

HR LEGAL GUIDE

M E I T A R
MEITAR LIQUORNIK GEVA LESHEM TAL

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INTRODUCTION TO THE LABOR LAW DEPARTMENT AT MEITAR LIQUORNIK GEVA LESHEM TAL LAW OFFICES

Meitar's Labor Law and HR Department has a broad range of expertise in all matters related to employment and labor laws, policies and procedures. Our labor law clients include some of Israel's largest employers, as well as multinational companies operating in Israel.

Our Labor Law Department's services include:

- Representation and consultation in all legal aspects regarding ongoing employment-related matters.
- Preparation of employment agreements, consulting agreements, manpower agreements, separation agreements, outsourcing agreements, non-compete and secrecy agreements.
- Labor litigation in all instances, including preventive counseling and strategies to avoid litigation.
- Advising on employment matters for M&A transactions and privatizations, including employment-related due diligence.
- Advising in structuring executive compensation arrangements, including MBO transactions.
- Consulting regarding adaptation of multinational companies' HR policies and employee manuals to Israeli law.
- Advising on labor-related IP matters, including breaches of employee non-disclosure agreements, non-competition or non-solicitation agreements and matters involving rights to inventions and patents.

- Preparation of equity compensation plans for employees, including options, restricted stock units (RSUs) and phantom stock plans.
- Advising on labor-related taxation, employee benefits and equity-based plans (option plans).
- Advising regarding employee privacy rights.
- Representation in all international relocation processes, including issuance of permits for employees and employment of foreign nationals in Israel.
- Providing frequent updates on new labor-related legislation and court precedents.

The contents of this guide are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

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WRITTEN STATEMENTS

■ **Terms and conditions**

Employer is required to provide each new employee with a written notice detailing certain terms of his or her employment within 30 days of the date of commencement of employment. These terms include, among others:

- Title
- Commencement date
- Name of the employee's direct supervisor
- All payments (salary and benefits) to which the employee is entitled
- Working days and hours
- Weekly rest day
- Social contributions

■ **Notices to job applicants**

An employer of more than 25 employees is required to provide each of its job applicants a written notification of his or her progress in the application process, at least once every two months starting from the commencement date of such process.

The employer is also required to notify the applicant if he or she is not accepted for the job, and such notice shall be sent no more than 14 days from the date on which another applicant was hired.

For these purposes, an 'Application Process' is defined as either an interview or an examination and the notices can be also sent via email.

These notices shall include, inter alia, the following details:

- Name of the employer
- Name of the applicant
- Commencement date of the application process
- Name of the party that conducted the process (other than the employer itself)
- The position applied for
- Name and position of the sender of the notice

MINIMUM WAGE

- **Rate of pay**

As of April 2015 the minimum wage is NIS 4,650 per month or NIS 25 per hour.

In August 2016 the minimum wage will increase to NIS 4,825.

In January 2017 the minimum wage will increase to NIS 5,000.

Additional wage scales are laid down for each industry sector by the relevant collective bargaining agreement and/or expansion order.

TRAVEL EXPENSES

- **Rate of pay**

Each employee is entitled to travel expenses to and from the place of work up to a maximum amount of NIS 26.40 per working day (the actual amount due to an employee depends on the actual cost of public transportation from the employee's home to work).

An employee that uses a company car is not entitled to such payment. Please note that if the employee uses a company car, then separate rules (mostly tax-related) apply.

WORKING TIME

- **Weekly working time limits**

The working time is 43 hours per week and 8.6 hours per day for employees that work on a 5-day workweek basis.

- **Rest breaks**

For blue-collar employees – if the employees' working time in a day exceeds six hours, the employee must be granted a break of three-quarters of an hour, including one continuous break of no less than half an hour.

For non-blue-collar employees - if the employees' working time in a day exceeds eight hours (or nine hours in a five-day workweek), the employee must be granted a break of three-quarters of an hour, including one continuous break of no less than half an hour.

- **Daily rest**

Per 24-hour period, i.e. between two daily work sessions, each employee is entitled to a rest period of at least 8 hours.

- **Night working time limits**

In night work (in the event that at least 2 hours of work are between 22:00 p.m. and 06:00 a.m.) - a working day shall not exceed 7 working hours.

- **Overtime**

Employees who work overtime are entitled to overtime pay calculated on a daily basis. Overtime is paid at the normal hourly rate plus 25% for the first two hours of overtime work, and at the normal hourly rate plus 50% for every additional hour thereafter.

