

The rights of the worker during the period of the Corona pandemic according to Iraqi labour law

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Summary:

As a result of the risk of the spread of Corona disease, all work stopped in countries, and of course Iraq, so all facilities were disrupted, and decisions were issued in the crisis cell to prevent movement between regions such as force majeure or exceptional circumstances that do not belong to the will of one of the parties (the worker and the employer), which does not It can be expected and not be pushed back under normal circumstances, just as it is temporary and it is hoped that its demise will be created by the disappearance of its causes, meaning that it is not permanent. The pandemic period results in different legal positions for workers, and the weakness of the law and its implementation has caused the workers' rights to be lost.

Introduction Labor law is considered one of the relatively recent laws when compared with other branches of law such as civil law and criminal law, as there were no laws regulating work in the countries of the world before the middle of the eighteenth century (which is the date when the first industrial revolution almost began). With the passage of days and years, it became clear that these principles place the employer in a much stronger position than the position of the worker, and since the worker needs to work, he will accept all the conditions set by the employer.

The (pandemic), which infected nearly two million people in the world with the disease, caused them to be unemployed or even to deteriorate their health

condition. leading to death. In its resistance and out of concern from the governments (including the Iraqi ones), it has imposed what is called a ban.

As a result of the ban, all work stopped in the countries, and of course, Iraq, so educational facilities were disrupted, then the less important government facilities were moved to include the most vital facilities in the country, and only service facilities remained in them, and even these were partially working in implementation of the so-called decisions of the crisis cell.

The failure of state facilities follows the failure of private facilities, i.e. business companies affiliated with the private sector. Then, during the ban, all practical aspects stopped, including workshops, laboratories, farms, large stores, complexes, and even many small shops.

The effect of the foregoing had the most prominent impact on workers in all sectors, as it lost more than months, as business owners stopped paying their wages, and this is a clear violation of the provisions of the law and the constitution. Its workers have multiple arguments. research importance

The oversight exercised by the administration in Iraq according to the Labor Law in force No. (37) of (2015) is one of the most important foundations on which its enforcement and implementation is built. What is considered to be the application of the provisions of the rules in force may be affected by a kind of manipulation or defect and error in implementation - which may be Sometimes in good faith - which necessitates the intervention of the competent authorities to bridge the defect and remedy the error socially in this pandemic .

Research problem : The majority of systems define their protection policy either by means or goals, or by both, to lay the foundations of legal rules to include protection in order to extend it to the members of society (with some simple legal conditions) or narrow it to include (according to objective restrictive conditions) a specific group who meet the specific legal description for extending protection. research aims

As each research has its goals and objectives, the objectives of this research will be:

Statement of deficiencies or imbalances in the Iraqi regulating legislation .

Research Methodology ;

Applied approach: By referring to the Iraqi rulings, whether issued in accordance with the applicable Labor Law No. (37) of (2015) or the canceled Labor Law No. (71) of (1987).

What can be talked about, about the rights of workers in Iraq, requires clarification of the points of in explaining them accurately, starting from the constitutional rights to the contractual agreements and the various legal positions for all workers.

Section One

(Constitutional rights of workers)

The text of the Iraqi constitution for the year (2005):

1- Article 22 (First - Work is a right for all Iraqis, which guarantees them a decent life).

2- Article 22 as well. (The law regulates the relationship between workers and employers on economic bases, while observing the rules of social justice).

3- Article (30/second).

(The state guarantees Iraqi social and health security in the event of old age, illness, inability to work or homelessness).

Who are the workers according to Labor Law No. (37) of 2015

According to Article (1 / VI) of the applicable labor law, the worker is (everyone with a natural person, whether male or female, who works under the guidance and supervision of an employer and under his management, whether he works under a written or oral contract, express or tacit, or by way of training, testing or performs a mental or physical work in order to meet another, of whatever kind).

