

Malta: Flexible forms of work: 'very atypical' contractual

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Official statistics show that in the year 2007, there were about 7,588 persons engaged in some sort of non-standard form of employment. Overall, there was a small increase between 2004 and 2007 in the number of such workers. The large majority of workers in Malta appear to prefer job security over flexibility. While there is little debate about non-standard form of employment in Malta, the interest in flexicurity among social partners has recently increased.

1. Definition and trends

1.1 Please describe the incidence of the following forms of employment that go beyond non-standard employment in your country, including any upward or downward trends over the past five years, plus, if relevant and appropriate, a brief explanation of the labour market context:

- Very short part-time contracts (less than 10 hours per week)
- Short fixed-term contracts, of either less than six months, less than three months or less than one month
- employment without formal written contracts, (based on oral contracts)
- “zero hours” contracts/on-call work, where workers can be called upon at short notice to go into work. Do these contracts guarantee a minimum number of working hours a week? Do these contracts offer a fixed hours pattern or can the employer vary working hours?
- any other forms of employment that are considered to be non-standard in your country (excluding regular part-time, temporary agency work and economically dependant work).

The following data is taken from the Labour Force Survey conducted in 2004 and 2007 by the National Statistics Office (NSO).

In 2004 there were 5,837 persons working on very short part-time contracts (10 hours or less), while in 2007 the figures remained stable since there were a total of 5,805. However, when considering gender, data indicates that the number of males working very short part-time contracts decreased by 10% (from 4,166 to 3,749), while there was an increase of 22% in females (1,671 to 2,037).

In 2004 there were 1,050 persons, of whom 546 were males, engaged on fixed-term contracts of less than 3 months. The figure decreased to 666 in 2007, of whom 223 were males.

In 2004 there were 571 persons, of whom 397 were males, employed on 4-6 month long fixed-term contracts. In 2007, the number increased to 1,171 persons, of whom 523 were males. Overall, there was an increase of 105% in those employed on 4-6 month long fixed-term contracts.

The number of persons working on variable hour contracts did not change between 2004 and 2007 (203 and 201 persons respectively). However, the number of males increased by 166% (from 87 to 144).

Data related to “zero hours” contracts / on-call work is only available for the year 2004, in which there were a total of 555 persons, of whom 333 were males.

On the other hand, data about employment based on oral contracts is not available.

1.2 What is the legal framework surrounding these types of employment– has it changed over the past five years, possibly in reaction to trends? Please note that this CAR does not include undeclared work.

The main framework regulating employment in Malta is the Employment and Industrial Relations Act (EIRA) 2002. The act is supported by a number of legal notices. Below are enlisted the relevant provisions applicable to non-standard forms of employment.

Contract of Employment

The law defines a contract of employment as an agreement whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for wages, and, in so far as conditions of employment are concerned, includes an agreement of apprenticeship.

Probationary Period

The EIRA provides that the first six months of any type of employment are deemed as probationary period unless agreed for a shorter period between parties.

Work for Equal Value

All employees are covered by the provision of Article 27 of the EIRA where employees in the same class of employment are entitled to the same rate of remuneration for work of equal value.

Information to Employees

The Information to Employees Regulations (2002) is applicable for those employees

who are engaged by an employer for a total duration which exceeds one month and working for eight hours or more per week. However it does not apply to employees who have been employed to perform a specific defined task, on condition that the non-application is justified by objective considerations. The Legal Notice among others stipulates that the employer must provide a letter of engagement, or a signed statement, within eight working days from the commencement of employment and which shall include all the basic information.

Fixed-Term Contracts

In Malta it is possible to employ persons on short-term contracts according to the Contracts of Service for a Fixed Term Regulations (2002). All employees are considered to be on an indefinite contract of service if their fixed-term contract of service has expired and they are retained by their employer whilst not being provided with a new contract within the first twelve working days following the said expiry, or if retained in employment following four years of successive contracts.

