

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,890, 12 ta' Lulju, 2022

Taqsimha B

A.L. 201 tal-2022

**ATT DWAR L-IMPIEGI U R-RELAZZJONIJIET
INDUSTRIJALI
(KAP. 452)**

**Regolamenti tal-2022 dwar il-Bilanċ bejn ix-Xogħol u l-Ħajja
privata għall-Ġenituri u għall-Persuni li jindukraw**

BIS-SAHHA tas-setgħat mogħtija bl-Artikolu 48 tal-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, il-Ministru responsabbli għall-Impiegi u Relazzjonijiet Industrijali, għamel dawn ir-regolamenti li ġejjin:

1. (1) It-titolu ta' dawn ir-regolamenti hu Regolamenti tal-2022 dwar il-Bilanċ bejn ix-Xogħol u l-Ħajja privata għall-Ġenituri u għall-Persuni li jindukraw.

Titolu u dħul
fis-seħh.

(2) Dawn ir-regolamenti għandhom jidhlu fis-seħh fit-2 ta' Awwissu 2022.

2. (1) L-iskop ta' dawn ir-regolamenti huwa li jittrasponu d-Direttiva (EU) 2019/1158 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar il-bilanċ bejn ix-xogħol u l-ħajja privata għall-ġenituri u għall-persuni li jindukraw u li tħassar id-Direttiva tal-Kunsill 2010/18/UE.

Skop u
applikabilità.

(2) Dawn ir-regolamenti jittrasponu rekwiżiti minimi maħsuba sabiex tinkiseb l-ugwaljanza bejn l-irġiel u n-nisa fir-rigward tal-opportunitajiet fis-suq tax-xogħol u t-trattament fuq il-post tax-xogħol, bil-faċilitazzjoni tar-rikonċiljazzjoni tax-xogħol u l-ħajja privata għall-ħaddiema li huma ġenituri, jew persuni li jindukraw. Għal dak il-għan, dawn ir-regolamenti jistipulaw drittijiet individwali relatati mas-segwenti:

(a) leave tal-paternità, leave tal-ġenituri u leave tal-persuni li jindukraw;

(b) arrangamenti tax-xogħol flessibbli għall-ħaddiema li huma ġenituri, jew persuni li jindukraw.

(3) Dawn ir-regolamenti japplikaw għall-ħaddiema kollha rġiel u nisa, li għandhom kuntratt tal-impjieg jew relazzjoni tal-impjieg kif definit mil-liġi, fi ftehim kollettivi jew skont il-prassi fis-seħh, b'qies għall-ġurisprudenza tal-qorti tal-ġustizzja rilevanti ta' Malta kif ukoll tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea.

Tifsir. **3. (1)** Għall-finijiet ta' dawn ir-regolamenti, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort' oħra:

Kap. 452. "l-Att" tfisser l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali;

"arranġamenti tax-xogħol flessibbli" tfisser il-possibbiltà għall-ħaddiema li jaġġustaw l-iskedi tax-xogħol tagħhom, inkluż bl-użu ta' arranġamenti ta' xogħol minn distanza, ta' skedi tax-xogħol flessibbli, jew ta' sigħat tax-xogħol imnaqqsa;

Kap. 602. "foster carer" tfisser persuna waħda jew aktar approvata mill-Bord għall-Fostering, kif stabbilit bl-artikolu 38 tal-Att dwar il-Protezzjoni tal-Minuri (Ħarsien Alternattiv), sabiex tifel jew tifla jitqiegħdu taħt foster care;

Kap. 452. "ħaddiem" għandu jkollha istess tifsira mogħtija lilha fl-Att;

"leave għal foster carer" tfisser leave illi jingħata lill-ħaddiema sabiex jipprovdu indukrar jew appoġġ lil tifel jew tifla taħt foster care;

"leave tal-ġenituri" tfisser leave mix-xogħol għall-ġenituri minħabba t-twelid jew l-addozzjoni ta' wild, għall-indukrar ta' dak il-wild;

"leave tal-persuni li jindukraw" tfisser leave mix-xogħol għall-ħaddiema sabiex jipprovdu indukrar jew appoġġ personali lil qarib jew persuna li tgħix fl-istess dar mal-ħaddiem, u li jeħtieġu indukrar jew appoġġ għal raġuni medika serja;

"leave tal-paternità" tfisser leave mix-xogħol għall-missirijiet jew sa fejn ikun rikonoxxut mil-liġi nazzjonali, għat-tieni ġenituri ekwivalenti, fl-okkażjoni tat-twelid ta' wild, jew adozzjoni ta' wild għall-finijiet ta' indukrar;

"persuna li tindokra" tfisser ħaddiem li jipprovdi indukrar jew appoġġ lil qarib, jew lil persuna li tgħix fl-istess dar mal-ħaddiem, u li jeħtieġu indukrar jew appoġġ sinifikanti għal raġuni medika serja;

Kap. 452. "*pro rata*" għandu jkollha l-istess tifsira mogħtija lilha fl-artikolu 2 tal-Att:

Iżda:

(a) meta l-impjegat ikollu impjieg part-time bi skeda ta' hinijiet varjabbli, in-numru ta' sigħat ta' xogħol f'gimġha għandu jkun in-numru medju ta' sigħat ta' xogħol fil-gimġha mifruxin fuq perjodi suċċessivi ta' tlettax (13)-il gimġha li jibdeu fl-ewwel ta' Jannar ta' kull sena kalendarja; u

(b) meta l-impjegat ma jkunx ilu f'impjieg part-time għal perjodu ta' tlelta (13)-il gimgħa, in-numru medju ta' sigħat ta' xogħol fil-gimgħa għandu jiġi kkalkulat fuq in-numru ta' gimgħat li matulhom ikun hađem;

"qarib", tfisser iben, bint, omm, missier, konjuġi jew, sieheb jew sieħba fi shubija ċivili, bla ħsara għad-dispożizzjonijiet tas-subregolament (3) tar-regolament 4 tar-Regolament dwar *Leave Urgenti tal-Familja*.

