

Legal Regulation of Social Security New Benefits Introduced In the Retirement and Social Security Law No. (18) Of 2023

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Abstract

The importance of the rules governing Social Security for the children of the community and the organization expands in the Social Security Law, which is formulated according to intellectual variables social policy. By the nature of this international law, which is generally proven in most countries of the world, including Iraq, and according to the general variables that have raced to influence the Iraqi society, it is necessary to recognize the positive points in the pension and Social Security Law. Which abolished the law and the stability of the calculation rules for all financial rights, and otherwise includes all the requirements of security and not limited to the concept of (social insurance) by regulating the established legal rules cultural rights (such as cultural workers ' clubs) and Housing Rights (by regulating the right of a worker in housing projects in established cities exclusively for workers) In its time, Iraq counted the most developed law, but the breakthrough in the field of achieving (social security) for the category of workers in the seventies of the last century among the countries of the region, and (with the issuance of the Constitution of 2005, the law no longer corresponds to the basic norm in society) also, Iraq's accession to

the agreements requires fulfilling its obligations to the international community and the International Labor Organization ILO, not to mention the changes in the Iraqi labor market influenced by all the influencing factors and its close connection with the labor law, which was changed by the issuance of a law (37) for the year 2015, which means the passage of three labor laws over the law on retirement security in force and the transformation of each of them into a different specific economic thought About the other. The Retirement and Social Security Law No. 18 of 2023 has added new branches that were not addressed or addressed in previous security legislation, but in line with all the global social and economic changes and recent trends that are prominent in most societies, it is necessary to find legislative treatment for two important branches, namely the guarantee of workers if they are unemployed, and the so-called Optional membership of the guarantee.

Key Words; Social .New .Benefits .Security

التنظيم القانوني للمنافع الجديدة في قانون التقاعد و الضمان الاجتماعي رقم (18) 2023

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المستخلص

تتسع اهمية القواعد المنظمة للأمان الاجتماعي لأبناء المجتمع و المنظمة في قانون الضمان الاجتماعي و التي تصاغ وفق متغيرات فكرية سياسة- اجتماعية – اقتصادية متلاحقة و التي يتوجب ان تكون مطابقة للقواعد الدنيا للمستويات الدولية بحكم طبيعة هذا القانون الدولية المثبتة عموماً في اغلب دول العالم ومن ذلك العراق، وطبقاً لعموم المتغيرات التي تسابقت في التأثير على المجتمع العراقي لا بد من الاقرار بالنقاط الايجابية في قانون التقاعد و الضمان الاجتماعي الملغى القانون واستقرار القواعد الحسابية لكل الحقوق المالية وشموله بخلاف ذلك لكل متطلبات الضمان وعدم اقتصره على مفهوم (التأمين الاجتماعي) بتنظيمه للقواعد القانونية المقررة الحقوق الثقافية (كالنواد العمالية الثقافية) و حقوق السكن (بتنظيم حق العامل في مشاريع السكن بالمدن المنشأة للعمال حصراً) وحقوق العاملة في دور الحضانة، وما الى ذلك عد في وقته بالقانون الاكثر تطوراً بل الطفرة في مجال تحقيقه (الامان الاجتماعي) لفئة العمال في سبعينيات القرن الماضي بين دول المنطقة، و (باستصدار دستور 2005 لم يعد القانون متطابقاً مع القاعدة الأساس في المجتمع) كما ان انضمام العراق للاتفاقيات يتطلب ايفاء بالتزاماته ازاء المجتمع الدولي ومنظمة العمل الدولية ILO، ناهيك عن تغييرات سوق العمل العراقي متأثراً بكل العوامل المؤثرة وارتباطه الوثيق بقانون (العمل) والذي تغيير باستصدار قانون (37) لسنة 2015 مما يعني مرور ثلاث قوانين العمل على القانون التقاعد الضمان النافذ وتحول كل منهما الى فكر اقتصادي معين مغاير عن الاخر. لقد اضاف قانون التقاعد والضمان الاجتماعي رقم (18) لسنة 2023، فروعاً جديدة لم تكن مطروقة او معالجة في تشريعات الضمان السابقة ولكن ومسايرة لكل التغييرات الاجتماعية والاقتصادية العالمية والاتجاهات الحديثة البارزة

