

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 18,862, 31 ta' Jannar, 2012

Taqsimha B

A.L. 44 tal-2012

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

**Ordni tal-2012 ta' Standard Nazzjonali dwar l-Istatus tal-
Impieg**

BIS-SAHHA tas-setgħat mogħtija bl-artikolu 4 tal-Att dwar l-Impieg u r-Relazzjonijiet Industrijali, il-Ministru għall-Ġustizzja, Konsultazzjoni Pubblika u l-Familja għamel dan l-Ordni li ġej –

1. (1) It-titolu ta' dan l-Ordni huwa Ordni tal-2012 ta' Titolu.
Standard Nazzjonali dwar l-Istatus tal-Impieg.

(2) Dan l-Ordni għandu jkun mingħajr preġudizzju għal u ma għandux japplika fil-każ ta':

(a) Kull liġi oħra li tiddefinixxi jew tirregola l-kundizzjonijiet speċifiċi ta' impieg tal-impjegati li jaqgħu taħt dik il-liġi partikolari jew ir-relazzjoni bejn persuni li jipprovdu servizz u l-persuna li tuża s-servizz u l-kundizzjonijiet rispettivi tiegħu, u

(b) Kull dritt u/jew obbligazzjoni li l-persuna li tipprovdi s-servizz u l-persuna għal min is-servizz jiġi provdut jista' jkollhom fir-rigward tal-kuntratt għal servizz kif miftiehem bejniethom, kif ikun jeżisti u fir-rigward ta' avvenimenti li saru qabel id-dħul fis-seħħ ta' dan l-Ordni, inkluż, *inter alia*, it-tnedija ta' proċedimenti legali quddiem il-qrati approprijati:

Izda d-dispożizzjonijiet tal-artikolu 6 ta' dan l-Ordni għandhom jiprevalu fuq il-paragrafu (b) ta' dan is-subartikolu.

(3) Bla ħsara għas-subartikolu (2) ta' dan l-artikolu, kull dikjarazzjoni magħmula minn xi individwu fir-rigward tal-istatus tal-impieg tiegħu jew ta' persuna oħra għandha tkun

ikkunsidrata bħala nulla u bla effett jekk il-konsegwenzi tagħha jkunu b'xi mod konfligġenti mad-dispożizzjonijiet ta' dan l-Ordni.

Tifsir.

Kap. 452

2. (1) Għall-iskop ta' dan l-Ordni, 'l-Att' tfisser l-Att dwar l-Impiegi u r-Relazzjonijiet Industrjali.

(2) Frazzjiet u espressjonijiet użati f'dan l-Ordni ta' Standard Nazzjonali għandhom, sakemm il-kuntest ma jitlobx xort' oħra, ikollhom l-istess tifsira mogħtija lilhom fl-Att.

Preżunzjoni ta' relazzjoni ta' impieg

3. (1) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (2), meta jkun qed jiġi kunsidrat l-istatus tal-impieg ta' persuna illi hija ddikjarata bħala persuna *self-employed* u li *prima facie* mhux kunsidrata bħala impjegata, għandu jitqies li hemm relazzjoni ta' impieg u li l-persuna għal min is-servizz qed ikun provdut hija l-prinċipal u illi d-dispożizzjonijiet tal-Att u tar-regolamenti jew ordni maħruġa tahtu japplikaw għal dik ir-relazzjoni jekk minn tal-inqas ħamsa mill-kriterji li ġejjin jiġu sodisfatti rigward il-persuna li qed tagħmel ix-xogħol;

(a) hija tiddependi minn persuna waħda għal min is-servizz qed jiġi provdut għal mill-inqas 75% tad-dħul f'perjodu ta' sena;

(b) hija tiddependi fuq il-persuna għal min is-servizz qed jiġi provdut biex jiġi stabbilit liema xogħol irid isir u fejn u kif ix-xogħol li ġie assenjat irid jitwettaq;

(c) hija tagħmel ix-xogħol permezz ta' makkinarju, għodda u materjali provduti mill-persuna għal min is-servizz qed jiġi provdut;

(d) hija tkun soġġetta għal skeda ta' ħin tax-xogħol jew għal perjodi ta' ħin minimu ta' xogħol stabbilit mill-persuna għal min is-servizz qed jiġi provdut;

(e) hija ma tistax tagħmel *sub-contracting* tax-xogħol tagħha lil individwi oħra floku meta jitwettaq ix-xogħol;

