

National Labour Law Profile: The State of Israel

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I. GENERAL FRAMEWORK

Constitution

When the State of Israel was founded on May 14, 1948 it inherited the British-model unwritten constitution, which it has been slowly replacing with a written constitution. For a variety of political and ideological reasons the first Knesset – Israeli Parliament – decided that the written constitution would be passed chapter by chapter. Till now the Knesset has enacted eleven Basic Laws, which comprise the existing partial written constitution. The early Basic Laws established the branches of government (executive branch, parliament and courts), basic state institutions, such as the president and army and basic elements of democracy, such as elections. In 1992, the Knesset passed two important Basic Laws: the **Basic Law: Human Dignity and Freedom** and the **Basic Law: Freedom of Occupation**. The Basic Laws not only set out constitutional rights but also include entrenchment clauses, which make it difficult for the Knesset to abolish rights and also enable courts to declare statutes “unconstitutional”. This was considered a constitutional revolution and a significant departure from the British model of parliamentary supremacy to the American model of constitutional supremacy.

The *Basic Law: Human Dignity and Freedom* specifically guarantees the rights to human dignity, life, property, freedom of movement and privacy. The right to human dignity has been broadly interpreted to provide an additional array of rights and liberties, including equality, freedom of association, the right to equal opportunity at the work place and other social rights.

Constitutional rights are not absolute and may be limited by primary legislation, which furthers the values of the State of Israel and is intended for a proper purpose. Moreover, such legislations must also meet the proportionality test. This means a balancing of the various constitutional rights. The **Basic Law: Human Dignity and Freedom** do not have the power to nullify or alter laws enacted prior to its’ enactment but such statutes are to be interpreted in light of the Basic Law.

The *Basic Law: Freedom of Occupation* makes freedom of occupation a constitutional right. This has been held by the Supreme Court to restrict unreasonable or not proportionate legislation to limit people from doing certain types of work, such as a real estate agent or importer of non-kosher food. A recent landmark judgment of the National Labour Court held that covenants not to compete were not enforceable unless the worker revealed trade secrets to his new employer. This judgment emphasized the constitutional right of freedom of occupation, freedom of movement for workers and their right to choose their workplace.¹

The Government

The government, which is the executive branch, is comprised of a Prime Minister and Cabinet Ministers, whose authorities, obligations, and election process are all regulated by the **Basic Law: Government**.

Until the 1996 elections voting was for political parties' Knesset list, with the party receiving the most members proposing a coalition headed by a Prime Minister of that party. Since 1996 the vote was split, with a separate ballot for the Knesset members and a direct election of the Prime Minister. Prior to the 1996 elections, the **Basic Law: Government** was reformed and a direct election method was enacted. The two-ballot election process was not successful and the Knesset passed a law reverting back to the one ballot system, which is the method to be used in the scheduled 2003 election.

The Prime Minister and the Knesset are elected for four-year terms, but both have the power to force new elections. Cabinet members are appointed and dismissed by the Prime Minister.

The Head of State

The Head of State in Israel is the President, elected by the Knesset for a single seven year term. This position is mainly ceremonial and the President signs all laws enacted by the Knesset and international treaties, which have been approved by the Knesset. In addition, he swears in judges and has the authority to pardon felons and reduce prison sentences.

The Knesset can remove the President from office with a majority vote of eighty Knesset members. In the event that the President cannot fulfill his/her duties, he is replaced by the Chairperson of the Knesset.

Composition of the Legislature

The Knesset, the Israeli legislature, derives its authority from *The Basic Law: The Knesset*, which regulates its' composition, election processes, and authorities. Knesset members are elected for four year terms on the basis of general, national, secret, and proportional elections.

¹ Dan Frumer and checkpoint Ltd. V. Radguard Ltd. National Labour Court, ILLR vol 20, p. 45.

As a rule, laws are passed in the Knesset on the basis of the majority of members present at the time of the vote. Certain issues demand a special majority such as the alteration or abolition of some Basic Laws.

Prior to the enactment of a law, it must pass a preliminary process. If the government or one of the Knesset committees submits the proposed law, it must pass two initial votes in the Knesset prior to the third and final vote. If a Knesset member submits a private proposal, it must be approved by the Chairperson of the Knesset and must also pass a preliminary vote, which sends it to the relevant Knesset committee to be prepared for the first and second vote.

The Judiciary

The judicial branch, which receives its' authority from the *Basic Law: Judiciary*, consists of the general court system, labour courts and religious courts. The general system and the Labour courts are administered by the Courts Authority, which is supervised by the Minister of Justice and the President of the Supreme Court. The general courts have three levels: the Magistrate Courts, which are trial courts, the District Courts, which hear both trials and appeals and the Supreme Court, which hears appeals and acts as the High Court of Justice. The latter hears constitutional cases, protects individuals from government actions and co-ordinates the court systems. Family Courts are a department of the Magistrates Courts and Administrative Courts are part of the District Courts. The Labour Courts have two levels: the trial level are the Regional Labour Courts and the appeal level is the National Labour Court.

Judges are appointed by a committee of three Supreme Court justices, the Minister of Justice, another minister, two Knesset members and two members of the Bar Association. Their appointment continues until they reach the compulsory retirement age of 70.

Key figures

Israel's population in 2001 was 6,496,600, with a Jewish majority and a Moslem, Christian and Druze minority of about 1,226,100. The civilian labor force was approximately 2,500,000, which is 55% of the population 15 years or older. There was about 200,000 migrant workers, mainly from the Far East and Eastern Europe. The average monthly wage per worker was approximately US \$1,500..²

II. LABOUR REGULATION

General

Employment relations in Israel are regulated by a number of sources: constitutional rights, as determined by the Basic Laws mentioned above; Statutory rights, as set out in statutes and regulations; rights set by collective agreements and extension orders of collective agreements; and individual labour contracts. These legal sources are interpreted by the National Labour Court, which is the main judicial body developing labour and social security law. International standards, especially ILO conventions

² The Israeli currency is the shekel. \$1.500 US is approximately 6,800 NIS.

adopted by Israel, but also EU standards, are used by the government and courts as guidelines, even though they are not binding.

Early developments and The formative years

Israel is the only country we know of which had labour unions prior to industry. Jewish immigrants to Turkish occupied Palestine arrived in the late 19th century, early 20th century, to find an undeveloped land, with a small agricultural economy. In addition to forming agricultural communes – kibbutzim – they founded a union – the Jewish Worker's Federation, known as the Histadrut – which then founded union controlled and owned factories and co-operatives, which provided work for union members. The Histadrut was the Jewish population's tool for economic, social and employment development in the pre-state period. Its' activities continued after the state was founded in 1948 and, as late as the early 1980's Histadrut companies were about 25% of the Israeli economy.

The Histadrut was one of the most influential forces in pre-state Israel. After the state was founded in 1948, the Histadrut continued to play an important role, especially as an integral part of the labour movement, which formed the government coalition until 1977. This influence and the ideology of the labour movement resulted in the Knesset adopting a comprehensive system of protective labour legislation. The Histadrut supported labour legislation for all workers, not only its' members. It also organized most Jewish workers in the pre-state period and both Jewish and Arab workers after the state was founded. As a result about 85% of the workforce was organized in the early period of the state and union density continued high until 1995. The Histadrut was a federation of labour which provided direct membership to blue collar and white collar unions, including professional unions. It also provided social services such as health-care, pensions, and insurance schemes, employment agencies, sports and cultural activities and senior citizen housing.

High union density resulted in collective agreements governing most workplaces. Moreover, the Histadrut preferred to keep the courts out of collective labour law, so that there was a model of state non-intervention in this area. The statutes governing collective labour law were the **Collective Agreements Law - 1957** and the **Settlement of Labour Disputes Law - 1957**. Until the early 1970's there were no limits on strikes and the law gave unions and strikers protection for strike activity.

By the early 1990's union density had declined to about 60% of the work force. A major cause of further decline was that until 1995, union membership was a condition for eligibility for medical coverage. In January 1, 1995 this linkage was terminated by the National Compulsory Health Insurance Law, which guaranteed every resident medical coverage. Over night Histadrut membership declined from about 1,250,000 to 600,000. From this time on union density has been about 33%, with union density in the private sector declining to about 10-15%. In addition the Histadrut severed its' link with the Labour Party, reducing its ability to influence labour legislation. Today the Histadrut has been renamed "The New Histadrut." Its power is mainly in the public sector but also has wide support from the low income workers. The Histadrut continues to control the workers' pension funds, which have about 700,000 members. It also has begun to offer its affiliated unions and rank and file legal services. It is still the most prominent union in Israel, but there are important independent unions, such

as The Grade School Teachers' Union, the High School Teachers' Union, the Doctors' Union and the Leumit National General Union.

Protective Labour Legislation

In its' first decade as a State Israel adopted many protective labour statutes, using ILO conventions and Western standards as a guideline. The following laws were passed: **Discharged Soldiers (Reinstatement in Employment), 5709-1949; The Hours of Work and Rest Law, 5711-1951; The Annual Leave Law, 5711-1951; Apprenticeship Law, 5713-1953; Protection of Youth Labour Law, 5713-1953; The Employment of Woman Law, 5714-1954; and The Wage Protection Law, 5718-1958.** Among the main achievements of this period was the prohibiting of dismissing pregnant workers, which was strictly enforced. From the foundation of the state the existing Mandatory period work safety laws were modernized.

During the second decade Israel continued to adopt both individual and collective labour laws, such as: The Labour Inspection (Organization) Law, 5714-1954; The Severance Pay Law, 5723-1963; The Collective Agreement Law, 5717-1957; The Settlement of Labour Disputes Law, 5717-1957; Male and Female Workers (Equal Pay) Law, 5724-1964.

