

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE ABELA  
President

26 ta' Ottubru, 2012

**ATT Nru. XVI tal-2012**

*Att biex jemenda l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, Kap. 452.*

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:-

**1.** It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2012 li jemenda l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali u dan l-Att għandu jinftehem u jinqara haġa waħda mal-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor.

Kap. 452.

**2.** Is-subartikolu (1) tal-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 2 tal-Att prinċipali.

(a) fit-tifsira ta' "impjegat *whole-time*" –

(i) minflok il-kliem "magħrufin ta' l-impieg:" għandhom jidhlu l-kliem "magħrufin tal-impieg;", u

(ii) il-proviso tiegħu għandu jiġi imħassar;

(b) it-tifsira "kuntratt ta' servizz" u "kuntratt ta' impieg" għandha tiġi sostitwita b'dan li ġej:

" "kuntratt ta' servizz" u "kuntratt ta' impieg" tfisser ftehim (barra minn servizz bhala membru ta' forza dixxiplinata), sew jekk bil-fomm jew bil-miktub, f'kull ghamla li tkun, li bih persuna tintrabat li tagħmel servizz lil jew taħdem għal prinċipal bil-hlas ta' paga u safejn għandhom x'jaqsmu l-kondizzjonijiet tal-impieg jinkludi ftehim ta' apprendistat:

Iżda sakemm ma jkunx speċifikat mod ieħor f'xi liġi oħra, f'dan l-Att jew f'xi regolamenti magħmula taħt dan l-Att, irrispettivament minn kif tkun dikjarata nnatura tar-relazzjoni, kull meta l-prinċipal jeżerċita direzzjoni, kontroll u għażla effettiva fuq in-natura ta' xogħol jew xogħolijiet li qed isiru jew li jridu jsiru minn persuna għal prinċipal, dik ir-relazzjoni għandha titqies bhala waħda ta' kuntratt ta' servizz u l-persuna li qed tagħmel ix-xogħol għandha titqies bhala impjegata tal-prinċipal;"

(ċ) minnufih wara t-tifsira ta' "perjodu ta' l-impieg", għandha tiżdied it-tifsira ġdida kif ġejja:

" "persuni li jaħdmu għal rashom " tfisser il-persuni kollha li jeżerċitaw attività bi qligħ għal rashom;"

(d) fit-tifsira ta' "rappreżentant ta' l-impjegati", minflok il-kliem "mid-Direttur" għandhom jidhlu l-kliem "mill-prinċipal".

Emenda tal-artikolu 8 tal-Att prinċipali.

**3.** Is-subartikolu (2) tal-artikolu 8 tal-Att prinċipali għandu jiġi imħassar u l-artikolu 8(1) għandu jiġi enumerat mill-ġdid bhala artikolu 8.

Emenda tal-artikolu 23 tal-Att prinċipali.

**4.** L-artikolu 23 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġejj:

"Hlas ta' bonus.

**23.** Kull prinċipal għandu jhallas, jew jara li tithallas, lil kull wieħed mill-impjegati *whole-time* tiegħu dawk il-*bonuses* statutorji fl-ammont li jista' jiġi stabbilit b'avviż legali maħruġ mill-Ministru tal-Finanzi bis-saħħa ta' dan l-artikolu jew kif il-Gvern jista' jgħid fl-estimi generali ta' xi sena partikolari:

Iżda dawn il-*bonuses* statutorji għandhom jithallsu bejn il-15 u t-30 ġurnata tax-xahar ta' Ġunju u bejn il-15 u t-23 ġurnata tax-xahar ta' Diċembru ta' kull sena u għandhom ikunu f'forma ta' somma ta' flus li, f'kull każ, m'għandhiex tkun inqas min-nofs ta' dak li l-Gvern ikun habbar fl-estimi ġenerali ta' xi sena partikolari kif iħallas il-Gvern lil kull impjegat tiegħu matul dik is-sena:

Iżda l-prinċipal għandu wkoll iħallas, jew jara li jithallas, lil kull wiehed mill-impjegati *whole-time* tiegħu xi supplimenti tad-dhul fl-ammonti u fiż-żminijiet li jistgħu jiġu stabbiliti b'avviz legali mahruġ mill-Ministru tal-Finanzi bis-sahha ta' dan l-artikolu:

Iżda wkoll illi, meta xi persuna tkun impjegata *whole-time* ma' xi prinċipal partikolari għal perjodu ta' inqas minn sena, dak l-impjegat għandu jkun intitolat li jirċievi mingħand il-prinċipal, jew minn xi prinċipali tiegħu, ammont proporzjonat tal-*bonus* jew ta' supplement tad-dhul u għal għanjiet ta' dan l-artikolu, il-kalkulazzjoni *pro rata* għandha ssir fuq il-bażi tas-siġhat maħduma f'sena:

Iżda fl-aħħar nett dan l-artikolu għandu japplika wkoll għall-apprentisti b'mod li jista' jiġi speċifikat f'xi skema applikabbli skont l-Att dwar is-Servizzi ta' Impieg u Taħriġ."

