KUWAIT

EXPLANATORY MEMORANDUM OF LAW No 6, 2010, LABOUR IN THE PRIVATE SECTOR

The social, economic and political changes due to the discovery of oil in Kuwait lead to new forms of labour, it was natural for the legislator to organise these changes taking into account the nature and type of labour in order to reflect that renaissance that pervaded all walks of life. This prompted examining of the need to enact a labour law for the private sector that organized relations between workers and employers promote national production and to keep pace with international trends regarding providing for to the working class.

The first law organizing labour in Kuwait was promulgated in 1959, it was amended by Amiri Decree No 43, in 1960, and by Law No 1 of 1961. This law was abrogated in 1964 by Law No 38, on Labour in the Private Sector. This Law was then amended several times to grant special privileges to workers in the oil sector, by law No 423 of 1968. which added a new Chapter, 16, regarding the recruitment of workers in the oil sector. Law No 28 of 1969 deleted this chapter and proceeded to spell out in its place benefits accruing to workers in the oil sector. The basic law governing labour relations became Law No 38 of 1964 on Labour in the Private Sector. As for Law No 28 of 1969, it dealt with oil sector activities within the scope of its definitions and terms, other activities were covered by the Labour Law for Private Sector, the general legislation governing relations between production partners in this sector.

The labour law's main purpose is to strike a fair balance between workers interests and their protection on the one hand, and those of the employers on the other, as it positively impact the national production in general.

In Kuwait, economic and social changes have required an amendment of existing legislation. Many changes on the Arab and International scenes could not be overlooked, especially as Kuwait had become a foreign labour importing country. Hence the current Law No 38 of 1964, in force for more than a quarter century, required amending to conform to recent changes.

Two trends drove thinking into amending the labour law. ONE: to amend certain provisions to conform, mutatis mutandis, with economic and social changes, TWO: the view, which was finally accepted, calling for the promulgation a new law that would conform to current circumstances and changes, but drafted in a forward looking manner that would take into account, wherever possible, the substitution of foreign labour by national manpower., this being one of the State's main targets for achievement.

The Ministry of Social Affairs and Labour prepared the attached draft (sic) legislation bearing in mind regional labour laws and International and Arab Labour Conventions and trends in current jurisprudence. Account was also taken of modern jurisprudence & legal principles set out by Kuwait Judiciary in the light of legislation in force. The Ministry set up several committees to

examine the draft were composed of, employers, as represented by Kuwait Chamber of Commerce and Industry, and workers, as represented by Confederation of Kuwait Workers. The draft was discussed, amended and certain articles redrafted over several sittings, until the law was approved in its quasi final forward looking form, it overcame shortcomings in current legislation and placed the State of Kuwait in its true place among nations applying progressive labour legislations.

To achieve this goal and ensure a qualitative text, the opinion of relevant of government bodies was sought; namely the Public Housing & Welfare Authority, the Ministry of Commerce and Industry, the Supreme Council for Planning and Development, the Ministries of Health, Justice, Oil, the Kuwait Municipality, Kuwait University, Public Authority for Social Security, the Public Authority for Applied Education and Training & the Civil Service Authority (general secretariat for manpower).

A committee was set up to communicate with these entities to which the quasi final version of the legislation was sent, replies were examined and the final revision was carried out accordingly.

These entities responded positively, they provided the committee with highly appreciated inputs which were the basis of a second reading and amendment of the draft legislation with the addition of the required new articles or paragraphs.

In order to comply with obligations of International Labour Conventions, Kuwait has acceded to, or ratified, Kuwait turned to the technical assistance extended by the ILO to member countries. ILO experts assisted in the revision of certain provisions in the draft and organised its layout resulting in its current format. The draft is set out in seven chapters;

- ONE: General Provisions
- TWO: Employment, Apprenticeship and Vocational training.
- THREE: Individual Labour Contracts
- FOUR: Conditions of Work and Regulations
- FIVE: Collective Labour Relations
- SIX: Labour Inspection and Sanctions
- SEVEN : Final Provisions.

The draft includes new rules required by the legislator in order to provide better guarantees to both production partners, to ensure justice and stability in labour relations domestically, as well as compliance with similar legislation abroad, especially International and Arab Conventions ratified by Kuwait.

Here is an outline of the legislation as set out in its different chapters:

CHPTER ONE: GENERAL PROVISIONS

This chapter contains 6 articles;

Article 1, defines the competent Ministry as that of Social Affairs and Labour, the competent Minister being the incumbent. This chapter also defines the terms, Worker, Employer and Organization.

Article 2, defines the scope of the Law and provides that it applies to workers in the private sector, here the definitions set out in Article 1 for worker and employer are understood to apply to the private sector.

Article 3, states that this Law shall apply to Marine Work Contracts unless these are provided for in Marine Commercial Law or if those provisions are more beneficial to the worker.

Article 4, stated that the provisions of this Law apply to workers in the Oil sector unless a more favourable provision was provided in the Labour Law for Workers in the Oil Sector or if it's provisions were more favourable to the worker.

Article 5, Excluded from the scope of application of the Law those workers whose relations with employers are subject to other laws.

Regarding domestic workers, i.e. those serving in homes and similar workers, their labour relations with their employer is made subject to a decision on the matter issued by the competent Minister.

Article 6, endorses a basic rule agreed upon by jurisprudence & the judiciary, and set out in most modern legislation whereby the provision of this Law, and worker rights and advantages set out therein are a minimum standard, and that any agreement to the contrary is null. As for the rights and advantages in collective or individual contracts or the regulations applied by employers which exceed the provisions of the LAW these are deemed applicable and workers may be employed on that basis.

