

## **Forum for Enforcing Workers' Rights**

Association for Civil Rights in Israel/ With You – Women Lawyers for Social Justice/  
*Kav LaOved* (Workers' Hotline) Program for Law and Welfare – Tel Aviv University/  
The Israel Women's Network

### **Summary of Activities of Forum for Enforcing Labor Rights in 2007**

The Forum for Enforcing Workers' Rights was founded in 2001 for the purpose of advancing the status of workers in Israel and to improve the system of enforcing labor protection laws. Members of the forum today are: The Association for Civil Rights in Israel, With You – Women Lawyers for Social Justice, Address – Workers' Aid Association, Kav LaOved (Workers' Hotline), Tel Aviv University Clinic of Law and Welfare, and the Israel Women's Network. The Forum operates by drafting proposed legislation, submitting interventions to legal authorities, appealing to government ministries and various public bodies and also by lobbying and media outreach. Listed below are the details of the Forum's activities in 2007.

### **Litigation**

#### **1. Petition for Freedom of Information - the Investment Center of the Ministry of Industry, Trade and Labor**

The Investment Center is part of the Ministry of Industry, Trade and Labor working for the establishment and expansion of factories by granting the status of "Approved Factory" to investment programs in factories that fulfill the criteria as outlined by the law. The status of "Approved Factory" gives the entrepreneur the opportunity to receive a grant from the State or tax benefits. The Forum appealed to the Center to use the tenders it advertises as an additional means of enforcing workers' rights; the letter argues that that the condition for granting State benefits to factories should be linked to the factory's enforcement of labor protection laws, and a number of ways were suggested to safeguard the workers' rights in approved factories. In addition, the Forum submitted a request for information regarding the manner in which the Center examines the enforcement of workers' rights in approved factories. Since the Center's reply arrived late, the Forum submitted a petition for freedom of information.

As a result of the freedom of information petition, the Forum obtained detailed information about the issues addressed in the appeal, and at the Forum's request, representatives of our group met again with the staff of the Ministry of Industry, Trade and Labor, wherein more details on the matter were imparted. Following the meeting, an agreed judgment was issued according to which the case will be closed with court costs awarded to the Forum from the State.

**2. Petition against the Minister of Social Welfare and the National Insurance Institute - Experiment in transferring nursing-care pension in money**

The Forum petitioned against the Social Welfare Minister and the National Insurance Institute (NII) because the Minister was not operating according to the amended National Insurance Law stating that for two years, starting on 1.6.07, the ministry would launch an experimental program, according to which in several areas a number of pensioners entitled to a nursing-care pension would receive the pension in money. Currently, elderly individuals who are entitled to a nursing care pension receive an "indirect pension": the pension is transferred by the National Insurance Institute to the employment agency placing the individual caregivers with clients, and the latter transfers the money to the caregiver who takes care of the elderly pension recipient. On the eve of the deadline for submitting the affidavit of the response, the Knesset enacted an amendment postponing the date of the beginning of the experimental phase, and even enacted an alternative arrangement in the Law of Arrangements for a money pension for part of the said elderly population. As a result, the petition was superfluous. Following this, both sides submitted an agreed request to cancel the petition and procure costs from the State. The request is currently pending.

**3. Providing Testimony as a Friend of the Court (amicus curiae) – Disclosure of Contracts between Client and Contractor**

We submitted a request to join the suit of a man who worked as a security guard for a security firm to receive his rights and benefits that had not been paid to him, as a "Friend of the Court". The plaintiff asked the court to order the defendant, the security firm, to reveal its agreement with the client of the security services. This request was rejected; an appeal was submitted and this too was rejected, based on the argument that the agreement between the contractor and the company was relevant to the suits of workers who are not party to the agreement. Therefore a request for leave to appeal was submitted. In the request of the amicus curiae we asked in the name of the organizations who are members of the Forum to safeguard workers' rights, to submit detailed testimony highlighting that the documents of agreement between manpower and service contractors and those that actually use their services are relevant to the suits of contractors' workers regarding the violation of their rights. In a very brief judgment the case was returned to the district court which will examine the relevancy of contract agreements. (Request for leave to appeal 806/06 Pinto)

**4. Joining as a "Friend of the Court" – an unrealistically low bid for tender in Haifa**

As a Friend of the Court, we joined a petition, submitted by a contractor who lost a tender for cleaning the Haifa Courts, against the Courts Administration and against the winning contractor. The petition claimed that the winning offer was deficient, not enabling the

contractor to pay the workers their legal pay and benefits. In the discussion held in the Court of Administration in Jerusalem, Judge Tzur ruled that the winning bid be returned for examination to the Tenders Committee so that it could examine it in light of the claims raised in the petition and in the amicus brief.

