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Subject: Employment matters in light of Defence Order no. 6/2020

Further to our letter of 30 March 2020, the Prime Minister issued Defence Order no. 6/2020 on 8 April 2020 (“**Defence Order**”) said to aim the reduction of the negative impact of the coronavirus pandemic on the private sector and its employees; the following is a summary of the most noteworthy aspects of the Defence Order:

First: **With respect to the private sector wages starting from 18 March 2020 until 31 March 2020; please refer to Table 1 appearing in the appendix to this letter.**

Second: **With respect to the private sector wages starting from 1 April 2020; please refer to Table 2 appearing in the appendix to this letter.**

Third: **With respect to the procedures to suspending work and employment contracts of the private sector in the event where the employer is unable to pay wages:**

The Defence Order stipulates that in the event where an employer (whether authorised to work, or those included in the public leave decision and is not authorised to work) is unable to pay wages, it can apply to a joint committee to be convened by the Ministers of Labour and Industry and Trade to suspend all of the entity’s operations and suspend the employment contracts for all the workers.

In this respect, no such action can be taken by the employer before obtaining the approval of said committee. The application is to be supported by a list of the names of all employees as well as details of their employment contracts including their respective terms, working hours and wages as recorded at the Social Security Corporation.

In the event where the application is granted an approval, and the employer is allowed to fully suspend all operations the following will apply:

- a) The employer shall be prohibited from carrying out any work or operation during the time of suspension.
- b) The contractual relationship between the employer and employees is not severed during the suspension, yet the employer will not be required to pay wages during this period.
- c) The period of suspension is not counted as part of the term of each respective employment contract, meaning that employment contracts of limited terms will be extended for the period of suspension.
- d) The employer shall remain liable for all financial and contractual obligations except for wages (in our opinion this condition is ambiguous and is subject to interpretation as it fails to clarify what obligations the employer remains liable for).
- e) The employer of the private sector and any other employer subject to the provisions of the Labour Law and authorised to operate, will not be able to benefit from any programmes aimed at protecting the private sector (such programmes have not yet been identified).
- f) All moveable and immovable assets belonging to the employer will be frozen during the suspension period.

We would advise any entity that wishes to apply to suspend the work and the employment contracts to complete all pending financial and tax matters, before the application for suspension is made, since, if approved the suspension will prevent the employer from fulfilling these obligations given that the moveable and immovable assets of the entity will be frozen during the suspension period.

The application can be submitted through <<https://hemayeh.jo/>> starting Sunday, 12 April 2020.

The Government has not advised if the employees of the suspended entity (who are enrolled with the Social Security Corporation) can apply to the Social Security Corporation for unemployment insurance during the suspension period.

Fourth: With respect to the legality of terminating employment contracts of the private sector, please note that the Defence Order stipulates the following:

- a) Employers are prohibited from exerting any pressure on employees to resign.
- b) Employers are permitted to terminate employment contracts **only** pursuant to the following specific and exhaustive cases:

- Pursuant to Article 21(c) and (d) of the Labour Law which stipulates:

“The contract of employment shall terminate in any of the following cases:

...

(c) If the worker passes away or is disabled by illness or became incapacitated to work and this was substantiated by a medical report issued by a medical authority.

(d) If the worker reaches the age of retirement as stipulated in the Social Security Law, unless the parties agree to otherwise.”

- Pursuant to Article 28(a), (g), (h) and (i) of the Labour Law which stipulates:

“The employer may discharge the worker without notice in any of the following cases:

(a) If the worker impersonates the personality or identity of another person or submits forged certificates or documents for the purpose of bringing personal benefit for themselves or damage to others.

...

(g) If the worker is convicted of a felony by a final court judgment or misdemeanour relating to honour and public morals.

(h) If the worker is found obviously drunk or under the influence of narcotics, mentally influencing factor or committed an act in the place of work which is improper to public morals.

(i) If the worker assaults the employer or the manager in charge or one of the superiors or any worker or any other person during work or because of it, and that is by beating or defamation.”

c) Article 23 of the Labour Law has been suspended; it reads:

“(a) If one of the Parties wishes to terminate the unlimited period contract of employment, such party must notify the other party in writing of the intention to terminate the contract at least one month in advance and the notification may not be withdrawn except with the approval of both parties.

(b) The contract of employment shall remain effective throughout the period of notice and such period shall be considered part of the period of service.

(c) If the notice is from the employer, they may relieve the worker from the period thereof or may put the worker to work except during the last seven days thereof. The worker in all cases shall be entitled to the wage for the period of notice.

(d) If the notice is from the worker and the worker quitted the work prior to the expiry of the notice period, the worker shall not be entitled to wages for the period of quitting of work and should compensate the employer for such period by the equivalent of the wage for such period.”