In other words, if the workers rights and advantages set out in this Law are the minimum guaranteed by the legislator, no agreement may be concluded affecting these rights unless it is more beneficial to the workers, whether this agreement is reached when labour contract concluded or while the contract is in force. This takes in to account a general legislative rule and gives effect to the principle according to which a person would refuses and reject having his rights diminished once they have been established.

Chapter TWO: Employment, Apprenticeship and Vocational Training.
Section One; Employment.

Article 7, entrusts the competent Minister (Minister for Social Affairs and Labour) with the task of issuing decisions organising conditions of employments in the private sector.

Article 8, requires the employer to periodically inform the competent authorities, as determined by the competent Minister in this regard, of his labour needs, their number and type, using the stipulated form and taking into account to the expansion or reduction of his activity.

Article 9, provides for the creation of a public corporate authority, with an independent budget to be known as the Public Authority for Labour, it shall fall under the authority of the Minister of Social Affairs and Labour, and shall perform the tasks assigned to the Ministry by this Law. The Ministry shall oversee supply of foreign workers and their employment on the basis of the requests made by employers. A law organising the Public Authority will be enacted one year from the publication of the present Law.

Article 10, sets out the procedures and rules for the employment of non-Kuwaitis and allows the competent Ministry to supervise and control the labour market as determined by the government, to gradually bring about a replacement of foreign labour by Kuwaiti labour. This Law provides that no employer may import labour or hire local workers then refuse to employ them, neither can he request workers which it is later found are surplus to requirements. The Law prohibits employers from hiring non Kuwaiti workers unless they have obtained a permit from the competent labour department to be employed by him. The purpose of this clause is to avoid importing workers surplus to requirements, to better organise the labour market and to ensure that an imported worker is hired by the employer who applied for him. The article also provides that each employer is responsible for the repatriation cost of a worker, it requires the Ministry, should it deny a request for importing foreign workers, to justify that refusal and further provides that the size of the company's capital, set out as a condition, shall not be a factor for refusal. This is to ensure effective government action in case of refusal. The article also states in its final section that should a worker cease working for a given employer in favour of another, the latter, after reporting the change of guarantor, shall be responsible for the worker's repatriation costs.

Article 11, provides that the Ministry when granting a work or transfer permit may not discriminate against or favour any employer. The Ministry is granted discretionary authority to cease issuing work or transfer permits for not more than two weeks annually. The Ministry may discriminate between employers.

Section Two

Apprenticeship and Vocational training:

This Section includes Articles 12 to 18 where the Law introduces vocational training contracts to create an environment that would favour the development of a national labour force which has been provided with the opportunity to receive training and education and is able to assume future responsibilities.

Article 12, defines the term apprentice and clearly stipulates that his contract is subject to the provisions regarding the employment of young persons in this Law.

Article 13, requires that any apprenticeship contract must be drawn up in triplicate a copy for either party, with a copy deposited with the competent labour department for certification. To stress the educational nature of the apprenticeship contract over normal work, the article prohibits pay being linked to piecework or production.

Article 14, allows an employer to terminate an apprentice's contract if he breaches its terms or lacks the aptitude to learn. The apprentice may also terminate his contract by giving seven day's notice. Both parties shall apply this period of notice.

Article 15, sets out what is meant by vocational training.

Article 16, grants the competent Minister power to decide the terms and conditions for providing vocational training programmes etc. The article requires that should a given enterprise or enterprises not have their own educational facilities, vocational training may be undertaken by the educational establishment of another enterprise.

Article 17, requires that whether the worker is trained on its premises or not, the enterprise concerned must pay the worker's full wages.

Article 18, states that an apprentice or worker who has completed his training, shall work for the employer for a period equivalent to the duration of his training but not more than five years. It allows an employer to be paid back the expenses incurred in training or teaching and equivalent to the period of unaccomplished employment.

Section Three:

Employment of Young Persons

This section includes articles 19 to 21.

Article 19, Prohibits the employment of young persons under the age of 15.

Article 20, Defines young persons (juveniles) as any person over the age of 15 years but under the age of 18 years, they may be employed with the permission of the competent

Ministry providing the following conditions are fulfilled: One, young persons may not be employed in certain categories of industries, dangerous occupations or those harmful to health as determined by Ministerial Decision and Two, that young persons must undergo a medical examination before employment and then periodically every six months.

Article 21, sets daily hours of work at six hours with a maximum of four consecutive hours followed by one hour's break. Young persons my not work overtime or during weekly days of rest, during public holidays or between 7 pm and 6 am, i.e. in the night.

Section Four

Employment of Women

This section covers Articles 22 to 26, **Article 22,** prohibits employment of women between the hours of 10 pm and 7am. This does not apply to those employed in nursing homes or similar establishments which shall be listed in a Ministerial decision. The employer must provide for their security and for transportation to and from the place of employment.

Article 23, bans the employment of women in hazardous, arduous occupations, or those that are harmful to health or morals or in any place where services are provided to men only. The Ministry of Social Affairs shall issue a decision listing those occupations and places.

Article 24, states that a woman workers are entitled to seventy days' paid maternity leave, providing that she gives birth during that period. A woman worker may also be granted an additional maximum period of four months' unpaid leave. A woman worker may not be dismissed from work during pregnancy, maternity or sick leave as certified by a medical certificate.

Article 25, here the legislator requires that women workers be granted, according to rules and conditions to be determined by Ministerial decision, two hours to nurse their infants. In establishments where more than 50 women are employed or more than 200 workers in total are employed, employers must provide nursery facilities for children under the age of four.

Article 26, stipulates that men and women shall receive equal pay for equal work without any discrimination. Special conditions regarding the employment of women set out in the Law must not be a reason or justification for setting a lower pay for women over men than what is stipulated or commonly applied.

