

**Subject: General Employment Advice on the Employees and Employers Rights during the period of the outbreak of COVID-19 in Egypt****Introduction:**

On March 11<sup>th</sup>, 2020, The World Health Organization (“**WHO**”) has announced that Coronavirus disease (“**COVID-19**”) is a pandemic. Based on this, different states worldwide started to take serious actions trying to face this worldwide crisis which negatively affected the business and caused economic recession all over the world.

In light of this economic recession, companies started to minimize the labor power working therewith by resorting to terminate the contracts of most of such employees. Accordingly, based on reviewing the provisions of the Egyptian Labor Law No. 12/2003 (the “**ELL**”), the court precedents, in addition to our experience with handling similar cases, we would like to share with you some of the alternative solutions and recommended strategies to be followed by the companies to mitigate the negative consequences of such crisis rather than resorting to any lay-offs or termination of the employees contracts.

**Content of the article:**

In this article, we shall address the following matters:

**i. The obligations imposed by the ELL regarding the management of this crisis:**

The provisions of the ELL regulate the Occupational Safety and Health rules that shall be followed by the employers and employees as well to prevent the negative consequences of the different crisis and to maintain the health and safety of the labor power and the work environment as well.

In this regard, According to Article (203) of the ELL, the obligation to follow the Occupational Safety and Health rules provided by the ELL is an obligation on all the companies and establishments regardless its type and activities performed. In this regard, Article (227) of the ELL authorizes the competent minister to issue a decree determining the establishments and companies obliged to have Occupational Safety and Health committees therein. Therefore, the Minister of the Manpower has issued the Ministerial Decree No. 234/2003 which determine such entities. Article (1) of this decree provides that the provisions of this decree shall be applied on all the establishments and work places, as follows:

a. The establishments having (50) employees or more:

These companies, either industrial or non-industrial establishments, are obliged to form Occupational Safety and Health committees in order to apply the Occupational Safety and Health requirements provided by the ELL. Such committee shall be formed of the members clarified in Article (5) of the Ministerial Decree No. 134/2003 and shall be responsible for certain competencies, such as:

- Take the necessary measures for the preparation of the organizational structure of the Occupational Safety and Health committees in the establishments;
- Investigating the work conditions and the reasons behind the gross accidents, work injuries, and chronic and occupational diseases in order to take serious steps to prevent its happening
- Offering equipment for determining the various risks which exist in the work place;
- Improving and developing the plans and programs related to the application of the Occupational Safety and Health requirements, in addition to the health, social, and cultural services in order to keep the safety and health of the employees and protect them from the diseases and work injuries.

b. The establishments having less than (50) employees:

As per Article (4) of the Ministerial Decree No. 234/2003, even though such companies and establishments are not obliged to form Occupational Safety and Health committees, such establishments shall ensure that the requirements and levels of the Occupational Safety and Health are followed and respected by the employees thereof.

Moreover, Article (210) of the ELL states that: *"The establishment or its branches shall undertake all the precautionary measures to protect the employees from the risk of catching bacteria, viruses, fungus, parasites, and all other biological risks, whenever the nature of the work makes the employees exposed to catching such diseases, especially:*

*1-Dealing with the infected animals, its productions, or wastes;*

*2-Contacting infected people and providing care and medical tests and examinations to them".*

Hence, companies are obliged to take all necessary measures to protect its employees from catching COVID-19, without any limitations regarding such necessary measures. Therefore, and in return, the main and sole obligation imposed by the ELL on the employees in this regard is to follow all the regulations set by the company to keep their safety and healthy as per Article (56) of the ELL.

In this regard, the following steps are highly recommended to be followed by the companies during this period of time in the course of performing its obligation to maintain and keep the safety and health of its employees, as per the law:

1. Adoption of the work from home (working remotely) policy, if possible.

2. Adoption of the rotations or shifts system, to avoid and reduce the intensive gatherings of the employees in the workplace during for long hours.
3. Providing the employees with sanitizers, masks and gloves for keeping them safe and healthy.
4. The company shall conduct frequent sanitization to the workplace.
5. The convocation of work meetings remotely using electronic means.

**ii. Recommended strategy to be followed by the companies to handle the current crisis:**

As a result of the outbreak of COVID-19 in Egypt, the companies would seriously consider cutting down their cost in order to be able to mitigate the negative consequences of such economic recession.

In this regard, we would like to highlight the different alternative options, as per the provisions of the ELL, that could be adopted by the companies operating in Egypt to mitigate the current economic recession while avoiding any layouts or partial closure of the business' decisions.

