

## Ministerial Decision

The Minister of Human Resources and Social Development;

Given the powers duly vested to him;

Having taken cognizance of the Labor Law promulgated by virtue of Royal Decree No. M/51 dated 23/08/1426 AH, as amended by Royal Decree No. (M/24) dated 12/05/1434 AH, as amended by Royal Decree No. (M/46) dated 05/06/1436 AH, as amended by Royal Decree No. (M/14) dated 22/02/1440 AH, as amended by Royal Decree No. (M/134) dated 27/11/1440 AH;

Having perused the Implementing Regulations of the Labor Law promulgated by virtue of Ministerial Decision No. (70273) dated 11/04/1440 AH, Ministerial Decision No. (142906) dated 13/08/1441 AH with regards to regulating contractual relationship between employers and their employees, as well as Ministerial Decision No. (146377) dated 07/09/1441 AH regarding penalties on violation of Article (41) of the Implementing Regulations.

Resolves as follows:

First: Approve the Explanatory Note attached to Ministerial Decision No. 142906 dated 13/08/1441 AH, and Ministerial Decision No. 146377 dated 07/09/1441 AH, attached hereto.

Second: This Decision shall be published in the Official Gazette and MHRSD's website, and shall enter into force from the date of its publication in the Official Gazette or MHRSD's website.

Third: Deputy Minister for "Labor" shall carry out necessary actions for communication and enforcement of this Decision.

**Allah is the Arbiter to Success**

**Minister of Human Resources and Social  
Development**

**[Hand Signed]**

**Ahmad Bin Suleiman Al-Rajhi**

## **Explanatory Note of Article No. (41) of the Labor Law Implementing Regulations with regards to regulating contractual relationship between employers and their employees, and Paragraph (63/1) regarding violations and penalties**

Ministerial Decision No. 142906 dated 13/08/1441 AH stipulated addition of Article 41 to the Regulations, and Ministerial Decision No. 146377 dated 07/09/1441 AH stipulation addition of Paragraph (63/1) to the Ministerial Decision No. 178743, pursuant to Article 243 of Labor Law, stating that "The Minister shall issue, within one hundred eighty days from entry into force of this Law, the decisions and regulations necessary for enforcing the provisions of this Law. The Implementing Regulations shall be published in the Official Gazette". Article 11 (bis) of Labor Law states that "Without prejudice to the provisions of this Law and the relevant regulations, the Minister may take measures that shall ensure improvement of the functioning of the labor market and regulate the movement of labor."

The referred to decision was issued including Article 41 to regulate contractual relationship between employers and their employees in the face of exceptional circumstances and force majeure, mentioned in Paragraph 5 of Article 74 of Labor Law, such that Article 41 would be a provision of the Law Implementing Regulations in which regulatory provisions and executive decisions that govern contractual relationship between employers and their employees are observed. In addition, this Article shall keep up with events that KSA and the entire world experience as well as associated precautionary measures and preventive actions to encounter any exceptional event described as a force majeure, taking into account that operation of Article (41) of Implementing Regulations of the Labor Law shall be associated with continuity of event or circumstance, in light of the fact that it is established under Islamic Sharia principles and rules that provision is always attached to its cause, whether applicable or not, since when the cause is non-existent, article shall not be enforced, and contract parties shall be reinstated to the condition prior enforcement of the regulations.

It is legally established, under general rules of contracts binding on the parties, that if a party obligation has expired due to impossible implementation, then corresponding obligations shall be expired. Force majeure is defined as every event or occurrence that a person cannot expect nor prevent. In order for force majeure to terminate contract, it shall lead to absolute impossibility that lasts until expiration of the contract, but not just implementation difficulty.

**Paragraph (1) of Article (41) of the Labor Law Implementing Regulations** has depicted force majeure as follows: "In case KSA has taken measures, as it deems appropriate or as recommended by a competent international organization, regarding a condition or circumstance requires to reduce working hours or to take precautionary measures in order to limit aggravation of that condition or circumstance. Moreover, Article 41 has approved a number of measures that must be taken by any employer or employee within the six months following measures that have been taken on such condition or circumstance before invoking the concept of force majeure and considering its realization only after a period of six months whilst condition or circumstance continues, in addition to proving that the employer is affected by these conditions. Such measures included steps that employee and employer shall implement and adhere to, as follows:

**First: Wages:**

Whereas payment of employee wage shall be one of the most important obligations prescribed by Labor Law as an essential clause of employment contract that shall be agreed by both parties, and wage payment shall be in return for work, and in case of an exceptional circumstance or situation that requires reduction of working hours, it is necessary to take into account both parties to the contract in this case as stated in the Islamic Sharia principles and rules, stating that (There should be neither harming (darar) nor reciprocating harm (dirar).

