

LEGAL ASPECTS OF REGULATING REMOTE WORK: AN OVERVIEW OF QATARI AND SELECTED COMPARATIVE MODELS

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ABSTRACT

This Article focuses on the legal aspects of regulating remote work in light of Qatari law and some selected comparative models. Employment contracts in many of their applications have shifted to remote work or work using electronic means. The current enforcement of employment contracts has placed the international labor market in the face of many difficult choices, particularly in light of the repercussions of the Corona pandemic, associated government actions and diverse sectoral responses. This Article addresses these current developments and concludes with a set of findings and recommendations focusing on strengthening the governing legal framework for remote work, effective enforcement of employment contracts, enhancing the protection of rights of the remote worker, and proposing a legal regulation of remote work to ensure a properly regulated working relationship.

Keywords: Qatari Law, Remote Work, Labor Law, Coronavirus Crisis

INTRODUCTION

The employment contract is one of the most important contracts organized by International Standards (Mattar, 2021; Mattar, 2020) and National legislator to protect the rights of the workers (Njida, 2017). The images of this contract have evolved to the point where they are performed remotely. In the wake of the Coronavirus pandemic outbreak and the accompanying actions in almost every country around the globe, the importance of "remote work" to address the imbalances in labor markets becomes evident. According to the ILO, the world has been impacted by the pandemic, affecting more than 2.7 billion workers (ILO, 2020).

In this context, legislative responses have begun to materialize at the international and domestic levels in an attempt to remedy the course of the labor market, through legal frameworks that try to harmonize the interests of the parties, as the current developments necessitated shifts in working patterns such as homework and telework, flexible work and output-based work (ILO, 2020). Telework, with its challenges and imperatives, may make it important to examine contemporary shifts in employment contracts. This is highlighted in an era when most of our life's activities are carried out remotely, and legal techno developments surround them from everywhere (Abdullah, 2018).

A remote contract, like a normal labor contract, is a contract between two parties - the employer and the worker - in the framework of private transactions, and the contract is binding arranging obligations and rights for each of the contracting party. This is a contract in which time plays an important role, the worker works for a period of time and is entitled to get paid for his work. Remote acts may be carried out in this way "remotely" because of the problems raised regarding the performance of the ordinary employment contract under the CORONA pandemic as an exceptional general event that cannot be expected and makes the performance of the obligation by one or both parties to the contract cumbersome or impossible. Remote work may also be intended to be performed remotely through a contractual condition in an ordinary

employment contract (Abdullah, 2020).

First: The Conceptual Framework of the Necessities and Effects of the Transformation to Remote Work

Working patterns have evolved considerably until "telework" has become a particularly important species in the context of the Corona pandemic (European Commission, 2020). This pandemic has engulfed all States in a way that was not in the contractors' original plans, and in such a way that the parties to the contract were unable to perform their obligations in the agreed manner. The reason for the inability to meet contractual obligations as agreed is due either to the pandemic itself and the spread of the disease in varying proportions or to the accompanying government efforts by States at the local as well as the international levels — in the public interest — to reduce the spread of the virus, try to combat it and mitigate its effects on society, particularly the health, economic and social impacts. The pandemic represents an extraordinary general event that cannot be expected and the government actions that accompanied it would make the performance of contractual obligations by one or both parties to the contract cumbersome or impossible.

There are obstacles that have arisen in the performance of employment contracts either because the employer has stopped the work and fulfilling his obligations to his workers to pay their wages has become extremely difficult and sometimes impossible. There are many questions that may be raised in this context. There are limitations that must be taken into account when considering addressing the challenges posed by this change in circumstances, namely, the need for the parties to the contract to act in good faith in their performance of the contracts; will implementation be economically burdensome to the detriment of the interested parties? Is there a clause in the contract in which it is agreed to that one of the contracting parties should bear the liability of new circumstances if it is considered force majeure? These are determinants that must be taken into account in the application of any legislative, judicial or conventional solutions in the implementation of contractual obligations in light of this pandemic and its consequences. By examining legislative solutions in Qatari law, for example, several options are suggested.