In the following period, between the late 1960's and the early 1990's, the Knesset expanded individual labour protection, adopted significant laws prohibiting discrimination at the work place and established the Labour Courts, by the following statutes: **The Labour Courts Law, 5729-1969; The Work Safety Ordinance (New Version), 5730-1970; The Sick Pay Law, 5736-1976; The Minimum Wage Law, 5747-1987; Male and Female Workers (Equal Retirement Age) Law, 1987; The Employment (Equal Opportunities) Law, 5748-1988; Single Parent Family Law, 1992; Absence Because of a Child's Sickness Law, 1993; Absence Because of a Parent's Sickness Law, 1993.**

Recent labour legislation, from 1995 to date, expanded equality at the workplace and attempted to protect labour-only contractual workers, workers in irregular work relationships and migrant workers. Such statutes included: **Employment of Employees by Manpower Contractors Law, 1996; Amendment to the Foreign Workers (Prohibition of Unlawful Employment and Assurance of Fair Conditions) Law, 1991; Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law, 1997; The Prevention of Sexual Harassment Law, 5758-1998; Equal Rights for Persons With Disabilities Law, 1998; Absence Because of a Spouses Sickness Law, 1998.** Recently laws were passed concerning basic protections and labour rights, such as: **The Advanced Notice of Discharge and Resignation Law, 2001 and The Notice of Basic Employment Terms Law, 2002.**

From its' first decade Israel adopted the progressive European social security model. The National Insurance Institute was founded in the 1950's with basic branches of social welfare, such as worker's compensation. Today this social security legislation encompasses the following benefits: maternity, disability, free burial, medical insurance, unemployment and minimum annual income.

The Labour Courts and their contribution to labour regulation

In 1969 the Knesset passed the *Labour Courts Law* and thereby formed a separate judicial system dedicated to individual and collective labour disputes and issues. These Labour Courts have played a significant role in the development of labour and social security law in Israel.

Prior to the Labour Courts, disputes relating to labour and social security were litigated in the general judicial system or tribunals, which did not develop law relating to collective disputes and handed down few cases relating to labour law and social security. In the mid 1960's the Histadrut and Manufacturers' Association signed a collective agreement undertaking to request the Knesset to establish a labour court. At this time strikes were common, especially in the public sector and the employers and unions hoped that labour courts would reduce the number of industrial disputes. Among the purposes for establishing Labour Courts were: [1] to settle labour disputes by legal means instead of strikes, [2] to provide expertise in adjudicating labour and social security disputes, [3] to have courts with simple and easy to understand procedures, so that workers could represent themselves and [4] to be more expedient and efficient than regular courts. In a break from the general court system, in which judges make all decisions without juries, the Labour Courts have lay members, in equal numbers, one from labour and one from management, sitting with professional judges. Labour Courts were, therefore, regarded as a partnership between the State, unions and management.

The Labour Court System has a trial instance, consisting of five Regional Labour Courts, and an appeals instance, the National Labour Court, which sits in Jerusalem. The Regional Labour Court bench is composed of one professional judge and two lay members, one from labour and one from management. The National Labour Court sits with three professional judges and two lay members. In criminal cases there are no lay members and only the judges hear these cases. In national wide collective disputes the National Labour Court sits with three professional judges and four lay members.

The judges are appointed by the same committee which appoints general court judges; consisting of three Supreme Court justices, the Ministers of Justice and Labour, two members of the Bar Association and two Knesset members. The appointment is until compulsory retirement at the age of 70. Today there are 55 judges. The lay members are appointed by the Ministers of Justice and Labour for terms of three years.

Labour Courts jurisdiction is very broad and includes individual disputes between workers and employers, protective labour laws, collective disputes, disputes between a union and its members or an employer and his association, pension matters, workplace equality, administrative matters relating to workers, such as job tenders, occupational safety and health, employment agencies, protection for migrant workers, social security and the State medical insurance. With regard to tort actions, the Courts have jurisdiction over the following actions where they are related to a labour dispute: trespassing, breaching of statutory duty, and inducing the breach of a contract. Approximately 30% of the cases filed in the Labour Courts relate to social security. Labour Courts hear cases concerning workers' compensation, unemployment insurance, disability benefits, maternity benefits, death benefits, guaranteed annual

income, senior citizens pensions, and children's benefits. The Labour Courts also hear matters concerning ratifying or canceling arbitration decisions.

In addition to being the appeal instance the National Labour Court also has original jurisdiction over nation wide strikes and collective disputes. Regional Labour courts receive about 90,000 cases a year and the National Labour Court receives about 2,000 a year. Judgments of the National Labour Court are not appealable; however, a party may petition the Supreme Court sitting as a High Court of Justice to hear petitions relating to constitutional issues or important labour law or general law matters. In practice the Supreme Court hands down one or two important judgments a year on labour or social security law matters.

Regarding criminal labour law cases, such as work safety, only judges sit. There is an appeal by right to the National Labour Court and by permission to the Supreme Court.

Procedural aspects are regulated by the special regulations for the Labour Courts and are much simpler and easier to understand than those of the general courts. Section 33 of the **Labour Courts Law** states that in any procedural matter not regulated by the law or its regulations, the Court shall decide according to what seems just and fair. Section 32 of the **Labour Courts Law** states that the courts are not bound to evidence rules. In practice, the basic principles of evidence apply in the Labour Courts, but the judges may be liberal in admitting evidence.

The Labour Courts are developing alternate dispute resolution (ADR) programs. Lay members do mediation and settled about 4,500 cases in 2001. All lay members acting as mediators are required to take mediation courses. About 400 cases were settled in 2001 by private mediators, to whom the courts referred the parties. The courts also referred parties to arbitration. Mediation is not compulsory, but actively encouraged by the courts.

The Labour Courts are developing a case management program, run by lawyers employed by the courts. Registrars and judges conduct pre-trial hearings to settle cases or prepare them for trial.

The National Labour Court created Israeli collective labour law. It also developed individual labour law and social security law. Only a few judgments of the Supreme Court were published until 1969 when the National Labour Court was established publishes an annual volume each year and is beginning to publish two annual volumes. The Labour Courts have made significant contribution to the stabilization of labour relations and settlement of collective disputes thru negotiating and adjudication. Their most important role is to stop a strike or lockout and return the parties to the bargaining table, which is accomplished by the judge suggesting a temporary compromise or giving a court order. The Labour Courts also interpret collective agreements and decide cases involving workers' rights when there is a transfer of ownership, privatization, collective dismissals, or violation of freedom of association.

Recent legislative and case law reforms:

A. Legislative reform

Recent statutes have mainly related to current problems in the Israeli labour market. Such problems are labour-only employment, irregular/non-traditional work relationships and migrant workers. Other legislation continues the policy of ensuring equality at the work place. Finally, a few laws have been passed expanding general protective labour legislation.

i. Labor- only -contracting

It is estimated that irregular and labour-only work relationships currently comprise 10% of the workforce. About a third of government workers are manpower agency employees. Such triangular work relationships are expanding. There is also a trend towards outsourcing. These models created problems concerning employment conditions and job security for workers.

Originally Labour Court cases held that the manpower agency was the employer of a worker in a triangular work relation, the receiver of work having no contractual relationship with this worker. Since the mid 1990's the National Labour Court has changed this policy and held that in certain circumstance the manpower agency and work receiver were joint employers, responsible jointly or separately to the worker. The National Labour Court said that "formal" contractual relationships in triangular work relationships should not be the only or main factor in determining whether the work receiver is responsible to the worker. Social policy considerations were given a significant role in determining the obligations of the work receiver. The real roles of each party were given weight, with the court examining who actually received the worker's work and not only who the worker had a labour contract with. For example, in a recent judgment handed down by the Tel-Aviv Regional Labour Court, it was decided that stenographers employed by the court system for long periods of time have become government employees. The National Labour Court and the Supreme Court also expanded the type of people doing work who were defined as "workers", thereby extending the scope of protective labour legislation.

As a result of Histadrut and public pressure the Knesset passed in 1996 the Employment by Labour-Only-Contracting Law, which has thereafter been amended. Regulations were issued to make the law more effective. This made into law some of the legal theories which the National Labour Court had developed and enumerated for the purpose of futhering rights of workers in triangular work relationships. The law requires labour-only contractors to obtain a license and deposit a substantial sum of money as a bond to ensure they can fulfill their obligations to their workers. According to this law contract-only workers are entitled to most of the terms granted to workers at their workplace by the collective agreements applying at the workplace. It did not, however, include protection from dismissal.

This law was criticized by the unions and social interest groups for not granting workers adequate protections. In 2000, the Knesset revised the law, significantly improving protections granted to employees in these irregular work relationships. The triangular relationship is now limited to a nine-month period after which the worker

becomes an employee of the employer at whose workplace he is working. Also, the contracted employee is entitled to the protection of either the collective agreement applying at his workplace or a collective agreement with the labour-only contractor.

This reform went into effect as of the 28.7.2001. There has been speculation as to the implications that this law will now have on the workforce in general and on the public sector in particular. The nine month period was recently extended a few months and as this period ends there is employer pressure for another extension. A heated public debate is taking place on this issue and the movement for improvement in labour-only employment conditions has played a significant part in the Histadrut's public campaign both against the government, employer organizations and competing unions.

ii. Migrant workers

In the late 1990's migrant workers increased from an insignificant part of the workforce, less than 1%, to about 10% of the workforce.³ Approximately half of these workers entered Israel illegally and have no work permit. According to statutes and case law, migrant workers are entitled to all the protective labour law rights, such as minimum wages, hours of work, severance pay and vacations. However, they have difficulty achieving these rights in the courts because of a language problem, unfamiliarity with Israel law and courts and lack of union or legal representation.

