



Legal Update

July 2017

Labor Relations

Changing the method of calculation of severance pay for an hourly employee with a changing scope of position

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Amendment of the Employment of Women Law –right to be absent from work when the spouse is on military reserve duty

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Providing electronic pay slips

New Ruling – calculation of an hourly employee's last wage for the purpose of calculating the severance pay to which he is entitled will be made according to the partiality of his position throughout the term of his employment

On June 4, 2017, the National Labor Court rendered a judgment in Labor Appeal 44824-03-16 **Y.B. See Resources Ltd. vs Adhenom Berh Teami** (the "**See Resources Case**"). The judgment set forth a new ruling for the method of calculating severance pay for an hourly employee whose scope of work hours changes each month.

As a general rule, the calculation of severance pay for an employee (who is not subject to the provisions of Section 14 of the Severance Pay Law, 5723-1963) is to multiply the last wage by the employee's years of seniority.

As for hourly employees whose monthly wage changes on a monthly basis, and in accordance with prior court rulings, as determined in Labor Court Hearing 3-57/57 **Snunit Demonstrations and Sales Promotion (1989) Ltd. – Peretz** (the "**Snunit Case**"), the hourly employee's determining wage, for the purpose of calculating severance pay, was calculated based on the average work hours in the 12 work months preceding the dismissal multiplied by the employee's last hourly rate.

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As aforesaid, in accordance with See Resources Case – calculation of an hourly employee's severance pay in a varying position will be made based on the partiality of his position **throughout the term of his employment.**

The rationale underlying the new ruling is that the severance pay will be calculated in keeping with the employee's actual scope of

employment, and will prevent a result whereby one case may discriminate against the employer and another against the employee. For instance, in case of an employment scope that increased in the last 12 months whereby the employee will receive severance pay for the period preceding the change in a rate exceeding the actual scope of his employment, as opposed to an employee that, in the last 12 months of his employment, there was a decrease in the scope of employment and, thereby, will receive lacking severance pay.

It was further determined that the calculation of the last wage based on the average work hours in the last 12 month is suitable in the following instances: *first*, where the employee's scope of employment does not change but his wage changes (e.g., due to receiving commissions) and, *second*, a case of real contractual work where the scope of work hours is not a factor in determining the wage. In these cases, the average refers to the "Shekels" (wage) received in the last 12 months.

Amendment of Employment of Women Law – an employee's right to be absent from work when their spouse is on military reserve duty

On July 3, 2017, Amendment 58 to the Employment of Women Law, 5714-1954 (the “**Employment of Women Law**”) was enacted, pursuant to which a woman may be absent from work for one hour per day when her spouse is on military reserve service.

The entitlement is conditioned upon fulfillment of the following accumulative conditions: (1) the reserve service period is not be less than five consecutive days; (2) the woman has a child who is not yet 12 years of age who lives with her; (3) the woman is employed full time as customary in her place of employment; and (4) the woman will inform her employer of exercising the right and present a confirmation of her spouse's reserve service.

The Amendment further provides that, insomuch that the woman is absent from work due to exercising the right for one hour of parenting, namely, a one-hour absence to which the woman is entitled as of the end of the period of birth and parenting until the end of four months of the same date (according to the terms in Section 7(C)(3) of the Employment of Women Law), the woman shall not be entitled to be absent from work also due to the spouse's reserve service. In addition, said allowed absence is in addition to breaks under the Hours of Work and Rest Law, 5711-1951 and shall

not be deducted from the wage. The entitlement to absence due to reserve service shall also apply to a man whose spouse is in reserve service, *mutatis mutandis*.

Delivering electronic pay slip

On July 2, 2017, the Wage Protection Regulations (Special Ways to Deliver Pay Slips), 5777-2017 (the “**Regulations**”) have been enacted regulating the delivery of electronic pay slip to employees.

In accordance with the Regulations, an employer may deliver an electronic pay slip to an employee who has agreed in advance and in writing as per a consent form, to receive a pay slip by electronic means, which is attached as an addendum to the Regulations, not to receive a hard copy pay slip but rather through a secured Internet website on behalf of the employer (and in accordance with the conditions provided for in the Regulations), or via a private e-mail or an e-mail of the employer.

The employer will ensure that the electronic pay slip, in each of the above-mentioned ways, will be printable. In addition, the employer will deliver the electronic pay slip no later than the effective date, which is the 9th day of the consecutive month for which wage is paid.

In the event of delivering electronic pay slip to a private e-mail, the employee will inform in writing shortly after receiving the slip and no later than five days of the effective date, of receiving the slip. If the employer does not receive such notice, it will deliver a hard copy of the wage slip to the employee within 5 additional days and no later than 10 days of the effective date.

An employer who delivers the pay slip to the employee in one of said ways will enable his employee to receive a hard copy of the slip for a period of not less than 7 years of the effective date for delivering the slip pursuant to the law. In addition, an employer who delivers the slip by a secure Internet website on behalf of the employer will allow access to the pay slip through said Internet website for a period of not less than 12 months of the effective date for delivering the slip pursuant to the law.

Providing information by an employer to an employee pursuant to the Regulations will be made using reasonable measures ensuring that the access to the pay slip and viewing the information included in it will be given to the employee only or under his permission, and at least

using encoding of the information, and following the employee having signed a statement to that effect (specified in the consent form attached to the Regulations).

The employer will use such technology means so as to prevent any changes in the delivered pay slip in the ways provided for in the Regulations.

The employee may, at any time, retract his consent to receive an electronic pay slip and the employer will act according to his notice starting on the month following the month in which the employee delivers such notice.

It is noted, as of the current date, the Regulations have not been published in the Official Gazette.¹

* See the wording of the Wage Protection Regulations (Special Ways to Deliver Pay Slips), 5777-2017 in the following [link](#).

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

Sincerely,

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¹ See the Wage Protection Regulations (Special ways to deliver payslips) 5777-2017 in the [following link](#).