

THE IMPACT OF THE CORONA PANDEMIC ON EMPLOYMENT CONTRACTS IN OMANI LAW

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ABSTRACT

This study aims to know the impact of the Corona pandemic on employment contracts. There are many workers in different countries of the world who have lost their jobs due to the impact of this pandemic. The problem of the study is that there are many disputes that have arisen as a result of this pandemic, some of them are related to the termination of the work contract, some are related to the reduction of wages, some are related to the reduction of employment, and some are related to the non-performance of the agreed work. It is one of the precautionary policies imposed by countries to limit or try to mitigate this pandemic, or as a result of the worker being infected with Corona disease or placing him in quarantine.

Keywords: Corona Pandemic, Employment, Omani Law

INTRODUCTION

The Corona pandemic is an emergency phenomenon, and therefore there are many questions about the legal status of this phenomenon within the framework of labor law, which is to know: To what extent are the rules contained in the civil law applied within the framework of the theory of emergency conditions to the disputes that arise under these circumstances? Or are the rules of the rules contained in the Labor Law considered sufficient to deal with these disputes that arise due to this pandemic? What are the other sources that the competent judge can resort to in the absence of the text? Therefore, this study was likely to contribute to reaching some results that put solutions to some legal dilemmas in this field.

This pandemic first appeared in the Chinese city of Wuhan in December of the year 2019, and this disease spread widely. On the thirtieth of January of the year two thousand and twenty-first, the World Health Organization declared that the disease constitutes a state of health emergency in general, and on the eleventh of the same year it declared that this disease had turned into a pandemic, more than 148 million were infected in more than 188 countries in which it was about 3,100,000 deaths. About 86.3 million infected people have recovered from this disease until the 28th of April 2021¹.

Because this disease is contagious and it spreads in many ways and very quickly, many countries have taken many measures to limit the spread of this disease, including closing borders, curfews, and closing shops.

The impact of this pandemic was not limited to the disease it causes, which leads to the death of many people, but also extended to work relationships. This pandemic has affected many employees, and the privileged among them were those whose salaries were reduced and others were laid off. Some companies have given their employees unpaid vacation (Al-Zein, 2020).

This research aims to know the legal adaptation of the impact of this pandemic on employment contracts, and to know the implications of the actions taken by employers against workers from the termination and amendment of contracts.

The importance of the research is that the topic in general has become preoccupied with media public opinion, and intense controversy erupted around it because it deals with a large segment, which represents the vast majority. The topic raises theoretical importance represented in the legislation governing these emergency situations and the practical

importance of many cases that arose regarding the establishment of some employers take some measures that affected workers (Faraj et al., 2002).

In order for the topic to be fulfilled its right, it was divided into two sections, the first section deals with the amendment of the work contract, and the second topic deals with the termination of the work contract. It was concluded with a number of results and recommendations, which we hope will help in this aspect.

The First Topic

Modifying Employment Contract

First of all, it is necessary to define an employment contract, which is defined as: “A set of legal rules that govern the relationship of private remunerated employment ²”. It was also defined as: “Every contract under which a natural person undertakes to work for an employer, under his management and supervision, in return for a wage ³”.

It is also important to define the parties to the contract, and the beginning is with the definition of the employer, which is defined as: “Every natural or legal person who employs one or more workers in return for a wage ⁴.” As for the other party, which is the worker, it was defined as: “The worker: every natural person who works In return for a wage with an employer and under his management and supervision. ⁵ (Al-Ma’ashani, (n.d.)):

Due to the lack of production or economic conditions, the employer may reduce the wage by a certain percentage to meet the losses that resulted from the effects of this pandemic. The employer may also reduce the daily working hours or working days for the worker based on the decisions issued by the Supreme Committee to Combat Corona. But if the reduction of working hours or the reduction of the number of working days does not result in harm to the worker, there is no problem, but the problem arises when the employer reduces worker wages.

