

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,599, 28 ta' Ġunju, 2016

Taqsim A

MALTA

ATT Nru XXXIII tal-2016

ATT maħruġ b'liġi mill-Parlament ta' Malta.

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

ACT No. XXXIII of 2016

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Employment and Industrial Relations Act, Cap. 452.

Nagħti l-kunsens tiegħi.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

28 ta' Ġunju, 2016

ATT Nru XXXIII tal-2016

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, harġet b'liġi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2016 li jemenda l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, u dan l-Att għandu jinqara u jinftiehem 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 (3) tal-artikolu 3 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 3 tal-Att prinċipali.

(a) fil-paragrafu (ċ) tiegħu, minflok il-kliem "lill-Bord mill-Ministru." għandhom jidhlu l-kliem "lill-Bord mill-Ministru."; u

(b) minnufih wara l-paragrafu (ċ) tiegħu għandu jizdied dan il-paragrafu ġdid li ġej:

"(d) biex iwettaq il-funzjonijiet mogħtija lilu bl-artikolu 73 u kull funzjoni oħra li tista' minn żmien għal żmien tingħata lilu b' liġi."

3. L-artikolu 73 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 73 tal-Att prinċipali

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(a) il-paragrafu (b) tas-subartikolu (2) tiegħu għandu jiġi mħassar;

(b) il-paragrafu (ċ) tas-subartikolu (2) tiegħu għandu jiġi enumerat mill-ġdid bhala l-paragrafu (b);

(ċ) fil-paragrafu (b) tas-subartikolu (3) tiegħu, minflok il-kliem "biex jirrappreżentaw, kemm jista' jkun indaqs, l-interessi fit-tilwima" għandhom jidhru l-kliem "biex minhabba l-esperjenzi differenti tagħhom iġibu fit-Tribunal għarfien kemm jista' jkun indaqs tal-interessi fit-tilwima,";

(d) minflok il-paragrafu (ċ) tas-subartikolu (5) tiegħu, għandu jidhol dan li ġej:

"(ċ) membru magħżul miċ-*Chairperson* tat-Tribunal minn lista ta' persuni mahtura mill-Ministru minn fost persuni nominati minn entitajiet fis-settur pubbliku.";

(e) minflok is-subartikolu (6) tiegħu, għandu jidhol dan li ġej:

"(6) (a) *Ic-chairpersons* tat-Tribunal jinhatru mill-Prim Ministru għal perijodu ta' hames snin.

(b) Il-membri tat-Tribunal jinhatru mill-Ministru għal perijodu ta' hames snin.

(ċ) Persuna ma tkunx kwalifikata biex tiġi mahtura *chairperson* jew membru tat-Tribunal jekk dik il-persuna:

(i) tkun Membru tal-Kamra tad-Deputati jew tal-Parlament Ewropew; jew

(ii) tkun membru ta' Kunsill Lokali; jew

(iii) tkun falluta mhux rijabilitata; jew

(iv) tkun giet kundannata minn xi qorti għal xi perijodu ta' prigunerija effettiva jew tkun instabet hatja minn xi qorti ta' xi wiehed mir-reati li jinsabu fit-Titoli III, V jew VI tal-Parti II tal-Ewwel Ktieb tal-Kodici Kriminali.

(d) Il-Prim Ministru jista', wara konsultazzjoni mal-Bord dwar ir-Relazzjonijiet dwar l-Impiegi, ineħhi membru minn fuq il-lista maħtura skont is-subartikolu (2), għal raġunijiet ta' mġiba hażina pruvata, ineffiċjenza ċara, jew inkapaċità li jaqdi jew li taqdi l-funzjonijiet tiegħu jew tagħha kemm minħabba f'mard korporali jew mentali. Id-deċiżjoni għat-tneħħija ta' dak il-membri għandu jkun fiha raġunijiet u tkun soġġetta għal dritt ta' appell fuq punt ta' liġi kontra l-Prim Ministru lill-Qorti tal-Appell minn dak il-membri. L-appell għandu jiġi preżentat fi żmien għoxrin ġurnata mid-data meta dak il-membri jiġi notifikat bid-deċiżjoni. Ir-regoli tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili li jirregolaw is-smiġħ u d-determinazzjoni ta' appelli minn sentenzi tal-Prim Awla tal-Qorti Ċivili għandhom *mutatis mutandis* japplikaw għal dak l-appell.

