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Legal Aspects of the Different Labor Contracts Suspension or Termination in Light of the Existence of an Epidemic as an Exceptional Circumstance

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Abstract

This paper is an analysis of legal aspects of the different labor contracts suspension or termination particularly, in light of the existence of an epidemic as an exceptional circumstance in the Hashemite Kingdom of Jordan. It analyses the provision of the Labor, the provision of defense orders and the decisions of courts. Thus, the paper analysis the General provisions of the suspension or termination of labor contracts under the epidemic condition as an exceptional circumstance in Chapter One, in the absence of defense orders. With the presence and issuance of defense orders. The Special Provisions for the Suspension and termination of Non-fixed term labor contracts in the presence of epidemic as an exceptional condition in Chapter Two.

Keywords

Labor contract, Fixed-term contract, Non-fixed-term contract, arbitrary dismissal, Exceptional condition, Epidemics

I. Introduction

Labor contracts are considered temporary contracts, no matter how long they last, as a result, the work may sometimes be terminated or suspended reasons. However, the Jordanian legislator has put in place several legal considerations for this suspension or termination and specified their legal provisions in the Labor Law no. (8) For the year 1996 and its amendments, in order to insure that both parties to the contract, whether the employer or the laborer, are not harmed by this suspension or termination. The law indicates ways of legitimate suspension or termination of labor contract whether it is for fixed terms or non-fixed terms labor contract. It also specifies cases of suspension and termination of the labor contract in exceptional circumstances, and in the event, the business owner closes the establishment.

Certain Epidemics may appear in the world, which causes forced or voluntary closures of many or most business sites, such as restaurants, entertainment houses, shops, etc., which caused confusion to both parties of a contract (the employer and the laborer), especially the lack of knowledge of the two parties on the date of the return to normal life and the return to their usual work (A. A. K. A. Shanab, 2010).

This paper aims to address the legal aspects of suspension and termination of labor contracts in the existence of exceptional and occasional circumstance, for instance, (Covid 19) in Jordan during the validity of labor contract as an example, and the nature of indemnity that a laborer may claim, according to the nature of a contract. Therefore, it will address these circumstances in the absence of Defense Order No. 6 for the year 2020; this is through labor law legislation and the civil law and in the existence of Defense Orders that are binding to both parties in labor contract (Salman, 2018).

II. Chapter One: The General provisions of the Suspension or termination of labor contracts under the epidemic condition as an exceptional circumstance

This chapter addresses the general provisions contained in the Labor Law that are applicable to all types of labor contracts, whether of fixed-term or non-fixed-term. It will illustrate the provisions before the issue of Defense Orders and with the existence of Defense Orders.

- **First section: The General provisions of labor law on the suspension and termination of labor contracts under the epidemic condition as an exceptional circumstance in the absence of defense orders**

Termination of labor contracts of all kinds based on a temporary and legitimate manner. Whereas section two will explain, the general provisions for terminating the contract based on a legitimate and permanent manner.

These general provisions related to the suspension and termination of legitimate labor contracts will be reflected to the extent of their applicability to the labor these general provisions will be discussed in two sections. The first section deals with the general

provisions for the termination of work, where this includes the contracts that will be suspended or terminated due to the exceptional conditions such as epidemic (Al-Atoum, 2022).

These provisions shall be discussed in the existence and non-existence of defense orders.

1- The extent to which general provisions are applied to suspend work contracts in the presence of an epidemic as an exceptional circumstance temporarily

The general provisions allow the two parties to stop the labor contract and thus the contractual obligations are frozen for a specific period of time, then the contract returns to force after the expiry of this period, and among these cases is giving the labor unpaid leave or giving a special unpaid maternity leave for a certain period.

The above mentioned is an agreement on the voluntary suspension t of the labor contract, but in other cases the suspension may be mandatory for the labor. As the Jordanian labor law stipulates special provision concerned with the temporary conditions beyond the control of an employer, i.e. for reasons that are not attributable to him and that he cannot prevent, that forced him to stop the work, and these provisions applies to many cases, where it can apply to the epidemic which is considered a temporary force majeure case.

Accordingly, article (50) of the Jordanian Labor Law can be applied to all labor contracts except those laborers who continue their work under these circumstances. This exception includes those who are working in primarily flexible works and did not stop or whose contracts were transformed under the exceptional circumstances into flexible labor contracts. Article (50) states:

1- The employee shall be entitled to full wage for a period not exceeding the first ten days from the suspension of work.

2- The employee shall be paid one-half of his wage for the period in excess of same whereby the total of the entire period of suspension of work does not exceed sixty days per year.

This includes the suspension of work temporarily, and according to the previous article, we note that the Jordanian legislator has addressed the effects of the Force Majeure on laborers 'wages, without addressing other laborers' rights. Moreover, the legislator provided the employer the right to stop work for reasons beyond his control, where the laborers shall not be entitled to receive any rights except the stated wages until the end of the suspended period.

In this regard, according to a decision made by the Court of Cassation where it states: "Article (50) of the Labor Law provides for the right of the laborer to receive his wages in the event that work in the establishment is suspended for reasons beyond the control of the employer, however no provision in this article is made, in any means, related to the rights of the terminated laborer. Hence, it is worth mentioning here, that the provision of Article (50) of the Labor Law applies to the termination of work if its conditions are fulfilled and consequently the termination of fixed-term and non-fixed-term contracts.

The extent to which general provisions are applied to terminate employment contracts in the presence of an epidemic

Article (21) of the Labor Law set out the general provisions on the cases of termination of labor contracts, however its provisions may not be applicable in light of the existence of exceptional circumstances as certain epidemic, except in a narrow manner and has nothing to do with the epidemic. Nevertheless, termination can be applied for other reasons, as paragraph (a) of the same Article authorizes termination in the event the parties agree to terminate the contract voluntarily. Yet, this is contrary to the current situation in the presence of epidemics and the disruption of most businesses, as most laborers are adhering to their jobs because the opportunities to obtain another job are not easy, and there may be no jobs in the event of termination due to the exceptional circumstances as epidemic.

On the other hand, paragraph (b) of the same article stipulates that the labor contract shall terminate if the period of the contract expires or if the work itself is finished. However, failure to renew the contract after the contract period ends is a reason for the termination of the contractual relationship without any legal liability on the employer. The same paragraph also provides that the labor contract shall terminate if it was related to a specific work if the work mentioned in the contract finished. It is worth noting that these cases mentioned in paragraph (b) of the same article are few and subject to chance. Likewise, such termination shall not be due to the epidemic. As for paragraph (c) of the same Article, it states that if the Employee passes away, disabled by illness or became incapacitated to work and this was substantiated by a medical report issued by a medical authority, and this case is irrelevant to the working conditions and closures due to certain epidemic. The last case provided by paragraph (d) of the same Article states that: "If the Laborer meets the conditions of old age pension provided for in the Social Security Law, namely 60 years for men and 55 years for women, unless the Parties agree otherwise. However, this case is also irrelevant to the subject of this study.

Consequently, according to the general provisions on termination of labor contracts mentioned in Article (21), the authors do not find these cases in line with setting general rules for work termination in the presence of this epidemic and due to work suspension of an establishment. Indeed, this Article deals with general cases of termination irrelevant from the consequences of such an epidemic as exceptional case. However, the authors believe that it is rare for employers to close their establishments and lose their infrastructure of labors, commercial reputation, and the money spent in establishing this business, due to emergency conditions of a pandemic that may not last for more than couple of months.

