens, or other).</p>   | <p>► The final beneficiaries are mainly the employees whose employment status is clarified and granted working conditions and employee rights and protection as per law. This includes vacation leave, sick leave, work life balance leaves, social security contributions, protection in industrial actions, protection against discrimination and unfair dismissal and others.</p> <p>The economy and society of Malta in general also benefit from this law, as this law allows for clearer interpretation and assigning of employment status, whilst reducing precarious employment and bogus self employment for a fairer society.</p> |
| <b>GOOD PRACTICE CRITERIA</b>   |   |
| <p><b>Achievements and outcomes</b></p> <p>What specific results did the practice achieve? (e.g. How many workers or employers were reached, number of publications created? What processes became faster?)</p> <p>What kind of broader benefits did it bring? (e.g. Did it improve understanding of rights and obligations, enhance cooperation between authorities, or reduce legal uncertainty and inconsistent application of rules?)</p> | <p>► Results achieved by this law where in areas such as platform work, cleaning and construction were reclassified to employees. In the case of platform workers in the food sector, this law created the legal framework for another piece of legislation that focuses on the working conditions of such workers once they were reclassified as workers.</p> <p>Throughout the years, the Department for Industrial and Employment Relation offered training and information sessions to a significant number of employers.</p>   |

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|  | <p>The broader benefits include the fact that workers will have a clearer idea of their status as employees or self-employed. In general, the law promoted a more coordinated approach between all stakeholders.</p> <p>Individual cases involved that are frequently quoted as case law include examples such as:</p> <p>a) An individual employed with an estate agency that sought to be defined as an employee. The Tribunal decided (using this law criteria) that the individual had to be reclassified as an employee.</p> <p>b) An individual working with a mobile telephony company also sought redress to have his status changed from self employed to an employee and the Tribunal decided that he was indeed to be considered an employee.</p> |
| <p><b>Cost effectiveness</b></p> <p>How did you keep costs low while still achieving results? (e.g. Did you reuse existing tools, automate processes, or share resources across teams?)</p> <p>Can you show that the outcomes were worth the investment? (e.g. Did small changes lead to big improvements, or were expensive tools avoided?)</p> | <p>► Exiting structures such as the Department for Industrial and Employment Relations and its Labour Inspectorate were tasked with the implementation of the legal provisions. The Department's IT system allowed for digital investigative solutions and a more efficient management process of submitted cases.</p>   |
| <p><b>Transferability</b></p> <p>What are the key features that make this practice work well? (e.g. a digital platform, clear guidelines, a joint inspection process, or strong coordination)</p> <p>What would another country or organisation need to make this work for them? (e.g. certain laws, IT systems, or staff training)</p>          | <p>For Malta, key features that make this practice work are:</p> <p>a) Clear criteria that avoid ambiguity and grey areas when coming to the legal status of workers.</p> <p>b) Using existing structures such as the Department for Industrial and Employment Relations' labour inspectorate and the Industrial tribunal.</p> <p>c) The Digital online information systems of the Department that allow for a certain degree of automation and efficiency in investigations.</p> <p>d) Collaboration with social partners, such as employers' organisation and trade unions, that support the implementation of this law.</p> <p>e) Joint inspections together with social security and undeclared work enforcement bodies, for a holistic</p>              |

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|  | <p>approach to the enforcement process.</p> <p>To be replicated, the following conditions should be met:</p> <ul style="list-style-type: none"> <li>a) Political will and commitment so that the law is enacted</li> <li>b) Cooperation between the relevant public authorities and social partners to support the initiative</li> <li>c) Labour Relations Inspectorate should be properly equipped to implement the law</li> <li>d) Proper training sessions for inspectors and educational campaign for all the stakeholders, including employers and employees.</li> </ul>   |
| <p><b>Sustainability</b></p> <p>How is the practice sustainable from a social, financial or environmental perspective?</p> <p>What makes this practice able to continue over time? (e.g. It is now part of regular work or has been built into law or procedures?) and how are you making sure it lasts beyond the pilot or project phase?</p>   | <p>► This initiative is a legal instrument under the Employment and Industrial Relations Act (CAP452). Thus, it is not a pilot project but a permanent legislative framework. This measure is a sustainable measure as it protects employees from bogus self-employment, especially vulnerable employees, such as those earning just above the minimum wage. Another factor is that the initiative in itself encourages social dialogue for the resolution of labour conflicts.</p> <p>No new authorities were set up for the implementation. Existing authorities and IT systems were used to implement new legal provisions.</p>  |
| <p><b>Innovativeness</b></p> <p>What makes this practice new or different in your field or country? (e.g. Is it the first of its kind, or does it combine actors who don't usually work together, or activities not performed before?)</p> <p>How does it improve older or less effective approaches? (e.g. By reaching more people, using data better, or simplifying complex procedures)</p> | <p>► This mechanism was the first legal instrument of its kind in Malta. It was the first attempt to neatly define criteria to increase legal certainty regarding employment status.</p> <p>This initiative brings together key stakeholders such as trade unions, government bodies, employers' associations, and tribunals, within a unified framework to examine specific cases collaboratively. Previously, such a joint approach did not exist in Malta. The new law represents a fundamental shift in how employment status is determined. Instead of relying on subjective factors, it introduces clear, objective criteria that must be analysed and applied consistently. Individuals themselves can also use these criteria to assess their</p> |

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|  | rights, enabling self-assessment. This approach broadens the reach of the law to include emerging categories of workers, such as freelancers and platform workers, which is particularly important in today's rapidly evolving labor market.  |
| <p><b>Digitalisation</b></p> <p>What kind of digital tools or platforms were used in this practice? (e.g. online portals, automated case tracking, data sharing, digital databases or other)</p> <p>How did these tools help in reaching your goals? (e.g. Did they save time, facilitate access to data in real time, reduce errors, help detect fraud, or improve coordination between authorities?)</p> | <p>► The digital tools/platforms used and the goals achieved are:</p> <p>a) Digital submissions to the Department (DIER) for compliance or information requests can be made online or via two dedicated freephone numbers: 1575 for employees and 1576 for employers, making access to employment rights easier.</p> <p>b) Requests for exemptions are also processed online.</p> <p>c) If an investigation is initiated, the entire process is managed digitally, including onsite inspections conducted using tablets.</p> <p>d) Data is stored in the Department's information system, enabling intelligence gathering and knowledge sharing with the labour inspectorate, for example during training.</p> <p>Overall, the IT platform for investigations and information provision enhances efficiency, improves accessibility, facilitates coordination between different bodies, and saves time by reducing paperwork and manual filing.</p> |