As for employers, according to Labor Law No. (37) of 2015

According to Article (1/8) (it is every natural or legal person who employs one or more workers for a meeting, or whatever its kind).

To which workers does this law apply?

According to Article (3). (First - the provisions of this law shall apply to all workers in the Republic of Iraq or those under their jurisdiction. unless the second clause stipulates otherwise). (Second - The provisions of this law do not apply to:

1- Public officials appointed in accordance with the Civil Service Law or a special legal text.

2- Members of the armed forces. police and internal security personnel.

In accordance with the provisions of this law. each of the following shall be applicable to:

1- Doing a job.

2- For a fee.

3- A follower of legal subordination (i.e. he receives orders and instructions from the employer and is subject to punishment in case of negligence and negligence).

4- The employer and the employer are bound by a contract. whether oral or written. temporary or permanent. for the purposes of discipline. and whether the agreement is express or implied (Article 1 / IX).

An employer. in accordance with the applicable labor law. is:

1- He employs only one worker.

2- For a fee.

3- He has legal dependency (Dr. Amer Salman Abdel-Malik. Social Insurance in the Arab Countries. first edition. 1990. pg. 28. which is a translation of the word (Securite Sociale).).

4- Whether the employer is a professional or a non-professional (Dr.. Salah Ali Ali Hassan. Protection of Labor Rights. The Role of Labor Inspection and its Impact on Improving Work Terms and Conditions. New University House. 2013 . p37).

5- Whether it is an individual or a company. and whether it is an agricultural. industrial. commercial or service sector. and whether this business owner is a sector (private. commercial. mixed. or with the state).

According to the applicable law that we talked about earlier, the Council of Ministers issued its Resolution No. (413) of 2017 to include workers in state departments and institutions with an explicit text in the Labor Law for what was stated in it (based on the provisions of the Labor Law, it is not regrettable under the title of the two-day procedure working as a contract under the description of workers And as long as this is the case, there is no obstacle preventing them from being included in the minimum wage set for the worker (in the event that financial specializations are available to grant them the said wage).

In confirmation of this, two books were added to the organization above the workers in the following form:

First - The letter of the Ministry of Higher Education came (and then, for example, based on the letter of the Council of Ministers thus (the provisions of Chapter Nine in Article 74/First-A) of the Labor Law in force and accordingly stipulates that workers enjoy a break on holidays and official incomes established by law and receive full wages for it. Based on the above legal data.

Second: He came with a letter to the University of Baghdad, for example, and in implementation of the following Cabinet decision (based on the decision of the Council of Ministers to determine the minimum wage for the worker at 350.000) thousand dinars, where the two-day procedure falls under contract workers, which entails their inclusion in the minimum wage established in accordance with the Labor Law and its provisions).

Thus, workers in the governmental, private and mixed sectors are all covered by the rights required by the Labor Law and based on the constitutional texts.

second section

Legal guarantees of workers' rights during the downtime

Basic principles.

Talking about workers' rights in Iraq requires a reference to the provisions of Article (14), which included principles that have been established in Iraqi legal jurisprudence, and since Law No.) for the year 2015 as follows:

First – The rights contained in the provisions of this law represent the minimum rights of workers and these provisions do not affect any of the rights granted to the worker under any other law, or an employment contract, agreement or decision if any of them entitles the worker to rights better than the rights granted to him under the provisions of the provisions of this law(Rasheed Labor Law, , p. 29)

Second: Every condition in a contract or agreement whereby the worker waives any of his rights under the provisions of this law shall be null and void.

According to Article (10): the law protects the law from intimidation by stipulating that (this law prohibits any behavior that leads to the creation of an intimidating, hostile or professional environment for those to whom such behavior is directed).

The right of the worker is, of course, guaranteed by resorting to the labor court located in every governorate in Iraq with the provision of Article (11) that (the worker has the right to resort to the labor court to file a complaint when he is exposed to any form of forced labor, discrimination or harassment in employment and profession) and shall be punished Imprisonment for a period of time in every six months and a fine not exceeding one million dinars or one of these two penalties.

