



Working During Wartime

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Special Circumstance on the Home Front

On October 7, 2023, the Minister of Defense declared, by virtue of the authority granted in section 9(3)(b)(1) of the Civil Defense Law, 1951 (5721-1951), a state of emergency in the airspace within a range of 80 kilometers from the Gaza Strip, a declaration which was later expanded on the same day to encompass the entire country.

The duration of this declaration was extended by the government in Decision No. 941 on October 8, 2023, and it was approved by the Foreign Affairs and Defense Committee.

Special Circumstance on the Home Front: Home Front Command Directives

The updated Home Front Command instructions, which are revised every two days, are provided under the authority of the Civil Defense Law, enabling the Chief of Staff and other military personnel to instruct the civilian population on how to act during a state of emergency in the home front.

These instructions apply to all workplaces, businesses, and commerce, including audience reception, with the exception of workplaces essential to vital infrastructure, for which specific guidelines are detailed separately.

In areas designated as "Orange Zones," including the Otef Gaza, western Negev, central Negev, western Lachish, Lachish, HaShfela, and Dan, the definition for workplaces is that activities can be conducted in a place from which it is possible to reach a protected area in accordance with regulations during times of defense.

Special Circumstance on the Home Front: Home Front Command Directives

In areas designated as "Yellow Zones," such as the confrontation line, northern Golan Heights, certain settlements in the southern Golan Heights (Katzrin, Merom Golan), Judea and Samaria (subject to the Central Command's traffic instructions), Sharon, Yarkon, Judean Plains, and Jerusalem, the definition for workplaces is that activities can be conducted in a structure or place from which it is possible to reach a protected area in accordance with regulations during times of defense.

For the updated instructions, please refer to the following link:


https://www.oref.org.il/SIP_STORAGE/FILES/2/9032.pdf



Authorized Absence During a State of Emergency in the Home Front

Authorized absence is absence in accordance with the relevant Home Front Command instructions during the absence period.

Currently, it is permissible to work in non-essential workplaces in areas designated as "Yellow" and "Orange" zones, from which it is possible to reach a protected area in accordance with regulations during defense. Therefore, so long as there is no other instruction pertaining to the employee or their place of residence, and the workplace has a regulated protected space that can be reached in a timely manner, the absence will not be considered as an authorized absence in accordance with the Home Front Command instructions. In "Green" zones, workplaces operate without restrictions.

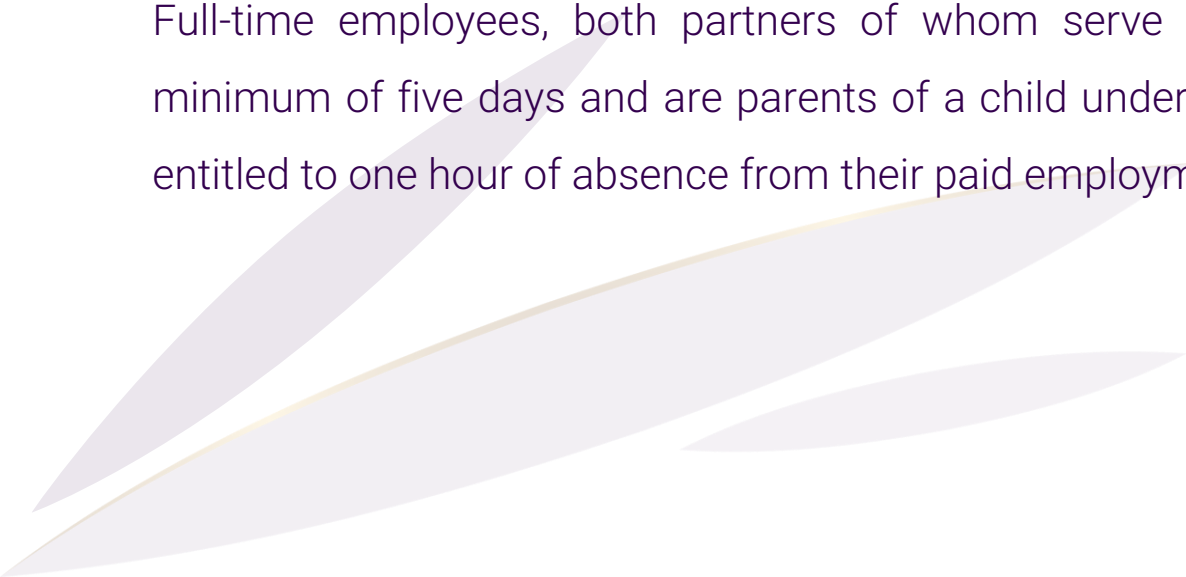


Authorized Absence During a State of Emergency in the Home Front

An employee with a disability who cannot reach work or perform the work due to their disability is considered to have authorized absence.