- **Second Section: General provisions for suspending and terminating work contracts in the presence of exceptional circumstances such as epidemics with the presence and issuance of defense orders**

Defense orders are legal provisions regulate labor contracts in force in the existence of the epidemic (COVID-19), some provision suspended some legal provisions in labor law

and anther were new provisions that regulate the contractual relation between the employer and the labor.

Noting that most defense orders are applicable on fixed term and non-fixed term labor contracts. Thus, this section will demonstrate some orders issued by the competent authorities in Jordan after the activation of defense orders, and hence it has ceased a part of the rules of labor law and social security law because of the presence of actual epidemic namely COVID-19. Most important of which the Defense Order no. 6, which regulated the relationship within the labor contract.

However, we did not discuss all defense orders since they are continuous and renewable and because part of which is irrelative.

Otherwise, we will define the most important of which related to the suspension and termination of labor contracts as an actual example of the presence of real epidemic affecting such contracts and its enforcement which led to the involvement of the government in this crisis in order to save the rights of both parties of a labor contract, the employer and the labor.

1- The establishment is suspended from its traditional operation by virtue of defense orders

Defense Order No. (6) Was issued in terms of the suspended establishment according to the previous defense orders. In this assumption, the employer is suspended from his work, does not work in a traditional way, in whole or in part, and has stopped his business because he did not obtain a license to open his establishment.it also includes who works in a flexible work, neither fully nor partial. Thus, we will show what provisions the defense order came in in terms of wages for the months March, April of 2020 and beyond.

A. Wages for the period (18/3/2020 – 31/3/2020)

The defense order stated that all labors working in private sector institutions and establishments or any other establishment subject to the Labor Law are entitled to their usual wages for the period from 3/18/2020 to 3/31/2020. This means that the labor, according to this assumption shall be entitled for his full rights for March even if he did not work because of the official holiday imposed by virtue of the previous defense orders, and this case shall include March only, because the month of April has its own provisions.

B. A mechanism for excluding unlabored for those groups that are not excluded

The defense order indicated that it shall specify the sectors, institutions or establishments excluded from the suspension decision, which will be authorized to start work after obtaining the approval of the Minister of Industry, Trade and Supply, the Minister of Labor, Minister of Health, and the competent Minister together . However, in order to issue these approvals, there is a need to issue instructions. In this regard, the defense order has authorized the Minister of Labor, the Minister of Industry, Trade & Supply and the Minster of Health for defining the principles, procedures and conditions for obtaining an approval according to the instructions issued by them together for this purpose.

Subsequently, several orders were issued to regulate some works, and the ban was subsequently lifted on most of these closed covered establishments and the working hours were extended.

C. An establishment that is suspended from traditional business by virtue of defense orders and carries out flexible works

The defense order permitted all establishments, whether authorized or unauthorized, to work fully or partially flexible works.

According to this assumption, i.e. if the establishment is suspended from work (unauthorized), the employer may submit a request to the Minister of Labor to allow him to pay at least 50% of the value of the usual wage, provided that this settlement shall not be less than the minimum wage, and the defense order has given the authority to the Minister of Labor to issue the instructions required for those settlements. The defense order has also indicated the suspension of Article (50) of the Labor Law related to this assumption, and thus replaces Article (50) and its provisions with this defense order by imposing a 50% reduction, subject to the approval of the Minister of Labor.

D. Economic Protection of an Establishment that is suspended from work

This defense order indicated that an economic protection program will be implemented by the government to help some of the establishments that were affected by the COVID-19 crisis. Also, this defense order indicated special conditions for benefiting from the intended economic protection programs, namely,

The Economic protection program dedicated only for the establishment covered by the decision of suspension and not permitted to work. The government shall grant incentives to the employers, in addition to the economic protection programs, for those employers who are committed to pay laborers' wages in full, from when the defense law was put into effect until it is suspended. An employer of an establishment authorized to work and have been suspended to work in accordance with (clause V) of the Defense Order shall not benefit from such economic protection for the private sector from the date of suspension. The principles and conditions for the employer to benefit from each economic protection program shall be determined by the competent official authority in accordance with instructions issued for this purpose.

2- An establishment continuing to operate by virtue of defense orders

A. Wages for the Period (18/3/2020) until (31/3/2020)

All laborers are entitled, according to this assumption, to their usual wages (full wages), for the period from (18/03/2020 until 31/03/2020).

B. Overtime Work for the Period (18/03/2020 until 31/03/2020) and beyond.

The defense order determined the mechanism for calculating the overtime work for the period (18/03/2020 until 31/03/2020). Where the laborers in these sectors, excluded from the decision of the cabinet to suspend its business, shall not be entitled to additional wages for their work during that period, unless they are assigned to overtime work in accordance with the provisions of Article (59) of the Labor Law No. (8) Of 1996. As Paragraph (a) of this article provides that an additional hour of work shall be calculated a wage of no less than 125% of the usual wage of the labor, provided that he worked on the normal working days. However, paragraph (b) of the same article provides that the additional hour of work, shall be entitled to a wage of no less than 150% of the usual wage of the labor if he worked on its weekly days off, religious holidays, or official holidays. Nevertheless, the defense order suspended paragraph (b) of Article (59) of the Labor Law No. 8 for the year 1996 with regard to the legal provisions related to work during official holidays only, and therefore the labor shall not be able to claim for his wage for the period from (18/3/2020 until 31/3/2020) if he was assigned additional work according to this assumption, except the value of overtime of only 125%.

The same, according to the defense order, shall apply to the overtime wages for the period (1/4/2020) and beyond.

C. The establishment that is performing its business in its workplace

This defense order has dealt with the establishment authorized to work in accordance with the previous defense orders, and at the same time continues its traditional work at the work site. As it determined the provisions related to labor contracts starting from 1/4/2020, as follow:

Labors that perform their work in the workplace are entitled to their full wages.

It is permissible to agree, with the laborer's consent, to reduce his wages as a form of social solidarity in these exceptional circumstances, since the work is not carried out in its nature.

The defense order stipulated for the agreement between the employer and the laborer two conditions. The first is that the amount of the reduction shall not exceed 30% of the laborer's usual wage, and the second is that this option should not be used unless the reduction includes the salaries of the higher management of the establishment.

D. It is permissible to reduce wages for those labors who work part-time

The defense order allowed the establishment authorized to work, but which the nature of its work is partial and it was not able to work fully, according to this assumption, under certain conditions, namely; the establishment is authorized to work part-time. Those labors who are not assigned to work are only covered by this reduction. The labor is entitled to a wage not less than 50% of the usual wage paid thereof. The assumed reduction shall not exceed the minimum limit of wages in any way. The reduction is subject to the approval of the Minister of Labor. The rules and conditions, upon which employers are allowed to pay at least 50% of the usual wage, shall be subject to instructions issued by the Minister of Labor for this purpose. The provisions of Article (5) of the Labor law regarding the enforcement of these conditions shall be suspended.

2-Total suspension of the work of the (excluded establishments, and not excluded establishments from work suspension)

Article (5) of the defense order (6) has indicated a legal mechanism in which employers, whether exempted and not exempted from work decease, can stop work, and the following conditions are required for implementing this imposition: An employer who is unable to pay wages to an establishment that is exempted or not exempted from work decease, may submit a request to a joint committee formed by both the Ministers of Industry, Trade & Supply and Labor to stop work in his establishment completely, and to stop labor contracts for all laborers.The employer may not stop the work of the laborer except after obtaining the approval of the committee, and he shall attach to the request a list showing the names of the laborers, the nature and the form of each of their labor contract, its duration, working hours, and the amount of his wage according to what is determined by the Social Security Corporation. Thus, a decision of approval should be issued so that the work decease takes effect. The employer may not conduct any business or any activity during the suspension period.The contractual relationship between the employer and the laborer shall not break during the suspension period, and the employer is not obligated to pay the laborer's wages during this period.The period of suspension shall not be counted from within the term of the labor contract.All financial and contractual liabilities incurred by the employer remain in effect during the suspension period, with the exception of laborers' wages. A sign of confinement on the disposal of movable and immovable properties. Belonging to the establishment during the suspension period shall be enforced upon a decision by the committee.