Employees may work up to 12 hours a day overall, including overtime hours, and no more than 15 overtime hours per week.

The current practice in Israel is to divide the employee's salary into a base salary component and an additional special "global overtime payment". Said division (usually in the range of 70% and 30%, respectively, of the total salary) shall be determined on a case-by-case basis, taking into account the expected number of overtime hours to be worked.

In most cases employers are required to record (using electronic or mechanical devices) the number of hours of work performed by each employee and make certain recording with respect to such overtime payments in the monthly pay slips.

- **Weekly rest day**

Employee is entitled to 36 continuous off-hours per week, which include a rest day according to the employee's religion. The employment of an employee on his or her weekly rest day or other official "Days of Rest" is not allowed, unless permitted in accordance with applicable law by the Ministry of Economy.

- **Paid annual leave**

Employees are entitled to a minimum number of vacation days each year, in addition to certain public holidays (decided on the basis of the employees religion). An employer may grant the employee more vacation days than the minimum required by law, but may not subtract from the statutory minimum.

Employers are entitled to set certain uniform dates for vacation for all or part of their employees.

■ **Accrued vacation days**

Employees may carry over, with the employer's consent, the balance of any unused vacation days, for use during the following two years. However, all employees must use at least five vacation days each year (employees who work five days per week) and can carry over only the balance.

Below is a table setting forth the minimum number of vacation days to which an employee is entitled, based on such employee's seniority.

Years of Employment	No. of vacation days according to law for employees who work five days per week (not including weekends, sick days, public holidays)
1 – 4	10
5	12
6	14
7	15
8	16
9	17
10	18
11	19
12 or more	20

Additional vacation days are laid down in relevant collective bargaining agreements and/or expansion orders for specific industry sectors.

SICK PAY

- **Entitlement**

Employee is entitled to 1.5 days of paid sick leave per full month of employment (18 days each year), up to a maximum of 90 days. These days may be accumulated and carried over, but not redeemed.

- **Rate of pay**

Employee is entitled to sick leave payment as of the second day of absence in an amount equal to 50% of the employee's salary (per day), and as of the fourth day of absence (subject to the number of sick days that employee is entitled to) in an amount that equals 100% of the employee's salary (per day).

RECUPERATION PAY

Employee is entitled to an annual payment which was originally intended for “recuperation” purposes. The payment is due with respect to employees who have completed a full year of employment and is paid retroactively. Payment of recuperation is usually made in one installment during the summer or on a monthly basis (1/12 per month). The following table lists the minimum recuperation payment amounts required in the private sector as of July 2014 :

Years of Employment	Rate of pay (annually)
1	378 NIS x 5 days
2 - 3	378 NIS x 6 days
4 - 10	378 NIS x 7 days
11 - 15	378 NIS x 8 days
16 - 19	378 NIS x 9 days
20 or more	378 NIS x 10 days

PENSION AND SEVERANCE

- **Legal pension**

As of January 1, 2014, the minimum payments to be made by the employer for each employee, are 6% to a pension fund and 6% to a severance fund, while the employee shall contribute 5.5% to the pension fund. A legal pension has to be paid upon completion of 6 months of employment or immediately if the employee has an active pension fund which was opened by the employee's previous employer.

- **Legal severance**

Upon termination of employment by the employer, an employee is entitled to receive a severance payment equal to the employee's latest monthly salary payments multiplied by the number of years of continuous employment with the same employer or at the same employment facilities. Upon resignation of an employee, the employee is generally not entitled to severance payments.

- **"Section 14 arrangement"**

Instead of the minimum legal pension contributions and severance, the employer and the employee may agree to be subject to the Section 14 Arrangement. Said arrangement is applied in many cases by the operation of certain expansion orders.

Where the Section 14 Arrangement is properly applied, the employer's sole obligation with respect to severance payment would be the release of all monies in the severance and pension funds in any event of termination of employment (either dismissal or resignation).

A proper application of the Section 14 Arrangement is by contribution of the following amounts to a Managers' Insurance Policy or to

a Pension Fund as instructed by the employee:

Managers' Insurance Policy - an aggregate amount of up to 20^{5/6}% of the employee's salary shall be paid, as follows:

- Severance fund - the employer contributes an amount equal to 8^{1/3}% of the employee's salary;
- Pension ('Tagmulim') - both the employer and employee contribute an amount equal to 5% of the employee's salary; and
- Disability insurance - the employer contributes an amount of up to 2^{1/2}% of the employee's salary for disability insurance (which covers 75% of the employee's salary). From our experience, however, the payment of such insurance is typically in the range of 1% only of the salary.