(e) Il-Ministru jista', wara konsultazzjoni mal-Bord dwar ir-Relazzjonijiet dwar l-Impiegi, ineħhi membru minn fuq il-lista maħtura skont is-subartikolu (3)(b), għal raġunijiet ta' mġiba hażina pruvata, ineffiċjenza ċara, jew inkapaċità li jaqdi jew li taqdi l-funzjonijiet tiegħu jew tagħha kemm minħabba f'mard korporali jew mentali. Id-deċiżjoni għat-tneħħija ta' dak il-membri għandu jkun fiha raġunijiet u tkun soġġetta għal dritt ta' appell fuq punt ta' liġi kontra l-Ministru lill-Qorti tal-Appell minn dak il-membri. L-appell għandu jiġi preżentat fi żmien għoxrin ġurnata mid-data meta dik il-persuna tiġi notifikata bid-deċiżjoni. Ir-regoli tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili li jirregolaw is-smiġħ u d-determinazzjoni ta' appelli minn sentenzi tal-Prim Awla tal-Qorti Ċivili għandhom *mutatis mutandis* japplikaw għal dak l-appell.

(f) *Î-chairpersons* u l-membri tat-Tribunal jistgħu, meta ż-żmien tal-hatra tagħhom, kemm jekk ikun l-ewwel wieħed u kemm jekk le, jintemm, jiġu maħtura mill-ġdid għal perijodu ieħor ta' hames snin:

Izda l-hatra mill-ġdid għandha, qabel ma ssir, tiġi proposta lill-Bord dwar ir-Relazzjonijiet dwar l-Impiegi u:

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(i) il-ħatra mill-ġdid ta' *chairperson* ma għandhiex issir jekk żewġ terzi tal-membri tal-Bord dwar ir-Relazzjonijiet dwar l-Impiegi jkunu kontra dik il-ħatra mill-ġdid;

(ii) il-ħatra mill-ġdid ta' membru mil-lista ta' persuni maħtura mit-*trade unions* rappreżentati fuq il-Kunsill Malti għall-Iżvilupp Ekonomiku u Soċjali ma għandhiex issir jekk ma tirċevix l-approvazzjoni minn qabel ta' mill-inqas hamsin fil-mija tal-membri kollha tal-Bord dwar ir-Relazzjonijiet dwar l-Impiegi li jkunu ġew nominati fuq dak il-Bord bħala rappreżentanti tal-impjegati;

(iii) il-ħatra mill-ġdid ta' membru mil-lista ta' persuni maħtura minn assoċjazzjonijiet ta' prinċipali u organizzazzjonijiet oħra li jirrappreżentaw lill-prinċipali ma għandhiex issir jekk ma tirċevix l-approvazzjoni minn qabel ta' mill-inqas hamsin fil-mija tal-membri kollha tal-Bord dwar ir-Relazzjonijiet dwar l-Impiegi li jkunu ġew nominati fuq dak il-Bord bħala rappreżentanti tal-prinċipali.";

(f) minflok is-subartikolu (7) għandu jidhol dan li ġej:

"(7) (a) Il-Prim Ministru jista', minn żmien għal żmien, kif jidhirlu xieraq u wara konsultazzjoni kif provdut fis-subartikolu (2) iżid mal-lista li hemm provdut għaliha f'dak is-subartikolu.

(b) Il-Ministru jista', minn żmien għal żmien, kif jidhirlu xieraq jitlob nomini godda mingħand *trade unions* u mingħand assoċjazzjonijiet u organizzazzjonijiet tal-prinċipali msemija fil-paragrafu (b) tas-subartikolu (3) bl-iskop li jiżdiedu l-listi msemija f'dak il-paragrafu.";

(g) minnufih wara s-subartikolu (9) għandu jiżdied dan is-subartikolu ġdid li ġej:

"(10) (a) Iċ-*chairpersons* u l-membri tat-Tribunal għandhom jirċievu dik ir-remunerazzjoni hekk kif il-Prim Ministru jista' b'avviż fil-Gazzetta jistabbilixxi. Dik ir-remunerazzjoni tista' tiġi ffissata f'ammont kull sena jew f'ammont għal kull seduta miżmuma jew

f'ammont għal kull każ deċiż. Ir-remunerazzjoni ladarba tkun giet stabbilita ma tistax titnaqqas izda l-bdil fil-kriterju tal-kalkolu tar-remunerazzjoni bejn il-kriterji msemmija f'dan il-paragrafu diment li jsir dwar iċ-*chairpersons* u l-membri kollha ma għandux jitqies illi jkun jikkostitwixxi fih innifsu tnaqqis fir-remunerazzjoni.