In 1991 the Knesset passed the *Foreign Workers' Law (Unlawful Employment and the Guarantee of Decent Conditions)*, which was amended in 2000. The purpose of this law is to guarantee that migrant workers obtain their rights under protective labour legislation and to compel employers to provide migrant employees with decent employment conditions. Employers are obligated to provide the employee with a written contract specifying the precise employment terms and conditions. Limits were placed on the expenses employers can compel workers to pay for housing. Employers are required to contribute a percentage of the migrant worker's wages to a government fund which will grant them certain social benefits, including social welfare benefits.. The law encourages employers to sign collective agreements regulating working conditions of migrant workers.

iii. Freedom of association

Recent National Labour Court judgments guarantee workers' right to organize and prohibit an employer from dismissing striking workers. Such protection had not been granted by statute. These decisions were based upon the constitutional freedom of association. Where a collective agreement existed and the employer attempted to oust the union or dismiss workers for participating in a strike the court based its judgment upon the long term obligation to maintain a collective relationship in good faith. After these decisions the Knesset amended the Settlement of Labour Disputes Law and guaranteed these protections by statute.

³ These figures do not take into account the Palestinian workers.

iv. Expanding the definition of worker

In judgments handed down in late 2001 and 2002 the National Labour Court held that certain freelancers are workers and entitled to protective labour law rights, if the purpose of such laws is applicable to their situations. The most important of these judgments is **Tzadka v. Gallai Tzahal, the Army Radio Station**.⁴

Other recent National Labour Court decisions held that work performers, defined as “independents” in their contracts for services, were nevertheless workers, because they were an integral part of the work receiver’s business and did not conduct private businesses of their own. This expanded the existing integration test and multiple factor test used to determine who is a worker.

These judgments also dealt with the question of what benefits the person who was considered an independent but became an employee by court judgment was entitled to. The general rule is that he or she is entitled to all rights granted by protective labour law, which are to be calculated at the salary which would have been received if he or she had been defined as a worker. In general there was to be no restitution, ie. the payments received during the period the worker was considered an independent, were not to be recalculated so that the worker would return the excess funds paid because he or she was an independent. There were, however, exceptions to this rule, when the worker compelled the employer to enter into the contract for service and refused to work as an employee; and when it was stated in the contract for services that the payments would be recalculated if the court determined he was an employee.

The trend of current case law is to expand the definition of who is entitled to benefits granted workers so as to cope with current social problems and protect weak groups. A National Labour Court judgment held that even prostitutes are entitled to rights granted by protective labour legislation.⁵

v. Workers’ rights on transfer of enterprise –

While there are no laws regulating workers’ rights upon transfer of enterprise or ownership the National Labour Court has ruled that the union must be informed of the transaction, the employer must negotiate with the union on this matter and workers’ have a certain quasi-property right in their workplace. A recent judgment dealt with workers’ rights when their workplace is privatized.⁶

III. CONTRACT OF EMPLOYMENT

General

There is no labour law governing individual labour contracts and, therefore, the *Contracts (General Part) Law, 1973* and the **Contracts Law (Remedies for Breach of Contract), 1970** apply to labour contracts, as they apply to general contracts. Thus,

⁴ The Tzadka judgment will appear in English in volume 21 of the International Labour Law Reports.

⁵ Eli Ben-Ami v. Rachael Glitzanski, ILLR, vol 17, p. 45.

⁶ Moadem, Seruci, the Skekem Workers local Union v. The Government of Israel, National Labour Court, ILLR, vol 19, p. 259.

such issues as how a contract is formed, that a contract need not be in writing, remedies for violation of contract and the good faith performance requirement are determined by general contract law.

The National Labour Court has developed a body of case law suitable to the particular characteristics of the labour contract. In doing so the court took into account the imbalance of power between the worker and the employer. Such case law has developed the special obligations and rights concerning the good faith requirement for the negotiation and performance of labour contracts. The employment contract may be either written or oral.⁷ The Supreme Court held that an employer cannot unilaterally change important terms and conditions of the employment contract.⁸

One particularly disputed issue was whether the court could reinstate an employee discharged in violation of his labour contract or collective agreement. In the 1970's the National Labour Court decided in the affirmative and was overruled by the Supreme Court. In the 1990's the National Labour Court again ruled that specific performance was an acceptable remedy and the Supreme Court has not overruled these judgments.

Another recent development is the view of certain Supreme Court justices that an employee – employer relationship can exist without an employment contract. The Chief Justice indicated, obiter dictum, that there may be a need to rethink the contractual requirement for establishing an employment relationship.⁹ Another Supreme Court judgment held that a prisoner could be considered a worker in certain circumstances, without specifying which and denied the petition for minimum wages.¹⁰

Fixed and unfixed term contracts of employment:

Employment contracts may be for fixed or unlimited periods of time. If an employment contract specifies a fixed period of employment, the contractual relationship is automatically terminated at the end of this period, without being considered a resignation or a dismissal.

An employment contract, which does not specify a fixed period of duration, is considered to be for an unlimited period of time, but can be terminated by notice of either party. However, in the organized sector of the work force collective agreements which give workers tenure limit the employers' ability to discharge and end the employment contract. Other limitations on terminating an individual labour contract are the duty that it must be done in good faith and not for a discriminatory reason. In the public sector civil servant laws limit the government's ability to civil servants.

Special contracts of employment

As mentioned above, Israeli labour law joint employers in certain instances of triangular work relationships. In such cases a labour contract of employment is

⁷ This does not apply to the contracts of contracted employees and to migrant employees

⁸ Milfelder v. National Labour Court (1987) (II) 41 P.D. 210

⁹ Sarosi and Zadka

¹⁰ Offer Sadut v. The Prison Authority (The Supreme Court, July 5 2001, not yet published).

deemed to exist between the manpower company and the worker and between the labour receiver and the worker. Sometimes they are considered joint employers.

Trial periods

Israeli statutes do not relate to trial periods for individual labour contracts. However, collective agreements generally establish a trial period, after which the worker receives tenure. Trial periods range between 6 months and 5 years. Often they are 6 to 12 months, with the employer empowered to extend them for various time periods. Such tenure limits the employers' power to discharge the worker, which can only be done by following a procedure set out in the collective agreement. Government workers receive tenure according to the requirements set out in the Civil Servants Law (Appointments) and the Civil Service Rules, which are determined by the Civil Service Department of the government.

An employer may dismiss the worker during the trial period or at its' conclusion, depending on the contract terms. This must be done in good faith. When the dismissal is unfair or causes the worker unusual injury the court may award him compensation of a month or two salary.

Suspension of the employment contract:

Under the *Collective Agreements Law* the labour contract is suspended if a worker participates in a strike or is locked out. Therefore, the employee does not violate his contractual obligations to his employer when he participates in a strike. Likewise, lockouts do not terminate the employment relationship.

When the labour contract is suspended by worker participation in a strike, the employer is not required to pay wages, since no work has been performed. National Labor Court judgments have held that an employer is not required to pay wages when the labour contract is suspended because of a strike.

Termination of the contract of employment:

i. Statutory restrictions

Various statutes prohibit the employer from discharging a worker for discriminatory reasons, such as gender, race, religion, age, sexual preference and disability.¹¹ If an employee has revealed corruption in the workplace, his/her termination is limited as well.¹²

Since 1954 Section 9 of the *Employment of Women Law* has prohibited discharge of pregnant workers. Discharge shortly after the women worker has given birth is also restricted. The statute does, however, allow the Minister of Labour to permit

¹¹ The Employment (Equal Opportunities) Law, 1988

¹² Protection of employees (Exposure of Offences of Unethical conduct and Improper Administration) Law, 1997

discharge of pregnant women if he is convinced that the discharge is unrelated to the pregnancy.¹³ Such permits are infrequent.

Following National Labour Decisions the Knesset amended the Settlement of Collective Disputes Law and reiterated that employers are prohibited from discharging workers for joining a union and participating in union organization or a strike.

ii. Restrictions imposed by collective agreements

Collective agreements regulate and limit the employers' ability to discharge workers. Grievance procedures and special dismissal procedures enable the union to represent the workers' interest and negotiate the employers' intent to make an individual or collective dismissal. When agreement is not reached the dispute is often settled in arbitration. Some collective agreements grant the employer the prerogative to dismiss a worker after the consultation and negotiation requirements have been met.

iii. Dismissal when there is no collective agreement

Two thirds of the work force, which is unorganized and not protected by collective agreements, has limited protection against dismissal. If the dismissal is not discriminatory the only protection the worker has is his individual labour contract with its good faith requirement. The labour contract generally allows dismissal if advance notice is given or at the conclusion of the contract term. The National Labour Court has begun to develop case law which expands the good faith requirement, holding that the dismissal cannot be arbitrary and the employee must be informed of the reasons for his dismissal and given a fair hearing and chance to relate to these reasons.

The labour contract can, of course, be terminated by the worker resigning, subject to the requirement to give advance notice. It may also be terminated when the worker retires. Most collective agreements compel retirement at the age of 65.

iv. Advance notice of dismissal or resignation

The Advanced Notice of Discharge or Resignation Law, 2001, requires the employer and worker to give advanced notice of discharge and resignation. The advance notice period is one day for every month worked during the first year of employment, 14 days during the second year, 21 days during the third year and 1 month after 3 years of work. If an employer or worker terminates the contract of employment without giving advanced notice the law requires him to pay the other party a sum equivalent to one month's salary. The employer is entitled to terminate the employment relationship when notice is given if he pays the worker the equivalent of one month's salary. If the worker is discharged for a serious disciplinary violation the employer is not required to give advance notice or pay in lieu thereof. Prior to this law many collective agreements required advanced notice of discharge or resignation. This was so prevalent that the National Labour Court declared it to be a custom, which became a contractual obligation and, therefore, obligated employers to give advance notice,

¹³ The Employment of Woman Law 1953

during which workers continued to work, and received their salary, or alternatively the employer could immediately terminate the employment relationship and pay the worker one month's salary.

v. Severance pay

Under the *Severance Pay Law, 1963* a discharged worker is entitled to severance pay of one month's salary for each year worked. Such severance pay can be reduced or denied when the worker is discharged for a serious disciplinary violation.

