THE LEGAL REGULATION OF WORK CONTRACTS DURING THE COVID-19 PANDEMIC

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ABSTRACT

This research sheds light on the impact of the Covid-19 pandemic, which has caused the world to suffering a real crisis and compelled the WHO to call it a global pandemic. This has led many countries, including Jordan, to take many precautionary measurements that legally impacted contractual obligations. In this light, the researcher decided to investigate in the legal nature of the Covid-19 pandemic, and its legal effects on the parties of a contractual relationship.

Keywords: Covid-19, Force Majeure, Urgent Circumstances, Contractual Obligations

INTRODUCTION

The outbreak of the coronavirus (Covid-19) has caused a global terror due to its rapid dispersal and clear threat to people's health around the world. This prompted countries across the globe to take precautionary procedures and measures to combat this health crisis. On 11/03/2020, the World Health Organization (WHO) declared the novel coronavirus (Covid-19) a global pandemic, to which the Jordanian government responded by taking all possible measures to combat the dispersal or the pandemic. Among those measurements were suspending the work of all public and private entities and their personnel as well as several provisions of the Labor Law. This invites to ponder the rights of workers in the private sector during this suspension and what would be the costs be if it extended for a longer period. In addition, does an employee have the right to terminate individual contracts in this case? Some sectors, such as bakeries, gas stations, drug companies, and the like were needed to continue working as they provide services integral to daily life. Therefore, it was necessary to tackle the legal nature of the work contract during this period, the legal provisions applicable to every dispute arising between workers and employers, the rights workers are entitled to, and whether an employer is entitled to assign a worker with works that are not among their responsibilities or specializations or with extra works. In addition, is an employer entitled to terminate a worker's contract in case the suspension continues to apply on facilities that are completely closed? What are the rights of the workforce in such facilities? All of these questions are subject to the interpretation of the Defence Order No. 6 of 2020 and the subsequent regulations thereof.

These questions are tackled in the following order

Chapter One: The Legal Nature of Employees' Work During the Pandemic
Chapter Two: The Rights and Obligations of Employees During the Pandemic

Chapter One: The Legal Nature of Employees' Work During the Pandemic

According to Article (2) of the Jordanian Labour Law No. 8 of 1996, Work is "Every mental or physical effort exerted by the employee against wages whether on permanent, casual, temporary or seasonal basis." The same article defined Casual Work as "The work required by contingent necessities, the completion of which does not require more than three months." In addition, it defined Work Contract as an "An explicit or implicit, verbal or

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written agreement under which the employee undertakes to work for the employer under his supervision and management against wages. The work contract can be for a limited or unlimited period, specific or nonspecific work." Article (2) of Social Security Law No. 1 of 2014 defined Hazardous Occupations as "Occupations which damage the health or life of the insured due to exposure to hazardous elements or conditions in the work environment despite implementing occupational health and safety requirements and standards. Said professions shall be specified bylaws to be issued for this purpose."

Work contracts are commutative contracts that serve the interest of all contractors, equally benefitting from it in a substantial manner [1]. It is also a consensual contract where the eligibility of contractors suffices, provided that the contractors will is free from any defect, such as error or fraud [2], as such reasons annul the work contract. In this light, the contract must be legal and enforceable, or otherwise it shall be considered invalid or null (Masarweh, 2008).

Among the obligations of the employee according to the work contract, as explained in Article 19 of the Labour Law, is that they shall "Perform the work by himself/herself and shall exert the efforts of a normal person to perform his/her work, he/she also shall abide by the orders of the employer in relation to implementing the agreed upon work." This applies the general rules of commitment that grant no contracting party the right to modify the contract solely at their own discretion without the consent of the other party [3]. This implies that the employee must not be obligated to risk themselves while performing the work they are assigned with, in accordance with Article 19/A of the Labour Law, which stipulates that the employee shall "Perform the work by himself/herself and shall exert the efforts of a normal person to perform his/her work, he/she also shall abide by the orders of the employer in relation to implementing the agreed upon work within the limits that do not expose him/her to danger and do not constitute a violation to the provisions of the applicable laws or public morals."

Hence, any orders directed to the employee by their employer shall have nothing contradictory to the contract, the law, or public morals. Moreover, such orders must not entail risking the safety of the employee or their colleagues if the employer obeys them. If an order would endanger an employer's life, the employee must not be obligated to obey such an order, and they will not be considered to have breached any commitment if they abstain from carrying it through[4] (Al-Maghribi, 2016).

In such a case also, the employee must not risk themselves while performing a certain job by disobeying the employer's instructions. If they do disobey clear instructions, they will be considered to have breached their obligations according to the work contract, allowing the employer to terminate their contract without notice and without the need to follow the disciplinary measures stipulated in Article 48 of the Jordanian Labour Law, which includes the commitment of the worker but in a defective manner that endangers the health of the employer of that of their colleagues [5].

Based on the text of Article 17 of the Jordanian Labour Law, we find that it made an exception that allows the employer to impose on an employee undertaking a work that is necessary in cases of accidents or in case of force majeure, even if the contract does not stipulate it. In this case, would the employee's contract be considered an example of the hazardous occupation defined by the Social Security Law? (Ramadan, 2010).