Chapter Three: Individual Labour Contracts.

Section One: Terms of Labour Contract

Article 27, states that any person over the age of 15 may conclude a labour contract of an undetermined duration. Contracts with a fixed duration may not exceed one year, until the

worker reaches the age of 18. This rule complies with Article 94 of the Civil Code on this subject.

Article 28, requires that the contract be a written one and must contain all the contractual details, it must be in triplicate (one for each party, and one to be filed with the administration). If the contract is not in writing, a worker may assert his rights by all evidentiary means.

Article 29, provides that contract must be drafted in Arabic but allows for a translation (in a foreign language) to be annexed. In any dispute the Arabic version is the version recognised by law. This rule also applies to all correspondence, bulletins, regulations and circulars issued by an employer to his workers.

Article 30, states that if the labour contract is of a fixed duration, its cannot be concluded for less than one year or for more than five years , and that the contract may be renewed by mutual consent.

Article 31, If the labour contract is of a fixed duration and both parties continue to apply its terms after it expires, the contract shall be deemed renewed for a similar period on the same terms, unless the parties agree to renew the contract with different conditions.

The renewal of a fixed term contract cannot affect the entitlements acquired by the worker under the previous contract.

Section Two;

Worker and Employer Obligations and Disciplinary Sanctions:

Article 32, states that the labour contract must set the probationary period of employment, and that it cannot exceed 100 days, i.e.100 working days. As stated in Law No 38 of 1964, a worker may not be hired on probation for the same employer twice. It further clarifies ambiguous provisions in the above mentioned Law, namely that either party to the contract may terminate it during the probationary period. If the employer terminates the contract he shall pay

end of service indemnities to the worker for his period of employment as provided by this legislation.

Article 33, is also similar to Law 38 of 1964, regarding outsourcing of certain tasks, as it calls for the equal treatment of workers and conditions of work, it provides for the joint liability of both employers to fulfil the rights of the workers of the original employer .

Article 34, requires employers working for government contracts and those employing workers in remote areas to provide adequate accommodation and transportation facilities, and stipulates that this is to be provided free of charge. In the absence of accommodation, workers must be paid adequate allowances. A Ministerial decision determines the location of remote areas, conditions and standards for adequate accommodation.

Articles 35 to 40, spells out rules for applying disciplinary sanctions to be observed by an employer, the required guarantees that allow a worker to defend his case and avoid sanctions for alleged breaches. The employer must obtain Ministerial approval of the table of sanctions prior to applying them, these may be amended by the Ministry to take into account the nature and condition of work. This article also states that any deduction of wages may not exceed the equivalent wage of five days per month.

Article 39, provides that a worker may be suspended during an investigation but not for more than ten days and adds that the worker retains the right to receive his wages if he is cleared by the investigation.

Article 40, requires the employer to place the proceeds from deductions of workers wages in a special fund to finance social, economic and cultural activities. This article also requires an employer to set up a special ledger for wage deductions and adds a new provision, namely that in the event of liquidation of the enterprise for any reason, the proceeds shall be equally distributed among all its workers. The competent Minister issues a decision with the rules governing the fund and distribution of proceeds.

Section Three

Termination of Employment and Severance Benefits:

This section includes articles 41 to 55.

Article 41, here the legislator lists those cases where the employer may dismiss a worker, as a sanction, and without notice, compensation or benefits, it corresponds to article 48, which sets out those cases where a worker may terminate his employment without notice and receive full severance pay.

The article also indicates those cases where a worker is entitled to full severance benefits on dismissal; it allows dismissed workers to oppose a dismissal decision with the competent department. If the employer is found to have acted arbitrarily, the worker is entitled to severance benefits and compensation for damages arising out of dismissal. In all cases he employer is required to inform the Ministry of his decision, its reasons. The Ministry in turn informs the Manpower Restructuring Teams.

Article 42, gives an employer the right to terminate a workers contract if he is absent from work for 7 continuous days or for a total of 20 days in a year. In such cases the provisions of Article 53 regarding severance benefits apply.

Article 43, added new provisions regarding payment of a worker's dues if he is held in preventive custody or in temporary detention pending a final court ruling due to charges brought by his employer. The worker is deemed suspended and his contract may not be

terminated unless he is convicted and a final judgement issued. If the worker is acquitted, the employer shall pay the worker his withheld wages and a fair compensation set by the court.

Article 44: sets out measures governing end of service for a non fixed-term contract, i.e. to give the other party three months notice for workers paid a monthly wage, and one month's notice for other workers. This article also sets the amount of compensation due for failure to give due notice as equal to pay for the notice period.

Article 45: to avoid unexpected dismissal while the worker is on leave, prohibits an employer from applying the right to dismiss granted to him under Article 44 while the worker (male or female) is on a leave as provided for in this Law,

Article 46; prohibits an employer from terminating a workers employment unless due inadequate worker skills, conduct or enterprise activity. The article does not consider the reasons listed in Article 46 as grounds for dismissal by the employer, as these concern basic rights guaranteed by the Constitution and International Conventions which grant a worker the right to join a trade union, to exercise trade union rights, and recognises the freedom of faith, of adjudication and protects him from discrimination based on origin or religion.

Article 47: sets compensation terms for unjustified premature termination of a contract and which must be applied by both parties to a fixed-term contract. This is equal to the workers wages for the uncompleted term of his contract. The judge when awarding damages for either party must take into account current custom and the nature of the work etc. as well as all other elements impacting the existence of damage and scope. The article also takes into account compensation due to the worker and debt or loans due to the employer.

Article 48: sets out those cases where a worker is entitled to terminate his contract and receive severance pay.