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في اغلب المجتمعات بوجوب ايجاد معالجة تشريعية لفرعين هامين هما ضمان العمال اذا كانوا في حالة بطالة، وما يطلق عليه بالانضمام الاختياري للضمان .
الكلمات مفتاحية : اجتماعي . جديدة .منافع .ضمان

Introduction

If it is possible to talk about the systems that are intended to keep pace with the development and renewal of all the circumstances surrounding those Concerned by the immediate and future legal application, then it is necessary to talk about the social security systems. Although the law is in reality the mirror of the honest peoples, their ideas and their political approach, the law regulating these systems cannot be said about anything but the magnifying mirror for them. The rules regulating social security for a broad law of the members of society (if not for the general society), must be estimated according to successive intellectual, political, social and economic variables, not to mention the necessity of its conformity with the minimum rules of international levels by virtue of its international nature generally proven in most countries of the world, including certainly Iraq, and according to the general variables that have competed to influence Iraqi society for twenty years, which necessitated a radical study of the social security system applied in Iraq for forty-one years. On the one hand, it was necessary to acknowledge with the positive points in this law and the stability of the accounting rules for all financial rights and its inclusion, other than that,

Research problem: The application of modern legislation faces difficulties in relation to modern benefits that were absent from previous legislation because they are not addressed. Research hypothesis: The research hypothesis is highlighted in the following:

- 1- Many Iraqi groups are in dire need of coverage in the benefits of voluntary membership and unemployment compensation guarantee.

- 2- The law is the ideal alternative to work in the public sector, which requires definition, encouragement and understanding on the other hand.

First Branch

The Branch of Unemployment Insurance

With new encouragement and the union of countries to reconsider education strategies in response to work requirements while ensuring the activation of the private sector and economic diversification directed at building a sustainable industry that generates job opportunities as well as adopting information technology as a means of developing human capital , and in order to achieve this¹, two elements are required, namely the time specified in the state's strategies and procedures to protect the unemployed until job opportunities are found², and this is represented in finding unemployment insurance compensation, which is one of the most important risks that the worker is exposed to because it leads to the interruption of his livelihood on the one hand and on the other hand to the emergence of societal risks such as deviance and crime, which affects society as a whole and threatens social safety, not to mention the economic risks that this poses such as disruption of economic movement, the above led countries to pay attention to unemployment insurance, especially after the constitutions stipulated the right to work for their citizens, including the Iraqi Constitution of 2005, which requires securing a job opportunity for everyone capable and willing to do so, meaning that the state must pay compensation for alternative income until a job is found for him³.

First - Conditions For Entitlement to Unemployment Allowance

The insured (insured worker) is entitled to unemployment allowance⁴, but the following conditions are included:

1- The number of his subscriptions must not be less than (24) twenty-four subscriptions before the date of entitlement to the unemployment allowance.

2- He must be able to work and willing to work.

3- He must have registered his name in the database of the unemployed in the competent employment offices and visit them at the specified times.

4- The end of service or work must not be due to:

A- His resignation or leaving work.

B- A conviction for a felony or misdemeanor involving honor.

C- His assault on the employer or superiors at work.

D- His absence from work without a legitimate reason for more than (30) intermittent days during one year or more than (15) consecutive days.

C- His attendance at the workplace while intoxicated, more than once, or under the influence of a narcotic or psychotropic substance, or he committed an immoral act. H- His commission of an error resulting in a significant material loss to the employer, provided that the employer informs the competent authority or authorities of the incident within (5) days from the time he learns of its occurrence⁵

Second - Loss of the Right to Work Disability Allowance

The insured person's right to work disability allowance is lost or the payment of work disability allowance is stopped in the following cases:

- 1- Refusal to join a job suitable for him in light of his qualifications, experience, and professional and physical abilities.
- 2- Leaving the Republic of Iraq without the approval of the department.
- 3- Proof of his work for himself or for the account of others or his entitlement to a salary or a valid monthly wage as a work disability allowance or more⁶.

The benefits of compensation paid to him in violation of the provisions of the law shall be recovered from the insured person, without the need for a court ruling, and the Government Debt Collection Law shall apply to their collection (⁷).