4-The resignation or dismissal of the labor during the period from 18/3/2020 and beyond for the establishment that is excluded and not exempt from work suspension

In line with the principles of the labor law in terms of the invalidity of any assignment of his rights during the validity of the labor contract, it is not permissible for the laborer to waive his rights before the end of the labor contract, because there is a suspicion that the employer pressures him to give up his right in exchange for continuing his work. So, the labor law considered such assignment illegal, where the illegal condition is nullified and the contract remains valid. However, as for the laborer's assignment after terminating the labor contract, it is permissible because there is no suspicion of pressure from the side of the employer on him ("Jordanian Court of Cassation, Case No. 6/2018, Rights,").

In a case examined by the Court of Cassation where the plaintiff (the laborer) was cleared, and this clearance signed by the laborer guarantees that there are no financial rights or claims, where it was proven to the court that this clearance was signed while the laborer was at her job and that she continued to work after that until the date of her notice. Accordingly, the court considered this clearance invalid according to the provisions of Article (4) of the Labor Law, and the Court of Cassation indicated that the Court of Appeal has the right to make the laborer take the complementary oath about this clearance, and if she receives any payments in light of the clearance, the court may deduct the amount of compensation thereof.

Paragraph (b) of Article (4) of the Labor Law is dedicated to protect the laborer from these concessions by stating: "Every condition in a contract or agreement, whether entered into force before or after this law, under which any laborer waives any of his rights granted by this law shall be deemed null."

Similarly, the Defense Order No (6) came to confirm this principle, as it stated in clause eight that the dismissal or resignation of the laborer due to this crisis is not allowed, and gave a time limit for its cancellation and imposed a penalty for those who violate it and the cases where the employer is not allowed to adhere to and its provisions, namely:

The employer may not exert pressure on the laborer to force him to resign, end his services or dismiss him from work, except in specific cases.

The defense order allowed termination of the labor contract in specific cases, according to paragraphs (c and d) of Article (21) of the Labor Law only, which is (the death of the laborer or incapacitated illness or inability to work, and this is proven by a medical report issued by the medical reference, or if the laborer fulfills Conditions for old-age retirement unless the two parties agree otherwise) This means that the defense order has implicitly suspended the paragraphs (a, b) of Article (21) of the Labor Law. The death of the labor means the termination of the work contract by force of law, regardless of the cause of death, because the personality of the labor is taken into account in the work contract. The heirs do not have the right to ask the employer to continue the contract, and all they can request is the financial rights of the deceased labor. The defense order also allowed the termination of the contract with cases of illness. The disease ranges in duration from short to long-term, which results in the suspension or termination of work.

The defense order allowed the employer to dismiss the laborer without a prior notice in certain cases, according to paragraphs (a, g, h, and i) of Article (28) of the Labor Law No. (8) For the year 1996. Therefore, the cases where it is permissible for the employer to dismiss the laborer without serving a notice, in accordance with The defense order are the following:

(a) If the laborer impersonates someone else's identity or provides forged certificates or documents with the intention of bringing benefit to himself or harm to others. This case includes two forms, the first of which is the labor's impersonation of another person's identity or identity, and the second picture of the labor submitting forged certificates or documents, and it is noted in this case that the legislator did not require a decision from the competent court to convict the labor which allow that the employer to dismiss him, so the employer must before dismissing the labor to give him an opportunity to defend himself by conducting investigations to prove impersonation or to present forged documents.

(g) If the laborer was convicted by a court ruling who acquired the final degree of a felony or misdemeanor damaging honor and public morals. And the conditions for achieving Paragraph (g) are that the crime affects honor or public morals, and therefore it is not required that the crime be related to the work practiced by the labor, and among other conditions is that the judicial decision issued against the labor is final and not subject to appeal by ordinary means, so if the judgment was not final, However, primary, it is not permissible to dismiss the labor, and that accusing the labor or filing a lawsuit against him does not allow him to be dismissed, because the explicitness of the text stipulates that to allow the dismissal of the labor that the judgment be final (Salameh, 2009).

(h) If the labor was found during the work in a state of drunkenness between or under the influence of a narcotic substance or psychotropic substance or commits an act

violating public morals in the workplace. One of the conditions for applying this case is the presence of the labor at his workplace and during his working hours, and the labor is in a state of drunkenness or under the influence of drugs, and of course a medical report will be requested to prove the state of drunkenness or abuse. This paragraph shall be accompanied by the labor's performance of any act contrary to morals and public morals in the place and hours of work.

(i)- If the laborer assaults the employer, the responsible manager, one of his superiors, or any laborer or another person during or because of the work, by hitting or belittling). The right of the employer in paragraph (i) is due to the fact that the relationship between the employer and the labor must be respected, and the assault is not required to be by a certain means, a certain way, a certain amount or a certain person. Thus, so the provision included in addition to the employer, the manager in charge, the bosses, another labor or any other person during or because of work, and in application, the labor accusing the employer of theft or fraud is considered an insult to the dignity and honor of the employer that justifies the employer's dismissal. This includes the assault of the employer's client because of the service he performs for him.

Suspend work in paragraphs (b, c, d, e, and f), where these paragraphs provides the following: (b) if the laborer fails to fulfill his obligations under the labor contract and paragraph (c) if the laborer commits a mistake that results in a heavy material loss to the employer, on condition That the employer informs the competent authority or authorities of the accident within five days from the time he learned of its occurrence, and Paragraph (d) if the laborer violates the institution's internal system, including conditions for work and laborer safety despite being twice warned in writing, and Paragraph (e) if the laborer is absent without a legitimate reason more than Twenty days deducted during one year or more than ten consecutive days, provided that the dismissal is preceded by a written warning sent by registered mail to his address and published in one of the local daily newspapers once and paragraph (f) if the laborer divulged secrets related to work.

The defense order gave the Minister of Labor to take the necessary measures and measures to implement Paragraph (e) of Article (28) which states: "If the laborer is absent without a legitimate reason for more than twenty discrete days during one year or more than ten consecutive days, provided that the dismissal is preceded by a written warning. It is sent by registered mail to its address and published in one of the local daily newspapers once.

As for the paragraphs that have been implicitly suspended, namely Paragraph (b): "if the laborer does not fulfill his obligations under the labor contract".

Stopping the enforcement of Article (23) of the Labor Law regarding the termination of an indefinite labor contract. The defense order gave a grace period of time (one week) to the employers to return the situation to what it was from the date of 3/18/2020, as the paragraph stipulated "every employer who forces any of his laborers to resign or terminate his services or dismiss him from work in other cases except under the cases stipulated in Paragraph (a) of this clause and during the period from 18/3/2020 until the date of issuance of Defense Order No. (6) Of 2020 to return them to work within a week from the date of publication of the order in the Official Gazette."

5-Reconsideration of Defense Orders (for an establishment that is exempt and not exempt from suspension)

Given all the developments of the disease that are unknown, therefore it is not known to what extent the spread or recurrence of the Corona disease, which may require in the event of its recession to return to the origin of the labor law or some provisions of it, in the event of the return of business to its normal nature. Meanwhile, it may be, God forbid, an expansion of the scope of the disease that requires strict laws to reduce it. Therefore, the Defense Order No. (6) Left to the possibility of reconsidering the contents of this defense order and the instructions issued pursuant to it on a monthly basis or whenever the interest required it according to notices issued by the Prime Minister for this purpose. Indeed, several decisions were issued regulating this.