Article (2) of Social Security Law No. 1 of 2014 defined Hazardous Occupations as "Occupations which damage the health or life of the insured due to exposure to hazardous elements or conditions in the work environment despite implementing occupational health and safety requirements and standards. Said professions shall be specified bylaws to be issued for this purpose." This definition entails that the legislature defined "Hazardous Occupations", not hazardous work. This extends doubtlessly to any employee who worked during the pandemic. It is certain that working during the lockdown announced by the government of the Hashemite Kingdom of Jordan[6] is considered a hazardous condition in

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itself in the workplace, regardless that all facilities have abided by safety and vocational health measures. According to Article 44 of the Insurance Coverage of the Social Security Corporation No. 15 of 2015, the foundations on which hazardous occupations are determined are as follows (Shabib, 1966):

Hazardous Occupations are Determined according to the following Foundations

1) If the occupation inflects harm on the worker's health, rendering their ability limited as they age, and causing their physical performance to reduce and decrease their efficiency in performing their job.
2) Exceptional work conditions where the insured is exposed to occupational hazards during at least 50% of working time, making it difficult for the elderly to continue performing such type of work. Those include occupations where a worker needs physical abilities and muscular effort resulting from repetitive moves, carrying heavy weights, working in closed or small places, and working in conditions of very high or very low temperatures.
3) If the insured worker's health becomes increasingly at risk as they grow old despite applying the conditions and criteria of occupational health and safety.
    1) The occupations stated in the table annexed to this Regulation are considered hazardous regardless of the sector to which the facility where the worker works belongs, provided that the title and job description of the occupation matches what is stated in the table.
    2) In all cases, administrative and supervisory occupations are not considered hazardous occupations for the purposes of applying this Regulation.

The Cabinet may, upon the recommendation of a committee formed by the general manager for this purpose, may issue any amendment to the table annexed to this Regulation.
By examining the above text, we fine that the legislature outlined the foundations on which hazardous works are defined. In addition, it identified some occupations as hazardous in their own right, regardless of the sector the facility belongs to. Such hazardous works were indicated in a table annexed to the Regulation [7]. The major problem, however, is that the text excluded administrative and supervisory occupations from the concept of hazardous work. Such an exception is not justifiable, and the legislature should have been more careful and should have stipulated a text that allows considering such occupations as hazardous occupations in case of force majeure or urgencies such as that of the Covid-19 pandemic. This is a risky exception especially because the legislature introduced it by virtue of the modified Regulations No. 23 of 2020 on 1/3/2020 as an exception due to the critical situation the country was going through. The reason is that it is expected that employees occupying administrative supervisory positions might work during the pandemic, being explicitly excluded from considering their occupations hazardous (Nasifm, 2017).

The issue of considering a work undertaken by an employee a hazardous work or not is manifested in the framework of the shared right of the worker according the provisions of the Social Security Law regarding early retirement. It is also manifested by being entitled to a hazardous work allowance in case the entity where they work grant employees this type of allowances. In this case, the allowance enters into the wage concept [8], based on which the worker's rights are calculated according to the interpretive resolution No. 5 of 2003 issued on 21/05/2003. This is also manifested clearly in case an employee working in a hazardous occupation was subject to a work injury, whether they were covered by the Social Security Law or not. In addition, it is necessary to study whether the facility where the employee works abides by the public safety requirements and the workplace risks, as such entities are committed, by virtue of the Instructions for protecting workers and institutions from the risks of the work environment for the year 1998, issued by virtue of text 79 of the Labour Law, to take the necessary precautions and measures to protect employees and facilities from work risks and diseases, and to supply the devices and materials needed thereto. In addition, the organization must guarantee an environment that is clear from all sorts of pollution, noise, vibrations or anything that might harm workers' health according to accredited international

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criteria, and to determine the special examination and testing methods for setting those criteria. In this light, it appears that an employee cannot refuse to obey their employer's orders to come to work during the pandemic in case it did not violate the applied laws in effect and in accordance with the orders of the Defence Law, which specified the vital sectors excluded from the curfew decision. It is provided, hence, that the employee's work does not endanger the employee or their colleagues, which would be the case where the employer does not provide the necessary means of protection for their employees, resulting in the worker being considered to have violated their work commitment if they refuse to work when such conditions are fulfilled. This entitles the employer to use the option available to them in Article 28/b of the Labour Law, which allows the employer to terminate the employee's services if the latter refuses to perform their duties despite the fulfilment of the conditions thereof. All such cases are real ones that the court evaluates through a legal prosecution, considering the data provided in accordance with the provisions of Articles 33 and 34 of the Jordanian Evidence Law (Hashem, 1973).

Nevertheless, the Prime Minister issued on 09/04/2020 the Defence Order No. 6 of 2020, published in the Official Gazette No. 5631 on page 1981 in relation to the Labour Law, stating in Article 8 thereof the following:

No employer is entitled to exercise pressure on their employees to force them to retire, or to terminate their services or dismiss them except in accordance with the provisions of Article 21:c/d and Article 28:a/g/h/I of the Labour Law No. 8 of 1996.

