

EMPLOYMENT LAW: ENGAGED IN DOMESTIC DUTIES?

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This article will shed light on what should be considered as the general understanding of an employment to perform domestic duties in terms of Maltese Employment Law.² The author shall delve into the salient provisions of the law and its applicability within the industry.³

It is apparent within the Employment and Industrial Relations Act (the EIRA)⁴ that there exists no legal definition of what is to be understood or what qualifies as domestic duties. Nevertheless, an explanatory note of what should be considered as employees employed in domestic duties is found annexed to the Domestic Service Wages Council Wage Regulations Order (the Order).⁵

To this effect the explanatory note annexed to the aforementioned Order clarifies that Subsidiary Legislation 452.40 applies to employees employed in private households.⁶ The latter explanatory note expounds and defines also the meaning of what is to be understood as private household. Amongst others, private households

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² Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta.

³ The author will delve into the understanding and applicability of overtime from a general perspective. The Maltese Employment Law is extremely complex, and was drawn from several Wages Council Orders and Regulations which can apply to different strata and trade accordingly.

⁴ Employment and Industrial Relations Act (n 2).

⁵ Domestic Service Wages Council Wage Regulations Order SL 452.40.

⁶ *ibid* Explanatory Note – 'The [omissis] Order applies to employees employed in private households, engaged in domestic duties, such as servants, maids, housekeepers, cooks, butlers, valets, handymen, cleaners, charwomen, washerwomen, baby-sitters, nursemaids, and other persons employed in related work, including chauffeurs, gardeners and similar occupations connected with the household.'

shall also include charitable institutions which provide residential care to persons in need as their main activity.⁷

Subsidiary Legislation 452.40 divides the workers in domestic service into six (6) groups. The first group shall include those workers who are engaged by the month and who reside with the employer, that is sleeping at their employer`s house, for not less than seventeen (17) nights within such month. Therefore an employee who is engaged as a carer/nanny with a family, and sleeps in-house with that family for seventeen (17) nights or more within the same calendar month, would fall within this group. The second group includes those workers who, like the first group, sleep at their employer`s house, however do not exceed the seventeen (17) nights requirement applicable to the first group. Moreover, the second group also encompasses those workers who do not sleep at their employer`s house, however are still engaged by the month.

The third group of workers in domestic service which is subject to Subsidiary Legislation 452.40, under Article 2 consists of those employees who are engaged by the week and within the same week sleep at their employer`s house for not less than four (4) nights in any such week The fourth group covers those workers who are also engaged by the week however, sleep at their employer`s house for less than four (4) nights or none at all. These two last groups cover those workers who whilst carrying out the same duties as the former first two groups, are merely engaged on a weekly basis. The last two groups include those workers who are either engaged by the day or, in case of group six (6), are merely engaged by the hour. ⁸

The Order also provides for the amount of working hours which apply according to the qualifying abovementioned defined groups, provided that the worker does not sleep at their employer`s house. In case of workers who reside or sleep at their employer`s house reference is to be made to the Organisation of Working Time Regulations.⁹

⁷ *ibid* Explanatory Note – '[omissis] "private households" includes charitable institutions which provide residential care to persons in need as their main activity, monasteries and convents but does not include any hospital, clinic, nursing home, institute of medico-surgical treatment, maternity home or hydropathic establishment, home for aged persons or schools run by any such households.'

⁸ *ibid* article 2 - 'For the purposes of this Wage Regulation Order, there shall be six groups of workers in domestic service, as follows: GROUP 1 shall consist of those workers engaged by the month who sleep in their employer`s house on not less than seventeen nights in any month; GROUP 2 shall consist of those workers engaged by the month who sleep in their employer`s house on less than seventeen nights a month or not at all; GROUP 3 shall consist of these workers engaged by the week who sleep in their employer`s house on not less than four nights in any week; GROUP 4 shall consist of those workers engaged by the week who sleep in their employer`s house on less than four nights a week or not at all; GROUP 5 shall consist of those workers who are engaged by the day; GROUP 6 shall consist of those workers who are engaged by the hour.'

⁹ Organisation of Working Time Regulations SL 452.87.

The former would apply to groups one to five, as defined in article 2 of the Order, who shall work not more than eight hours in any day and not more than forty hours in any week, these hours not including breaks for meals and rest.

