

COVID-19 and Labour Law: Lebanon

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Abstract

Lebanon is facing an economic and political crisis unlike anything experienced in our lifetimes; especially after October 17, 2019 when anti-government demonstrations began to intensify. The government declared a "public health emergency" on March 15, and business operations were interrupted. The measures set out by the Ministry of Labour to address the impact of the national lockdown on working conditions and business operations were limited. It included modification of working time and counselling businesses facing difficulties. Additional measures were taken by the Central Bank and the National Social Security Fund to alleviate the monetary burden on disadvantaged businesses. Also, the government enlarged the scope of the anti-poverty program to aid new vulnerable populations. Yet, the impact of taken measures was falling behind the emergent economic challenges. The governmental action plan was based on a political interest rather than an understanding of the unprecedented economic crisis. It reflected, among other things, the absence of an effective social dialogue structure.

Keywords: Covid-19; Labour Law; Health and Safety; Social assistance; Social dialogue.

1. Timeline of key dates and events

The lack of geographic proximity and direct link between Lebanon and China, the first epicenter of the outbreak, has delayed the transmission of COVID-19 to the country. The first diagnosed cases in Lebanon were confirmed after the return of travellers back home from countries with close ties to Lebanon and suffering from large outbreaks, such as Iran and Italy. The first detected case was registered on February 20¹ after the return of the pilgrims from the city of Qom in Iran and a priest from Italy.

A governmental committee was formed to deal with the outbreak and the Ministry of Public Health (MoPH) prepared a containment section at the public hospital of Beirut, the Rafic Hariri University Hospital (RHUH), to isolate patients. The committee made available a phone number for symptomatic people and asked returnees to quarantine themselves for 14 days. At the same time, the World Health Organization (WHO) made more "Polymerase chain reaction" (PCR) tests available. These collaborative efforts contained the spread for a few days.

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¹ Epidemiological Surveillance Program: <https://www.moph.gov.lb/maps/covid19.php>

The government issued several circulars on preventive measures in schools and the public sector. It introduced travel restrictions for non-residents from countries with a large COVID-19 outbreak. On February 29, pushed by national panic, the government ordered to close all schools and public markets for one week. The ministerial committee, the WHO, and the United Nations International Children's Emergency Fund (UNICEF) argued that the source of the spread was still external. They believed the school closures were a hasty order. The MoPH formed a committee to monitor the effectiveness of preventive measures and issued daily reports. The committee asked people to practice social distancing and avoid gatherings. The Lebanese Order of Physicians (LOP) was first to declare the passage from containment to the mitigation phase with ten confirmed cases. The MoPH, five days later, announces the official mitigation phase with two new confirmed cases from local transmission in the country.

The ministerial committee extended the school closures along with restaurants, coffee shops, and entertainment places until March 14. On the eve of the WHO's announcement of COVID-19 as a pandemic, the Lebanese national death toll was five new cases on average per day. On March 13, the government shut down the airport and ordered the closure of public facilities.

By March 15, hundred cases were confirmed. The virus was still rapidly spreading. The government declared the "State of General Mobilization"² for two weeks then extended to May 10. This resulted in total closure of the economy, except for essential services. The State of General Mobilization (which is a state of military emergency³) was adopted because of the absence of a state of a medical emergency in the Lebanese Law⁴. On March 20, Lebanon was in a situation of local transmission. With a surge of confirmed new cases, averaging 35 per day, the government announced a night curfew (19h-5h) until April 12.

However, towards the end of March, Lebanon appeared to be among the top countries best protecting its citizens against the novel virus. Although that raised concerns regarding undiagnosed cases, the MoPH announced slower disease transmission in the country with a doubling time of ten days versus three days in other countries. On April 4, the number of infected people exceeded 500 cases with an average of 15 new cases per day and a death toll of 17 cases. The ministry of interior affairs applied driving restrictions: cars with odd number plates allowed to run on Monday, Wednesday, and Friday, while those with even number plates will be allowed to run on Tuesday, Thursday, and Saturday⁵. The exponential growth was stemmed. The compliance with the confinement measures reduced the transmission rate.

