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The legal rules regulating the end-of-service gratuity according to Iraqi Legislation

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Abstract: Labor laws determine the cases of termination of the work association. These legislations guarantee a retirement salary to the worker whose service is terminated, provided that he is protected and covered by social security, meaning that he fulfills the legal requirements, which include the payment of pension contributions. However, there are exceptional cases in which they expire. The work relationship, whether in collective or individual labor contracts, without those contracts fulfilling the legal requirements, whether in terms of years of service, Or in terms of collecting pension contributions during the period of his service or work with the employer, especially if he is not protected or covered by social security, in this case the person is entitled to a reward known as the end-of-service gratuity , as it has been approved to protect and compensate him and his family for his loss of work and the possibility of He will have not obtaining another job opportunity after the end of his service, especially if he is old, so we will try to explain the issue from various aspects in accordance with the Iraqi legislation in force.

Key words: Labor laws, work association

Introduction

Labor laws determine the cases of termination of the work association. These legislations guarantee a retirement salary to the worker whose service is terminated, provided that he is protected and covered by social security, meaning that he fulfills the legal requirements, which include the payment of pension contributions. However, there are exceptional cases in which they expire. The work relationship, whether in collective or individual labor contracts, without those contracts fulfilling the legal requirements, whether in terms of years of service, Or in terms of collecting pension contributions during the period of his service or work with the employer, especially if he is not protected or covered by social security, in this case the person is entitled to a reward known as the end-of-service gratuity , as it has been approved to protect and compensate him and his family for his loss of work and the possibility of He will have not obtaining another job opportunity after the end of his service, especially if he is old, so we will try to explain the issue from various aspects in accordance with the Iraqi legislation in force.

Research division

Proceeding from the fact that social security has become one of the basic rights of the worker, which is stipulated in many constitutions and different laws, especially for people who do not have a pension salary, it has become necessary to study the nature of those rewards and the extent of their entitlement and the people covered by them, so we have divided this research into three basic chapters:

The first chapter we will talk about the definition of end-of-service gratuity, as it is divided into two basic sections dealing with the first section, the legal concept of end-of-service gratuity, while addressing the second section distinguishing end-of-service gratuity from other rewards and wages, and the second chapter We have devoted it to clarifying the cases of termination of service in the various Iraqi legislation, where the first section dealt with the case of the termination of the contract by a unilateral will and the second section the case of the termination of the contract due to the impossibility of final implementation, while the third section dealt with the hypothesis of the expiry of the fixed-term contract. As for the third chapter, it deals with the legal regulation of the end-of-service gratuity, then we conclude the research with the most important results, and we put the appropriate recommendations for them.

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Chapter One
Definition of end of service gratuity

The insured worker deserves end-of-service gratuity in accordance with the law and regardless of the cases of termination of the work contract, as the insured worker may not meet the conditions set by the law for entitlement to the retirement salary, so the various laws have surrounded the worker with many guarantees and rights, perhaps the most prominent of which is the end- of-service gratuity which is paid once within the terms determined by law, as it is considered as compensation to the worker for the end of his service, Therefore, we will divide this chapter into two sections that we deal with in the first section, a statement of the legal concept of end-of-service gratuity, while the second section will address cases that may be similar to that reward and the differences between them, in accordance with the different Iraqi legislation.

First Section
Legal concept of end of service gratuity

Defining the legal concept requires a statement of what is meant by end-of-service gratuity, which requires its definition, with an indication of the legal nature of it according to its characteristics, and as dealt with by the various Iraqi legislations.

