

NEWSLETTER – JANUARY 2012

THE LAW FOR INCREASED ENFORCEMENT OF LABOR LAWS

The Israeli Parliament (Knesset) recently adopted The Law for Increased Enforcement of Labor Laws – 2011 (the “**Law**”), which will come into force on June 19, 2012.

The Law represents a comprehensive attempt to step-up enforcement, by imposing additional administrative sanctions upon employers for non-compliance who are in violation of existing protective labor law, and by imposing personal liability on a company’s CEO for non-compliance. The Law also specifically regulates contracts with service contractors in the security, cleaning, and catering professions, and places administrative fines and criminal sanctions on the recipients of the services of such contractors who have not fulfilled their obligations towards their employees.

As a result, companies and organizations will now have an additional incentive to ensure that they are acting in compliance with applicable protective labor laws. Moreover, companies and organizations that contract out for cleaning, cafeteria or security services, will now need to make sure – both on a contractual and a practical level -- that their service providers are acting in compliance with such provisions.

An overview of the main provisions of the Law follows.

Inspection Authority and Fines

The Law authorizes senior labor inspectors from the Ministry of Industry, Trade and Labor to impose fines in an amount ranging from NIS 5,000 to 35,000 upon employers for violation of certain labor laws. These fines also apply (at half the maximum rate) to individuals who employ an employee outside the framework of a formal business or service. An ongoing violation can increase the fine by 2% for each day the violation occurs, and, of course, repeated violations can result in multiple fines.

The labor inspector finding a violation must provide the employer with written notice of the intention to impose a fine, listing the details and circumstances of the claimed violation. The employer has the right to respond and present the inspector with a written response by a date specified in the notice. Taking into account any response, or in the absence of a response within the specified period, the inspector will make a decision whether or not to impose a fine. The labor inspector may alternatively choose to send out an administrative warning instead of imposing a fine. An employer may appeal a fine or a warning to an appeal committee set up by the Ministry, whose decision is appealable to the labor courts.

An imposed fine will be subject to the same collection procedures applicable to taxes due under the Tax Ordinance (Collection). These procedures provide for aggressive and expedited collection proceedings (such as seizure of bank accounts or possessions), without prior recourse to a normal court proceeding.

The imposition of a fine does not detract from an employer's criminal liability for the violation of the provisions of the applicable law. However, if an employer is charged under a criminal proceeding, the criminal proceeding will prevail and cancel any administrative acts under the Law. The rationale of the Law is to make it easier for Ministry officials to impose sanctions outside of the existing (but time and resource consuming) criminal process.

Personal Liability of the CEO

The Law explicitly provides that the CEO¹ of any corporation is personally liable to oversee and to take all reasonable measures to prevent the violation of those provisions of the Law applying to a corporation. If the corporation violates any of the provisions of the Law, the inspector may send a warning to the CEO clarifying the CEO's responsibility to eliminate the specified violation and/or prevent its recurrence, within a specified time frame. If the measures are not taken, the inspector may impose a fine upon the CEO personally; unless the CEO proves that he has done "all that is possible" to fulfill his obligations under this Law.

Publication of the Imposition of the Fine

The Ministry of Industry, Trade and Labor will publicize on its site every fine imposed by it under the Law, including the name and identifying details of the employer, the nature and circumstances of the violation and the fine amount. In the case of an individual, details regarding the violation will also be publicized, but will not include the name of the offender.

Legislation Covered by the Law

The Law provides an extensive list of provisions whose violation may be sanctioned, broken down according to the severity of the fine that may be imposed. A full list appears in the form of Exhibits to the Law, which may be viewed in its entirety (in Hebrew) at the following link:

<http://www.knesset.gov.il/Laws/Data/law/2326/2326.pdf>

The following is a **non-exhaustive survey** of the labor law provision covered by the Law:

Protective provisions for which a fine of up to NIS 5,000 may be applied:

Failure to maintain employer registers with respect to annual vacation and work hours and overtime, failure to adopt guidelines for the prevention of sexual harassment, failure to provide notice of minimum wage, demands for protected information (military profile, genetic tests etc.), provision of sufficient work breaks on a daily and weekly basis, including with respect to special circumstances (such as night work, pregnant employees, employees returning from maternity leave).

