

EMPLOYMENT

The new Employment Agencies Regulations

The recent evolution of the labour market has triggered diverse atypical work arrangements prompting new Employment Agencies Regulations which come into effect on April 1. While employment agencies' fundamental role is to streamline the recruitment process for employers and job seekers, these new regulations will enhance their professionalism and accountability and help promote more fair and transparent practices in the employment agency sector, writes Dr Mariella Baldacchino.

Scope of regulation

The Regulations cover three main relevant activities carried out in Malta, namely (i) recruitment services, (ii) temporary work agencies, one which hires temporary workers, and assigns them to user undertakings for temporary work, under the supervision, direction, and control of those user undertakings and (iii) outsourcing agencies, one that employs workers and assigns them, to user undertakings, either on-site or remotely, but which retains supervision and direction over such workers.

The Regulations do not extend to employers conducting recruitment for their own companies or outsourcing agencies that offer specific professional and technical services.

Employment agencies licence and key changes

Engaging in the activities of an employment agency requires a valid licence issued by the Director of the Department of Industrial and Employment Relations (DIER). There are 2 different licences, being (i) one covering recruitment services and (ii) another one covering temporary work agency and/or outsourcing agency. Multiple licences are required where the applicant would be engaging in the activities mentioned in (i) and (ii) above.

Some of the salient requirements introduced by the Regulations include:

Applicants must provide evidence of a bank guarantee of a minimum € 20,000 and up to a maximum of € 300,000, depending on number of employees.

One (1) competent person, approved by the DIER, must be engaged on a full-time basis to manage the agency. The competent person needs to be an EU citizen, residing in Malta.

Implications for employment agencies

The Regulations present both challenges and opportunities for businesses. Swift compliance is necessary, requiring significant time and resources, particularly for



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smaller businesses. Compliance costs associated with obtaining licenses, maintaining competent personnel, and providing mandatory bank guarantees may pose financial challenges for businesses. Seeking guidance from legal experts or consultants could ensure adherence to regulatory standards. However, non-compliance carries significant risks, as the DIER holds the authority to refuse or revoke licenses under specific circumstances outlined in the regulations.

However, within these challenges, employment businesses can discover opportunities to enhance their practices, improve their recruitment processes and contribute to a fairer and more transparent job market.

The application process

The application process commences with the applicant publicly displaying a notice of their intention to operate an agency for twenty-one days, in addition to advertising the notice in two daily newspapers.

Subsequently, the applicant must submit a duly completed application form to the DIER, providing essential particulars such as personal and business details, and proposed activities, accompanied by the requested supporting documentation. Licence fees are payable upon submission.

Refusal of application and bank guarantee

The Director is entitled to reject or refuse to renew a license

under specific circumstances outlined in the Regulations. These include failure to comply with regulatory requirements or license conditions, failure to meet tax and social security obligations, convictions under the Employment and Industrial Relations Act (EIRA) or related regulations and charging fees for employment services. Similarly, the license will not be renewed if following a comprehensive vetting process conducted by the Malta Police Force, the applicant is deemed unfit to provide the services. This evaluation includes scrutinizing criminal records for any convictions related to immigration laws among applicants, competent persons, directors, or individuals with significant ownership stakes in the agency.

Where the license is revoked or not renewed, the Administration Board will utilise the bank guarantee to compensate affected employees. The money goes into the Agencies Guarantee Fund, managed by the Administration Board. The fund helps employees who lose their jobs because their agency's licence was revoked or not renewed.

Conclusions

By introducing a licensing regime and requiring applicants to have the necessary systems and competence in place, these Regulations aim to enhance the professionalism and accountability of employment agencies, ensure that agencies operate within legal and ethical boundaries and provide quality services while safeguarding the rights and interests of both job seekers and employers. Additionally, the regulations maintain standards within the industry, fostering trust and confidence among stakeholders thus playing an important role in promoting fair and transparent practices in the employment agency sector.

Dr Baldacchino is founder of Empleo, a legal practice focused on employment law related matters.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.