Definition of end-of-service gratuity According to the legal concept, labor and social security legislation almost combines a common definition of end-of-service gratuity, despite the disparity in terms and expressions, in (it is a monetary amount to which the worker is entitled in the event of the end of his service if he is not covered by social security), The Retirement and Social Security for Workers Law No. 39 of 1971 defined it (as the amount that the institution pays to the insured in the absence of the conditions for his entitlement to the pension or in other cases stipulated by the law) (1). The Unified Retirement Law defined it as (a sum of money paid to an employee who has been retired in accordance with the law). (2)

Second section
Distinguish the end-of-service gratuity

Most of the legal legislations agree that the end-of-service gratuity is not considered compensation, because its payment is not due to an error committed by the employer towards the worker in order for him to be obligated to pay it to him, and the worker who is entitled to it was not harmed by the end of his work so that he can claim the owner Compensation work, as the legal legislation determines that the worker is entitled to end-of-service gratuity even in the event of no fault of the employer, as is the case with the termination of the work contract by the expiry of its term. Or because of the worker's inability to work or because of his death, just as the worker is entitled to end-of-service gratuity without the need to prove that he sustained damage as a result of the termination of his contract, even if it is proven that he benefited from this termination by joining him to work for which he receives a wage in excess of what he was receiving under Work contract that has expired. An opinion in the judiciary tends to consider the end-of-service gratuity an additional wage imposed by law on the employer at the end of the contract, and this results in the award being subject to all provisions related to wages, except in cases where an express provision is stated that contradicts these provisions, then the end-of-service gratuity The obligation of the direct source of the law and its cause is the services provided by the worker as a result of the contract concluded between him and the employer (3), in this description it is considered a kind of overtime (4) Another opinion in the jurisprudence goes that end-of-service gratuity is closer to a guarantee than to a deferred wage, in the end the legal legislation has settled that end-of-service gratuity is not a kind of wages, because it is not subject to the regulations on salaries and wages Unless the law expressly provides for this (5) In view of the multiplicity of laws dealing with the organization of the work contract and the diversity of protection methods for the worker, cases have emerged that are similar to the end-of-service gratuity in some aspects, but differ from them in other aspects, such as the retirement salary, work injury compensation, compensation for unfair dismissal, Which we will try to explain below:

Subsection One: End-of-service gratuity differentiation from the retirement pension

The Retirement and Social Security Law defines the pension as (the full or partial retirement salary that the institution pays to the insured, or his successor after him upon the end of his service, disability or death in accordance with the rules of the law), through the definition it becomes clear that the end-of-service

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gratuity is shared with the retirement That both of them are paid to the worker after the end of his service, and they also share as compensation in cash and not in kind, but the end-of-service gratuity differs from retirement in terms of continuity and permanence, As the end-of-service gratuity is paid to the worker in one payment and for one time only, while the retirement salary is a cash amount paid to the worker on a continuous periodic basis, usually on a monthly basis. The end-of-service gratuity differs from the retirement salary in terms of the reason for entitlement, as the reason for the end-of-service gratuity is the end of the worker's service due to one of the reasons stipulated by law, Whereas, the entitlement to the retirement pension is based on age, service, disability, sickness or death, and the end-of-service gratuity is not entitled to the worker's heirs while the heirs of the retiree can benefit from the retirement salary in the event of the retiree's death.

Subsection Two End-of-service gratuity for compensation for work injury reward

A work injury can be defined (as having an occupational disease or an organic malfunction as a result of an accident that occurred during work or because of it, and it is considered as an accident that occurs to the insured worker during his direct going to work or during his direct return from it.) (Retirement Law) and as we knew previously the end-of-service gratuity is the amount paid by the Corporation to the insured in the event that the conditions for his entitlement to the pension are not met, or in other cases provided by law (6). By legal definition we can say that the compensation to which the worker is entitled as a result of the work injury is a monetary amount paid by the organization to the injured worker, it has in common with end-of-service gratuity that both are a sum of money paid to the worker, while end-of-service gratuity differs from Work injury compensation in terms of its calculation mechanism and the legal rules regulating its entitlement, as the provisions of calculating end-of-service gratuity depend mainly on the number of years of service, cases of contract termination, whether or not the worker is covered by the warranty, while we find that compensation for work injuries is a compensation For harm suffered by the worker as a result of the work.

