

**MEMORANDUM
OF
UNDERSTANDING**

This Memorandum of Understanding is between the Employment and Training Corporation, on one part, and the Malta Employers' Association and the Malta Chamber of Commerce, Enterprise and Industry on the other.

LIST OF ABBREVIATIONS & ACRONYMS

ETC - Employment and Training Corporation

KNPD - National Commission for Persons with Disability

Malta Chamber - Malta Chamber of Commerce, Enterprise and Industry

MEA - Malta Employers' Association

PwDs - Persons with Disability

RDPs - Registered Disabled Persons

PREAMBLE

The Minister for Finance, in November 2014, announced in his National Budget 2015 speech, amendments to the Persons with Disability (Employment) Act (CAP 210) to become effective on 1st January 2015.

WHEREAS

(i) The Persons with Disability (Employment) Act (CAP 210), as eventually amended, has a lacuna where it comes to the challenges being faced by employers of Persons with Disability (PwDs).

(ii) It is acknowledged that the problems encountered originate from a 1969 law which is outdated in part and further subject to restrictions imposed by the Data Protection Act (CAP. 440), so that strict enforcement is less transparent than desired.

(iii) It is the intent and objective of the signatories of this Memorandum of Understanding to establish a viable way forward regarding the management of this sensitive and important issue of the employment of Persons with a Disability.

The Parties are agreeing to the following understandings and objectives, that should encourage a correct application of what in essence is a positive and enabling Law.

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UNDERSTANDINGS

1. An employer should be able to identify who of their employees are officially registered as Persons with Disabilities. It is intended that the new Jobsplus Act will empower the national employment service, ETC, to provide employers with the personal details of individuals who are registered with either ETC, KNPD or the intended new unified national register of Persons with Disability.

It is being proposed that until one national register for Persons with Disability is established; which is formally recognised as such in terms of the Persons with Disability (Employment) Act; ETC will be empowered through the new Jobsplus Act to have complete access to all registers of Persons with Disability for the purpose of calculation of quotas and for the purpose of satisfying the commitment in article 1 of this MoU.

2. Should a person who is registered as disabled, and who is given employment in fulfilment of a quota de-register themselves, it will not be to the detriment of that employer's quota as required by Chapter 210 (Article 26).
3. The definition of 'Persons with Disability' shall be the one applied in the United Nations Charter for Rights of Persons with Disability and the local Equal Opportunities Act (CAP 413) which read: "Disability means a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one's full and effective participation in society on an equal basis with others."

4. a) Current employees, who are not registered as Persons with Disability, but who are manifestly disabled and medically certified to fall under the above definition of disability, will be acknowledged by ETC only for the purposes of an Employer's quota calculation; it is clarified that PwDs do not become eligible for incentives of any kind until they are certified as Registered Disabled Persons (RDPs) by a placement medical officer as prescribed by the Persons with Disability (Employment) Act (CAP 210).
- b) If the disability is of a temporary nature, accreditation should be restricted to the definite period for the duration of which a person is actually medically certified to be disabled.
5. The ETC will not penalise an employer who does not fulfil the required quota of directly-employed PwDs, so long as they can prove that they are offering equivalent hours of work to PwDs, through an in-service or an outsourced work arrangement or through a surrogate employer (NGOs).
6. Employers will not be penalised quota-wise if eligible persons with disability resign within one year of employment.
7. Particular employers, such as Temporary Service Contractors, Temping Companies and Companies with fluctuating or seasonal levels of employment, will be entitled, for quota calculation purposes, to establish the true size of their workforce by counting a temporary employee as a fraction of 1 in mathematical proportion to the number of days actually worked by such employee out of a total of work days of 225 days in that same year's first 11 calendar months (January to end November).
8. Employers who offer apprenticeship placements of at least one year's duration to students with disability will be accordingly credited for the calculation of their Disability Employment quota.

9. Some employers might have work environments and tasks which are manifestly not suitable for Persons with Disability; the ETC or the Lino Spiteri Foundation will engage such Employers in a dialogue to identify alternative ways in which such Employers can support the objectives of the Law; if no common ground is found and no engagement is formalised before 30th November in each year, which is to be the annual cut-off date for Contribution Invoicing purposes, the Employer will be deemed not to have satisfied the quota for that calendar year.
10. Employers who are presently actively undergoing a recruitment process to employ Persons with Disability, will be exempted from contributions until 30th November 2016; if they are unsuccessful in their recruitment, they will then automatically be considered to be in default of the provisions of the Persons with Disability (Employment) Act and will become immediately liable to pay the contributions prescribed in that Act for both the calendar years 2015 and 2016, as well as becoming subject to any other sanctions established by the legislation.
11. The ETC or the Lino Spiteri Foundation will offer focused assistance to Employers to recruit RDPs. Rather than sending mere lists of potential employees, there should be an effort at matching the jobs available with persons who have the abilities to perform particular tasks.
12. Employers who operate a group of companies will be subject to an overall quota, based on the total number of employees employed within the group, where such quota can be distributed throughout the group of companies.
13. Employers who become compliant during the course of a particular year should not become liable to pay the contribution for that year as long as they engage an PwD before the established annual cut-off date for Contribution Invoicing purposes, which invariably will be 30th November.

CONCLUSION

The MEA and the Malta Chamber positively acknowledge the financial and tax incentives granted to employers to favour the employment of Registered Disabled Persons. The Associations undertake to encourage their members to adhere to the objective of increasing the inclusion of Persons with Disabilities into their workplaces, and confirm their belief that this objective, correctly pursued, will bring social and economic benefits.



Employment and Training Corporation
Mr. Clyde Caruana, Executive Chairman

28/04/2016

Date



Malta Chamber of Commerce, Enterprise & Industry
Mr. Anton Borg, President

28th April 2016

Date



Malta Employers' Association
Mr. Arthur Muscat, President

28/4/16

Date