For the purposes of implementing paragraph (a) from this article, the provisions of Article (23) and Article 28:b/c/d/e/f of the Labour Law No. 8 of 1996 will be suspended, and the Minister of Labour will be assigned to take the necessary procedures to apply paragraph (e) thereof.

This results in that in case the employee refuses to work during the pandemic, the employer has no right to terminate their contract under Article 28/b of the Labour Law, considering that it was explicitly suspended by virtue of the Defence Order No. 6. It would have been more fit, though, if it was left to the competent court to decide, considering that the situation is a factual one. If it was proved that the employee was obstinate in refusing to go to work despite the employer's taking all public safety measures, the employer is entitled, in our view, to terminate the employee's work for not complying with their obligations stipulated in the job contract. The court here would have the right to decide not abiding by the defence order that contradicts the Labour Law and the rules based on it in case the defence order proved to bypass the safety criterion, without cancelling the order itself.

Chapter Two: The Rights and Obligations of Employees during the Pandemic

It is important to sustain the daily life in Jordan, which requires that several employees stay on top of their duties. Employees are obliged to obey the orders of their employers, who were given permission by the legislature, in order to encounter such exceptional circumstances, to modify the work contract temporarily by modifying the tasks assigned to the worker during this period. The Royal Decree approved the resolution of the Cabinet to start enforcing the Defence Law No. 13 of 1992 across the Kingdom [9] as of 17 March 2020. In this light, the Prime Minister issued Statement No. 2 by virtue of the Defence Law to impose a curfew on 21/03/2020 [10]. The Cabinet had decided earlier, specifically on 17/03/2020, to suspend work in the private sector, except for the entire healthcare sector and other vital sectors determined by the Prime Minister upon the advice of the Minister of Industry, Trade and Supply, and following the Ministry of Labour's resolution about employees' affairs as of 18/03/2020 for the duration of two weeks, extended for two additional weeks as of April 1st 2020.

The rights and obligations of employees who work during the pandemic are as follows:

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First: The Right to Take an Allowance for Official Holidays

By examining the Prime Minister's decision to suspend the private sector's activities, it appears that it was issued by virtue of decisions issued in turn by the Minister of Labour and the Minister of Industry, Trade and Supply to ensure the sustainability of daily life. Hence, the decision did not encompass the entire private sector, meaning that those workers who must be on top of their duties because they work in a vital sector such as bakeries, gas stations, groceries, greengrocers, pharmacies, nurses, doctors, and office boys and cleaners in the healthcare sector such as hospitals, are not entitled to work allowances in public holidays, as they would be considered to be doing their work during regular work days, as can be deduced from the explicit notice issued by the Prime Minister.

Accordingly, the criteria for hearing legal prosecutions demanding official holiday allowances during this period is the necessity to look into the nature of the work the employee who filed the lawsuit does, and whether they are subject to the Cabinet's resolution issued on 17/03/2021 or excluded. This is important especially that we are implementing the Defence Law and that various administrative decisions are being issued daily or regularly by different ministries to determine and make occasional changes to those groups. For these reasons, employees must prove that they are included in the work suspension decision because they do not work in a vital sector, by virtue of a written proof by the two competent authorities, the Ministry of Labour and the Ministry of Industry, Trade and Supply. If so, they would necessarily have to prove that they worked during that period to deserve an allowance for working during an official holiday. Otherwise, the employee will not be entitled to anything but their regular salary. In confirmation thereof, the Prime Minister issued the Defence Order No. (6) of 2020 on 08/04/2020, deciding to stop working with the provisions of Article 59/b of the Labour Law regarding working during holidays only with exclusion of religious holidays or weekends, which was not necessary considering the first resolution of the government to exclude workers in vital sectors from the official holiday decision. Nonetheless, it gives more clarity to the application of claims regarding this issue, without affecting the employee's right to their work allowance in weekends and religious holidays, since the defence order was clear about suspending work only with regards to official holidays.

Second: The Flexible Work Regulation

The Jordanian Minister of Labour issued on 17/03/2020 instructions on working during the pandemic, including stressing that the worker deserves their full payment during the suspension of work, and is not considered an official holiday that can be deducted from annual leaves. However, the instructions of the Minister of Labour included an indication that employers and employees can use the Flexible Work Regulation during this period, without the need for the Ministry of Labour's approval. It would be sufficient in this case to have an agreement between the employee and their employer without affecting the value of the allowance the worker receives.

Accordingly, the Jordanian Prime Minister issued the Defence Order No. 6 of 2020, which also regulated work according to the Flexible Work Regulation in paragraphs 3 and 4 of the defence order:

Third: To Facilitate Telecommuting in whole or in Part and to Enable the Economic Sectors in these Circumstances to carry out their Economic Activities and Continue their Production, I hereby Decide the following

A. Private sector institutions and establishments and any other entity subject to the Labour Law may be allowed for telecommuting in whole or in part.

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B. The provisions of Articles (3), (5), (8), (10) and (12) of the Flexible Labour Law No. (22) of 2017 shall be suspended for the purposes of implementing paragraph (A) of this clause.
C. The Minister of Labour is authorized to take the necessary measures to organize flexible work "telecommuting" according to instructions issued for this purpose.