On April 7, the LOP and MoPH would disagree, one more time, on adopting "Rapid tests anticorps" as suggested by LOP to discover asymptomatic carriers of the virus. The MoPH

² Decisions of the Council of Ministers on March 15, 2020:

<http://www.pcm.gov.lb/Library/Files/Decision%20n1%2015-3-2020.pdf>

³ Legislative Decree n° 102 of September 16, 1983.

⁴ The declared state differs from the State of Emergency (Legislative Decree n° 52 of August 5, 1967) in that it does not impose restrictions on fundamental rights, and it limits the prerogatives of the armed forces to the application of the measures taken by the government.

⁵ Decision of the Ministry of the Interior n° 479 relating to circulation schedule:
<http://www.interior.gov.lb/AdsDetails.aspx?id=339>

was concerned regarding the reliability of these mobile tests. Eventually, the MoPH proceeds with random PCR testing using mobile clinics and took additional measures such as increasing the number of daily performed tests. On April 21, no new cases were detected in the country. Despite the “State of general mobilization”, the government planned to gradually reopen certain sectors. On April 27, the reopening phase began with three new cases out of 1360 tests performed per day. A total of 708 cases in the country, 146 recovered and 24 deceased.

2. Labour market measures

Prior to the global health pandemic, businesses were pressured by the economic uncertainty and the massive waves of protests that the country witnessed since October 17, 2019. Multiple instant collective dismissals happened. In the case of the banking sector, the Ministry of Labour (MoL) and the Federation of Syndicates of Banks Employees negotiated the suggested compensation. The Federation objected to the low compensation provided by article 50 (a) of the Labour Code (i.e., two to twelve months) and pushed to obtain between 24 to 36 months of compensation.

With the spread of COVID-19 across the country, companies adjusted their employment conditions. Private schools' teachers received a 60 to 70 % reduction in their March salary. The teachers' union refused the salary reduction by an official communication to the Ministry of Labour. Companies managed the economic burden of the lockdown differently; the Habtoor Grand Hotel and the ABC Group, took advantage of the force majeure event to suspend contracts, while others, such as the Middle East Airlines and LibanPost, have mandated employees use vacation time for missed days of work without reducing wages.

This economic burden has equally affected the health sector. Representatives of the Order of Nurses met with the Minister of Labour⁶ to raise their concerns regarding the changes in wages such as non-payment, cuts, and unpaid leave. For example, the Lebanese French hospital issued a written statement to impose part-time hours and leave without pay⁷ to its employees.

Facing these challenges, the MoL devised a plan to address the workers' wellbeing. It issued multiple circulars to protect the health and safety of workers, especially in essential services, such as grocery stores and industrial establishments⁸. It recommended compliance with social distancing, the use of personal protective equipment, and adherence to hygiene directives. Most importantly, working hours were reorganised into shifts, including mandatory breaks, to decrease exposure. The MoL published also a multitude of work specific protocols to help protect workers and consumers of food-related and maintenance or housekeeping businesses⁹. The plan included meeting with companies that decided to shut down their businesses (such as the Le Bristol Hotel and the AZADEA Group company)

⁶ <https://www.labor.gov.lb/LatestNewsDetails.aspx?newsid=16298>

⁷ <https://www.aljournhouria.com/ar/news/525597/30>

⁸ Circulars n° 25/1 and n° 26/1.

⁹ <https://www.labor.gov.lb/LatestNewsDetails.aspx?newsid=16287>

to reiterate the legal procedure to follow during dismissal for economic reasons or force majeure event (Article 50 of the Labour Code, paragraph f); the dismissal would be fair only if the employer consult the MoL one month prior to the expected closure date. For the healthcare workers, the MoL determined in decision n° 20/1 the period of self-isolation for COVID-19 would be considered a paid sick leave. In the case of COVID-19 disease contracting by a healthcare worker, the decree n°136 of September 16, 1983 on work-related injuries and emergencies will apply¹⁰. Labour inspectors ensured compliance with the proposed measures and two hotlines were made available by MoL for workers to report problems at work. One of those hotlines is specific for domestic workers who are most at risk of domestic violence¹¹.

The Bank of Lebanon (BDL) and the National Social Security Fund (NSSF) worked alongside with the MoL to support businesses. An example of that would be the circular issued by the BDL on March 23, 2020¹². Inspired by the Jordanian emergency plan, the BDL encouraged private banks to offer loans to their business clients with zero interest for a period of five years in order to continue paying salaries and afford other operating expenses. The NSSF helped to minimize the financial burden of the pandemic on businesses by postponing the social security contributions¹³ and renewing the “Attestation of fees payment” until June 30¹⁴. This latter measure was supposed to help challenged enterprises reorganize their businesses (e.g, to sell, reduce the capital, and change the rules of procedure) without the intervention of the NSSF inspectors.

