

SUBSIDIARY LEGISLATION 343.24**EMPLOYMENT AGENCIES REGULATIONS**

1st January, 1996

LEGAL NOTICE 127 of 1995, as amended by Legal Notices 96 of 1997, 424 of 2007, 540 of 2010 and 426 of 2012; and Act XXVII of 2016.

1. The title of these regulations is the Employment Agencies Regulations. Citation.

2. In these regulations unless the context otherwise requires:

"Act" means the Employment and Training Services Act;

"advertisement" includes any advert in any publication or broadcast on any radio or television station or cable network;

"applicant for employment" includes any person who seeks to avail himself of opportunities for employment offered by an employment agency or employment business;

"Authority" means the National Employment Authority set up in terms of article 3 of the Act;

"competent person" means a fit and proper person approved by the Director to manage an employment agency or employment business and who is in possession of the qualifications and the experience laid down in regulation 7;

"conditions of employment" means wages, the period of employment, the hours of work and leave;

"Director" means the Director of Industrial and Employment Relations and includes any officer of the Department of Industrial and Employment Relations who is authorised by the Director to act on his behalf;

"editor" shall have the same meaning as is assigned to it by the Press Act;

"employer" includes a partnership, company, association or other body of persons, whether vested with legal personality or not;

"employment" includes also self-employment;

"employment agency" or "employment business" means any activity carried out in Malta for the recruitment of persons for employment in Malta or outside Malta;

"employment services" include the keeping of any register of applicants for employment or the referral of applicants for employment, the placing in employment of applicants for employment; the placing of adverts for the filling of employment vacancies, the interviewing and selection of applicants for employment and the offering of employment contracts for or on behalf of any employer to applicants for employment;

"licensee" means the holder of a licence to conduct an employment agency or an employment business;

Interpretation.
Amended by:
L.N. 540 of 2010.
Cap. 343.

Cap. 248.

"person" includes a body of persons and a body corporate established by law;

"user" includes any employer or any person other than an applicant for employment who makes use of any services provided by an employment agency or employment business.

Conditions for
conducting
employment
agencies or
business.
Amended by:
L.N. 540 of 2010.

3. (1) In terms of article 23 of the Act, no person shall carry on an employment agency or an employment business unless:

- (a) he is the holder of a valid licence granted by the Director authorizing him to carry on such an agency or business in premises specified in the licence; or
- (b) he is lawfully established to conduct business as an employment agency in a Member State, and has informed the Director that he is providing services of an employment agency in Malta within five working days from the date of the commencement of such activity:

Cap. 500.

Provided that for the purposes of these regulations, "lawfully established" shall be read and construed in terms of the Services (Internal Market) Act:

Cap. 500.

Provided further that the Director may impose any necessary requirements on persons referred to in paragraph (b) in terms of the Services (Internal Market) Act and it shall be an obligation on persons referred to in paragraph (b) to comply.

(2) No person shall be qualified to be granted a licence to conduct any employment agency or employment business in terms of sub-regulation (1)(a) unless he is twenty-five years of age or over and has displayed a notice of his intention to run the employment agency and has advertised notice of the application in accordance with sub-regulation (2A).

(2A) The procedure which is to be followed in terms of sub-regulation (2) shall be as follows:

- (a) an applicant for a licence in terms of sub-regulation (1)(a) shall, not less than twenty-one days before making his application -
 - (i) display notice of the application in a place where it can conveniently be read by the public on or near the premises at which the employment agency or employment business is or is to be carried out and take such steps as he reasonably can to keep that notice so displayed for a period of twenty-one days; and
 - (ii) advertise notice of the application in two daily newspapers; and
- (b) a notice under this regulation shall state the name and address of the applicant and, where the applicant is a company or other body of persons, the company's number and registered office and the address of the premises at which the employment agency or employment business is or is to be carried out, which

premises must be suitable in terms of regulation 7A.