Part-Time Employment

The Part-Time Employees Regulations (2002) stipulate, amongst others, that all part-time employees including those working very short hours are to be offered full-time posts if vacancies arise. Moreover the Part-Time Employees (Amendment) Regulations (2007) grant the principle of pro-rata benefits to all employees whose part-time occupation is their principal one. This right has been recently fortified by the Part-Time Employees (Amendment) Regulations (2008).

1.3 Is there any data on the transitions between:

- non-standard forms of employment and standard forms of employment, and
- non-standard forms of employment and unemployment/inactivity?

In other words, can non-standard forms of employment be seen as a stepping stone to more standard forms of employment, or perhaps conversely can non-standard employment contracts lead to inactivity?

No statistical data exists about such transitions. However, according to an employment advisor working at the Employment and Training Corporation (ETC), persons in non-standard forms of employment tend not to move into standard forms of employment. In fact, it appears that these are more likely to remain in similar non-standard forms of employment or to become unemployed or inactive. Females often appear to prefer non-standard forms of employment in order to be able to balance their work and family responsibilities. On the other hand, the employment advisor said that men who are in non-standard forms of employment often remain in similar types of employment due to their particular lifestyle choices valuing, among others, considerable free time and high pay in relation to the amount of work done.

1.4 How prominent is the academic/policy debate on non-standard employment in your country? Please briefly summarise the content of the debate.

In general, there is little academic/policy debate about non-standard forms of employment in Malta. However a policy debate on flexicurity is currently on the Malta Council for Social and Economic Development (MCSED) agenda, which is further dealt with in Section 5.2.

2. The nature of the work carried out by those in non-standard employment

2.1. The nature of the work

- the sector
- the type of enterprise (size etc.)
- the type of activity (eg low-skilled jobs such as cleaning, or high-skilled jobs such as IT consultant roles or jobs in creative arts)

Table 1 below shows that the majority of persons involved in non-standard form of employment belong to the private sector. Table 2 indicates that this type of employment is more common in activities employing less than 10 persons and in those exceeding 50 employees. Table 3 shows that service workers and shop and sales workers are the occupational category mostly performing non-standard form of employment. Professionals and technicians and associate professionals follow.

Table 1. Total persons engaged in non standard form of employment by economic sector

Economic Sector	Male		Female		Total	
	Count	%	Count	%	Count	%
Private	3,462	77.4	2,519	80.9	5,981	78.8
Public Majority	181*	4.0	105*	3.4	286*	3.8
Independent Statutory Bodies	208*	4.6	113*	3.6	321*	4.2
Government Ministries and Dept	623	13.9	377*	12.1	1,000	13.2
Total	4,474	100	3,114	100	7,588	100

Source: Labour Force Survey 2007 (NSO)

*=underrepresented due to small sample size

Table 2. Total persons engaged in non standard form of employment by size of enterprise

Size of employment	Male		Female		Total	
	Count	%	Count	%	Count	%

Less than 10 employees	1,833	41.0	865	27.8	2,698	35.6
Between 11 to 19 persons	316*	7.1	428*	13.7	744	9.8
Between 20 to 49 persons	397*	8.9	411*	13.2	808	10.6
More than 50 persons	1,928	43.1	1,410	45.3	3,338	44.0
Total	4,474	100	3,114	100	7,588	100

Source: Labour Force Survey 2007 (NSO)

*=underrepresented due to small sample size

Table 3. Total persons engaged in non standard form of employment by occupation

Occupation	Male		Female		Total	
	Count	%	Count	%	Count	%
Armed Forces	105*	2.3	0*	0.0	105*	1.4
Legislators, senior officials and managers	481*	10.8	70*	2.2	551	7.3
Professionals	567	12.7	618	19.8	1,185	15.6
Technicians and associate professionals	667	14.9	434*	13.9	1,101	14.5
Clerks	290*	6.5	527	16.9	817	10.8
Service workers and shop and sales workers	586	13.1	871	28.0	1,457	19.2
Skilled agricultural and fishery workers	145*	3.2	0*	0.0	145*	1.9
Craft and related trades workers	453*	10.1	0*	0.0	453*	6.0
Plant and machine operators and assemblers	489*	10.9	324*	10.4	813	10.7
Elementary occupations	691	15.4	270*	8.7	961	12.7
Total	4,474	100	3,114	100	7,588	100

Source: Labour Force Survey 2007 (NSO)

*=underrepresented due to small sample size

2.2. Work organisation

- working hours (*eg. unsocial working times, rather than working hours*)
- shift patterns.