(f) hija persuna integrata fl-istruttura tal-proċess ta' produzzjoni, l-organizzazzjoni ta' xogħol jew il-ġerarkija tal-kumpanija jew ta' organizzazzjoni oħra;

(g) l-attività tal-persuna hija element ċentrali fl-organizzazzjoni u t-twettiq tal-għanijiet tal-persuna għal min is-servizz qed jiġi provdut; u

(h) hija tagħmel xogħlijiet simili tal-impjegati eżistenti jew, fil-każ ta' meta x-xogħol jiġi *outsourced*, hija tagħmel xogħlijiet simili għal dawk li kienu jkunu mwettqa qabel minn impjegati.

(2) Minkejja l-preżenza ta' ħames kriterji, jew aktar, imsemmija fis-subartikolu preċedenti, f'relazzjoni bejn żewġ persuni jew aktar, kull persuna f'relazzjoni li bis-saħħa tal-preżenza ta' dawk il-kriterji tkun awtomatikament meqjusa bħala waħda ta' impieg, tista', qabel tidhol f'dik ir-relazzjoni, tagħmel talba bil-miktub lid-Direttur biex jeżenta dik ir-relazzjoni milli tiġi kunsidrata bħala waħda ta' impieg u d-Direttur jista' jeżenta bil-miktub dik ir-relazzjoni milli tiġi kunsidrata bħala waħda ta' impieg jekk jiġi kunsidrat illi hemm bażi partikolari li jkollhom ma' dik l-attività illi jeżentawha minn dan ir-rekwizit li jkun jinkludi l-attività li tkun qed issir hija okkorrenza mhux komuni jew li tkun ta' tul ta' żmien qasir ħafna u dik l-eżenzjoni għandha tibqa' valida sakemm ma tiġix revokata mid-Direttur:

Iżda f'każ ta' relazzjonijiet stabbiliti qabel id-dhul fis-seħħ ta' dan l-Ordni, il-persuna involuta għandu jkollha perjodu ta' sitt ġimgħat mill-imsemmija data tad-dhul fis-seħħ biex tagħmel talba fir-rigward ta' dik ir-relazzjoni.

4. (1) Persuna li kienet kunsidrata li qed twettaq servizzi lill-persuna oħra bħala persuna *self-employed*, sew jekk qabel jew f'kull żmien wara d-data tad-dhul fis-seħħ ta' dan l-Ordni u li hija sussegwentement tinstab li hija impjegata skont l-artikolu 3 ta' dan l-Ordni, għandha tiġi kunsidrata li giet ingaġġata bħala impjegata b'kuntratt indefinit tal-persuna li għaliha qed jiġi provdut is-servizz.

Data effettiva ta' impieg, avviz u perjodu ta' prova.

(2) Id-data tal-ingaġġ b'kuntratt indefinit kif imsemmi fis-subartikolu (1) ta' dan l-artikolu għandha tiġi kunsidrata bħala d-data tal-ewwel darba li gie provdut kontinwament is-servizz u l-anzjanita` u kull ħlas tal-avviż dovut f'każ ta' sensja eventwali għandu jinħadem b'dan il-mod:

Iżda għall-fini ta' dan is-subartikolu, it-terminu 'servizz provdut kontinwament' għandu jinkludi dawk il-kuntratti, sew jekk fuq bażi ta' *self-employed* sew jekk fuq bażi ta' impieg, meta x-xogħol imwettaq kien essenzjalment l-istess u fejn il-perjodu ta' bejn kuntratt u ieħor ma jkunx jaqbeż is-sitt xhur u l-perjodi bejn dawk il-kuntratti għandhom jittieħdu akkont.

(3) Jekk persuna kienet qed twettaq servizz lil persuna oħra fuq bażi *self-employed* qabel id-dħul fis-seħħ ta' dan l-Ordni u li r-relazzjoni tagħha bis-saħħa tal-artikolu 3 hija meqjusa bħala relazzjoni ta' impieg, għandu jiġi meqjus, għal kull ħsieb u fini tal-Att, illi l-perjodu ta' prova, skont l-artikolu 36 tal-Att, f'dik ir-relazzjoni ntemm qabel id-dħul fis-seħħ tal-Ordni, sakemm l-prinċipal ma jipprovax mod ieħor.