When the worker resigns he is not entitled to severance pay, unless he meets one of the specific provisions in the statute, such as resignation because of giving birth, serious illness, or a significant worsening of employment conditions. When a worker dies his dependant survivors are entitled to severance pay. A worker is entitled to severance pay when his employer dies.

When a collective agreement requires the employer to contribute to a pension plan the worker is not entitled to severance pay.

This law's purpose is unclear. Severance pay can be seen as giving the worker funds to live on until he finds another job, or as payment for his contribution to the workplace, or to live on when retired or to make it economically not worthwhile to dismiss the employee or for him to quit. These are contradictory purposes and some legal scholars have criticized the differentiation between the discharged worker and those who quit. There have been movements to replace the Severance Pay law with a compulsory pension law covering all workers.

vi. State employees

Civil Service Laws and rules regulate the discharge of civil servants. These laws and collective agreements create a complex procedure for dismissing government employees, which greatly limit the dismissal option. The dismissal of state employees for disciplinary reasons is regulated by the **State Employees (Discipline) Law, 1970**. Serious discipline of civil servants is governed by a special disciplinary tribunal, whose judgments may be appealed to the Supreme Court..

vii. Collective dismissals

Israeli legislation does not deal with collective dismissals. Collective agreements generally require the employer to inform, consult and negotiate with the union prior to making a collective dismissal. The common procedure is that the employer determines the need for a collective dismissal and the number of workers to be dismissed. The employer must then submit a list of the candidates for dismissal to the union, who can suggest an alternative list. If there is no negotiated agreement an arbitrator determines who shall be dismissed. Under some collective agreements the arbitrator also determines the number of workers to be dismissed. Collective dismissals are uncommon and generally involve limited numbers of workers. When an employer decides to make a collective dismissal there are often strikes and petitions to the Labour Courts by the union.

Remedies in the case of unjust dismissal

Under Israeli contract law the general remedy for breach of contract is compensation, but the court may also grant specific performance or rescission. According to National Labour Court case law the preferred remedy for breach of an individual labour contract is damages but, when special circumstances warrant, the court may return the discharged worker to his workplace. As mentioned above the specific performance remedy has been a controversial issue with a serious disagreement in the 1970's between the National Labour Court and the Supreme Court. The former held that it had the power to reinstate a wrongfully discharged worker while the Supreme Court said this was not possible because of a provision in the **Contracts (General Part) Law** prohibiting specific performance of personal work or service contracts. Labour Court judgments interpret "personal work" narrowly, not including workers who have no "personal" relationship with their employer. Wrongful termination in the public sector has been viewed as allowing reinstatement even when dealing with personal work. In the 1990's the Supreme Court indicated in a number of judgments that it accepts the National Labour Courts' interpretation that it has the power to reinstate a wrongfully discharged worker if special circumstances warrant..

According to statute and case law the Labour Courts have the power to reinstate workers discharged for discriminatory reasons, such as gender, age, religion, nationality, sexual preference, disability or revealing corruption at the workplace. There are specific statutes which enable the Labour Courts to reinstate her or him, such as the **Prevention of Sexual Harassment Law, 1998** and the **Revealing corruption in the Workplace Law**, both of which include provisions empowering the court to reinstate the wrongfully discharged worker.

In such instances the court sometimes regards reinstatement as the best method of discouraging discrimination.. Some judgments considered discharge in violation of a law as void, having no legal effect on the termination of the labour contract. The Labour Court has held that termination, which constitutes a breach of fundamental human rights, such as the right to unionize, justifies reinstatement as the preferred remedy. On the other hand, when a worker is discharged for theft, with the unions' consent, but later acquitted because the crime was not proven "beyond a reasonable doubt", a recent National Labour Court judgment declined his request for reinstatement.¹⁴ It was felt that the employer had reasonable cause for losing confidence in the worker's loyalty, especially since as a truck driver he was often alone with costly merchandise and damages was an adequate remedy.

Resignation

Workers have the right to resign and end the work contract. However, if the workers' resignation violates a contractual obligation to work for a specified period he may be liable for damages his resignation caused his employer. Such cases are few and difficult to prove. Courts will not grant the specific performance remedy to an employer, ie, they will not compel an employee to work, the employers' only remedy being damages.

¹⁴ David Bivas v. Supersol Inc. (National Labor Court, August 12 2001, not yet published).

As mentioned above, according to the recent *Advanced Notice (Discharge and Resignation) Law* the worker is obligated to give his employer a month's notice of his resignation and continue to work for that period. Violation of this obligation requires the worker to pay damages equal to a month's salary to his employer.

In general, when an employee resigns he is not entitled to severance pay. For details, see the section on the *Severance Pay Law*.

The Labour Courts have jurisdiction over disputes relating to restrictive covenants in labour contracts. Until recently such covenants were enforced if they were reasonable. However, in the *Radguard - Checkpoint judgment*¹⁵ the National Labour Court held that such covenants were not enforceable unless there were trade secrets which the worker would reveal to his new employer. The worker was head of research and development for Radguard and resigned to work for Checkpoint. These were competing companies, but Radguard failed to prove that the worker's trade secrets were still "secret" or useful to Checkpoint when the case came to the court, which was about six months after his resignation. The basis of this judgment was the importance of freedom of occupation, free flow of labour and services as an important principle of the modern economy, the workers' human dignity as expressed by his right to fulfill himself and the importance of the free flow of information in developing the economy.

IV. PROTECTIVE LABOUR LEGISLATION

Soon after gaining independence Israel made the policy decision of establishing a comprehensive protective statutory system. The Knesset turned to the ILO and progressive European countries as models for these laws. It also relied on the customs existing in the organized sector of the economy. This protective legislation provided mandatory minimum working conditions, which could be added to by rights achieved in collective agreements or individual labour contracts.

Before describing this legislation we should note certain characteristics of protective labour legislation.

First, rights created by protective labour laws are cogent and cannot be waived by the worker. Thus, section 12 of the *Minimum Wage Law* states that "a right of an employee under this Law cannot be made conditional or waived." Therefore, collective agreements and individual labour contracts can add to a worker's rights but cannot detract from them. Recent National Labour Court judgments have suggested that there may be rare instances when a worker's lack of good faith can justify canceling cogent provisions of protective labour law, but this minority opinion has met with much criticism and is held by only a few judges.

Second, protective legislation provides for both civil remedies and criminal punishment. Thus, failure to meet the statutory requirements is often punishable as a criminal offense, resulting in a monetary fine.

¹⁵ The National Labour Court, *Dan Frumer and Checkpoint Ltd. v. Radguard Ltd.* International Labour Law Reports, Martinus Nijhoff publishers, vol 20, 2002, p. 45.

Third, many important protective labour laws have not been amended so as to adapt them the new economy. Therefore, the National Labour Court has been compelled to interpret them in a liberal and progressive manner in order to achieve their purposes. This approach has drawn some criticism from employers but is respected and admired by the public.

Hours of Work

The *Hours of Work and Rest Law, 1951* was one of Israel's early protective legislation. It determines the maximum hours of daily and weekly work and grants all workers a weekly day of rest. As of today, 2002, the maximum weekly work is 45 hours and the maximum hours of work for a day is 8. However, when the work week was reduced from 6 days to 5 days a Regulation was issued by the Minister of Labour which extended this work day to 9 or 10 hours, depending on the economic branch. The day of rest for Jews is Saturday (the Jewish Sabbath), for Christians Sunday and for Moslems Friday. The law guarantees workers a 36 hour weekly rest period. Employment on the rest day is prohibited unless authorized by the Minister of Labour where working is deemed in the interest of the general public due to security, safety, and economic considerations (Section 12 of the Work and Rest Law). There is considerable controversy whether a Jewish worker can choose his day of rest or is prohibited from working on the Jewish Sabbath. Also, an exceptional provision of this law prohibits self employed from working in their factories or stores on the day of rest. The law defines hours of work as the time in which the employee is at the employer's service including short authorized breaks.

The law grants workers additional compensation when they work overtime, ie, more than 8 hours a day. This compensation is 125% of the hourly wage for the first two overtime hours and 150% for additional hours. For Sabbath work the law grants the worker 150% of his hourly wage for all hours worked. Employment for more than the legal amount of hours is a criminal offence by the employer.

Section 30 of the law exempts certain branches of the economy and employers from the law, such as police, air crews and sailors. The most litigated exception is for "***persons employed in administrative duties or duties requiring a special degree of personal confidence***" or "***employees, the conditions and circumstances of whose employment render it impossible for the employer to control their working hours and hours of rest.***" In a controversial recent case the National Labour Court held that this section exempted mobile television cameramen from the **Hours of Work and Rest Law**.

The law also guarantees the worker at least one 45-minute meal break. Section 20 of the law also entitles religious employees to short prayer breaks.

Annual Vacation

Another early protective labour law, the *Annual Leave Law, 1951* guarantees workers paid vacation, for periods set in the law. During the first four years of work – 14 days; in the fifth year – 16 days; sixth year – 18 days; seventh year – 21 days; more than seven years – an additional day per year to a maximum of 28 days..

The dates of the annual vacation must be approved by the employer, who is entitled to require all workers to take their vacation at the same time.

Absence because of army reserve duty, official holidays, maternity leave, is not considered annual vacation. When the annual leave includes the weekend, one weekend day is calculated as a part of the annual leave.

The law prohibits workers from accumulating more than 4 years of annual leave, so as to compel them to take annual leave. Upon termination of employment, the employee is entitled to compensation for annual leave not taken in the previous four years.