It should be emphasized that authorized absence is permitted by law, for example, during mourning days for a first rate relative is still permissible during a state of emergency in the home front.

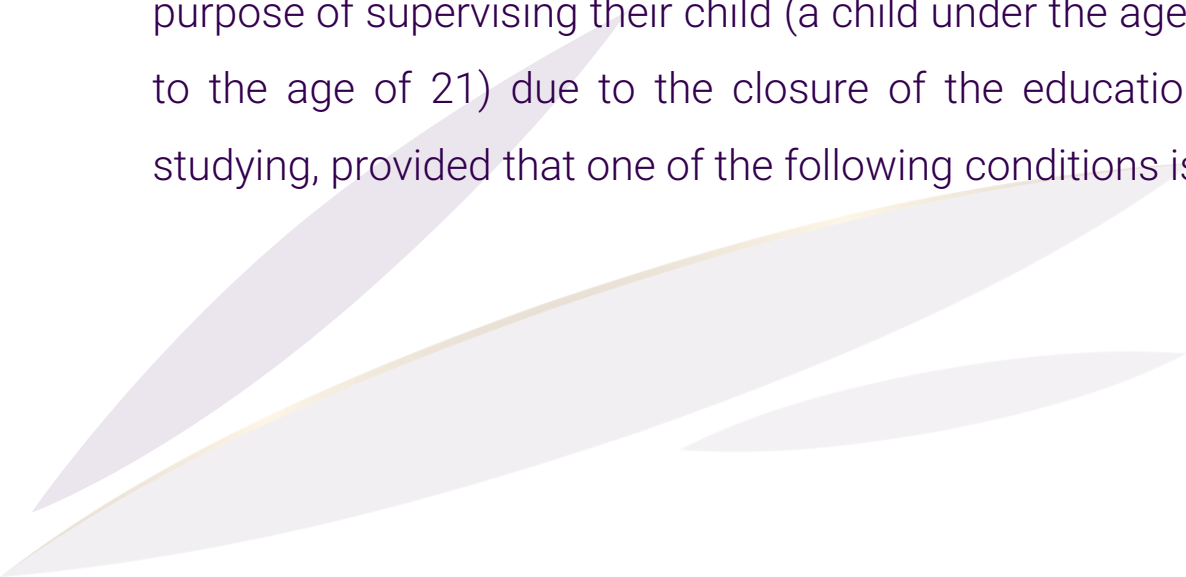
Full-time employees, both partners of whom serve in the reserve military service for a minimum of five days and are parents of a child under the age of 13 residing with them, are entitled to one hour of absence from their paid employment at the expense of the employer.



Unauthorized Layoffs due to Circumstances

Section 2 of the Emergency Workers Protection Law, 5766-2006, prohibits the dismissal of an employee due to their absence from work or the non-performance of their duties as a result of an instruction given during a state of emergency in the home front according to **Section 9d(a) of the Civil Defense Law** (as occurred under the circumstances), which prevents the employee from reporting to work or performing their duties, as the case may be.

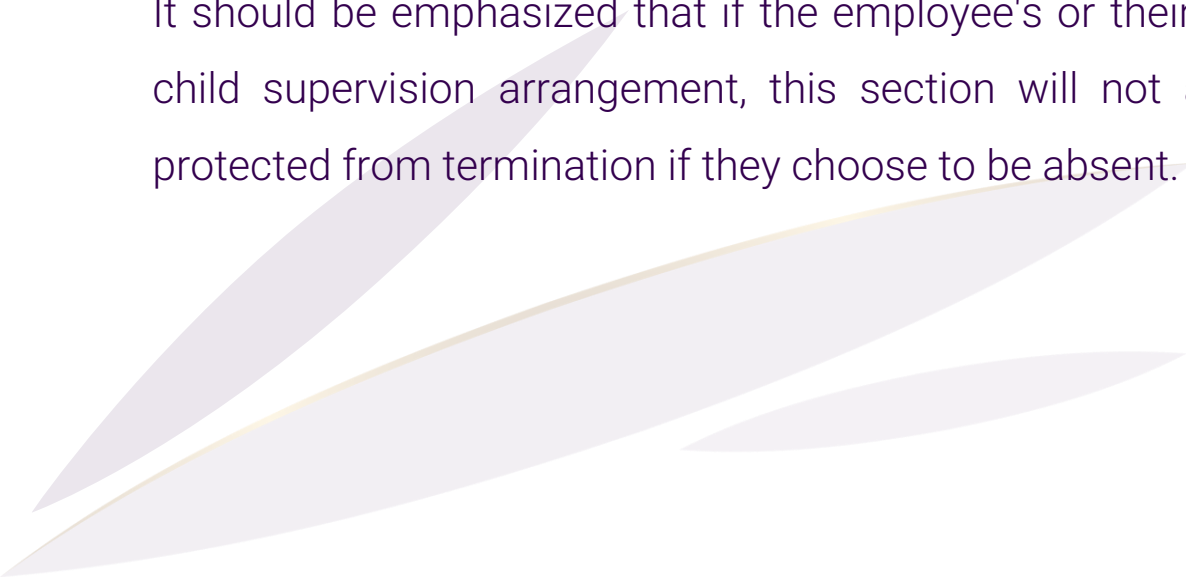
It is prohibited to terminate the employment of an employee who is absent from work for the purpose of supervising their child (a child under the age of 14, or a child with special needs up to the age of 21) due to the closure of the educational framework in which their child is studying, provided that one of the following conditions is met:



Unauthorized Layoffs due to Circumstances

1. The child is under the exclusive custody of the employee, or the employee is the independent parent of the child.
2. The employee's spouse is an employee or self-employed and is not absent from work or their business, or does not delegate their responsibilities for the supervision of the child. If the spouse is not employed, they are exempt from child supervision.

It should be emphasized that if the employee's or their spouse's workplace offers a suitable child supervision arrangement, this section will not apply, and the employee will not be protected from termination if they choose to be absent.



Unauthorized Layoffs due to Circumstances

Terminations contrary to the aforementioned Section 2 are **void**.

Section 4 of the law establishes that in a lawsuit brought by an employee due to a violation of the provisions of Section 2 by their employer, the burden of proof lies with the defendant. The defendant will need to prove that they acted in accordance with the provisions of Section 2, as stated. If the employee can demonstrate the following two conditions:

1. That they were absent from work or did not perform their duties under the circumstances mentioned in Section 2(a) or (b)(1), as applicable.
2. That the termination occurred during their absence from work or non-performance of duties, as stated in clause (1), or within two months thereafter.

Section 7 stipulates that terminations contrary to the section may constitute a criminal offense, punishable by a fine. According to **Section 8**, criminal liability may also result in potential job loss for an employee of an employer.

Unauthorized Layoffs due to Circumstances

According to **Section 11** of the law, protection against terminations due to absence from work does not apply to the following:

1. Those called to serve in emergency service in an essential workplace according to the Emergency Service Law, 5727-1967.
2. Policemen as defined in the Police Ordinance [New Version], 5731-1971.
3. Prison guards as defined in the Prisons Ordinance [New Version], 5732-1971.
4. Employees of the General Security Service as defined in the General Security Service Law, 5762-2002, and employees of the Intelligence and Special Operations Agency.
5. Members of a civil defense organization as defined in the Civil Defense Law, 5711-1951.
6. Employees of a rescue organization as defined in Section 90a of the Police Ordinance.

It is prohibited to terminate the employment of an employee called up for reserve duty. Furthermore, without permission, no employee who has served in the reserves for more than two consecutive days may be terminated within 30 days after completing their reserve service.

Rulings on Layoffs during Wartime

Civil Appeal (Local) 400-09, **Raphael Lev Ari - Ma'alot Tarshiha Municipality** (Decision dated October 13, 2010)

The national court dismissed the appeal of an employee who claimed that he was terminated in contradiction to Section 2 of the Workers' Protection Law. The ruling stated that the employee could have reached his workplace or worked remotely from the center but chose not to do so because he felt offended by the mayor and demanded an apology. Therefore, the protection granted by the law did not apply to him.

Labor Appeal (Natzrat) 1694/07, **Nakh Ngaoker - Yiftach Galil Stone Ltd.** (Decision dated April 30, 2008)

The regional court in Nazareth accepted the claim of an employee who was terminated shortly after the Second Lebanon War. It determined that "since the absence of the plaintiff during the period of the war was a valid consideration in the factors that led to the termination of his employment, the termination is in contradiction to the provisions of the law."

Salary Payment for Absence

Even in cases where an employee's absence is permitted due to Home Front Command instructions, the payment of wages for this absence is not regulated by law.

In previous wartime situations, employees' right to wage payments were arranged in retrospect through collective agreements expanded by extension orders.

Most employers were required to pay their employees wages if they were absent in accordance with Home Front Command instructions, and specific provisions were set out for compensation to employers in terms of property tax for the wages paid to their employees as mentioned.