- (3) The provisions of sub-regulation (1) shall not apply:
- (a) in respect of any employer who carries out any employment service related to any employment in his own undertaking or in any undertaking in which he participates in the day to day management as an active partner or for any company in which his company has an interest as majority shareholder, provided that if any advertisement is placed for the filling of any vacancy, the identity of the employer is clearly specified in the advertisement; and
 - (b) in respect of any employment service provided by an employment agency on behalf of any employer whose identity is clearly specified in an advertisement inviting applicants for employment.

4. (1) Applications for licences to carry on an employment agency or employment business shall be submitted to the Director on the form prescribed in the First Schedule. Each application shall include the following particulars:

Application for licence.
Amended by:
L.N. 424 of 2007;
L.N. 540 of 2010;
L.N. 426 of 2012.

- (a) name, address, a legally valid identification document number, Value Added Tax registration number and Income Tax registration number of the applicant;
- (b) address of the place where the activity is proposed to be carried out;
- (c) detailed information about the activities to be carried out. Such information shall include:
 - (i) a description of the services proposed to be provided;
 - (ii) the procedures proposed to be followed by applicants for employment and by users;
 - (iii) the method of financing of the employment agency or of the employment business or employment services, if any, proposed to be offered;
 - (iv) a declaration by the applicant to the effect that a notice of intention had been displayed by him and that advertisements have been published in at least two newspapers as required by the provisions of regulation 3(2A). A copy of the notice and of the newspapers showing the advertisements shall accompany the application;
 - (v) the name, address and a legally valid identification document number and the *curriculum vitae* showing the date of birth, educational and professional qualifications and professional experience of the person who is to manage the employment agency or employment business.

(2) Applications shall be accompanied by a birth certificate, and a recent Police conduct certificate of the applicant and of the

person, if different from the applicant, who is to manage the employment agency or employment business.

(3) A licence fee of three hundred and forty-nine euros and forty-one cents (349.41) shall be paid to the Director together with the application. Such fee shall not be refunded to the applicant if the application is refused.

(4) Every notification forwarded to the Director in terms of regulation 3(1)(b) shall include:

- (a) the name of the employment agency and its registered address which have to be in a Member State;
- (b) the name, the address and the number of a personal identification document of a contact person authorized by the employment agency or business to carry out the functions of the employment agency or business in Malta and proof that the person is legally established in another Member State; and
- (c) the address of the place in Malta where the activity is proposed to be carried out.

Notice of intention.
Substituted by:
L.N. 540 of 2010.

5. No application for a licence under these regulations shall be entertained by the Director unless it is accompanied by a certificate, signed by or on behalf of the applicant, stating that the applicant has complied with the provisions of regulation 3(2A) and a copy of the newspapers containing notice of the application in accordance with the same regulation.

Conditions of
licence.
Amended by:
L.N. 424 of 2007;
L.N. 540 of 2010;
L.N. 426 of 2012.

6. (1) A licence to carry on an employment agency or an employment business in terms of regulation 3(1)(a) shall be issued by the Director for a period of one year (or for such longer period, not exceeding five years, as the Director may specify in any particular case) beginning with the date specified therein for its commencement. Such licence shall be renewed for further periods each of one year subject to the continuous fulfilment of the requirements laid down in the Act and in these regulations:

Provided that when a request for renewal has been received prior to the expiry of a licence in force, the licence shall remain in force until a decision is taken by the Director with regard to the request for renewal of the licence.

(2) Licences shall be issued by the Director on the form prescribed in the Second Schedule subject to the conditions laid down in the Act or in any regulations made thereunder as may from time to time be in force and subject to such conditions as the Director may lay down in the licence to ensure the proper management of the employment agency or employment business or for the protection of the users, and in particular of applicants for employment. Such conditions may be varied by the Director:

Provided that licences shall be issued by the Director within the period of twenty working days from the receipt of the application and the necessary documents in terms of these regulations provided that all the requirements laid down by the Act and by these regulations have been complied with. A lack of

response within the aforementioned period of twenty working days shall not be deemed to imply a tacit approval of the applicant's application.