Persons engaged in non-standard forms of employment by type of working hours

The following data refers to the year 2007 based on a total of 7,588 persons employed in non-standard form of employment and is derived from the Labour Force Survey conducted by the NSO.

28.4% (2,158 persons) declared that they usually work on weekdays between 20.00 hrs and 23.00 hrs while a further 15.3% (1,183 persons) responded that they sometimes work on such schedule.

On the other hand, a smaller proportion of 20.2% (1,529 persons) usually work on weekdays between 23.00 hrs and 5.00 hrs while 10.1% (766 persons) are sometimes employed during these hours.

Nearly half of the persons engaged in non standard forms of employment (45%, or 3,397 persons) usually work on Saturdays, while nearly a third (30% or 2,250 persons) work on Sundays.

The proportion and count of males working in non standard forms of employment is higher than that of females across all the four types of employment examined.

Persons engaged in non-standard form of employment by type of shift patterns

Data from the NSO (for 2004) about persons engaged in non-standard forms of employment by type of shift patterns is unreliable due to the small sample size. However, it appears that only about half of the sample does some type of shift work, while the other half does not work in a shift system.

3. Consequences of non-standard work on working conditions

- pay
- working hours
- exposure to risks and accidents at work
- work-related health problems (including problems related to mental health) and occupational illnesses
- Social consequences such as a lack of job security

- training and career development opportunities
- job quality: is the content of the job interesting and/or does it require the worker to possess a certain level of knowledge and skills?
- Employment rights (equality, non-discrimination, right to collective bargaining). Are there any control mechanisms to ensure that these rights are not being breached? Are there any mechanisms to ensure that employees can lodge complaints about breaches of employment rights?

No statistics exist about the specific consequences of non-standard employment on working conditions. On the other hand, most complaints associated with non-standard employment received by the labour inspectorate of the Department of Industrial and Employment Relations (DIER) consist of non payment of wages and benefits due to short-term part-time work. This problem is also commonly encountered in other work situations. Most complaints come from sectors associated with seasonal employment (such as hotels and catering establishments), cleaning services and construction.

All employees can freely lodge complaints in front of the industrial tribunal on matters of equality, non-discrimination and the right to collective bargaining. Persons employed in non-standard forms of work cannot be treated less favourably than others on standard employment performing the same work. Moreover any rate of pay cannot be less than the national minimum rate.

4. Impact on health and safety

- what are the main health and safety issues for workers in non-standard employment?
- Are there any control mechanisms to ensure the health and safety of these workers?
- Organisation of Working Time and Statement by the Employer injury/ni contributions (pt main employment or not)
- what is the role of the labour inspectorate?
- what mechanisms exist to ensure that employees can lodge complaints relating to health and safety?

Health and safety issues

Data about accidents at work is provided by the NSO and is based on accidents reported to the Department of Social Security. Such data does not specifically indicate accidents occurred in non-standard forms of employment. The economic sectors mostly affected by accidents at work in the period April to June (2008) were: manufacturing (32.9%); construction (15.4%); and transport, storage, and communications (11.7%). The elementary and trades occupations were the most affected since 628 cases (53.1%) involved people in elementary occupations, while 206 cases (17.4%) were reported by employees in craft/ trades work (NSO news

release 146/2008).