In case of those workers who sleep in their employer`s house the Order also applies in so far as the maximum working hours are concerned, nevertheless, when it comes to their mandatory daily rest article 4 of Subsidiary Legislation 452.87¹⁰ applies and therefore ‘every worker shall be entitled to a minimum daily rest period of eleven consecutive hours per 24-hour period during which the worker performs work for his employer’. This means that the latter group of workers shall also work a maximum of forty (40) hours in a week equivalent to eight (8) hours per day. It is imperative to understand that if the worker is residing/sleeping at their employer`s house this does not automatically imply that [s]he is on duty for twenty-four (24) hours on a daily basis, in fact [s]he would be entitled to a mandatory eleven (11) consecutive hours as day rest.¹¹ This is additional to the minimum daily rest as specified under the Order.

The Order under article 7 explains that workers who sleep at their employer`s house, falling within groups one to four, shall be granted a mandatory minimum daily rest of three (3) consecutive hours in every day. ¹² The latter daily rest is over and above the mandatory eleven (11) consecutive hours rest referred to under article 4 of Subsidiary Legislation 452.87. The Order leaves the scheduling of the minimum daily rest to be agreed between the employer and the employee, thus taking in to consideration the exigencies of the nature of domestic duties in a private household.

In those cases where the worker does not sleep at their employer`s house, nevertheless still falling within groups one to four and five, such worker is granted a mandatory forty-five (45) cumulative minutes break for meals and rest. ¹³

The Order also deals with what is considered as mandatory weekly rest and it sets out that workers in groups one to four shall be entitled to a twenty-four (24) hour rest in every seven (7) days` work.¹⁴ This provision is to be read in conjunction with article 6 of Subsidiary Legislation 452.87 which clarifies that the twenty-four

¹⁰ *ibid.*

¹¹ *ibid* article 4 ‘Every worker shall be entitled to a minimum daily rest Daily period of eleven consecutive hours per 24-hour period during which the worker performs work for his employer.’

¹² SL 452.40 (n 5) article 7 (a) ‘Workers in Groups 1 and 3 on those days when they sleep in their employer`s house, and workers in Groups 2 and 4 on those days when they sleep in their employer`s house, shall be entitled to a minimum daily rest of three hours in the aggregate in every day, the time or times of rest to be fixed by the employer after consultation with the employee.’

¹³ *ibid* article 7 (b) ‘Workers in Groups 1 and 3 on those days when they do not sleep in their employer`s house and workers in Groups 2 and 4 on those days when they do not sleep in their employer`s house, and workers in Group 5, shall be allowed, in any one day intervals of not less, in the aggregate, than forty-five minutes for meals and rest.’

¹⁴ *ibid* article 8 ‘Workers in Groups 1, 2, 3 and 4 shall be entitled to a day`s rest in every week, such day of rest being fixed by the employer after consultation with the employee.’

(24) hours weekly rest period is in addition to the mandatory eleven (11) hours daily rest period mentioned in article 4 of the same subsidiary legislation. ¹⁵

In case of group six that includes those workers who are merely engaged by the hour, the Order fails to quantify the time they shall be allowed as rest breaks, nevertheless it explains that they shall be entitled to refreshments and meals according to the hours they have worked.¹⁶ However, workers within group six would fall within the parameters of article 5 of Subsidiary Legislation 452.87.¹⁷ If the latter worker has worked for six (6) hours or longer in any given day, [s]he is entitled to an uninterrupted fifteen (15) minute break. ¹⁸

Workers falling within groups one to four, on the days where they do not sleep at their employer`s house, and workers within group five, are entitled to be remunerated for any additional hours worked over and above the eight (8) hours in a normal day. The remuneration to be paid when such extra hours are worked is at one and a half time of their ordinary remuneration per hour. ¹⁹

Therefore, this means that any hours worked over and above the forty (40) hours weekly shall accrue and be paid according to the applicable overtime rate. Overtime is also regulated by article 7 of Subsidiary Legislation 452.87 which limits the average working time for each seven-day period and specifies that it shall not exceed forty-eight (48) hours, ²⁰ unless the worker agrees with his employer in writing to waive such restriction imposed by the Organisation of Working Time Regulations.²¹ Therefore, Subsidiary Legislation 452.87 indirectly limits the hours of overtime which can be added to the forty hours per week to eight hours, unless the worker agrees with his employer to override such constraint.

The Order also sets out that a worker providing domestic duties in a private household is entitled to vacation leave. This includes entitlement for all whole time²²

¹⁵ SL 452.87 (n 9) article 6(1) '[omissis] every worker shall be entitled to a minimum uninterrupted weekly rest period of twenty-four hours, in addition to the daily rest period of eleven hours referred to in regulation 4, for each seven-day period during which the worker works for the employer.'

¹⁶ SL 452.40 (n 5) article 6(c) 'Workers in Group 6 shall be entitled to coffee or tea after working for not less than two hours and shall be further entitled to lunch or supper, as the case may be, after working in the aggregate for not less than five hours.'