Or :

Pension Fund - an aggregate amount of 19^{5/6}% of the employee's salary shall be paid as follows:

- Severance Fund - the employer contributes an amount equal to 8^{1/3}% of the employee's salary;
- Pension - the employer contributes an amount equal to 6% of the employee's salary, whereas the employee contributes an amount equal to 5^{1/2}% of the salary.

The employee may elect to have managers' insurance with respect to any part of the salary and a pension fund with respect to the rest.

FAMILY POLICIES

MATERNITY AND PATERNITY

■ **Maternity leave**

Pregnant employees who worked more than 1 year are entitled to 26 weeks of maternity leave comprising:

- The prenatal rest period, which may commence at the earliest 7 weeks before the expected date of birth; and
- The postnatal rest period, which will be a minimum of 19 weeks, or more if the prenatal rest period lasted less than 7 weeks.

The first 14 weeks of the maternity leave are paid by the National Insurance Institute while the rest of the maternity leave is at the employee's expense.

Pregnant employees who worked less than 1 year are entitled to 14 weeks of maternity leave only.

Male employees may also be entitled to part of the maternity leave subject to the conditions of the law.

■ **Prohibition of dismissal**

It is prohibited to dismiss pregnant employees that have worked for the same employer for over six months, without a special permit for dismissal from the Ministry of Economy. This prohibition also applies to the term of the above mentioned maternity leave and for a period of 60 days after the return of the employee from such leave.

- **Unpaid extension of maternity leave**

Employees are entitled to be absent from work, from the end of the maternity leave, for a number of months equal to a quarter of their overall months of service for the same employer before birth, but no more than 12 months from the date of birth. Such extension period shall be treated as unpaid leave period, and the extension period will not be counted for purposes of seniority rights.

- **“Nursing hour”**

Full-time employees are entitled to a shorter working day by one hour each day, for a period of 4 months after the end of the maternity leave.

- **Paternity leave**

Employee is entitled to be absent from work for up to 7 days a year, to accompany employee's pregnant partner to antenatal appointments, where the employee's presence is required. Such absence will be deducted from employee's accrued sick leave entitlement.

Employee is also entitled to use these overall 7 days of absence, due to his partner's delivery, from the beginning of the delivery until 24 hours after birth.

- **Employee's resignation due to child care**

A female employee who resigned in order to take care of her newborn, shall be held as dismissed for 9 months from the date of birth and shall therefore be entitled to severance payments. A male employee shall be entitled to such benefit subject to additional requirements set in the law.

ADOPTION

- **Adoption leave**

An employee (either male or female) shall be entitled to an adoption leave similar in terms to a maternity leave (described above) as well as to nursing benefits if the child is aged under 10 at the beginning of the adoption leave.

Employees engaged in intercountry adoption are entitled to an additional period of unpaid leave of up to 45 days, for purposes of traveling abroad in connection with the adoption process.

SURROGACY

- **Adoption leave**

Intended parents in a surrogacy process are also qualified for adoption leave and pay similar in terms to a maternity leave (described above). The difference in terms regarding intended parents is that: (a) the commencement date of leave is the date the child came into the custody of the intended parent; (b) The legal restrictions prohibiting dismissal and decrease in salary or work of pregnant employees, are also applicable to intended parents who notified their employer of the pregnancy of the surrogate mother, from the date of giving the notice to the employer, until the date the child comes into the custody of the intended parent.

FERTILITY TREATMENTS

- **Fertility treatment leave**

Female employee undergoing fertility treatment shall be entitled to a leave from work (similar in nature to sick leave) during the term

of the treatment, if she has received her doctor's approval that her treatment requires so, and subject to notifying her employer in advance. Female employee is entitled to use such right up to 4 series of treatments each year, and to take 16 days off during each treatment. Male employees are only entitled to 12 days of fertility treatment leave per year. Payment shall be made according to the regulations regarding sick leave and the accrued amount of sick days of the relevant employee.

- **Prohibition of dismissal**

Employees undergoing fertility treatment may not be dismissed during the period of the treatment, subject to certain conditions.

ABSENCE DUE TO ILLNESS OF RELATIVES

- **Absence due to illness among children**

Employee is entitled to use up to 8 accrued sick days each year due to illness of his or her child, if that child is aged under 16 and the employee's partner is employed and has not used this right as well.