3. Social assistance measures

To address the social impact of the public health crisis, the government relied on social assistance measures. The National Poverty Targeting Program (NPTP) of the Ministry of Social Affairs (MoSA) was expanded to include new vulnerable populations, such as daily workers, farmers, disabled people, taxi drivers, and the families of students of public schools. The NPTP, funded by the World Bank, was implemented as part of the economic reforms requested by the International donors in 2007. This anti-poverty program was however transformed in the time of COVID-19. Management of the NPTP transitioned from the MoSA to the Lebanese Army in collaboration with municipal councils to maintain the fairness of monetary distributions. In mid-April, when the monetary assistance was inappropriately assigned, the army intervened by withholding the distributions until April 21. The food assistance program was replaced by monetary support of 400 thousand Lebanese Pounds due to fear of food shortage in the country. In any event, social assistance seems to

¹⁰ <http://www.orderofnurses.org.lb/Details?type=Press&id=1304>

¹¹ <https://www.labor.gov.lb/LatestNewsDetails.aspx?newsid=16300>

¹² BDL's circular n° 547 for March, April, May, and circular n°552 extending the measure to June.

¹³ Memorandum n° 634 of April 6, 2020 of the NSSF.

¹⁴ Decisions of the Council of Ministers on March 24, 2020:

<http://www.pcm.gov.lb/Arabic/subpg.aspx?pageid=17394>. The Council renewed the decree n° 6036 of December 23, 2019 on the validation of the Attestation of Fees Payment until June 30.

be a one-time payment. The government has not succeeded in obtaining a new budget to its social security plan on April 23 because the quorum was lost at the time of the proposition.

In addition to the aforementioned measure, municipal councils contributed by providing aid to people in need, such as the one in Tripoli, which distributed food vouchers to 40 thousand families. The government suspended certain provisions of article 32 of the 2020 finance law to allow municipal councils to dilute the social and economic impacts of the health crisis¹⁵.

4. Social dialogue

The involvement of the social partners in the definition of those measures remained limited and based principally on public interventions on the matter. Although the Economic and Social Council (EcoSoc) suggested monetary assistance of 500 thousand Lebanese Pounds for a period of three months¹⁶, the government approved a one-time contribution of 400 thousand Lebanese pounds. The Lebanese Economic Organization, i.e., the peak employers' organization, suggested monetary assistance equivalent to the minimum wage (i.e., 675 thousand Lebanese Pounds) to the private sector employees. The organization thought of using the NSSF End of Service sub-fund to finance this plan. The NSSF in collaboration with the General Confederation of Lebanese Workers (GCLW) renounced the proposition. The GCLW kept a low profile and played a marginal role in the crisis. No actions were made aside from requesting social dialogue between social actors to guarantee worker's rights during the pandemic and suggesting the operationalisation of the National Labour Council which is a tripartite advisory body to the MoL¹⁷. The Confederation reiterated its position on the need for unemployment insurance. The Association of Lebanese Industrialists did not find a projection of their concerns in the governmental decision. They contested the decision of the government on the circulation schedules and asked for better coordination of the next measures.

The lack of an effective social dialogue was, in like manner, observed in the public sector. Twenty days after the detection of the first case in the country, the League of Public Administration Employees shut down all offices for five days (March 11 to March 15) to push the government to provide them with adequate hygiene measures. While the parliament was closed for disinfection purposes, the frontline healthcare workers at RHUH organized a sit down on March 12 to demand their right in access to personal protective equipment and adequate cleaning and disinfection. Many of these workers in the public sector are non-regular employees. The 2020 finance law has set aside a budget to cover the salaries of those non-regular employees. The government chose, instead of paying salaries, to include daily workers in the social assistance program, while other categories, such as contractual teachers, may be paid 70% of their salaries.