The emphasis will refer to the provisions of Article (73) of the applicable law, which is the focus of the lecture, thus (the employer who violates the provisions of this chapter shall be punished with a fine of no less than (250.000) two hundred and fifty thousand dinars and not more than (500.000) five hundred thousand dinars, and the fines are multiplied by the number of workers in respect of whom the violation occurred).

That is, there are provisions for violating the workers' rights regulation:

- 1- Imprisonment if it involves forced labor (unpaid coercion).
- 2- A fine for violating the provisions of giving the worker their rights.
- 3- The number of penalties according to the number of workers against whom the violations were committed.

third section

Rights of workers during downtime in accordance with the applicable labor law

The ban period due to the Corona pandemic and the issuance of decisions by the Crisis Cell to prevent movement between regions by force majeure in exceptional circumstances that do not belong to the will of one of the parties (the worker and the employer), and which cannot be expected or pushed under normal circumstances, as it is temporary, and it is hoped that its demise will be established by its demise. Its causes, that is, it is not permanent.

If those circumstances were permanent or led to the termination of the work contract and the demise of the obligations of each of the parties, except what the law recognizes upon the termination of the contract, in order for the worker to have financial and non-financial rights, such as the end of service gratuity and his right to documents. (-Rasheed , suspension of the Employment Contract, p. 162)

As for the pandemic (as the World Health Organization called it), it is mostly temporary and it is hoped that it will disappear, with the following legal consequences:

First - its effects on the work contract

Where these circumstances are beyond the control, they stop the work contract, that is, the contract stops the production of its effects during the period of temporary force majeure.

Second: the obligations of the employer during the pandemic

As we have already said, the contract stops its effects, so the worker stops working and basically the employer must stop paying wages, but the Iraqi legislator (as well as the laws of other countries such as Egyptian, Jordanian and French) arranges for the worker the right to wages during the period of suspension due to the weakness of his financial position, which entails The following is for the employer:

- 1- The worker maintains his position at work throughout the period of suspension.
- 2- Contracts may not be terminated during this period unless one of the cases that permits the employer to terminate the contract arises:

A- If the worker suffers from a disease that prevents him from working for a period that can reach a maximum of (6) months.

- 1- If the worker suffers a disability of up to 75%.
- 2- If the worker has reached retirement age.
- 3- If the working circumstance of the project requires the project to be reduced or liquidated, subject to the approval of the Minister of Labor.
- 4- The worker has committed one of the cases that permit his disciplinary dismissal.
- 3- Paying social security contributions 5% on the worker and 12% on the employer, if the worker has a wage, otherwise the whole 17% becomes on the employer.
- 4- Calculating the downtime period from one fifth of the seniority period in the project for the purposes of induction and promotion.
- 5- Allowing the worker to return to work after the end of the period of suspension (the pandemic).

Third: The right of the worker during the pandemic period. However, the development in the legal rules aimed at protecting the worker was in considering ordinary illness as a reason (only for terminating the contract), according to a theory that was adopted by the French judiciary in order to preserve the (worker's status) with the employer, so the employer cannot terminate his contract only without having the right. The worker returns to the employer, neither for his wages nor for any kind of offer, () and by adopting this theory and introducing it into the peremptory legislative texts, the disease has become a model for many cases that stop the contract, in which the worker does not fulfill his obligation to perform the work, while the employer remains obligated to perform his obligation. The wage, even if it is for a specified period determined by the law, is sufficient for the worker to recover immediately, while the remaining period of the worker's illness nullifies his commitment, which made the worker in a weak state of protection despite the remainder of his basic law (labor law) for a theory that almost violates the basic principles that are stable and fixed in the provisions of general rules (contract law). Therefore, the introduction of the normal disease branch of social security legislation was in order to expand the umbrella of protection, as it is considered a condition that prevents earning, similar to the risks of work.

