

EMPLOYMENT LAW: WHAT`S NEW?

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In this article, Dr Caruana de Brincat will shed light on some of the introductions and amendments resulting from these legal notices, which are meant to address frequent queries posed by workers and employers alike. These lacunae were previously addressed by practitioners based on good industry practice and interpretative guidance founded on local and foreign court judgments.

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Legal Notice 271 of 2018 can be considered of major interest considering that it deals with the Annual Vacation Leave. The National Standard Order provides the minimum necessities vis-a-vis entitlement of annual leave in terms of the Organisation of Working Time Regulation.

As practice dictated, and law provided for, annual vacation leave is to be availed on the days as agreed between the worker and the employer. Over the years we have experienced several employers imposing shutdowns on their workforce. Unfortunately, no legislation used to regulate the amount of annual vacation leave days that the employer could force the worker to dedicate for the shutdown. This issue was addressed with the new changes mentioned above and from the 1 January 2019, the employer can avail a limited number of working days from the annual vacation leave for the purposes of shut down. These working days from the annual vacation leave can also be used for a temporary closure of whole or part of the premises for a short period of shutdown. It is of utmost importance to keep in mind that the Employer is bound to communicate such shutdowns or temporary closure of the premises to the workers.

If the worker is on maternity leave, the annual vacation leave entitlement shall continue to accrue in favour of the worker. Hence any balance of annual vacation leave which would have not been availed by the end of the calendar year shall be automatically allocated to the next calendar year especially when it has not been possible for the worker to avail herself of such leave during the year when the maternity leave began. If during the said maternity leave public or national holiday would fall on work day, the worker on maternity leave is entitled to the equivalent in hours of an additional day of annual vacation leave.

The same can be considered in those situations when a worker is on sick leave or injury leave, in such cases the annual vacation leave shall continue to accrue in his favour. This means that any annual vacation leave which is unavailed of by the end of the same calendar year shall be carried over to the following calendar year. Provided that it has not been possible for the worker to avail himself of his leave entitlement during the year when he was sick or injured.

There can be situations where the worker would have had pre-arranged vacation leave, which might coincide with a period of sickness, in-

jury or maternity leave, this shall be considered that it was never availed of and shall be re added to the annual vacation leave for the worker to make use thereof upon his return to work or if not availed of during that calendar year it shall be transferred to the following year, this always provided that the worker could not avail from such vacation leave during the year when the worker was subject to sickness, injury or maternity leave.

Another interesting legal notice is 272 of 2018 which is entitled the Temporary Agency Workers (Amendment) Regulations, which amended the Temporary Agency Workers Regulations.

The salient point addressed refers to the definition of what constitutes an agency worker. The amendment removed part of the definition and was replaced with a much more practical requirement which states that the agency worker needs to be working at the place of work of the user undertaking. Another interesting concept is the principle of equal pay for agency workers. Prior to the amendments, there was no obligation to provide for equal pay between undertaking`s workers and agency workers especially when the temporary agency workers had an indefinite contractual relationship with the agent and would have been paid between assignments by the agent. Such situation was resolved, nevertheless during the first four (4) weeks of the assignment the principle of equal pay will not apply irrespective of the duration. If the worker is replaced at any time by another agency substitute worker, irrespective if within the first four (4) weeks, the replacement will have the right to equal pay from Day One.

Legal notice 274 of 2018 introduced new provisions related to payslips. The Itemized Payslips Regulation obliges employers to provide workers with detailed itemized payslips either before or on the day when the remuneration is due. Such payslip shall contain all the information listed therein the Regulation. The employer is not merely bound to provide such information, but in case of any proceedings instituted against him for not doing so, the burden of proof is on him and non-observance of these regulations can result in a fine set at a minimum of €500 and can lead to a maximum of €1,165.

If you would like to discuss how these changes might impact your organization please do not hesitate to contact me on *natalino@caruanadebrincat.com*.