Fourth: As of 1/4/2020, The Wages of Workers in Private Sector Institutions and Establishments and in any other Entity Subject to the Labour Law shall be Determined as follows

A. Workers who perform their work in the workplace shall be entitled to full pay, provided that it is permissible to agree, under the free will of the worker, to reduce his/her wages, provided that the amount of the reduction does not exceed 30% of the usual wage. Further, recourse to this option shall be permissible if such reduction includes the senior management of the establishment.
B. Workers who fully telecommute for the establishments not included in the work stoppage decision or those not allowed to work shall be entitled to their full wages. Workers who partially telecommute for the establishments not included in the work stoppage decision or those not allowed to work, shall be entitled to be paid according to the actual working hours. This must not be less than the specified minimum hourly wage, or according to the wages stipulated in Paragraph (E) of this clause, whichever is higher.
C. The workers, indicted in paragraphs (A) and (B) of this clause, who are assigned additional work shall be entitled to overtime pay according to the provisions of Paragraph (A) of Article (59) of Labour Law No. (8) of 1996 only.
D. For the purposes of implementing paragraphs (A) and (B) of this clause, paragraph (B) of Article (59) of Labour Law No. (8) of 1996 in relation to legal provisions related to work on public holidays only shall be suspended.
E. With regard to establishments allowed to partial operation and which have workers not assigned to any work and those included in the work stoppage decision, the employers may apply to the Minister of Labour to allow them to pay 50% of the usual wage of those workers, provided that the pay shall not be below the minimum wage.
F. The basis and conditions according to which employers are allowed to pay a minimum of 50% of the value of the original wage shall be determined according to instructions issued by the Minister of Labour for this purpose.
G. The text of Article (50) of Labour Law No. (8) of 1996 shall be suspended for the purposes of implementing paragraphs (E) and (F) of this clause.

A flexible work contract[11] is a written approval by virtue of which the employee undertakes to work for the employer and under their supervision and management in exchange for a salary. The contract in such a case would be of a fixed-term employment contract or for a specified or unspecified work, depending on the types of work indicated in the Flexible Work Regulation:

a) Part-Time work: The employee is entitled to work for a reduced time after the employer's approval if the nature of the work permits.
b) Flextime work: the worker shall have the right and after the employer's approval to distribute the specified working hours on a daily basis in a manner consistent with the worker's needs, provided that the total number of hours worked on a daily basis shall not be less than the usual working hours of the worker.
c) Flexible week: The worker shall have the right and after the employer's approval to distribute the weekly working hours on a number of days less than the usual number of working days in the establishment, provided that it does not exceed eleven hours per day.
d) Flexible year: After the agreement with the employer, the worker shall be entitled to distribute the annual working days on specified months of the year provided they are no longer than what is prescribed by the law.
e) Teleworking/ remote work: under this pattern, the work is completed remotely, after the approval of the employer and without the need for the presence of the worker in the workplace.

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Upon the spread of the coronavirus pandemic in Jordan, it seems that the Prime Minister, through the Defence Order No. 6 of 2020, has tried to urge employers to activate the Flexible Work Regulation in the form stipulated in Article 4/e thereof, which allows working remotely without the need to be at the workplace. The worker's payment in the flexible contract is determined in proportion with the amount of time or work done in one month, provided it is not less than the minimum wage per actual working hour or the wage stipulated in paragraph (e), whichever is less. The wage stipulated in paragraph (e) means 50% of the usual wage, with exempting the facilities that approved such a procedure of the approval of the Ministry of Labour to modify its statute in light of the conditions the country is witnessing [12], and considering the suspension of Articles 3, 8, 10 and 12 of the regulation. Accordingly, the Minister of Labour issued Regulation No. 2 of 2020 to execute the stipulations of the defence order, where the instructions allowed institutions and facilities to pay at least 50% of the usual salary to employees. Those stipulations entered into force as of the date they were published in the Official Gazette, to be applied on all institutions and facilities unauthorized to work by competent authorities due to the current situation of the spread of the coronavirus, and the institutions and facilities allowed to work partially and practice any activity partially with some of their total number of employees, whether in the workplace or remotely.

Instructions indicated that an employer in any institution or facility can send a request to the Minister of Labour allowing them to pay at least 50% of the usual salary for employees or the minimum salary paid to workers at that facility or institution, whichever is higher. Such a request only encompasses those workers who work full-time, part-time or remotely in those institutions or facilities. The instructions indicated also that the request must also include the name of the employer, the facility's national number or registration number in competent authorities and any information related to the employer as stated in the request form issued by the Minister of Labour, the names of all the employees at the institution or facility, their national numbers if they were Jordanian or their personal numbers if they were non-Jordanians, and the full amount of salaries paid to those employees.

According to the instructions, the percentage of the salary the employer will pay their employees must be no less than 50% of the employer's usual salary or the minimum wage, whichever is higher. Instructions also stated that a committee formed by the Minister of Labour considers the requests of institutions and facilities, provided that the decision of forming this committee details the tasks and responsibilities thereof. According to the instructions, in case the employer submits a request for an institution or a facility allowed working part-time, the employer must state who are the employees who are practicing their work and those who are not, by virtue of statements attached with the request that indicate their social security numbers, provided that the Minister of Labour determines the application mechanism to the MoL online.

