

17. Malta

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Currently, all third-country nationals, with the exception of citizens from the EEA and Switzerland, as well as their third-country-national family members, require authorisation to work in Malta either through a Single Permit for the purpose of employment (SP) or through an employment license (EL). These are generally subject to labour market considerations. Third-country nationals who register in Malta under the Social Security Act require a Maltese ID card (if available) and passport, a copy of the JobsPlus engagement form or a 'Promise of Employment' letter or similar document that shows that the applicant will be carrying out an employed/self-occupied activity in Malta and a copy of an employment license. Persons not in possession of a permanent Maltese ID card need to provide supporting documentation in order to apply for a social security number. Once the application is submitted, they will be subjected to an insurability test.

Table 1.17 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Children benefits
Posted workers	Yes*	Yes	No	No	Yes	Yes**
Intra-corporate transfers	Yes	Yes	No	No. Third-country nationals are expected to support themselves and cannot rely on Social assistance	Yes	Yes
Seasonal workers***	Yes	Yes	Yes	Yes	Yes	Yes
Temporary agency workers	N/A	N/A	N/A	N/A	Yes	N/A
High-level professionals	No	No	No	No. Third-country nationals are expected to support themselves and cannot rely on social assistance	No	No
Self-employed	Yes	Yes	Yes but with conditions****	Self-employed third-country nationals are expected to support themselves and cannot rely on social assistance	Yes	Yes

Notes: * Generally, third-country nationals require both a residence permit and an employment license to reside and work in Malta. If a third-country national satisfies the minimum requirements established by law, that is, by obtaining a single permit for the purpose of employment and is paying social security contributions in Malta then they are eligible for social security benefits. ** With regard to children allowances, if a third-country national is paying social security contributions in Malta and has satisfied the minimum requirements, then yes, the benefit is awarded from birth if a minor is born after employment has been secured, where claimants and children are both living in Malta, both parents have valid residence permits, and one or both parents are in employment. Entitlement is in accordance with the permit. If they have a residence or work permit, claimants will be entitled for children's allowance with effect from the sixth month of employment; if the claimant has a Blue Card/International Protection/Subsidiary Protection/Humanitarian Protection permit (including temporary permits), they will be entitled to children's allowance from the start of employment; if claimants have a long-term residence permit, they are entitled from the date of issue of the permit, whereas holders of an intra-corporate transfer permit will be entitled from the ninth month of employment. Those with seasonal worker status and/or student third-country nationals are not entitled to children's allowance if they do not hold any other permit mentioned above. *** In Malta, seasonal workers are eligible for sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; family benefits. **** To qualify for self-employed status, a third-country national must invest capital of at least €500,000 in Malta within six months of the date on which the Jobsplus licence is issued. Long-term residents, refugees, subsidiary protection, humanitarian protection and asylum seekers are exempt from these criteria. Therefore, a third-country-national self-employed person is not eligible for this benefit unless one of the above criteria applies. Source: Author's analysis, 2022.

Description of the Maltese system

1. Overview of social security rights of short-term third-country-national migrant workers

In Malta the Social Security Act is in accordance with the EU general principle that a worker should be subject to the legislation of only one Member State at any one time. This applies to all employees working in Malta whether they are Maltese citizens, other EU nationals or third-country nationals. Special arrangements exist for employees temporarily posted by their employer to work in another Member State. These workers must be insured with a national institution in their third-country homeland.

Third-country nationals may request to be exempted from registering in Malta under the Social Security Act as long as a state contribution is being paid in the home country. The Social Security Department will issue an Exemption Certificate, but the employer is still required to register the employment of the third-country national with both the Commissioner for Revenue and Jobsplus and is then automatically exempted from their share of payment of the social security contributions of the third-country national.

Maltese law grants equality of treatment to all with regard to employment conditions. When it comes to social security benefits all employees, including third-country nationals, are eligible, provided that the minimum requirements established by law (referring to single permits) are satisfied, regardless of the employee's nationality. The benefits do not include unemployment benefits, however.

If a third-country national (not having refugee status) either loses their single permit or their employment licence they have to return to their home country if an alternative job is not found within 10 days.

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

Malta has no special provision for seasonal workers with regard to payment of social security contributions. Therefore, any seasonal worker shall be treated in the same manner as any Maltese employee, other EU nationals as well as third-country nationals. Both the employer and the third-country national have to pay their share of National Insurance. The third-country national has income tax deducted from their salary. Third-country nationals do not qualify for unemployment benefits as they cannot be a burden on the state. The rate of social security contributions is dependent on the employee's earnings in accordance with

the Tenth Schedule of the Social Security Act.¹ If there are no earnings then no social security contributions are payable by either the employee or the employer. The same rates of contribution apply to all employees working in Malta regardless of their nationality, for example, whether EU, EEA, Swiss or third-country national as this is based solely on earnings.