The authors consider that defense orders discussed earlier is justified at the beginning of the pandemic, yet with the existence of the vaccine and the return of normal life it is the time to reconsider mitigating defense orders according to the present circumstances as defense orders indicate the reconsideration of such orders. Noting that some defense orders is expired as the case with paying full wages at the beginning of the epidemic therefore, the amendments would be for the defense offers in force only ("Defense Order No. 6 for the year 2020 issued pursuant to Defense Law No. 13 of 1992,").

III. Chapter Two: The Special Provisions for the Suspension and termination of Non-fixed term labor contracts in the presence of epidemic as an exceptional condition

- **First Section: the special provisions for the suspension and termination of non-fixed term labor contracts in the presence of epidemic as an exceptional condition without the presence of the Defense Orders**

This section explains the provisions for non-fixed-term labor contracts, especially in terms of the general provisions contained in the labor law. In the non-fixed labor contracts, they are distinguished from the fixed-term contracts, so that the parties may terminate the contract unilaterally with the condition of notification, and therefore the contracting party may refrain from implementing the obligation and this is the expression of his will to terminate the contract. On the other hand, the fixed-term labor contract does not provide the contractual ties with stability, therefore, the protection of the labor in non-fixed labor contracts is more, because the legislator linked the termination of these contracts to objective conditions that prevent the termination of the contract without a legitimate justification, as well as formal restrictions that prevent the sudden termination of the contract. Labor contract is of a fixed-term if it does not include a clause specifying its duration, and if the will of the two parties does not tend to specify it implicitly, or if the contract is already for a fixed-term, but there is a condition in the contract that gives one of the contracting parties to terminate it by notifying the other party at any time before the expiry of its term, or the parties of fixed-term labor contract continue to implement the contract despite the expiry of its term (Hamdan, 2003).

The first section answers the question: Can the employer rely on the difficult economic circumstances due to the certain epidemic to suspend or terminate labor contracts? As for the second section, it answers the question: what are the obligations that the employer has and the rights of the laborer in the event that the employer terminates the non-fixed-term labor contracts due to the outbreak of an epidemic? As for the third section, it will answer the question: Can a laborer resort in the future to the courts and claim that the employer arbitrarily dismissed him during the period of the epidemic? Therefore, this section addresses suspension or termination non fixed labor contracts in the absence of defense orders or after suspending defense order.

1- The provisions related to the suspension or termination of labor contracts based on the difficult economic situation due to the existence of an epidemic

In general, the employer may face difficult economic conditions that lead him to partially or permanently close the establishment, stop the activity, or reduce the volume of labor. The law has admitted the employer right to terminate labor contracts for economic justifications, yet it sets controls and restrictions over them in order to prevent employers from expanding the use of this justification, provided that an economic justification should be general or related to the production sector that an employer is working in, thus it is not enough to be merely related to the establishment itself.

The employer has the right to organize his facility and work on planning for the future and dealing with emergency cases, and this is related to reducing the number of labors in his facility and to dispense some or all of them, but this is provided that there are certain economic conditions and according to the conditions and procedures stipulated by the laws.

The employer may resort to this option in light of the epidemic, since the laborer is not entitled to any wages during the suspension period, and that the suspension of the labor contract was not a mistake the employer committed, but rather due to occasional circumstances that necessitated it. Thus, the legislator considered the case provided for in Article (31) a kind of temporary impossibility, as long as it stipulated the right of a terminated laborer accordingly to return to his work, if the work returned to normal, and if he can be employed by the employer within a year from the date of termination.

However, the authors deem that the employer can resort to Article (31) of the Labor Law as a mediating procedure between terminating the labor contract or continuing it in light of the epidemic through reducing the workload, or the work might be stopped completely. The employer can argue, in the event of business downsizing or termination, that there are an occasional economic conditions. The law stipulates for the application of this article to notify the Minister of Labor in writing, reinforced by the justified reasons for the closure of his establishment, namely the large economic burdens on the employer that may lead to his bankruptcy or insolvency. It should be noted, however, that this Article is devoted for non-fixed-term contracts, and this downsizing or termination may be considered as provisions of work stoppage in accordance with the Jordanian labor law. Because if the epidemic crisis ended, in accordance with paragraph (E) of the same article, which provides for the laborers who were terminated by the employer to return to their

work within a year from the date of termination, if the work returned to normal after the epidemic has passed and if they can be re-employed by the employer.

It worth mentioning here, that Article (50) is applied as general provisions to all contracts, therefore it has not been discussed here in order to prevent repetition, while Article (31) mentioned in this section applies for a special reason which is the economic conditions in non-fixed term labor contracts. The authors consider that the Labor Law has narrowed the scope of work in Article (31) by limiting it to contracts of unlimited duration in terms of suspending all or some of them in the event that the laborer's economic or technical conditions require to reduce work, replace production systems or permanently stop work, and in this regard it is suggested that the legal text shall include fixed-term and non fixed-term labor contracts, rather, the harm of fixed-term labor contracts is greater than the non- fixed term labor contracts that is already included in article (31), for example, if there is an economic circumstance for the reasons mentioned in Article (31) that compels to terminate all labor contracts or suspending some of them, for non-fixed term contracts, without the presence of Article (31), the employer give a month's notice and terminate the contract and thus, will not be sentenced to arbitrary dismissal because there are justifications for that. In other words, for non-fixed-term labor contracts there is a legal mechanism that aids the employer and Article (31) is an additional protection. However, if the employer wanted to terminate fixed-term labor contract for the economic reasons mentioned in the text of the article, and these contracts were long, might be up to 5 years, and he would have to pay their wages in full until the end of the contract if he could not prove the justifications for terminating all or some of the contracts, so the authors suggest to expand the coverage of Article (31) for fixed-term or non-fixed term labor contracts.

2- Special Provisions related to the termination of the non-fixed-term labor contracts in the presence of the epidemic

Among the special provisions for the termination of non-fixed-term labor contracts, if one of the parties wishes to terminate the non-fixed-term labor contract, he shall notify the other party in writing of his desire to terminate the contract at least one month in advance and the notice may not be withdrawn except upon the consent of both parties. In the event that the employer chooses the option to terminate the labor contract through notification, then according to the Labor Law, the labor contract remains in effect throughout the notice period, and the notice period is considered to be a period of service.

The notice is a legal act, and this act is in addition to the general conditions that must be met for its validity, in which the legislator stipulates that it be formally in writing, so the oral notice is not taken into consideration, and the legislator's goal of notice is to achieve the interest of both parties if one of them wants to terminate the contract.

According to the labor law, the employer may dismiss the laborer, provided that a full month of wages is paid, and if the employer has jobs during the epidemic period, he can force the laborer to work during the notification period, with exception of the last seven days of it. The laborer shall be entitled to his wages for the notice period in all these cases. However, if the notice is performed by the laborer, and this is rare in the closing period for most of the work during the period of the epidemic, and a laborer leaves his work before the notice period expires, he is not entitled to a wage for the period he left the job and he should compensate the employer for that period with the equivalent of his wage for it. In

this regard, the authors consider that if the laborer failed to arrive at his work as a result of the absence of private or public transportation due to the total or partial lock-dawn which may be imposed by the state during exceptional case as the epidemic, then the laborer shall be exempted in the event that the notice was issued by the employer, and the employee shall not be entitled for a compensating the employer in case of not attending work if the notice was issued by the latte. With the exception of certain cases, such as the event of defense orders were issued that lifted the ban on the movement of public and private vehicles, or in the event permits were given to laborers to move legally while the employer provided means to transportation to laborers from the employee residence to work location and visa versa, or the laborer's residence was close to the work site so that he could reach his work site on foot without effort or legal responsibility. The authors also believe that if the employer violated defense orders, and used unauthorized transportation means or opened his store without legal approval or permission, in these cases the laborer is not obligated to move through these unlicensed transportation means. In this case, access to the work site is considered impossible. Likewise, the laborer is not obliged to work in violation of the law in the event that the employer does not obtain permission to open the work site.