Article 49 & 50: Indicate instances where a contract is terminated by force of law. Article 49 deals with cases of termination involving the worker, such as death or incapacity to perform his work or end of sick leave entitlements. Article 50 sets cases for termination of work contract such as sale of the enterprise, merger, and transfer through inheritance, donation or other similar legal actions, as well as closure of the enterprise or bankruptcy of the employer on the basis of a final decree.

In the case of transfer of ownership by the above mentioned means, Article 50 stipulates that workers entitlements are a debt that must be redeemed by successor owners. The article enables workers to continue working for successor owners of the enterprise who remain bound by the terms of the labour contract concluded by the predecessor owner.

Article 51, provides for severance pay due to workers receiving a monthly wage and other workers. The former shall receive as severance pay, the equivalent of fifteen days wages for every first (sic) year of employment then one month's wages for each successive year, the total

pay shall not exceed wages for 18 months. The latter group severance pay is set at ten days wages for each of the first five years of employment, and increases to 15 days wages as of the sixth year of employment, total pay must not exceed the equivalent of one year's wages. In both cases workers the article provides that workers are entitled as severance pay for the fraction of the year of employment pay proportionate to the period of employment. Employers must also pay amounts due to a worker's social insurance accounts for severance pay.

Article 52: lists those cases where the worker is entitled to full severance pay.

Article 53: sets out cases where partial severance pay is due, such as when a worker terminates a non fixed-term contract granting him half pay for service for less than three years but not more than five. If the period of service is between five years of service but less than ten, the worker is entitled to two thirds severance pay, but if he completes ten years service he is entitled to full severance pay.

Article 54: provides that a worker is entitled to receive an end of service certificate indicating the duration of his employment or experience. Employers may not draft the certificate in a manner that would morally harm the worker or mar his prospects for other employment. The employer must return to the worker all documents, tools or certificates deposited by the worker on joining, or in the course of employment.

Chapter Four
Terms and Conditions of Employment
Section One: Remuneration

This section includes articles 55 to 63.

Article 55 defines remuneration as all payment received by a worker or due to him in return for his work; this includes basic pay in addition to other elements such as bonuses and allowances stipulated in the worker's contract of employment, or as provided for by employer regulations. Remuneration does not include that which the employer may voluntarily pay a worker such as bonuses and grants; neither does the concept of remuneration include other amounts or benefits received by a worker to cover expenses incurred or expenditure required for the performance of his work or due to the nature of the work such as allowances for a worker's transportation vehicle, accommodation allocated to security personnel in buildings or transportation provided to workers on remote locations. This latter group of benefits is neither remuneration nor allocation.

Remuneration by virtue of Law No 19 of 2000, does include social benefits and child allowance and other allocations periodically granted by the state to workers.

The article has added a new clause providing that when a worker's wage is a share of profits and should the enterprise fail to make any profits or if the profits are incommensurate with the nature of the work performed, the remuneration shall be determined on the basis of similar work according to custom and with due regard to fairness.

Article 56: states that remuneration is paid on a working day in the national currency, it provides that wages are to be paid once a month for workers hired on a monthly basis and to other workers at least once every two weeks and that payment may not be delayed for more than seven days.

Article 57: in order to guarantee payment, requires an employer who employs workers according to the provisions of this Law and the Law regarding workers in the Oil Sector No 28 of 1969, to pay his employees wages into their accounts with local financial institutions, the employer shall provide the Ministry with copies of statements to this effect.

Article 58, to protect workers, and without prejudice to rights acquired by a worker hired on a monthly basis, does not allow a worker for a monthly wage to be transferred to another category without his written consent.

Article 59: as further protection, this article does not allow for deductions of more than 10% from the workers wages to service debts or repay loans from employer which must be interest free. A worker's wage may not be seized or reduced by more than 25% to cover alimony payments, or debt due for food or clothing or any other debts including debts owed to the employer. Where various debts compete for payment, alimony takes precedence over other debts.

To further enhance protection, the legislator provides in **Article 60,** that a worker may not be required to purchase food or goods from a given commercial outlet or the product manufactured by the employer.

Article 61 introduces a new clause that requires the employer to pay his workers wages for the duration of a full or partial work stoppage due to reasons not involving the workers and prohibits termination of employment under the same circumstances.

Article 62, stresses the rule in Law no 28 of 1964, namely that the last paid wage is the basis for calculating a worker's entitlements. If the workers are paid for piecework, his wages shall be determined on the basis of his remuneration for effective work during the preceding three months. Cash and in kind benefits shall be calculated by dividing the workers average wage over the preceding 12 months by the entitlement, if he was employed for less than a year, the average shall be calculated on the basis of his period of employment. A workers wages may not for any reason be reduced while being employed.

Article 63, adds a new clause which, on the basis of a Ministerial decision reached in consultation the Consultative Committee on Labour Affairs and competent organizations, requires that minimum wages in occupations and industries be set by type of work to take into account future requirements to apply current trends which call for setting minimum wages to guarantee decent living standards for workers. This is also a strong incentive for Kuwaiti workers and encouragement for them to enter the labour market in the private sector.

Section Two

Weekly Hours of Work and Rest:

This section includes articles 64 to 69.

Article 64 sets weekly hours of work at 48 hours as a general rule. A worker may not work for more than eight hours a day. This amends Article 33 of Law No 38, 1964, which read " a worker may not be employed for more than eight hours a day or 48 hours a week", as opinion diverged as to the meaning of the word **or,** and to whether the eight daily hours could be increased or if the mention of 48 hours a week was adequate. To settle the debate, the former clause was replaced by the present one where **Article 64 clearly states** that workers may not work more than 48 hours a week, or 8 hours a day, except in those cases specified by law. The aim here is to uphold the view that a worker requires this protection every working day, and to provide that the eight hours rule may only be exceeded in those exception set out by Law.