Kap. 343.

5. L-ewwel proviso tal-artikolu 33 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 33 tal-Att prinċipali.

(a) il-kliem "fl-impieg wara d-data tat-tmiem", għandhom jiġu sostitwiti bil-kliem "fl-impieg fl-istess kategorija wara d-data tat-tmiem";

(b) il-kliem "reġa' ġie impjegat minn prinċipal", għandhom jiġu sostitwiti bil-kliem "reġa' ġie impjegat fl-istess kategorija minn prinċipal"; u

(c) il-kliem "f'dan l-Att." għandhom jiġu sostitwiti bil-kliem "f'dan l-Att:" u minnufih wara għandu jizded dan il-proviso ġdid li ġej:

"Iżda wkoll minkejja kull ftehim kuntrarju, kuntratt ta' servizz għal perjodu indefinit ma għandux jinbidel f'kuntratt ta' servizz għal perjodu ta' żmien fiss fejn ma jkunx hemm bidla sostanzjali fix-xogħol tal-

A 488

impjegat jew fil-kategorija tiegħu u kull ftehim li jkollu dan l-effett għandu jkun null u bla effett u l-kuntratt tax-xogħol għandu jitqies għal kull fini u għan tal-liġi bhala wieħed li baqa' indefinit."

Emenda tal-artikolu 36 tal-Att prinċipali.

**6.** Fil-paragrafu (e) tas-subartikolu (5) tal-artikolu 36 tal-Att prinċipali, il-kliem "sussegwenti ta' servizz sa massimu" għandhom jiġu sostitwiti bil-kliem "jew parti minnha sussegwenti ta' servizz sa massimu".

Żjieda tal-artikolu 47A ġdid.

**7.** Minnufih wara l-artikolu 47 tal-Att prinċipali, għandu iżdied l-artikolu 47A ġdid kif ġej:

"Dritt ta' appell tal-Avukat Ġenerali. Kap. 9.

47A. Minkejja d-dizposizzjonijiet tal-Kodiċi Kriminali, l-Avukat Ġenerali jkollu dejjem id-dritt għal appell lill-Qorti tal-Appell Kriminali minn kull deċiżjoni mogħtija mill-Qorti tal-Maġistrati dwar proċeduri kriminali skont id-dizposizzjonijiet ta' dan l-Att."

Emenda tal-artikolu 48 tal-Att prinċipali.

**8.** Is-subartikoli (1) u (2) tal-artikolu 48 tal-Att prinċipali għandhom jiġu sostitwiti b'dan li ġej:

"(1) Il-Prim Ministru jkollu s-setgħa li jippreskrivi permezz ta' regolamenti l-applikabilità ta' kull artikolu jew subartikolu tat-Titolu I u tat-Titolu II ta' dan l-Att għal servizz mal-gvern u għal membri ta' forza dixxiplinarja.

(2) Il-Ministru jkollu s-setgħa li jagħmel regolamenti biex jitwettqu u jingħataw effetti kull dizposizzjoni ta' dan l-Att fuq kull materja li għandha x'taqsam ma' relazzjonijiet ta' impieg u ma' relazzjonijiet industrijali."

Emenda tal-artikolu 64 tal-Att prinċipali.

**9.** Fil-paragrafu (g) tas-subartikolu (6) tal-artikolu 64 tal-Att prinċipali, il-kliem "responsabbli għat-trasport" għandhom jiġu mħassra.

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Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 511 tat-22 ta' Ottubru, 2012.

MICHAEL FRENDO  
*Speaker*

RAYMOND SCICLUNA  
*Skrivan tal-Kamra tad-Deputati*

I assent.

(L.S.)

GEORGE ABELA  
President

26th October, 2012

**ACT No. XVI of 2012**

*An Act to amend the Employment and Industrial Relations Act,  
Cap. 452.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

**1.** The short title of this Act is the Employment and Industrial Relations (Amendment) Act, 2012, and this Act shall be read and construed as one with the Employment and Industrial Relations Act, hereinafter referred to as "the principal Act".

Short title.

Cap. 452.