Protective provisions for which a fine of up to NIS 10,000 may be applied:

Failure to meet annual leave requirements or make mandatory payments in lieu of leave, requiring overtime work in excess of permitted time frames, failure to make payment for overtime, work on holidays and rest days, illegal employment practices for minors, failure to provide notices in connection with work conditions and termination of employment, failure to provide a proper pay slip, unlawful deductions from wages, employment of employees on maternity leave.

Protective provisions for which a fine of up to NIS 35,000 may be applied ("Serious Infractions"):

Failure to make payment for overtime², work on holidays and rest days², illegal employment practices for minors, late payment of wages, failure to pay minimum wage, unlawful termination of protected employees, and failure to make payments to pension in accordance with a general expansion order.

¹ While the Law is not clear on the definition of "CEO", it should be assumed that this term would include a country manager or other most senior manager in Israel, in the case of a company with a branch or subsidiary in Israel.

² It is noted that the matter appears both here and in the NIS 10,000 list.

Liability of the Recipient of Services from a Service Contractor

In an effort to combat the phenomenon of circumvention of protective legislation through the use of outsourcing in the security, cleaning and catering professions, the Law also imposes liability for non-compliance with such protective legislation on the recipient of such services (in the framework of a business or other organization), *provided* that all of the following three conditions are met:

- The service is provided on the premises of the recipient of services by at least four employees (employed by one or more contractors³).
- The service is provided for at least six months and in a continuous manner.
- Either:
 - the contractor's employee demanded that the contractor fulfill its obligations, provided the recipient of services with a copy of the demand, and the obligations were not fulfilled by the contractor within 30 days; or
 - if the labor inspector gave the recipient of services a written notice that the contractor has not fulfilled one of his obligations, and the contractor did not comply within 30 days.

In this context the recipient is also liable for compliance with expansion orders applicable to the service provider's employees (including with respect to "recuperation" or "convalescence" pay, pension requirements and so forth), even though the Law does not provide authority to inspectors with respect to the obligations of a direct employer under expansion orders.

Responsibility of the Recipient of Services

The recipient of services is required by the Law to take reasonable measures to prevent the violation of the rights of the contractor's employees providing the services, including providing effective means at the work place for submission of notices of violations and investigation of alleged violations.

If the recipient of services does not initiate procedures that inform and allow the contractor's employees to submit a notice of violation of their rights, the recipient of services will be subject to a legal presumption of direct liability towards the service contractor's employees for the violations.

The recipient of services may also be held criminally liable under the Law if the contractor commits (and does not remedy) a Serious Infraction (as defined above), such as failing to provide a properly detailed pay slip, making illegal deductions from salary, failure to provide annual vacation, or failure to pay minimum wages. To avoid criminal liability, the recipient of services must demonstrate that it did "all that was possible" to fulfill its obligations under this Law, including that the service provider: (a) relied in good faith upon periodic checks by the authorized salary inspector in proximity to the time when the violation was committed, and (b) when a violation was discovered, did all that was possible to have it remedied or terminated the agreement with the contractor.

A recipient of services who is sued by a contractor employee or his or her representative in a civil suit for the violation of one or more of the Law's provisions will have a legitimate defense if it can be demonstrated that the violation was remedied from the date upon which the violation occurred, or that the recipient of services relied in good faith on periodic inspections by an "authorized salary inspector"⁴, and, if any violations were discovered, took all action possible to have the contractor remedy the

³ For example, if two separate contractors provide security services, and each employs 3 employees for a particular recipient of services, and an additional service provider allocates two employees for cleaning services, the provisions of the Law will apply with respect to the two security contractors, but not the cleaning contractor.

