

An Insight Into the New Iraqi Labour Law

Mustafa Muayad - Associate - Corporate / Mergers and Acquisitions
- Baghdad

Haydar Jawad - Senior Counsel - Corporate / Mergers and Acquisitions / Commercial / Employment and Incentives

h.jawad@tamimi.com - Erbil

April 2016

This law shall replace the old labour law No. 71 of 1987. The New Labour Law took a long time to be issued as the draft of the law went through many amendments and was under discussion from 2005 to 2010 with international, local and governmental entities before its submission to the State Council. The issuance of the New Labour Law was necessary, due to the significant changes that occurred over the last thirty years and the transformation of the Iraqi economy from Socialism to an open economy, especially with the entrance of working expats to Iraq.

Scope of New Labour Law

The New Labour Law applies to all employees in Iraq (i.e. including Iraqis and foreigners) except public sector employees who have been hired according to the Civil Service Law and all security forces.

Observations on the New Labour Law

In terms of its content, the New Labour Law appears to be more detailed than its predecessor. It aims, as described by the Iraqi Parliament, to address the old law's shortcomings and align Iraq's labour regulations with international labour principles ratified by Iraq.

The New Labour Law differentiates jobs depending on the circumstances and duties that the employees are conducting, bearing in mind that the New Labour Law includes more than 170 Articles, which include a number of new terms and additions. These Articles have been set out after consulting with the labour society, labour unions, businessmen and the Ministry of Labour and Social Security. The most significant attribute is that New Labour Law ratified all the international standards and conventions regarding labour which were not ratified by the previous law and which had been left pending. The New Labour Law is equitable to employers and employees and is comparable to the labour laws of developed countries.

The New Labour Law's most important advantages are as follows:

- The New Labour Law aims to organise all aspects of the relationship between the employer and employees, with the aim of protecting their rights and realising sustainable improvement which is based on social justice, equality and providing suitable work for everybody without discrimination. The objective is to build the national economy, realise human rights and basic freedoms, organise the work of expatriates or those who want to work in the Republic of Iraq and execute the provisions of the Arab and International Work Agreements approved by the law. In addition, the New Labour Law aims to eliminate all types of compulsory labour, child labour and to determine a minimum working age and to prevent any discrimination or harassment, whether direct or indirect. Hence, the New Labour Law regulates the work of female employees by granting additional rights to those that existed in the old law. Furthermore, it addresses the work of subcontractors regarding the employees' rights, following the expansion of such work in Iraq without previous regulation.

- The New Labour Law differs to the old law in respect to illustrating and regulating the forms of work and states a definition for each. The forms include: Temporary Work, Casual Work, Compulsory Work, Part-time Work and Indefinite Work. The New Labour Law states an explanation and required terms and conditions for each form. First, Temporary Work is the work that needs a specific period of time to be carried out and accomplished, which is usually adopted by companies that face a high volume of work for a specific period. Secondly, Casual Work has been defined as work that is needed due to an emergency state, whose nature does not form part of the activities performed by the employer and should be accomplished within a period that does not exceed six months. Thirdly, Compulsory Work is work or service that is forced upon a person and in which he is employed against his will under the threat of punishment or sanction, the New Labour Law prohibits all forms of compulsory work. Fourthly, Part-time Work, the New Labour Law addresses this form of work more widely than the old law and states clearly certain terms and conditions that should be applied in this regard. According to the New Labour Law, part-time work is work that is performed during a number of working hours that are less than the normal daily working hours mentioned in this law, whether the work is performed daily or during specific days of the week and the working hours are calculated on a weekly basis or on the basis of the average number of working hours during a specific employment period.
- In addition to the above, the New Labour Law regulates the work of foreigners in the country and devotes a special section to the rights of foreign workers, the work permits and visas that should be obtained, and the requirements and conditions to obtain the same. In addition, the New Labour Law gives the right to a foreign employee to submit his complaints directly to the Inspection Committees of the Ministry of Labour, in case of any violation. Further, the New Labour Law emphasise the principal of equality among workers, to eliminate any direct or indirect discrimination in order to be compatible with international standards.
- The New Labour Law did not fail to address the health aspect for the employees, as it stipulates that the National Centre of Occupational Health and Safety is to be in charge of planning and inspecting the implementation of health affairs in a manner that guarantees the safety of employees at work sites from occupational diseases and injuries, and sets out extensive requirements in this regard in order to achieve a healthy work environment.