An employee of an essential business and non essential business who works regularly is entitled to their regular wages.

Salary Payment for Absence - Examples of Past Arrangements

The extension order dated July 21, 2022, regarding the payment of wages for war damage and indirect damage (Operation Guardian of the Walls) 2022 (eligibility was granted only if one of the conditions is met with respect to the employee):

- (a) The employee is employed in an educational institution located in the designated area and is absent from work for one or more days during the agreement period due to an instruction regarding the closure of educational institutions.

- (b) The employee is absent from work to care for their child who is with them, due to an instruction regarding the closure of educational institutions where the child studies or resides, or due to an instruction regarding the closure of educational institutions at their place of residence, located in the designated area. This is provided that, during the employee's absence, two of the following cumulative conditions apply:

Salary Payment for Absence - Examples of Past Arrangements

- (1) During the employee's absence from their workplace, an educational institution in the designated area is closed.

- (2) One of the following conditions applies to the employee, and they have declared it in writing:
 - a. The child is solely in the custody of the employee, or the employee is a single parent of the child.
 - b. The employee's spouse is employed or self-employed and has not been absent from work or their business due to childcare, and if the spouse is not employed or self-employed, they are exempt from caring for the child. Notwithstanding the above, the provisions of this section shall not apply if, during the employee's absence as described in this section, the employee's or their spouse's workplace had an appropriate framework for childcare.

Salary Payment for Absence - Examples of Past Arrangements

(g) The provisions of subsection 5(b) above shall apply to an employee who is an “omenn,” provided that the following two conditions apply to them cumulatively:

1. All the conditions granting eligibility stipulated in subsection 5(b) above apply to them.
2. The child's parents, who are employees or self-employed, have not been absent from work, their business, or their occupation, due to childcare. If the child's parent is not employed or self-employed, they are exempt from caring for the child.

For the purpose of this section, an "omenn" is a parent in a family approved by the Minister of Welfare and Social Security to serve as a foster family.

Salary Payment for Absence - Examples of Past Arrangements

(d) The employee is absent from work due to an instruction regarding the prohibition of assembly.

(e) The employee is a person with disabilities whose place of residence or workplace is in the designated area, and the following two conditions apply to them cumulatively:

1. Their disability is known to the employer, or they have provided the employer with medical confirmation/documentation testifying to their disability.
2. Their disability prevents them from reaching the workplace or staying in it because they cannot comply with the Home Front Command instructions.

Salary Payment for Absence - Examples of Past Arrangements

- (vi) A parent of a person with disabilities to whom the following three cumulative conditions apply:
- (1) The disability of their son or daughter, the employee's child, is known to the employer, or the employee provided the employer with medical confirmation/documentation of the disability of their son or daughter.
 - (2) The parent is absent from work to care for their son or daughter because the disability does not allow them, according to the circumstances, to follow the Home Front Command instructions during the term of the agreement.

Salary Payment for Absence - Examples of Past Arrangements

- (3) One of the following conditions applies to the parent, and they declared it in writing:
- a. The person with the disability (their son or daughter) is solely in their custody, or the employee is a single parent of the person with disabilities.

 - b. Their spouse, the employee's partner, is an employee or self-employed and has not been absent from work, their business, or their occupation due to caring for their son or daughter with disabilities. If the spouse is not employed or self-employed, they are exempt from caring for their son or daughter with disabilities.

Salary Payment for Absence – Possible Courses of Action

1. Allow absence without pay at this time, and soon after act according the collective bargaining agreements are signed and expansion orders are issued.
2. The position of the Ministry of Labor is, based on past regulations, to pay the salary at this time.
3. Pay salaries to employees who have had justified absences but establish the payment as an advance on future salary payment. If the arrangement is not determined as mentioned, the payment will be considered a debt of the employee, and they will be required to reimburse the employer.
4. Registering the absence as a vacation:

Up to 7 days of time off without prior notice. Beyond that, with a notice of at least 14 days in advance.

A negative balance of vacation days cannot be imposed without the employee's consent.