(b) Matul iż-żamma tal-ħatra tagħhom iċ-*chairpersons* u l-membri tat-Tribunal ma jkunux jistgħu jidhru quddiem it-Tribunal fl-eżerċizzju tal-professjoni tagħhom jew biex jassistu lil xi parti.

(ċ) Iċ-*chairpersons* u l-membri tat-Tribunal għandhom qabel ma jibda jinstema' kull każ jiddikjaraw lis-Segretarju tat-Tribunal kull interess illi huma jista' jkollhom fil-proċeduri u s-Segretarju għandu, meta fil-fehma tiegħu dak l-interess ikun jista' jippreġudika l-indipendenza taċ-*chairperson* jew tal-membri konċernat, jahtar *chairperson* jew membru ieħor skont il-listi msemmija fis-subartikoli (2) u (3) rispettivament:

Izda xejn f'dan il-paragrafu ma għandu jinftiehem bhala li jnaqqas id-dritt tal-partijiet f'każ quddiem it-Tribunal li jitolbu r-rikuża ta' xi *chairperson* jew ta' xi membru skont id-dispożizzjonijiet tal-artikolu 734 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili u skont id-dispożizzjonijiet ta' dan l-Att.

(d) Xejn f'dan l-Att ma għandu jinftiehem bhala li jeżenta lil xi persuna li tkun tiffirma parti mit-Tribunal mill-obbligu li taġixxi b'indipendenza u b'imparzjalità skont il-liġi u illi ma toqgħod għad-direzzjoni jew kontroll ta' ebda persuna jew awtorità oħra fil-qadi tad-dmirijiet għadizzjarji tagħha fuq it-Tribunal u dan irrispettivament mill-proċedura li biha, jew il-lista li minnha, dik il-persuna tkun giet maħtura biex tiffirma parti mit-Tribunal."

4. Fis-subartikolu (2) tal-artikolu 76 tal-Att prinċipali l-kliem ", f'kull każ li fih japplika l-artikolu 73(5)(ċ), minn persuna oħra maħtura *ad hoc* mill-Prim Ministru" għandhom jiġu sostitwiti bil-kliem "l-artikolu 73(5)(ċ)".

Emenda tal-artikolu 76 tal-Att prinċipali.

5. Fis-subartikolu (2) tal-artikolu 77 tal-Att prinċipali, minflok il-kliem "persuna li tagħti l-ġurament għal dan l-għan." għandu jidhol il-kliem "persuna li tagħti l-ġurament għal dan l-għan:"

Emenda tal-artikolu 77 tal-Att prinċipali.

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u minnufih wara għandu jizdied dan il-proviso ġdid li ġej:

"Izda dak ix-xhud, assessur, espert jew persuna oħra, skont il-każ, għandu jinstema' u jiġi eżaminat f'udjenza tat-Tribunal u l-partijiet fil-każ ikollhom id-dritt li jagħmlulu domandi."

Emenda tal-
artikolu 80 tal-
Att prinċipali

6. L-artikolu 80 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) Is-subartikoli (1) u (2) tiegħu għandhom jiġu sostitwiti b'dan li ġej:

"(1) Fl-għoti ta' kull sentenza, deċiżjoni jew parir, it-Tribunal jista' jqis il-politika soċjali u ekonomika u l-prinċipji tal-gustizzja soċjali li jkunu jipprevalu fiż-żmien tal-pronunzjament tiegħu jekk huwa jqis illi dawn ikunu rilevanti għad-determinazzjoni tal-każ li jkollu quddiemu.

(2) Meta xi haġa quddiem it-Tribunal tkun tolqot jew tkun dwar uffiċjali pubbliċi t-Tribunal għandu jastjeni milli jieħu konjizzjoni ta' kull haġa li taqa' taħt il-funzjonijiet ta' dik il-Kummissjoni."

(b) Fis-subartikolu (3) tiegħu l-kliem "għandha tara li tistabbilixxi jew iżzomm relattività xierqa" għandu jiġi sostitwit bil-kliem "għandha, fejn it-Tribunal jikkunsidra li dan huwa xieraq, tieħu in konsiderazzjoni ż-żamma tar-relattività xierqa".

Dispożizzjoni
transitorja.

7. (1) L-emendi magħmulin b'dan l-Att għall-Att prinċipali għandhom japplikaw malli jsiru liġi hekk iżda li, mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikolu (2) hawn aktar 'l isfel, kull persuna li fid-data tal-bidu fis-seħħ tal-imsemmija emenda tkun f'lista ta' *chairpersons* jew membri tat-Tribunal għandha titqies li tkun ġiet nominata għal perijodu ta' hames snin li jibdedw jgħoddu mid-data tal-aħħar haħra tagħha.