Contractual Relationship

As regards to regulating the contractual relationship between the employer and the employee, the New Labour Law is organising such relations thoroughly by stating the requirements of the employment agreements, the rights of both parties and the mechanism of settling any disputes with the committees which are responsible in this regard. In addition, the New Labour Law clearly specifies the conditions of abrogating and terminating the employment agreement in order to cover all the possible circumstances that might occur during the validity of the agreement. It also determines in a specific way the amount of compensation related to the employment agreement as a result of breach, abrogation, dismissal and termination, which allows both parties to be aware of the implications of their actions in the course of the employment agreement. Further, the New Labour Law establishes one or more labour courts in each governorate which shall govern all the disputes that might arise from employment agreements. Thus, the New Labour Law is distinct from the old law and covers thoroughly all labour aspects. The following are the formations that the New Labour Law stipulated:

- Setting up a Service Termination Committee through instructions which will be issued by the Minister of Labour. This committee shall be responsible to hear appeals filed against termination decisions and the decisions of the said committee is appealable before the labour court within thirty days from the date of notification, or the assumed notification;

- Setting up at least one labour court in each governorate, which shall consist of: a judge named by the Supreme Judiciary Council on the recommendation of the presiding judge of the Court of Appeal, a representative of the general federation of trade unions the most represented and a representative of the employers' federation the most represented.

This court shall have jurisdiction over civil and penal actions, matters and disputes referred to in the New Labour Law, the Pension and Social Security Law for Workers and temporary decisions involving actions within the jurisdiction of the Labour Courts.

Termination of Employment Contract

Similarly to the previous Labour Law, the New Labour Law continues to restrict the termination of the employment contract, and sets limitations regarding how the employment relationship can be terminated. However, the New Labour Law provides further details in such a case including dividing the termination instances to general ones, acts by the employer, or acts by the employee.

An important note to be mentioned here is that the New Labour Law emphasises the legal concept of mutual agreement between the employer and the employee in order to terminate the employment contract, and the same cannot be done by the employer (for his part) by only addressing a notice to the employee, unless this to be done according to one of the specific cases listed in the New Labour Law.

Force majeure and the death of the employee are two new cases that have been added to the general termination instances, both to be applied according to particular conditions clarified in the New Labour Law. These are in addition to the other general instances such as:

- If the employee is sentenced to imprisonment. The law has differentiated between imprisonment for one year and more, and imprisonment for less than a year.
- The death of the employer if his personality was taken into account in the employment contract, and the same cannot be completed with the employer's heirs.
- If the project been liquidated pursuant to a final judicial ruling or voluntary liquidation subject to the approval of the Minister of Labour.
- When the parties mutually decide to terminate it, as stated in writing.
- On the expiry of the contract period, if for limited term.
- Completion of the work or performance of the service, if the contract is specified for a work or a particular service.
- The resignation of the employee, subject to related procedures mentioned in the law in this regard.

As mentioned earlier, the employer may terminate the employment contract, for his part, in the following exclusive cases, subject to having given to the employee at least 30 days' advance written notice before the termination date. If such notice is not given, the employee shall be entitled to compensation amounting to his salary for the notice period. Such cases are:

- When the employee has an illness which makes him unable to work and has not been cured within 6 months, as substantiated by an official medical report.
- When the employee has become incapacitated to the extent of 75% or more and is unable to work, as substantiated by an official medical report.
- If the employee completed the retirement age according to the provisions of the Iraqi Pension and Social Security Law.
- When the working conditions in the establishment call for a reduction in the volume of work, subject to the approval of the Minister of Labour.
- When the employee has behaved in breach of his duties pursuant to the employment contract.
- If the employee impersonated a false persona, or presented fake documents.
- If the employee did not show acceptable efficiency during the probation period.
- If the employee has committed a grave mistake which led to severe losses and harmed the work, the workers, or the production, based on a final judicial decision.

The employee may terminate the employment contract, for his part, and with no need to send a notification, in the following case:

- If the employer breached any of his obligations stipulated in the New Labour Law, or in the work's Rules of Procedure, or in the employment contract.
- If the employer has committed a felony or misdemeanour against the employee or any of his family members, at work or outside.
- If there is a grave hazard threatening the employee's safety or health, provided that the employer is fully aware of this hazard and did not work to remove it.