Salary Payment for Absence – Possible Courses of Action

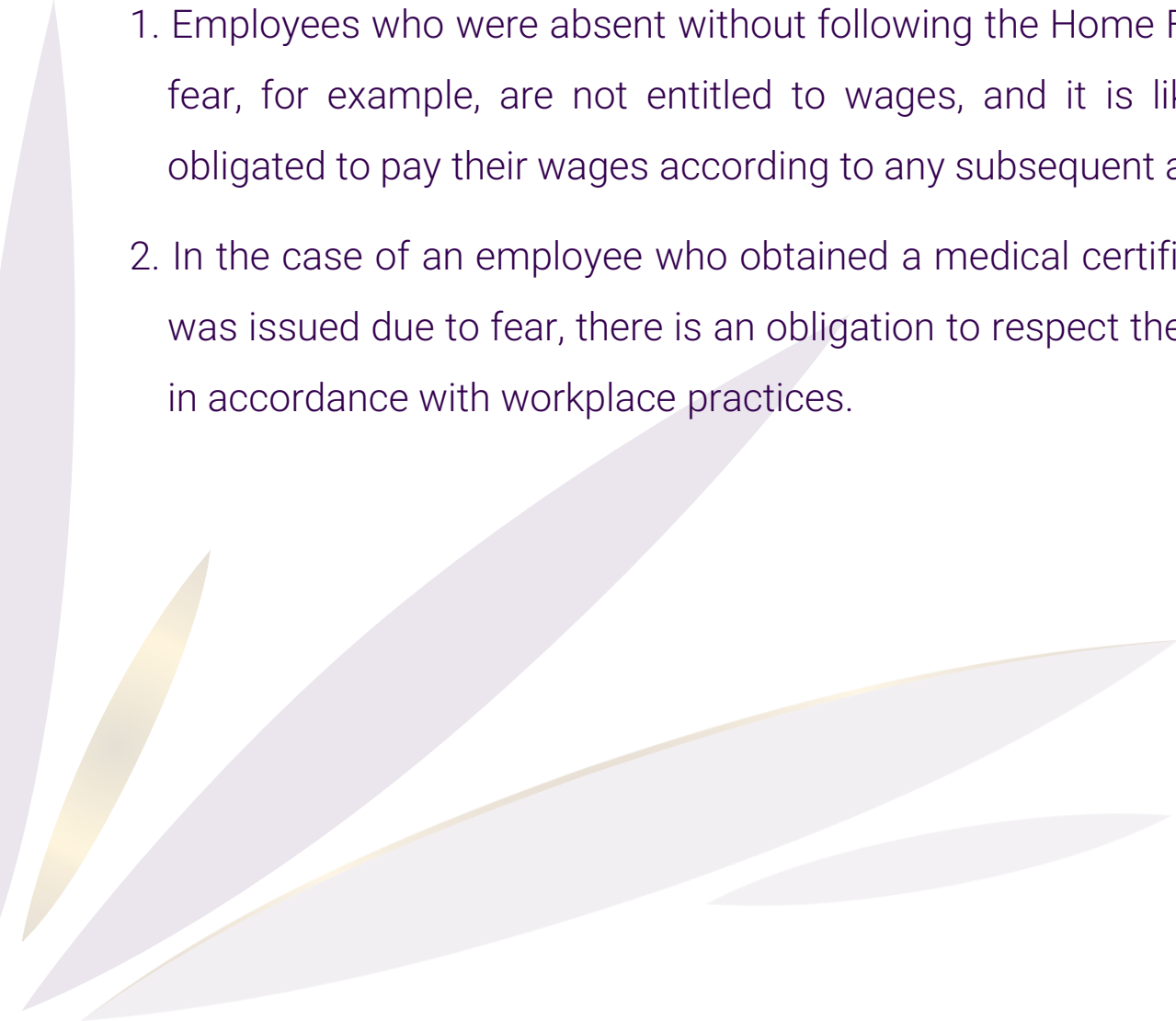
5. Unpaid leave- Requires employee's consent.

An employee shall be entitled to unpaid leave. leave not initiated by them only if the unpaid leave period is at least 30 days, and only if they have used their entire annual leave days balance (otherwise, unemployment payment will commence only after exhausting the vacation days entitled to the employee).

6. Remote Work - To the extent possible, remote work should be allowed for employees. In such a case, employees will be entitled to regular wages.

7. Job Reduction - Requires the employee's consent and a preliminary hearing before the process is executed. In the event of a unilateral reduction in the employment volume, the employee is entitled to resign as if terminated or to claim salary differences.

Absence not in Accordance with Home Front Command Instructions

1. Employees who were absent without following the Home Front Command instructions due to fear, for example, are not entitled to wages, and it is likely that the employer will not be obligated to pay their wages according to any subsequent arrangements.
 2. In the case of an employee who obtained a medical certificate, even if the medical certificate was issued due to fear, there is an obligation to respect the certificate and cover for sick leave in accordance with workplace practices.
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Salary Payment for Absence – Business Closure

Position of the Ministry of Labor:

In the past, it was stipulated in collective agreements agreed upon by employees, employers, and the government that an employer whose workplace was closed in accordance with the Home Front Command's instructions would pay their employees their regular wages and could receive compensation in accordance with the arrangements set out in the Property Tax and Compensation Fund Law.

