



December 2023

**Amendment No. 5 to the Law of Protection of Workers in Times of Emergency and an Indirect Amendment to the National Insurance Law**

**Iron Swords War**

Dear Client and Friends,

Following the recent legal updates which we published in relation to Iron Swords war and the state of emergency which was declared, we update you that on November 28, 2023 amendments were made to the Law of Protection of Workers in Times of Emergency, 5766-2006 (the "**Workers Protection Law**") and to the National Insurance Law [Consolidated Version], 5755-1995 - Temporary Orders ("**Amendment to the National Insurance Law**").

In Amendment No. 5 to the Law of Protection of Workers in Times of Emergency and Temporary Orders - Iron Swords, 5784-2023 (the "**Amendment**") the following additional protections were established for workers during the state of emergency period, which will be in force between October 7, 2023, and January 7, 2024, or until the end of the Amendment's extension period:

**1. New grounds added to the prohibition against employee dismissal during the state of emergency period include: a foster parent, an evacuated parent, a family member of an abducted or missing individual, an individual who is abducted or missing, a parent whose spouse is serving in the army reserves.**

1.1. The Amendment expands section 2 of the Workers Protection Law by establishing the prohibition against dismissing an employee who is a foster parent as defined in the Children's Foster Care Law, 5776-2016 ("**Foster Care Law**") who has confirmation from a foster care supervisor which verifies that during his absence from work a child pursuant to the Foster Care Law resided with him and he had to supervise the child's educational institution was closed due to the emergency situation.

1.2. The Amendment also establishes that an employee cannot be dismissed due to his absence or because he did not carry out his work during the state of emergency period, due to one of the following -

(a) An employee was evacuated from his residence located in one of the communities listed in the Appendix of the law;

(b) An employee who is a parent or spouse of an abducted or missing person, as defined under section 3 of the Victims of Hostile Actions (Pensions) Law, or if the employee is another relative (a child, sibling or other relative of who has received a grant under the Law for Subsidy of Expenses of Families of Captives and Abducted and Missing Persons) of such a person, provided that the employee submits a signed statement indicating their inability to attend work or perform their duties due to being a family member of an abducted or missing person.

(c) An employee is an abducted or missing person pursuant to section 3 of the Pensions Law due to hostile actions or war.

1.3. The Amendment also establishes that an employer may not dismiss an employee if during the state of emergency period he was absent or did not carry out his work because he had to care for his child due to his spouse or the child's other parent serving as a soldier as defined in the Military Jurisdiction Law, 5715-1955.

1.4. If the employer is a manpower contractor, for the purpose of the Amendment, dismissal will be deemed to be a permanent or temporary pause of the employee's employment, and the following provisions will apply -

(a) The principal employer will not dismiss an employee of a manpower contractor due to his absence or his failure to carry out his work under the circumstances specified in the sections above.

(b) If the Labor Court rules that an employee of a manpower contractor was dismissed due to his absence or his failure to carry out his work under the circumstances specified above, it will be presumed that the principal employer dismissed the employee in violation of the Amendment.

## 2. The Defendant Bears the Burden of Proof

In a claim of an employee for violations of the Amendment specified in section 1 above, the defendant will bear the burden to prove that he did not violate the Amendment, in the following two cases:

(a) The employee is an abducted or missing person pursuant to section 3 of the Disabled Persons (Pensions and Rehabilitation) Law, 1959;

(b) The employee was absent or failed to carry out his work under the circumstances specified above in section 1.1-1.3, and the dismissal occurred during his absence or when he did not carry out his work under the circumstances specified in sections 1.1-1.3 above, or **within two months thereafter**.

**3. Amendment of the National Insurance Law - Temporary Order - Continuation of payments to a pension fund for an employee who is an abducted or missing person, for an employee whose employment ended five months before the abduction or from when he went missing, or for an independent contractor**

In accordance with the amendment to the National Insurance Law, an employer of an abducted or missing person must continue to pay for an employee (both the employee and employer contributions) the payments to the pension fund for the period when the employee was abducted or missing (the "**Payments**"). This in order to secure the employee's rights to the pension fund, and in accordance with the rates and salary which were paid to the employee if he had continued to work (and according to the average salary for which the employer made contributions to the pension fund in the 12 consecutive months which preceded the abduction date or the date when the employee went missing, and if the employee worked for less than 12 months with the employer, then according to **the higher of** his average salary during the employment period, or his average salary in the last three months). The Payments shall also be made to an abducted or missing person whose employment **terminated** in the five months which preceded the abduction date or the date when the employee went missing, or whose employment terminated after such date, according to his average salary as mentioned above.

The employer shall report to the National Insurance Institute ("NII") on the Payments which it made, in the manner which is published on the NII website, and the State Treasury shall indemnify the employer through the NII for the Payments which it made, provided that the Payments were not financed by another source or that the Payments were made as compensation for the holding back of salary pursuant to section 19A of the Salary Protection Law.

For an **independent contractor** who contributed to a pension fund in the year preceding the date of abduction or the date when he went missing, the State Treasury shall, through the NII, transfer payments to the same pension fund for the period of the contractor's abduction or absence. This is to secure their pension fund rights based on the income for which insurance fees were paid in the quarter preceding the abduction date or the date when he went missing.

We are available for any questions you have, and we would be happy to assist you.

**FISCHER (FBC & Co.)**

Adv. Moran Friedman

[Mfriedman@fbclawyers.com](mailto:Mfriedman@fbclawyers.com)

Adv. Hilla Sachs

[Hsachs@fbclawyers.com](mailto:Hsachs@fbclawyers.com)

Adv. Keren Berger

[Kberger@fbclawyers.com](mailto:Kberger@fbclawyers.com)

Adv. Hadar Kohen

[Hkohen@fbclawyers.com](mailto:Hkohen@fbclawyers.com)

Phone: 03-6944162

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