(3) The holder of a licence granted by virtue of these regulations or the person mentioned in regulation 3(1)(b) shall keep displayed on the premises to which the licence relates or at which the business of an employment agency is carried out, as the case may be, in such a position that it can be readily seen by persons resorting to those premises -

- (a) the licence granted by virtue of these regulations, if applicable; and
- (b) a copy of these regulations which shall be available for inspection by any interested person:

Provided that failure to comply with the provisions of this sub-regulation constitutes an offence against these regulations.

(4) It shall be a condition of any licence that a competent person is available at all times to manage the employment agency or employment business, provided that the licensee may nominate one or more competent persons to act as substitutes for the person nominated by him, if such person is not at any time available for any justifiable reason. Failure to comply with the provisions of this sub-regulation constitutes an offence against these regulations.

(4A) The person mentioned in regulation 3(1)(b) shall ensure that a competent person is available at all times to manage the employment agency or employment business, provided that such person may nominate one or more competent persons to act as substitutes for the person nominated by him, if such person is not at any time available for any justifiable reason. Failure to comply with the provisions of this sub-regulation constitutes an offence against these regulations.

(5) Where it is intended to effect any change in the place where the activity of the employment agency or employment business is carried out, or in the class of activity to be carried out, or any substantial change in the procedures or any transfer of business is intended, the licensee or the person mentioned in regulation 3(1)(b) shall notify the Director in writing of the proposed change not later than one month before the proposed change. Failure to notify the director shall constitute an offence against these regulations:

Provided that nothing in this sub-regulation shall be taken as authorising the holder of a licence to carry on any business in accordance with regulation 3(1) a) otherwise than in accordance with the provisions of the said licence:

Provided further that every licence granted in terms of these regulations shall be endorsed with notice of the effect of this regulation.

(6) No transfer of a licence to another person shall be complete before it is approved in writing by the Director. When applying for a transfer of a licence, the licensee shall furnish the Director with the name, address and a legally valid identification document number of the person to whom it is intended to transfer the licence

and all the particulars and documents specified in regulation 4 in respect of the person to whom the licence is to be transferred.

(7) A licence renewal fee of three hundred and forty-nine euros and forty-one cents (349.41) shall be paid to the Director together with each application for renewal of licence. Such fee shall not be refundable if the application for renewal is refused.

Competent person.
Amended by:
L.N. 540 of 2010;
L.N. 426 of 2012.

7. (1) A competent person nominated by a licensee or by the person mentioned in regulation 3(1)(b) or by an applicant for a licence to manage an employment agency or business, or to act as substitute for such person, shall:

- (a) be not less than twenty-five year of age;
- (b) be of good moral character; and
- (c) have:
 - (i) not less than six years' experience in any activity which includes the management of human resources; or
 - (ii) not less than three years' experience in any activity which includes the management of human resources and be in possession of a University degree or diploma in a field which, in the opinion of the Director, is relevant to the management of an employment agency or employment business.

(2) A competent person nominated by the applicant for a licence or by the licensee or by the person mentioned in regulation 3(1)(b) to manage an employment agency or employment business shall be responsible for the proper management of the employment agency.

(3) It shall be the responsibility of the applicant for a licence or of the licensee or of the person mentioned in regulation 3(1)(b), as the case may be, to ensure that the Director is notified in writing of the name, address, a legally valid identification document number, and that he is furnished with the *curriculum vitae*, qualifications and testimonials of experience and with a recent Police conduct certificate of the person nominated by him as a competent person to manage the employment agency or employment business and of any person or persons nominated by him to act as substitute for such person. In cases falling under regulation 3(1)(a), it shall be a condition of every licence that a competent person is employed to manage the employment agency or business; and that, where such competent person is not employed, the Director may revoke the licence.