The employer may not deviate from the provisions of the contract or assign the worker to do work that is not agreed upon in the contract unless it is necessary and on a temporary basis. However, it is permissible for the worker to assign a work that is not agreed upon if that work is not fundamentally different from the original work ⁶, and there is no doubt that the wage is one of the essential elements of the employment contract. Any kind of amendment in the employment contract is considered a fundamental amendment that the employer is not entitled to make, but in the event the facility goes through a financial crisis, the employer will have only one of two options: to reduce the workers’ wages or terminate their contracts in order to be able to overcome this economic crisis ⁷.

Contracts in general - including the employment contract - are subject to what is known as the law of contract theory. The contract is the law of contracting parties and it may not be rescinded or amended except with the agreement of the two parties and for reasons approved by law ⁸.

The law has decided that if the contract is valid, no one of the contracting parties has the right to unilaterally amend it without the consent of the other party or without a judicial decision ⁹; because the contract takes the place of the law in regulating the relationship between its parties ¹⁰.

There is no doubt that the contract is the result of the will of its parties, and therefore the contract may not be set aside or amended by the judge on the grounds that the amendment is required by justice. Neither party has the right to exploit it by modifying it without the consent of the other party. This is the general rule; however, the contract can be modified by its parties ¹¹.

This general rule is subject to some exceptions with which contracts may be amended, including employment contract. Among these rules is the theory of emergency

circumstances; because the Corona pandemic is crossing an emergency circumstance that could not have been expected (al-Sanhoury, (n.d.)).

First - The Theory of Emergency Conditions

Under these circumstances, the employer must take all measures to preserve the safety of the work, including preparing thermostats, sterilizers, face masks, and other health measures to preserve the safety and health of workers¹².

The theory of emergency circumstances was decided by Article 159 of the Omani Civil Transactions Law of 2013, which states: "If general exceptional incidents occur that could not have been foreseen at the time of contracting, and their occurrence resulted in the implementation of the contractual obligation, and if it did not become impossible, it became burdensome for the debtor, threatening him with heavy loss. The court may, according to the circumstances and after balancing the interests of the two parties, reduce the burdensome obligation to a reasonable limit, and every condition stipulating otherwise shall be null and void (Allah, 2001).

There are conditions for the contingency theory to be applied, and therefore the contract is modified by the judge and this is an exception to the general rule. These conditions are as follows:

- 1) The contract must be lax in its implementation: the contract is lax if there is a period of time between the issuance of the contract and its implementation, whether the contract is an immediate contract but its implementation is deferred, such as the sales contract in which it is agreed to postpone the delivery of the thing sold, or it is a continuous contract as a contract rent¹³. Employment contract of contracts to which the theory of emergency conditions applies; Because it is one of the continuous contracts or time contracts, in which the obligations of both parties to the contract are carried out periodically or continuously, and therefore if the rest of the other conditions that will be referred to are met, the contract can be modified.
- 2) That a general exceptional accident occurs: What is meant is that the accident should be exceptional and that its occurrence should be rare, provided that what is meant is that the accident should be general and not be limited to the debtor, rather it should happen to a large group of people and the best example of this is the Corona pandemic.
- 3) That the exceptional event is unexpected: in addition to the fact that the accident is not expected to occur, it is also required that it be something that cannot be prevented, and if it can be prevented, this theory cannot be applied in its regard¹⁴.
- 4) That the exceptional incident would make the implementation of the obligation stressful for the debtor: it is stipulated that the exhaustion that may befall the debtor should cause him a heavy loss, but if it is a familiar loss, it is not considered, and the assessment of the heavy loss is considered a discretionary authority of the court¹⁵.

Second - The Impact of the Emergency Conditions Theory on Employment Contract in Light of the Corona Pandemic

Except for these conditions, we find that the Corona pandemic is a general exceptional event; Because the pandemic has spread in all countries of the world, it is also an unexpected accident, and since an employment contract is a continuous contract, it is a type of contract to which the theory of emergency conditions applies, and therefore if there is a huge loss that cannot be paid, it can happen to the employer as a result of the procedures taken by states, the employer's obligation can be reimbursed and the wage reduced to a reasonable extent (Moussa, 2009).