(2) Kull persuna li, għalkemm ma tkunx aktar tiffirma parti mil-listi li hemm referenza għalihom fis-subartikoli (2) u (3) tal-artikolu 73 tal-Att prinċipali, tkun, fid-data tal-bidu fis-seħħ ta' dan l-Att, għadha tiffirma parti mit-Tribunal għas-smiġħ ta' każijiet partikolari, għandha tkompli hekk tiffirma parti mit-Tribunal skont id-dispożizzjonijiet tal-Att prinċipali għal massimu ta' sena mid-dħul fis-seħħ ta' dan l-Att.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 406 tat-22 ta' Ġunju, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

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I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

28th June, 2016

ACT No. XXXIII of 2016

*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:-

Short title.

1. The short title of this Act is the Employment and Industrial Relations (Amendment) Act, 2016, and this Act shall be read and construed as one with the Employment and Industrial Relations Act, hereinafter referred to as "the principal Act".

Cap. 452.

Amendment of
article 3 of the
principal Act.

2. Sub-article (3) of article 3 of the principal Act shall be amended as follows:

(a) in paragraph (c) thereof, for the words "to the Board by the Minister." there shall be substituted the words "to the Board by the Minister;"; and

(b) immediately after paragraph (c) thereof there shall be added the following new paragraph:

"(d) to carry out the functions assigned to it by article 73 and any other function that may be assigned to it by law from time to time."

Amendment of
article 73 of the
principal Act.

3. Article 73 of the principal Act shall be amended as follows:

(a) paragraph (b) of sub-article (2) thereof shall be deleted;

(b) paragraph (c) of sub-article (2) thereof shall be renumbered as paragraph (b);

(c) in paragraph (b) of sub-article (3) thereof, for the words "to represent, so far as may be equally, the interests in dispute" there shall be substituted the words "so that due to their different experiences they shall bring to the Tribunal knowledge, so far as may be equally, of the interests in the dispute";

(d) for paragraph (c) of sub-article (5) thereof, there shall be substituted the following:

"(c) a member chosen by the Chairperson of the Tribunal from a list of persons appointed by the Minister from amongst persons nominated by entities in the public sector.";

(e) for sub-article (6) thereof there shall be substituted the following:

"(6) (a) The chairpersons of the Tribunal shall be appointed by the Prime Minister for a period of five years.

(b) The members of the Tribunal shall be appointed by the Minister for a period of five years;

(c) A person shall not be qualified to be appointed as chairperson or as member of the Tribunal, if such person:

(i) is a Member of the House of Representatives or of the European Parliament; or

(ii) is a Member of a Local Council; or

(iii) is an undischarged bankrupt; or

(iv) has been sentenced by any court to effective imprisonment for any term or has been found guilty by any court of any of the crimes listed in Titles III, V or VI of Part II of Book First of the Criminal Code.

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(d) The Prime Minister may, after consultation with the Employment Relations Board, remove a member from the list appointed in accordance with sub-article (2), for reasons of proved misbehaviour, manifest inefficiency, or inability to perform his or her functions whether due to an impairment of mind or body. The decision to remove such a member shall include reasons and shall be subject to a right of appeal on a point of law against the Prime Minister to the Court of Appeal by such member. The appeal shall be filed within twenty days from the date when the said member is notified of the decision. The rules of the Code of Organization and Civil Procedure regulating the hearing and determination of appeals from judgements of the First Hall of the Civil Court shall *mutatis mutandis* apply to such appeal.

(e) The Minister may, after consultation with the Employment Relations Board, remove a member from the list appointed in accordance with sub-article (3) (b), for reasons of proved misbehaviour, manifest inefficiency or inability to perform his or her functions whether due to an impairment of mind or body. The decision to remove such a member shall include reasons and shall be subject to a right of appeal on a point of law against the Minister to the Court of Appeal by such member. The appeal shall be filed within twenty days from the date when the said person is notified of the decision. The rules of the Code of Organization and Civil Procedure regulating the hearing and determination of appeals from judgements of the First Hall of the Civil Court shall *mutatis mutandis* apply to such appeal.