¹⁵ Decisions of the Council of Ministers on March 24, 2020:
<http://www.pcm.gov.lb/Arabic/subpg.aspx?pageid=17394>

¹⁶ <https://www.annahar.com/article/1151176-المجلس-الاقتصادي-لتقديم-500-الف-ليرة-شهر-باللعائلات-الأكثر-فقرا>

¹⁷ Decree n° 6304 of December 5, 1966.

5. Limits of the government action plan

The government has successfully contained the first wave of COVID-19 but failed to diminish the social and economic collateral damages of the lockdown, especially to workers. The measures of the MoL have remained in keeping with previous limited follow-up actions. The Ministry has taken steps to reorganize working time, but no special arrangements have been made on termination of employment or social dialogue. There is, however, a glaring gap between a struggling economy and the unprecedented public health crisis. Dismissed employees could still turn alternatively to self-employment, the informal sector, or family support. The national health emergency requires more robust legal measures given the total closure of the economy and the dependence of tens of thousands of Lebanese citizens on their salaries.

The Labour Code states that in the event of force majeure the employer has to notify the MoL one month prior to termination of employment to establish jointly an execution plan (Article 50, paragraph f). Rather than the cessation of the business activities, that would allow measures such as unpaid leaves or reduced hours. Although the Labour Code prioritises dismissed employees to be reinstated whenever the company resumes operations. (Article 50, paragraph g), it does not guarantee the same employment conditions in terms of salary, nor it specifies the order of recall to work. What is more, commonly employers do not abide by this Code, and the judicial process in the case of a complaint from the employee is low. From a broader perspective, the Lebanese labour market policies are marked by the lack of unemployment insurance to which employees could have recourse.

The MoL embraced, then, a social solidarity approach based on non-binding measures. Given the numerous weaknesses in the national legislation, the government should have brought forward a different approach. By way of comparison, Tunisia, which is another middle-income country and characterized by the absence of an unemployment insurance fund, has taken protective measures by Laws Decrees of the Head of Government on the date of 14 April 2020. Those Laws Decrees contributed to job security for workers in two ways. On one hand, the Law Decree n° 2020-2 suspended, in its first article, the application of force majeure on employment contracts (Article 14, paragraph 3, subparagraph C of the Tunisian Labour Code) until the end of the national public health emergency. On the other hand, the Law Decree n° 2020-4 encouraged companies to remedy the situation through a series of measures, such as the application of the annual vacation with full pay, the early payment of the annual vacation, or the payment of the whole or a part of the salary. In doing so, companies guarantee their employees the right to the exceptional and temporary compensation that worth two hundred (200) Tunisian Pounds. In Lebanon, those measures could be easily adopted considering that the government has ratified the Convention n°15 of the Arab Labour Organization¹⁸. Article 7 of this Convention states that workers shall be entitled to full wages, even in the case of a work stoppage due to circumstances beyond the control of workers.

¹⁸ Ratified by the law n° 183 of May 24, 2000.

The lack of legislative initiatives on termination of employment and social dialogue could not be compensated by social assistance. The one-time payment was fixed at a very low level. Even the employers' Confederation suggested a higher amount. All of these limited measures paved the way for a greater role of the non-state welfare in the public health crisis. Hence, all major political parties in the country have offered social and medical assistance to their supporters. Those services go from large scale measures, such as the mobilization of 25,000 health care workers and the preparation of treatment centers to distributing food packages.

Although Lebanon is in a difficult economic situation, the choice of the action plan to address the impact of the COVID-19 emergency on working conditions remains a political choice. The government held, at the ministerial level, meetings with multiple social actors during the decision-making process, but the crisis response mechanisms would reflect a lack of genuine social dialogue between the concerned parties. The Economic and Social Council (EcoSoc) was adopted under Law n° 389 of 1995 to issue non-binding advisory opinions at the request of the government. It allows participation of the civic society in legislative reforms, but it was inactive for almost fifteen years (2001-2017). The organisational structure of the Labour Confederation does not provide for effective workers representation since it is not based on the proportional system. Ultimately, the grip of the political regime on the members of the EcoSoc and the Labour Confederation transformed them into other state institutions paralyzed by sectarian divisions. The action plan would have been different had they been able to influence further. The "State of General Mobilization" has led the government to cease investments, except salaries payment. The Minister's Council froze the price of oil despite the drastic fall of the barrel price at the international price of a barrel. Those actions provide direct cost savings for the State, which could be redirected, as expenditure, towards a more generous action plan.

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