The Minister of Labour issues their decision of approval or refusal within no more than seven business days. No institution or facility is allowed to make any employee work if it was approved to pay them at least 50% of their usual salary, which means actual work where the employee must go to the workplace and be on top of their duties at the institution. The institution or the facility then undertakes to pay to the employee their full salary if they were employed in the institution or the facility, or otherwise the employer would be considered to have violated the defence orders issued by virtue of the Defence Law No. 13 of 1992.

The instructions of the Minister of Labour in this regard are enforceable, having been issued in accordance with the provisions of the Defence Law by virtue of the provisions of Law [13], and by virtue of the explicit text of Article 3 of the Defence Law that states: "Working with any text or legislation that opposes any provision of this Law and the orders issued according to it is ceased," and Article 10 of the same law that stipulates "The application of this Law is the responsibility of the Prime Minister to take measures and

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procedures necessary to secure general safety and defend the kingdom without being restricted with the provisions of normal applicable laws and Article 10 of the same law, which states: "Working with any text or legislation that opposes any provision of this Law and the orders issued according to it is ceased." It should be taken into consideration that the text of Article 10 used the term "ceased" not "cancelled", meaning that when the Defence Law is no longer enforceable, the employer who modified the statute of their institution must ask to duly endorse it by the MoL.

Third: Working in a Healthy Workplace

Any employee working during the pandemic deserves to work in a healthy work environment. Therefore, the employer must abide by the text of Article 79 of the Jordanian Labour Law, which stipulates that all precautions and measures must be taken to protect employees from work risks and illnesses. The employer must also provide all the devices and equipment needed to protect employees from work risks and illnesses, as well as the precautions and measures needed to protect them from work and the machinery used in it. In addition, the employer must provide them with personal protection equipment to protect them from such risks, such as uniforms, glasses, gloves, shoes and others, and to teach them how to use them and keep them clean. Employees must be informed, before appointment, about the risks their tasks entail and the means of protection they must follow, in accordance with the regulations and decisions issued in this regard. The employer must also provide first aid materials depending on the levels determined by the Minister's decision upon consulting with competent authorities. Accordingly, no employee should incur any expenses for implementing or supplying such needs.

Otherwise, the employer shall be subject to permanent or partial closure of their business, and the Minister is entitled to refer them to the competent court [14] to be duly tried at court in accordance with the text of Article 84 of the Jordanian Labour Law. This means that the employee is entitled, in case they contracted Covid-19 if the employer does not abide by such precautionary procedures, to recourse to this law following the criteria of the grave error [15].

In return, every employee must abide by the provisions, instructions and decisions stipulated in Article 82 of the Labour Law, regarding the measures of precaution, health and vocational safety, and using the equipment necessary for those safety measures, as well as abstain from any action that leads to those provisions, decisions and instructions not being implemented. Moreover, every employee shall abstain from tampering with the protection, safety and vocational health equipment or intentionally damage them, liable to the disciplinary sanctions stipulated in the statute of the institution.

According to the second item of the Defence Order No. 6 of 2020, those entities allowed to work during the lockdown were determined by the Minister of Industry, Trade and Supply and the Minister of Health, in accordance with instructions they issue. Indeed, the mentioned ministers issued instructions No. 1 of 2020 regarding the grounds, procedures and conditions for sectors, facilities and institutions to get permission to work, and were published in the Official Gazette No. 5631issued on 09/04/2020. According to those instructions, the requests regarding allowing any economic sector or any institution or entity desiring to work during the pandemic can be submitted to the minister of the concerned economic sector. Accordingly, a committee consisting of the Minister of Industry, Trade and Supply, the Minister of Labour, the Minister of Health and the concerned minister to consider any requests submitted to allow any economic sector, institution or entity that desires to work at the current time, after the concerned minister determines that there is an urgent logistic, economic or health need and the suggested percentage of employees needed to operate the institution or the facility in the minimum and at their discretion.

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The Ministry of Labour determines the standard work procedures and the work procedures manual for safety, health and protection measures to protect from the spread of the coronavirus, in the manner that is suitable for the economic sector, institution or facility that submitted the request to the committee according to instructions. Such instructions indicated that the committee issues its approval or refusal on the submitted request, provided that if the decision returned with approval, it must include the conditions stipulated in the recommendations of the National Epidemics Committee, if any, and the percentage of workers needed in the minimum required percentage. The facility, in this case, must take all the measures of safety and health protection stated in the regulations issued by the MoL regarding the facility's work. This mentioned, it is important to indicate that the MoL has issued specific regulations regarding the nature of every facility, including the precautionary procedures that the facility must follow to limit the spread of the coronavirus.

Fourth: The Employee's Abidance by the Instructions and Orders of the Employer during the Pandemic

The employee's work during the pandemic does not mean they are free from their obligations by virtue of the work contract. Hence, they remain under the command and supervision of the employer and must abide by their employer's instructions regarding working hours, regulating holidays and weekends, and especially regarding health and occupational security in line with the urgent situation the country is going through.