The other option is to stop the implementation of the employment contract until this pandemic is over or less so that the implementation of the employment contract becomes possible, and this can be achieved if the employer grants the worker unpaid leave.

This was a common law order, the Omani Civil Transactions Law of 2013, which contains the text referred to and addresses this issue. As for the Labor Law, it states that it is not possible to withhold or waive the wages owed to the worker except within the limits of a quarter, for a debt of alimony or for the payment of the sums owed by him to the government or to the employer, and in case of contention, priority is given to the alimony debt¹⁶.

The Second Topic

Expiry of Employment Contract

First - Majeure Force

If a majeure force occurs in the contracts binding on both sides, and as a result of which the implementation of the obligation has become impossible, the corresponding obligation shall expire and thus the contract shall be voided on its own¹⁷.

In the case where the implementation of the obligation is not possible by becoming impossible, such as the Corona pandemic, the contract is voided by default, and the burden of proof falls on the employer to prove that the Corona pandemic has become a force majeure, and therefore the responsibility of the employer ends due to the impossibility of implementing his obligation to enable the worker to perform the agreed work him because of this majeure force.

But if the impossibility is partial if the debtor performs part of his obligation, then the consideration for the part that has not been performed lapses. This applies to continuous contracts. In the event that part of the contract is implemented, the consideration for what has not been implemented lapses and the creditor has the right to rescind the contract¹⁸. A good example of continuous contracts is employment contract to which this order applies.

According to the text of the first paragraph of Article 172 of the Omani Civil Transactions Law of 2013, which was referred to, there are conditions for applying the force theory and its role in the impossibility of implementation (Musa, 2015):

- 1) That the contract be a contract binding on both sides: A contract that is binding on both sides is that type of contract that entails reciprocal obligations in the hands of each of its parties¹⁹. The employment contract is one of the binding contracts for both sides, where it entails an obligation in the hands of the worker represented in his carrying out the agreed work and arranges a corresponding obligation for the employer to pay the agreed wage.
- 2) The failure of one of the contractors to implement his obligation: Either the worker is unable to perform the work or the employer is unable to enable the worker to perform the agreed upon work due to the Corona pandemic or because of the measures taken by countries to close shops.
- 3) That the impossibility of implementation is due to a foreign reason: The foreign reason is the one that occurs due to a force majeure and one of the parties to the contract has no involvement in it, such as the Corona pandemic.

Second - The Effect of Force Majeure

The effect of force majeure is the termination of the contract. In the event of termination of the contract, the two parties must be returned to the state they were in before the contract²⁰ and the contract is terminated retroactively. But with regard to continuous contracts or period contracts, it is not conceivable that the contract be rescinded retroactively, but the contract disappears with respect to the future. In other words, the effects of such type of contracts before the termination of the contract remain valid, but the termination is for the part of the contract that was not executed later in the future²¹; It is not conceivable in the event of contract termination for the employment contract that it will be rescinded

retroactively. It is not possible to restore the situation to what it was in the past, return the work that the worker did in the past, and return the wage to the employer.

Third - The Impossibility of Implementation for an Economic Reason

The Omani legislator did not provide for the dismissal of economic reasons, but it can be considered as one of the reasons which permits the employer to dismiss the worker in the event of its occurrence; It is not reasonable to obligate the employer To keep his workers despite the fact that the facility is in a state of collapse due to poor financial matters, which may have occurred due to reasons beyond his control²² However, the dismissal of the worker to avoid the economic crisis must not be arbitrary, as the allegation must be real, and this should not be a justification for dismissal worker, and there is another reason that has nothing to do with the interest of work²³.