In light of the above, we are of the opinion that **employment contracts of unlimited term** should **not**, under any circumstance, be terminated even if the employer pays all entitlements to the employee, under the Labour Law including compensation for arbitrary dismissal. The employer will otherwise be in violation of the Defence Order and thus subject to the penalties as outlined in ‘Fifth’ below.

On the other hand, however, we find that there would be no legal implications of terminating employment contracts (whether for unlimited term or for fixed term) **during the probation period**, provided that the employer notifies the employee that the relationship is being terminated due to the employee’s unsatisfactory performance, as per Article 35 of the Labour Law, the operation of which has not been suspended.

With respect to **contracts of fixed term**, taking what is mentioned in ‘Third’ above into consideration, there is nothing that prevents an employer from informing an employee of the employer’s decision **not to renew** the employment contract at the time the contract expires, particularly that the Defence Order has not dealt with this matter.

With respect to **contracts of unlimited term**, even though the Defence Order has suspended Article 23 of the Labour Law, we find that nothing prevents employees from resigning, so long as they do so freely and without any pressure from their employers.

d) Article 28 (b), (c) (d), (e) and (f) of the Labour Law that has been suspended reads as follows:

“The employer may discharge the worker without notice in any of the following cases:

...

(b) If the worker does not fulfil the obligations under the contract of work.

(c) If the worker makes a mistake which results in serious material loss to the employer provided that the employer notifies the competent party or parties of the incident within five days from the time of their knowledge of the occurrence thereof.

(d) If the worker violates the internal regulations of the establishment including the safety conditions of work and workers, despite being warned twice in writing.

(e) If the worker is absent without legitimate reason for more than twenty intermittent days during the year or more than ten consecutive days provided that the discharge is preceded by a written warning to be mailed by registered post to the worker’s address and published once in one of the local dailies.

(f) If the worker discloses the secrets of work.”

We find that the decision to suspend Articles 28(c), (d) and (f) is unsound even under the current conditions, particularly since some entities have been excluded from the public leave decision and have been operating whether remotely or otherwise.

Fifth: With respect to the violations of the Defence Order:

- a) All employers who, during the period of 18 March 2020 until 8 April 2020, coerced any employee to resign or terminated their contracts for any reason other than those outlined specifically in the Defence Order, must reinstate the employees within a week from the date the Defence Order was published in the Official Gazette. The Defence Order was published in the Official Gazette on 9 April 2020.
- b) Any declaration, agreement and/or deed made since 18 March 2020 by virtue of which the employee waives or agrees to diminish his rights is considered null and void; employers must take the necessary steps to cancel such declarations, agreements and/or deeds within a week from the date the Defence Order was published in the Official Gazette.
- c) Violations of Clause 2 of the Defence Order which requires approvals (for entities which were excluded from the public leave decision and require the joint approval of the Ministers of Labour and Industry and Trade to operate),- are punishable by shutting down the violating entity's operations for 60 days.
- d) Any other violations of the Defence Order or any other announcements by the Prime Minister or designated minister, are punishable by up to three years' imprisonment, **in addition to** a penalty of three thousand Jordanian Dinars (this stipulation is also ambiguous and is subject to varying interpretation as the stipulation fails to define the person(s) who will be subject to imprisonment where the employer is a legal entity, since the penalty is **both** imprisonment **and** a fine).

- e) The aforementioned penalties shall have no effect on the employee's ability to claim the entitlements afforded by the Labour Law.

Sixth: The Defence Order also stipulates that:

- a) To operate the entities of the private sector and those subject to the provisions of the Labour Law which **have been excluded from the public leave decision**, they must obtain the **joint** approval of the Ministers of Labour, Industry and Trade, Health and another competent Minister before they can operate. The Ministers of Health, Industry and Trade and Labour have been delegated to issue instructions detailing the mechanism of doing so, noting that Instructions no. 1, as published in the Official Gazette on 9/4/2020, have been issued for this purpose; we are awaiting further details regarding the mechanisms and the excluded sectors.
- b) Entities of the private sector and those subject to the provisions of the Labour Law which have been included in the public leave decision and have **not been permitted to operate**, can make use of the programmes for economic protection pursuant to their respective conditions (which are yet to be announced).
- c) The Government is working on incentives for employers who have committed to paying workers' wages as of the start of the application of the Defence Law until its suspension, in addition to benefiting from programmes for economic protection as per their respective conditions.
- d) The terms of the Defence Order (and any instructions issued pursuant thereto) shall be reconsidered on a monthly basis or whenever is necessary by virtue of decrees by the Prime Minister.



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Note Bene:

This legal opinion may be 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, being 11 April 2020.