**1. As for the recommended strategy to handle the employment matters:**

With regard to the alternative solutions that could be adopted by the company, to avoid the termination of its employees' contracts during the period of the current economic recession in Egypt, we recommend to follow the below options:

- a) The company may request its employees to consume all their unused annual leaves balance these days. This is as per Article (48) of the ELL which grants the employer the right to regulate and determine the annual leaves of its employees as per the work needs in the company. In light of the current situation, and the reduction of most economic activities by most companies, the employer has the right to ask the employees to consume their unused annual leave balance these days.
- b) The company may decide to cancel the overtime system; since there is no need for the employee to work for extra hours over and above the official working hours of the company due to the slowdown of the company's activities during this period. Accordingly, the company will not have to incur any overtime payments to its employees.
- c) The company may amend its policy related to the eligibility and payment of the other benefits granted to its employees (such as: bonus, allowances, schooling, housing, or any in kind benefits) to suspend the grant of such benefits to the employees, temporarily, until the company manages to overcome such economic recession and the damages caused as a result thereof. Noting that, such amendment is recommended to be in writing and shall be notified to the employees. It is also recommended to reflect such amendments in an addendum to be signed with the

employees, as an evidence of the employee's approval on such amendment of the policies.

- d) The company is highly recommended to stop and suspend any new hires for any new employees (either outsourcing employees or direct employees) during this period of time and revoke any offers that has been recently sent to any new candidates.
- e) With regard to the employees on definite period employment contracts that shall expire soon, and their work is non-essential, the company is highly recommended not to renew the contracts of such employees, and notify them with such decision, in case their contracts provide for a notice letter to be sent to the employee in such case.
- f) The company may consider amending the working hours of its employees, by reducing such working hours or adopting/activating the shift work system to avoid the gathering of such employees in the same workplace. This is as per the discretionary powers provided by the ELL to the employer to regulate the work system as per the work needs and conditions.
- g) On the employees with the definite period contracts which its term is about to expire soon, and their work is essential, and in case the company decided to renew their contracts, the company is recommended to renegotiate the salaries to be paid to such employees according to the renewed contracts by providing reduced salaries to them.
- h) In light of the recent characterization of COVID-19 as a pandemic, therefore, it may constitute either a force majeure event or trigger the application of the theory of unforeseen circumstances, as the case may be.

Based on this, the company, in the course of re-negotiating the terms of the outsourcing contracts signed with third parties for the provision of outsourcing employees, may either terminate such outsourcing agreements based on force majeure events or decrease the costs of such contracts in case the theory of the unforeseen circumstances. This would decrease the costs and expenses of the company during the crisis period.

- i) The company may use the amounts deposited in any solidarity fund, or establish a solidarity fund based on the contribution from the employee and the employer, to face any emergency situations (if any).
- j) The company may conduct part-time arrangements with its employees, with new salaries, whereby the company reduces the working hours or working days for such employees. In this regard, such part-time arrangements shall be temporarily until the lapse of the period of the outbreak of COVID-19. We do not recommend that such reduction exceeds half of the employee's salary.

- k) The company may conduct certain amendments to the employee's positions in the company, for example, by referring them to work with other departments, to keep balance between the departments of the company which needs more employees than others.
- l) The company is entitled to reduce the working hours of its employees as per the work needs during this crisis. Further, the company may adopt the system of rotation or shifts between the employees; so that it will reduce the intensive gathering of the employees inside the work place and at the same time would allow the company to reduce the salaries of the employees as per the amendment of their working hours in application of the principle of "salary against work".
- m) The company may encourage the employees to convert their sick leaves or part thereof into annual leaves; in order to be able to consume such annual leaves during this crisis period.
- n) The company may submit a request to the Employees Emergency Subsidy Fund established according to the provisions of the Law No. 156/2002, in order for the employees to receive certain subsidies from such Fund. Noting that, in such case, the company has to evidence its inability to pay the salaries of its employees during the crisis period.

According to Article (1) of the Executive Regulations of this law No. 1395/2002 (the "ER") which states that: "An employees' emergency subsidy fund shall be established and shall have the public juristic personality. Further, it shall follow the Minister of Manpower and Immigration, to provide the subsidies to the employees, whose salaries are suspended, from the establishments which were partially or fully closed or the number of its employees registered in its records and insured with the Social Insurance are reduced", the employees eligible for receiving such subsidy is the employees whose salaries were suspended due to any of the following reasons:

- a- The partial or full closure of their employing companies; or
- b- The reduction of the number of the employees working at such employing companies, while considering that such employees are insured with the Social Insurance Authority and they are not entitled to the unemployment subsidy provided by the Social Insurance Law.

In this regard, Article (9) of the ER regulates the conditions and requirements to be fulfilled for the payment of such subsidy to the eligible employees. Noting that, such subsidy would be calculated based on the basic salary of each employee that is announced to the Social Insurance Authority with a minimum amount equals to (200 EGP per month). While Article (10) of the ER provides for the cases where the

payment of such subsidy to the eligible employees should be suspended. Nevertheless, it is worthy to mention that the decision of approving such request is subject to the discretionary power of the board of directors of the Fund. We would be happy to assist you with the request and application form to be filed with the Emergency Fund.