District Petition (Jerusalem) 1204/06.

**5. Joining as a "Friend of the Court" – an unrealistically low bid for tender in Bat Yam**

We joined, as a "Friend of the Court", a petition submitted by a contractor who lost a cleaning tender issued by the Bat Yam Municipality, against the municipality and the winning contractor. The petition argued that the winning bid was deficient since it did not allow the contractor to pay the workers their legal rights and benefits. Our position is that "unrealistically low bids for tenders" should be put aside, and in every case of contention whether an offer is deficient or not, the Tenders Committee must ascertain in advance the cost of the workers' employment and reach an informed decision. During the debate, Judge Dotan ordered the contractor to show us the workers' pay slips. Our investigation revealed that each month between 50%-100% of the slips were defective due to lack of payments of workers' social benefits. Under cross-examination an expert on behalf of the Municipality admitted that he had not included all the social benefits demanded by the law in the estimation according to which the bids were examined. Therefore it turned out that the contractor had offered a bid lower than the estimate. We submitted summaries and we are awaiting the judgment. District Petition (Tel Aviv) 1464/07.

**6. Petition against unrealistically low bid of the Center for Local Government**

We filed a petition in the name of *Ma'agalei Hatzedek, Kav LaOved* and the Association for Civil Rights in Israel against a tender for guarding educational establishments advertised by the Center for Local Government. Contractors whose bids were approved for this tender can be in touch with the local authorities in Israel to carry out these contracts, and 5,000 workers can be employed. The petition argued that the maximum price fixed for the tender was not realistic, since it is not much higher than the work pay and therefore does not leave room for pricing overheads and funding of benefits. On the recommendation of Judge Tzur, the parties reached an agreement that received the validity of a court ruling according to which the minimum rate in the tender would be the cost of employing the workers. District Petition (Jerusalem) 520/06.

**7. Request to join as "Friend of the Court" in petition of security company against the Tiberias Municipality**

This is the matter of a petition within the framework of the second part of a tender for guarding educational institutions. The security company claims that the companies that won the tender to guard educational institutions in Tiberias were not capable of paying the workers' wages and social benefits. The forum submitted a request to join the petition as a Friend of the Court regarding the above issue and we are waiting for the Court's decision. (District Petition [Tel Aviv] 1995/07)

## **Outside the Courts**

**Pension Agreement** – We applied to the Minister of Industry, Trade and Labor to sign the expansion order **only** after several necessary changes were added, in order not to create a new generation (Generation B) of workers who would receive a pension less than the current pension (17.5%). We also called on the Minister to advance the legislation of a Compulsory Pension Act; the same letter contained the signature of the *Histadrut* and Employers' Organizations on an agreement within the framework of pension insurance in the economy. The agreement is due to come into force with the signature of the Minister of Industry, Trade and Labor on the expansion order that will apply to the entire population. Inter alia the agreement states that the proportion of pension fund allocations will start at 2.5% and will reach 15% in 2013. As a result of this meeting I was invited to a meeting with the person in charge of work relations at the Ministry of Industry, Trade and Labor, who confirmed that the Expansion Order was about to be signed soon and that an agreement had been reached with the *Histadrut* and the Employers, according to which the harm caused to Generation B workers would be reduced. Unfortunately the agreement is not enough but we shall not continue to act on this matter since the efficacy of the expansion order exceeds its damage.

**Permit to work overtime** – We applied to the Minister of Industry, Trade and Labor to review the general permit for overtime which was allowed by Para. 11 (1) of the Law of Work Hours and Rest, 1951, and which nowadays enables employers to employ all workers in Israel in an overtime capacity. Paragraph 11 enables the Minister of Labor to issue an overtime permit during a State of Emergency. We argued that the legislator determined the orders of Para. 11 in order to allow essential administrative flexibility in the labor market with the emphasis on emergency situations and times of war – this necessitates a change in the form of employment; we are certain it was not the intention of the legislator to allow overtime routinely and to actively weaken the double purpose of the law.

The said permits enable many hours of overtime in a manner that contradicts the spirit of the principal legislation. We asked the Minister to form a working group, together with the workers' and employers' organizations, to formulate a new version of the permit that will be compatible with the objective of the Law for Work Hours and Rest and taking into account the well-being of all workers in Israel. Our application was not approved.