3- Special Provisions related to arbitrary dismissal in non-fixed-term labor contracts in the presence of the epidemic

A. Special Provisions related to arbitrary dismissal in non-fixed-term labor contracts before epidemic

Labor Law provides the right to terminate non-fixed labor contracts with a unilateral will under certain legal conditions, except that an employer should not abuse his right in termination. Arbitrariness to terminate labor contract means exceeding the party the limits of good faith and the purpose for which the termination right is granted. It is derived from the principle of good faith that the labor has to abide by towards the employer, which is (doing his work perfectly, being honest and well treating, paying attention to appearance in work that requires that, using means of prevention). In other words, it is legal to terminate the contractual bond, whenever the party wants, if there are legitimate reasons that justify such termination. In the absence of justification, the contracting party who terminated the labor contract is arbitrary in the practice of his right in termination, and the other party should be compensated for the damage.

The mentioned above is the general concept of arbitrariness, whereas in the Jordanian labor law, arbitrariness in non-fixed-term contracts is identified by the Appellate courts, and Article (23) of the Labor Law permits the termination of the non-fixed-term contracts, provided that the other party is notified in writing one month in advance or paying such allowance. However, the assessment of the arbitrary dismissal of non-fixed-term contracts is by the Appellate court according to Article (25) of the Labor Law, where if the employer is arbitrary in terminating the contract, it includes the provisions of arbitrary dismissal in addition to the month of notice, or if the employer is not arbitrary at the termination of the contract, it shall be satisfied to pay the month of notice without resorting to the provisions of the arbitrary dismissal.

In the non-fixed-term contracts, the laborer should file the lawsuit within sixty days if he believes that the employer has arbitrarily terminated his non-fixed-term contract, in which the laborer is not satisfied with the month's notice wage. However, the court may decide that the dismissal of the laborer was arbitrary or not, and consequently, the employer shall pay a compensation to the laborer equivalent to the amount of half a month's wages for each year of the laborer's years of service. And the laborer has the option of either submitting a damage claim or requesting return to his work.

As for the the minimum amount of compensation, which is decided by the court, it shall not be less than two months' wages, and this minimum compensation shall be paid in case the laborer works for a period of less than four months and has been arbitrarily dismissed, and in all cases the laborer may claim the entitlement to the month of notification stipulated in Article (23) of the Labor Law.

On the other hand, the laborer may also claim all his rights and other entitlements, as an end-of-service allowance, provided that a laborer is not subject to the social security, as well as his benefits generated by savings, retirement funds, or any other funds, which the laborer subscribes to, which is granted to him in accordance with the regulations subject to his institution, that he deserves in the event that his service is terminated. Furthermore, the laborer shall be entitled to have any other rights, such as overtime allowance and other sorts of additional works. The court shall decide the amount of compensation based on the last wage paid to the laborer. The court may also issue an order to the employer to return the laborer to his original job in certain cases.

The discretion of the arbitrariness in the dismissal of the laborer is due to the appellate court, and it is considered one of the appellate issues that fall within the discretionary jurisdiction of the court, and which it exclusively resolves without an oversight from the Court of Cassation, provided that the result of its conclusion is a valid and acceptable conclusion drawn from firm legal evidences in the lawsuit, according to the provision of Article (25) of the Labor Law.

An issue may arise here about an employee, with a non-fixed-term contract, who has completed the legal conditions for retirement age, according to Paragraph (A) of item 1 of Article (62) of the Social Security Law, which sets out the conditions for entitlement to old age retirement by completing 60 years for a man and 55 years for a woman. Does the employer need to perform a month notice in order to terminate this contract, and does this termination fall within the limits of arbitrary dismissal?

Of course, such contract will expire by law, when the laborer reaches the age of retirement. But if the male laborer continues after the age of sixty and the female laborer after the age of fifty-five in their work and with the consent of the employer, then it is permissible, and the employer can terminate the contract for those who reach the old age without a notice and this termination does not enter under the provisions of arbitrary dismissal (Ramadan, 2014).

The Court of Cassation has found in one of its decisions that: An agreement not to terminate the contract after the age of sixty, shall not be admitted unless it is expressly agreed not to terminate the contract upon reaching the old age, because the labor contracts are not eternal, so if the employer chooses to terminate the labor contract after the laborer continues his work after reaching the age of sixty, this termination shall not constitute an arbitrary dismissal. Since the stay of laborer in his work according to the non-fixed labor contract after the age of sixty should be coupled with the employer's approval, thus the

plaintiff's termination by the employer shall not be considered an arbitrary dismissal and then he shall not be entitled to nor an arbitrary dismissal compensation neither one-month notice allowance.

Another issue may arise about the status of returning the laborer to his work, by the court, after he was found arbitrarily dismissed. Is this laborer entitled to wages (salaries) from the date of his arbitrary dismissal to the date he returned to his work? To answer this issue, the authors rely on the judgment of the Court of Cassation, in which it is stated that: The provisions of Article (25) of the Labor Law shall apply if the court deems that through the statement of claim that the return is possible. However, if it finds otherwise, it shall rule for compensation and it is not permissible to combine both decisions. If it decides to return, it should not rule with any other rights claimed, including wages claimed by the laborer for the period between his dismissal and his return, because these wages for the period during which the laborer does not work are not among the benefits stipulated in the aforementioned Article, and that the entitled remuneration according to the general rules shall be during the validity of the contract and while the laborer was performing his work.

B. Special Provisions related to arbitrary dismissal in non-fixed-term labor contracts during the epidemic

An issue arises here regarding the laborer right resorting to the court if he was terminated by his employer, without committing any violation during the epidemic period, to claim compensation given that such termination of a non-fixed-contract, during the circumstances of the epidemic, is an arbitrary dismissal? To answer this issue, the authors must clarify that the employer's termination of labor contracts in the presence of lock-dawn decision for most businesses under the defense orders, and that the characterization of this termination from a legal point of view, whether it is an arbitrary dismissal or not, especially in light of the existence of the epidemic, is an issue of facts. In light of that, and as a matter of fact, it is extracted by the Appellate courts, with its powers to estimate the evidence and weigh it according to the provisions of Articles (34) of the Evidence Law no (3) for the year 1952 without a commentary by the Court of Cassation, and as long as it is based on legal evidence and extracts is adequate and acceptable, otherwise, it is the duty of the Court of Cassation to monitor the Appellate court for its findings. Taking into account that a certain direction may be taken by the Court of Cassation in cases of termination of labor contracts in the period of the epidemic, hence, this direction will be binding to the Appellate courts or may lead to inciting legislation by the legislative or issuing orders by executive authority to deal with such exceptional cases, in which, shall be enforceable. However, in the absence of such legislation or orders, (presumably), the matter remains held by the jurisdiction of the Appellate courts.