Subsection three End-of-service gratuity for compensation for unfair dismissal

Unfair dismissal is defined as the termination of the work contract at the unilateral will of the employer for legitimate or illegitimate reasons, where the end-of-service gratuity participates with compensation for the unfair dismissal that the case of unfair dismissal is one of the reasons for the worker's entitlement to the end-of-service gratuity (7) as the end-of -service gratuity with compensation for unfair dismissal that their entitlement is based on law, Whereas end-of-service gratuity differs from compensation for unfair dismissal in that the rules for calculating them differ from the other, where compensation for unfair dismissal is calculated at the discretion of the judiciary as a result of the worker's claim for compensation, while end-of-service gratuity is calculated on the basis of years of service and age of the worker In addition, compensation for unfair dismissal includes, in some cases, returning the worker to his work with compensation if it has a legal basis. (8).

Chapter Two

Cases of termination of the employment contract

The issue of the termination of the work relationship has raised a lot of controversy regarding what results from the termination of that relationship, and the question also arises about how the work relationship ends, and although the result is the same, the effects are completely different. The employer, and in other cases, it terminates for a reason beyond the control of the parties, in addition to its termination according to the natural situation when the work contract is for a fixed term, Therefore, we will try to show the cases of termination of the work contract, as we deal in the first section with cases of the termination of the work contract by the unilateral will of the parties to the contract or one of them, then we deal with the termination of the work contract due to the impossibility of final implementation in the second section, then the termination of the work contract for a fixed term in the third section.

The first section

the termination of the work contract by the unilateral will of the two parties to the work contract or one of them

The general provisions in contracts binding on both sides have allowed one of the parties to the contract to request the judiciary to rescind it when its reasons are realized after warning the second party. In this case, the court may consider the debtor for a specified period or refuse the annulment, provided that the

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two parties may consider the contract rescinded on its own and without the need to resort to the judiciary when the obligations arising from the contract are not fulfilled after warning the other party (9), However, it is also permissible to agree not to give notice, but this situation may not be consistent with the nature of work relationships, so labor laws may deviate from the provisions of the general provisions in this regard, as they allow both the worker and the employer the right to terminate the contract unilaterally without the need to resort to Judicial and warning the second party, whenever certain conditions specified by law are achieved, bearing in mind that the achievement of this matter is not always linked to the failure of one of the contracting parties to implement his contractual obligations, but rather for other reasons specified by law (10) Therefore, the work contract can be terminated by agreement between the two parties to the work contract, and termination can occur at the unilateral will of the employer or the worker.

The second section

the termination of the work contract due to the complete impossibility of implementation

The impossibility of implementation is an essential condition for the termination of the employment contract. Impossibility is a fact that makes the implementation of the contractor's obligation impossible. (11) Therefore, the general provisions of civil law stipulate that the incident that leads to the impossibility of implementation is a force majeure, in which it is stipulated that the incident is unexpected (12) to be obtained and cannot be paid and is not due to an error on the part of the debtor. Force majeure has an effect on the termination of the work contract due to the impossibility of implementing the obligation. It is also noted that the source of force majeure that leads to the impossibility of implementing the obligation is not considered. This impossibility may be due to an act of nature such as floods, earthquakes and volcanoes, and as in the case of the death of the worker or his prolonged illness, as it may refer to the order of the competent authorities as if the administrative authority issued a decision prohibiting the practice of an activity A specific occupation (13) It may be related to social or political events such as wars and revolutions that could lead to the destruction of the facility. Therefore, the impossibility of implementation leads to the expiration of the obligation of both the working parties and the employer. Therefore, the work contract is terminated by itself and by virtue of the law without the need for any special action taken by one of the parties to decide this termination. Therefore, final impossibility is what leads to the termination of the work contract (14) From this, there are two cases of final impossibility, namely the case of complete impossibility on the part of the worker in addition to complete impossibility on the part of the employer.

