

October 16, 2023

Labor Law Aspects of the Emergency Security Situation and the Special Situation on the Home Front

Client Updates

In light of the current emergency situation in the State of Israel, arising from "Operation Iron Swords" and the special situation that was declared on the Home Front in all of the State of Israel, we would like to bring to your attention important information about the employment of employees and address questions that might naturally arise from this situation.

1. Are employees obligated to maintain regular attendance at work? Under what circumstances are employees permitted to refrain from coming to work?

If an order has been given by the Home Front Command that prevents or prohibits reporting to the workplace, then the employee is not required to show up to work.

In the absence of an order that prevents or prohibits the employee from reporting to the workplace, the employee is required to report to work, provided that no exception exist, such as:

- The employee is unable to report to work due to a disability;
- The employee is required to supervise his or her child under 14 years of age, or a child with a disability under 21 years of age, and the employee is a single parent, or the employee's spouse is not absent from work for the purpose of supervising the child.

However, the employer is obligated to exercise discretion and consider appropriate alternatives for work attendance based on the circumstances, such as facilitating remote work from home, permitting the use of vacation days, etc.

2. Are there any current limitations on workplace activities?

According to the [Home Front Command Guidelines](#), (which are valid at this time and until October 16, 2023 at 18:00, but are expected to be extended), there are workplace restrictions in the following areas:

The Gaza Envelope, the West Negev, the Central Negev, Lachish, HaShfela, Shfelat Yehuda, Dan, Yarkon, Sharon, Yehuda, Shomron, and Jerusalem (essentially all areas of the State of Israel between the Gaza Strip and Tel Aviv and its adjacent cities).

In these regions, workplace operations are permissible only when there is access to a standard protective space during self-protection periods. In other areas of the country, no specific workplace restrictions have been implemented.

3. If an employee does not report to work - is the employer required to pay his or her salary?

Should an employee fail to report to work without a valid justification, they will not be eligible for their salary. Even if the absence is justified, such as compliance with Home Front Command Guidelines preventing them from attending work, there is no automatic entitlement to salary, however it is possible that such entitlement would be granted retroactively, e.g. after such special situations no longer apply, by the relevant authorities or through agreements like collective labor agreements. In such cases, it is likely the employer would receive compensation for any such payments. Similar arrangements were implemented in similar security situations in the past.

4. Are employees required to report to work? What sanctions can be taken against employees who did not report to work?

An employee who did not show up for work, without a justifiable reason (detailed above), may be subject to customary disciplinary sanctions in accordance with the existing arrangements in the workplace (for example, in accordance with the disciplinary code or with a collective bargaining agreement), which can even result in termination, in appropriate circumstances.

However, in view of the uniqueness and gravity of the current situation, it is appropriate and wise to carefully examine whether each case justifies taking disciplinary measures, especially when it comes to termination.

It is important to remember that no sanctions (including termination) may be taken against an employee who is absent for a justified reason as detailed above, or due to military reserve service.

Regarding workplaces that have been declared as "essential establishments" or as "establishments for the provision of essential services", and due to the recruitment of the military reserve forces and the declarations of an Emergency Security Situation and a Special Situation on the Home Front, failure to report to work may constitute a criminal offense, which can result in a prison sentence.

It is also possible that in these cases, an employer will not be allowed to dismiss an employee, other than according to a special permit.

An "essential establishment" or an "establishment for the provision of essential services" is a workplace that has been declared as such by the competent authority. Please refer to the list of [essential](#)

[establishments on the website of the Ministry of Labor.](#)

5. Are employers allowed to require employees to work remotely? Can employees demand to work remotely?

An employer may require an employee to perform his or her work remotely, to the extent that the employee can perform his or her work remotely, in general (in light of the employee's position and the type of work performed by the employee), and also taking into account the special security situation (i.e. that there are no specific circumstances that might prevent the employee from performing his or her work remotely, such as in the case where the employee is required to watch over his or her young children as mentioned above, active military reserve service, etc.).

An employee is not allowed to 'demand' to work remotely, but employees are certainly entitled to ask to do so, and, if possible, the employer should properly consider their request, taking into account the current difficult and extraordinary situation.

6. Are employers obligated to allow employees to take PTO? Are employers allowed to inform employees that they must take PTO?

In this case, the general law applies in terms of personal time off (PTO). Employees may take PTO only after their PTO request was approved by their employer, provided that the employee has remaining PTO days, and an employer may require an employee to take PTO provided that the employee has remaining PTO days.

In cases where the employer wants the employee to take PTO for one week (7 days) or more, the employer must notify the employee at least two weeks (14 days) in advance. In cases where the employee has no remaining vacation days, an employer may not require an employee to take PTO without the employee's consent.

7. Can an employer halt all work activities? What are the implications for the employees?

An employer can stop all work activities, and in some cases, is even obliged to do so, unless it has been declared "essential establishment" or an "establishment for providing existential services".

If an employer has stopped the activity at the workplace voluntarily, they are required to pay employee wages, except in cases where an employee does not have a predetermined scope of work and the employer is not obligated to guarantee any minimum scope of work to such employee.

However, employees can take several additional measures so that they are not required to pay employee

salaries when the workplace is inactive, for example:

- Have the employees use PTO (subject to the conditions mentioned above);
- Have the employees work from home, if relevant and possible under the circumstances;
- Require the employee take unpaid leave of absence. This option is less common and more rigid than others, and should be resorted to in appropriate cases only. If this option is used, an orderly procedure must be followed according to applicable law.

8. Are there special rules regarding work under the current circumstances?

The answer is: yes. Due to the current situation, there are unique directives and specific instructions being implemented. For instance, during this emergency situation:

- In most sectors of the economy, except certain specified ones^[1], employees can be employed for up to 67 hours a week (as opposed to the usual 58), provided the total additional working hours per month does not exceed 90. Additionally, with the employees' consent, employees can work for 14 hours per day (instead of the usual 12). If employees are employed for over 12 hours in a day, they are entitled to an extra 15-minute break after the 12th hour.

For employers with more than 20 employees, a above permit applies provided that one of the following conditions is met: a. 20% of the workforce is absent for reasons beyond the employer's control, and the permit is required in order to maintain production capacity; b. The work is conducted in shifts, and at least 20% of the shift employees are absent for reasons beyond the employer's control, making it impossible to maintain production capacity without this shift; c. The workplace is recognized as an "essential establishment" due to the emergency situation.

- Security personnel, who agree to do so, may work 14 hours a day (as opposed to the regular 12) and up to an additional 37 hours weekly (as opposed to the standard 16). In these instances, the employee will be entitled to an extra 30-minute break.
- For "essential establishments" or "establishments for the provision of essential services", there may be a need for a special permit for termination of employees, restrictions may apply on the employer's authority to halt activities or change working hours, etc.

Given the circumstances, it is crucial to stay regularly updated on the rules and regulations related to the current situation. Naturally, this evolving situation prompts many other questions, and these regulations and guidelines might change over time.

Should you have any questions, please do not hesitate to contact us.

^[1] The sectors not covered by the special permission detailed above are: public and other transportation; the construction sector; infrastructure; heavy equipment; public offices and renovations.

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