(4) Jekk persuna tagħti servizz lil persuna oħra fuq bażi *self-employed* fid-data tad-dħul fis-seħħ ta' dan l-Ordni jew wara u li r-relazzjoni tiegħu bis-saħħa tal-artikolu 3 hija meqjusa li tkun relazzjoni ta' impieg, il-perjodu ta' prova f'dik ir-relazzjoni għandu jiġi kunsidrat li beda fid-data tal-ingaġġ biex jiġu provduti servizzi.

(5) Il-kuntratt ta' impieg indefinit imsemmi f'dan il-artikolu għandu jitqies bħala wieħed *whole-time* fuq l-istess bażi tas-sieġhat ta' xogħol ta' impjegat *whole-time* komparabbli, jew, fin-nuqqas ta' impjegat *whole-time* komparabbli, fuq bażi tas-sieġhat speċifikati fl-Ordni ta' Standard Settorali jew f'Ordni tal-Kunsill tal-Pagi biex jirregola l-Pagi applikabbli, jew, fin-nuqqas ta' ordni applikabbli, fuq bażi ta' ġimgħa normali ta' xogħol ta' erbghin siegħa, sakemm, fir-rigward ta' sieġhat ta' xogħol, ma jiġix speċifikat mod ieħor bil-miktub skont l-artikolu 7 ta' dan l-Ordni.

Kundizzjonijiet ta' Impieg.

5. (1) Il-prinċipal għandu obbligu li jagħti lil persuna li hi meqjusa bħala impjegat tiegħu skont dan l-Ordni:

(a) fir-rigward ta' pagi;

(i) l-istess pagi mħallsa lill-impjegat komparabbli jew,

(ii) meta ma jkunx hemm dak l-impjegat komparabbli, l-istess remunerazzjoni li kien jircievi għas-servizzi mogħtija fuq bażi *self-employed* bħala pagi:

Iżda jekk ikun hemm nuqqas ta' qbil fir-rigward tal-paga li trid tiġi mħallsa u l-impjegat itemm l-impieg, id-dispożizzjonijiet imsemmija fis-subartikolu (2) tal-artikolu 7 għandhom japplikaw.

(b) Fir-rigward ta' kundizzjonijiet ta' impieg oħrajn, l-istess kundizzjonijiet ta' impieg bħal dawk li qed jitgawdew minn impjegat komparabbli jew, meta ma hemmx dak l-impjegat komparabbli, il-kundizzjonijiet ta' impieg minimi skont l-Att u r-regolamenti jew ordni maħruġa taħtu.

6. Minkejja kull dispożizzjoni f'xi liġi jew ftehim kollettiv jew kuntratt individwali, jekk persuna kienet qed tagħti servizz lil persuna oħra fuq bażi *self-employed* qabel id-data tad-dhul fis-seħħ ta' dan l-ordni u li r-relazzjoni tagħha bis-saħħa tal-artikolu 3 hija meqjusa bħala relazzjoni ta' impieg, kull klawnsola li timponi penali msemmija fil-kuntratt għal servizz preċedenti fir-rigward ta' avvenimenti li saru qabel id-dhul fis-seħħ ta' dan l-Ordni, għandha tkun nulla u bla effett mad-dhul fis-seħħ ta' dan l-Ordni, sakemm u sa meta tiġi awtorizzata mid-Direttur skont l-Att:

Klawnsola li jimponu penali.

Iżda dan ma għandu bl-ebda mod jeskludi kull dritt li jinbdew proċedimenti ċivili għad-danni li jistgħu jkunu disponibbli għall-partijiet f'kuntratt għal servizz skont subartikolu (2) (b) tal-artikolu 1 ta' dan l-Ordni.

7. (1) Fis-sitwazzjonijiet meta l-istatus tal-impieg ta' persuna hu meqjus li hu wieħed ta' impieg skont dan l-Ordni, il-prinċipal għandu jkun marbut li jagħti jew jibgħat lill-impjegat ittra ta' ingaġġ jew dikjarazzjoni ffirmata, li għandha tinkludi l-informazzjoni imniżzla fir-Regolamenti tal-2002 dwar Informazzjoni lill-Impjegati, u f'dawn il-każijiet, minkejja ż-żmien differenti mniżzel fir-Regolamenti tal-2002 dwar Informazzjoni lill-Impjegati, iż-żmien biex id-dokument rilevanti jasal għand l-impjegat għandu jkun:

Informazzjoni lill-impjegati.