(4) Nothing in these regulations shall prevent any applicant for a licence or any licensee or any person mentioned in regulation 3(1)(b) from nominating himself as competent person or as a substitute for a competent person to manage the employment agency or business, provided that the applicant for a licence or the licensee or the person mentioned in regulation 3(1)(b), as the case may be, is qualified according to these regulations and is approved by the Director as a competent person.

7A. For the purposes of these regulations, premises shall be deemed to be suitable if the premises concerned have access for persons with disability, have a segregated area designated as a waiting room and also include an office room where interviews could be carried out in private.

Suitability of premises.
Added by:
L.N. 540 of 2010.

8. The Director may refuse an application for a licence or revoke a licence, as the case may be, on any of the following grounds:

Refusal or revocation or varying of licence.
Amended by:
L.N. 540 of 2010.

- (a) that the applicant is under twenty-five years of age or has failed to comply with the provisions of these regulations; or
- (b) that the applicant or the person nominated by him as a competent person to manage the employment agency or employment business does not possess th in possession of a clean police conduct; or
- (c) that the premises where the employment agency or employment business is proposed to be carried out are unsuitable in terms of regulation 7A, or where any of the employment services contemplated in the application for a licence or in the licence is proposed to be carried out, as the case may be, is in breach of any law or regulation; or
- (d) that the applicant has failed to comply with any of the provisions of the Act or of these regulations or of any other regulations in force under the Act or has failed to comply with any conditions laid down in the licence; or
- (e) that the licensee or the competent person nominated by him to manage the employment agency or business or any other person responsible for the running of the employment agency or employment business has charged any fees or demanded any payment from applicants for employment; or
- (f) that the applicant for a licence or the licensee or any competent person nominated by the applicant for the licence or by the licensee has been convicted by any Court of fraud or of any offence under these regulations or has been imprisoned for any other offence; or
- (g) that the licensee has failed to keep the Director informed of any change in the nature of the activities carried out or the procedures adopted or has failed to furnish the Director as required by these regulations with the particulars of the person nominated by him as a competent person to manage the employment agency or employment business or to act as substitute for such person;
- (h) that the employment agency or employment business has been or is being improperly conducted.

Provisions of article 24 of the Act to apply.

9. Where the Director intends to refuse to grant or transfer or intends to revoke or vary a licence, the provisions of article 24 of the Act shall apply.

No payment to be demanded.
Substituted by:
L.N. 540 of 2010.

10. (1) No payments or charges shall be demanded or levied on any applicant for employment in consideration of such employment or in consideration of registration therefor.

(2) No deductions shall be made from the wages of any employee for any services rendered by an employment agency or employment business.

Procedures to be observed.
Amended by:
L.N. 540 of 2010;
L.N. 426 of 2012;
XXVII. 2016.6..

11. An employment agency or employment business shall observe the following procedures:

- (a) When issuing advertisements for the filling of vacancies or when making any form of publicity of the employment agency or business or for any user, the licence number or any other identification number issued by the Director shall be quoted.
- (b) No person seeking employment outside Malta shall be referred for employment outside Malta unless a copy of the contract of employment proposed to be offered to such person has been approved by the Director; provided that the Director may exempt the licensee or the person mentioned in regulation 3(1)(b) from submitting such contract where it appears to him that the interests of the person selected are adequately protected. The licensee or the person mentioned in regulation 3(1)(b) shall be responsible to ensure that the conditions approved by the Director are included in the contract of employment.
- (c) Where a person is employed by an employment agency or employment business and referred to an employer by it to perform service temporarily for that employer, the employment agency or employment business shall not charge such employer rates for the services provided which are less than those payable by such employer to his regular employees for similar work.
- (d) The licensee or the person mentioned in regulation 3(1)(b), as the case may be, or in the absence of the licensee or the person mentioned in regulation 3(1)(b), the competent person shall keep records showing names, address, a legally valid identification document number, qualifications and job experience of applicants for employment and records showing the name, address, Value Added Tax registration number and Income Tax registration number of the users of employment services. Such records shall be retained for periods of at least two years and they shall be subject to inspection at any time by inspectors appointed under the Act. The licensee shall ensure that the particulars including name, address and a legally valid identification document number of persons employed through the employment agency as well as

the name, address, Value Added Tax registration number and Income Tax registration number of the employer with whom such persons have been employed, are submitted to Jobsplus not later than four weeks from the date on which such employment has been effected.

