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RE: **General Review of the Employment During 'Iron Swords'**

Following the attack on Israel, the Minister of Defense declared the existence of a 'special situation'. Due to this declaration, a various of special instructions and restrictions were giving to the public, that are updated on a daily basis, affecting the Israeli economy and the employment of workers during this difficult time.

Due to the sensitivity of the situation and changes in the various instructions from time to time, please note that the information in this review may change as well, in accordance with updates made.

A. **Prohibition on Termination of Employment**

1. The primary law dealing with workers' rights in times of emergency is the Protection of Employees in an Emergency Law, 2006 (hereinafter: "**the Protection Law**").
2. According to the Protection Law, it is prohibited to terminate an employee due to a directive given during a 'special situation', which prevents the employee from reporting to work or performing work, as the case may be. For example, if there are instructions prohibit the employee from arriving at their workplace.
3. Additionally, in accordance with the Protection Law, it is prohibited to terminate an employee due to their absence from work, caused by their need to care for their child whom is in their custody, as the educational framework (schools or day care) are closed due to the 'special situation', provided that the child is under 14 years of age or is a child with special needs (as defined in the Special Education Law, 1988), and under the condition that one of the following conditions is met:
 - 3.1. The child is in the sole custody of the employee.

- 3.2. The employee is a single parent.
- 3.3. The employee's spouse is an employee or a self-employed worker whom is not absent from their work or business to care for the child, or in cases where the other parent is unable to care for the child.
4. According to the Protection Law, an employee's absence from work in the circumstances outlined above will not be considered an interruption in their employment continuity and will not affect the rights dependent on their seniority (consecutive employment) with their employer.
5. If the 'special instructions' does not prohibit an employee from reporting to work, and the employee decides to be absent from work on their own accord despite repeated requests from the employer in writing to report to work, the employer is allowed to consider employee's termination, subject to the already legally required hearing process, and may also deduct the days of absence. However, it is our recommendation that an employer will not go straight to a hearing procedure and first consider the sensitive nature of this problematic situation and take into account that the Labor courts have not yet ruled on the issue of the employer's obligation to act in good faith and/or exercise leniency in such cases. Also, please note that since there are still no educational frameworks, many workers fall into the category of protected workers who cannot be terminated.
6. It is, prohibited to terminate an employee due to their draft to reserve duty (including Order No. 8) during this period, during the time they attend reserve duty, and for 30 days after their return to work from reserve duty.

B. Payment of Wages to Employees

7. The Protection Law does not address the employer's obligation to pay wages to employees during their absence from work.
8. The determination of compensation (in our case, compensation for work (salary)) during these times and areas of conflict, is examined and decided retroactively. In similar previous cases, collective agreements were signed and expanded by extension orders, whereby employers were obligated to pay wages to their employees who were absent from work under such circumstances, while the employers received compensation for these payments from the government.
9. The recommendation of the Ministry of Labor is that employers pay wages to their employees who are absent, as if they had worked regularly, with the expectation that employers' compensation for wage payments will be received (subject to consent), following claims to be filed with the Finance Ministry, as determined by Property Tax Regulations. **It should be emphasized again, that this is only our recommendation**, as the law itself does not regulate this matter or require payment of wages to an absent employee before addressing the issue in a collective agreement.
It should be noted that if an employee's salary is reduced and/or vacation days have been deducted and the employer receives full compensation for the employee's salary during this period, then the employer must return to the employee the difference between the reduced salary and/or return the deducted vacation days.
10. It is important to note, that the absence of an employee from work for any other reason which is not protected by law, will most likely not be included within the compensated to be awarded to the employer for wages paid.

C. Working from the Home

Conducting work from home, if possible, is at the full discretion of the employer.

D. Reduction of the Job Scope/Unpaid Vacation Leave/Use of Vacation Days

11. A reduction of the job scope or giving the employee permission for an unpaid leave, (for example due to a decrease in productivity and/or activity level due to the situation), are allowed only if the employer obtains written consent from the employee.
12. If it is not possible to provide work to an employee or if there is a limitation on the ability to reach the workplace (a limitation unrelated to meeting the needs of an existence of a protected area at the workplace), it is possible to consider ordering the employees to take a concentrated vacation of up to 7 days, subject to the condition that the employee has more than enough accrued vacation days.
13. On November 9, 2023 'special' format for paying unemployment pay to employees that were taken on unpaid leave at the initiative of the employer between October 7, 2023 and November 30, 2023, was published.