S.L. 452.88.

(2) Bla ħsara għad-dispożizzjonijiet tar-Regolamenti dwar l-Organizzazzjoni tal-Ħin tax-Xogħol, kull referenza għall-ġranet ta' xogħol f'dawn ir-regolamenti għandha tinftiehem bhala referenza għal skeda ta' xogħol full-time.

S.L. 452.87.

4. (1) Il-missierijiet jew, it-tieni ġenituri ekwivalenti, għandhom id-dritt għal-leave tal-paternità ta' għaxart ijiem (10) tax-xogħol, mingħajr ebda telf ta' pagi, li għandhom jittieħdu fl-okkażjoni tat-twelid, jew addozzjoni tal-wild, immedjatament wara it-twelid, jew l-addozzjoni tal-wild.

Leave tal-paternità.

(2) Id-dritt tal-leave tal-paternità ma għandux ikun soġġett għall-kwalifika ta' perjodu ta' xogħol jew għall-kwalifika ta' tul ta' żmien fis-servizz.

(3) Id-dritt tal-leave tal-paternità għandu jingħata irrispettivament mill-istat ċivili jew l-istat tal-familja tal-ħaddiem.

5. (1) Kull ħaddiem għandu dritt individwali għal-leave tal-ġenituri, għal kull wild, sew jekk ikun impjegat full-time, jew part-time u sew jekk ikun impjegat b'kuntratt indefinit jew għandu kuntratt għal żmien fiss:

Leave tal-ġenituri.

Iżda f'kull każ, il-ħaddiem irid ikun ilu jaħdem mal-istess prinċipal għal perjodu kontinwu ta' mill-anqas tnax (12)-il xahar:

Iżda wkoll għall-finijiet tal-kalkolu tal-perjodu ta' kwalifika ta' tnax (12)-il xahar f'każ ta' impjegati li għandhom kuntratt għal żmien fiss:

(a) meta jkun hemm kuntratti suċċessivi għal żmien fiss mal-istess prinċipal, it-total ta' dawn il-kuntratti għandu jittiehed inkunsiderazzjoni, u

(b) meta jkun hemm kuntratt għal żmien fiss li jiġi mgedded fi żmien perjodu ta' sitt (6) xhur mit-tmiem tiegħu, dak il-perjodu bejn iż-żewġ kuntratti għandu wkoll jittiehed inkunsiderazzjoni:

Iżda wkoll kemm-il darba l-prinċipal u l-impjegat ma jiftehmux mod ieħor, il-prinċipal ma għandux, matul il-perjodu tal-leave tal-ġenituri, ikollu d-dritt jissospendi l-leave tal-ġenituri u jitlob lill-impjegat jidhol lura għax-xogħol qabel id-data miftehma għad-dhul lura tiegħu fuq dmirijietu, u l-impjegat ma għandu jkollu ebda dritt jidhol lura għax-xogħol qabel id-data miftehma għad-dhul lura tiegħu fuq dmirijietu.

(2) Il-perjodi minimi ta' intitolament imsemmija fis-subregolament preċedenti għandhom ikunu applikabbli sakemm ma jkunx ġie stabbilit perjodu iqsar ta' intitolament fil-kuntratt ta' servizz tal-impjegat jew fi ftehim kollettiv applikabbli għall-impjegat.

(3) Dawn ir-regolamenti għandhom japplikaw mingħajr preġudizzju għall-introduzzjoni u l-implimentazzjoni ta' disposizzjonijiet aktar favorevoli f'xi ftehim kollettiv jew f'xi ftehim ieħor bejn il-prinċipal u l-impjegat.

(4) Il-ħaddiema għandhom id-dritt illi jitolbu li jieħdu l-leave tal-ġenituri b'modi flessibbli. Il-prinċipal għandu jikkunsidra u jwieġeb għal tali talbiet, b'qies għall-ħtiġijiet kemm tal-prinċipal kif ukoll tal-ħaddiem. Il-prinċipal għandu jagħti raġunijiet bil-miktub għal kwalunkwe każ għal tali talba, f'perjodu ta' ġimagħtejn (2) minn meta tkun saret it-talba:

Iżda mingħajr ħsara għal kwalunkwe ftehim kollettiv applikabbli għall-ħaddiem, il-prinċipal flimkien mal-ħaddiem jista' jiddeċiedi jekk jagħtix il-leave tal-ġenituri fuq bażi full-time jew part-time, jew biċċa biċċa.

(5) Haddiem li japplika għal-leave tal-ġenituri mingħand il-prinċipal għandu jkun marbut jagħti mill-anqas avviż bil-miktub ta' ġimagħtejn (2), li fih jispeċifika l-bidu u t-tmiem tal-leave tal-ġenituri, qabel ma jieħu tali leave.

