
COVID-19 and Labour Law: Israel

Einat Albin, Guy Mundlak*

Abstract

The article, written at the peak of lockdown and closures due to the Covid-19 pandemic in Israel, describes the government's initial response to the employment crisis (up to the 10th of April 2020). A host of emergency regulations affected the continuation of employment, and the provision of a social security safety net. Following a short description of the legal developments, the article notes some problems in the immediate response at times of crisis, including the use of the social security (unemployment insurance) system in lieu of encouraging the continuation of work to the extent medically possible, a differentiation between categories of work-providers in the public and private sectors, the gendered aspect of responses and the exceptional difficulties faced by those who are part of the weaker segments in the workforce.

Keywords: Covid-19; Labour Law; Unemployment insurance; Employment policy; Gender.

The Covid-19 pandemic elicited in Israel a relatively rapid response, which holds an advantage of relatively hermetic borders with entry through only one major airport. However, preliminary success was diluted by the quick spread of the virus, leading to further limitations of closure, lock-ins and isolation requirements. Setting aside a host of constitutional question - such as the use of emergency regulations, and structural matters of governance - such as the quality of decision-making processes at times of crisis within a long-lasting period of political instability and uncertainty, the following looks at employment related matters. However, the health, political, and employment matters are inseparable.

Similar to other countries, Israel was not prepared with policies to address the economic and social consequences of the COVID-19 crisis and it seems as if the health restrictions set the tone. Moreover, Israel's employment-related restructuring measures are underdeveloped and therefore had no embryonic structures to develop¹. Israel was

* Einat Albin, Assistant Professor, Law Faculty, The Hebrew University of Jerusalem; Guy Mundlak, Professor of Labour Law at The Buchmann Faculty of Law, Tel Aviv University, Israel. Text is updated to April 10, 2020. The text documents in brief developments that took place for approximately one month. The advantage of its timely and immediate description should be offset with the lack of a long-term perspective.

¹ The absence of restructuring programs is striking in comparison to some OECD countries, for example – as documented in the Eurofound Restructuring Monitor: (<https://www.eurofound.europa.eu/observatories/emcc/european-restructuring-monitor>).

therefore indecisive in the employment policy it adopted. In the first week of the crisis the Ministry of Finance, which is the main governmental body handling the crisis alongside the Ministry of Health and the Ministry of Defense, called for a continuous operation of economic activity, while observing the health requirements. The public sector and most of the private sector adjusted accordingly, requiring protective measures at the workplace and when possible - encouraging their workers to work from home. But a week later, health policy changed, and what started as a recommendation to avoid congregations (circa 5.3.2020)², gradually progressed towards legal requirements to stay home with exceptions (eg, shopping for food and pharmacy, or the performance of essential work by the end of March 2020). All workplaces were instructed to limit the number of workers present at the work-place to ten workers or 30 per-cent, whichever is higher. This enabled employers to continue employment with very few working in the establishment itself, while others working from home³. The so called “70-30” rule, was later amended into a “85-15 rule” (only 15 per cent are allowed to be at the workplace), with numerous exceptions for essential services in both the public and the private sector (eg., security service and supermarkets, respectively).⁴ Regulations from 19.3.2020 prohibited the opening of cultural and sports centres, public parks, hotels and restaurants and more. While some could provide partial service (e.g., deliveries from restaurant), others could no longer operate, and in fact some shut down the business even before the regulatory provisions⁵.

As a result, a massive displacement of workers took place. This included workers employed by services that were shut, voluntarily or by regulations, workers whose work was made unfeasible by the 70-30/85-15 social-distancing rule, but also – and not less importantly – workers who were displaced by employers’ exploitation of the situation. Within a short time, unemployment rates surged from a record low in early 2020 (approximately 3.5%) to a record high by late March 2020 (approximately 25%).⁶ Unemployment rates, measured by the number of employees who register for unemployment insurance, provide an under-estimate of the employment crisis, because they do not include independent (self-standing) workers, freelancers, and other forms of work providers who are not classified as ‘employees’ and according to Israeli law are disqualified from unemployment insurance.

While some immediate measures in Europe expanded existing programs such as the short-time working allowances (eg., in Germany – Kurzarbeitergeld), the absence of a clear employment-related restructuring measures in Israel required a de-novo approach.

² The Public Health Decree (New Corona Virus) (Solitary Confinement and Other Instructions)(9.2.2020, amended 5.3.2020, and further amended on 12.3., 15.3., 19.3, 2.4).