Fourth - Cases of Contract Termination in the Labor Law

There are cases in which the employer may dismiss the worker and the termination of the employment contract must be based on a legitimate reason²⁴, stipulated in the Labor Law in Article 40 and it does not apply to the subject of the research²⁵. Therefore, it is necessary to refer in this regard to the Omani Civil Transactions Law of 2013 due to the absence of a text in the Omani Labor Law of 2013.

There are cases in which the employment contract²⁶ ends, including the inability of the worker to perform the work and the worker's illness. Corona's disease may be one of the diseases that cause the worker's inability to perform the agreed work; Employment contract of indefinite duration must not be arbitrary and there must be a legitimate justification for the termination of the contract by the employer. Violation of this results in the permissibility of returning the worker to his work or obligating the employer to pay fair compensation to the employee²⁷.

Fifth: Settling a Dispute between the Employee and the Employer Regarding Dismissal or the Amendment of Employment Contract

The employment contract must be fixed in writing and drawn up in the Arabic language in two copies, for each party a copy. If the contract is drawn up in a language other than Arabic, at least a copy drawn up in Arabic approved by the two parties to the contract shall be attached to it. It shall have the same evidentiary force. If there is no written work contract, the worker may prove his rights by all means of proof, and the worker is given a receipt for the papers and certificates that he has deposited with the employer²⁸.

The worker must claim his rights within one year from the date of the decision, otherwise he will not be able to claim them in the future if he does not claim them during this period²⁹.

The worker must file a grievance within the establishment in accordance with the applicable system. If a grievance has not been resolved, or this system is not in place, he must, within fifteen days, submit a request to the competent department in the workforce³⁰, but this article does not prescribe any penalty to file the case after the lapse of these dates, rather they are organizational dates and their purpose is not to deprive the worker from claiming his rights³¹.

The Department of Manpower must resolve the dispute amicably, and if it is done, it must be proven and implementation followed up. If the employer does not implement the implementation, or the settlement is not completed, the department must, within two weeks, refer the dispute to the court. If the court finds that the dismissal was unfair, it must rule to

return the worker to work or sentence him to a salary of three months with the last comprehensive salary in addition to the due end-of-service gratuity. He is legally entitled and all other benefits stipulated by law or employment contract, whichever is greater³².

CONCLUSION

I would like to thank Allah, before and after, who helped me to complete this research. I would like to point out that the conclusion contains the results and recommendations

First: The Results

- 1) The Corona pandemic within the scope of labor law can be applied to the theory of emergency conditions; because a pandemic is unexpected and can make the implementation of an employment contract cumbersome for the employer rather than impossible.
- 2) The Corona pandemic could make the implementation of an employment contract impossible, considering the Corona pandemic a force majeure.
- 3) Since the pandemic occurred in the year 2019 and surprised the world, there are few legal studies on this matter.

Second: Recommendations

- 1) We recommend the legislator to put a text in the labor law that addresses the issue of emergency circumstances in a way that does not cause a heavy loss to the employer.
- 2) We recommend the legislator to put a text in the labor law dealing with the issue of force majeure, with which it is impossible to implement an employment contract.
- 3) I recommend myself and the researchers to write about this subject because of its great importance, especially that in the future, judicial rulings will be issued which are worthy of study and can be relied upon to find solutions to some of the practical problems that occur in this regard.