Kap. 452.

(6) Mingħajr ħsara għall-provvedimenti tal-Att, il-Ministru jista' jagħmel regolamenti fejn jipprovi għall-kundizzjonijiet ta' aċċess għal u arrangamenti dettaljati għal talba tal-leave tal-ġenituri, adattati għall-ħtiġijiet tal-ġenituri adottivi, tal-ġenituri b'diżabilità u tal-ġenituri ta' tfal b'diżabilità jew b'marda fit-tul:

Kap. 452.

Iżda fil-każ ta' ġenituri b'diżabilità jew ġenituri bi tfal b'xi diżabilità, mingħajr ħsara għall-applikabilità tal-Att, kwalunkwe arrangament dwar leave għall-ġenituri illi jmur kontra l-provvedimenti tal-Att dwar Opportunitajiet Indaqs għal Persuni b'Diżabilità għandu jitqies null u bla effett.

Kap. 413.

(7) Meta jingħata il-leave tal-ġenituri, matul il-perjodu tal-

leave tal-ġenituri, l-impjegat ikollu d-dritt li japplika għal opportunitajiet ta' promozzjoni li jinqalghu fuq il-post tax-xogħol, u sabiex jiġi ffaċilitat ir-ritorn lejn l-impjieg wara l-leave tal-ġenituri, kemm il-prinċipal kif ukoll l-impjegat ikkonċernat huma obbligati li jżommu kuntatt bejniethom matul il-perjodu tal-leave u jistgħu jagħmlu arrangamenti għal kwalunkwe miżuri ta' rijintegrazzjoni, li għandhom jiġu miftehma bejn il-partijiet innifishom

6. (1) Għandu jkun id-dritt individwali ta' kull ġenitur li jingħata leave tal-ġenituri bi hlas għal raġunijiet ta' twelid, adozzjoni, fostering jew kustodja legali ta' tifel jew ta' tifla sabiex ikun jista' jieħu hsieb dak it-tifel jew tifla għall-perjodu ta' erba' (4) xhur sakemm it-tifel jew tifla jagħlqu t-tmien (8) snin:

Leave tal-
ġenituri bi hlas
għal raġunijiet
ta' twelid,
fostering,
adozzjoni jew
kustodja legali
ta' tifel jew tifla.

Iżda l-leave tal-ġenituri għandu jithallas għall-perjodu ta' xahrejn (2), bl-istess rata stabbilita għall-intitolament għall-benefiċċju tal-mard taht l-Att dwar is-Sigurtà Soċjali, u l-leave tal-ġenituri għandu jithallas kif ġej:

Kap. 318.

(a) ħamsin fil-mija (50%) tal-intitolament jithallas meta l-wild jew l-ulied illi għalih jew għalihom ingħata l-leave tal-ġenituri ma jkunx għadu jew għadhom, għalaq jew għalqu l-erba' (4) snin;

(b) ħamsa u għoxrin fil-mija (25%) tal-intitolament jithallas meta wild jew ulied illi għalih jew għalihom ingħata l-leave tal-ġenituri jkun jew ikunu għalqu l-erba' snin (4) iżda, ma jkunx għadu għalaq jew għadhom għalqu l-età ta' sitt (6) snin;

(ċ) ħamsa u għoxrin fil-mija (25%) tal-intitolament jithallas meta l-wild jew l-ulied illi għalih jew għalihom ingħata l-leave tal-ġenituri jkun jew ikunu għalqu s-sitt snin (6) iżda, ma jkunx għadu għalaq jew għadhom għalqu l-età ta' tmien (8) snin:

Iżda wkoll fil-każ ta' leave tal-ġenituri illi jingħata lil foster carers, ir-rata ta' pagament għandha tkun l-istess daqs dik stabbilita għall-ġenituri illi mhumiex foster carers kif stipulat fl-ewwel *proviso*, sakemm il-pagament tal-allowance jingħata għal kull ġenitur illi japplika għal-leave tal-ġenituri u mhux għal kull wild taht fostering:

Iżda wkoll xahrejn (2) mil-leave tal-ġenituri ma jistgħux jiġu trasferiti:

Iżda wkoll il-leave tal-ġenituri jista' jittiehed f'perjodi stabbiliti mill-inqas ta' ġimagħtejn (2) kull wieħed, mingħajr preġudizzju għal kwalunkwe ftehim li jkun sar bejn il-prinċipal u l-ħaddiem jew ftehim kollettiv.

(2) Fil-każ li l-leave tal-ġenituri ma jkunx ittiehed jew ikun għad baqa' bilanċ ta' leave tal-ġenituri, l-impjegat għandu jibqa' intitolat għal dak il-leave anke jekk jinbidel il-prinċipal jew l-impjieg tal-impjegat, dment li l-impjegat jikkwalifika għalih skont is-subregolament (1).

(3) Kull prinċipal għandu jkun obligat iżomm rekord tal-leave tal-ġenituri mogħti lil kull ħaddiem u għandu fuq talba tal-ħaddiem li tista' ssir ukoll wara t-terminazzjoni tal-impjieg, jgħaddi lill-ħaddiem dikjarazzjoni bil-miktub tal-leave, fi żmien ġimagħatejn (2) mit-talba li għandha ssir bil-miktub.