Yours sincerely,

Adib Habayeb

Table No. (1)

Wages of employees working in the private sector for the period between 18/03/2020 and on 31/03/2020:		
1)	Employees working in private sector entities included in the public leave decision issued by the Council of Ministers.	Entitled to their standard wages for the period between 18/03/2020 to 31/03/2020.
2)	Employees working in private sector entities excluded from the public leave decision issued by the Council of Ministers.	Entitled to their standard wages for the period between 18/03/2020 to 31/03/2020. It is worth noting that these employees are treated equally in terms of receipt of wages as those who did not perform any work.
Overtime allowance for the period between 18/03/2020 to 31/03/2020 inclusive:		
3)	Employees working in private sector entities included in the public leave decision issued by the Council of Ministers.	Not entitled to overtime since they were not working in the first place.
4)	Employees working in private sector entities excluded from the public leave decision issued by the Council of Ministers.	Not entitled to overtime unless they actually worked overtime (i.e. more than the specified daily or weekly working hours) or worked on weekends, in which case they shall be entitled to compensation for overtime, as per Article (59) of the Labour law ¹ .

	In accordance with Defence Order No. (6), Article 59(b) of the Labour Law which relates to compensation of overtime work has been suspended for the purposes of the public leave commencing on 18/03/2020 and ending on 14/042020, as per the decision of the Council of Ministers.
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¹ Article (59) of the Labour Law:

- a) It is permissible to put the worker to work with their consent more than the ordinary daily or weekly working hours provided that the worker receives a wage for the hour of overtime a minimum of 125% of the regular wage.
- b) If the worker works during the weekly rest day or religious feast holidays or official holidays, the worker shall receive a minimum wage for the work on that day of not less than 150% of the regular wage.

Table No. (2)

Issues pertaining to private sector employees as of 01/04/2020 until the date of the issuance of another Defence Order, new instructions, and/or the Defense Law is no longer in effect:

Nature of Work		Wage	Overtime	Deduction of Wage
1)	Employees who are entitled to work at the workplace.	Entitled to full wage.	Any overtime hours worked shall be compensated pursuant to Article 59(a) of the Labour Law, noting that Article 59(b) which relates to public leaves only has been suspended. ³	<p>The employer may reduce the employee's wage at a rate that does not exceed 30% of the standard wage with the approval of the worker, provided that the senior managements' wages are also reduced.</p> <p>The Defence Order is not clear on what rate of reduction should be applied to the salaries of the senior management in the event where the rates agreed by the employees for the reduction vary.²</p>

² In such event, we recommend applying a uniform/equal reduction rate to the wages of all employees and senior management provided that this rate does not exceed 30%.

³ Article (59) of the Labour Law:

- a) It is permissible to put the worker to work with their consent more than the ordinary daily or weekly working hours provided that the worker receives a wage for the hour of overtime a minimum of 125% of the regular wage.
- b) If the worker works during the weekly rest day or religious feast holidays or official holidays, the worker shall receive a minimum wage for the work on that day of not less than 150% of the regular wage.

2)	Employees working remotely at a full-time rate whether in the entities authorised to work, or those not authorised and are included in the public leave decision of the Council of Ministers.	Entitled to full wage.	Any overtime hours worked shall be compensated pursuant to Article 59(a) of the Labour Law, noting that Article 59(b) which relates to public leaves only has been suspended.	The Defence Order does not allow for an agreement to reduce the wage.
3)	Employees working remotely at a part-time rate whether in the entities authorised to work, or those not authorised and are included in the public leave decision of the Council of Ministers.	<p>a) If the remuneration for the actual hours worked by the employee exceeds 50% of the standard wage, then the employee is entitled to remuneration for the actual hours worked.</p> <p>b) If the remuneration for the actual hours worked by the employee is less than 50% of the standard wage, then the employee is entitled to 50% of the standard wage as a minimum.</p>	Any overtime hours worked shall be compensated pursuant to Article 59(a) of the Labour Law, noting that Article 59(b) which relates to public leaves only has been suspended.	The Defence Order does not allow for an agreement to reduce the wage.

		In all cases , the employee's remuneration should not be less than the minimum wage of JOD 220 (<i>two hundred twenty Jordanian Dinars</i>).		
4)	Employees which have not been tasked with any work and/or are unauthorised to work.	It is permissible to reduce (50%) of the standard wage, provided that the wage is not less than the minimum wage of JOD 220 (<i>two hundred twenty Jordanian Dinars</i>).	Overtime provisions do not apply.	Employers must submit an application to the Minister of Labour to reduce 50% of the standard wage as per the requirements of Defence Order no. (6) and pursuant to Instructions no. (2) issued by the Minister of Labour and published in the Official Gazette on 9/4/2020. This application can be made through < https://hemayeh.jo/ > starting from Sunday 12/04/2020. It must be noted that the provisions of Article 50 of the Labour Law ⁴ have been suspended.

⁴ Article 50 of the Labour Law:

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.