



HOW TO HIRE MY FIRST EMPLOYEE IN MALTA

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

1. Enter into a contract of employment with the Employee which is drafted in terms of Maltese law.
2. Verify that the employee possess the valid employment licenses in Malta. For EU/EEA nationals, there is no legal requirement to apply for a work permit though the latter would have to register for income tax and social security purposes. Typical such persons, staying more than six months in Malta, would need to register for a residence card in Malta.
3. Engage the Employee by means of an engagement form which would need to be submitted to the Employment and Training Corporation.
4. Register the Employer with a PE number with the Inland Revenue Department
5. Register the Employee with the Inland Revenue Department by notifying about the applicable tax rates on the salary which will be paid via an FS4 form

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

The contract would need to include certain important attributes:

1. Details of the Employer and Employee
2. Description of the title and job being offered
3. Gross Annual Salary, together with any fringe benefits, per diems, or other additional terms connected with the remuneration of the Employee
4. Whether contract of employment is definite or indefinite
5. Working hours and any special rules on overtime, leave entitlement, etc.

CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

Sub-contractors could be employed to provide services without them being employed directly. The latter would have their respective tax/VAT/reporting requirements in terms of law.

However, the use of sub-contractors for a certain period of time would need to be assessed in terms of Legal Notice 44 of 2012 as amended, with this legislation providing for certain circumstances where the sub-contractor might be presumed to be an employee even if not de facto employed directly by the Employer. This law provides that if five of the following criteria are satisfied, an employment relationship is created:

- (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.