Avviż u rikjesta.

7. (1) Ħaddiem li japplika lill-prinċipal għal-leave tal-ġenituri għandu jagħti avviż bil-miktub ta' ġimagħatejn (2), fejn jispeċifika l-bidu u t-tmien tal-leave tal-ġenituri, qabel ma jieħu tali leave.

(2) Il-leave tal-paternità jew tal-ġenituri, kif irregolati mir-regolamenti 4(1) u 5(1), għandu jibda għaddej mid-data meta l-ħaddiem jagħti lil prinċipal:

(a) fil-każ ta' foster carers, prova tat-tqegħid tat-tifel jew tifla taħt il-ħarsien tal-impjegat;

(b) fil-każ ta' ġenituri adottivi;

(i) prova li jkunu nbdew il-proċeduri legali meħtieġa biex l-adozzjoni issir skont il-liġi; u

(ii) ċertifikat bil-miktub mill-awtorità kompetenti indikata għal dan l-iskop mill-Ministeru responsabbli mill-politika soċjali, li jkun jiċċertifika li tlesta *home study report* b'eżitu pożittiv; jew

(iii) prova bil-miktub li l-koppja għandha kustodja legali tat-tifel jew tifla.

(ċ) Fil-każ ta' ġenituri li jieħdu l-leave minħabba il-kustodja legali ta' wild, il-leave tal-ġenituri għandu jibda għaddej mid-data meta l-ħaddiem jagħti prova bil-miktub li l-koppja għandha kustodja legali tat-tifel jew tifla.

(d) F'każijiet għajr dawk imsemmija fil-paragrafi (a), (b) u (ċ), il-leave tal-ġenituri għandu jibda għaddej mid-data meta l-ħaddiem jipprezenta ċ-ċertifikat tat-twelid lill-prinċipal.

Posponiment.

8. (1) Prinċipal li jirċievi avviż għal-leave tal-ġenituri kif stipulat fir-regolament 7(1), jista' jipposponi temporanjament l-għoti

tal-leave għal raġunijiet ġustifikabbli relatati mal-operat tal-post tax-xogħol.

(2) Għall-finijiet ta' dan ir-regolament, il-frazi "raġunijiet ġustifikabbli" tinkludi:

(a) meta x-xogħol li jsir fil-post tan-negozju jkun ta' xorta staġġjonali;

(b) meta ma jkunx jista' jinstab sostitut fil-perjodu ta' avviż mogħti mill-impjegat;

(c) meta l-impjieg speċifiku tal-impjegat li jitlob leave tal-ġenituri jkun ta' importanza strateġika għall-ażjenda jew post tan-negozju;

(d) meta l-post tan-negozju jkun intrapriża żgħira li tħaddem mhux iżjed minn għaxra (10) min-nies, dment li l-prinċipal jikkonsulta mal-ħaddiem biex jiġu stabbiliti dati alternattivi meta dak il-leave jista' jittiehed, b'mod li jiġi evitat il-postponiment indefinit tal-leave tal-ġenituri li jkun ġie mitlub;

(e) meta proporzjon sinifikanti tal-forza tax-xogħol tapplika għal-leave tal-ġenituri fl-istess żmien:

Izda prinċipal li jiddeċiedi li jipposponi l-għoti tal-leave tal-ġenituri għandu jgħarraf lill-impjegat bil-miktub bir-raġunijiet għal dak il-posponiment fi żmien ġimagħtejn (2) minn meta jirċievi l-avviż tal-ħaddiem, f'każijiet li jaqgħu taħt dan is-subregolament:

Izda wkoll il-posponiment mill-prinċipal tat-teħid tal-leave tal-ġenituri għandu jkun mingħajr preġudizzju għad-dritt tal-impjegat li jieħu l-leave tal-ġenituri intitolat għalih sa mhux aktar tard minn meta t-tifel jew tifla jagħlqu t-tmien (8) snin u jekk tali posponiment jista' jirriżulta fit-telf tal-intitolament għal-leave tal-ġenituri jew ta' xi parti minnu, għandu jkun id-dmir tal-prinċipal li minnufih jagħti l-leave tal-ġenituri għal perjodu li jkun ekwivalenti għal-leave li ma jkunx għadu ttiehed, jew għal perjodu inqas kif jista' jiġi mitlub mill-ħaddiem:

Izda wkoll meta jiġu kkunsidrati talbiet għal-leave tal-ġenituri, il-prinċipali għandhom, qabel kwalunkwe posponiment, joffru, sakemm huwa possibbli, modi flessibbli kif jittiehed il-leave tal-ġenituri.

9. Kull ħaddiem għandu d-dritt għal-leave tal-persuni li jindukraw ta' hamest ijiem (5) tax-xogħol fis-sena, mingħajr hlas:

Leave tal-persuni li jindukraw.

Iżda l-ħaddiem għandu jippreżenta prova medika illi l-qarib jew persuna illi tgħix fl-istess dar mal-ħaddiem, illi minħabba fih jew fiha intalab leave tal-persuni li jindukraw, qiegħed jew qiegħda tbatu minn marda u teħtieġ kura u appoġġ.

Arranġamenti
tax-xogħol
flessibbli.