Employee that has worked for the same employer for over a year is also entitled to use up to 90 accrued sick days each year due to a malignant disease of his or her child, if that child is under 18. Employees who are single caregivers or if their partner is employed and has not used this right as well, may use up to 110 accrued sick days each year due to such malignant disease, as described above.

- **Absence due to illness among parents**

Employee is entitled to use up to 6 accrued sick days each

year due to illness of his or her parent or partner's parent, if the employee's partner is employed and has not used this right as well.

- **Absence due to illness among partners**

Employee is entitled to use up to 6 accrued sick days each year due to illness of his or her partner.

Employee that has worked for the same employer for over a year is also entitled to use up to 60 accrued sick days each year due to a malignant disease of his or her partner.

MILITARY LEAVE

According to Section 276 of the National Insurance Law – 1995, an employee is entitled to receive his or her salary from the employer during his or her military reserve duty. In case the amounts received from the National Insurance Institute are higher than the employee's salary, the employee shall be entitled to the difference.

STUDY FUND (“KEREN HISHTALMUT”)

This savings arrangement, originally established to assist employees to study, is a common contractual arrangement between employers and employees. Subject to the maximum amount stated in Section 3(e) of the Income Tax Ordinance – 1961, the company contributes to such fund a monthly amount equal to 7.5% of the monthly salary, and the employee contributes to such fund an amount equal to 2.5% of his salary. After 6 years (or 3 years in certain circumstances), the amounts accumulated in the fund may be released and are tax-exempt.

DISCRIMINATION

The Employment (Equal Opportunities) Law - 1988, prohibits differential treatment of employees based on their gender, race, sexual preference, age, religion, personal status, pregnancy, parenthood, nationality, country of origin, political views, political party membership or reserve military service. Differentiation between employees will not be deemed discriminatory if it is due to the nature or characteristics of the job or position. In addition to the above, there is also a specific law in Israel (the Male and Female Workers (Equal Pay) Law- 1996) that prohibits any differential pay (including salary and all other benefits, monetary or otherwise) between female and male employees.

COLLECTIVE AGREEMENTS AND EXTENSION ORDERS

■ **Collective agreements and extension orders**

Collective labor agreements, arrangements, and extension orders serve to broaden the application of various binding employment terms.

The issues usually addressed by such collective agreements, arrangements, or extension orders include wages, social conditions, working hours, compensation for overtime, and manner of dismissal of employees.

Any employer that is a member of an employers' organization is subject to all of the general collective agreements and arrangements to which that organization is a party.

Extension orders are administrative mandates issued by the Minister of Economy, which extend the application of existing general collective agreements. The extension orders serve to extend the application of collective labor agreements so that the provisions laid out by such agreements will also apply to certain employers and employees that were not initially a party thereto. Several extension orders are applicable to all employees in Israel; for example, every employee in Israel is entitled to cost of living raises, recuperation payment, travel expenses, minimum contributions to pension and so on. Several extension orders expressly provide that employees are entitled to such rights even if they are not specified in the employee's personal employment agreement.

NON-COMPETE

■ The “Reasonableness test”

Israeli courts have restricted the validity of non-compete provisions, mainly in accordance with the “reasonableness test”, examining different factors of the provisions and deciding on a case-by-case basis. Generally, in cases where the main purpose of the non-compete provision is non-competition with the employer after the term of employment and where there is no legitimate interest of the employer that is being protected in such non-compete limitation, the non-compete limitation will not be enforceable or will only be enforceable for a relatively short period (not more than a few months).

■ Enforcement considerations

When determining the enforceability of a non-compete agreement, Israeli courts typically consider: (i) the factors of time and space/territory to which the non-compete provisions apply (with a general limit of 12 months following the termination of employment), (ii) proper economic compensation to the employee, (iii) whether a clear written agreement exists, (iv) whether the employee acquired special knowledge in the course of training by the former employer, (v) whether the employee engaged in unfair competition and failed to act in good faith, (vi) whether the employer had a legitimate interest in preventing competition. Providing remuneration to an employee in return for his undertaking not to compete has been upheld as legal.

In order to increase the likelihood of enforceability, the scope of the non-competition undertaking should be defined and known by the parties as of the date of such undertaking, and should cover the business of the company in which the employee is employed.

Widening the scope of the undertaking, to include future business (which is not known as of the date of the undertaking) and future affiliates of the employer, may be more difficult to enforce.