In a first approach, the termination of the contractual relation in the employment contract, is proposed. This is either by agreement, which means that the contract expires by agreement, *i.e.*, the will of the parties to the employment contract - the employer and the worker - to terminate the contract as per article 189 of the Qatari Civil Law (Law, 2004). The expiry of the contractual relation may also occur by the mechanism of avoidance of the contract by the employer if the worker violates the work safety instructions specified by the employer, by law or by government instructions, with these instructions written in an apparent place and shown to the worker, the penalty is dismissal from work. The employee should be warned in writing. For example, the worker's breach of the required safety procedures in the face of Coronavirus, or the avoidance of the contract by the worker in the event that the employer violates his obligations to provide health care to the worker (precautionary measures against Corona). In addition, the expiry of the contractual relationship by force of law may occur because of a foreign cause such as an administrative decision to close the work facility or the employer's decision to stop the work, due to the economic crisis. The expiry of the contractual relationship may also be at the end of the contract by the expiry of its actual agreed period. If the contract is fixed term, it expires without the need for warning unless it agreed that the worker must be notified when the contract term expires. If the contract is not fixed, according to the article 49 of the Qatari Labour Code (Labor Law, 2004), each of its parties may terminate it without giving reasons. In this case, the party wishing to terminate the contract must notify the other party in writing. Notification will be issued at least one month before termination of the contract if the term of service is five years or

less. If the duration of service exceeds five years, the duration of the notification is at least two months. Under article 50 of the Labour Law. The employer must pay the worker his full wages for the duration of the notification if the worker has done his work during this period as usual (Abdullah, 2020).

In a second approach, which is the continuation of the contractual relationship in the employment contract, this may be done by continuing the contract without prejudice, agreeing to renew it in accordance with article 381 of the Civil Code, or agreeing to grant either party an agreement to implement some or all of the contract obligations. The continuation of the contractual relationship may be through resorting to the judiciary in the event of an exceptional circumstance that has made the performance of the obligations of the employment contract cumbersome for one of its parties with the possibility of its implementation, *i.e.*, the debtor is threatened by a heavy and unusual loss that led to an economic balance of the contract. The application of the doctrine of change of circumstances grants the judge the authority to amend contractual obligations in such cases and on a case-by-case basis to mitigate the obligation of one of the parties to the contract or increases the obligation of the other party or delays the performance of the obligation in order to achieve the contractual balance between the parties. The judge can combine the reduction of the debtor's obligation with the increased obligation of the creditor in order to balance the obligations of the parties. The judge may also consider it more appropriate to suspend the execution of the contract temporarily for a certain period until the emergency situation is resolved. This assumes that the circumstance (pandemic or otherwise) is a temporary event that will disappear within a certain period of time, and that the creditor will not be significantly affected by the temporary suspension of the contract. The continuation of the contractual relationship may also be legal, *i.e.*, the continuation of the contract in accordance with the provisions of the law, such as when the contract expires in duration or full implementation of its purposes in accordance with the Labor Law or government instructions. For instance, where the Ministry of Administrative Development, Labor and Social Affairs of the State of Qatar allowed workers who have been dismissed, quarantined, or receive treatment constantly the rights of obtaining basic wages and allowances, regardless of whether or not they are eligible for sick leave (Abdullah, 2020).

Second: The Legislative Responses to the Conceptualization of Telework

The term teleworking, used by the International Labour Organization in 2017 and reaffirmed in its practical guide to remote work during the July 2020 Corona pandemic, indicates that remote work is meant to be carried out outside the employer's residence, using ICT, including smartphones, tablets and regular and portable computers. This work is carried out remotely by agreement of the employer and the worker and includes the determination of the place of work either in the worker's home or elsewhere, and the working hours, dates and communication tools used, the work to be done, the mechanisms for supervising the completion of the work and the reporting arrangements for the work done must also be determined. In the same vein, the international legislator had referred to "work at home" in the ILO Convention on Domestic Work No. 177 of 1996, referring to the term "work at home" as work performed by the worker at home or elsewhere other than the employer's workplace in exchange for a fee, in accordance with the employer's instructions and directives (Al-Manasier, 2019).