Other Leave Benefits.

The *Sick Pay Law, 1976* entitles employees to paid sick leave in the case of absence from work due to illness. According to the law, employees are granted one and a half-sick days for each month of employment up to a maximum of 90 days. The law does not guarantee a minimum number of sick days. It should be noted that in most cases collective and personal agreements provide for substantially improved sick leave benefits. The law serves to protect employees who are not covered under such agreements.

Full sick leave pay is paid as of the fourth day of sickness. The employer pays 37.5% of the workers' regular wage for the second and third days of illness and 75%, thereafter.

The employer may relieve himself of the obligation to give sick pay by insuring the employee with a benefit fund.

Maternity leave and maternity protection

An indication of progressive labour law is that over 40 years ago Section 9 of the *Employment of Women Law, 1954* prohibited discharging a pregnant worker or reduce her hours of work because of her pregnancy. While the law allows the Minister of Labour and Welfare to give an employer a permit to discharge a pregnant worker if the discharge is unrelated to her pregnancy, this is rarely done. Discharge in violation of this law is void and considered a criminal offence. The employer cannot discharge the worker during maternity leave and for a period of 45 days after the employee's return to work

Section 1 of the law permits the Minister of Labour to prohibit or restrict, by regulation, the employment of women in positions and conditions, which may be harmful to their health. Recent regulations specify positions and employment conditions prohibited or restricted to women during their fertile years. Special concern is given to the employment conditions of pregnant and breast feeding employees. The majority of these restrictions are concerned with the exposure to hazardous chemicals and work conditions. In addition, Section 10 of the law restricts the employer from employing a pregnant employee from her fifth month of pregnancy during night shifts and on the weekly rest day, even if such employment was allowed prior to the pregnancy.

This law also requires employers to give women, and in some limited circumstances, the father, a 12-week paid maternity leave. A maximum of six weeks may be taken by the woman prior to giving birth and the remaining weeks can be taken after the birth. The woman can also choose to take all the maternity leave after the birth. If the woman was hospitalized during pregnancy she may extend the leave to up to 16 weeks. If the baby is hospitalized, the maternity leave may be extended to a maximum of four additional weeks. Section 7 of the law allows the pregnant worker to be absent from work with a doctor's authorization if her medical condition requires. The law also allows the woman to extend her maternity leave for up to 6 months after birth, but without the right to payment for the extension period. After birth, the employee is granted an hour of paid leave each day for a period of four months after her return to work. The law also allows for sick leave on account of fertility treatment and in the case of residence in a battered women's shelter.

The *Employment of Women Law* requires the employer to give women maternity leave; however, her income during this period is from the National Insurance Institute.

Under certain circumstances an employee whose wife gave birth the use up to six weeks of the maternity leave. The prerequisites for such leave are that: the employee's wife is entitled to maternity leave, she utilized at least six weeks of leave after birth, and she waived her right to the remaining weeks.

Other Legislation Protecting Women

The *Sick Pay (Absence Due to Child Illness) Law* allows for 8 paid parental sick-leave days a year, in the case of the illness of a child under the age of 16. In the case of a child's terminal illness, the employee is entitled to 30 sick leave days.

The *Sick Pay (Absence Due to Pregnancy and Childbirth of a Partner) Law, 2000* provides for a seven days of paid leave per year for medical treatments or exams connected with the partner's pregnancy or for the birth of a child.

Legislation furthering women's equality will be discussed in the "equality and the workplace" section.

Minimum age and protection of young workers

Youth employment is governed by *The Youth Work Law, 1953*, which prohibits employment of children under the age of 15. During the period of compulsory schooling, which in Israel is up to tenth grade, a child may be employed only as an apprentice. During the summer vacation, youth over the age of 14 and under the age of 15 can be employed in positions which are relatively undemanding and which will not prove hazardous to their health. The Minister of Labour may impose additional age restrictions for certain types of employment. Youth work requires proper medical permission.

The Youth Work Law establishes a 40-hour workweek for employed youth (instead of 45 for adults). Night work is prohibited, unless authorized by the Minister of Labour. Employed youth are entitled to a minimum of 18 days annual leave (instead of 14 for adults). The Ministry of Labour and Welfare is required to provide training programs

for youth working and the employer is obligated to release him for one day a week in order to participate in the training, without deducting those hours from his monthly salary.

Employers are obligated to keep a written record of all youth employees.

Failure to meet the obligations imposed by this law is a criminal offense.

Another law protecting youth is the *Apprenticeship Law, 1953*, which requires all employees under the age of 18 working in a trade to be registered as apprentices. Each trade has specific training requirements such as a mandatory period of apprenticeship, which must be met in order to certify the employee. Employers are bound by the **Apprenticeship Law** to employ the youth until the completion of the mandatory training period, as well as, to insure proper training and supervision (Section 14).

The Ministry of Labour is responsible for publishing the minimum wage, which must be paid in each profession to the employed youth, during the period of his/her apprenticeship.

The law also regulates the specific circumstances under which such an employment relationship may be terminated. Thus, employment can only be terminated during the first six weeks of employment or if approved by the Ministry of Labour or if the employee resigns.

V. EQUALITY AT THE WORKPLACE

The Declaration of Independence proclaimed equality a guiding principle of the State, As shall be described below, later legislation has prohibited discrimination on the basis of race, religion, sex, personal status, marital status, nationality or country of origin, sexual orientation, age, disability, political affiliation, or army reserve service. Equality at the workplace began in the early 1950's with prohibition of discharging pregnant workers, received a significant impetus in the mid-1970's with a National Labour Court judgment invalidating a section of a collective agreement which discriminated against women flight attendants and blossomed in the 1980's and 1990's with comprehensive legislation.

The sources of workplace equality are described below.

In 1951, three years after Israel's independence, the Knesset passed the *Women's Equal Right Law*, which declared that "a man and a woman shall have equal status with regard to any legal proceeding; any provision of law which discriminates, with regard to any legal proceeding, against women as women, shall be of no effect." This law, amended in 2000, expresses a policy of guaranteeing equality to men and woman. Section 6 of the amended law proclaims that every woman and man have equal right to a dignified existence, which includes equal treatment in the areas of employment, education, health, housing, and social welfare.

In 1964 the Knesset passed the *Male and Female Workers Equal Pay Law*, which guaranteed equal pay to women and men workers for equal work. Few cases were brought under this law. It was replaced in 1996 by another law of the same name,

which increased the ability to achieve its' goals, by defining equivalent work, allow appointment of job evaluation experts, compel employers to give information and allow class actions

In the mid 1970's the National Labour Court handed down the first judgment furthering womens' equality in the workplace.¹⁶ This decision invalidated a provision of the El Al airlines collective agreement, which discriminated against women flight attendants. In 1995 the court handed down another important judgment, guaranteeing homosexual flight attendants equal rights to airline tickets given airline employees.¹⁷

The *Employment (Equal Opportunities) Law, 1988*, which replaced the *Employment (Equal Opportunities) Law, 1981*, prohibits discrimination on the basis of age, race, religion, personal (marital) status, country of origin, nationality, personal opinions, military service, political affiliation or sexual orientation. Discrimination against employees or prospective employees is prohibited regarding hiring; employment conditions; promotion; training; dismissal and severance pay; and retirement benefits. Non-relevant discriminatory conditions are illegal. Protection is granted labour contractor employees. Workers are protected from sexual harassment at the workplace. The Labour Courts are authorized to award damages without demanding proof of actual economic injury and may also reinstate an employee discharged in violation of this law. These remedies are unusual in Israeli law. Compensation is the common remedy in Israeli law and is also possible in these cases. The law transfers the burden of proof to the employer after the worker has proven prima fascia discrimination. Prior to the law's amendment the National Labour Court's judgments had awarded monetary damages to employees discriminated against. This was later incorporated into the law. Section 3(b) of the Law allows affirmative action laws, collective agreements and labour contracts which grant women advantages and privileges, not granted men, which are aimed at giving them equal status at the workplace.

The *Equal Rights for Handicapped Persons Law, 1998* protects the dignity and liberty of physically or mentally handicapped individuals and insures their equal and active participation in all areas of life, including work. This law expands the protection granted in the *Equal Opportunities Law*. Only a few cases have so far been brought under this law and it is still unclear whether it will be able to achieve its' goals.

The *Male and Female Workers (Equal Retirement Age) Law, 1987* prohibits discrimination with regard to mandatory retirement on the basis of gender, which was common in collective agreements.

Section 9c of the *Hours of Work and Rest Law, 1951*, mentioned above, forbids discrimination on religious ground. An employer may not discriminate against an employee who objects to working on the day of rest for religious reasons.

In the year 2000 the *Collective Agreement Law* was amended so as to prohibit discrimination because of participation, or lack of participation, in union activity or union organizing efforts.

¹⁶ El-Al Airlines v. Edna Chzin, National Labour Court, vol 4, p. 436.

¹⁷ El-Al Airlines v. Danielowitz, National Labour Court, International Labour Law Reports, vol 15, p. 229.

Both the *Government Companies Law, 1975* and the *Civil Service (Appointments) Law* were amended during the 1990's to allow and encourage affirmative action favoring women as a means of furthering equality at the workplace. The amendments require the civil service to take positive measures to insure fair representation at the workplace. The Supreme Court has also stated that affirmative action is an acceptable means to abolish discrimination between the sexes. In 2001, these laws were amended to extend affirmative action to minority (Arab, Druze) employees.

Both the Supreme Court and the National Labour Court play an active role in combating discrimination and inequality in the workplace. The courts have stood up against discrimination based on sexual orientation, age, union participation, and gender. An Israeli Supreme Court judgment held that discrimination which gives women preference in order to make them equal is permissible, so that a government company was required to appoint a woman director, since she was as equally qualified as the man which the Minister wanted to appoint. A National Labour Court judgment granted damages to a women who had not been hired as a microscope salesperson because she was a women.