The amended Social Security Retirement Law No. (39) of 1971 regulated the health insurance branch, in its seventh chapter, to benefit the female worker in the event of childbirth(Thus, we find that the first Iraqi jurist in the field of social security, Dr. Sadiq Mahdi Al-Saeed, defined social security as (a social, political, and economic system that aims directly and formally at providing individuals with prevention and treatment from the dangers of ignorance, disease, and poverty, which always secures for them means of subsistence), comfort in life, and a decent standard , which is no longer limited only to providing cash benefits as in previous laws, and extends to include all necessary medical care to benefit from the normal state of health The Worker. (Dr. Adnan Al-Abed and Dr. Yousef Elias Social Security, an increased and revised edition, Baghdad, 1988, p. 84).

The pandemic period results in different legal positions for workers, and the weakness of the law and its implementation has caused the loss of workers' rights, which results in discrimination in the following:

1- If the worker is not infected with corona.

That is, he is ready to perform the work, but the impediment to performing the work is not up to him (the worker), so the distinction is between two cases:

(a) Work on the project has been suspended.

A- According to Article (72) of the Labor Law in force, the employer must pay the workers' wages for the period of suspension of up to (30) days.

B- The employer may entrust the worker with similar or additional unpaid work for a period of (2) two hours a day for thirty days a year, meaning that the worker may not work every two hours above (8) hours on a day divided by the year of work.

B - Using the newly developed means of work: it is the use and employment of workers outside the work site in the project with what is called (remote work)(Dr. Adnan Al-Abed and Dr. Yusuf Elias, Labor Law, Al-Sanhouri Library, Baghdad, 2012.p 121), meaning that the worker performs the same work that is performed for the employer or a relative to him, commissioned by the employer while he is in the rest and by the newly developed electronic means of work. It leads to the same

benefit in projects, that is, if it is under the supervision and direction of the employer, which calls for his entitlement to his full (usual wage) and he leads to remote work until the pandemic is over and he returns to the work site in the project. Article (71) of the applicable law.

It is 50% of the normal wage if it is daytime and 100% if it is night, exhausting or hard.

If the added hours exceed (48) hours per week, that is, it will include days during which the worker is supposed to be unemployed .

. He is entitled to an additional wage and all working hours will be additional to the wage.

2- If he is sick, which entails the following rights:

A- Proof of this according to a medical report (after illness is a material fact).

b- The worker is entitled to a full-paid sick health leave paid by the employer up to (30) days for the year of work, which can accumulate up to 180 days.

C - The sick leave that the worker is entitled to for each service with the employer may accumulate up to (180) paid days, i.e. (six months) paid by the employer. And the employer has to consider it (actual period of service). As mentioned.

If the worker continues to be ill with the coronavirus, for example, for a period exceeding the accumulated sick leave in his service to the employer, or his entitlement to paid sick leave, the following entails:

c- Refer the worker to the provisions of the Social Security Law to benefit from his in-kind and cash benefits.

d- The employer stops paying wages if the accumulated vacations have expired and the period is less than (6) months, and the worker's position in the project is maintained. (Rasheed. The entrance to the study of the Social Security Law, , p. 21)

e- The period of suspension is considered (a period of sick leave) or in fact a period of suspension for which the worker is not entitled to a wage, but the provisions of the Labor and Social Security Law for Workers, No. (39) of (1971) shall be referred.

As for the rights of workers according to the Social Security Law?