- o) In case of the failure of the aforementioned steps to help the company overcome the damages and losses suffered due to the current economic recession in Egypt, the company, as a last resort, may agree with its employees to submit a request to go on an unpaid leave for a certain period of time. In this regard, it is significant to highlight that such agreement between the company and the employee shall be verbal without any written documents. This option would decrease the expenses of the company, however, this option shall not be applied on all the employees of the company at the same time, to avoid any claims that the company obliged the employees to take unpaid leaves; since it will not be possible that all the employees of the company go on an unpaid leaves at the same time.
- p) In case the current crisis lasted for a long period of time causing severe damages to the companies in a way that the aforementioned suggestions become ineffective for mitigating the negative consequences of this situation, the following general theories provided by the provisions of the Egyptian Civil Code No. 131/1948 (as the general law) may be adopted by the company to be applied on the employment contracts, on case by case basis and subject to separate advice:
  - Theory of unforeseen circumstances;
  - Force majeure theory; and
  - Suspension of the legal effects of the employment contracts for a certain period of time.

## **2. On handling the other general matters related to the operation of the business of the company in Egypt:**

In this section, we shall address the recommended practices to be adopted by the companies in other matters, which are not related to the employees thereof, to mitigate the negative consequences of the current economic recession and reduce the expenses thereof. Such practices include the following:

- a. The company may renegotiate the terms of the lease agreements signed with the lessors regarding the different premises and branches thereof; trying to amend the rent value of such branches or the payment terms related thereto, based on the force majeure and the unforeseen circumstances theories. We have seen some landlords reducing or exempting the lessee from the rent.

- b. The company may renegotiate the terms and conditions of the other commercial agreements signed with its partners; suppliers; or third parties in relation to the performance of its business in Egypt. In this regard, and as clarified above, the company may resort to the force majeure and the unforeseen circumstances theories to reconsider the terms and obligations provided in such agreements.
- c. The company is also recommended to use any saved amounts therewith to open bank accounts and certificate of deposits with the banks; to receive interest thereon which may be helpful at this stage.
- d. The company may take serious steps and measures trying to reduce, as much as possible, the general expenses of the operation of its business in Egypt.
- q) According to Articles No. 40 and 42 of the Egyptian Companies Law No. 159 of 1981 and Articles 192 and 193 of the Executive Regulations of the aforesaid law, these articles provide that the companies may use its reserve, with all its types, to overcome any losses suffered during this period of time due to the suspension of the company's operations. However, please note that the application of this option shall be subject to the provisions of the Egyptian Companies which regulate the right of the company to use/utilize its reserve to overcome its losses during a determined year. We would be happy to assist you throughout this entire process if the company wishes to do so.

**iii. The legality of deducting the employee's salaries, as a solution for reducing the expenses of the company during this crisis:**

In this regard, we have to distinguish between two case, as follows:

- A) In case the employees will continue performing their work, but the company intends to decrease their salaries due to the economic recession happening during this period of time:

The provisions of the ELL do not regulate such case explicitly except in the cases of the partial or full closure of the company due to economic reasons provided in Articles from (196) to (200) of the ELL. In this regard, according to Article (201) of the ELL, the company is entitled to reduce the salaries of its employees (or amend the provisions of his/her contract's term, temporarily) only by following the procedures of the partial and full closure of the companies provided by Articles from (196) to (200) of the ELL.

According to this process, such closure (in order to be justified) shall be after obtaining the approval of a certain committee to be formed for such purpose in the Ministry of Manpower. This process is not recommended to the companies; as it is a time lengthy and might not be effective in these cases; as it may take about one year to be determined and the financial



statements of the company, evidencing that the company has recently achieved losses, shall be submitted to such committee as well.

**B) In case the company intends to request the employees to stay at home without performing any work during the outbreak of COVID-19 period:**

In such case, and as per Article (41) of the ELL which states that: *"If the employee attends at his/her place of work, at the determined time for work and he/she was ready to exercise his/her work, while he/she was prevented from doing so due to reasons related to the employer, he/she shall be considered as performed his/her work and accordingly deserves his/her salary. However, if he/her attendance was prevented from performing his/her work due to coercive reasons beyond the will of the employer, he/she shall be entitled to half of his/her salary", the company shall pay such employees half of their salaries during such suspension of operations period of time*, without any fear that such employees may submit labor complaints against it before the labor office. This is due to the fact that the reason behind preventing the employees from performing their jobs in such case is not subject to the employer's decision (i.e. event of force majeure) that is regulated by virtue of Article (41) clarified herein.

**Summary:**

In light of our above-mentioned legal analysis, the company is not recommended to terminate the employee's contracts as a first option to overcome and mitigate the consequences of the outbreak of COVID-19 in Egypt, due to the following reasons:

- 1- To legalize the termination of the employment contracts of its employees (or the reduction of their salaries) due to economic reasons, the company shall follow the procedures regulated by the Articles from (196) to (200) of the ELL which regulate the partial and full closure of the companies, which is not recommend, as clarified above.
- 2- Other alternative solutions are available for the company to be adopted, at first, before resorting to the option of terminating its employees' contracts.
- 3- The excessive severance package which may be paid by the company to the employees on definite and indefinite employment contracts, upon the termination of their contracts.

Should you need further assistance or inquiries, please do not hesitate to contact us.

Sincerely yours,  
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