Legal Update **June 2015**

Labor Relations Department

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<u>New case law: employer ordered to provide prior notice to employees in a change of ownership transaction.</u>

Employment Appeal 28597-03-11 Dabush Light - Jordanian Locks Holdings (2005) Limited. Decided on February 11, 2015.

Jordanian Locks transferred the ownership of its plant to another company which sent letters of dismissal to Jordanian Locks' employees, informing them of the immediate termination of their employment, as a result of a change of ownership. The employees continued to work at the factory with the new employer.

Jordanian Locks paid its employees severance pay for termination of their employment, but refused to pay them in relation to notice of their termination.

The National Labor Court ruled that the obligation to give employees prior notice before termination of their employment (or, alternatively, financial compensation in lieu of notice) is mandatory and applies even when the workplace continues to exist and the new employer is willing to hire the workers and to continue to employ them without a break in their employment.

In other words, an employer that wishes to transfer the ownership of its business to another entity should notify employees <u>in advance</u> of this intention, and thus leave the employees with the choice as to whether to continue working with the new owner. An employer that does not do so will be requested to pay an amount in respect of prior notice to its employees.

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The National Labor Court based its decision on two grounds:

The first argument - the Law of Notice of Dismissal and Resignation - 2001 states that "an employer that wishes to dismiss a worker will give him or her advance notice under this law". In other words, the provision regarding the duty of an employer to give the dismissed employee notice is a mandatory provision which must be applied.

The second argument – "the continued existence of the workplace" does not mean that the employees automatically give their advance consent to move to the new employer. Some employees may not be interested in continuing to be employed at the workplace under new owners. In such circumstances, if employees do not receive advance notice from their former employer (whether through advance notice or money in lieu of notice), the purpose of the law, which is to enable the employee to prepare for the termination of his or her employment, is not achieved.

The National Labor Court also made clear that the employees' eligibility to receive prior notice before the termination of their employment does not depend on whether the employees continue to work at the same workplace after the termination.

New case law: as part of a claim of a contractor who was recognized retroactively as an employee, an employer may effect an offset or receive monies that were overpaid by the employer, without reference to the measure of the difference between the compensation as a contractor and the salary as an employee.

Employment Appeal 3575-10-11 Anat Amir - The Israel News Company Limited. Decided on January 21, 2015.

The appellant was engaged at the Israel News Company as an assistant stage manager for six years. The parties entered into an agreement which classified the appellant as providing independent services. The appellant's **compensation** for providing such services was a significantly higher amount than the **salary** that would have been due to her had she been classified as an "employee".

The question before the National Labor Court concerned whether the employer was entitled to offset or refund monies which had been overpaid to any member of staff classified as a contractor and subsequently recognized, in retrospect, as an employee.

Until the current ruling, the prevailing case law held that it was possible to effect an offset or refund of amounts that had been overpaid to a person who retroactively was recognized as an employee only where there was a **substantial difference** between the compensation paid to the person as a contractor and the salary that would have been paid had he or she been properly designated as an employee.

In the case in question, the National Labor Court overturned existing case law and stated that there **is no need to demonstrate a substantial difference** between the compensation as "a contractor" and salary as "an employee".

The National Labor Court also stated that the calculation of social benefits to which the newly classified "employee" will be entitled, will be made on the **salary** as "an employee".

The rate of offset or refund will be the difference between the cost of the alternative salary as an employee, together with social benefits on that salary, and the cost of the total compensation as a

contractor.

If the difference in costs is in favor of the employee, he or she will be entitled to that difference.

If the difference in costs is in favor of the employer; the employer may be, in certain circumstances, entitled to that difference.

The National Labor Court clarified that its ruling was valid in cases in which there had been a basis for the parties to assume that it was possible to enter into an independent contractor relationship, such as in cases where the employee determined the type of engagement. However, in cases where the employer knew that it was engaging someone as a contractor, when the person was properly classified as an "employee", the social benefits to which the employee will be entitled will be calculated on the basis of his or her **compensation as contractor**.

We would be happy to answer any questions that you might have.

Sincerely,

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