In principle, an employee is only obliged to perform the work agreed upon, and the employer is not entitled to assign them to perform other tasks. This general principle, however, has exceptions in law that allow it. Hence, we see that when the curfew decision was issued by virtue of the Defence Law, many employers assigned their employees, especially pharmacists and employees at major commercial centre, to deliver medications and basic utilities to citizens at their homes. Such an assignment, in principle, is not part of any of those employees' job, but became a necessity due to an exceptional situation and thus became part of the job contract [16] in accordance with Article 815 of the Civil Code, which stipulates that: "Every task traditionally known to be part of the job binds the worker even if not mentioned in the contract." Accordingly, if an employee assigned to such a task refuses to do it, they will be considered to have violated the obligations they are subject to by virtue of the job contract.

This deviation from the principle has a reference in the Labour Law, which, in Article 17 thereof, allows assigning an employee with tasks that are completely different than their work nature if necessity stipulates it or in the case of force majeure, provided that it be within the capacity of the employee and the nature of the condition that demanded it. Thus, whether the assignment is or is not within the capacity of the employee or exceeds it is a question of fact that can be proven in different ways by those concerned, since it might prove to the employer that they have indeed assigned they employee with assignments outside of their capacity and ability. Such criteria are the criteria applied on any regular person according to Article 19/A of the Jordanian Labour Law, depending on the level and skills of the employee [17] . An example of that is assigning a pharmacist working at a pharmacy in Amman to deliver medication to Salt without them having a security permit to move between municipalities, while the owner of the pharmacy knows about the curfew except with special permissions. More importantly, in accordance with Article 19/A of the Jordanian Labour Law, a worker is not obliged to perform a task that endangers them or includes violating the laws in force.

Contractors, however, may have agreed to increase or decrease the care level, which is a correct agreement that does not violate any orders. What remains is that such an agreement must indicate, either explicitly or implicitly, and depending on the circumstances, a certain amount of willingness at the time of contracting or assignment to work during the outbreak of the pandemic. Such an agreement, although legally valid, must be taken with

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precaution and not be applied per se nor effectuated in any other circumstances [18]. In the case of the Covid-19 pandemic, and in light of allowing only some vital businesses to keep working during its outbreak in the sufficient limit that allows daily life to continue, an employer would naturally choose from their employees those most qualified and those who have the confidence they can control things during such a difficult time. In addition, employees should take into consideration that they are working in special circumstances, and must thus be more careful in handling the work in such exceptional circumstances [19].

Fifth: The Employee's Commitment to the Employer's Regulation of Annual Leaves

Article 61/d of the Labour Law states: "During the first month of the year, the employer may specify the date of the annual leave for each employee and how it shall be used in the employer's establishment in accordance with the work requirements provided that the employer shall take into consideration the interest of the employee." This means that the employee is the person who decides when the annual leave starts for each employee, depending on the interest and need of the work and, meaning that no employee can decide their own vacation without the employer's approval [20].

In this light, the employer is entitled to refuse to grant any employee their annual leave during the pandemic if the necessities of work require that they work during the pandemic. For example, it this employee's position bears the greater load of the entire company, such as cashiers in bakeries considered vital sectors that must continue working during the pandemic, or the baker if there was no one else, or tellers or security men at banks. All those employees are necessary and therefore it is difficult to accept their requests for annual leaves during urgent circumstances such as Covid-19 [21].

Of course, an employer must also take into consideration the employee's interest when they assign them to work in such circumstances in the first place. This includes the distance of the employee's home from work, their age, the nature of their work and its importance in achieving the main goal of working in such circumstances, which is contributing to guaranteeing the continuity of daily life and avoiding the obstruction of such continuity. In this case, if the employee's work proves to be unimportant, if there were several people doing the same job, if the employee lives in a distant area and is unable to come to work due to the curfew, their employer would be considered to be abusive in using their right to regulate annual leaves if they refuse to grant the employee an annual leave [22].

Sixth: The Employee's Right to Get the Necessary Permissions to Work

If the Defence Law applies during the pandemic, which requires complete abidance by curfew for individuals and vehicles except for those who have permissions to work issued from competent authorities, commitment to getting such a permission is the responsibility of the employer, especially that the government, represented by the Cabinet, restricted the mobility of individuals and vehicles for good reasons without obstructing daily life.

Any legal text issued in such a concern relies on logical discretion. Therefore, any employer running a business that belongs to a vital sector must submit the names of their employees to issue security mobility permits to enable them to go to work. If such a permit was not issued, a worker cannot be forced to work, since working in such a case will be considered illegal, as they would be violating the provisions stipulated in Article 19/a of the Labour Law.

Seventh: The Employer's Commitment to Working Hours according to the Defence Law

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The Prime Minister's orders issued when it was declared that the Defence Law will enter into force indicated the times when mobility was allowed as an exception to the curfew order issued on 20/3/2020, which entered into force on 21/03/2020. This exception allowed mobility between 10 am and 6 pm within certain restrictions and for specific purposes only, among which is guaranteeing the daily life of citizens. Accordingly, although working hours might be eight, it would not be possible for an employee to cover all those hours plus the time needed from home to work and back to home. Otherwise, a worker would be considered to have violated the curfew order and would be subject to sanctions by the security units dispersed across the streets.