The article also introduces a new rule setting working hours during the month of Ramadan at 36.

This article also allows, by Ministerial decision, for a cut in hours of work in arduous occupations or those deemed harmful to health, or due to harsh conditions.

Article 65 endorses the provisions of Article 33.2 of Law 38, 9164, forbidding the employment of a worker for more than five consecutive hours without at least one hour's break and states that rest periods are not part of working hours. This article excludes from these provisions workers in the financial, commercial and investment sectors, where hours of work are set at eight continuous hours. A new provision is added, out of practical necessity, stating that with the competent Minister's consent, workers may be employed without a period of rest for technical reasons or in an emergency or in office work providing that the total daily hours of work are one hour less that those specified in Article 64.

Article 66, set the rules for overtime work allowing an employer, by a written order, to require workers to work overtime in the case of an emergency or to prevent a dangerous accident, to repair damages caused by the accident, to avoid certain loss or to meet an unusual work load that exceeds normal daily capacity. The article fixes the number of daily, weekly and annual hours of overtime work. The wages for overtime work are 25% over normal rates for the same period,

An employer is required to keep a special record of overtime work.

Article 67 grant the worker the right to a paid weekly rest of 24 continuous hours after every six days of continuous work. If the need arises, a worker may be required to work on his rest day. The worker shall then receive an additional daily remuneration corresponding to at least 50% of his wages, he shall also be granted another rest day during the week immediately following to receive the benefit of the rest so allowed i.e. restoring the workers energy with periodic periods of rest and within short periods. The article reaffirms that these provisions do not affect the workers daily remuneration or holiday rights; this right is calculated by dividing the remuneration by number of days actually worked excluding weekends, though weekends are actually paid.

Article 68 lists fully paid public holidays and sets the total number of days of official leave with pay at 13 days per year.

If work circumstances require the worker to work on any of those days, he shall be paid twice his daily wages and granted an additional day's leave. This double wage is the basis for the calculation of overtime required for work on that day.

Under **Article 69 ,** a worker is entitled to sick leave as certified by a medical doctor as follows:

15 days on full pay

10 days on 2/3 pay

10 days on ½ pay

10 days on ¼ pay

30 days without pay.

The worker provides a medical certificate from a physician appointed by the employer or one employed by the government health unit, in the event of conflict the government physician's certificate prevails.

The last paragraph provides that these provisions do not apply to incurable diseases, as stipulated by Ministerial decision.

Section Three

Paid Annual Leave:

Articles 70 to 79

Article 70 increases the number of days of annual leave to 30 for every year of service, the worker is also entitled to a leave proportionate to parts of the year served even if it is the first year of service, public holidays and sick leave taken during the year will not be not taken into account when calculating annual leave.

Article 71 adds that a worker must be paid his wages before he takes his annual leave to settle his affairs for that period as he deems fit.

Article 72 gives the employer the right to set the date for the annual leave or with the workers consent to divide it after the worker has taken the first 14 days of leave. The worker may, with the consent of the employer, accumulate and take leave due for not more than two years. Both parties may agree to accumulate more than two years leave if dictated by practical necessity.

Article 73, states that without prejudice to Article 70 & 71, a worker, at the end of his contract, is entitled to receive financial compensation for accumulated leave not taken.

Article 74, does not allow a worker to give up his leave, paid or unpaid, as the legislator has stipulated such leave for the rest and recuperation of the worker. This article grants the employer the right to recover a remuneration paid to a worker if it is established that he has worked for another employer during his leave.

Article 75, to encourage workers to further their education and learning, adds a provision granting a worker paid educational leave to obtain a higher degree in his field of work, providing that he undertakes to work for his employer for an equivalent period. This leave may not exceed five years. Should the worker not respect this rule, he must repay his employer the remuneration received while on leave, as proportionate to his remaining period of work.

This article also introduces entitlement to a 21 day paid- leave to perform hajj duties for a worker who has worked for two consecutive years for an employer, providing this is the worker's first hajj.

Article 77, introduces a new type of three day leave, paid in the event of the death of a relative of the first or second degree.

A Muslim working woman who is widowed is entitled to a fully paid *iddat* of four months and ten days from the date of her spouse's death; she may not work for another employer during this period. The competent Minister shall issue a decision regarding the conditions of such a leave. A non Muslim woman shall receive 21 days leave wit pay on the death of her spouse.

Article 78 adds a 21 days paid leave for a worker to attend period labour social conferences and meetings as provided for in a Ministerial decision.

Article 79 allows a worker, upon his request, to take special unpaid leave in addition to leave provided for in this section.

Section Four

Occupational Safety and Health:

This section includes articles 80 to 88.

Part One; Occupational Safety and Health Rules.

Articles 80 to 83 sets out the types of files and records an employer must keep for each worker. These indicate different types of leave taken, occupational accidents and diseases, occupational safety and health data, and start and end of employment. The records must contain data required

by these articles. An employer must post in a visible location a schedule of hours of work and weekly rest, dates of public holidays as well as penalties (sic), he shall provide workers with means for securing their occupational safety and health and to protect them from work hazards. A worker shall not assume the costs for such equipment or suffer any wage deductions to cover costs.

Article 84 requires the employer to place, in a visible location, at the place of work, safety instructions and measures to protect from occupational diseases. The article entrusts to the competent Minister the task of issuing instructions regarding safety instructions, warnings and equipment.

Article 85 states that the Minister in charge, based on the opinion of the competent authorities, determines by a decision the type of activities for which occupational safety and health equipment is required and name the technicians who are to operate them.