The authors believe that the laborer whose contract is terminated, in all cases, should submit a claim to proof the employer's arbitrariness of such termination within sixty days of the date of his dismissal. Yet, the question arises herein: if the laborer in the presence of the epidemic is unable to comply with the period of sixty days, then shall he loose his right to file the lawsuit due to prescription? Any law or order issued by the legislative or executive authority suspend the government's official departments and private institutions to address the exacerbation of the outbreak of certain epidemic are

considered an official holiday, and therefore these holidays shall not be counted within the sixty-day period for filing an arbitrary dismissal case.

However, the court may later issue an order to the employer to return the laborer to his original work after the end of the epidemic crisis without applying the provisions of arbitrary dismissals as a kind of restoration of the situation to what it was before the epidemic period, with a partial compensation for the laborer against the period of his interruption. Thus, both the employer and the laborer shall bear the burden of this unforeseen circumstances (Al-Daoudi, 2020).

Finally, the competent court, in accordance with the Jordanian law, for cases arising from individual labor disputes, in accordance with paragraph (a) of Article (137) of the jurisdiction of the Magistrate Court, which must consider cases arising as a matter of urgency, so that the case is decided within three months from the date it has been received by the court. The reason for such a short period is that the effect of time on the relationship between the two parties after the end of the labor contract is serious, which calls for the quick settlement and resolution of labor disputes. However, cases related to wages in regions where the wage authority was formed under the provisions of the Labor Law are excluded from the jurisdiction of the Magistrate Court.

- **Second Section: the special provisions for the suspension and termination of non-fixed-term labor contracts in the presence of the epidemic as an exceptional circumstance with the existence of defense orders**

Defense orders suspended article (23) of labor law which is concerned in terminating non fixed labor law contracts, article (23) states: if one of the parties want to end non-fixed term labor contract he shall give a written notice to the other party informing him the desire of ending the contract term before a month at least and it is not allowed to withdraw the notice except with the acceptance of both parties, and that the contract remain valid during notice period, and in case the employer wanted to terminate the labor contract the labor shall not be granted one week leave.

Thus, the authors believe that the suspension of article (23) is considered transfer to article (25) of labor law as being arbitrary dismissal without seeking the reasons as if the defense found a new principle "assumed arbitrary dismissal" in light of the existence of epidemic and the explicit defense order in this regard as according to article (25) the judge may return the labor to his work.

The authors consider also that the renewal of the labor contract for a non-fixed term until further notice of the end of the epidemic may cause great harm to the employer, because Article (23) of the Labor Law was suspended by a defense order. Therefore , there will be no month of notice, and this matter may be justified and acceptable at the beginning of the pandemic so that most of laborers don't lose their jobs, but with the partial and complete return of businesses and limited closures, the authors suggest issuing defense orders that reduce this severity, and at the same time do not go back to applying Article (23) in its entirety because the business has not returned to its normal form, and therefore the possibility of issuing a defense order that allows employers to give notice for a period more than a month (for example, three or six months) for the termination of work contracts

for non-fixed term labor contract, and in order to give the labor enough time to find an alternative job with a facility that operates normally in these conditions, it is suggested also that the last month of the notice be a holiday for the labor instead of the last week of the month notice mentioned in Article (23) which is currently suspended.

1- The special provisions for the suspension and termination of fixed-term labor contracts in the presence of the epidemic

This chapter explains the special provisions for stopping and terminating one of the types of labor contracts, which is a fixed-term contract in light of an exceptional circumstance such as an epidemic, before and after defense orders or suspension of defense orders as follows:

A: the special provisions for the suspension and termination of fixed-term term labor contracts in the presence of the epidemic with the existence of defense orders

This section explains the provisions for the suspension of fixed-term labor contracts in the presence of an epidemic, and in the second section we will explain the provisions for terminating fixed-term contracts in the presence of the epidemic, and all these treatments on the assumption that there are no defense orders issued by the competent authorities in the country to freeze, stop, or issue special laws and decisions such as defense orders that violate the labor law, and therefore these orders are taken to be implemented in crisis conditions (*Court of Cassation Rights Judgment No. 4470 of 2018*).

B: Termination of fixed-term labor contracts in the presence of the epidemic

The employer may resort to suspending the labor contract temporarily in accordance with Article (50) of the Labor Law, which outlines general provisions for the suspension of the labor contract for reasons not attributable to the employer and which he cannot prevent. This is what the authors have explained in detail in the first chapter of this paper in the general provisions of work termination. Hence the compensation payable by the employer will be less than what he pays in accordance with Article (26) of the Labor Law.

An issue may arise about whether Article (50) of the Labor Law was invoked and the epidemic persists, so what is the fate of the remaining period in the fixed-term labor contract ("Judgment No. 5689 of 2019 - Court of Cassation of Rights - Five-year panel,")?

The authors believe that, in the presence of the epidemic, practically, employers will resort to the general provisions of the work suspension mentioned in Article (50) of the Labor Law that corresponds to the conditions of the presence of the epidemic, where the employer will apply the provisions of this Article by paying ten- days full wage and wait to returning to normal circumstances. However, if the crisis persists, the laborer will be paid a half month's salary for two months approximately, and then if the work continues to stop, he will be paid a wage for another half a month, and if work stoppage continues after that, the employer will either pay according to the general rules in the presence of casual circumstance, or the fixed-term labor contract may be nearing its end. These options are

available to the employer to reduce the burden of full wages and may keep his laborers to return at any time after the crisis recedes. On the other hand, the employer may not choose to wait all this period, but rather seeks directly to terminate the contract, and this is what we will discuss in the second section of this chapter.

The authors would like to point out herein that the employer cannot stop or terminate the fixed-term labor contract according to the economic circumstances of the employer, where these circumstances forced him to partial or total suspension. The reason behind that is because the provisions of Article (31) expressly provides that: "it is exclusively related to the non-fixed-term labor contracts", and therefore we suggest that the legislator should amend this provision to be one of the general rules for suspension or termination, that is, it applies to all contracts, whether fixed or non-fixed-term, as the casualty is unified in both contracts, namely the exposure of the employer to an urgent economic circumstance that is difficult to do with his job naturally ("Judgment No. 6670 of 2018 - Court of Cassation for Rights,").

2- Termination of fixed-term contracts in the presence of the epidemic

This section shows the special provisions for termination of fixed-term contracts in the period of the epidemic, as the probability of such termination, under these circumstances, is most likely by the employer more than it is by an employee. However, fixed-term labor contracts may be terminated in accordance with the general provisions of Article (21) which we have described above. Also, in rare cases, the laborer may terminate his fixed-term work for certain reasons, or he may have better working conditions under these exceptional circumstances. That will be demonstrated in the following these two cases:

A- If the employer terminated the fixed-term contract before the expiry of its term during the period of the epidemic

In the beginning, if there is a labor contract, where its clauses stipulate that it is a fixed-term contract, and in the event that the employer has dismissed the laborer arbitrarily, we cannot apply the terms and conditions of Article (25) for arbitrary dismissal. Rather, the employer shall be penalized for terminating the contract early by paying to the laborer full wages for the remain period of the contract as stated in Article (26). Certainly, the employer bears all other entitlements except for the notice month's entitlement, because this month is exclusively related to the non-fixed-term contracts. A question may arise; do the conditions of the epidemic give the employer the right to terminate the fixed-term labor contract? To answer this question, we will distinguish between two cases:

I. If an employer has terminated the fixed-term contract while the work is already suspended due the epidemic

This option may not be appropriate for the employer, in light of the lock-dawn of his establishment, in the presence of the epidemic, because he shall pay all the wages for the remaining periods of the contract. On the other hand, this possibility can be applied in

narrow cases, once the employer may choose the termination of fixed-term contracts that will expire during the epidemic period (the contract expires within one or two months following the epidemic period) according to Article (26). So that the employer shall not pay any compensation in this case, except to notice the laborer that he does not want to renew the contract, and he shall pay the remaining wages according to the contract period for one month or two months. Where there is no room here for the judge to award that such termination is an arbitrary dismissal or to give the laborer any other compensation.