A.L. 431 tal-2002

(a) fil-każijiet ta' persuni li jipprovdu servizzi illi bis-saħħa ta' dan l-Ordni għandhom jiġu kunsidrati bħala impjegati fid-data tad-dhul fis-seħħ ta' dan l-Ordni, kemm jista' jkun malajr, iżda f'kull każ, mhux aktar tard minn tmien ġimgħat mid-data tad-dhul fis-seħħ ta' dan l-Ordni, u

(b) fil-każ imsemmi f'artikolu 3 (2) ta' dan l-Ordni, meta l-persuna li għaliha qed jiġu provduti s-servizzi titlob eżenzjoni skont dak l-istess subartikolu u d-Direttur ma jaċċettax dik it-talba, fi żmien ġimgħatejn mid-data taċ-ċaħda tad-Direttur.

(2) Jekk impjegat ma jaqbilx ma' :-

(a) xi kundizzjoni ta' impieg mnizzla fl-ittra ta' ingaġġ jew fid-dikjarazzjoni ffirmata skont dan il-paragrafu; jew

(b) l-ammont ta' pagi li qed jiġi propost li jingħataw kif speċifikat f'artikolu 5(1),

jitlaq mill-impieg, huwa jista' jibda proċeduri quddiem it-Tribunal Industrijali fejn jista' jsostni tkeċċija ingusta u d-dispożizzjonijiet relevanti tal-Att għandhom japplikaw.

Awtorizzazzjoni biex kuntratt ta' servizz isir kuntratt għal servizz.

8. Kull konverżjoni ta' kuntratt ta' servizz jew kuntratt ta' impieg f'kuntratt għat-tweġiq ta' servizz jista' jkollu effett legali għall-finijiet tal-Att biss jekk il-konverżjoni tkun awtorizzata mid-Direttur. Sakemm din l-awtorizzazzjoni tiġi maħruġa u jekk tkun rifjutata wara li tkun mitluba, l-istatus tal-impieg tal-persuna involuta għandu jkun meqjus li ma nbidilx u għandu jkun l-istess bħal dak li kien fis-sehħ qabel it-talba għall-awtorizzazzjoni.

Limitu tad-drittijiet.

9. Sakemm ma jkunx espressament msemmi xort' oħra, xejn f'dan l-ordni ma għandu jiġi interpretat li jagħti dritt lil impjegati li jgħorru magħhom ma' dan l-istatus benefiċċji partikolari għar-relazzjoni fuq bażi ta' *self-employed* precedenti.

Impieg mas-Settur Pubbliku.

10. (1) Id-dispożizzjonijiet tal-Kostituzzjoni jew ta' xi liġi oħra li tapplika għall-impieg mas-servizz pubbliku jew mas-settur pubbliku għandha tipprevali fuq dan l-Ordni u ebda haġa f'dan l-Ordni ma għandha tagħti dritt lil xi persuna li tikkunsidra relazzjoni bejn persuna li tipprovdi servizz u s-settur jew is-servizz pubbliku għal min qed jiġi provdut is-servizz bħala relazzjoni ta' impieg.

(2) Izda, fis-settur jew fis-servizz pubbliku, jekk relazzjoni li tibda wara d-dhul fis-sehħ ta' dan l-Ordni hija nominalment *self-employed* u li tissodisfa r-rekwiżiti mnizzla f'artikolu 3 (1), izda li, bis-saħħa tas-subartikolu 10 (1), ma tistax titqies bħala waħda ta' impieg, u jekk l-ebda eżenzjoni ma ngħatat kif speċifikat f'artikolu 3 (2), il-persuna li qed tipprovdi s-servizz tista' tirreferi l-każ tagħha lit-Tribunal Industrijali biex titlob kumpens mill-persuna li għaliha qed jiġi provdut is-servizz f'kull żmien tul ir-relazzjoni jew fi żmien erba' xhur minn meta r-relazzjoni tiġi terminata. Jekk it-Tribunal ikun sodisfatt illi r-raġuni għall-persistenza tal-kuntratt fuq bażi *self-employed* hija minhabba d-dispożizzjonijiet tas-subartikolu 10 (1), għandu jagħti

għotja ta' kumpens u jistabilixxi ammont li jrid jiġihallas mill-persuna li għaliha qed jiġi provdut is-servizz lill-persuna li qed tipprovdi s-servizz għal perjodu tar-relazzjoni.

