

Most Important Initiative Related Questions in Explanatory Note

<u>Article's Scope of Application</u>	<ol style="list-style-type: none"> 1. When this Article shall be enforced? <ul style="list-style-type: none"> ○ Ministerial Decision No. (142906) on regulating contractual relationship between employees and employers shall be enforceable as from publication date thereof (13/08/1441 AH) 2. How to calculate the 6-month term? <ul style="list-style-type: none"> ○ 6-month term shall be calculated upon KSA declaration to take certain measures against a specific condition or circumstance that requires short time working or precautions that mitigate severity of such condition or circumstance. 3. Shall this Article be applicable to employees during probationary period? <ul style="list-style-type: none"> ○ Yes, Article 41 shall apply to employees during the probationary period. 4. Shall enterprises be entitled to select one of the three options to be applied to employees or should options be applied gradually? <ul style="list-style-type: none"> ○ Yes, enterprises shall be free to select any of options set forth in Article 41 as needed. 5. Shall an enterprise not affected by current conditions be entitled to benefit from Article 41? <ul style="list-style-type: none"> ○ Enterprise not affected by current circumstances shall not entitled to rely on Article 41 for any procedures taken against its employees. 6. Shall Article 41 remain applicable to enterprises after gradual return of work? <ul style="list-style-type: none"> ○ Article 41 shall remain applicable over the 6-month term upon KSA declaration to take certain procedures against a specific condition or circumstance that requires reducing work hours or precautions that mitigate severity of such condition or circumstance, unless such procedures are suspended. 7. Shall provisions of Article 41 be applicable to non-Saudi employees in enterprises affected by the current crisis? <ul style="list-style-type: none"> ○ Yes, Article 41 shall be applied to all employees under Labor Law as prescribed in Article (5) of the Law, save as exempted categories mentioned in Article (7), or in case excluded by an order given by Regulatory Authority. 8. Shall enterprises benefitting from Sanid partial compensation for certain employees, deal with other employees as per Article 41. <ul style="list-style-type: none"> ○ Yes, provided that such enterprises have been affected by COVID-19 pandemic. In this case, such enterprises shall be entitled to apply options of Article 41 to other Saudi and non-Saudi employees excluded from Sanid compensation. 9. May enterprises be entitled to apply the three options to an employee? <ul style="list-style-type: none"> ○ Yes, enterprises may also grant a paid leave for a given term, and then apply the other option with 40% reduction as a maximum. If agreed, such employee may be granted an unpaid leave.
--	--

<p><u>Dismissal and Contract Termination</u></p>	<ol style="list-style-type: none"> 1. Shall enterprises be entitled to dismiss an employee who rejected application of Article 41? Which Article shall be applied then? <ul style="list-style-type: none"> ○ If an employee rejected application of Article 41, such employee shall be deemed as violating Employer Instructions set forth in Paragraph (2) of Article (80) of Labor Law. 2. If an enterprise violated Article 41 while certain employees had been dismissed before issuance of Explanatory Note, how such enterprise can remedy such violation? <ul style="list-style-type: none"> ○ Ministerial Decision on violations has defined certain sanctions against Article 41 violation. Explanatory Note also indicated that the Ministry is entitled to reach settlement if employer remedied such violation by returning employees back to work. 3. If employer had dismissed an employee on grounds of force majeure (i.e. for an illegal reason), before a pay cut, how compensation shall be then calculated? <ul style="list-style-type: none"> ○ If employment contract has been terminated for legal or illegal reason, such employee shall be entitled to receive his/her dues by operation of Law or as per contract or Work Bylaws, based upon the last pay that such employee revived before occurrence of such exceptional condition or circumstance. 4. Shall enterprises be entitled to terminate contract of an employee during probationary period due to COVID-19 pandemic without relying on Article 41? <ul style="list-style-type: none"> ○ Article 41 does not violate terms of employment contract on regulation of contract termination. 5. Under such circumstances, what are conditions whereupon termination of employment contract renders legal and lawful? <ul style="list-style-type: none"> ○ Article 41 does not violate terms of employment contract on regulation of contract termination. 6. If an enterprise has applied provisions of Article 41 and continuously defaulted on paying salaries after 6 months, shall such enterprise be entitled to terminate employee contract whose working hours have been reduced or the employee who has been granted an exceptional leave? <ul style="list-style-type: none"> ○ The employer shall not terminate the employment contract given that such condition or circumstance is deemed as a force majeure, unless the following three main conditions have been met: <ul style="list-style-type: none"> ▪ Lapse of 6-month term following actions taken on a condition or circumstance involving precautions or protective measures, requiring short-time working or suspension for a certain term, and survival of such condition or circumstance. ▪ All or part of procedures on pay cut, annual leave and exceptional leave have been actually applied and observed. ▪ It is proven that the employer has not benefited from Government subsidies of whatever type against such condition or circumstance.
---	--