Case law has also held that public tenders for jobs must be based on equal opportunity. Dismissal of public sector employees cannot violate the principles of equal treatment of all workers.¹⁸

VI. PREVENTION OF SEXUAL HARASSMENT

Sexual Harassment is a violation of human dignity and deprives women equal status and opportunity at the workplace. It is, therefore, prohibited. This began with the **Equal Opportunities Law of 1988**, which dealt with sexual harassment in an indirect manner by making harming an employee on the basis of sexual harassment a criminal offense.

In 1998, the Knesset, passed the *Prevention of Sexual Harassment Law, 1998*, which significantly expanded protection against this negative phenomenon. Sexual harassment was not only defined as a criminal offense but also a ground for tortuous civil cause of action. Soon afterwards the **Employment (Equal Opportunities Law)** was amended to incorporate more comprehensive remedies to prevent sexual harassment..

The *Sexual Harassment Law* prohibits all forms of sexual harassment (verbal and physical) at the workplace. In addition, the law places responsibility on the employer to take preventive measures against sexual harassment in the workplace. An employer who fails to meet these preventive requirements is liable both on the criminal and civil level. Similar to the **Equal Opportunities Law**, the **Sexual Harassment Law** establishes two stages of proof. First, the employee must show that he/she was sexually harassed by the employer, a supervisor, or another employee. If this burden is met, the employer is then required to prove he/she was not responsible and has taken all reasonable steps to prevent this from happening .

¹⁸ See: Pinhas Navon v. Yerouham Local Council, National Labour Court, ILLR, vol 16, p. 301.

The law allows for compensation of up to 50,000 NIS, which is approximately \$10,000, without proof of actual injury.

There have been a number of cases in which the Labour Courts have required employers to pay damages to women who were sexually harassed at the workplace. This law has significantly increased employers' awareness of their responsibility to prevent sexual harassment.

VI. WAGE PROTECTION

Payment on time

General contract law compels employers to fulfill their labour contract and pay the wages agreed upon. The *Wage Protection Law, 1958* compels the employers to pay wages on time. Unless other better conditions are set by the labour contract, the employer is obligated to pay monthly salaried employees by the end of month he is being paid for. Hourly or weekly workers must receive wages every two weeks. This law creates a unique and draconic remedy for guaranteeing that wages are paid on time – for the first week delay there is a penalty of 5% and for every week thereafter a penalty of 10%. Therefore, the employer who pays wages a month late must pay a 35% delay penalty in addition to the wage. This is a powerful incentive for employers to pay wages on time. Because this penalty is so high the statute of limitations is much shorter than for other causes of actions, one year instead of seven years. Also, the Labour Courts may reduce the penalty when the wage was paid late due to a good faith mistake on the part of the employer, a disagreement between the parties as to the existence of the debt. There is extensive Labour Court case law on when the penalty can and should be reduced.

Mode of payment

The *Protection of Wages Law* regulates the manner in which payment can be made. Wages must be paid at the place of employment or into the employees' bank account. Payment other than money is prohibited and the employer may not restrict the manner in which the employee uses his/her wages by obligating the purchase of products.

Payment for overtime work must be according to the hours worked and cannot be part of the basic monthly wage.

Protection against wage deductions, attachment and transfer

The law also protects workers from wage deductions which have not been authorized by the worker or specifically required or allowed by law. Permitted deductions include: income taxes, union membership and agency fees, disciplinary fines agreed upon in the employment contract or in a collective agreement, and debt to the employer which may not exceed 25% of the salary during employment and may reach the full salary after termination of employment.

Section 8 of the law safeguards a proportion of the employee's salary from attachment, transfer, or charges. The amount protected correlates to the guaranteed income, as determined in the **Income Guarantee Law, 1981**. This protection does not apply to child support and alimony payments.

Minimum wage

The *Minimum Wage Law, 1987* provides for a minimum wage, which is set at 47.5% of the average wage, the latter being updated at least every year or when a general cost of living collective agreement is signed.

There is no comprehensive definition for the term "wage" in Israeli law. Thus, the term may include different components depending upon the legislative intent. Case law has recognized two proposed definitions for the term. A broad definition regards wages as any and all monetary or in-kind compensation stemming from the employment relationship. A narrow definition regards wages as the basic pay, excluding fringe benefits and additional payments. The *Minimum Wage Law* states that payments considered wages for the purpose of determining whether the worker has received the minimum wage include: the basic wage, cost of living allowance and payments which are part of the regular salary ("permanent additions to salary"). Additional supplementary payments such as incentive pay, seniority and family increases are not part of wages for calculating the minimum wage. At present, the minimum wage is set at approximately US \$650. Section 12 of the *Minimum Wage Law* specifically states that the right to a minimum wage cannot be waived.

All employees 18 years and older are entitled to the minimum wage. Handicapped and youth are entitled to a lower minimum wage, so that it will be worthwhile economically for employers to hire them.

If an employer does not pay the statutory minimum wage this is a criminal offense and the worker also has a civil cause of action. In such instance the Labour Courts are empowered to impose a failure to pay wages penalty higher than the 40% per month imposed for general late wage payment. This exaggerated penalty is because the sums not paid are usually very small and the regular penalty, although high, would not sufficiently deter employers.

If the parties to the employment relationship did not agree on the wages prior to the employment, the employer is obligated to pay the wage which the Labour Court thinks would be paid for similar work. However, the minimum wage must be paid by the end of the month, otherwise it is liable to a failure to pay wages penalty.

Finally, the level of the minimum wage is a politically sensitive issue in Israel. The Histadrut is campaigning for a substantial increase in the minimum wage to a fixed \$1,000, instead of the \$650 today. This is bitterly opposed by employers and many economists.

VII TRADE UNION REGULATION

Freedom of association

Freedom of association has been recognized for many years as a fundamental right by Supreme Court and National Labour Court judgments. When constitutional rights were created in 1992 by the *Basic Law: Human Dignity and Freedom* and *Basic Law: Freedom of Occupation*, freedom of association was not specifically mentioned. However, subsequent Supreme Court and National Labour Court judgments held that freedom of association was a constitutional right, derived from the right of human

dignity. National Labour Court judgments held that freedom to strike and join, or not join, a union are part of freedom of association.¹⁹ Another National Labour Court case held that workers discharged for joining a union and participating in a strike must be reinstated since the employer's action violated their constitutional freedom of association right. The court also referred to ILO conventions (87, 98) regarding freedom of association as supporting its decision. Although these conventions are not binding under Israeli law, the Courts have regarded their provisions as proper norms and standards when interpreting statutes and deciding constitutional issues. Shortly afterwards the Knesset amended the *Settlement of Labour Disputes Law* to prohibit such employer action, thereby expressing legislative approval of the Labour Court judgment.

Israel does not allow the "closed shop" or "union shop", since a National Labour Court judgment said that workers have the right not to join or not to join a union. However, in the organized sector of the workforce non-members are obligated by collective agreement to pay the union a service fee instead of union dues, thereby making lawful the "agency shop". Non-members are entitled to all the benefits set in the collective agreement.

Trade unions

There is no special statute regulating trade unions. Therefore, unions become legal entities according to the laws regulating non-profit organizations, the first such law being the old *Ottoman law* and the current one the *Non-profit Organization Law*. These laws require registering the organization, filing its' by-laws, and filing an annual report and important decisions of the governing bodies. Labour Court judgments regard the union's registered by-laws as the guidelines for union activity.

Until recently unions in Israel meant the Histadrut, which was a labour federation, including workers from most branches of the economy, and governed by a central body. Its national unions were organized on the basis of industry, profession and trade. There were also some unions for large companies. The largest union was the Clerical Workers Union, which encompassed most white collar workers. The Histadrut was more than a trade union, it was a workers' movement, including health services, pension funds, union owned companies, sport and cultural activities, worker education, book publishing, working women department, and international department and workers co-operatives. In the mid-eighties the Histadrut companies approached bankruptcy and were sold to private companies. The sport clubs also became economically unstable and many were sold. The Histadrut also lost control of most of the co-operatives. For the past twenty years the Histadrut pension funds have shown a huge actuarial deficit and have been attempting to improve their financial situation. The Treasury, which regulates the financial market, including the pension funds, has increased its' involvement and today the issue is whether the Histadrut will retain control over these funds.

When the Histadrut was very powerful, from 1948 to 1995, it wanted no legislation to limit its activities and needed no laws to protect the freedom to strike or organize.

¹⁹ Delek – the Israel Petroleum Company Ltd. appellant v. Histadrut – New General Labour Federation, respondent, National Labour Court judgment, ILLR, vol 18, p. 81.

When such legislation was needed by the Histadrut, in the late 1990's, it lacked the political power to convince the Knesset to pass such laws.

As mentioned above, from 1948 until the 1970's approximately 75% to 85% of the work force was organized. During the period between 1980 to 1995 union density was slowly declining as new industries emerged which were not organized, such as hi-tech and the media. However, about 60-70-% of the workforce was organized. There were two important explanations for the high union density: one – the collectivist and labour movement views of much of the workforce; two – health services were provided by the Histadrut Health Fund, which was available for Histadrut members only. On January 1, 1995 the link between union membership and Health Fund services was severed, when the *Government Health Insurance Law* went into effect. Workers no longer needed to be Histadrut members to have health insurance and, overnight, Histadrut membership dropped from about 1,300,000 to 650,000, according to Histadrut statistics.

As of June 2002 union density is about 33%. However, in the private sector union density is only 10-12%. The Histadrut remains the largest union but there are also independent unions, such as the Grade School Teachers Union, the High School Teachers Union, the National (Likud associated) Union and the Doctors' Union. These non-Histadrut unions have about 250,000 members.

