



18 College Street
Astra Building
First Floor
Jabal Amman
Amman
Jordan

P.O. Box 3424
Amman – 11181
Jordan
T: +962 (0) 6 464 3367
F: +962 (0) 6 464 7335
E: law@juris.com.jo

Monday, 30 March 2020

Dear Sir/Madam,

Subject: Fate of contracts in light of the measures taken to date to combat the coronavirus pandemic

Further to our opinion dated 24 March 2020, please note the following:

- 1) On 16 March 2020, the Minister of Labour issued decision no. (3/1/1/5041) confirming that preventative and precautionary measures must be adopted by the private sector during the current health crisis. The Minister accordingly activated the flexible working scheme outlined by the *Regulation of Flexible Work 22/2017* without the need for the pre-approval of the Ministry of Labour.
- 2) On 17 March 2020, the Council of Ministers ordered a **public leave for entities in the public and private sectors, excluding** entities operating in health, food and fuel sectors, and other sectors that the Minister of Industry and Trade declared pursuant to decision no. 39 for 2020 in which he further excluded specific commercial and industrial sectors, water, energy, agricultural, logistical, telecommunications, IT, and media sectors – by virtue of permits issued for the purpose for freedom of movement.
- 3) On the same day, the Minister of Labour, referring to the decision of the Council of Ministers, **re-issued** decision no. (3/1/1/5041) in which he confirmed that:
 - a. The public sector will be treated as having a paid public leave which will not be deducted from the balance of annual leaves; **this applies to employees in the private sector insofar as they are not included in para (b) below.**
 - b. Private-sector entities who operate in the fields of consultancy, translations, programming and **any other field which does not require physical presence in the workplace**, may require their employees (subject to their agreement) to

work remotely **provided that the offices of these entities are completely shut; in this case, the Council of Minister's decision is not applicable. The employees' salaries must not be affected by such remote working scheme.**

- c. The private-sector entities which operate in health, food and fuel, and all other activities outlined in the decision of the Minister of Industry and Trade (being specific commercial and industrial sectors, water, energy, agricultural, logistical, telecommunications and IT, and media sectors), **are excluded from the leave decision** and thus will operate normally even if they are required to keep their doors open during the leave period determined by the Council of Ministers; in this case, their employees' salaries and annual leaves must not be affected.
- 4) Subsequently on the same day (17 March 2020), the Council of Ministers issued its decision no. (9060) for the application of the *Defense Law no. 13 for 1992* across the Kingdom from the date of the Royal Decree confirming same, which was issued approving the decision of the Council of Ministers on the same date, i.e. 17 March 2020, and was published in the Official Gazette of 18 March 2020.
- 5) On 29 March 2020 the Prime Minister decided to extend the public leave mentioned in para (2) above that had been issued previously by the Council of Ministers, and that is for a period of 14 days commencing on Wednesday 1 April 2020 until 14 April 2020.
- 6) The following provisions should be noted:
 - a. Article 50 of the Jordanian Labour Law stipulates:
*“in the event where an employer is compelled to stop **work temporarily** for a reason beyond his/her control, his/her employees shall be entitled to full pay for the first ten days following the suspension of work, and to half-pay for any period exceeding the first ten days provided that the total period of suspension does not exceed 60 days per year”*

b. Article 10 of the Defense Law reads:

*“The operation of any text or legislation that **violates** any of the provisions of this law and the orders issued pursuant thereto, shall be suspended.”*

c. Articles 11 of the Defense Law reads:

*“If it becomes **impossible** to execute any contract or obligation due to the observance of the provisions of this law or any order, mandate or instruction issued pursuant thereto, **the person associated with such contract will not be considered in breach of its terms; rather, the contract will be considered suspended insofar as it is not possible to be executed.** This will be a defense for said person in any court action filed or to be filed against them or any procedures taken against them for their failure to execute or commit to the contract.”*

7) Many questions arise here:

First: Employment Contracts

Q1: What is the fate of employments contracts which can still be executed despite the observance of the Defense Law? In our opinion, these contracts cannot be suspended and remain in force with employers giving full pay.

Q2: What is the fate of employment contracts which are impossible to execute in light of the curfew issued pursuant to the Defense Law? In our opinion, given that the Government decided to provide the employees of the private sector with a paid public leave, this means that Article (11) of the Defense Law would not be applied to employment contracts that are impossible to execute during the period of the application of the Defense Law. Accordingly, these contracts remain binding and applicable, and the employees are entitled to their salaries throughout the period decided by the Council of Ministers as a public leave until 14 April 2020, as per the decision of the Prime Minister dated 29 March 2020.