<p><u>Short-Time Working</u></p>	<ol style="list-style-type: none"> 1. What is the minimum short-time working and pay cut? <ul style="list-style-type: none"> ○ There is no minimum short time working, while the minimum pay cut is 40%. 2. Shall short-time working remain enforceable until the end of contractual relationship? <ul style="list-style-type: none"> ○ Article 41 shall remain enforceable until end of the term specified therein. 3. May pay cut be applicable regardless of short time working and observance of remote work? <ul style="list-style-type: none"> ○ Short-time working must be in proportion to pay cut no matter how the work is being implemented. 4. Shall short-time working apply based on 6-hour working in Ramadan, or on 8-hours basis? <ul style="list-style-type: none"> ○ Pay cut must be in return for reduction in actual working hours. 5. Shall enterprises that had reduced March wages be entitled to rely on Article provisions of 41, given that no short-time working is applied for March? <ul style="list-style-type: none"> ○ The enterprise shall not be entitled to draw on Article 41 until publication date thereof, which was made in accordance with Ministerial Decision No. (142906) on regulating the contractual relationship between employees and employers, published on 13/08/1441 AH (6 April 2020 AD). 6. Shall an employee be entitled to reject pay cut? <ul style="list-style-type: none"> ○ Article 41 sets forth pay cut and short time working for enterprises affected by Coronavirus pandemic, provided such pay cut shall not exceed 40% of actual pay. Therefore, the employee shall not be entitled to object to such option in accordance with Shariah Principle "There should be neither harming (darar) nor reciprocating harm (dirar) ". 7. If pay cut is applied to an employee who had bank loans, how shall such installments be covered? <ul style="list-style-type: none"> ○ Under SAMA's instructions, banks must take into account pay cut; such employee is therefore entitled to provide proof of pay cut to the bank to reduce such premiums in proportion to the pay following pay cut. 8. Is there a specific criterion for employer selection of 1% to 40 pay cut? <ul style="list-style-type: none"> ○ There are two conditions for pay cut, (1) Enterprise shall have been affected by COVID-19, and (2) Pay cut shall be offset by short-time working. 9. Shall an employee rejecting pay cut adhere to terms of employment contract? <ul style="list-style-type: none"> ○ During such exceptional circumstances and due to some enterprises' default on paying wages, the employer has been allowed to apply pay cut by no more than 40% if it proven that such employer has been affected by the pandemic, and for a temporary term. Accordingly, employee's objection to such procedures shall be deemed as non-compliance with employer's instructions.
<p><u>Exceptional Leave:</u></p>	<ol style="list-style-type: none"> 1. Shall employer be entitled to grant an unpaid leave to an employee without his/her consent? <ul style="list-style-type: none"> ○ It is employee's right to request for unpaid leave but shall not be forced to take such leave. 2. Shall employment contract be deemed suspended and employee' work not calculated if it has been agreed upon an exceptional leave between employer and employee?

	<ul style="list-style-type: none"> ○ Article 116 of Labor Law shall apply. <p>3. Shall the exceptional leave term be specified?</p> <ul style="list-style-type: none"> ○ Yes, the exceptional leave term shall be specified.
<u>Annual Leave:</u>	<p>1. Shall paid leave be calculated based upon pay cut or before pay cut?</p> <ul style="list-style-type: none"> ○ If employee takes a paid leave, such leave should be consistent with pay before cut. <p>2. Shall employer be entitled to grant a paid leave to its employees in return for a portion of their salaries?</p> <ul style="list-style-type: none"> ○ Yes, the employer is entitled to specify the leave term and designate employees to be granted such unpaid leave, while the employee has no right to object to such procedures.
<u>Government Subsidies:</u>	<p>1. Shall enterprises be entitled to dismiss an employee based on force majeure if such enterprises had not benefited from Government subsidies?</p> <ul style="list-style-type: none"> ○ This may be permitted only after 6 months of taking precautions and measures. <p>2. What are Government subsidies set forth in the Ministerial Decision on Article 41 of the Implementing Regulations, whereupon enterprises shall not be entitled to dismiss employees?</p> <ul style="list-style-type: none"> ○ Any subsidies of whatever type provided to enterprises.
<u>Violation of Article 41:</u>	<p>1. How can an affected employee lodge a complaint against an enterprise violating Article 41?</p> <ul style="list-style-type: none"> ○ A complaint can be lodged through the following channels: <ul style="list-style-type: none"> - Ma3an Rasd App - Call 19911 <p>2. Shall penalty apply to all private-sector enterprises?</p> <ul style="list-style-type: none"> ○ Yes, it shall apply to all enterprises in violation of Article 41 of the Implementing Regulations of Labor Law. <p>3. Shall penalty be imposed only upon unlawful termination of Saudi employees?</p> <ul style="list-style-type: none"> ○ No, the penalty shall be imposed upon all Saudi and non-Saudi employees at the enterprise. <p>4. Shall the enterprise be deemed in violation of Article 41, if such enterprise terminated the contract with employees covered in "Sanid" initiative upon expiry of subsidy term?</p> <ul style="list-style-type: none"> ○ Yes. Such enterprise shall be deemed in violation. <p>5. Shall enterprise be deemed in violation of Article 41 if such enterprise terminated the contract with employees covered in "Sanid" initiative upon expiry of subsidy term?</p> <ul style="list-style-type: none"> ○ Yes, such enterprise shall be deemed in violation for failure to complete the contractual term while benefiting from Government subsidy. <p>6. Shall enterprise be deemed in violation of Article 41 if such enterprise carried out internal restructuring, resulting in dismissal of Saudi employees so as to mitigate damage?</p> <ul style="list-style-type: none"> ○ Yes, such enterprise shall be deemed in violation for non-compliance with Article 41.