Article 86 requires the employer to take all necessary precautions for the protection of workers.

Article 87 requires workers to use protective gear with due care and apply instructions regarding them.

Article 88; Due to the legislator's desire to protect workers, in this article the employer is required, subject to the terms Social Security Legislation, to provide insurance coverage for his workers against occupational injuries and diseases.

Part TWO:

Occupational Injuries and Diseases:

Articles 89 to 97.

In **Article 89** the legislator has added a new provision stating that the following provisions do not apply to workers subject to insurance clauses for occupational accidents as covered by the terms of the Social Security Law.

Article 90 sets out the measures in the case of an occupational injury to be taken by the employer and worker, if his condition permits, and the authorities to whom it must be reported.

Article 91. Without prejudice to the provisions of Law No 1, of 1999, the employer shall bear all costs incurred for the treatment of a worker for occupational diseases or injury, including the cost of medicines and transportation. Both worker and employer may oppose the findings of the medical report before the Medical Tribunal of the Ministry of Health.

Article 92, requires each employer to periodically provide the competent Ministry with statistics of occupational injuries and diseases in his establishment.

Article 93, gives the injured person the right to receive full pay throughout his treatment. If treatment lasts for more than six months he shall be paid half his wages until he recovers, or until he is declared disabled, or till his death.

Article 94, refers to a decision by the Minister, who after consulting the Minister of Health, sets the amount of compensation due to a worker or his beneficiaries.

Article 95 set out those cases where an injured worker my not receive compensation.

Article 96 extends the protection granted to the worker under articles 93 to 95 of this Law if he suffers any symptoms of an occupational disease within one year of leaving service.

Article 97, sets the liability of former employers for whom the worker has worked, each in proportion to the workers period of employment, for payment of compensation due for injury and as set out in this Law. The articles provides that an insurance company or the Public Institution for Social Services may, after having paid compensation to the worker, claim from the employer(s) the compensation paid as per the provisions of paragraph one of this Article.

Chapter Five

Collective Labour Relations

Section One: Worker and Employer organizations & Trade Union Rights.

This section includes articles 98 to 110.

Article 98 of this Law grants employers the right to establish federations and workers the right to setup trade unions.

This article endorses the principle of the establishment of worker federations and trade unions in the government, private and oil sectors and their different levels. It complies with the provisions of Article 43 of Constitution upholding the principle of the freedom to form associations and trade unions, and pertinent International Conventions especially Convention 87, 1948 on Freedom of Association and guarantees of trade union rights.

Article 99 reaffirms freedom to create trade unions and federations and states that the purpose of setting these organizations is to protect the interests of its members, to improve their material and social conditions and ensure their representation in dealings with other (parties). **Article 100** did not set a minimum number of workers or employers for the creation of a trade union or federation, but as stated in the Constitution and International Conventions, left this right unrestricted. This article also sets out the steps for the creation of a trade union or federation.

Article 101 sets out the specific rules to be included in the statutes, member's rights and the conduct of its activities.

Article 102 lists the documents that the governing body must deposit with the Ministry within 15 days of its election, and how to establish the corporate identity of the organization.

Article 103, requires workers and employers, in the exercise of the rights set out in this chapter, to abide by applicable laws and not to act outside the stated purposes of the organization as set out in its statutes.

Article 104, requires the competent Ministry to guide trade union organizations regarding the proper application of the law and how to register with the Ministry..etc The article also sets out those activities that a trade union may not engage in .

Article 105, states the right of a trade union, with the approval of the employer and the competent authorities to organise restaurants and cafeterias to serve workers.

Article 106 reaffirms the right of trade unions to set up federations to uphold their common interests, and the right of federations to set up confederations, however there cannot be more than one confederation of worker or employer organizations.

Article 107 enables any worker or employer organizations, referred to in the article above, to join any Arab or International organizations providing they notify the competent Ministry.

Article 108, gives two options for the dissolution of an employer or worker organization:

1- An voluntary dissolution according to its statutes and by decision of the general assembly,
2- A legal dissolution by a decision of the courts following a request from the competent Ministry if the union is involved in activities deemed in breach of the Law or statutes. This article allows for an appeal against to Court of Appeals, within 30 days of the decision.

In the case of a voluntary dissolution, the general assembly decides the fate of funds arising out of the liquidation (of the organization).

Article 109, adds a new clause requiring employers to provide their workers with copies of all decisions and regulations regarding their rights and duties.

Article 110, allows the employer to release a member or more of the trade union or federation governing body to follow up trade union issues with the administration or government authorities.

Section Two

Collective Labour contracts

This section which includes articles 111 to 122 adds provisions regarding collective labour contracts, a subject not previously dealt with in earlier labour laws.

Article 111, defines the collective labour contracts as a contract, concluded between a trade union or more, or a workers' federation or federations and one or more employer and which sets out terms and conditions of work .

Article 112: states that such a contract must be in writing and accepted by both parties. The general assemblies of trade unions and employer federations approve the contracts according to the provisions of their statutes.

Article 113, requires that a collective labour contract be concluded for a fixed period of not more than three years, if the parties continue to abide by the contract beyond that date it shall be deemed renewed for one year for the same terms. This is without prejudice to any special provisions in the contract contrary to this article.

Article 114, states that if a party to the contract does not wish to renew it at the end of its term, he must notify, in writing, the other party and the competent Ministry at least three months beforehand. If several parties are signatories to the contract, its termination for one party does not apply to the remainder.

Article 115, provides that such a contract is deemed null and void if violates any of the provisions of this Law. The only exceptions are those clauses that provide for better rights or benefits for the worker than legal minimum standards. The article also nullifies any condition or agreement, concluded before the entry into force of this Law, whereby the worker waives a right stipulated therein. Any reconciliation or settlement waiving or reducing a worker's rights in an ongoing agreement or three months after its expiry is invalid if it breaches the terms of this Law.