(ii) Third-country-national posted workers

Unless the third-country national prefers to pay social security contributions in Malta they have the option of paying social security contributions in their home country. In that case they have to apply for an exemption certificate issued by the Social Security Department. If the anticipated duration of the posting does not exceed 24 months the worker may remain insured in their 'home' state's scheme. If the work lasts longer than 24 months, the Member States involved may enter into a common agreement under Articles 16 of Regulation 883/2004, whereby the person may remain insured in the sending state. This applies to posted workers, intra-corporate transfers and temporary agency workers.

(iii) Third-country-national temporary agency workers

The Subsidiary Legislation on temporary agency employment² does not differentiate between workers who are from the EU or third-country nationals. The same rules apply to all temporary agency workers. Under Article 16 of Regulation 883/2004, an employee may remain insured for social security purposes in the sending state, if the anticipated duration of the posting does not exceed 24 months. If the work lasts longer than 24 months, Malta may enter into a common agreement under Articles 16 of Regulation 883/2004, whereby the temporary agency worker may remain insured in the sending state. As a result third-country-national temporary agency workers may request to be exempted from registering in Malta under the Social Security Act if they are being paid in the employee's home country. The Social Security Department will issue an Exemption Certificate exempting the third-country national from registering in Malta. But even though the third-country-national is automatically exempted from their share of National Insurance contributions, the employer is still required to register their employment with both the Commissioner for Revenue and Jobsplus, and is then automatically exempted from the payment of Class 1 Social Security Contributions.

3. Conditions for obtaining different social security rights

If by obtaining a Single Permit an employee satisfies the minimum requirements established by law, regardless of nationality, then they will be eligible for free health services, sickness benefit, occupational injury benefits and pension. This does not extend to unemployment benefits. With regard to children's allowances if the third-country national holds a residence or work permit, they will be entitled

1. <https://legislation.mt/eli/cap/318/eng>

2. <https://legislation.mt/eli/sl/452.106/eng/pdf>

with effect from the sixth month of employment. If the claimant has a Blue Card/ International Protection/Subsidiary Protection/Humanitarian Protection permit (including temporary permits), the claimant will be entitled to children's allowance from the start of employment. If they have a long-term residence permit, they are entitled from the date of issue of the permit, whereas holders of intra-corporate transfer permits will be entitled from the ninth month of employment. Third-country nationals with seasonal worker and/or student status are not entitled to children's allowance if they do not have any other permit mentioned above. Child allowance is awarded from the date indicated above if the minor is born before the date of employment, but from the date of birth if the minor is born after the entitlement date mentioned above.

4. Portability of benefits between host country and country of origin

Portability of rights of third-country nationals depends very much on bilateral agreements signed between Malta and third countries. A reciprocal agreement was signed with Australia³ and a bilateral agreement was signed with the Netherlands⁴ and with New Zealand.⁵

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

As a Covid relief measure for businesses, the government provided a deferral on payment of social security contributions. Moreover, through Malta Enterprise⁶ the government introduced a Covid-19 Wage Supplement available to businesses with specific NACE Codes to support businesses that were adversely impacted by the pandemic. This wage supplement is available for all employees of such businesses. Thus, no distinction was made between employees who are EU nationals and third-country nationals. From the wage supplements the government deducted from the outset the portion allocated for employees' social security contributions as a prepaid employees' share of social security contributions.⁷

6. Overview of enforcement and monitoring

Article 5 (5) of the Posting of Workers in Malta Regulation stipulates that when a worker is posted to Malta, the inspection of their terms and conditions of employment is the responsibility of the DIER, in cooperation, where necessary, with the Member State of establishment.

3. <https://legislation.mt/eli/sl/318.11/eng>

4. <https://legislation.mt/eli/sl/318.18/eng>

5. <https://legislation.mt/eli/sl/318.23/eng>

6. Malta Enterprise is the country's economic development agency, tasked with attracting new foreign direct investment, as well as facilitating the growth of existing operations.

7. <https://finance.gov.mt/en/news/Pages/NOTICE-TO-EMPLOYERS.aspx>

A residence permit will cease to apply if the applicant no longer remains in the specified employment, whatever the reason for termination. Third-country nationals with a single permit who lose their job have to find an alternative job within 10 days or they have to return to their home country. These third-country nationals cannot register for unemployment benefits. Only third-country nationals with refugee status may register for unemployment benefit.