According to the Occupational Health and Safety Authority (OHSA) Activity report for 2007 the enforcement unit of the Authority focussed its inspection campaign on Construction and Hotel establishments which correspond to the activities in which the majority of complaints related to non-standard forms of employment are reported to the DIER. Besides, about one fourth of all fatal accidents over recent years involved foreigners in the construction industry (OHSA 2007 Annual Report). The majority of them were immigrants that entered Malta illegally from Africa. These people tend to lack knowledge about occupational health and safety procedures and communicating with them is problematic. Most African migrants are often employed illegally in seasonal and short term jobs.

Role of inspectorate sections

The labour inspectorate system in Malta consists of a three-tier system: The enforcement and inspectorate section of the DIER; The OHSA inspectorate and the ETC law compliance unit.

The DIER inspectorate role regulates employment contracts whilst investigating all complaints lodged by employees or persons whose employment has been terminated. The DIER is also responsible for the Industrial Tribunal. The Department operates within the parameters of the Employment and Industrial Relations Act (2002).

The OHSA inspectorate investigates complaints alleging breach of law raised by the general public and by employees related to health and safety issues. Among others, an on-line complaint form is provided on the Authority's website. The OHSA is regulated by the Occupational Health and Safety Authority Act (2000).

The ETC law compliance unit takes action against: employers who do not fill in an ETC engagement form for their newly employed persons, thus jeopardizing their basic conditions of work; employers who employ persons of compulsory school age, and; against foreigners working without the necessary work permits. The unit works in collaboration with the Department of Social Security, Tax Compliance Unit, VAT Department, the DIER and the Police Force. The ETC is regulated by the Employment and Services Act (1990).

5. Views and actions of policy makers and social partners

5.1 Have there been any actions taken by policy makers and/or social partners to change the regulatory framework surrounding non-standard forms of employment, or to encourage the growth or decline of any particular practice?

The two general trade unions in Malta, namely the General Workers' Union (GWU) and the Union of United Workers (Union Haddiema Maghqudin, UHM) have in past couple of years pressed for an improvement in the Part-Time Regulations in relation

to the eligibility of pro-rata benefits as sick leave, vacation leave and payment of statutory bonuses. The Part-Time Employees Regulations (2002) enabled employees whose part-time is their principal employment regularly working a 20-hour week to receive the said benefits. As described in section 1.2, the law has been amended in 2007 and changes were particularly directed at eliminating the practice that many part-timers were being purposely employed for less than the 20-hour threshold so that employers could avoid granting such benefits.

5.2 What are the views of policy makers and social partners on these issues?

While social partners recognise the fact that due to globalisation constraints, there should be a more flexible labour market, improvement towards this aim has so far been limited. The Director General of the Malta Employers' Association, in his speech at the Conference on Labour Mobility held in Lisbon (2007), declared that labour market rigidity and the costs of employing persons on full time employment have shifted employers' preference towards atypical employment contracts. However, when compared to the EU average, Malta has a low percentage of employees on fixed-term contracts and in part-time employment. This reflects a common attitude among Maltese workers who prefer job security over flexibility.

While the GWU is not against the adoption of atypical forms of employment, it remains vigilant against their negative impact. For instance the Union recognizes that employment on fixed-term contracts is on the increase and that there are many situations in which such employees are treated less favorable in comparison with fellow employees.

The government, on the other hand, is promoting the idea of flexicurity and the Malta Council for Social and Economic Development (MCSED), Malta's highest tripartite consultation body, is currently discussing a document about flexicurity. It is expected that this issue would bring about major changes in the industrial law and in the local industrial relations. The UHM, in particular, is in favour of strengthening the legislative structure to safeguard workers rights. In the meantime, the government announced plans to set up a law enforcement unit by combining the inspectorate of the DIER, OHSA and ETC (The Times of Malta, 2008).

6. Commentary by the NC

The reluctance of Maltese workers to engage in non-standard forms of employment could be decreased with the improvement of the legal framework, the enforcement system and a more flexicurity-friendly social security system. The plans unveiled for creating a unified enforcement unit should thus improve the situation. Besides, once social partners strike an agreement about flexicurity, an increase in the non-standard forms of employment is expected, especially with the possible increase of female participation in the labour market.

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