However, it should be clarified that, as of this time, there is still no agreement in place regarding the “Iron Sword” operation. Therefore, employees' entitlement to compensation for a closed workplace under the Home Front Command's instructions will only arise upon the signing of a collective agreement.

Special Circumstance in the Home Front - Directives of the Home Front Command - an Essential Economy

Guidelines for Vital Workplaces -

Workplaces defined as vital installations, and workplaces and services vital for the population's well-being, military efforts, and the country's economy, are not subject to the regular Home Front Command instructions. Instead, specific guidelines apply to them, including those related to protection, warning mechanisms, information dissemination, work in open areas, or specific industries.

Attached is a link to the Home Front Command guidelines (Appendix B in the link):


https://www.oref.org.il/SIP_STORAGE/FILES/2/9032.pdf



Essential Business

The Service in Time of Emergency Law, 5727-1967, regulates the operation and activities of vital facilities and facilities for essential services.

"Vital Facility" - Any facility or part thereof that operates or can be operated for the purpose of national defense or public security or to maintain supply or essential services. It also includes any facility or part thereof that can be operated for the purpose of maintaining the economy and whose operation is vital for the supply of goods or services needed by the public or for export, as approved by the order required by law.

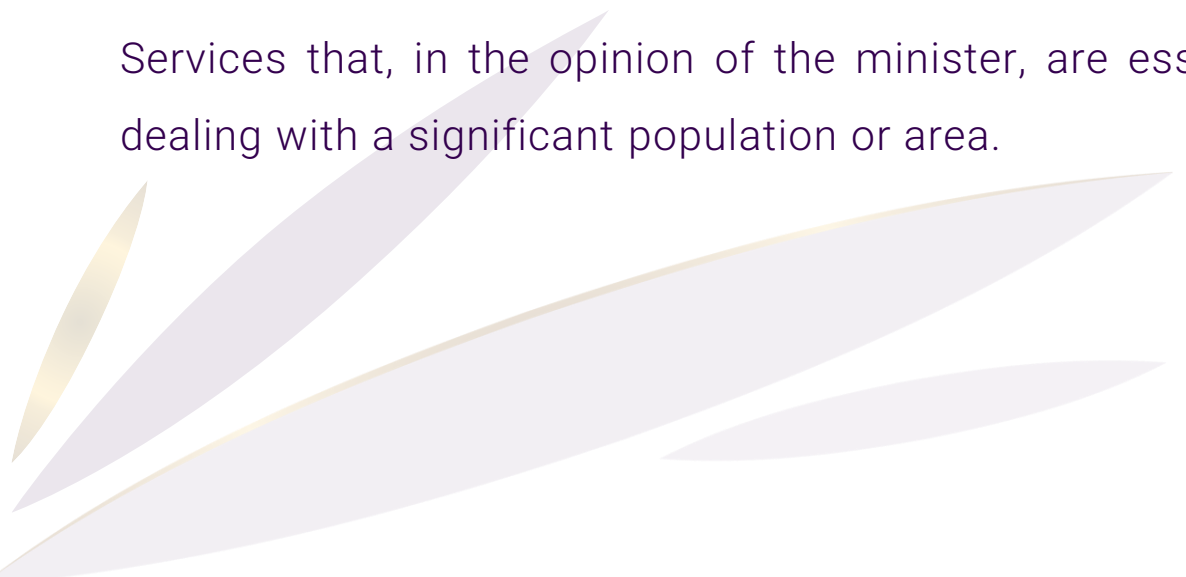


Essential Business

"Facility for Providing Essential Services" - Any facility or part thereof that provides essential services as detailed below and is approved by order for this purpose in the event of a special emergency or a civilian emergency event:

Supplying water, food, or electricity, as well as providing healthcare services, hygiene, communication, or mail services.

Services that, in the opinion of the minister, are essential to maintaining supplies or dealing with a significant population or area.