⁴ For this purpose an "authorized salary inspector" is defined as someone recognized as such by the Minister of Industry, Trade and Labor. For the first 18 months in which the Law will be in effect, it will be sufficient to rely upon the inspection of an accountant, once every 9 months, regarding at least 10% of the relevant employees, and presumably the Ministry will provide additional guidance in the future.

situation (and if the contractor did not do so in a timely manner, the recipient of services terminated the agreement with the contractor).

If a Serious Infraction is committed by the contractor, the senior labor inspector may send the CEO of the recipient of services a warning that he must take action to have the contractor remedy the violation or to act in good faith to terminate the agreement for the provision of services by the contractor. If neither of these measures are taken, the CEO will be presumed to be liable under this Law, and unless the CEO proves otherwise, may be charged with criminal charges and be personally liable for the full amounts of the fine.

Provisions in a Services Agreement

The recipient of services is obligated to ensure that the services agreement includes a written breakdown of the components and minimal costs of the wages and other payments that the contractor will pay his employees (which of course cannot be lower than the mandatory minimum for wages and other payments), and a declaration by the contractor of its additional costs, including profits, and the contractor must expressly undertake to make payment for such itemized amounts. As minimum payment levels (whether minimum wage or otherwise) are updated as a result in changes in the law or accrual of rights, the recipient of services is responsible to ensure that the payments under the service agreement and to the contractors' employees are updated accordingly.

Non-inclusion of these provisions in the service agreement constitutes a criminal offense by the recipient of services, and its CEO bears personal liability for non-inclusion unless he or she is able to prove that he or she did all that was possible to supervise and prevent the offense. In addition, the non-inclusion of these provisions automatically makes the recipient of services directly liable towards the contractor's employees.

No Waivers or Indemnifications

Employee's rights vis a vis the contractor and/or the recipient of services under this Law cannot be contracted around or waived, and any provision in a contract purporting to do so, or to provide for indemnification or insurance, or otherwise shifting the liability of the recipient of services under the Law to the contractor, will be null and void. Likewise, the CEO's personal liability under the Law may not be contracted around, waived or be made subject to indemnification or insurance.

Practical Recommendations for Service Contractors

As suggested above, any business or organization whose activities include the outsourcing of security, catering or cleaning services by four or more individuals will be held responsible under the Law for the compliance of the service providers' obligations to its employees.

To protect itself from criminal and civil liability, including the personal liability of its CEO, any such business or organization should take the following steps:

We suggest that recipients of the affected services take the following steps:

- *appoint one of its employees as a designee to receive complaints of violations of mandatory employment provisions from employees of the contractors;*
- *create a written procedure for the investigation of complaints;*
- *post notice in the work place (such as on a bulletin board) addressed to the contractor's employees setting out the employee's right to file a complaint and the procedure for doing so, including details of the designated contact person;*
- *adopt a fixed procedure for the carrying out of inspections of the activities of the contractors,*

regarding the fulfillment of the provisions of the Law;

- *ensure that contracts with affected service providers contain the following provisions:*
 - *express undertakings of the contractor to comply with the provisions of the Law and cooperate with the recipient of services' efforts to comply with the Law;*
 - *the right of the recipient of services to carry out inspections of the activities of the contractor, including by appointment of an "authorized salary inspector" ;*
 - *inclusion of detailed provisions regarding the components of salary or wages, mandatory payment and deductions that will apply to the contractor's employees;*
 - *express adjustment mechanisms for payment of increases in minimum wage and other mandatory payments;*
 - *ensure that existing service agreements be updated to include the foregoing provisions in advance of the coming into effect of the Law (i.e. within the next six months).*

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We would be pleased to answer any questions you may have and to assist in preparing your business or organization for compliance with requirements of the Law.

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