Article (43) of this law stipulates that:

++ The insurance department pays the sick insured worker until he recovers or ensures his disability a sick leave compensation at the rate of (75%) from the other's representative for the last three months. and the wage he used contains no less of this percentage than the minimum wage paid in the worker's profession. This is according to the following compensation rule:

$75\% \times \text{the average wage for the last three months} \times \text{sick days.}$

100

+++ If (6) months have elapsed and his recovery has not been proven. he is considered disabled and is entitled to a pension according to the percentage of his estimated disability. which is legal. i.e.. by virtue of full 100% and according to the following equation:

$2.5 \times \text{the average wage for the last three years} \times \text{the number of months of service.}$

100×12

++++ Corona disease is one of the diseases that conditions have not stabilized to its severity. which indicates that it is close to incurable and malignant diseases. which requires giving the worker a wage of up to two years according to Article (47/H1). and his full wage until his complete recovery is proven.

If the worker recovered before six months and left him with a disability from Corona disease:

+++++ If it was between (35% - 39%) it was a partial disability for which he is entitled to a partial disability pension that will not be transferred to his heirs if he dies.

++++++ If it is 100% according to the medical report. then he is considered completely disabled and his heirs are entitled to a pension.

Conclusion

Acknowledging the rights of workers in all sectors of the state during the suspension period requires review and follow-up by workers and during the periods of limitation. whether they are financial or non-financial rights. such as treatment.

surgeries, and industrial alternatives. He called a duty for workers free of charge and used to preserve their rights in all circumstances, so how about rights in exceptional circumstances. (Rasheed ,Social Security System, , p. 104.)Establishing the rules of social justice and social solidarity is one of the foundations for reaching (social welfare), which requires the establishment of legal rules that include rights, whether directed (individually) or (collectively), and supported by solid rules with an authoritative (compelling) power supported by punitive provisions that inflict violators, not to mention the creation of executive bodies Flexible in applied thinking and quick in application (by creating regulatory rules facilitating the implementation of legislation) and very persistent with regard to obtaining rights and then performing the obligations prescribed for them legislatively. Whereas the health insurance branch is considered one of the newest branches in the social security systems, which scientific studies have proven to be associated with (work injury branches), which was the focus or in fact the real reason for the emergence of the insurance law in its effects by losing the ability to earn or lowering its level than normal. Infection of the worker with common diseases to cut off the worker's relationship with the employer (termination of the contract) for the lack of anything to guarantee and protect the worker throughout that period.

Recommendations

In view of the challenges posed by this disease, which caused its emergence and the emergence of new forms of it, and even its stability in many countries, including Iraq, which led to exposing the jobs of workers to the danger of removal, which requires serious study and recommendations for treatment of the laws in force and in the following forms:

- 1 - Amending the Iraqi labor law in force to include provisions for affliction with corona disease, after which it is a disease for which a suspension is due in the contract, accompanied by satisfactory compensation and the non-dismissal of the worker from work in the project due to the multiplicity of his injuries.

2 - Amending the effective retirement and social security law or adding an explicit paragraph in the draft security law submitted to the Iraqi parliament in a way that guarantees the worker his rights after he is unable to work due to the injury he has left from the corona if it is professional, i.e. the injury caused to him as a result of work and Including workers with unemployment compensation in projects that are closed as a result of the pandemic, regardless of the number of paid contributions of the worker and his registration with the Insurance Department.

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حقوق العامل خلال فترة جائحة كورونا طبقاً للقانون العراقي

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الكلمات المفتاحية: حقوق، عمال، كورونا، عراق

الملخص:

نتج عن خطر انتشار مرض كورونا، توقف كل الاعمال في الدول وطبعاً منها العراق فكان تعطل كافة المرافق، وصدور القرارات في خلية الازمة بمنع الحركة بين المناطق من قبيل القوة القاهرة او بالظروف الاستثنائية الذي لا تعود الى ارادة احد الطرفين (العامل وصاحب العمل) والتي لا يمكن توقعها ولا دفعها بالظروف الاعتيادية، كما انها مؤقتة متأمل زوالها انشاء اليه بزوال اسبابها، اي انها ليست دائمية. ويترتب على فترة الجائحة اختلاف المراكز القانونية للعمال وتسبب ضعف القانون وتنفيذه في ضياع حقوق العمال .