The *Wage Protection Law* allows the union and employer to agree that union dues are deducted by the employer from the workers' salary and transferred to the union by the employer. This is also the case for union service fees which are paid to the union by non-members. Such agreements must be by a collective agreement.

Regulations enacted by the Minister of Labour allow for a maximum 1% deduction for union dues. Usually, deductions are .8% of the employee's wages up to a fixed ceiling. Israeli law recognizes the union security arrangement in the form of an "agency shop".

Recent issues relating to the legal status of unions have concerned new problems which arose because of the decline in Histadrut power and union density.

The *Amit judgment*²⁰ of the National Labour Court held that a rival union could collect union dues from its' members in bargaining units covered by Histadrut collective agreements. This judgment was overturned by the Supreme Court because the rival union was an employer controlled union, not formed by workers and with no by-laws for a union. This judgment discussed the definition of a trade union. The Supreme Court described a number of basic criteria that must be met in order to gain union status. For example, collective bargaining and negotiation must constitute a dominant part of the organization's activity. In addition, the organization must be independent and uninfluenced by the employer's interests and agenda. In this particular case, the organization focused primarily on the individual level and was not independent from unwanted employer influence. Additional criteria for union recognition were that the union must be permanent, membership must be personal and

²⁰ "Amit" – Maccabi Trade Union v. The Histadrut, ILLR, vol 15. p. 79. The Supreme Court adopted the minority opinion, at p. 89.

voluntary, the membership must be of employees, the organization must be governed by regulations and guidelines, and hold democratic elections for its key positions. Furthermore, the Court required the union to prove that it has an authentic role in representing employee interests. The Supreme Court also emphasized the importance of unionization of employees in the modern labour market.

A few recent cases have dealt with the definition of bargaining units. The *Tadiran judgment* of the National Labour Court held that an employer could not unilaterally change the bargaining unit.

The *Raphael judgement* of the National Labour Court held that the research professionals at the Raphael research institute could break away from the Histadrut, form their own union and sign a separate collective agreement.

Employer organizations

There is no law regulating employer associations. As with the unions, the employer associations are founded as non-profit organizations. There are employer associations for many branches of the economy, such as manufacturing, building, trade and transportation. Regarding labour relations and nation wide collective agreements the employer associations act together thru the Coordination Chamber of Economic Organizations.

The Manufacturers' Association, which is the largest employer associations, is composed of both unionized and non-unionized employers. However, since collective agreements signed by an employer association bind its' members few non-organized employers became members. Recently, there has been an attempt to create a separate part of the Manufacturers' Association for non-organized firms, which being separate from the organized section, will not be bound by collective agreements. This has yet to be tested in the courts.

VIII. COLLECTIVE BARGAINING AND AGREEMENTS

1. Background

Until the early 1990's, when the Histadrut had a dominant role in labour relations and 65% - 85% of the labour force was organized, collective bargaining and collective agreements played a key role in Israeli labour regulation. Most subjects concerning personal employment conditions were regulated by collective agreements at the different employment relations' level supplementing the rights set in protective labour legislation. In collective labour law the collective agreements and union power determined most aspects of union organization, bargaining units, grievance handling and collective dismissals. They had a significant role relating to strike conduct, limited mainly by Labour Court case law. During this period collective agreements were signed on three levels: plant, industry and national. Each level of agreements added further rights to the workers. The bargaining usually began on the national level, resulting in a general wage rise applying to all union members and often extended to the entire workforce by an extension order. Then industry bargaining resulted in a collective agreement with a wage increase and terms applying to that industry. This agreement was often extended to the entire industry. Following the national and industry agreements many plants signed plant agreements, adding rights

and wage increases specific to that workplace. Additional collective agreements were often negotiated at the industry and plant level by professional or trade unions, such as the engineers or clerks union. This system resulted in a large number of collective agreements with employers constantly negotiating with one union unit or another. The Ports Authority, for example, employed 1,400 workers but has about 500 collective agreements. This system resulted in worker security and improved conditions but also caused many labour disputes. On the other hand, these agreements generally gave the employers generous flexibility in transferring workers from one job to another suitable one.

The *Collective Agreement Law, 1957* set a minimal of general rules concerning collective agreements, the most important of them being: [a] The definition of a collective agreement, which is a written agreement signed by a union and an employer or employers' association, sent for registration to the Labour and Social Welfare Ministry and dealing with hiring and dismissing workers, terms of employment, labour relations and the rights and obligations of the parties to the agreement. [b] Rights which collective agreements give workers become part of their individual labour contract. [c] Individual labour contracts can add to rights set by collective agreements, but not detract from them. [d] Workers cannot waive rights granted them in collective agreements. [e] A collective agreement applies to the employer and members of the employers' association which was party to the agreement and to the union signing it and its' members working for those employers. [f] The Minister of Labour and Social Welfare is empowered to extend an industry wide collective agreement to apply to the entire industry. [g] A collective agreement is valid for the period set in it, but if neither party sends a termination notice it is valid indefinitely, until a termination notice is sent.

Much law concerning collective agreements is Labour Court case law, the most important of which are as follows:

[a] When a collective agreement was made but did not meet the laws technical requirements, such as registration, it was generally not enforceable. This policy was meant to encourage registration of agreements and signing of collective agreements. Recently, however, such agreements were enforced, so as not to deprive workers and management of the fruits of their negotiation.

[b] Rules for the interpretation of collective agreements were determined in case law, the most important of these being that agreements are interpreted according to the purpose which is inherent in them.

[c] Implied in the collective agreement are rights of the union and workers regarding transfer of enterprises and privatization. These rights revolve around the employers' obligation to inform the union of changes in labour relations and negotiate concerning them. Furthermore, recent case law stated that workers had a modified property right in their workplace and unions had certain rights because the collective agreement was a unique long term agreement.

[d] Employers' prerogative to manage their businesses, unless limited by obligations in a collective agreement, has been the subject of much case law.

[e] Much case law discusses the relation between the collective agreement and equality at the workplace.

2 Collective Bargaining

Collective bargaining is mainly relevant for 30% of the workforce, which is organized. In this sector the collective bargaining results in collective agreements, which determine the rights and obligations of the worker, union and employer. Collective agreements also have some relevance for the non-organized work force, since certain industry-wide and nation-wide collective agreements are “extended” to apply to an entire industry or the entire workforce. In general, there has been a decline in collective bargaining and agreements, because of the decline in union density and lack of communication and co-operation between the employers and unions.

Case law requires the parties to negotiate in good faith, according to the requirements of the *Contract Law (General Part)* and the general principle requiring good faith behavior. While there is no statute regarding bargaining units the National Labour Court has handed down several judgments on this subject. One judgment established the principle that an employer is obligated to provide information to the union, which it requires in order to negotiate.²¹ Other judgments supported the central Histadrut body, which gave it control over collective bargaining for all Histadrut bodies. Thus, case law enforced the Histadrut by-laws which did not allow Workers’ Committees to sign collective agreements. Also, in the *Senior Paz Workers judgment*, senior workers were not allowed to break away from the bargaining unit which included all workers in a company. However, a recent judgment allowed the research workers in the defense industry to form their own union and bargaining unit. The case law today holds that a separate union may be formed if the group desiring to do so has a common interest, profession and justification for negotiating separately. The employer is not allowed to unilaterally change the bargaining unit.

Recent National Labour Court judgments have discussed the subjects of collective bargaining, in the context of what subjects are legitimate for a strike. The extent of the employers’ prerogative to manage his business is the subject of negotiation and may be restricted by a collective agreement. Unions do not have a right to collective bargaining regarding whether the Knesset may reduce the budget or number of government employees; however, they may negotiate about the effects of such laws on their members. A yet unresolved issue is whether the unions have a right to bargain and strike exclusively for the benefit of retired members, since they are no longer “workers” and collective bargaining is for workers’ rights.

3 Collective agreements

Collective agreements are governed by the *Collective Agreement Law, 1957*. The law differentiates between two forms of collective agreements, a special collective agreement, covering one workplace or employer, and a general collective agreement, which covers an industry or the entire workforce.

²¹ The National Association of Defense Ministry Research Workers v. the State of Israel, National Labour Court, ILLR, vol 16, p. 385.

A collective agreement is valid if it adheres to a number of requirements:

First, the “agreement” must be signed and in writing (Section 7).

Second, the agreement must be submitted to the Ministry of Labour for registration within two months of the signing date (Section 10). Unless there is an objection to registering the agreement it is valid upon submission. The registration requirement is to guarantee that all workers and the public have access to these agreements.

Third, as mentioned above the Collective Agreement Law determines who may be a party to collective bargaining and a collective agreement. A special collective agreement must be signed between the employer or an employer’s association that represents the specific employer and the representative employee’s organization (Section 2). In order for an organization to be considered representative, its members must constitute the majority of organized employees who will be covered by the special collective agreement and not less than one third of the employees (Section 3). A general collective agreement must be signed between an employer’s organization and the relevant representative employee organization (Section 2). A representative employee organization for this purpose is the organization whose members constitute the majority of organized employees who will be covered by the agreement (Section 4).

Four, as mentioned above Section 1 of the law determines the subjects for collective bargaining.

According to Section 19 of the law, all collective agreements have both a contractual and a normative status. They obligate the parties and the provisions granting workers rights become part of their individual labour contracts.

According to the Supreme Court *Milfelder judgment*, key provisions in the personal contract can only be cancelled or altered by consent or by termination of employment. This does not apply to provisions which, by nature are within the employers’ prerogative to alter, such as expense accounts and travel allowances.

A worker cannot waive his/her rights determined in a collective agreement.

The term of a collective agreement may be fixed or indefinite. The agreement remains in effect until it is cancelled. Even if an agreement is cancelled the individual provisions remain in effect, as part of the workers’ individual labour contract. Moreover, a collective agreement for a fixed period does not expire automatically at the end of the period agreed upon, but continues until cancelled. The law sets the procedure for canceling a collective agreement.