- (e) It shall be the responsibility of an employment agency or employment business to ensure that no applicants for employment are referred to any user unless the user has furnished the employment agency with precise information about the vacancy to be filled, including an adequate job description, the terms and conditions of employment offered and any special requirements of the employer. The employer shall undertake to furnish any applicants for employment engaged by him with a written agreement incorporating the terms and conditions of employment.
- (f) In the employment of seamen, it shall be the responsibility of the employment agency or employment business as well as of the user to ensure that the provisions of the Merchant Shipping Act are complied with.
- (g) Failure to comply with the provisions of paragraphs (a) to (f) shall constitute an offence against these regulations.

Cap. 234.

- 12.** (1) It shall not be lawful for any employment agency -
- (a) to seek to provide employment in Malta for an expatriate, unless such employment is authorised in accordance with the provisions of the Immigration Act; and
 - (b) to seek to hire the services of an expatriate to any employer in Malta, unless the hire of such services is authorised under the provisions of the Immigration Act.

Employment of
expatriates.
Added by:
L.N. 96 of 1997.
Cap. 217.

(2) For the purposes of this regulation "expatriate" means a person requiring a licence from the Prime Minister to exercise any profession or occupation or hold any appointment or be employed by any other person or engage in business in Malta, in terms of article 11 of the Immigration Act.

13. (1) It shall be the responsibility of any employment agency or employment business to forward a reply in writing within one month to every applicant for employment who had forwarded an application in writing in response to any advertisement. Such reply shall include an acknowledgement of the application and it shall indicate the name of the employer or of the employment agency or employment business, as the case may be.

Advertisements.

(2) It shall not be lawful for any employment agency or employment business which places an anonymous advertisement to request applicants for employment to forward, in response thereof, any photograph of the applicant for employment or any document

which includes any photograph of the applicant for employment.

(3) When an advert is placed by any employment agency or employment business without any specific vacancy in view, the employer or the employment agency or employment business, as the case may be, shall specify such fact in the advertisement.

(4) Failure to comply with any of the provisions of the preceding sub-regulations constitutes an offence against these regulations.

(5) It shall be the responsibility of the editor when publishing or broadcasting, as the case may be, any advertisement, to ensure that the provisions of regulation 11(a) and the provisions of regulation 13(2) have been complied with. Any editor who publishes or broadcasts any advertisement contrary to these provisions shall be guilty of an offence against these regulations.

Confidential information.

14. Any information furnished to any employment agency or employment business by any applicant for employment or by any user shall be carefully guarded as confidential, and it shall not be divulged for any purpose other than that for which it had been furnished, except with the consent in writing of the person furnishing the information, or without such consent for purposes of complying with the provisions of regulation 10(d) or in compliance with any order by a competent Court, or any request by the Authority in pursuance of any investigation into any complaint referred to it. Any breach of this regulation shall constitute an offence against these regulations.

Director's rights.
Amended by:
L.N. 540 of 2010.

15. The Director shall have at any time the right to examine the books, including any records of any licensed employment agency or employment business or of any other employment agency or employment business carrying out its activities in Malta in terms of the Act and these regulations, or to demand any information which in his opinion is reasonably required for ensuring that the conditions of any licence issued by him or the provisions of these regulations are being complied with, or for protecting the interests of applicants for employment or applicants for training services. Failure to comply with any demand made by the Director in pursuance of this regulation shall constitute an offence against these regulations.

