

Bits & Briefs

Israeli Labor and Employment Law | Special Series | 30 May 2019

In our "Bits & Briefs" Special Series dedicated to **Israeli Labor and Employment Law**, we provide periodic bite-sized updates introducing key provisions of Israeli labor law and their practical implications, particularly from the perspective of businesses looking to operate in, or expand to, Israel. In this update we will cover some of the basic rights granted to employees in Israel regarding business sales and change of control, as well as employers' obligations in a unionized entity regarding structural change.

Business Sales and Change of Control

Bit #1: The Israeli National Labor Court has not directly discussed the definition of a "Change of Control" in the context of a business sale. The court has held that the definition of a "Change of Control" in relation to determining whether the employees are entitled to resign and receive severance pay depends on the question as to how the employee's work environment has changed as a result of the change of control (and not on the number of the shares or quantity of assets that were transferred).

Bit #2: If an employee resigns in connection with a change of control, the employee may be entitled to severance pay as if dismissed. Labor court rulings have established the following requirements to create this entitlement: (i) a causal connection exists between the change of employer and the resignation of the employee, and (ii) the change of control causes a substantial change in the characteristics of the employer.

Structural Change in a Unionized Entity

Bit #3: According to Israeli labor case law, an employer in a unionized entity has the obligation to consult with the labor union on any matters that can relate to the workers' terms of employment, including a structural change.

Bit #4: The obligation of consultation includes: (a) the obligation to provide employees with relevant information regarding the structural change; and (b) the obligation to consult with the employees regarding the maintenance of their rights during the structural change.

Bit #5: There is no obligation on an employer in a unionized entity to pay the employees a change of control bonus.

Practical Implications:

- If the two requirements set forth in Bit #2 above regarding an employee's resignation in connection with a change of control are met, then the resigning employee would be entitled to severance pay.
- The Israeli Supreme Court ruled that in the event of a merger following which the target entity disappears (which is, clearly, a substantial change in the work environment), the target entity must ask the employees whether they agree to be employed by the purchaser (i.e., the new employer).
- An employee who refuses to give his or her consent to this change is not transferred to the purchaser, and the target entity is entitled to dismiss the employee.
- The meaning of the employer's "consultation" obligation in a unionized entity regarding structural change, as set forth in Bit #4 above, is that the employee must hear the labor union's opinions regarding the future changes (and only the future changes since the transaction itself is in the sole discretion of the employer or its shareholder, depending on the transaction structure). The employer does not have to accept the union's opinions.
- In light of the labor courts' tendency to strengthen the employees' right to organize, in change of control transactions, the labor court will likely order the employer in a unionized entity to consult with the labor union in good faith, and also will not prevent the employees from conducting industrial actions (such as work stoppages, strikes, etc.), if the consultation does not proceed smoothly.

We are happy to assist you in providing legal advice in relation to each of these issues, their ramifications for the workplace and the practical steps that may be taken as a result.

Sincerely,
Fischer Behar Chen Well Orion & Co.

For further information, please contact:

Labor & Employment Group

[Adv. Shay Teken, Partner](#)

[Adv. Moran Friedman, Senior Associate](#)

Hi-Tech Group

[Adv. Raz Tepper, Partner](#)

[Adv. Eran Yaniv, Partner](#)

Legal Knowledge Manager

[Adv. Esther Dediashvili](#)