The third section

the termination of the fixed-term employment contract

A fixed-term employment contract is shared with an indefinite-term employment contract in cases of termination, with the exception of the case of unilateral termination of both parties. In addition, the Labor Law forbids specifying a term for the contract in works of a continuous nature, while it permits in business of an occasional, temporary and seasonal nature. The principle is the nature of the work subject of the contract, if it is of a permanent or temporary nature. The matter does not depend on the will of the two parties, but rather depends on the will of the legislator, who aimed from this provision to protect the worker from the employer’s control not to make his fate in his own hand whenever he wants to use or dispense with him. But in cases where there is a condition stipulating the timing of the work contract in works of a continuous nature, this condition is invalidated and the contract that is concluded becomes of unlimited duration. (15) The first paragraph of Article 915 of the Iraqi Civil Code in force stipulates that: (16) If the contract (work for a fixed term expires on its own by the expiry of its period). The first paragraph of Article 916 of the same law stipulates that: The contract for carrying out a specific work ends with the expiry of the work agreed upon.It is clear from the preceding texts that the fixed-term work contract ends with the expiry of its term or the end of the agreed-upon work, and that the end of the fixed-term work contract is automatically and by force of law without the need to take a formal procedure and without the need for direction Notification and the reason for this due to the lack of the element of surprise and for both parties to know the date of the end of the contract (17) Therefore, according to determining the termination of the fixed-term work contract at the end of its term or the work agreed upon, the two parties cannot unilaterally terminate the work contract before the expiry of its term, but the two parties may agree to terminate the fixed-term work contract before the expiry of its term. However, there are some cases in which the employer or the worker has the right to terminate the work contract before the expiry of its term, such as in the case of

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termination of the contract, in the case of impossibility and the state of the economic conditions he is going through. As for the work contract concluded for the life of the employer or worker, we find that the Iraqi legislator referred to this case in (18) Employer Article 902/2 where it stipulates that: If the contract is for the life of the worker or the employer or for more than five years, the worker may terminate the contract after five years without compensation, provided that the employer waits for six months. It is clear from this text that the work contract The contract for the life of the worker or the employer ends with the lapse of five years, as the law gives the worker the right to terminate it without the employer after five years have passed without the worker being committed to any compensation, provided that he informs the employer of six months until another worker is found (19).

Chapter Three

The mechanism of calculating the end of service gratuity

The relevant labor laws determine end-of-service gratuity, whether they are labor laws or social security laws, in addition to stipulating the rules for calculating end-of-service gratuity depending on the years of service, as well as whether it is covered by retirement and social security, or whether it has reached of a certain age and was not guaranteed or insured, among these legislations are the current Iraqi Labor Law and Law No. 39 of 1971 on Retirement and Social Security for Workers, The relevant legislation in the Arab countries also dealt with regulating the rules for calculating end-of-service gratuity in a varying manner from one law to another, and also included the cases under which the worker is deprived of end-of-service gratuity, so we will show the rules for calculating end-of-service gratuity. in the first section, then we indicate the cases under which the end-of-service gratuity is entitled in the second section, and we assign the third section to cases of denial of entitlement to end-of-service gratuity.

First section

Rules for calculating the end of service gratuity

Article 45 of the current Labor Law stipulates that (a worker whose service has ended shall be entitled to an end-of-service gratuity in the amount of two weeks' wages for each year of service performed with the employer...), while Article (20) of the Workers' Retirement and Social Security Law stipulates that if the worker service ends, who was not granted a retirement salary because he did not meet the conditions of entitlement, or because he is entitled to a full retirement salary from a non-establishment, shall be granted a total cash compensation in one payment representing an end-of-service gratuity, and it shall be calculated on the basis of his average monthly wage multiplied by the number of months of his service, and divided by Twelve, and the fraction of a month is calculated as a whole month...).

By reviewing the two texts, we see a clear difference in the rules for calculating end-of-service gratuity, between the current labor law and the retirement and social security law for workers, while it is calculated according to the labor law on the basis of the amount of two weeks' wages for each year of service, we find that the retirement and social security law has Adopt the rule of the average salary or monthly wage for the worker multiplied by the number of months of service and divided by (12) twelve, As the Retirement and Social Security Law was more equitable to the worker whose service has ended than the current Labor Law, if we assume that the worker's service was (20) years, then he is entitled to a wage of (40) forty weeks, which is equivalent to the wage of (11) eleven months of his total service, Whereas if we calculated the end-of-service gratuity under the Retirement and Social Security Law, the result of the equation would be twenty (20) months' wages, Here it is necessary to specify the applicable law, is it under the current labor law or under the retirement and social security law for workers? The Iraqi legislator did not indicate that when settling the end-of-service gratuity, if we take the rule of the later law superseding the previous law, the end-of-service gratuity will be in accordance with the current labor law, while the retirement and social security law provides better benefits for the terminated worker i.e. It is the best law for the worker, which is a clear legislative defect that must be addressed.