FOOTNOTES

- 1) <https://ar.wikipedia.org> › wiki ›
- 2) Mustafa Mandour Musa, Al-Wajeez in Omani Labor Law, University Book House, Al-Ain, UAE, 2015, p. 22.
- 3) Paragraph 7 of Article One of the Omani Labor Law for the year 2003 AD.
- 4) Article 5 of the Omani Labor Law for the year 2003 AD.
- 5) Article 6 of the Omani Labor Law of 2003.
- 6) Article 25 of the Omani Labor Law of 2003.
- 7) Saeed bin Muhammad Al-Ma'ashani, The authority of the employer to amend the contract, without mentioning the country of evil, without t, p. 137.
- 8) Article 113 of the Sudanese Civil Transactions Act of 1984.
- 9) Article (167) of the Civil Transactions Law of 2013.
- 10) Appeal No. 82/2007, High Workers' Session, 18/6/2007 AD, a set of judgments issued by the civil departments of the Supreme Court and the principles drawn from them from 1/10/2006 to 30/6/2007 AD, the seventh judicial year, prepared by the Office Technical Court of the Omani Supreme Court, p. 1163. See also the Supreme Commercial Appeal No. 209/2005, session 15/2/2006 AD, a set of judgments issued by the civil departments of the Supreme Court and the principles extracted from them from 1/1/2006 to 31/6/2006 AD, Seventh Judicial Year, Prepared by the Technical Office of the Omani Supreme Court, p. 387.
- 11) Dr. Abd al-Razzaq Ahmad al-Sanhoury, Mediator in Explanation of the New Civil Law, Arab Heritage Revival House, Beirut, Lebanon.

- 12) Article 33 of the Omani Labor Law of 2003, which states: “The employer must provide his workers with medical aid in the facility, and if the number of his workers in one place or one country exceeds one hundred, he must employ a qualified nurse to carry out medical aid and entrust a doctor to If the number of workers exceeds five hundred, he must, in addition to the above, provide his workers with all other means of treatment whose treatment requires the assistance of specialized doctors, or performing surgeries, or If the worker is treated in a government or private hospital, the employer must bear the expenses of treatment, medication, and accommodation in the hospital, in accordance with the financial regulations and regulations in force in those hospitals, with no Violation of the provisions of the Social Security Law.
- 13) Ahmad Muhammad Ahmad Al-Zein, *Sources of Voluntary Compliance in Omani Law*, Dar Al-Kitab Al-Jami, Al-Ain, UAE, 2020, p. 159.
- 14) Abd al-Razzaq Ahmad al-Sanhouri, previous reference, p. 644.
- 15) Muhammad Labib Shanab and Dr. Muhammad Al-Mursi Zahra, *Voluntary Sources in Omani Law*, University Book House, Al-Ain, UAE, pp. 229-230.
- 16) Article 59 of the Omani Labor Law for the year 2003 AD.
- 17) The first paragraph of Article 172 of the Omani Civil Transactions Law of 2013.
- 18) The second paragraph of Article 172 of the Omani Civil Transactions Law of 2013.
- 19) Muhammad Sheikh Omar Dafa Allah, *Civil Transactions Law*, Khartoum, 2001, p. 28.
- 20) Appeal No. 986/2014 High Civil, Session 20/January/2015 AD, Collection of Judgments issued by the Civil Chambers of the Supreme Court and the principles drawn from them from 10/1/2014 to 30/6/2016 AD, fifteenth and sixteenth judicial years, prepared Technical Office of the Omani Supreme Court, pg. 70.
- 21) Dr. Tawfiq Hassaab Faraj and Dr. Jalal Al-Adawi, *The General Theory of Obligation*, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2002, p. 333.
- 22) Mustafa Mandour Musa, *The Origins of Implementing Labor Law in the Sultanate of Oman*, Beirut Library, Cairo, Arab Republic of Egypt, 2009 AD, p. 175, see also Appeal No. 1272/2014 High Civil (C) session on Monday 27 April 2014 AD Collection of provisions Issued by the civil departments of the Supreme Court and the principles extracted from it in the period from 1/10/2014 to 30/6/2016 AD, the fifteenth and sixteenth judicial year, prepared by the Technical Office of the Omani Supreme Court, p. 292.
- 23) Appeal No. 194/2005 High Labor, session 8/5/2006 AD, a set of judgments issued by the civil departments of the Supreme Court and the principles drawn from them in the period from 1/1/2006 to 06/31/2006 AD, the seventh judicial year, prepared by the court’s technical office The Omani Supreme Court, p. 589.
- 24) Appeal Appeal No. 401/2015 High Civil Session on Monday 28/December/2015 AD Collection of Judgments issued by the Civil Chambers of the Supreme Court and the principles drawn from them in the period from 10/1/2014 to 30/6/2016 AD, the fifteenth and sixth judicial years Ten, prepared by the Technical Office of the Omani Supreme Court, p. 635.
- 25) Article 40 of the Omani Labor Law of 2003, which stipulates the cases in which an employer may dismiss a worker:
 - 1) If he commits a mistake that results in a serious material loss to the employer, provided that the latter informs the competent department of the incident within three days from the date of his knowledge of its occurrence.
 - 2) If he did not observe the instructions required to be followed for the safety of workers and the workplace despite being warned in writing, provided that these instructions were written and hung in a conspicuous place, and their violation would cause serious harm to the workplace or the workers.
 - 3) If he is absent without an acceptable excuse from his work for more than ten days during one year or more than seven consecutive days, provided that the dismissal is preceded by a written warning from the employer to the worker after his absence for five days in the first case.
 - 4) If he discloses the secrets of the establishment in which he works.
 - 5) If he has been finally convicted of a felony or misdemeanor involving moral turpitude or dishonesty, or a misdemeanor committed at the place of work or while it is being carried out.