10. (1) Ħaddiema bi tfal sal-età ta' tmien (8) snin, u li jindukraw, għandhom id-dritt illi jitolbu arranġamenti tax-xogħol flessibbli għal finijiet ta' indukrar.

Iżda l-arranġamenti tax-xogħol flessibbli jistgħu jkunu limitati fit-tul tagħhom;

Iżda wkoll meta l-arranġamenti tax-xogħol flessibbli jkunu limitati fit-tul tagħhom, il-ħaddiem għandu jkollu wkoll id-dritt li jitlob li jirritorna għall-iskeda tax-xogħol oriġinali qabel tmien il-perjodu miftiehem, meta dan ikun iġġustifikat abbażi ta' bidla fiċ-ċirkustanzi. Il-prinċipal għandu jikkunsidra u jwieġeb għat-talba għal ritorn bikri għall-iskeda tax-xogħol oriġinali, b'kunsiderazzjoni għall-bżonnijiet kemm tal-prinċipal kif ukoll tal-ħaddiem.

(2) F'dawn ir-regolamenti arranġamenti tax-xogħol flessibbli jistgħu jinkludu iżda mhumiex limitati għal xogħol minn distanza, sigħat tax-xogħol imnaqqa u skedi tax-xogħol flessibbli.

(3) Il-prinċipal għandu jikkunsidra u jwieġeb għat-talba għal arranġament tax-xogħol flessibbli, fi żmien ġimagħtejn (2), u għandu jagħti raġunijiet għal kwalunkwe rifjut ta' tali talba jew għal kwalunkwe posponiment ta' tali arranġamenti.

Drittijiet tax-
xogħol.

11. (1) Id-drittijiet li jkunu nkisbu jew li jkunu fil-proċess li jinkisbu mill-ħaddiema fid-data li fiha jibda l-leave mogħti taħt dawn ir-regolamenti għandhom jinżammu sakemm jintemm tali leave jew il-ħin liberu mix-xogħol. Fi tmien tali leave jew ħin liberu mix-xogħol, dawk id-drittijiet, inkluż kwalunkwe tibdil li jirriżulta mil-liġi, minn kwalunkwe ftehim kollettiv jew prassi, għandhom japplikaw.

(2) Fi tmien il-leave tal-paternità, tal-ġenituri, jew persuni li jindukraw, il-ħaddiema jkunu intitolati jirritornaw għall-karigi tagħhom jew għal karigi ekwivalenti b'termini u b'kundizzjonijiet li ma jkunux inqas favorevoli għalihom, u li jibbenefikaw minn kwalunkwe titjib fil-kundizzjonijiet tax-xogħol li kienu jkunu intitolati għalihom li kieku ma ħadux il-leave.

Diskriminazzjoni.

12. Kwalunkwe diskriminazzjoni kontra ħaddiem minħabba illi jkun eżerċita d-dritt għal-leave tal-paternità, leave tal-ġenituri, leave tal-persun li jindukraw, leave mix-xogħol għal raġunijiet ta' forza maġġuri jew minħabba kwalunkwe arranġament tax-xogħol flessibbli, hija pprojbita.

13. Mingħajr ħsara għall-Artikolu 28 tal-Att, l-ebda haddiem, jew haddiem illi huwa rappreżentant tal-impjegati, li jippreżenta ilment lill-prinċipal jew jibda kwalunkwe proċediment legali kontra l-prinċipal għall-finijiet tal-infurzar tal-konformità mar-rekwiziti ta' dawn ir-regolamenti, ma għandu jsofri minn trattament avvers jew konsegwenzi avversi.

Protezzjoni
kontra
trattament jew
konsegwenzi
avversi.
Kap. 452.

14. (1) Kwalunkwe tkeċċija jew, thejjija għall-tkeċċija ta' haddiema, minhabba li applikaw għal, jew ħadu, leave tal-paternità, tal-ġenituri, tal-perusni li jindukraw, jew ħin liberu mix-xogħol minhabba forza maġġuri, jew minhabba li eżerċitaw id-dritt li jitolbu arrangamenti tax-xogħol flessibbli, huma pprojbiti:

Protezzjoni
kontra tkeċċija u
l-oneru ta'
prova.

Iżda f'każ ta' leave tal-paternità, jista' jingħata avviż tat-terminazzjoni tal-impjieg, kif provdut fl-Att, tul il-perjodu tal-leave tal-ġenituri:

Kap. 452.

Iżda wkoll l-għoti ta' avviż ta' terminazzjoni jew mill-prinċipal jew mill-impjegat tul il-leave tal-ġenituri, għandu jwassal għas-sospensjoni awtomatika tal-leave tal-ġenituri mid-data tal-għoti ta' dak l-avviż.

(2) Il-haddiema li jikkunsidraw li tkeċċew minhabba li applikaw għal, jew ħadu il-leave previst fis-subregolament (1), jew għaliex eżerċitaw id-dritt li jitolbu arrangamenti tax-xogħol flessibbli, jistgħu jitolbu lill-prinċipal jipprovdi raġunijiet sostanzjati kif xieraq għat-tkeċċija tagħhom. Dawn ir-raġunijiet għandhom jingħataw mill-prinċipal bil-miktub, fi żmien ħmisatx (15)-il jum minn meta dawn jiġu mitluba.