Essential Business

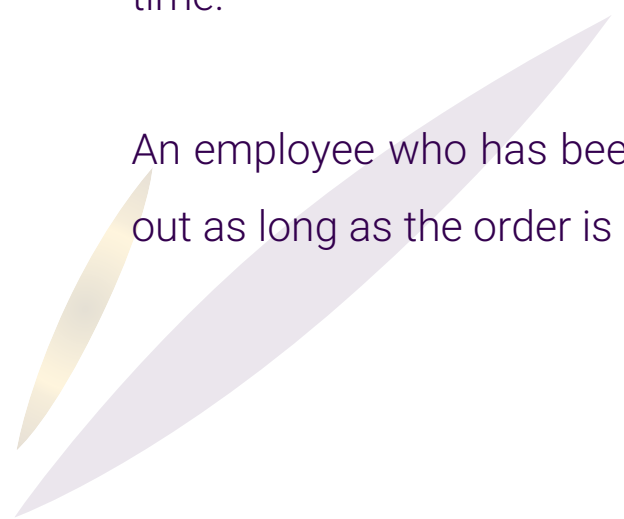
On October 7, 2023, following consultation with the Minister of Defense, the Minister of Labor issued an order to activate Chapter 4 of the law. According to the Ministry of Labor's statement, the meaning of the order is that employees in facilities providing essential services can continue to work in an area declared to be "in a special emergency situation" in accordance with the civil defense instructions.

The Obligation to Report for Duty at an Essential Business

In accordance with the Home Front Command instructions, unlike a non-essential business, an essential business can continue to operate without the restrictions imposed on regular facilities.

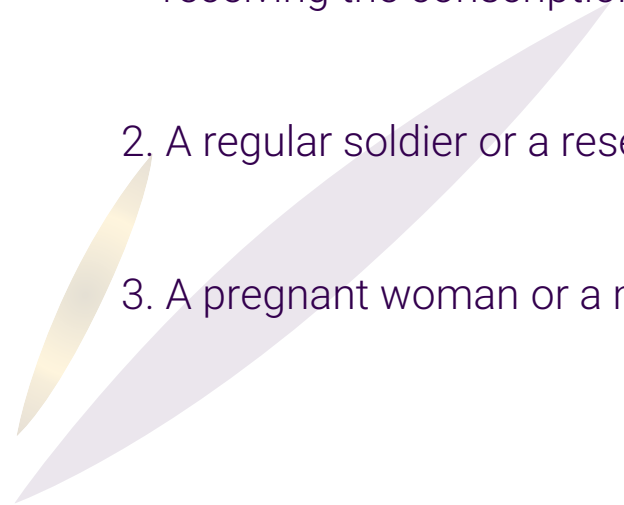
An employee of an essential business who hasn't been issued an enlistment order for work, while it's not obligatory for them to arrive at work without the order (as there's potential criminal sanction on their side), their absence won't be considered as such according to Home Front Command instructions, even if they can't reach a protected area at the workplace in a reasonable time.

An employee who has been conscripted for work under an order must report for duty and carry it out as long as the order is in effect. Failure to report for duty is a criminal offense.



The Obligation to Report for Duty at an Essential Business

Those who are not obliged to report for duty and cannot be conscripted for work in an essential facility are:

1. An employee who hasn't undergone a physical examination within the last 6 months prior to receiving the order is allowed to request a medical examination to determine their fitness for the specific job. Until the examination is completed, they are not obligated to report for duty unless they are an employee of the same facility continuing the exact job they worked in before receiving the conscription order.
 2. A regular soldier or a reservist who has received a 8 order.
 3. A pregnant woman or a mother of a child up to one year of age.
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Essential Business– Employee Recruitment Order

In the event of an issue with employees reporting for duty, the responsible government ministry can turn to the Manpower Directorate in an emergency and consider the need to issue an order for the conscription of employees. The implication of such an order is that, if necessary, employees can be conscripted to support the essential functions during an emergency.

Under these circumstances, if the workplace is recognized as a “essential business” or “business for the provision of essential services” in the order, employees can be obligated to report for duty at that location, subject to an order issued in accordance with the provisions of the law. A service work order may require an employee to report to their existing workplace (as per **Section 17** of the law, and such an employee is referred to as “conscripted-on-site”) or, in cases of necessity, it may require those who do not work at this facility during peacetime to report to work there (as per **Section 18** of the law, and such an employee is referred to as “conscripted-off-site”).

Essential Business– Employee Recruitment Order

According to **Section 26**, the provisions of these laws shall not apply to the work of a conscript:

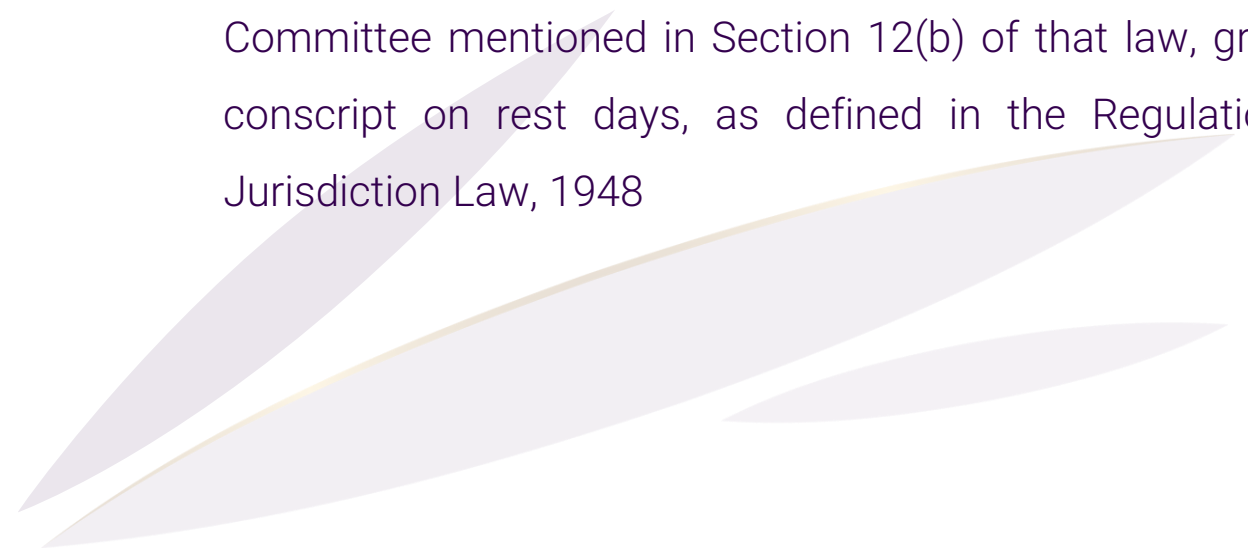
(2) Youth Corps Law, 1953;

(3) Youth Employment Law, 1953, if the conscript is a youth as defined in that law;

(4) Women's Employment Law, 1954;

(5) Employment Service Law, 1959.

(b) Working Hours and Rest Law, 1951, except for Section 9 thereof, shall not apply to the work of a conscript unless the Minister so orders, and he may, after consulting with the Ministerial Committee mentioned in Section 12(b) of that law, grant a general permit for employing a conscript on rest days, as defined in the Regulations of the Emergency Powers and Jurisdiction Law, 1948



Essential Business– Employee Recruitment Order

(c) Notwithstanding the provisions of the Annual Leave Law, 1951, a conscript shall not be entitled to actually take annual leave; this provision shall not detract from the conscript's right to receive compensation in lieu of annual leave or to a leave redemption. The period of service as a conscript shall count for the purpose of calculating the entitlement to annual leave.



General Permit for Employing Workers for Overtime Hours (Hourly Instruction) - 2023

According to the permit issued on October 9, 2023, it is possible to employ a worker for up to 67 hours per week, provided that the limit for additional hours in a month does not exceed 90.

A worker may be employed for up to 14 hours per day, provided that the worker consents to this arrangement and is given at least a quarter-hour break between the hours of 12:00 PM to 2:00 PM during the workday, without deducting from the right to a break.

General Permit for Employing Workers for Overtime Hours (Hourly Instruction) - 2023

An employer who hires more than 20 workers may employ workers under the conditions of the permit if one of the following conditions is met:

1. On the day when they started employing workers under this permit, at least 20% of their workforce (based on the average workforce as reported by the employer to the National Insurance Institute between May 2023 and July 2023) were absent from the workplace due to circumstances that are not under the employer's control, and the work cannot be performed by existing employees at the same level of productivity without working additional hours under this permit.
2. Employees working in shifts at the workplace have at least 20% of their workforce absent in the same shift due to circumstances not under the employer's control, and the work cannot be performed at the same level of productivity by existing employees in that shift.

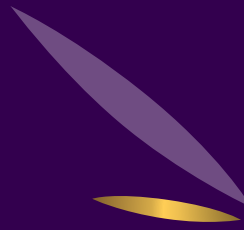
General Permit for Employing Workers for Overtime Hours (Hourly Instruction) - 2023

The permit generally applies to essential business unless the business has received a conscription order for work from Section 17 of the Law of Hours of Work and Rest, 1951, in which case the Hours of Work and Rest Law does not apply to conscripted workers (except for Section 9, for which there is a specific provision in Section 26(b) of the Emergency Employment Service Law).

The concession granted to essential businesses is that the condition of the absence of 20% of the workforce **does not** apply for an essential business to be able to use the permit.

The entire permit is valid for a period of 14 days from the date of publication or until the end of the state of emergency, whichever comes first.

The permit does not apply to employers in the public transportation sector, employers subject to an expansion order in the transportation sector, expansion orders in the construction, infrastructure, TAMA, public works, and renovations sectors.



Thank You!

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