### **Application to the Registrar of Associations to supervise workers' rights in associations**

- We applied, in the name of the Forum for the Enforcement of Workers' Rights, to the Registrar of Associations to interpret the Associations Law so as to obligate the supervision of workers' rights by the Associations' Registrar, inter alia through monitoring the petitions filed against the association by workers whose rights have been violated, according to Para. 38 (a) (4) of the Associations Law. This clause orders the Association to inform the Registrar of any claim made against it. We argued that the Registrar must make use of his authority according to the law, in order to monitor the suits of workers against an association, and to act and/or investigate an association against which suits were filed indicating serious violations of workers' rights. We asked the Registrar to examine and take into account safeguarding workers' rights, within the framework of the tests and proceedings enacted to issue or renew the authorization of proper management, and this according to the best measures and tools available to him. And if this examination finds violations of labor laws, steps within his jurisdiction must be taken, including not granting a certificate of proper management; disbanding the association; appointing an investigator to the case; initiating liquidation proceedings, and so forth. The Registrar of Associations replied that generally this matter was not within his jurisdiction, but should he receive concrete information about the blatant and sweeping violation of workers' rights, he would consider exercising his authority.

### **Request to publish expansion orders on the site of the Ministry of Industry, Trade and Labor**

- We applied to the Ministry of Industry, Trade and Labor with a request to publish on its site all the expansion orders issued by the Minister. We argued that at present only 17 expansion orders have been published, out of more than 40 current orders, and that orders not published on the site are not accessible to the public, workers and employers. We argued that the duty of the Ministry of Industry, Trade and Labor to publish the orders and make them accessible to the public derives directly from the foundations upon which the rule of law in a democratic state is based. The significance of this principle is "that the legal norm be published and known. Legislation that is not published and lies in the drawer of the executive authority contradicts the principle of the rule of law". We were told that since the orders had been published over the years in official publications, the Ministry had no additional obligation to publish on the site, although efforts would be made to add more orders to the Ministry's site.

### **The Center for Encouraging Investments at the Ministry of Industry, Trade and Labor**

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In wake of the information received in the petition for freedom of information against the Investments Center (see above), the Forum is currently formulating a position paper to examine the possibilities of promoting the enforcement of workers' rights in approved factories receiving grants from the Investments Center.

### **The Licensing of Manpower Companies at the Ministry of Industry, Trade and Labor** –

The forum applied to the unit for licensing manpower companies for information about the way in which the unit examines the protection of workers' rights at the manpower companies, when it issues a license to these companies. After lengthy correspondence, the request was granted, and the Forum is currently examining the information given and ways in which to advance the enforcement of workers' rights in manpower companies in light of this.

### **The renewal of National Insurance Institute contracts with nursing-care companies** -

The payment of a nursing pension indirectly means, as previously mentioned, that the NII (National Insurance Institute) pays pension to those entitled to it through a third party – the nursing care companies. The companies receive the money to employ caregivers, and the elderly individuals who are entitled receive care according to the scope of their entitlement. However, the manpower companies harm the rights of their workers and skim off money paid to their workers by the NII – according to the NII's own estimate we are talking about an amount of 180 million shekels annually, and according to other estimates: more than double this sum (in addition to the "official" profits of the companies according to the contracts they have with the NII). The Forum was previously involved in various petitions regarding a new tender between the nursing care companies and the NII that asked to protect the rights of caregivers by adding a contract to the tender. The nursing care companies succeeded in delaying this tender for about 12 years, and it is extremely doubtful if the NII will succeed in pushing it through in spite of its considerable efforts. In the meantime every year contracts are renewed with the nursing-care companies, even though everyone knows they are discriminating against their workers and stealing from public insurance money. Against this background, the Forum applied to the Minister of Social Welfare and the NII with a plea to renew the contractual agreement for providing nursing care services with each one of the nursing-care providers only after a contractual agreement according to the current contract corresponding to the version of the contract added to the fifth tender (and the last one so far) that the NII published for nursing-care providers. According to that version of the contract, care workers are employed through these providers as contractor's employees, who will give nursing care services to the elderly, until the drafting and execution of a new tender for providing nursing services.