F'dawk il-kazijiet, it-Tribunal għandu jagħti l-ekwivalenti ta' dak li kellha tkun ġimgħa paga li kieku r-relazzjoni nbidlet f'wahda ta' impieg,

(a) għal kull sena, jew parti minnha, għal perjodu tar-relazzjoni *self-employed*, f'każ ta' relazzjoni li giet mitmuma, u

(b) f'każ ta' relazzjoni li ma gietx mitmuma, minbarra l-paragrafu (a) ta' dan is-subartikolu, it-Tribunal għandu jordna lill-prinċipal biex ikompli jhallas din il-penali annwalment fir-rigward ta' kull sena, jew parti tagħha sa meta dik ir-relazzjoni tigi mitmuma.

11. (1) Għandu jkun id-dmir tal-persuna li għaliha qed jingħata s-servizz, jew tal-prinċipal, skont il-każ, li jagħti dikjarazzjoni bil-miktub lill-persuna li qed tipprovdiha s-servizz jew l-impjegat, skont il-każ, li jitlob dik id-dikjarazzjoni u li jidhirlu li l-persuna li qed tirċievi s-servizz jew il-prinċipal tiegħu seta' trattah b'mod li jikser dritt mogħti lilu b'dan l-Ordni.

Dritt li wiehed jirċievi dikjarazzjoni bil-miktub.

(2) Dik id-dikjarazzjoni għandha tagħti r-raġunijiet għal xi differenza fit-trattament u għandha tingħata fi żmien wiehed u għoxrin ġurnata mid-data tat-talba.

(3) Dikjarazzjoni bil-miktub magħmula skont dan l-artikolu għandha tkun ammissibbli bħala evidenza f'kull proċeduri taħt dan l-Ordni.

12. (1) Impjegat jista' jippreżenta ilment lit-Tribunal Industrijali illi l-prinċipal tiegħu jew il-persuna għal min kien qed jiġi provdut is-servizz kiser xi dritt mogħti lilu b'dan l-Ordni fi żmien erba' xhur minn meta l-impjegat sar jaf bil-ksur tad-drittijiet tiegħu u t-Tribunal jista' jagħmel kull ordni u/jew jordna ħlas ta' kumpens kif jidhirlu meħtieġ biex jirrimedja l-ksur.

Ilmenti lit-Tribunal Industrijali

(2) Id-dritt li wiehed jirreferi l-każ lit-Tribunal Industrijali biex jieħu kumpens għandu japplika wkoll fir-rigward ta' persuna kif hemm f'artikolu 10 fuq il-baži u l-kundizzjonijiet imsemmija fl-istess artikolu.

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Reati.

13. Kull persuna li tikser id-dispożizzjonijiet ta' dan l-Ordni tkun ħatja ta' reat u tista' tehel, meta tinstab ħatja, multa ta' mhux anqas minn elf euro (1000) fir-rigward ta' kull impjegat affettwat.

L.N. 44 of 2012

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)**

Employment Status National Standard Order, 2012

IN exercise of the powers conferred by article 4 of the Employment and Industrial Relations Act, the Minister for Justice, Dialogue and the Family has made the following Order –

1. (1) The title of this Order is the Employment Status Title.
National Standard Order, 2012.

(2) This Order shall be without prejudice to and shall not apply in the case of:

(a) any other law defining or regulating either the specific conditions of employment of employees falling under that particular law or the relationship between persons providing a service and a service user and the respective conditions thereof, and

(b) any right and/or obligation which the person providing the service and the person for whom the service is provided may have in regard to their agreed contract for service, as existing and in relation to events occurring before the coming into force of this Order, including the right to *inter alia* institute legal proceedings before the appropriate court of law:

Provided that the provisions of article 6 of this Order shall prevail over paragraph (b) hereof.

(3) Subject to sub-article (2) hereof, any declaration made by any individual in relation to his own or to another person's employment status shall be considered to be null and void and without effect if its consequences are in any way in conflict with the provisions of this Order.

2. (1) For the purposes of this Order, “the Act” means the Definitions.
Employment and Industrial Relations Act. Cap.452

(2) Terms and expressions used in this Order, unless the context otherwise requires, shall have the same meaning assigned to them in the Act.

Presumption of an employment relationship.