This requires the employer to consider such a circumstance out of control and decrease the number of working hours to enable the employee to do their job and keep the business going without decreasing their wage.

Moreover, this should not waive the employee's right to a rest during work. The Jordanian legislature did not precisely indicate when such a leave must be taken in articles 55 and 56 of the Labour Law, unlike the case in the repealed Law No. 21 of 1961, in which Article 39 stated: "No worker must be made to work for more than five consecutive hours without taking a rest for at least half an hour or more than six consecutive hours without taking a rest for one hour. Resting hours are not considered part of daily working hours." The text in the repealed law was a general rule and thus it was not legal to ignore it. However, the new text of Article 56 of the Labour Law No. 8 of 1996 and its amendments states: "A. The working hours shall not exceed eight per day and forty eight hour per week except in the cases stipulated by this law, the time allocated for meals and rest shall not be calculated. B. The maximum of the weekly working hours and rest times might be distributed so that its total may not exceed eleven hours per day."

This means that the legislature prohibited making the employee work for more than eight hours a day or 48 hours a week, excluding the time allocated for meals and rest. The law did not, however, state a specific time for meals and rest, and there must be a kind of balance between the interests of either party in light of mobility restrictions and take into consideration the employee's right to mobility exceptions and their ability to continue to work and be productive. This is possible when the "no harm" concept is fulfilled to make balance in a contractual relationship.

Eighth: Abstaining from Strikes during the Outbreak of the Pandemic

Since the Minister of Labour and the Minister of Industry and Trade specified some vital sectors that must continue working to maintain daily life going in Jordan, this requires that an employee cannot abstain from working during this time unless they are at dire risk or unless this work is beyond their energy. In such a case, it is preferable that neither the employer nor the employee make a strike or close the business during such circumstances, or otherwise this would be considered an illegal strike and closing, according to articles 135 and 136 of Labour Law, considering that it hinders public interests.

Article 3 of the Regulation of the Terms and Procedures for Strike and Closure No. 8 of 1998 defined public interest as follows: "The public interests services indicated in the law include: All public facilities services, including the services of the post and wired and wireless communications, water, electricity, transportation, hospitals, bakeries and pharmaceutical industries or any section that is related to the maintenance of the establishment or the safety of the employees during work, or any other service about which the Council of Ministries issues a decision based on the recommendation of the Minister of Labour to consider it as services of public interest, on the condition that the decision of the Council of Ministries is published in the official gazette."

RESULTS

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- In order for the employer's orders to their employees to be binding, they cannot violate the employment contract, the law or public decency and must not put the employee at any risk, or otherwise the employer's orders would not be worthy or obedience.
- During the pandemic, the employer must create a healthy work environment for their employees to protect them from the risks of the job.
- Employees working on the top of their duties in a vital sector are not entitled to an allowance for an official leave. Employers in such a case may refuse to grant an employee their annual leave during the pandemic if it was necessary for work.
- No employee is entitled to refuse the orders of their employer to go to work during the pandemic if it does not violate the orders of the Defence law and any relevant law.
- Working during the pandemic does not entitle an employee to disengage from their obligations agreed upon in the work contract, as they remain accountable under the legal contract between them and the employer.

FOOTNOTES

1) Nasif, I. (2017) Encyclopedia of Civil and Commercial Contracts. Part two, V.1. First edition. Alhaditha Books: Beirut.
2) Hashem, H. R. (1973) Interpreting the Jordanian Labour Law. First edition. Al Muhtaseb Library Press: Amman.
3) Al-Maghribi, J. (2016), Interpreting the Provisions of the Labour Law. First edition, Dar Al Thaqafa for Publishing & Distributing: Amman.
4) Shabib, M. L. (1966). Interpreting the Labour Law. First edition. Dar Alnahda Alarabia: Cairo.
5) Cassation Court's resolution No. 6505/2018, issued on 29/11/2018 by the General Assembly.
6) Defense Order No. 2 issued by the Jordanian Prime Minister on 20/03/2020, published in the Official Gazette under No. 5627 on page 1920, on 20/03/2020.
7) Hazardous Occupations Table of 2015, issued by virtue of article 44 of the Insurance Coverage Regulation that stated six hazardous occupations categories: Workers in primary occupations such as cleaners, drivers, mobile workshop operators; workers at factories and machines; workers at assembly and manufacturing industries such as mine workers; workers and technicians in food industries and crafts and relevant occupations such as masons; and specialists such as nurses and surgeons.
8) The decision of the Court of Cassation No. 3211/2019, which stated: "Age allowance is part of the wage, and the plaintiff brought action to demand a hazardous occupation allowance, being part of the wage."
9) A Royal Decree was issued on 17/03/2020 to approve the Cabinet's decision No. 9060 in its session held on 17/03/2020, including the following: "Considering the urgent conditions the Hashemite Kingdom of Jordan is going through, and considering the WHO's declaration of the outbreak of Covid-19, and since we must combat this pandemic on the national level and protect public safety across the Kingdom, the Cabinet has decided, based on the provisions of Article 124 of the constitution and paragraphs A and B of the Defence Law No. 13 of 1992, to start implementing this law across the Kingdom as of the date of issuance of the Royal Decree and its publication in the official gazette No. 5625 on 18/03/2020.
10) Defence order published in the official gazette No. 5627 on 1920, stating: "By virtue of Article 4/a of the Defence Law No. 13 of 1992, and considering the urgent situation the region and the entire world in experiencing and to prevent the dispersal of the pandemic, I decided to issue the following defence order:
    1) Mobility is prohibited for all individuals across the Kingdom as of 7am, 21/03/2020 until further notice.
    2) All businesses across the Kingdom must be closed, and on the morning of Tuesday 24/03/2020 we will publish specific times for citizens to perform necessary activities in the mechanism that will be published then.
    3) Those excluded from the curfew are those allowed by the Prime Minister and the Minister of Defence, as their jobs require maintaining the continuity of public facilities.
    4) For urgent medical cases, citizens must inform the PSD/Civil Defence to take the necessary procedures to duly protect their health and safety.