Article 116: Although a collective labour contract, like an individual one, is basically a consensual contract, this article requires that the contract is registered with the competent Ministry and that a summary is published in the Official Gazette. Article 116.2, grants the Ministry the right to oppose any clause found to be in breach of the Law, and requires the parties, within 15 of receipt of the opposition, to amend the provision as demanded by the Ministry. Failing this the contract shall not be registered.

Article 117, states that such a contract may be concluded:-

1- By workers in an enterprise
2- By workers in an industry
3- By workers on the national level.

Such a contract must be signed by the Confederation of Industrial Trade Unions if it applies to the entire industrial sector;

By the Trade Union Confederation if it is implemented on national level.

Within scope of their common clauses, a contract signed on the industrial level amends a contract signed at the enterprise level, while the contract signed on the national level amends any of the other two categories.

Article 118 lists corporate and non corporate entities and those categories to which a collective labour contract applies, namely, 1. Trade unions or labour federations that have signed the collective contract or joined it after it was concluded. 2. Employers and their federations that have signed the collective contract or entered into it after it was concluded. 3. Those trade unions that

have joined the signatory federations after conclusion of the contract. 4. Employers who have joined the federation after the conclusion of the collective contract.

The provisions of the Law are thus extended to include the largest number of workers and employers in the provisions of a collective labour contract. This is the foremost stabilising factor for labour relations and has an economic and social impact.

Article 119, states that if a worker withdraws from a union or is dismissed, after it signs a contract or joins it, this does not affect his right to benefit from the terms of the contract or fulfil its duties.

To maximise the benefit of collective labour contracts, **Article 120, allows** non-contracting trade unions or their federations, or employers and their federations if they jointly agree to do so, to join any collective labour contract after a summary is published in the Official Gazette. This is not subject to the consent of the original parties to the contract. The article sets out the procedure to be followed to accede to the collective contract, namely, to submit a request signed by both parties to the competent Ministry. The collective contract enters into force for these parties only when the approval of the competent Ministry is published in the Official Gazette.

Article 121 establishes an important principle, namely that a collective labour contract signed by a trade union in an enterprise shall apply to all the workers in the enterprise including non union members, this is without prejudice to any clause in the individual labour contract that is more beneficial to the worker. A contract signed between a federation or trade union and an employer only applies to the workers in his enterprise.

Article 122 admits the principle of proxy, as it provides that the worker and employer organizations which originally signed or joined the collective contract may all file suits arising out of the breach of the terms of the contract on behalf of any of their members without the need for a formal power of attorney.

Section Three

Collective Labour Disputes

This section includes Articles 123 to 132, and seeks to uphold the stability of labour relations especially when a dispute, with one or more employer, involves a large number of workers and concerns the nature or conditions of work.

Article 123, defines a collective dispute as those disputes arising between one or more employer and all or part of the workers over terms or conditions of work. This clause has extended the concept of a collective dispute and defines it as a work related dispute, it does not only set out the circumstances of a dispute as stated in Article 88, of Law No 38 of 1964, where disputes were considered as individual ones even if they are submitted by all or a group of workers, and where the labour relation is deemed to continue to exist if the dispute or difference is over a clause in the Law or the contract. Here the legislator has sought to give the dispute a collective nature even if it

is due to the very nature of the work, and not only its conditions, the purpose being to ensure a stable work atmosphere in the enterprise, the industrial sector, in similar activities or on the national level by settling the dispute and eliminating its causes without wasting any time. This also reduces litigation cases and cuts back on the number submitted for adjudication.

Article 124 sets out the procedures to be followed by the parties to settle collective disputes, and requires direct negotiations between the employer or his representative and the workers or their representative. The article authorises the competent Ministry, in order to be informed about the causes of the dispute from the very beginning, to be represented as an observer in the negotiating sessions.

Paragraph 2 states that should both parties in the dispute reach an amicable settlement that sets outs duties, rights or advantages, the agreements reached must be registered with the Ministry within 15 days, and according to established rules. This would provide both parties with a guarantee that the terms of the agreement are implemented.

If the parties to the dispute fail to reach a settlement as mentioned above, **Article 125** states that any party may request the competent Ministry to settle the dispute amicably through the Collective Labour Disputes Conciliation Committee. The request must be signed by the employer or his authorised representative or by a majority of the workers involved in the disputes or their authorised representative.

Article 126,: It deals with the composition of the committee and its membership. The committee is authorised to call on any person it deems necessary to perform its task. A decision by the competent Minister sets the number of representatives from the Ministry and from the parties to the dispute who are members of the committee. The article also grants the Ministry the right to request any information it deems relevant to the settlement of the dispute.

Article 127, outlines the measures and deadlines to be observed by the committee in examining the dispute and until an amicable settlement is reached. The settlement is final and binding for both parties.

If the Conciliation Committee fails to settle the dispute within the stipulated time, the disputed points and all pertinent documents must be referred to an Arbitration Panel within one week.

Article 128: provides for the setting up of an Arbitration Panel for Collective Labour Disputes. It is composed of a circuit of the Court of Appeal appointed by the Court's annual assembly, chief prosecutor appointed by the Attorney General a representative of the competent Ministry nominated by its Minister. The Panel shall hear the parties to the dispute or their legal representative.

To guarantee a speedy hearing of the dispute **in Article** 129, The Arbitration Panel is required to examine the dispute within 20 days of receiving the dispute documentsby registry office. Both

parties to the dispute must be informed of the dates of the hearing 7 days before the sitting. The dispute must be settled within three months of the first hearing.