3. (1) Subject to the provisions of sub-article (2), when considering the employment status of a person who is nominally self employed and is *prima facie* not considered as an employee, it shall be presumed that there is an employment relationship and that the person for whom the service is provided is the employer and that the provisions of the Act and of the regulations or orders issued thereunder apply to that relationship if at least five of the following criteria are satisfied in relation to the person performing the work;

(a) he depends on one single person for whom the service is provided for at least 75% of his income over a period of one year;

(b) he depends on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;

(c) he performs the work using equipment, tools or materials provided by the person for whom the service is provided;

(d) he is subject to a working time schedule or minimum work periods established by the person for whom the service is provided;

(e) he cannot sub-contract his work to other individuals to substitute himself when carrying out work;

(f) he is integrated in the structure of the production process, the work organisation or the company's or other organization's hierarchy;

(g) the person's activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided, and

(h) he carries out similar tasks to existing employees, or, in the case when work is outsourced, he performs tasks similar to those formerly undertaken by employees.

(2) Notwithstanding the presence of five or more of the criteria referred to in the previous sub-article in a relationship between two persons or more, any person in a relationship which would by virtue of the presence of such criteria be automatically considered to be an employment relationship may, before entering into such a relationship, submit a written request to the Director to exempt such a relationship from being considered to be an employment relationship and the Director may exempt in writing that relationship if it is considered that there are particular grounds relating to that activity to exempt it from this requirement, including that the activity being carried out is an uncommon occurrence or of very short duration and such exemption shall remain valid unless rescinded by the Director.

Provided that in the case of relationships established before the coming into force of this Order, the person concerned shall have a period of six weeks from the said entry into force to make such a request in respect of such a relationship.

4. (1) A person who was considered to be performing services as a self-employed person for another person, whether prior to, or at any time following, the date of the entry into force of this Order and is subsequently found to be an employee in terms of article 3 of this Order, shall be considered to have been engaged as an employee on an indefinite contract of the person for whom he was providing services.

Effective date of employment, notice and probation.

(2) The date of engagement on an indefinite contract referred to in the subarticle (1) of this article shall be considered to be the date of the initial continuous provision of services and the seniority and any notice due in case of an eventual redundancy shall be computed accordingly:

Provided that for the purpose of this subarticle the term 'continuous provision of services' shall include those contracts, whether on a self-employed or employment basis, when the work performed was essentially the same and where the period between a contract and another does not exceed a period of six months and the periods between such contracts shall be taken into account.

(3) If a person had been performing services for another person on a self-employed basis prior to the date of entry into force of this Order and whose relationship by virtue of article 3 of this Order is deemed to be an employment relationship, it shall be presumed, for all intents and purposes of the Act, that

the probationary period in terms of article 36 of the Act in that relationship has elapsed prior to the coming into force of this Order unless the employer proves otherwise.

(4) If a person performs services for another person on a self-employed basis on or after the date of entry into force of this Order and whose relationship by virtue of article 3 of this Order is deemed to be an employment relationship, the probationary period in that relationship shall be considered to have commenced on the date of engagement to provide services.

(5) The indefinite contract of employment referred to in this sub-article shall be deemed to be whole-time on the same basis as the hours of work of a comparable whole-time employee, or, in the absence of a comparable whole-time employee, on the basis of the hours specified in the applicable sectoral or Wage Council Wage Regulation Order, or, in the absence of an applicable Order, on a forty-hour normal working week, unless, in relation to hours of work, otherwise specified in writing in terms of article 7 of this Order.

Conditions of
employment.

5. (1) The employer shall be obliged to grant a person who is considered to be his employee in terms of this Order:

(a) with respect to wages;

(i) the same wages paid to a comparable employee or,

(ii) where there is no such comparable employee, to the same remuneration he used to receive in return for services rendered on a self-employed basis as wages:

Provided that if there is disagreement as to the payable wage and the employee terminates his employment, the provisions laid down in sub-article (2) of article 7 of this Order shall apply.

(b) With respect to other conditions of employment, the same conditions of employment as those enjoyed by a comparable employee or, where there is no such comparable employee, to the applicable minimum conditions of employment in terms of the Act and the regulations or orders issued thereunder.

6. Notwithstanding any provision in any law or in any collective agreement or individual contract, if a person had been performing services for another person on a self-employed basis prior to the date of entry into force of this Order and whose relationship by virtue of article 3 of this Order is deemed to be an employment relationship, any penalty clause laid down in the previous contract for service in relation to events occurring before the coming into force of this Order, shall, on the entry into force of this Order, be null and void unless and until it is authorized by the Director in terms of the Act: Penalty clauses.