Article 110 of the Constitution.
Amended by:
L.N. 540 of 2010.

16. No person may perform the services referred to in article 110(6) of the Constitution.

Issue of directives by the Authority.

17. The Authority may from time to time give to the Director directives of a general nature on the manner of the exercise of his functions under these regulations and the Director shall give due consideration to such directives.

Penalties.
Amended by:
L.N. 424 of 2007.

18. Any person who contravenes any provision of these regulations shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not less than one hundred and sixteen euros and forty-seven cents (116.47) and not more than two thousand and three hundred and twenty-nine euros and thirty-seven cents (2,329.37), provided that when a person is convicted of having received any payment from any applicant for employment

or of having made any deductions from the wages due to an employee in consideration of any services provided by an employment agency or employment business, the Court shall in determining the penalty, take into consideration any refund made by such person to the applicant for employment of any payment received or deduction made.

Amended by:
L.N. 540 of 2010;
L.N. 426 of 2012.

FIRST SCHEDULE
(Regulation 4)

EMPLOYMENT AND TRAINING SERVICES ACT (CAP. 343)

Application for a licence for carrying on an employment agency or employment business

(Regulation 4 of the Employment Agencies Regulations)

1. Name of applicant
Legally valid identification document number
2. Address
.....
Telephone number
3. If the applicant is a company or body corporate or a body of persons, a list signed by the applicant showing the name, a legally valid identification document number and address of each Director or of each officer acting in a like capacity shall be annexed.
4. Value Added Tax registration number of applicant
5. Income Tax registration number of applicant
6. The address of the premises at which the business is to be carried out:
.....
.....
7. Activities proposed to be carried out:
.....
.....
8. Particulars of the competent person nominated by the applicant:
Name:
Legally valid identification document number
Address
Date of birth
Qualifications and experience:
.....
.....
.....

A birth certificate, recent Police conduct certificate and *curriculum vitae* of the competent person shall be attached. Original certificates and testimonials or certified true copies thereof shall be produced.

(An applicant may nominate more than one competent person to act as substitute. In such case, the above particulars regarding each of the competent persons so nominated shall be forwarded).

9. Method of financing of the services proposed to be provided:

.....
.....

10. Describe the procedures proposed to be followed by:

(i) applicants for employment:

.....
.....

(ii) users:

.....
.....

11. The following declaration is to be filled in and signed by applicant:

I declare that the particulars given above are to the best of my knowledge correct. I also declare that:

(i) a notice of intention has been displayed during the period to as required in terms of regulation 3(2A) at a place near the premises where the business is proposed to be carried out, and

(ii) advertisements have been published in the following newspapers as shown below:

Name of newspaper	Date of publication
.....
.....

A copy of the notice of intention and of the newspapers showing the advertisements are hereto attached.

Signature of applicant Date

Amended by:
L.N. 426 of 2012.

SECOND SCHEDULE
(Regulation 6)

EMPLOYNIENT AND TRAINING SERVICES ACT (CAP. 343)
Licence to operate an Employment Agency or Employment Business
(Regulation 6 of the Employment Agencies Regulations)

Date:

A licence is hereby being granted in terms of regulation 6 of the
Employment Agencies Regulations to:

Name of licensee:

Legally valid identification document number

Address:

.....

Value Added Tax registration number

Income Tax registration number

for carrying out the employment agency or employment business described below:

.....

.....

from premises situated at:

Address of premises:

.....

This licence is being issued subject to the provisions of Part V of the
Employment and Training Services Act, and the Employment Agencies Regulations,
and to the following special conditions:

.....

.....

.....

The licensee shall be required to display a copy of this licence and of the
Employment Agencies Regulations in a place on the premises where they can be
easily seen and read by the persons who resort to the premises.

This licence shall be valid for a period of one year from the

DIRECTOR