FOREIGN EMPLOYEES

The employment of foreign employees is allowed, subject to the existence of a valid working permit and the fulfillment of its terms.

Foreign employees are entitled to all the rights and benefits which Israeli employees are entitled to other than with respect to pension payments that are subject to a special treatment. The employer should provide the foreign employee with an employment agreement drafted in a language that the foreign employee understands. The employer is obligated to provide the employee with a certain medical insurance policy and a dwelling place for the entire period of employment and for seven days thereafter.

BACKGROUND CHECKS

In general, limited background checks are allowed, provided that such checks are not being made for discriminatory reasons or on the basis of discriminatory considerations. For example, an employer is not allowed to ask a candidate whether she is pregnant. Any request made to an employee for permission to conduct a background check should be reasonable and should be relevant to the employee's position and duties. Criminal checks are not allowed in most cases. It is advisable to receive the employee's written consent for any background check, as by doing so, the employer may be able to limit the risks related to conducting a background check.

DISMISSAL

■ **Hearing proceeding**

Termination of employment requires the employer to conduct a hearing proceeding before providing a written notice of termination to the employee.

A hearing proceeding is a preliminary procedure conducted prior to dismissal, during which the company presents the employee (in writing) with the reasons and considerations for its intention to terminate the employee's employment.

During the proceeding, the employer must give the employee an opportunity to be heard before a final decision is made. Failure to conduct a proper hearing proceeding may result in payment of fairly high compensation to the dismissed employee.

NOTICE PERIODS

Employees are entitled to a statutory notice period, according to the table below. The parties may agree, in the employment agreement, to a longer (but not shorter) notice period than the period stipulated by law.

Employers have the right to terminate the employment outright and pay the terminated employee the base salary that the employee would have received during the notice period.

Type of Employee	Term of Service	Notice before termination by either the employer or the employee
Full Time	During the first 6 months	One day for each month of service
Full Time	From 7 months to 1 year	6 days, plus 2.5 days for each month of service
Full Time	More than 1 year	One month
Hourly	During the first year	One day for each month of service
Hourly	During the second year	14 days, plus 1 day for each additional two months of service during that year
Hourly	During the third year	21 days, plus 1 day for each additional two months of service during that year
Hourly	More than 3 years	One month

INCOME TAX BANDS 2015 (ANNUAL INCOME)

Lower (NIS)	Upper (NIS)	Rate on taxable income (%)	Tax on band amount (NIS)
0	63,240	10%	6,324
63,241	108,000	14%	6,266
108,001	167,880	21%	12,575
167,881	239,760	31%	22,282
239,761	501,480	34%	88,984
501,481	and over	48%	n/a

Additional Tax for High Income Earners - An additional 2% income tax will be imposed on individuals who receive wages in excess of NIS 810,720 annually (NIS 67,560 monthly) on the amount above the threshold.

Credit Points - It shall be noted that Israeli residents are entitled to 2.25 'Credit Points' (2.75 for females) which reduce their annual income tax liability by NIS 2,616 for each point. Additional Credit Points are given to youth, discharged soldiers, college graduates and to parents (according to the number of children) etc.

SOCIAL SECURITY CONTRIBUTIONS

Below is a table setting forth the rates of national and health insurance contributions for salaried employees who are Israeli residents aged 18 up to retirement age, as percentages of income (updated in January 2015; rates are updated every January):

	For the share of income which is up to 60% of the average wage –NIS 5,556 – (reduced rate)			For the share of income which exceeds 60% of the average wage, up to the maximum level of income for which national and health insurance contributions must be paid–NIS 43,240 – (full rate)		
	Employer (%)	Employee (%)	Total (%)	Employer (%)	Employee (%)	Total (%)
National insurance contributions	3.45	0.40	3.85	7.25	7.00	14.25
Health insurance contributions	–	3.10	3.10	–	5.00	5.00
Overall rate	3.45	3.50	6.95	7.25	12.00	19.25

CONTACT DETAILS OF THE LABOR AND EMPLOYMENT PARTNERS AT MEITAR LIQUORNIK GEVA LESHEM TAL LAW OFFICES

Rami Landa

T +972 3 610 3152

F +972 3 610 3752

E ramil@meitar.com

Hila Silverstein

T +972 3 610 3165

F +972 3 610 3674

E hilas@meitar.com

The information in this guide was correct at the time of publication. Readers are advised to check information at the time of use.

 MEITAR
MEITAR LIQUORNIK GEVA LESHEM TAL

www.meitar.com