



Supreme Court Orders Cancellation of Automatic Sick Leave Certificates for Quarantined Employees

Dear Clients and Colleagues,

In March, we updated that due to the spread of the coronavirus (COVID-19) the Ministry of Health established that an employee required to quarantine at home in accordance with Ministry of Health guidelines would automatically receive a sick leave certificate which could present to the employer and receive sick pay for the quarantine period. The rule was regulated in light of the fear of the increased transmission rate of the coronavirus and the resulting surge of employee visits to public health clinics. However, in a precedent setting ruling, the Supreme Court recently held that automatic sick leave certificates would no longer be issued to employees so required to quarantine.

The consequence of the cancellation of the policy to automatically issue the certificates is that the employers will no longer have to bear the economic burden of the quarantine days.

On July 27, 2020, two petitions were filed with the Supreme Court by employers and employers' associations, including The Manufacturers Association and The Association of Craft and Industry, against the State's practice of automatically issuing sick leave certificates to employees who were quarantined.

The petitioners' main argument was that, under the Sick Pay Law, 5736-1976, the term "sick employee" must be interpreted to be an employee who is suffering from a concrete illness and the law only grants the sick pay entitlement to an employee "who was absent from work due to the illness" – *i.e.* an employee absent from work due to his temporary or permanent incapacity to carry out his work." Accordingly, the petitioners argued that an employee required to quarantine exclusively for preventative reasons is not incapacitated to carry out his work and, therefore, is not entitled to receive a sick leave certificate which grants him payment for sick days.

The respondents (the State of Israel and the "Histadrut" - General Workers' Organization of Israel) argued that a quarantined worker who is defined as "statistically sick" – meaning any person who could be a carrier of the coronavirus and infect others – is akin to a worker being absent from work due to illness which establishes the entitlement to receive sick pay.

The Supreme Court accepted the petitioners' position and ordered that **the automatic sick leave**

certificates would be cancelled, commencing September 30, 2020. In its judgement, the Supreme Court also held that the Sick Pay Law did not grant the Ministry of Health the authority to issue automatic sick leave certificates which obligated all employers in Israel to pay sick pay to their mandatory quarantined employees who showed no coronavirus symptoms and who were not carriers of the virus.

We will provide further updates if new rules are established on the matter.

We are available for any questions or clarifications and we will be happy to assist you.

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