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5) Anyone violating the provisions of the defence order and the notices issued by the Prime Minister and the Minister of Defence by its virtue shall be immediately imprisoned for a period not exceeding one year.

11) The Flexible Work Regulation was issued by virtue of Article 140 of the Jordanian Labour Law on 22/02/2017 and was published in the Official Gazette No. 5450 on page 1924, and entered into force on 16/03/2017.
12) The Flexible Work Regulation was issued by virtue of Article 140 of the Jordanian Labour Law on 22/02/2017 and was published in the Official Gazette No. 5450 on page 1924, and entered into force on 16/03/2017.
13) The decision of the Jordanian Cassation Court No. 323/1978, which stated: "Whereas the defence order stipulating the acquisition of the lands concerned in the law suit was issued in accordance with Article 2 of the Defence Law No. 2 of 1939, the right to amend for the benefit right overtaken belongs to the Prime Minister in accordance with paragraph (e) of this article. It would not be valid to say that courts have the competency to hear the trial according to Article 102 of the Defence Law, or that vesting this right in the Prime Minister is a violation of the constitution, since Article 100 thereof states that assigning court competencies is done by virtue of the law, whereas Article 124 allows that the Defence Law includes states that cease operating with the state's regular laws. In addition, paragraph (h) of Article 4/b of the Defence Law stated ceasing any provision of regular laws if it contradicts with the provisions of any defence order regulation. All of this results in that what is stated in Article 2 of the Defence Law No. 2 of 1939 cease the court's power to evaluate the compensation, since the overtaking was for defending the Kingdom and securing housing for refugees.
14) The competent court referred to in Article 84 of the Labour Law is the cassation court. However, since the Defence Law has entered into force, Article 6 thereof temporarily revokes any decision taken by the cassation court. Nevertheless, the first instance court decides upon crimes that violate the provisions of the Defence Law and the Orders issued by its virtue.
15) The Jordanian cassation court decision No. 2211/2018 issued on 08/05/2018, stating: "Since the defendant did not take the precautions and measures to protect workers from hazards, violating the provisions of Article 78 of the Labour Law, considering the railing is not high enough to prevent a person from falling, the absence of a safety belt and an ambulance ready, which is a grave mistake that entitles the plaintiffs for compensation for the harm inflicted upon them as a result of the death of their testator, based on the provisions of Article 89 of the same law and the profit loss they suffered according to Articles 256 and 266 of the Civil Law.
16) Masarweh, H. H. (2008). Interpreting Labour Law. First Edition. Dar Al-Hamed For Publication and Distribution: Amman.
17) Al-Maghribi, J. (2016), Interpreting the Provisions of the Labour Law. First edition, Dar Al-Thaqafa for Publishing & Distributing: Amman.
18) Dr. Hasan Kira says about this that an employer might hire a highly qualified worker or hire a worker with a higher wage, meaning probably that the employer expects higher care than the usual care taken in performing their work. In comparison, an employer hiring a worker they are aware of having minimum efficiency or negligence might actually suffice with a level of care less than the usual. The latter deduction, however, must be carefully made. See Ramadan, S. M. (2010), Al-Waseet in Interpreting the Labour Law. First and Third Editions. Dar Al-Thaqafa for Publishing & Distributing: Amman, footnote (1) on page 250.
19) Shabib, M. L. (1966). Interpreting the Labour Law. First edition. Dar Alnahda Alarabia: Cairo, ibid.
20) Hashem, H. R. (1973) Interpreting the Jordanian Labour Law, ibid.
21) Nasif, I. (2017) Encyclopedia of Civil and Commercial Contracts. Part twenty: Work Contracts, ibid.
22) Ramadan, S. M. (2010), Al-Waseet in Interpreting the Labour Law. First and Third Editions. Dar Al-Thaqafa for Publishing & Distributing: Amman

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Jordanian Labour Law No. 12 of 1996.

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Jordanian Labour Law No. 21 of 1961.
Jordanian Defence Law No. 13 of 1992 and the defence orders issued accordingly.
Flexible Work Regulation No. 22 of 2017.
Explanatory Memoranda of the Jordanian Civil Law.
Social Security Law No. 1 of 2014.
Insurance Coverage Regulation No. 15 of 2015.
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