¹⁷ SL 452.87 (n 9) article 5(1) 'Every worker shall be entitled to a rest break where the working day is longer than six hours.'

¹⁸ *ibid* article 5(3) '[omissis] shall be for an uninterrupted period of not less than fifteen minutes, and the worker shall be entitled to spend it away from his workstation, if he has one.'

¹⁹ SL 452.40 (n 5) article 5(1) 'Workers in Groups 1, 2, 3, and 4 on those days when they do not sleep in their employer's house and workers in Group 5 shall be entitled for payment at time-and-a-half for all time worked over eight hours in normal days and for all time worked over [omissis] forty hours.'

²⁰ SL 452.87 (n 9) article 7 'Saving as otherwise provided in these regulations, the average working time for each seven-day period of a worker, including overtime, shall not exceed forty-eight hours.'

²¹ *ibid* article 20(1) 'The provisions of regulation 7 shall not apply in relation to a worker who has agreed with his employer in writing that it should not apply [omissis].'

²² SL 452.40 (n 5) article 1 'whole-time employee" means an employee who is deemed to be a whole-time employee in terms of any recognized conditions of employment.'

employees to all the public and national holidays with full pay.²³ The whole time worker is also entitled to a number of days as vacation leave over and above the public and national holidays which do not fall on their day of rest if the latter is during the week. Sick,²⁴ injury,²⁵ bereavement,²⁶ marriage,²⁷ and birth leave,²⁸ are also covered by the Order which provides specific entitlements according to the type of leave in question. Article 16 of the Order concludes that the retiring age of a male worker providing domestic duties in a private household is expected at the age of sixty (60) nevertheless the worker may ask the employer to extend his employment by an additional year. This however does not reflect the current national retirement age for those born on or after 1st January 1962, which is that of sixty five (65) years of age.

In summary, it can be said that a worker providing domestic duties who sleeps at their employer`s house is not bound to work odd hours without being fairly remunerated. The above explains that the law protects every worker within such category, notwithstanding the fact that [s]he resides and lives at the place of work, by limiting and setting the working hours to a maximum of forty (40) hours per week which can be extended with mutual agreement if overtime is so required to go beyond the allowable eight (8) hours per day.

Therefore a worker providing domestic duties in a private household working eight (8) hours per day for a maximum of forty (40) hours per week is entitled to: (i) a mandatory minimum daily rest of three (3) consecutive hours in every day; (ii) all meals, if a worker resides and sleeps at his/her employer`s house;²⁹ (iii) overtime rate of one and a half time of their ordinary remuneration per hour; (vi) a mandatory

²³ *ibid* article 9(1) [omissis] whole-time employees shall be entitled to the national holidays and to all public holidays with full pay.'

²⁴ *ibid* article 10(1) 'After the completion of six months continuous service, every whole-time employee in Groups 1, 2, 3 and 4 shall in every calendar year be entitled to the equivalent in hours of fourteen days sick leave on full pay, less an amount equal to the sum set for sickness benefit entitlement at the rate established under the Social Security Act, and part-time employees shall have a pro rata entitlement to sick leave in hours on full pay, less an amount equal to the sum set for sickness benefit entitlement at the rate established under the Social Security Act, which amount is also to be calculated on a pro rata [omissis].'

²⁵ *ibid* article 11 'A whole-time employee shall be entitled to a maximum of one year injury leave on full pay, less the full amount of any injury benefit to which such employee may be entitled in terms of the Social Security Act, if he is injured during the actual discharge of his duty and such injury is not due to any contributory negligence on his part or to the contravention by him of any safety rules laid down by the management.'

²⁶ *ibid* article 12 'Employees in Groups 1, 2, 3 and 4 shall be entitled to two days paid leave on the occasion of the death of any of the following relations: the wife or husband, the mother or father, the daughter or son, and the sister or brother.'

²⁷ *ibid* article 13 'Employees falling under Groups 1, 2, 3 or 4 shall be entitled to three working days leave on full pay on the occasion of their marriage.'

²⁸ *ibid* article 14 'A male worker in Groups 1, 2, 3 and 4 shall be entitled to two days leave with pay on the occasion of the birth of a child to his lawful wife.'

²⁹ *ibid* article 6(a) 'Workers in Groups 1 and 3 on those days when they sleep in their employer`s house, and workers in Groups 2 and 4 on those days when they sleep in their employer`s house shall be entitled to all meals, and on those days when they do not sleep in their employer`s house they shall be entitled to all means except supper.'

eleven (11) consecutive hours daily rest; (v) twenty-four (24) hours rest in every seven (7) days of work, and (vi) all other mandatory leave applicable to all other workers in employment in other different strata of employment.