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Rules for Integrating People with Disabilities into the Work Market

According to data published by the Ministry of Economy in 2016, one out of every five Israelis who are of working age (ages 20-64) is disabled. This translates into approximately 750,000 Israelis out of whom only 51% are employed in the job market, as opposed to 72% of people who are not disabled. Moreover, people with disabilities who are employed, find themselves working in jobs that neither suit their qualifications nor education.

In 1998 the Israeli Legislature enacted the Equal Rights for People with Disabilities Law, 5758-1998 ("**the Law**"). Section 2 of the Law provides that the object of the Law is "**to protect the dignity and liberty of a person with a disability, to enshrine his right to equal and active participation in society in all major spheres of life, and, furthermore, to provide an appropriate response to his special needs, in such a manner as to enable him to live his life with maximal independence, in privacy and with dignity, realizing his potential to the full**".

As transpires from the stated object of the Law, it applies to all spheres of life and not only to the employment field. In the area of employment, the Law bestows on an employer various obligations to act in order to advance the principle of equality, based on the understanding that the obligations are justified for the purpose of advancing the stated object thereof.

How is a "person with disabilities" defined in the Law? The Law defines a person with disabilities in section 5 thereof as "**a person with a physical, mental or intellectual, including cognitive, impairment, whether permanent or temporary, which substantially limits his functioning in one or more of the central spheres of life**". The language of the section has been left open deliberately, so as not to limit the applicability of the section by means of a closed list of circumstances or spheres of life.

In case law rendered by the Supreme Court and the Labour Courts, the term "disabilities" has been broadly interpreted. Thus, for example, in Labour Dispute 59662-05-**12 John Doe v. Anonymous** (published in Nevo, 6.8.2014), the Labour Court held that the term includes also an employee with temporary impairment, that compels him temporarily to reduce his daily working hours to 6 hours.

Coupled with the prohibition to discriminate (that is negative by nature), the Law imposes on employers (that employ more than 25 employees) also active obligations (that are positive by nature) to make adaptations in the work place, that will facilitate the employment of persons with disabilities. Such adaptations include, inter alia, adaptations in the physical structure of the workplace, in the equipment, in the job requirements, in the working hours, in candidacy tests, in the job training and in the policies adopted in the workplace.

The Labour Court has held that the employer bears the burden to show and convince that has actively and sincerely taken steps to implement the adaptations required in order accommodate disabled employees in the workplace.

In the case of **Hussein v. Migdam Consulting and Research** (Labour Dispute with the Authority of a Judge 46240-06-13, published in Nevo, 21.3.2016), the Labour Court awarded statutory compensation against an employer that was held to have discriminated against a blind man, in refusing to consider adaptations that would facilitate his employment, such as the installation of special computer software.

Another means to promote the integration of disabled persons in the workplace was taken by the regulator which, in 2014, issued an extension order providing that an employer that employs 100 employees or more will be deemed to have fulfilled the requirement of appropriate representation if it 3% of its employees are persons with disabilities.

There are two important provisos to the duty to adapt persons with disabilities:

1. The first proviso is that the disabled person is that the disabled person does not lack a material requirement for performing a role or filling a position.
2. The second proviso is that implementation of the required adaptations will not impose "**an undue burden**" on the employer. In High Court of Justice 6069/10 **Machmali v. the Prison Services** (published in Nevo, 5.5.2014), the Supreme Court held that this proviso is applicable only when the burden to be imposed constitutes an unreasonable burden taking into consideration the resources available to the employer.

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