The law effectively eliminates damages as a remedy for violation of a collective agreement by a union. The remedy available is usually specific performance, ie, an injunction ordering striking workers back to work or preventing collective dismissal.

Section 25 authorizes the Minister of Labour to extend provisions of a collective agreement to cover an entire industry or the entire workforce

Collective arrangements

A collective arrangement (“gentleman’s agreement”) is a collective agreement which does not meet the law’s requirements; for example, an agreement which was not submitted for registration or not signed by the union organ authorized to sign a collective agreement. The law requires that collective arrangements in the government

sector be registered. The legal rules regarding a collective arrangement were created and developed by the National Labour Court judgments of the 1970's. Their purpose was to make such arrangements not worthwhile for the parties and encourage them to make collective agreements. The court did so for two main reasons: one - in order that agreements between unions and management be registered and, therefore, public; two – to support the Histadrut's by-laws, which authorized centralized union organs (national unions and local work councils, for example) to sign collective agreements while plant or company workers' committees were not authorized to do so. Thus, the court policy enforced the power of the central Histadrut leadership, at the expense of the local plant and company workers committees. Over the years, as power continued to transfer from the central Histadrut leadership to these local workers' committees the court policy became unrealistic. In addition, there were few collective arrangements and those existing were the result of a technical error, such as forgetting to submit it for registration. Therefore, the National Labour Court modified its case law and held that if the collective arrangement failed to meet the collective bargaining agreement requirements for technical reasons it would be enforceable. This was the case when the agreement was signed by parties who were empowered to do so or they forgot to register it.

IX STRIKES AND LOCKOUTS

The right or liberty to strike is not specifically mentioned in the basic laws or other statutes. However, the Supreme Court and the National Labour Court have held that such a liberty exists, as derived from the constitutional freedom of association. This is a liberty which must be balanced against other constitutional rights and freedoms, such as the employers' property right.

Protections for unions and workers participating in industrial disputes existed from the early years of the State. The *Collective Agreement Law* grants employees protection on the individual level by stating that an employee's participation in a strike does not suspend the individual employment contract. On the collective level, the *Collective Agreement Law* grants protection against damage claims against unions relating to a breach of the collective agreement due to a strike. The *Civil Wrongs Ordinance [New Version]* protects employee unions from being held liable under a cause of action concerning "inducing a breach of contract". The *Annual Leave Law* states that strike days will not be considered vacation days and will not break the continuity of employment for leave entitlement purposes. Similarly, the *Severance Pay Law* states that strike days will not break continuity with regard to severance pay.

Statutory limitations on strikes did not exist until 1969. The only limitations were those agreed upon and contained in collective agreements. Then, the *Settlement of Labour Disputes Law* was amended, so as to require 15 days advance notice of a strike or lockout. The notice must be submitted to the Chief Labour Relations Officer in the Ministry of Labour and to the other side to the dispute (Section 5). The rationale behind this provision is to allow for a cooling off period. The Chief Labour Relations Officer may decide to conduct conciliatory measures during the cooling off period. After the fifteen days are up the Relations Officer is not entitled to postpone the strike if the parties did not reach an agreement.

In 1969 the Labour Courts were established, among other things, to set norms and rules concerning industrial disputes.

An amendment from the early 1970's to the *Settlement of Labour Disputes Law, 1957* attempted to limit strikes in the public sector, in which most strikes occurred. It created the "unprotected strike", which was deprived of the protections given the legal strike. However, National Labour Court judgments limited the scope of this limitation on strikes and the law was only partially successful in reducing strikes in the public sector.

The definition of a "strike", "partial strike" or "lockout" has been mainly by case law. However, a few statutes contain partial definitions of these terms, especially the *Settlement of Labour Disputes Law*. The latter defines a "strike" in the public sector as an organized work stoppage, either fully or partially, on the part of a group of workers, including any slowing down or disturbance of production. Furthermore, refusal of workers to fulfill their normal overtime work is also considered a strike.

General Labour Court policy is not to interfere in industrial disputes but to encourage the parties to suspend industrial action and return to the bargaining table. However, when a strike violates the union's obligation in a collective agreement or occurs without the mandatory 15 days advanced notice the Labour Courts sometimes issue injunctions which stop or limit the strike. Also, strikes are generally limited to economic disputes, whereas disputes over legal rights must be settled in the Labour Court. Case law instructs the courts not to issue injunctions unless it is necessary and to take into consideration employer conduct when making this decision. In recent years the National Labour Court judgments have set a policy of minimum intervention in industrial disputes, with the emphasis on assisting the parties to settle their dispute thru collective bargaining.

Over the years some court judgments have placed other limitations on strikes. The main remedy available for the employer when there is an unlawful strike is an injunction. In one unusual case the Supreme Court held that a party not involved in a labour dispute, which caused it economic losses, could file a tort action against a union conducting a legal strike. The situation was a strike in a port, which caused economic loss to a company whose shipment was delayed by the strike. This judgment was heavily criticized by academic scholars and has not been repeated.

In what other circumstances have courts limited or prohibited strikes? The Supreme Court held that a strike which interfered with Knesset elections or attempted to prevent the Knesset from passing a law which effects the striking workers was illegal. Therefore, political strikes are unlawful. However, strikes with "mixed" purposes, both political and economic, may be lawful in certain circumstances. The National Labour Court has, in a few instances, issued an injunction stopping a strike which infringed on basic constitutional rights, such as the right to travel outside the country. However, this has been done with great reserve, after balancing these rights with the freedom to strike, and then placing restrictions on the strike but not stopping it altogether. Examples of this policy are an injunction preventing Ministry of Interior workers from refusing to issue passports but allowing them to stop other functions; or permitting a nation wide strike for two or four hours, while prohibiting it for a longer period of time.

According to Histadrut by-laws workers' committees cannot declare a strike and, therefore, a strike unauthorized by Histadrut bodies which are authorized to do so can be stopped by an injunction. This is uncommon in recent years, since the weakening of the central Histadrut bodies has compelled them to authorize most strikes which workers' committees declare.

The National Labour Court is currently considering the question, whether a strike for sole benefit of retired workers is lawful, even though strikes have until now been lawful only if conducted for the benefit of "workers".

It should be noted that almost all collective agreements contain no-strike clauses, in which the union undertakes to maintain industrial peace and the parties obligate themselves to settle disputes arising when the agreement is in effect by mediation and arbitration. In the past unions, especially workers' committees, often violated these provisions. However, with the decline in union power, the willingness of the central Histadrut leadership to authorize most strikes, and the Labour Courts efforts to emphasize settlement of disputes by collective bargaining, there have been fewer such illegal strikes.

Employers may not discharge workers for participation in industrial action, according to recent National Labour Court judgments, mentioned above, and an amendment to the *Settlement of Labour Disputes Law*.

The National Labour Court held that lockouts are legal only if they are defensive, ie, in reaction to a partial or full strike. Requirement for advanced notice of industrial disputes also apply to lockouts.

An employer is not obligated to pay wages to striking workers. Under certain circumstances partial strikes entitle the employees to partial wages. In some cases, negotiations between the parties result in a retroactive reimbursement of pay for all or part of the strike. The Histadrut and Manufacturers' Association have strike funds which sometimes pay those involved in industrial activity.

X. SETTLEMENT OF LABOUR DISPUTES:

Prior to the founding of the State in 1948 there was a well developed system of dispute settlement based on negotiations, mediation and arbitration. This system was widespread and encompassed most workplaces during the period of high union density. As the unionized sector of the workforce declined the extent of collective bargaining and dispute settlement also declined. Today, dispute settlement through negotiation between worker representatives and management exists in only a third of the workforce. The rules relating to dispute settlement at the unionized workplace are determined by collective agreements. The parties participating in dispute settlement are the management and union representatives on all levels: plant, local work councils, work committees, national unions and even the central Histadrut leadership.

In the non-organized sector of the workforce most of the workers have no means of settling grievances or disputes other than discussions with their employer and filing a case in the Labour Court, if they have a legal right. However, in many high-tech

companies there is a company established grievance procedure which affords workers' limited rights to present their grievances to management on various levels.

The laws prohibiting sexual harassment have required employers to establish an internal procedure for allowing workers to complain against sexual harassment. In addition, the work safety laws require the employer to establish joint management-worker safety committees, in which workers can present grievances and suggestions concerning work safety.

While there is no law compelling arbitration or mediation of labour disputes, ADR is rapidly developing. The Labour Courts have been active in this area, establishing internal programs for mediation at no cost to the parties, with lay members as mediators. The courts have also established departments which handle case management, including referring cases to private mediation and arbitration. In 2001 1,383 cases were settled by private mediators and 3,973 by internal Labour Court mediators (lay members). In 2002 these figures are expected to rise and, in addition, about 2,500 cases should be settled in pre-trial sessions conducted by a judge or registrar. The Labour Courts have adopted an ADR of the "many door courthouse", including mediation, arbitration, early neutral evaluation, pre-trial hearings and trials before the court panel (judges and lay members).

The mediation officers of the Ministry of Labour and Welfare are empowered to mediate and arbitrate disputes in the private sector. The governments' refusal to allow them to mediate public sector disputes has greatly limited their role in dispute settlement.

The government and Histadrut established in the 1970's a body to arbitrate economic or mixed economic-rights disputes. However, submission of disputes to this body is voluntary, only a few disputes are submitted to this body each year and it has not made a significant contribution to the settlement of labour disputes.

XI. ISRAEL AND THE ILO

The State of Israel joined the ILO in 1949. As at 31 st May 2002 it had ratified 45 ILO Conventions, of which 42 were in force for the country. [List of ILO Conventions ratified by Israel.](#)

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