In all cases, the employer must prove the emergency circumstance due to the existence of the epidemic in the event of a labor lawsuit, as previously shown in this research, and thus request the court to mitigate the amount of damage he suffered because he has no hand in it (Al-Tai, 2018).

II. If the employer has terminated the fixed-term contract while the work continues in the presence of the epidemic

However, in the event that the employer's establishment is operating normally and is not covered by the imposed lock-dawn, and the executive authority has allowed for him, through the defense orders, to work as pharmacies, drug factories, bakeries, etc., the authors believe that any termination of such a non-fixed-term labor contract by the employer makes it in violation of the contract concluded with the laborer necessarily. Accordingly, the provisions of termination of the fixed-term contracts shall apply to him, which is the payment of the full remaining wage according to the contract. In the event that the employer is working normally, this is in two cases the first case continues work with all the employees and thus the rules of labor law shall be applied because the employer was not affected by the epidemic. The second case, works that require continues work but the conditions of work under the epidemic necessitated reducing the number of laborers, thus labor law shall be applied on employees attending work as for suspended employees due to exceptional circumstance then they shall be subject to the special provision mentioned earlies for the suspending the work of the employer due to exceptional circumstances (*Court of Cassation Decision No. (305/2005) is a five-member panel*).

III. If the laborer left his work under the fixed-term contract without reasons before the expiry of its term during the period of the epidemic

In the event that the laborer leaves his work before the end of the term of the fixed-term contract, and without the conditions that the labor law permits, which is mentioned in Article (29), the laborer will bear the result of this abandonment that the employer will be surprised about, as this termination will result in a malfunction and harm to the employer, that will be estimated by the competent court.

The authors found that the law sets an upper limit for the penalty for the laborer’s breach of his obligation, in case the employer submits the lawsuit against the laborer, which is a compensation for the employer that does not exceed the amount of half a month's wages for each month of the remaining period of the contract. This compensation imposed on the laborer must be inflicted by a verification of damage to the employer. In a decision by the Court of Cassation, it stated that the legislator stipulated that the right of the employer to claim compensation should be proven by the occurrence of the damage

and the injury in accordance with the general rules. And that he must provide the evidence that while the laborer left his work before the expiry of the contract period, he caused a material damage to the employer. Thus, the compensation is only paid upon the occurrence of the damage, and since the employer did not claim the actual harm that he suffered as a result of the laborer leave to his work before the contract expiry, the court did not award compensation to the employer because he failed to prove the damage, because of the laborer leave according to a fixed-term contract. Here, the authors find that under the labor law, as the laborer is the lesser party in the contract, he enjoyed greater protection, where according to the court's decision the court asked to prove the damage, otherwise when the employer terminates the fixed-term labor contract, the laborer is not asked to prove his harm. As it is considered that such termination is a presumed harm affected the laborer from the employer, except for if the employer terminated his contract for another reason mentioned in Article (28) of the Labor Law which is in short: (if the employee impersonates the personality or identity of another person or submits forged certificates or documents, or did not fulfill his obligations, or commits an error which resulted in serious material loss, or if the employee violates the internal the safety instructions, despite his warning in writing twice). In these last cases, the employer may dismiss the laborer directly. In any case, this termination of the laborer subject to a fixed-term contract is rare practically, in light of the disruption of all businesses in the presence of the epidemic. Hence, it is unreasonable for a laborer to leave his work, during the epidemic period, especially since most jobs are stopped, and there is a large curfew for vehicles and people, and most businesses are stopped (Al-Balawi, 2022).

3- Non-applicability of arbitrary dismissal provisions on fixed-term contracts

This section shows the applicability of the provisions of arbitrary dismissal on fixed-term labor contracts. If the employee's contract is of a limited duration and the employer has arbitrarily terminated the labor contract due the epidemic, the laborer will be entitled to all his wages for the remainder of the labor contract in accordance with Article (26) of the Labor Law (2019, 2020).

In a decision issued by the Jordanian courts, the arbitrary dismissal under a fixed-term labor contract was described and a judgment was awarded to compensate the remaining wages of the contract, and, the employer claimed that the appellate courts made a mistake when they decided to sentence the laborer the entitlement to an arbitrary dismissal allowance represented in the remainder of the contract period. He also claimed that the laborer was unable to prove arbitrary termination of his services and that the court relied on the provisions of Article (28) of the Labor Law, but it failed to prove that, and considered that the termination of the laborer's service constituted an arbitrary dismissal. The Court of Cassation responded to the employer's appeal that Article (25) of the Labor Law provides that the legislator left the discretion of the arbitrary dismissal to the Appellate courts explicitly according to Article (25) as the matter of arbitrariness to terminate the service of the laborer is one of the factual matters that are exclusively assigned to the Appellate courts to explain, and not a specific legal issue. Thus, it is like any other factual matter that the court extracts with its powers to interpret the evidence and its weight without being commented by the Court of Cassation, as long as it was extracted based on

legal evidence, justified and acceptable, and provided that if the dismissal was justified, in accordance with Article (28), it is the responsibility of the (employer), not the laborer, to prove how he has been dismissed from his work ("Judgment No. 7198 of 2018 - Court of Cassation of Rights, as well as Judgment No. 7078 of 2018 - Court of Cassation of Rights.,").

The authors consider that the description came from the Court of First Instance, under its appellate capacity, of the compensation for the remaining wages according to the fixed-term contracts as an arbitrary dismissal, is inaccurate. Whereas the provisions of the arbitrary dismissal were defined by the Jordanian legislator in Article (25) of the Labor Law by compensating the laborer for an amount equal to half a month's wages for each year of the laborer's service period or returning him to work. However, this can only apply to non-fixed-term contracts, while the Labor Law in Article (26) provides for other provisions, and the case can be described as willful termination of the laborer by the employer, in the fixed-term labor contracts, not an arbitrary dismissal. As in the fixed-term contracts, the laborer deserves his full wages until the remaining period of the contract expires. However, the provisions of the arbitrary dismissal mentioned in Article (25) of the Labor Law shall not apply.

On the other hand, the authors believe that the Court of Cassation did not address the terms used by the Appellate courts in describing the arbitrary dismissal, which does not apply to this case, given that the contract is of a limited duration, but rather it provides general rules for the provisions of arbitrary dismissal, where it leaves the discretion to estimate the arbitrary dismissal to the Appellate Courts, because to proof if there is arbitrariness or not, in terminating the service of the laborer, is a matter of fact that should be interpreted by the Appellate court and is not a legal issue, bearing in mind that the court is supposed to search for such facts mentioned in Article (28), namely the cases of dismissal of the laborer without notification and not discussing the facts related to the arbitrary dismissal provisions (Al-Maghrabi, 2022).

The authors also believe that the cassation decision has made it clear that the employer cannot evade his responsibility for termination of the labor contract unlawfully, except by proving the applicability of one of the cases stipulated in Article (28) of the Labor Law (cases of laborer termination without notice). The Court of Cassation also indicated that the proof of what was mentioned in Article (28) for cases of dismissal of the laborer without notification falls on the employer not on the laborer.

Therefore, the authors believe that fixed-term contracts cannot be applied to the provisions of arbitrary dismissal, as the legislator has decided to compensate the laborer in these cases where the employer shall pay the remaining wages up to the end of the contract's term, as we have explained above in detail. Thus, the judge cannot resort to the provisions of arbitrary dismissal except for non-fixed-term contracts.