Accordingly, those who were taken on unpaid leave at the initiative of the employer - may be entitled to unemployment pay if they meet the eligibility conditions;

- 13.1. **First condition** – The employee shall be a resident of Israel and/or a temporary resident.
- 13.2. **Second condition** - The employee has turned 20 years old, and has not yet reached the age of 67.
- 13.3. **Third condition** - The period of unemployment entitling to unemployment pay is at least 14 days. Payment of unemployment pay will be given from the first day of unemployment (provided that the employees were registered on time with the employment service) even if at the time the employees had unused vacation days left.
- 13.4. **Fourth condition** - Reporting to the employment service immediately upon the date of the unpaid leave.
- 13.5. **Fifth condition** - Qualification period. The employee has accumulated a qualifying period of at least 6 months of work as an employee out of the last 18 months before being first registered with the employment service.
14. The employee cannot work for the employer during the unpaid leave and receive unemployment pay, even if it is for a few days.

E. Obligation to report of an employee hired at an “essential service factory”

15. Following declaration regarding the special situation throughout Israel, on October 7, 2023, the Minister of Labor signed an order to apply Chapter D of the Emergency Labor Service Law, 5727-1967.

16. The aforementioned chapter of the law allows the Minister of Labor to declare a workplace as an “essential service factory” as defined in that law. These are workplaces that are required for the purposes of State defense, public security or to provide supply or essential services during this period. For example: factories that provide electricity, fuel, gas, water infrastructure, emergency medicine, nursing institutions and support services, welfare institutions, transportation, health maintenance organizations and support services, food supply, local authorities, and others.
17. Employees of a workplace, which is declared by the order as an “essential service factory”, must report to their work, unless they have been recruited for reserve service. If they do not report for work, this is allegedly an offense and the employees will not be entitled to a salary for their absence.

F. **permit for overtime work**

18. On October 9, 2023, the Minister of Labor published a notice of granting a general permit for the employment of employees in overtime hours (hourly order) 2023, according to which it will be possible to employ employees up to 14 hours a day (including overtime hours).
19. In accordance with the permit, the weekly overtime quota was extended to 25 hours and it was determined that the length of the work week, including overtime hours, should not exceed 67 hours (provided that the quota of overtime hours in a working month should not exceed 90).
20. The employment of an employee overtime is subject to the employee: (1) has given his consent to this [*we recommend obtaining this consent in writing*]; (2) the employee be given a break of at least fifteen minutes between the 12 hour of work and the 14 hours of work.
21. The general permit applies to an employer who employs over 20 employees and **one** of these conditions is met:
 - 21.1. On the day he began employing workers according to the permit, at least 20% of his employees were absent from the workplace under circumstances beyond the employer's control and the work cannot be performed by the employees who report to work without them working overtime according to this permit.
 - 21.2. At the workplace employees are employed in shifts and at least 20% of the shift workers are absent when the absence of the workers is due to reasons beyond the control of the employer and the work cannot be performed in the existing worker station with the same output.
22. **The general permit to work overtime is valid for 14 days from the date of its publication or until the end of the period in which a 'special situation' was declared, whichever comes first.**
23. The general permit to work overtime does not apply to an employer in the public transportation industry, as well as to an employer to whom the expansion order in the transportation industry, the expansion order in the transportation industry, and the expansion order in the construction, infrastructure, public works, and renovations industry. Also, the security industry is granted a specific permit that applies on it.

In light of the above, it is recommended to attempt to reach agreements (in writing) with the employees regarding work arrangements during this complex period and avoid unilateral actions.

This review is for general information purposes only, is based, among other things, on past precedents and guidelines from the Ministry of Labor, which are subject to change, and does not replace legal advice in a specific case. Furthermore, it does not include all of the laws, expansion orders and/or regulations which may apply on this matter.

***Please note further than the abovesaid, there are protected employees whose protection remains in effect even during these days. Therefore, for employees in certain protected situations, it is advisable to seek additional specific legal advice.

Wishing for calm and better days,

Koren - Grodberg & Co. Law Offices