Second section

Cases of entitlement to end of service gratuity

Upon the termination of the worker's relationship with the employer, regardless of the reason for the termination of his service, except for some cases stipulated by the relevant laws, he is entitled to an end of service gratuity. where most of the legal legislations agree on the same conditions under which the worker is entitled to end-of-service gratuity, among them the Iraqi labor and social security legislations. Labor Law

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No. 151 of 1970 stipulated a set of conditions for the worker to be entitled end-of-service gratuity when one of them is fulfilled. Which:
First, if the employer terminates the worker's services for any reason.
Secondly, if the service of the worker or user is terminated for any reason.
Third, upon the expiry of the period agreed upon between the worker or employee and the employer.
Fourth, if the woman leaves her service because of marriage.
Fifth: If the worker or employee reaches sixty years of age and is not covered by social security (21). While the previous Labor Law No. 71 of 1987 did not provide for end-of-service gratuity, the current Labor Law has included a statement of end-of-service gratuity upon termination of an employment contract (22). As for the current Retirement and Social Security Law, it mentioned several conditions under which the worker is entitled to end-of-service gratuity:
First, if the man has reached the age of sixty, or the working woman has reached the age of fifty-five.
Secondly, if the insured worker resigns from her job because of her marriage or status.
Third, if the worker is permanently outside the scope of the Labor Law.
Fourth, if he intends to leave the country permanently and the Minister agrees to his travel (23).

Third section

Deprivation of end-of-service gratuity

The current labor law stipulates cases of end-of-service gratuity for an employee, which are:
First, if the worker is sentenced by a final court ruling to imprisonment for more than one year, but if the sentence is less than one year, he shall be returned to his work, without being entitled to the wages of the period he spent in detention or imprisonment

Secondly, when the worker commits a behavior in violation of his duties under the work contract

Third, if the worker impersonates a false identity, or submits forged documents.

The results

Based on the foregoing, the research reached a set of results, which are listed below:
First: The insured worker is entitled to end-of-service gratuity in accordance with the law, regardless of the cases of termination of the work contract.

Second: The end-of-service gratuity is paid in the form of a cash sum to which the worker is entitled in the event of the end of his service if he is not covered by social security, in addition to the absence of conditions for his entitlement to the retirement salary or in other cases stipulated by law

Third: The end-of-service gratuity calculation mechanism in the Retirement and Social Security Law No. 39 of 1971 in force differs from the calculation mechanism in Labor Law No. 37 of 2015.

Fourth: The cases of calculating end-of-service gratuity in the Retirement and Social Security Law No. 39 of 1971 in force differ from the calculating mechanism in Labor Law No. 37 of 2015.

Fifth: The Iraqi Retirement and Social Security Law specified cases of depriving the worker of end-of-service gratuity, as they were limited to a group of cases, unlike the Arab legislation that expanded in this aspect.

Based on the foregoing results, the research reached a set of **recommendations**, which are listed below:

First: The need to provide the necessary financial allocations with the speedy payment of end-of-service gratuity to workers who are not entitled to the pension, because government departments complain about the lack of financial allocations that must be paid to this important category on which the country relied so much to build it.

Second: The need to work on resolving the discrepancy in calculating the end-of-service gratuity between Labor Law No. 37 of 2015 and Retirement and Social Security Law No. 39 of 1971 with the possibility of adopting the law that is best for the worker, which requires legislative intervention.

Third: The necessity of unifying end-of-service gratuity cases among Iraqi legislation to ensure receipt of funds by those who are entitled to it while ensuring that no element of this important category is unfair.

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Fourth: Working on setting clearer criteria while studying the cases that deserve deprivation of this reward because the Iraqi legislation was brief with regard to this particular issue, in contrast to other Arab legislation that was more detailed, which ensured that the amounts reached the actual beneficiaries.

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