Third section: the special provisions for the suspension and termination of fixed-term labor contracts in the presence of the epidemic with the existence of defense orders

This section discusses the impact of fixed-term labor contracts after the issuance of defense orders, and therefore fixed-term contracts before the date of issuance of defense orders (ending before March 18, 2020) are not covered by defense orders for the renewal of specified labor contracts, therefore according to the general provisions of the Jordanian Labor Law, mentioned in this research, the laborer whose fixed-term contract has expired before this period cannot return to his work.

Another issue arises in regard of the situation with the laborer being in the probationary period until the issuance of defense orders, in this case the employer can terminate the laborer's work because basically he is under a probationary period to test his appropriateness to do the work, if the employer had dispensed with the laborer during the probation period until defense orders were issued, the laborer cannot be returned to his work after the defense orders are issued.

Some have criticized the Jordanian Labor Law's treatment of the probationary requirement in two respects, the first in terms of limiting the trial period to contracts of non-fixed term and not including fixed-term contracts in Article (35) related to the treatment of probationary periods, and on the other hand, that the Jordanian legislator did not prevent the appointment of the labor under a condition experiment with an explicit text, as the Egyptian Labor Law did in Article (33) of it, but this treatment left to the general rules.

On the other hand, the defense orders gave a special provision for fixed-term contracts, by forcing the employer to renew the fixed-term contract despite the expiration of its term after the date of 4-30-2020, provided that the fixed- term labor contract has been renewed for three periods or more, and the renewal continues with the same contractual period until the suspension of work by defense orders, and therefore any termination of a fixed-term labor contract that expired after 4-30-2020 with three renewed contractual periods, in order to be fair to the laborer in these exceptional circumstances, the laborer shall return to his work by virtue of defense orders. otherwise, if the employer did not obey legal measures are taken against him, and he shall be bond to renew the fixed-term contract for a period similar to the last contract of work for the laborer or to the date of stopping work in defense orders, that is, the two periods expire after each other. The authors believe that the laborer's presence for three years is a long period, despite the fact that the contract is for a fixed term and his dismissal from his work is an arbitrary dismissal because of these circumstances, and since the provisions of arbitrary dismissal are only in non-fixed term labor contract, the defense order created this provision, as well as the labor law that dealt with the dismissal of the laborer during the validity of the labor contract by the employer to pay all his remaining salaries, nonetheless, the law did not deal with the provisions after the end of the contract in accordance with the principle of the contract is the law of the contracting parties and that the contract expires by the end of its term. So, the defense order came in fairness to the working class associated with fixed-term labor contracts, and these contracts expired after the emergence of the epidemic (M. L. Shanab, 2010).

The authors believe that extending the contract with the same contractual terms may generate practical problems, for example, if an establishment granted contracts for different periods to complete a work in a certain period, and the contracts were for five or four years, therefore, according to this text, the employer will be obliged to renew with the same contractual periods Therefore, we believe that it is better for the defense orders to specify the extension for a period of one year only, that is, the extension for one year, regardless of the duration of the previous specified contract. As for contracts that are less than a year, such as six or seven months, we suggest extending them for the same period as the previous contract. And also the defense order came to address the expiration of contracts for the period from 4-30-2020. As for the contracts that ended before this date and during the existence of the Corona epidemic, they will be outside the framework of the

text and therefore the termination of the contract will be according to the principle of the contract, the law of the contractors, and therefore the authors believe that the most appropriate was the application of renewal from the beginning of the epidemic Krona and not from a later date.

The authors also deem that the renewal of fixed-term contracts with the same contractual periods was justified at the beginning of the pandemic, but the continuation of these renewals after the great breakthrough in the return of life and the decline of closures does not achieve protection for both parties to the contract, specifically the employer who has become working with a production capacity lower than it was before the epidemic. Therefore, the employer does not need big numbers of labors so the authors suggest to address this issue by issuing an order that renews the fixed-term contracts for one year only from the date of the decision and regardless of the period of the previous fixed-term work contract, and on the other hand, to support employers who renewed work contracts for all labors and during the year proposed in the above exempt them from a certain percentage of this year's tax that is conditional in the event that their labors' contracts are renewed for contractual periods after the one-year period. This is for the purpose of supporting and motivating employers to retain their labors and at the same time protecting them from continuous loss in paying labors' salaries despite the decline or suspension of work. These solutions may be of benefit to the state because it bears the burden of supporting employers by taking advantage of programs provided to them to support defense orders (economic protection programs) announced by the Central Bank of Jordan, as well as the support from the Social Security Institution and all of these government support programs to keep the class working in its work.

IV. Conclusion

The relationship between the laborer and the employer is governed by the Labor Law, the complementary rules of the Labor Law, the rules for work contained in the Civil Law and the general rules contained in the Civil Code of Jordanian legislation, but with the emergence of the epidemic, this paper illustrated how to deal with labor laws in force with this exceptional circumstance in terms of suspending and terminating labor contracts in accordance with the general provisions of all labor contracts; these circumstances can be initially addressed without defense orders through the application of some articles in the Labor Law, such as Article (50) regarding temporary work suspension, nonetheless the provisions of Article (21) which set out general provisions includes the termination of the labor contract under normal and not exceptional circumstances.

We have clarified the specificity of the provisions of indefinite contracts in the presence of the epidemic and the absence of defense orders through the text of Article (31) to terminate of non-fixed term labor contracts, and we proposed to amend the text of Article (31) to include fixed-term and non-fixed term labor contracts.

We have clarified the specificity of the provisions of non-fixed term labor contracts in the presence of the epidemic and the absence of defense orders through the text of Article (23) related to the provisions for the termination of non-fixed term labor contracts, which did not help us much in the presence of the epidemic. And the legislator has clarified provisions for arbitrary dismissal in accordance with Article (25), which is exclusively for non-fixed term labor contracts.

With the issuance of defense orders in the Hashemite Kingdom of Jordan, which suspended and amended legal provisions contained in the labor laws referred to above, defense orders became effective with labor laws that were not stopped by the defense order, so we dealt with the legal provisions in force in the presence of exceptional defense orders through provisions of the general rule that applies to all labor contracts and the effect of defense orders on fixed term and non-fixed term labor contracts.

In the contracts of non-fixed term labor contracts, the defense order canceled the work of Article (23) referred to previously and thus renews the contract and no notice of termination of the contract may be served, and therefore the authors found that the defense order reached a new principle, which is a "supposed arbitrary dismissal" in light of the pandemic's existence for non-fixed term labor contracts.

And as the lock-down is decreasing it is suggested not to return to the application of Article (23) of Labor Law, but rather to the possibility of issuing a defense order allowing employers to give more than a month's notice (for example, three or six months) to terminate non-fixed term labor contracts, and in order to give sufficient time for the laborer to find alternative work with a working establishment naturally in these circumstances, it is suggested also that the last month of the notification to be a leave for the laborer instead of the last week only.

As for the fixed-term labor contracts after the issuance of defense orders, that compel the employer to renew the fixed-term contract despite the expiry of its period after the date of 4-30-2020 and not before, provided that the fixed-term labor contract has been renewed for three or more periods, and the renewal continues with the same contractual period until suspension of defense orders.it is suggested that the provision of defense order was justified at the beginning of the pandemic, but the continuation of these renewals after the great breakthrough does not achieve protection for the parties to the contract, to renew fixed-term contracts for one year only from the date of the decision and regardless of the period of the previous fixed-term work contract.

In general, the authors appraise that these orders served protection for a certain period of the epidemic, and therefore it is time to amend these orders in line with the current reality.

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