(3) Meta haddiem jistabbilixxi, quddiem awtorità kompetenti, fatti li minnhom jista' jiġi preżunt li tkeċċa minhabba li applika għal, jew ħa l-leave previst fis-subregolament (1), jew għaliex talab, jew ibbenefika minn arrangament tax-xogħol flessibbli, għandha tkun ir-responsabbiltà tal-prinċipal li jipprova li t-tkeċċija kienet saret minhabba raġunijiet oħra.

15. Jekk tinqala' tilwima bejn prinċipal u impjegat dwar id-drittijiet li jaqgħu taht dawn ir-regolamenti jew kwalunkwe kwistjoni oħra relatata, allura jew il-prinċipal jew l-impjegat jistgħu jirreferu l-kwistjoni lid-Direttur Ġenerali tal-Impjieg u r-Relazzjonijiet Industrijali li għandu jagħmilha ta' medjatur bejn il-partijiet.

Tilwim.

Thassir u
riżerva.
S.L. 452.78.

16. (1) Ir-Regolamenti dwar Dritt ta' *Leave* tal-Ġenituri huma b'dawn imħassra.

(2) Ir-revoka tar-regolamenti msemija fis-subregolament (1) għandha tkun mingħajr preġudizzju għall-validità ta' kull haġa li saret jew naqset milli ssir taht l-imsemmija regolamenti.

Kap. 452.

(3) Dawn ir-regolamenti jieħdu post dispożizzjonijiet rilevanti inqas favorevoli fi kwalunkwe regolamenti, ordnijiet jew leġislazzjoni sussidjarja oħra magħmula taht, jew miżmuma fis-seħh taht l-Att u f'każ ta' inkonsistenza bejn tali leġislazzjoni u dawn ir-regolamenti, għandhom jipprevalu dawn tal-aħhar.

Reati.

17. Kull min jikser jew jonqos milli jikkonforma ruħu mad-dispożizzjonijiet ta' kwalunkwe minn dawn ir-regolamenti, għandu jkun ħati ta' reat kontra l-Att u għandu jekk jinstab ħati, jehel multa ta' mhux aktar minn elfejn euro (€2000).

L.N. 201 of 2022**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)****The Work-Life Balance for Parents and Carers Regulations, 2022**

IN EXERCISE of the powers conferred by article 48 of the Employment and Industrial Relations Act, the Minister responsible for Employment and Industrial Relations, has made the following regulations:-

1. (1) The title of these regulations is the Work-Life Balance for Parents and Carers Regulations, 2022. Title and commencement.

(2) These regulations shall come into force on the 2 August, 2022.

2. (1) The scope of these regulations is to transpose the relevant provisions of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. Scope and applicability.

(2) These regulations transpose minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents, or carers. To that end, these regulations provide for individual rights related to the following:

(a) paternity leave, parental leave and carers' leave;

(b) flexible working arrangements for workers who are parents, or carers.

(3) These regulations apply to all workers, men and women, who have an employment contract or employment relationship as defined by law, collective agreements or practice in force, taking into account the case-law of the relevant courts of justice of Malta as well as the Court of Justice of the European Union.

3. (1) In these regulations, unless the context otherwise requires: Definitions.

"the Act" means the Employment and Industrial Relations Act; Cap. 452.

"carer" means any worker providing personal care or support to a

relative, or to a person who lives in the same household as the worker, and who is in need of care or support for a serious medical reason;

"carers' leave" means leave from work for workers in order to provide personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of care or support for a serious medical reason;

"flexible working arrangements" means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours;

Cap. 602. "foster carer" means one or more persons approved by the Fostering Board, as established by article 38 of the Minor Protection (Alternative Care) Act, to foster a child;

"foster carers' leave" means leave from work for workers in order to provide care or support to a child under foster care;

"parental leave" means leave from work for parents on the grounds of the birth or adoption of a child to take care of that child;

"paternity leave" means leave from work for fathers or, where and insofar as recognised by national law, for equivalent second parents, on the occasion of the birth or the adoption of a child for the purposes of providing care;

Cap. 452. "*pro rata*" shall have the same meaning attributed to it by article 2 of the Act:

Provided that:

(a) when the employee is in part-time employment on a variable time schedule, the number of hours of work per week shall be the average number of hours of work per week spread over successive thirteen (13) week periods commencing on the first of January of each calendar year; and

(b) when the employee has not been in part-time employment for a period of thirteen (13) weeks, the average number of hours of work per week shall be calculated over the number of weeks in employment;

"relative" means a worker's son, daughter, mother, father, spouse or, partner in civil partnership, without prejudice to regulation 4(3) of the Urgent Family Leave Regulations; S.L. 452.88.

"worker" shall have the same meaning attributed to it by the Act. Kap. 452.

(2) Without prejudice to the Organisation of Working Time Regulations, reference to working days in these regulations shall be understood as referring to the full-time working pattern. S.L. 452.87.

4. (1) Fathers or, equivalent second parents, have the right to paternity leave of ten (10) working days, to be taken on the occasion of the birth or the adoption of the worker's child, immediately after the birth or the adoption of the child, without loss of wages. Paternity leave.

(2) The right to paternity leave shall not be subject to a period of work qualification or to a length of service qualification.

(3) The right to paternity leave shall be granted irrespective of the worker's marital or family status.

5. (1) Every worker is entitled to parental leave per child, whether full-time, part-time, and whether employed on an indefinite or fixed-term contract: Parental Leave.