³ Emergency Regulation (Limiting the Number of Workers in order to Reduce the Expansion of the New Corona Virus), 2020 (21.3.2020). Preparatory draft was circulated on 16.3.2020.

⁴ Emergency Regulation (Limiting the Number of Workers in order to Reduce the Expansion of the New Corona Virus), 2020 (amended 31.3.2020).

⁵ The Public Health Decree (New Corona Virus)(Solitary Confinement and Other Instructions)(Temporary Order), 2020, Sec. 3(a), 3(c) (amendment 19.3.2020).

⁶ Data Reported by the National Insurance Institute to the Parliament’s Committee on Welfare and Employment (30.3.2020), and updated on 5.4.2020, as reported in daily newspapers.

During this period of time, the State took several measures, responding to the situation of massive displacement, while creating intended and unintended incentives to place workers on unpaid leave in order to minimize expenses.

- For those who were permanently dismissed from their jobs, the state eased the conditions for receiving unemployment insurance and also extended the period of entitlement for several weeks (at the time of writing).⁷ However, it is important to note that Israel's unemployment insurance, administered as part of the National Insurance, is rather slim in comparison to OECD standards, on all accounts – eligibility conditions, replacement rate, and length of eligibility⁸.
- To ease the economic hardship from those who are not fully dismissed it was decided that employees who are sent to unpaid leave of at least 30 days, would be qualified for unemployment insurance if the other conditions required in law, some of which were relaxed, are met⁹. This in fact created an incentive for employers to release workers who cannot work in full, to a full-fledged leave of absence, so that the employees could claim unemployment insurance from the state.
- On 18.3.2020 the major trade union in Israel – the General Histadrut – concluded a collective agreement with the public employers, including the State and local municipalities, according to which the wages of employees whose work was ceased will continue to be paid by drawing on their accrued vacation days, and if necessary to draw on future vacation days¹⁰. The state was concerned with the public-sector being viewed as privileged compared to private sector, and therefore prevented these workers from turning to the publicly funded unemployment insurance. However, this created a different type of asymmetry between the public and private sectors, because the public sector employees must fund their leave of absence exclusively by their own employment rights.
- Finally, independent workers, freelancers and other categories of non-employees, remain excluded from unemployment insurance, and were granted a special short-term grant, of lesser value than unemployment insurance, taxable, based on household income tests and on other targeted conditions that are not required from employees who were relegated to unpaid leave and unemployment insurance¹¹. As a result, a significant number of work-providers were excluded from the scope of benefits.
- Importantly, in comparison to other countries, no measures were taken in Israel thus far (10.4.2020) to encourage continuation of employment, to the extent health-

⁷ Emergency Regulation (New Corona Virus) (Special Rules for Unemployment Benefits) 2020 (27.3.2020).

⁸ OECD, *Employment Outlook (2018)*, Chapter 5, 2018. Some comparative data missing and described in Hebrew, in: Bendlak J., *The Social Security System in Israel and in OECD Countries*, in *National Insurance Institute Periodic Reports #296*, 2018, pp 50-56.

⁹ See note 7, supra. Special instructions were already in place since 16.3.2020.

¹⁰ Collective Agreement from the 18th of March 2020 between The State of Israel and others and the New General Histadrut. Can also be found at: Emergency Regulation (Extending the Agreement on Vacation Leave for Public Sector Employees due to the New Corona Virus), 2020 (21.3.2020).

¹¹ Emergency Regulation (New Corona Virus) (Grant for Self-Employed), 2020 (2.4.202). New, and more accommodating, regulations were announced on 7.4.2020 but not yet enacted.

related restrictions permit. Subsidies to employers to continue the work of their employees were not provided, nor is there legislation to encourage the development of more flexible work or job-sharing to spread more evenly the burden of unemployment. Nor have there been, thus far, any programs to aid workers, for example – by means of re-training, towards expected changes in the composition of the labour market and changes in demand.

Despite pressure from employers to forgo some employment standards during the crisis, notably – the duty to provide due process hearings before dismissals, the prevailing employment regulations remained intact and unchanged. Formally, two changes introduced in emergency measures relaxed the requirements set in labour protective legislation. The first was to forgo the duty to give workers at least two weeks' notice before an employer initiates an organized paid leave for its employees¹², and the other was to relax a required approval from a governmental official to terminate women's employment or putting them on unpaid leave, during pregnancy or birth-related circumstances¹³.