Provided that this does not in any way waive any right to initiate civil procedures for damages which may be available to either party to the contract for service in terms of subarticle 2(b) of article 1 of this Order.

7. (1) In situations where the employment status of a person is deemed to be one of employment in terms of this Order, the employer shall be bound to give or send to the employee a letter of engagement or a signed statement, which shall include the information laid down in the Information to Employees Regulations 2002, and in these cases, notwithstanding the different timeframe set out in the Information to Employees Regulations 2002, the timeframe for delivery of the relevant document to the employee shall be; Information to employees.

(a) in the cases of persons rendering services who by virtue of this Order shall be considered to be employees on the date of entry into force of this Order, as soon as possible, but in any case, not later than eight weeks from the date of entry into force of this Order, and L.N. 431 of 2002

(b) in the case referred to in article 3 (2) of this Order, where the person for whom the services are provided requests an exemption in terms of that same subarticle and the Director does not accede to such a request, within two weeks from the date of the Director's refusal.

(2) If an employee does not agree with

(a) any of the conditions of employment listed in a letter of engagement or a signed statement in accordance with this paragraph; or

(b) the amount of wages being proposed to be given as specified in sub-article (1) of article 5 of this Order,

and leaves employment, he may institute proceedings before the Industrial Tribunal where he may claim unfair dismissal and the relevant provisions of the Act shall apply.

Authorization to convert contract of service into contract for service.

8. Any conversion of a contract of service or of a contract of employment into a contract for service can only have legal effect for the purposes of the Act if it is authorized by the Director. Until such authorization is obtained and if it is refused once sought, the employment status of the person concerned shall be considered to be unchanged and shall be the same as that enjoyed prior to the request for authorization.

Extent of rights.

9. Unless otherwise expressly stated, nothing in this Order shall be interpreted as conferring on employees the right to carry with this status benefits which are particular to their previous self-employed relationship.

Public Sector Employment.

10. (1) The provisions in the Constitution or in any other law which apply to employment with the public service or public sector shall prevail over this Order and nothing in this Order shall confer a right to any person to consider a relationship between a person providing a service and the public sector or service for whom the service is provided to be an employment relationship.

(2) However, in the public service or public sector, if a relationship which is entered into after the date of entry into force of this Order is nominally a self-employed one and satisfies the requirements set out in article 3 (1), but which, by virtue of sub-article 10(1), cannot be considered to be one of employment, and in respect of which no exemption has been obtained as specified in article 3(2), the person providing the service may refer his case to the Industrial Tribunal to claim compensation from the person from whom that service is provided at any time during the relationship or within four months from when the relationship is terminated. If the Tribunal is satisfied that the reason for the continuation of the contract on a self-employed basis is because of the provision in sub-article 10(1), it shall grant an award of compensation and establish an amount to be paid by the person for whom the service is provided to the person who provides the service for the duration of the relationship.

In such cases, the Tribunal shall award the equivalent of what would have been one week's wages had the relationship become one of employment,

(a) for each year, or part of, of the duration of the self-employed relationship, in the case of a relationship which has been terminated; and

(b) in the case of a relationship which has not been terminated, in addition to paragraph (a) hereof, the Tribunal shall order the employer to continue paying this penalty annually in respect of each year, or part thereof, until said relationship is terminated.

11. (1) It shall be the duty of the person to whom services are provided, or the employer, as the case may be, to provide a written statement to the person rendering the services or to his employee, as the case may be, who requests such statement in writing and who considers that the person to whom services are rendered or his employer, as the case may be, may have treated him in a manner which infringes a right conferred on him by this Order.

Right to receive a written statement.

(2) Such statement shall state the reasons for any difference in treatment and shall be provided within twenty-one days from the date of the request.

(3) A written statement made in terms of this paragraph shall be admissible as evidence in any proceedings under this Order.

12. (1) An employee may present a complaint to the Industrial Tribunal that his employer or the person for whom he has rendered services has infringed a right conferred on him by this Order within a period of four months from the date when the employee became aware of the infringement of his rights and the Tribunal may make such order and / or award compensation as it deems necessary in order to remedy any breach.

Complaints to the Industrial Tribunal.

(2) The right of referral of a case to the Industrial Tribunal for compensation shall also apply in respect of a person referred to in article 10 on the basis and conditions set therein.

13. Any person contravening the provisions of this Order shall be guilty of an offence and shall be liable on conviction to a fine of not less than one thousand euros (1000) in respect of each employee affected.

Offences.