Provided that in all cases, the worker has been in the employment with the same employer for a continuous period of at least twelve (12) months:

Provided further that for the purpose of calculating the twelve (12) month qualifying period, in case of workers with a fixed contract term:

(a) when there are successive fixed term contracts with the same employer, the sum of these contracts shall be taken into account, and

(b) when there is a fixed term contract which is renewed within a six (6) month period from its termination, the said period between the two contracts shall also be taken into account:

Provided further that unless the employer and the employee agree otherwise, the employer shall not, during the period of parental leave, have the right to suspend the parental leave and to request the employee to return to work before the agreed date of resumption of duties, and the employee shall have no right to return to work prior to the agreed date of resumption of duties.

(2) The minimum periods of entitlement mentioned in the preceding sub-regulation shall be applicable unless a shorter period of entitlement has been established in the contract of service of the worker or in a collective agreement applicable to the worker.

(3) These regulations shall be applicable without prejudice to the introduction and implementation of more favourable provisions in collective agreements or other agreements entered into between the employer and the worker.

(4) Workers have the right to request that they take parental leave in flexible ways. The employer shall consider and respond to such requests, taking into account the needs of both the employer and the worker. The employer shall provide reasons for any refusal to accede to such a request in writing within two (2) weeks from the request:

Provided that, without prejudice to any collective agreement applicable to the worker, the employer together with the worker may decide whether to grant the parental leave on a full-time or a part-time basis, or in a piecemeal way.

(5) A worker applying for parental leave from the employer shall be bound to give a minimum of two (2) weeks notice in writing, specifying the beginning and the end of the parental leave, prior to taking such leave.

Cap 452.

(6) Without prejudice to the Act, the Minister may issue regulations to provide for conditions of access to and detailed arrangements for the application of parental leave adapted to the needs of adoptive parents, parents with a disability and parents with children with a disability, or a long-term illness:

Cap. 452.

Provided that in the case of parents with a disability or parents with children with a disability, without prejudice to the applicability of the Act, any arrangement concerning parental leave which goes counter to the provisions of the Equal Opportunities (Persons with Disability) Act shall be considered null and void.

Cap 413.

(7) Upon the granting of parental leave, during the period of parental leave, the employee shall have the right to apply for promotion opportunities arising within the place of work, and in order to facilitate the return to work following parental leave, both the employer and employee concerned are obliged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures, which are to be decided between

the parties themselves

6. (1) It shall be the individual right of each parent to be granted paid parental leave on the grounds of birth, adoption, child fostering in the case of foster parents, or legal custody of a child, to enable them to take care of that child for a period of four (4) months until the child has attained the age of eight (8) years:

Paid parental leave to be granted for birth, adoption, fostering or legal custody of a child.

Provided that parental leave shall be paid for a period of two (2) months, at the same rate established for the sickness benefit entitlement under the Social Security Act, and parental leave shall be paid as follows: Cap 318.

(a) fifty per centum (50%) of entitlement will be paid, where the child or children for whose care parental leave was granted has or have not attained four (4) years of age;

(b) twenty five per centum (25%) of entitlement will be paid, where the child or children for whose care parental leave was granted has or have attained the age of four (4) years but has or have not yet attained the age of six (6) years; and

(c) twenty five per centum (25%) of entitlement will be paid, where the child or children for whose care parental leave was granted has or have attained the age of six (6) years but has or have not yet attained the age of eight (8) years:

Provided further that in the case of parental leave granted to foster parents, the rate of payment shall be the same as that established for parents not being foster parents as stipulated in the first proviso, on condition that payment of allowance will be given as per parent applying for parental leave and not for each child fostered:

Provided further that two (2) months of parental leave cannot be transferred:

Provided further that parental leave shall be availed of in established periods of at least two (2) weeks each, without prejudice to any agreement reached by the employer and employee or collective agreement.

(2) In the event that the parental leave was not availed of or there is still an existing balance of parental leave, a worker shall remain entitled to such leave even if there is a change in the employer or in the employment of the worker, as long as, the worker qualifies therefor in accordance with sub-regulation (1).

(3) Every employer shall be bound to keep a record of the

parental leave for every worker, and shall, on the demand of the worker which may be made even after termination of employment, deliver to the worker a written statement of the leave to the worker, within two (2) weeks of a written request.

Notice and request.

7. (1) A worker applying for parental leave from the employer shall be bound to give a minimum of two (2) weeks notice in writing, specifying the beginning and the end of the parental leave, prior to taking such leave.

(2) Paternal and parental leave, as regulated by regulations 4(1) and 5(1), shall commence from the date when the worker provides the employer with:

(a) the proof of placement in the case of foster carers;

(b) In the case of adoptive parents:

(i) evidence that the legal proceedings necessary for the adoption to be completed in accordance with the law have been initiated, and

(ii) a written certificate from the competent authority, designated for this purpose by the Minister responsible for social policy, certifying that a positive home study report has been completed; or

(iii) certified evidence that the couple have legal custody of the child.

(c) In the case of parents taking leave because of the legal custody of a child, parental leave shall commence from the date when the worker provides certified evidence that the couple have the legal custody of the child; and

(d) In cases other than those mentioned in paragraphs (a), (b) and (c), parental leave shall commence when the worker provides the employer with a birth certificate.

Postponement.

