

**Opinion:**  
**"Asylum seekers who were summoned to the Holot Detention Center  
are entitled to severance pay."**

By Michal Tadjer  
Labor Law Attorney, Kav LaOved

The law regarding a worker's right to severance pay owing to the non-renewal of a temporary work visa, states as follows:

"The right of a worker to severance pay is based on the specific statement by the employer regarding the failure to obtain the required visa. In this case, the employer would not risk employing the worker illegally. Nevertheless, the employer is not exempt from paying compensation to the foreign worker who has been laid off, even if the worker ran away from his employer's home after learning of the absence of the required permit and becoming fearful of deportation."

Labor Appeal: 1511/02 Armilanda Lahato v. the estate of the late Victoria Ben Benjamin; Labor Appeal: 1152/04 David Dudai v. Nicholai Stika.]

The law was broadly interpreted in the regional labor courts. For example, last January in the matter of Srisofh v. Maman, it was established that the proximity of the visa expiration to the worker's resignation, no matter the cause expiration of the visa, nor whether it was the worker's responsibility, provides for the eligibility for severance pay.

We believe that, if the location of employment was Israel, if the work visa was not renewed, and if the worker's job was terminated close to the visa expiration date, the worker is entitled to severance pay. It does not matter why the visa was not extended because the plaintiff's employment was terminated due to the expiration of the license to work as a foreign worker in Israel.

It should be noted that the detention of asylum seekers at the Holot facility is the expression of a change in state policy resulting from the intention of lawmakers to prevent asylum seekers from residing in city centers and from working in Israel. This development results in termination of employment. As recognized by the labor law pertaining to both foreigners and Israelis, the employer is responsible to provide severance pay to the worker who has been prevented from continuing his or her employment as a result of the policy change and the change in social and economic norms resulting from the change in policy.

An example of this interpretation can be found in Labor Appeal 137/08 Metin Ilindz v. Kakshouri Friedman Engineering and Construction, Ltd., August 22, 2010. As a result of this appeal, the right to severance pay was established for foreign construction workers who were brought to work in Israel by corporations and by government decision. They are to be provided severance pay by the construction companies that employed them prior to their termination. This was the testing ground for the expectation of policy change. In the words of the court:

"The employment of foreign and migrant workers has always been dependent upon licensing permits provided by government authorities. Under varying conditions, the

right to employ these workers has always been dependent on holding valid permits. The provision of permits is influenced by economic policy and applies to all sectors of the economy as well as specific employers applying for permits. As long as the employer has a valid permit for a certain worker, the employer is allowed to employ the worker...

The normal state of affairs regarding employment of migrant workers is dependent on permits provided by licensing authorities. However, we believe that changes in economic policy affect even reasonable employers and force the development of significant changes in terms of engagement of migrant workers particularly effecting continued employment."

There cannot be any doubt that the employers know that the right to employ asylum seekers is constrained, temporary, fragile, unsustainable, and undependable, even for a pre-determined period of time. Sadly, the detention of the asylum seekers was highly anticipated due to the mindset of the lawmakers and the political climate in Israel. Hence, as the inevitable confinement of asylum seekers in the detention facility was foreseen by the employers, the workers summoned to the facility are entitled to full severance pay.

As a result of the expectation by employers that workers will be confined in the detention facility, causing the termination of their employment, workers are entitled to full severance pay.