**2.** Sub-article (1) of article 2 of the principal Act shall be amended as follows:

Amendment of  
article 2 of the  
principal Act

(a) the definition of "contract of service" and "contract of employment" shall substituted by the following:

" "contract of service" and "contract of employment" means an agreement, (other than service as a member of a disciplined force) whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for wages, and, in so far as conditions of employment are concerned, includes an agreement of apprenticeship:

A 490

Provided that unless otherwise specifically referred to in another law, in this Act or in any regulations made under this Act, irrespective of the declared nature of the relationship, whenever the employer exercises effective direction, control and choice over the nature of the work or the tasks being or to be performed by a person for the employer, that relationship shall be considered to be one of a contract of service and the person carrying out the work shall be deemed to be an employee of the employer;"

(b) in the definition of "employees' representative", the word "Director" shall be substituted by the word "employer";

(c) immediately after the definition of "sectoral regulation order", there shall be added the following new definition:

" "self-employed persons" means all persons pursuing a gainful activity on their own account;"

(d) in the definition of "whole-time employee"-

(i) the term "conditions of employment:" shall be substituted by the term "conditions of employment;", and

(ii) the proviso thereof shall be deleted.

Amendment of article 8 of the principal Act.

**3.** Sub-article (2) of article 8 of the principal Act shall be deleted and article 8(1) shall be renumbered as article 8.

Amendment of article 23 of the principal Act.

**4.** Article 23 of the principal Act shall be substituted by the following new article:

"Payment of bonus.

**23.** Every employer shall pay, or cause to be paid, to each of his whole-time employees such statutory bonuses in the amount as may either be established by legal notice issued by the Minister of Finance by virtue of this article or as the Government may announce in the General Estimates of any particular year:

Provided that such statutory bonuses shall be paid between the 15<sup>th</sup> and the 30<sup>th</sup> day of the month of June and between the 15<sup>th</sup> and 23<sup>rd</sup> day of the month of December of each year and shall be in the form of a sum of money which, in either case, shall not be less than one-half of that which the Government shall have announced in the general estimates of any particular year as payable by the Government to each of its employees during that year:

Provided further that the employer shall also pay, or cause to be paid, to each of his whole-time employees any income supplements in the amount and at the times as may be established by legal notice issued by the Minister of Finance by virtue of this article:

Provided further that, where any person has been in whole-time employment with any particular employer for a period of less than a year, such employee shall be entitled to receive from his employer, or from any of his employers, a proportionate amount of the bonus or income supplement and for the purposes of this article, the pro rata calculation shall be made on the basis of the annual hours worked:

Provided finally that this article shall also apply to apprentices in a manner as may be specified in any applicable scheme under the Employment and Training Services Act."

Cap. 343.

**5.** The first proviso of article 33 of the principal Act shall be amended as follows:

Amendment of article 33 of the principal Act.

(a) the words "in employment after the date of termination" shall be substituted by the words "in employment in the same category after the date of termination";

(b) the words "re-employed by the employer" shall be substituted by the words "re-employed in the same category by the employer"; and

(c) the words "under this Act." shall be substituted by the words "under this Act:" and immediately thereafter there shall be added the following new proviso:

"Provided further that notwithstanding any agreement to the contrary, a contract of service for an indefinite term shall not be changed into a fixed term

A 492

contract of service where no substantial change has been effected as to the work of the employee or to his category and any agreement to this effect shall be null and void and the employment contract shall, for all intents and purposes of law, be considered to have remained an indefinite one."

Amendment of article 36 of the principal Act.

**6.** In paragraph (e) of sub-article (5) of article 36 of the principal Act, the words "year of service up to a" shall be substituted by the words "year of service or part thereof up to a".

Addition of new article 47A.

**7.** Immediately after article 47 of the principal Act, there shall be added the following new article:

"Attorney General's right of appeal. Cap. 9.

47A. Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates in respect of criminal proceedings according to the provisions of this Act."

Amendment of article 48 of the principal Act.

**8.** Sub-articles (1) and (2) of article 48 of the principal Act shall be substituted by the following:

"(1) The Prime Minister shall have power to prescribe by regulations the applicability of any article or sub-article of Title I and of Title II of this Act to service with the government and to members of a disciplined force.

(2) The Minister shall have power to make regulations for the purpose of carrying out and giving effect to any of the provisions of this Act on any matter related to employment relations and industrial relations."

Amendment of article 64 of the principal Act.

**9.** In paragraph (g) of sub-article (6) of article 64 of the principal Act, the words "responsible for transport" shall be deleted.

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Passed by the House of Representatives at Sitting No. 511 of the 22nd October, 2012.

MICHAEL FREND  
*Speaker*

RAYMOND SCICLUNA  
*Clerk to the House of Representatives*