8. (1) An employer who receives notice for parental leave as prescribed in regulation 7(1), may temporarily postpone the granting of parental leave for justifiable reasons related to the operation of the place of work.

(2) For the purposes of this regulation, the term "justifiable reasons" includes:

(a) where the work carried out at the place of business is

of a seasonal nature;

(b) where a replacement cannot be found within the notice period given by the worker;

(c) where the specific employment of the worker who requests parental leave is of strategic importance to the undertaking or place of business;

(d) where the place of business is a small enterprise employing not more than ten (10) people, provided that the employer consults with the worker in order to establish alternative dates when such leave may be availed of, in such a way to avoid indefinite postponement of the requested parental leave;

(e) where a significant proportion of the workforce applies for parental leave at the same time:

Provided that an employer who decides to postpone the granting of parental leave shall inform the worker in writing of the reasons for the postponement within two (2) weeks of receipt of the worker's notice, for cases falling under this sub-regulation:

Provided further that the postponement by the employer of the granting of parental leave is without prejudice to the worker's right to take the parental leave entitlement before the child reaches eight (8) years of age at the latest and if such postponement may result in the loss of the parental leave entitlement or part thereof, it shall be the duty of the employer to immediately grant parental leave for a period equivalent to the leave still unavailed of, or for such other lesser period as may be requested by the worker:

Provided further that when considering requests for parental leave, employers shall, prior to any postponement, offer, to the extent possible, flexible ways of taking parental leave.

9. Each worker has the right to carers' leave of five (5) working days per year, which shall be unpaid: Carers' leave.

Provided that the worker shall present medical proof that the relative, or person who lives in the same household as the worker and in relation to whom carers' leave is requested, is suffering from an illness and is in need of care and support.

10. (1) Workers with children up to the age of eight (8) years, and carers, have the right to request flexible working arrangements for caring purposes: Flexible working arrangements.

Provided that flexible working arrangements may be limited in duration:

Provided further that when flexible working arrangements are limited in duration, the worker shall have the right to request to return to the original working pattern before the end of the agreed period where justified on the basis of a change in circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.

(2) In these regulations flexible working arrangements may include but are not limited to, remote working, work on reduced hours, and flexitime.

(3) Employers shall consider and respond to requests for flexible working arrangements within two (2) weeks, providing reasons for any refusal of such requests or for any postponement of such arrangements.

Employment
rights.

11. (1) Rights that have been acquired or that are in the process of being acquired by workers on the date when leave granted under these regulations commences, shall be maintained until the end of such leave or time off from work. At the end of such leave or time off from work, those rights, including any changes arising from the law, collective agreements or practice, shall apply.

(2) At the end of paternal, parental, and carers' leave, workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave.

Discrimination.

12. Discrimination against workers on the ground that they have availed themselves of leave, being paternity, parental, carers' leave, time off from work on grounds of *force majeure* or any flexible arrangement, shall be prohibited.

Protection
against adverse
treatment or
consequences.
Cap. 452.

13. Without prejudice to Article 28 of the Act, no worker, or any worker being the employees' representative, lodging a complaint with the employer or initiating legal proceedings against the employer for the purpose of enforcing compliance with the requirements laid down in these regulations, shall suffer from any adverse treatment or consequences.

14. (1) Any dismissal, or preparations for the dismissal of workers on the grounds that they have applied for, or have taken, paternal, parental, carers' leave, or time off from work on grounds of *force majeure*, or have exercised the right to request flexible working arrangements, shall be unlawful: Protection from dismissal and burden of proof.

Provided that in the case of parental leave notice of termination of employment, as provided for in the Act may be given during the period of parental leave: Cap. 452.

Provided further that, a notice of termination given by either the employer or the employee during parental leave, shall result in the automatic suspension of the parental leave from the date such notice is given.

(2) Workers who consider that they have been dismissed on the grounds that they have applied for, or have taken leave provided for in sub-regulation (1), or availed themselves of a flexible working arrangement, may request the employer to provide duly substantiated reasons for their dismissal. Such reasons shall be provided by the employer in writing, within fifteen (15) days from a request therefor.

(3) When a worker establishes, before a competent authority, facts capable of giving rise to a presumption that he has been dismissed on the grounds of having applied for, or availed himself of any leave mentioned in sub-regulation (1), or of having requested or availed himself of a flexible working arrangement, it shall be the responsibility of the employer to prove that the dismissal was based on other grounds.

15. Should a dispute arise between an employer and an employee regarding the entitlements covered by these regulations or any related matter, then either the employer or the employee may refer the matter to the Director General of Employment and Industrial Relations who shall mediate between the parties. Dispute resolution.

16. (1) The Parental Leave Entitlement Regulations are hereby repealed. Repeal and saving. S.L. 452.78.

(2) The revocation of the regulations referred to in sub-regulation (1) shall be without prejudice to the validity of anything done or omitted to be done thereunder.

(3) These regulations supersede any less favourable relevant provisions in any regulations, orders or other subsidiary legislation made under or kept in force under the Act and in case of any inconsistency between such legislation and these regulations, the latter shall prevail. Cap. 452.

B 1062

Offences.

17. Any person who contravenes or fails to comply with any provision of these regulations shall be guilty of an offence against the Act and shall, on conviction, be liable to a fine (*multa*) of not more than two thousand euro (€2000).