(f) The chairpersons and the members of the Tribunal may, when their term of office, whether it be the first one or otherwise, expires, be re-appointed for another term of five years:

Provided that such re-appointment, prior to being made, shall be proposed to the Employment Relations Board and:

(i) the re-appointment of a chairperson shall not be made if two thirds of the members of the Employment Relations Board are against such reappointment;

(ii) the re-appointment of a member from the list of persons appointed by trade unions represented on the Malta Council for Economic and Social Development shall not be made if it does not receive the prior approval of at least fifty percent of all the members of the Employment Relations Board that have been nominated on such Board as representatives of the employees;

(iii) the re-appointment of a member from the list of persons appointed by employers' associations and other organisations that represent the employers shall not be made if it does not receive the prior approval of at least fifty percent of all the members of the Employment Relations Board that have been nominated on such Board as representatives of the employers.";

(f) for sub-article (7) thereof, there shall be substituted the following:

"(7) (a) The Prime Minister may, from time to time, if he thinks fit and after consultation as provided in sub-article (2) add to the list provided for it in the said sub-article.

(b) The Minister may, from time to time, if he thinks fit request new nominations from trade unions and associations and organisations of the employers mentioned in paragraph (b) of sub-article (3) for the purpose of increasing the lists mentioned in the said paragraph.";

(g) immediately after sub-article (9) there shall be added the following new sub-article:

"(10) (a) The chairpersons and the members of the Tribunal shall receive such remuneration as the Prime Minister may establish by notice in the Gazette. Such remuneration may be fixed at an amount per year or at an amount for every hearing held or at an amount for every decided case. Once the remuneration has been established it shall not be reduced but the change in criteria for calculating the remuneration between the criteria mentioned in this paragraph provided that it is made in regards to all the chairpersons and members shall not be deemed to constitute in itself a reduction in

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the remuneration.

(b) During their term of appointment the chairpersons and the members of the Tribunal shall not appear before the Tribunal in the exercise of their profession or to assist any parties.

(c) The chairpersons and the members of the Tribunal shall prior to the hearing of every case declare to the Secretary of the Tribunal any interest that they may have in the procedures and the Secretary shall, when in his opinion such interest may prejudice the independence of the chairperson or of the member concerned, appoint another chairperson or member in accordance with the lists mentioned in sub-articles (2) and (3) respectively:

Provided that nothing in this paragraph shall be construed as diminishing the right of the parties in a case before the Tribunal to request the challenge of a chairperson or of a member.

(d) Nothing in this Act shall be construed as exempting any person forming part of the Tribunal from the duty to act with independence and impartiality according to law and not to be subject to the direction or control of any other person or authority in the performance of his judicial duties on the Tribunal and this irrespective of the procedure according to which or the list from which such person shall have been appointed to form part of the Tribunal."

Amendment of article 76 of the principal Act.

4. In sub-article (2) of article 76 of the principal Act the words ", in any case in which article 73(5)(c) applies, by another person appointed *ad hoc* by the Prime Minister" shall be substituted with the words "article 73(5)(c)".

Amendment of article 77 of the principal Act.

5. In sub-article (2) of article 77 of the principal Act, for the words "person to administer the oath for that purpose." there shall be substituted the words "person to administer the oath for that purpose:" and immediately thereafter there shall be added the following new proviso:

"Provided such witness, assessor, expert or any other person, as the case may be, shall be heard in evidence and shall be examined in a Tribunal hearing and the parties to the case shall have the right to ask questions."

6. Article 80 of the principal Act shall be amended as follows: Amendment of article 80 of the principal Act.

(a) Sub-articles (1) and (2) thereof shall be substituted by the following:

"(1) In giving any award, decision or advice the Tribunal may give consideration to the social and economic policies and to the principles of social justice prevailing at the time of its pronouncement if it considers that these are relevant to the determination of the case before it.

(2) Where any matter before the Tribunal concerns or relates to public officers the Tribunal shall abstain from taking cognizance of any matter which is within the functions of the said Commission."

(b) In sub-article (3) thereof for the words "shall endeavour to establish or maintain" there shall be substituted the words "shall, where the Tribunal considers that it is appropriate, take into account the maintenance of".

7. (1) The amendments made by this Act to the principal Act shall apply upon their enactment so however that, without prejudice to the provisions of sub-article (2) hereunder, any person who on the date of the coming into force of the said amendment is a member of a panel of chairpersons or members of the Tribunal shall be deemed to have been appointed for a period of five years commencing from the date of his last appointment. Transitory provision.

(2) Any person who, although no longer forming part of the panels referred to in sub-articles (2) and (3) of article 73 of the principal Act, shall on the date of the coming into force of this Act be still forming part of the Tribunal for the hearing of particular cases, shall continue to so form part of the Tribunal in accordance with the provisions of the principal Act for a maximum period of one year from the coming into force of this Act.

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Passed by the House of Representatives at Sitting No. 406 of the
22nd June, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