Notwithstanding the above paragraph, it is our opinion that after the end of the public leave on 14 April 2020 and if the curfew remains, the Defense Law remains applicable and this public leave is not extended, then these contracts that are impossible to execute shall be **suspended** pursuant to Article (11) of the Defense Law.

Q3: Is it permissible to terminate the employee if it is impossible to execute the employment contact in light of the Defense Law? In our opinion the answer is negative, since the employee is considered in a period of paid public leave according to the relevant decisions.

Notwithstanding the above paragraph, it is our opinion that after the end of the public leave on 14 April 2020 and if the curfew remains, the Defense Law remains applicable and this public leave is not extended, then these contracts that are impossible to execute shall be **suspended** pursuant to Article (11) of the Defense Law.

Q4: Can Article 50 of the Labour Law be applied if the contract cannot be executed? Jurisprudence shows that Article 50 is applied in cases of temporary suspension of work and not cases of force majeure that occur indefinitely. Given that the decisions of the Council of Ministers have considered this period as a public leave, in our opinion it is not permitted to apply the provisions of Article (50) of the Labour law.

Q5: What is the fate of fixed-term employment contracts that end during the public leave? Although this period has been declared by the Council of Ministers as a public leave, and although the provisions of Article (11) of the Defense Law will not be applied to employment contracts given that a public leave has been granted, it is our opinion that a fixed-term employment contract **terminates** at the contract's ending date, even if such date falls during the public leave. However, the employer must notify the employee of the employer's decision not to renew or extend the contract at least one day before its date of termination or pursuant to the terms of the contract in this respect. In this case, the employment contract would be considered terminated pursuant to the provisions of the law and the contract.

Q6: Is the employer permitted to terminate employment contracts during the probation period? Although this period has been declared by the Council of Ministers as a public leave, and although the provisions of Article (11) of the Defense Law will not be applied to employment contracts given that a public leave has been granted, it is our opinion that for an employment contract that includes a probation period that falls during the public leave, the employer is entitled in this case to terminate the employment contract during the probation period pursuant to Article (35) of the Labour law.

Second: Rental Agreements

Q7: What is the fate of residential rental agreements? Since the execution of a residential rental agreement remains possible considering that the lessee is still able to use the property, then the agreement remains intact, and the lessor is entitled to full rent.

Q8: What is the fate rental agreement for stores and office which have closed? Since the commercial lease agreement is no longer capable of being executed, it will be considered suspended for the period after the application of the Defense Law during which the stores and offices remain closed.

Third: all other contracts which are not capable of being executed will be suspended until they are capable of being executed.

Fourth: Provisions of the Civil Code that relate to Force Majeure

Q9: Can the provisions of the Civil Code or any other law be applied? In our opinion the answer is negative, as there is a need to distinguish between force majeure as a result of an **individual** case without the application of the provisions of the Defense Law, and the case where the Defense Law is applied to counteract a **general** force majeure.

If the government had not invoked the Defense Law, then the provisions of force majeure under the relevant laws would need to be applied separately in line with the principles specified in the Civil Code. For example, if a factory catches fire, the employer may terminate employment contracts – as an example – as he suffered from an individual case of force majeure which makes the execution of these contracts impossible in accordance to the provisions of the Civil Code.

However, the force majeure in the case of a pandemic is a general one as it is not specific to one person or circumstance. Thus, the Defense Law is the applicable legislation; and, as per Article 11 thereof, all **contracts which are not capable of being executed due to the observance of said Law**, shall be suspended to the extent that the implementation of the contract is impossible.

If after the Defense Law is lifted the impossibility to execute a contract or obligation remains and/or the execution of mutual obligations becomes onerous, then the provisions of force majeure under the Civil Code.

Fifth: Nota bene

In our opinion the decision of the Jordanian government to provide employees in the private sector with a paid public leave is contrary to the provisions of the law, the principles of justice and contradicts Article (11) of the Defense Law. A decision by the Prime Minister and/or the Council of Ministers should not contradict a provision of the law. The Prime Minister should have issued a Defense Order to balance between the rights and obligations of the parties to an employment contract and their decisions must always remain transparent.

Accordingly, our legal opinion in this respect is subject to change in light of any future decisions made by the government, and in all cases, this opinion is based on the current state of matters as per the decisions issued to date.

Yours sincerely,

Adib Habayeb