According to the European Framework Agreement for Remote Work issued on 16 July 2002, specifically in Article II, telework is based on the performance of the work by the worker using technical means of communication and information tools mainly under an employment contract, provided that the work is carried out in a different place from the employer's workplace (Flayyih & Qusmar, 2018).

The French Labour Code in Articles L1222-11/10/9 also detailed the provisions of telework, defining it as a form of work outside the workplace on an agreement basis using information and communication techniques, with the remote worker enjoying the same rights as the worker who performs his work at the company's premises, particularly his right to pay, training, respect for private life, health and security at work and all the rights established for the average worker. One of the most prominent rights is to consider any incident to which a worker is remotely injured in the place where he or she performs his or her work and during his professional activity as an accident of work. The employer is also obliged to inform the worker who is doing his work remotely of any restrictions on the use of equipment, purifiers or electronic communication services and sanctions that are imposed in the event that the worker does not comply with these restrictions. French law also addressed the existence of exceptional circumstances, particularly the risk of an epidemic or the presence of force majeure and considered the practice of remote work, in these cases to be a necessity for the company's continued activity (Al-Manasier, 2019; Emmert, 2014).

U.S. law presented the legal aspects of telework within the Law on Support of Work of 2010 in Article 6505/3, noting that the telework contract is based on an agreement on flexible working arrangements through which the worker implements its obligations and carry out its responsibilities to the employer from a non-employer's location (Act, 2010).

As for the Qatar's legislative response to the requirements of telework, in April 2020, the Ministry of Administrative Development, Labour and Social Affairs issued guidelines on temporary remote work measures in response to the emerging Coronavirus crisis. In accordance with these directives, telework is defined as "the work of workers from home, for a fee, and leads to the completion of a job or the performance of a service to the employer that ensures the continuity of the work." In this context, a set of limitations has been put in place governing the powers, competences, and functions of both parties to the employment contract with regard to the practice of telework. Most importantly, the terms and conditions of the employment contract, which were in place prior to the transition to remote employment, must not be amended in terms of the nature of the work and how it is completed, as well as the non-infringement of the worker's wages and entitlements, including the provision of food, housing or the payment of allowances, as a result of remote work. In addition, it is important to agree on working hours and times, and the rules governing overtime. A follow-up mechanism should also be put in place in accordance with a specific plan, with the employer providing the necessary equipment and materials to complete his work, including electronic devices and technologies, and training on how to use them. With the provision of protective electronic technologies for the content of work files rules need to be established to protect the safety and health of remote workers, which could include, for example, weekly virtual group meetings and daily contacts to check on them. It is important that remote workers do their jobs during working hours with the same efficiency and productivity at work, and not to confuse personal and professional work during working hours. It should be emphasized that telework is not a leave of absence, as telework must not be used as an alternative to annual, sick or any other type of leave. Applications for leave must be submitted to the person responsible for continuing the work (Ministry of Administrative development, Labor & Social Affairs, 2020).

According to Qatar Ministry of Health's Remote Work Guidelines, remote work is "work that can be done and is done away from the workplace, free of the use of electronic systems and smart digital applications, so that communication between the employee and his work destination is electronic" (Ministry of Public Health, 2020).

In the Jordanian legislation, "telework" was addressed within the context of "flexible working" (Karak Castle Center, 2018), one of the recognized types of work in addition to the work in its traditional sense. Under flexible working system No. 22 of 2017 and flexible working

instructions for 2018 and in light of Labor Law No. 8 of 1996 and its amendments, the Jordanian legislation was one of the first Arab legislation to address the definition of a remote employment contract, as one of the forms of a flexible work. The flexible working contract is defined as "a written agreement under which the worker in the flexible working contract undertakes to work for the employer, under his supervision and management for a fee, and the contract is fixed-term, indefinite, or for a particular or non-specific work in accordance with the forms of flexible working specified in this law." According to Article 4/Paragraph (E) of the same law, telework is the work in which "the work is done remotely after the employer's consent and without the need for the worker to be present in the workplace".

