



March 2020



## Coronavirus Update #3 – Clarifying Guidelines for Employers Following Broadened Limitations

Following our previous updates of [March 8, 2020](#) and [March 12, 2020](#), the below is a summary of certain updates regarding the SARS-CoV-2 virus outbreak which causes the COVID-19 disease (hereinafter the “**Coronavirus**”) and its influence on employment relations.

### Clarifying guidelines regarding quarantined employees

Employers are permitted to come to an arrangement with quarantined employees who are not exhibiting symptoms of the Coronavirus or experiencing any other medical limitations, providing that such employees will **work from home** for as long as they are able to continue working under these circumstances. In these situations, employees are entitled to their regular salary and not to sick leave. If an employee in quarantine refuses to work from home, his or her refusal must be made in good faith and for good reasons. For clarification purposes, employers are prohibited from allowing an employee to enter the workplace if they are required to be in quarantine pursuant to the Ministry of Health’s guidelines, even the employee’s requests to come to work.

Additionally, it is important to note that entitlements to sick leave for quarantined employees pursuant to the comprehensive sickness certificate are in accordance with the remaining accumulated sick leave days available. An employee who does not have any

accumulated sick leave days will not be entitled to sickness benefits for the days they are required to spend in quarantine.<sup>1</sup>

### **Unpaid leave – clarifications regarding employer obligations**

Forcing an employee to take unpaid leave (hereinafter: an “**Unpaid Leave**”), is considered a “coerced unpaid leave” by the Employment Services, but **employers cannot force an employee to take Unpaid Leave without their consent, best recommended in writing.**

An employer that decides to force an employee to take an Unpaid Leave must complete Form 1514 “Employer Approval on the Employment Period and Salary”, for their employees.<sup>2</sup> In the case of an Unpaid Leave for a period of over 30 days, an employee will be entitled to receive unemployment benefits (subject to meeting the eligibility conditions of the National Insurance Institute). Additionally, employers must continue **to pay national insurance contributions for the first two months of an Unpaid Leave** and to instruct employees to ensure their pension continuance during their Unpaid Leave.

### **The possibility of forcing employees to utilize vacation days**

Receiving unemployment benefits during a forced Unpaid Leave for a period of over 30 days due to the Coronavirus does not require the employee to utilize his or her annual vacation days (in contrast to the customary practice). However, the employer has the option to force employees to utilize their unused vacation days.

If the forced vacation is for seven continuous days or more, the employer needs to notify the employees 14 days prior to the commencement of the vacation. However, if the vacation is for less than seven continuous days, the employer needs to give the employees notice within a reasonable period prior to such vacation and, in this circumstance, a mutually agreed upon vacation will take place immediately. In the case that the vacation is not agreed to by the employee, the employer is required to provide notice of only a day or two.

Employers can reduce salaries and/or the scope of the employment, but they are required to receive the employee’s consent to make these changes. If an employee refuses to the

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<sup>1</sup> [Comprehensive sickness certificate for quarantined employees](#) [in Hebrew].

<sup>2</sup> [Employer approval form for employment and salary period.](#)

aforementioned changes, the employer is required to provide the employee with a hearing before implementing the changes, or, to consider terminating their employment. The hearing process during this period should be conducted with certain necessary changes, including receiving the employee's response in writing and/or conducting the hearing via video conference.

on the decision to take these aforementioned measures, in the event that the employee does not agree to the changes, may allow the employee to resign and claim that he or she was subject to a deemed termination, in the event that these changes amount to a substantial worsening of his or her terms of employment. Before deciding on these courses of action, we recommend reaching out for specific legal advice in each specific case.

### **Protected employees**

In order to initiate a dismissal procedure or alter the terms of employment for employees who are performing their reserve duty in the Israel Defense Forces, undergoing IVF treatments, pregnant or on maternity leave, the employer is required to receive a permit from the relevant commissioner, because the aforementioned employees are protected by various laws. We recommend reaching out for legal advice in such specific cases.

Following our inquiry regarding governmental policy on this matter with the **Employment Relationships Commissioner at the Ministry of Labor, Social Affairs and Social Services**, it seems that it may be possible for the employer to utilize an expedited procedure upon applying for a permit to force protected employees to take an Unpaid Leave. Accordingly, recently, the Employment of Women Commissioner at the Ministry of **Labor, Social Affairs and Social Services** (the “**Commissioner**”) published a “special form for requesting a permit pursuant to the Employment of Women Law to harm the scope of employment and salary (unpaid leave) that is submitted due to the guidelines/consequences of the Coronavirus outbreak”, that allows employers to submit a request to force protected employees to take Unpaid Leave, including for a the period of 60 days following parental leave. At this time, the Commissioner’s Office is working at full capacity. Employers need to submit their requests to the Commissioner in accordance

to the guidelines, and if the employee consents, the time taken to process the request will likely be shorter.

### **Changing work arrangements to mitigate contagion and exposure to Coronavirus**

The Ministry of Health's guidelines prohibit gatherings of over 10 people. Employers need to prepare accordingly by closing the workplace, encouraging employer to work from home or continuing regular work while conforming to the Ministry of Health's guidelines, including maintaining over 2 meters of distance between each employee.<sup>3</sup> Pursuant to these guidelines, workplaces are required make numerous changes, such as minimizing the number of employees in every shift and changing shift arrangements. Changes in work arrangements that do not constitute a worsening of the employment conditions can be implemented by providing notice according to the employer's managerial prerogative. If the changed to the working arrangements constitute a worsening of the terms of the employment of an employee, an employer must receive the employee's consent before the changes are implemented. If the employee does not approve these changes, the employee could claim effective dismissal.

### **Declaring a state of emergency**

As of the date of this update, a state of emergency throughout the market has yet to be declared. In the event that a state of emergency will be declared, it will result in the closure of workplaces. In such a scenario, the limitations and rules that will apply will be pursuant to current law as well as specific Orders and/or guidelines that will be published. On March 15, 2020, the "Temporary Order Ordinance (Employment Services in an Emergency), 5780-2020, was published, which added a reference to a "dangerous contagious disease" to the Employment Service in a State of Emergency Law, 5727-1967 (hereinafter the "**Law**"), but it did not declare a state of emergency or provide specific orders. It is difficult to analyze and review the consequences of such a declaration on employment relations and therefore, this update focuses only on understanding the normative basis of the declaration.

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<sup>3</sup> [Limitations on gatherings by the Ministry of Health.](#)

The legal framework for employment in a state of emergency throughout the market is regulated by the Law, which defines the parameters of employment in certain workplaces in the market and the rights and obligations of employees employed in these places.

Please note that the regulatory framework generally refers to essential/existential services and does not relate to the specific needs of particular employers. We have been updated of various intergovernmental discussions regarding the classification of fields/factories, the scope and content of limitations and the characterization of essential/existential services relating to the specific characteristics of the current crisis.

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Please note that this update is only a summary and does not represent the author's position. This update does not replace legal counsel.

The information provided in this notice is for informational purposes only and does not constitute legal advice.

The Employment team at Gornitzky & Co is ready to assist (within existing limits) during these challenging circumstances and is available for any clarification with respect to this update and any general concerns or needs that arise.



**Michael Ayalon**

Partner, Leads the Labor Law Practice

✉ [michaela@gornitzky.com](mailto:michaela@gornitzky.com)

45 Rothschild Blvd. Tel-Aviv, 6578403, Israel | Tel: +972-3-7109191 | Fax: + 972-3-5606555 | [www.gornitzky.com](http://www.gornitzky.com)

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