Paragraph (A/1) of Article 41 of Labor Law Implementing Regulations has indicated that wage shall be reduced, during the six months following measures taken on the condition or circumstance or a part of this period, in a manner commensurate with the daily or weekly working hours. However, pay cut shall not exceed 40% of full actual wage, and shall apply only within the six months following measures taken regarding the condition or circumstance or within a period thereof, as may be agreed by the parties. Then, the employer shall resume payment of full wage previously agreed upon before the reduction and the employee shall not have the right to refuse pay cut as long as it does not exceed the mentioned limit.

**Second: Annual leave**

It is legally established by virtue of Article (109) of the Labor Law that employer shall have the right to organize period on which employee will obtain his/her annual leave, such that employer can set annual leave dates for employee based on work conditions and requirements. In addition, employer shall have the right to grant annual leave to all employees within a single period of time or on a rotating basis, as required.

Paragraph (b/1) of Article (41) of Labor Law Implementing Regulations has indicated that employer may grant annual leave to the employee within six-month period following measures taken regarding the condition or circumstance or within a period thereof, based on the powers and authority vested in the employer to determine annual leave time, at its sole discretion and as required by work conditions.

Annual leave remuneration shall be paid in accordance with Article 109 of the Labor Law. Employee may not refrain from exhausting the balance of his/her leave whenever the employer decides to grant him/her an annual leave. Annual leave remuneration shall be calculated based on the actual wage before reduction applied due to exceptional circumstances under the provisions of Article (41) of Labor Law Implementing Regulations.

**Third: Exceptional Leave:**

It is legally determined under Article (16) of Labor law that the employee shall be entitled to apply for unpaid leave subject to employer's approval of that leave, in light of the fact that employee's exhaustion of annual leave shall not deprive him/her of the right to apply for unpaid leave.

Paragraph (C/1) of Article (41) of the Implementing Regulations of Labor law provides that employer may grant employee an exceptional leave within the six months following the measures taken regarding the condition, circumstance or part of the period whenever requested by the employee.

This provision shall be applied subject to the provision of Article (116) of the Labor law regarding that the employment contract shall be deemed suspended during that exceptional leave whenever it exceeds twenty days unless the parties agreed on

considering that the employment contract is not suspended for the time in excess of that period.

Accordingly, the provisions of Paragraph (1) of Article (41) of The Implementing Regulations of Labor law stipulated regulating procedures that shall be fully or partially applied by both employer and employee during the six months following the measures taken regarding any circumstance or condition that may arise and which can be considered as force majeure, taking into account that any illegal termination during that period shall give the affected party the right to get his/her/its dues prescribed under law, employment contract or work bylaws. These dues shall not be calculated based on the reduced wage during the exceptional condition or circumstance but shall be calculated based on the last wage received by the employee before occurrence of that exceptional condition or circumstance.

**Paragraph (2) of Article (41) of the Implementing Regulations of Labor law indicates that applying provisions of that Regulations shall not prevent employer to benefit from the subsidy provided by KSA to support the private sector whatsoever type of this subsidy, such as helping employers to pay wages of their employees, exempting employers from payment of governmental fees or any other similar measures decided by KSA within the procedures of facing the condition or circumstance.**

Therefore, employer shall not invoke termination of the employment contract, considering that this condition or circumstance falls within the definition of force majeure, except after the realization of these three basic conditions:

1. Passage of the six months following measures taken regarding condition or circumstance leading to precautionary or preventive procedures that require reducing the working hours or suspending business for a specific period while the condition or circumstance continues.
2. Completion of applying the procedures, in whole or in part, regarding reduction of wage, annual leave and exceptional leave and compliance therewith.
3. If it is proven that employer had not benefited from any kind of subsidies provided by KSA in facing that condition or circumstance.

**Moreover, paragraph (3) of Article (41) of the Implementing Regulations of Labor law indicates that employee shall not invoke termination of employment contract, considering that this condition or circumstance falls within the definition of force majeure, except after the realization of these two basic conditions:**

1. Passage of the six months following measures taken regarding condition or circumstance leading to precautionary or preventive procedures that require reducing the working hours or suspending business for a specific period while the condition or circumstance continues.
2. Completion of applying the procedures, in whole or in part, regarding reduction of wage, annual leave and exceptional leave and compliance therewith.

**Paragraph (63/1) of the Ministerial Decision No. (178743) on violations and penalties indicated that in case of any violation or non-compliance with application of the provisions regulating exceptional conditions, the legally competent authority shall be entitled to impose a ten thousand Riyal penalty against that violation, knowing that penalty shall be multiplied in case of repeated occurrence. MHRSD may opt to settle these violations whenever they are remedied and settlement requirements are met as may be determined by MHRSD.**

**Allah is the Arbiter to Success**