It should be noted that the Jordanian law has placed telework within the scope of flexible working and has established a legal regulation of the contract governing such work, which means that the contract of telework is considered one of the so-called flexible working contracts. The flexible working contract was also defined as "the intellectual or physical effort of the paid worker within one of the specified forms of flexible working contract. "The law referred to the parties to the flexible working contract - and the telework contract as a form of flexible working contract - identifying the first party as the employer, the natural or moral person who is employed in any capacity, and the second party to the contract is the worker, that is "every male or female person who performs paid work and belongs to the employer within one of the specified forms of flexible working contract." A flexible working contract is a written agreement under which the worker in the flexible working contract undertakes to work for the employer, under his supervision and management for a fee. The contract is fixed-term, indefinite, or for a particular or non-specific work in accordance with the forms of flexible working specified in the flexible working system.

As for the wages, the law mentioned that it includes all that the worker in the flexible working contract deserves for his work in cash or in kind plus other benefits of any kind if provided for by labor law or employment contract except for wages due for overtime. The Jordanian legislator has identified the categories subject to the flexible working system if agreed upon to include (1) a worker who has spent three consecutive years with the employer (2) a worker with family responsibilities: this includes pregnant women - the worker who takes care of a child or the care of a family member or the elderly due to disability or illness (3) the worker who is a regular university student (4) the worker with disabilities. This means that flexible work, including telework, does not cover all categories, and it may now be important to amend this law or incorporate its provisions into the provisions of the Labour Code.

Third: Legal Implications of a Remote Employment Contract

What emerges from these different legislative approaches is that telework is based on several pillars. First, that there is a practical, actual and realistic divergence between the employer and the worker. Second, there is a supervisory and hypothetical convergence of the employer on the worker that achieves legal dependency, which is the essence of the employment contract in its traditional and electronic form. Third, there is a detailed agreement on the place, time, dates, nature of the work, how it is accomplished, the tools to communicate with the employer, and the agreed wages for this work.

The agreement entails that telework should be clearly paid for, while ensuring that the worker's private life, personal data and correspondence are fully protected (Al-Manasier, 2019). The public safety of the worker should also be protected remotely from the risks and accidents of work through preventive digital measures, the establishment of remote inspection controls and ensuring supervision of the employer in order to achieve legal dependency on the employer. It is possible to agree on the performance of work remotely either from home, a equipped site or even

outside the country as in multinational companies, but it is important that the worker be obliged to perform the work and respond to the employer during the agreed working hours.

CONCLUSIONS AND RECOMMENDATIONS

Upon review of the aforementioned comparative legislative solutions, one may conclude that there is a need for legislative intervention in Qatar to amend the labor law by adding a section on specialized legal provisions governing remote work. This section should include contracting limitations, the privacy of work remotely, the protection of the worker's private life, his professional integrity, his rights to pay and leave, the guarantee of the employer's rights to complete the required work and the right of the employer to supervise the work within the framework of the worker's legal and economic dependency towards the employer. As indicated, in the Jordanian legislation, categories of those who can work remotely should not be identified by certain groups and this should be left to contractual freedom in light of the agreement between the employer and the worker and in accordance with the interests of the parties and the interests of the work itself.

At the international level, it is important to develop international legislative tools for remote work in accordance with a new ILO convention that contains rules protecting the rights of the parties to the teleworking contract, including economic and social rights. One may also argue that the age of work should be reviewed taking into consideration the specifics of remote work and the categories allowed to do so, particularly among young people, to ensure that they are supervised and fully protected from any violation or a wrongful act.

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