However, general rights and principles governing the ethos of work and which serve as guidance for the development of employment law in Israel were neglected, notably – the right to work. Even though the right to work has not been acknowledged by the Israeli legislator or the courts, the courts stress the importance of work for the individual, as a source of income and also of personal development, social engagement and fulfilment. This is seen as part of the individual's right to dignity under Israel's Basic Law of Human Dignity and Liberty. The country's absenteeism from introducing any employment policy that secures people's right to perform actual work to the extent possible (as opposed to merely securing a degree of continuation in the employment contract) is a breach of such fundamental rights¹⁴.

A distinct concern that emerges from the responses of the first month, is that the current scheme does not seem to carefully split the burden of displacement between the state, employers and workers. The immediate solutions of sending workers to unemployment insurance, or to draw on their accrued vacation days, do not provide employers an incentive to increase efforts to leave workers on the job to the extent possible, even if only partially. Notably absent are measures that accommodate partial work, rotations, job sharing and other arrangements that will keep as many workers as possible on the payroll, even if minimally.

¹² Annual Vacation Law (1954), Sec. 14; Emergency Regulation (Extending the Agreement on Vacation Leave for Public Sector Employees due to the New Corona Virus), 2020 (21.3.2020).

¹³ Women's Work Law (1954), Sec. 9(a); Emergency Regulation (New Corona Virus) (Women's Work) 2020 (6.4.2020).

¹⁴ The right to work is being used here as a value-laden trajectory and does not reflect the state of the law, in which the constitutional right to work is underdeveloped, and the Supreme Court has thus far rejected all constitutional challenges, upholding all the state's Corona-related emergency measures, despite infringement of more established rights such as the freedom of movement and the right to privacy.

The differentiated responses further reveal a hierarchy in the labour market, where at the top are those who continue their work as before, and below them private sector workers who were relegated to temporary unpaid leave and unemployment insurance, public sector workers who must fund their absence from work by their own employment rights, and non-employees who are entitled to lesser grants, which are highly conditional. Consequently, the current assembly of solutions entrenches previous cleavages between employees, and workers who are not classified as employees, and deepens distinctions between a primary and secondary labour markets. The potential for a structural diminution of this binary classification, after identifying its harmful social impact – accentuated by the crisis, has not been fulfilled. At the same time, other measures seem to be geared at fostering a structural change for post-pandemic times, such as a degradation of the public sector.

The differentiation further reveals structural disparities in the labour market. According to statistics of the Employment Service Bureau, 58.3% of the new unemployed registered in the Bureau during March were women. Gender differences at times of crisis are reflective of over-representation of women in the public sector, particularly in ranks and occupations that are easy to dismiss for being non-essential, including education and social services. In the private sector, over-representation in the hospitality (restaurants, hotels), leisure (entertainment, sports), administration and retail sectors further contributes to the over-representation of women among the unemployed¹⁵. The response to the crisis accentuated further de-valuation of women's work, such as the initial designation of social workers as being non-essential (later corrected). The absence of protective gear for care workers in institutions and private households further disadvantages low-waged workers and women in particular, only augmenting labour market disparities. While nurses and teachers enjoy greater protection by their respective trade unions, care workers are exceptionally vulnerable. Measures that are usually deployed to advance gender parity in the labour market, such as fair representation among the workforce (public sector) and diversity schemes (in the private sector) have been totally marginalized at the moment of crisis. There are further concerns that ideas such as favouring the primary breadwinner (man) in times of mass layoffs, have been introduced after many years in which they were set aside for their disparate gendered effects,

The gendered effects of the last month, reveal that all the way at the bottom of the policy hierarchy – are individuals whose general disadvantage at the labour market is being heightened at these times. These can be particularly marginalized groups such as sex-workers, or more general disadvantaged groups. People with disabilities were the first to be put to leave, paid or unpaid; those who were dismissed found that unemployment funds decrease their right to disability benefits; and sheltered workshops were shut down, not providing their workers with welfare rights due to lack of an employment relationship. Data reveals high levels of unemployment among the Arab population. Migrant workers

¹⁵ The list of occupations in which unemployment surged, ICBS data as published in April, 6, 2020.

and asylum seekers who are generally excluded from the social security system are facing particular challenges in addressing their immediate economic needs. They all carry a heavy price of disadvantage as a result of the crisis.

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