**Information sheets regarding manpower workers** – Toward the end of 2007 and the coming into force of the order regarding the actual absorption of manpower companies' workers by employers, we published information sheets concerning the violations by manpower agencies, amongst others in banks, local councils and fashion chains, etc. In the information sheets we showed that the subcontracted workers, mostly women, are discriminated against in relation to workers employed directly; the latter earn a higher salary and various benefits, compared to all workers in the economy who receive a monthly wage. We claimed that the manpower companies violate the law that demands equal working conditions in a sweeping manner. We also warned against the intention of the manpower agencies and the organizations employing their services to utilize all their power to evade the new directive that will come into force in 2008, regarding the direct absorption (of workers) into the organizations employing them through the agencies.

## **Legislation**

**Bill regarding the Repeated Violation of Labor Laws, 2007** – The aim of the bill is to define and deal with the phenomenon of employers who are "serial" violators of labor laws. Due to the serious difficulty of enforcing labor protection laws in Israel, a large percentage of employers deliberately and continuously violate the rights of their employees as a means of cutting costs. The law offers a simple, effective legal instrument to deal with this phenomenon by leverage of the existing legislation, by adopting the term "repeated violation" to the system of labor laws. The proposed law defines repeated violation, determines the process and the conditions for proclaiming an employer an "repeat offender" and outlines a series of sanctions (civil and criminal) that can be applied against the employer who is a repeat offender, together with other directives such as the limitation of the period of repeated violation and the establishment of a directory of repeat offenders. The Bill was submitted by M. K. Ran Cohen.

**Bill regarding pay slips 2007** – The proposal was drafted and promoted by the Forum. The wages protection law (1958) regulates wages, payment schedule and form of payment. Among other things, Clause 24 states that the employer must keep a wage record and provide workers with a pay slip as regulated by the Minister. The proposed amendment details the employer's duties concerning the wage record, and to provide the workers with a pay slip no later than nine days after payment of the wages. Along with this stated duty, the proposed amendment stipulates that it is criminal not to abide by the above duties and to provide false information. The bill also proposes that illegal deductions from wages should be a criminal offence. It is proposed to make the Labor Court the sole authority for civil proceedings related to violation of this law, and to allow the Court to order restitution for non-financial

damage to the worker. It is also proposed that the Court would be able to order restitution without proof of damage for failure to supply a pay slip on time. The proposal passed its first reading in the parliament.

**Bill regarding unlawful deductions for professional training** – This is a proposed amendment to the Wage Protection Law, initiated by the Forum with the objective of increasing the enforcement of laws punishing employers who illegally deduct sums from their workers' salaries. The deductions in question are taken under various pretexts from the workers, including "training courses". Generally there is no real reason for these fines other than increasing the employers' profits. This phenomenon manifests itself in the security industry, for example, where deficient tenders are common, and the employers increase profits at the workers' expense. This bill was submitted by Knesset Member Zvulun Orlev.

**Legislation of Amendment to Law of Notice to Worker (work conditions), 2002** – The law obligates the employer to give the worker written notice detailing the worker's employment conditions of the worker, according to law (henceforth – notice to the worker), no later than 30 days after the worker began to work, including: identity of employer and employee, date of commencement and duration of work, the total payments to the worker as wages and the dates of payment. Violation of the law constitutes an administrative offence. The amendment applies the law also to contractors' workers by determining that the employer that agreed to a contractor's contract or to a service-providing contract, in which work conditions or the wage conditions of the worker were stipulated, must include in the notice to the worker the work conditions or the pay conditions of the worker as fixed in the contract with the service provider. The bill was submitted by Knesset Member Dov Hanin and others. The bill was accepted in the Knesset on October 16, 2007, and came into effect 60 days later.

**Bill regarding the responsibility of employers who contract services** – The Forum drafted the basis for this proposed bill, which assigns responsibility for upholding labor laws not only to the manpower or services contractor, but also to the agent commissioning the service and enjoying the worker's labor, who is employed by the agent indirectly (via manpower contractor, services contractor or labor contractor). The proposed bill states that the responsibility of the indirect employer is residual. First, the agent commissioning the service is informed that the contractor violated labor laws. If the violation persists for 21 days, and the contractor does not correct the violation, the agent commissioning the service must see to that the worker's rights are restituted and that the worker's wages are paid according to the law. The bill was submitted during the 16<sup>th</sup> Knesset by Knesset Member Yasinov (Shinui), and again in the current Knesset by Knesset Members Dov Hanin (Hadash), Lia Shemtov



(Israel Beiteinu) and Shelly Yekhimovich (Labor). The bill was endorsed by the ministerial legislation committee, and is now being negotiated with the Treasury, which objects to the arrangements that the bill proposes.

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