Article 130 states that the Arbitration Panel enjoys all the powers of the Court Of Appeal according to the laws regulating judiciary and civil and commercial procedures, its shall justify its decisions which shall have the same effect as the verdicts of the Court of Appeal.

Article 131 introduces a new principle namely that, if the need arises, the Ministry may intervene in collective disputes without being requested by one of the parties to the dispute for an amicable settlement. The Ministry may also, as it deems fits, refer the dispute to the Conciliation Committee or the Arbitration Panel, which ever allows a speedier settlement of the dispute. The article requires both parties to submit all documentation requested by the competent Ministry, and to be present when invited to do so.

Article 132 prohibits the parties to the dispute from declaring a total or partial work stoppage while direct negotiations are ongoing or if the Ministry has intervened in the dispute, as provided for in article 131 or while the dispute is in the process of being settled either before the Ministry, the Conciliation committee or the Arbitration Panel.

It goes without saying that the provisions of this Chapter only govern ongoing labour relations between parties to the dispute (employer and labour), otherwise the disputes, whatever the number of parties involved, are deemed to be individual ones.

Chapter Six

Labour Inspection and Penalties

Section One

Labour Inspection

Article 133 grants those officials who supervise an implementation of the law and its implementing regulations, and who are appointed by decision of the Minister, the status of officers of the court. These officials shall swear an oath of office which requires them to perform their duties faithfully, honestly, and neutrally and not to divulge any employers' professional secrets they may be informed about in the pursuit of their work.

Article 134 sets out the powers of these officials in the pursuit of their duties, including right of access to places of work, to request data and records, as well as access to areas allocated by the employer for the worker services. The officials may request assistance of public forces (police) to perform their duties.

Article 135, provides the expert Ministry officials, in coordination with the competent authorities, the right to take measures for the total or partial closure of a workplace, or to ban the use of a tool or special machinery until a violation is remedied.

Article 136 grants these officials the authority report violations by workers who do not posses labour status documents (sic).

Section Two

Penalties

This section includes Articles 137 to 142, it is noted that generally speaking the legislator has sought to impose harsher penalties for violators than those provided by Law 38, 1964, which have proven not to have the required deterrent effect.

Article 137 provides for a fine of not more than 500 dinars for all violations of Articles 8 and 35. this penalty doubles if the offence is repeated.

Article 138, adds a prison term for not more than three years and a fine of not less than 1000 dinars or one of these penalties for any person who violates the provisions Article 10.3 of the Law.

Article 139 imposes a fine on any employer found in violation of article 57 of this Law.

The legislator in seeking to provide as comprehensive a supervisory role as possible to the Ministry over enterprises in order to asses their implementation of occupational and health and safety rules and in implementing Ministerial decisions, penalises in **Article 140** any employee who prevents the official from accomplishing the duties assigned to him in Articles 133 and 134 of the Law , and to further uphold this principle, sets a maximum fine of 1000 dinars.

Article 141 sets out how notification of a violation is communicated, the means to remedy it as well as the penalty for failure to do so.

To further enhance the Ministry's supervisory role, **Article** 142 punishes any person who disobeys an order by cessation of activity or closure as provides in article 135. He is also subject to either a maximum fine of 1000 dinars and a prison sentence of six months or one of these penalties.

Section Seven

Final Clauses

This section includes Articles 143 to 150.

Article 143 provides for the setting up, by Ministerial decision, of a Consultative Committee for Labour Affairs to give its opinion on any matter submitted to it by the Minister. The decision shall also set out the convening of the committee, its methods of work and issuing of decisions.

The legislator's determination to protect workers and their rights is reflected in drawing on the Civil Code, Article 442, to provide all the guarantees therein regarding lawsuits brought by them, contrary to past practice under Article 96 of Law No 38, 1964.

Article 144 provides that a lawsuit may not be examined if one year has elapsed since the termination of the Labour Contract, this dismissal entails the application of the provisions of

Article 442.2 of the Civil Code. The party rejecting examination of a lawsuit must take an oath stating that the worker's dues have been paid. If the debt is an inherited one, then the debtor or his legal representative or that of his heirs shall take an oath indicating that to his knowledge no debt exits, or that it has been paid. The Court automatically administers such an oath.

The last paragraph of that article exempts lawsuits brought by workers or their beneficiaries from payment of Court fees. According to this article, the Court may, when a lawsuit is dismissed, order the party which files the suit to pay all or part of the costs. A lawsuit brought by a worker is examined as a summary case.

Article 145 added a new provision which grants workers entitlements under this law a lien over an employee's movables and immovables, except his private residence. These entitlements are settled after deduction of court costs and amounts due to the public treasury and reserve and reparation costs.

Article 146 requires that before a lawsuit is filed, the worker or his beneficiaries shall submit an application to the labour administration in whose district the workplace is located. The Labour administration shall attempt to settle the dispute amicably with two weeks only. If this fails the administration refers the matter and all documentation to the Court of First Instance along with a memorandum summarising the dispute, both parties defence and the comments of the administration.

Article 147; states that the Clerk of the Court sets a date for hearing, three days after receiving the documents in the case, and informs the parties to the dispute.

Article 148 stipulates that the Minister, in consultation with employers and workers, issues the decisions and regulations for the implementation of this Law.

Article 149 abrogates Law 38 of 1964, and its amending legislation, adding that workers retain all the rights obtained under the Law prior to its abrogation; all implementing decisions remain in force, pending adoption of implementing decisions and regulations for the present Law, and providing they are not contrary to its provisions.

Article 150 requires the Prime Minister and Ministers, each within his jurisdiction, to implement this Law which enters into force on publication in the official Gazette.

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