- 6) If he is found during working hours in a state of intoxication or under the influence of a narcotic or psychotropic substance.
 - 7) If he assaulted the employer or the manager in charge, or if he seriously assaulted one of his superiors during or because of work, or if he assaulted one of his colleagues at the work site and that resulted in illness or disruption from work for more than ten days.
 - 8) If the worker seriously breaches his obligation to perform the work agreed upon in his work contract.
- 26) Article 43 of the Omani Labor Law of 2003:
An employment contract ends in any of the following cases:
- 1) Expiry of its term or completion of the work agreed upon.
 - 2) The death of the worker.
 - 3) The worker's inability to perform his work.
 - 4) Resignation, dismissal or leaving work in accordance with the provisions of this law.
 - 5) worker has an illness that necessitates his absence from work for a continuous or separate period of not less than ten weeks within one year.
 - a. The worker's disability or illness shall be proven by a medical certificate, and age shall be proven by the same instrument if it is not possible to prove it by the birth certificate or an official extract thereof. The medical certificate shall be issued by the medical committee formed by a decision of the Minister of Health in coordination with the Minister for the purposes of implementing the law. This decision shall include the organization of work procedures. Its decisions are final.
 - b. The contract may not be terminated by the employer unless the worker reaches the age of sixty at least. In case of termination of the contract for one of the aforementioned reasons, the employer must pay the reward stipulated in Article 39 to the worker or his beneficiaries if the worker is not subject to the provisions of the Social Insurance Law.
- 27) Appeal No. 86/2006, High Workers' Session, 10/10/2006 AD, a set of judgments issued by the civil departments of the Supreme Court and the principles drawn from them from 10/1/2006 to 30/6/2007 AD, the seventh judicial year, prepared Technical Office of the Omani Supreme Court, p. 1016.
- 28) Article 21 of the Omani Labor Law of 2003.
- 29) Article 7 of the Omani Labor Law of 2003.
- 30) Article 106 of the Omani Labor Law of 2003.
- 31) Appeal No. 402/2015 High Civil Session on Monday 4/4/2016 AD A set of judgments issued by the civil departments of the Supreme Court and the principles extracted from them in the period from 1/10/2014 to 30/6/2016 AD, the fifteenth and sixth judicial years Ten, prepared by the Technical Office of the Omani Supreme Court, p. 670.
- 32) Article 107 of the Omani Labor Law of 2003, which states:

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6. Appeal No. 1272/2014 High Civil (C) Session on Monday 27/April/2014 AD Collection of Judgments issued by the Civil Departments of the Supreme Court and the principles derived from them in the period from 1/10/2014 to 30/6/2016 AD, Judicial Year Fifteenth and Sixteenth, Prepared by the Technical Office of the Omani Supreme Court, p. 292.
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