The insured is entitled to unemployment compensation three times during the period of his coverage by the provisions of the law, provided that the period of subsequent subscription after the unemployment payment is not less than (24) subscriptions for each time, meaning that the unemployment payment may not be repeated unless payment is made for the period specified by the law when working after the unemployment⁸).

1- Method of paying the unemployment compensation

The unemployment compensation allowance is calculated for the insured during (the last six months) of his work subject to the subscription that is not less than the minimum guaranteed wage and is paid every month according to the following paragraphs:

- A - (75%) for the first month.
- B - (65%) for the second month.
- C - (55%) for the third month.
- D - (50%) for the fourth, fifth and sixth months.

2- Method of calculating the unemployment compensation

The unemployment compensation is paid to the insured according to the following:

A - For a period of (3) months if the number of his subscriptions to this insurance is not less than (24) subscriptions.

B - For a period of (6) months if the number of his subscriptions to this insurance is not less than (48) subscriptions.

C - Retirement insurance contributions are deducted from the unemployment compensation paid, at a rate of (5%) of the wage on the basis of which the unemployment allowance was calculated.

D - The period for which the subscription was paid is considered retirement service (⁹)

Fourth: Provisions for Payment of Unemployment Compensation

The unemployment compensation is paid to the insured from the beginning of the month following the date of submitting the request for payment, but the unemployment compensation is not paid for the month in which the insured's service ended.

However, the following provisions apply to the payment of the unemployment guarantee:

1- It is not permissible to combine the unemployment compensation with the compensation for maternity leave, and the compensation is paid more than once.

2- It is not permissible to combine the unemployment compensation with any retirement salary unless the law stipulates otherwise (¹⁰).

3- Taking into account the provisions of the Labor Law, which requires the availability of the conditions for inclusion in its provisions (performance in return for a wage and that the worker is legally subordinate to the employer and bound by a contract

with the employer that is not subject to the provisions of other laws, the most important of which is the Civil and Military Service Law), the unemployment compensation is applied to the covered workers with the exception of ¹¹:

A - Voluntarily insured who work inside and outside Iraq.

B - Non-Iraqi insured.

Second Branch Optional Retirement Guarantee

In line with global changes and recognition of the so-called (unorganized - black work) economy, which is usually not subject to the Labor Law, the Retirement and Social Security Law of the Labor Law usually regulates the provisions of (Optional Retirement Guarantee)¹² to include those legally described as (workers) and those who are not covered by the conditions of compulsory subjection and are called by the Labor Law (individuals) in implementation of the principle of equality guaranteed by the Constitution, which governs the relationship of citizens with the state, especially in the field of social care and providing livelihood security and ensuring freedom to join, and therefore we will refer to the conditions of inclusion and calculation of subscription, then the registration mechanism and sources of funding for this branch.

First - Conditions for inclusion in the optional rules guarantee

The Iraqi legislator stipulated in the provisions of Article (70) of the new Social Security Law the following conditions for inclusion in the provisions of the optional retirement guarantee:

- 1- Submitting an application for inclusion in the guarantee after it is done on the form prepared for this ¹³purpose.
- 2- The applicant for joining must be medically fit for work,
- 3- in line with the condition of the covered person, supported by a report issued by the competent medical committee .¹⁴
- 4- Not to

combine the social protection network (assistance) and social security coverage.

5- To pay the contributions stipulated in the Retirement and Social Security Law No. (18) of 2023.¹⁵

Second - Registration Mechanism

Based on the request submitted by the beneficiary of the optional retirement guarantee, it is registered as follows:

1- The name of the subscriber and his personal information are registered in a special register.

2- The subscriber may choose the subscription income category for which he must pay his subscriptions.

3- The subscriber may move from the subscription income category to the next category only after one year has passed since paying the subscription¹⁶.

4- The protection network and coverage by the guarantee shall not be combined.

Fourth: Sources of financing the optional retirement guarantee

The sources of financing the optional retirement guarantee consist of the following:

1-(5%) of the amount paid by the subscriber from the category of subscription income that he chooses from one of the categories determined by the Board of Directors and approved by the Minister after publishing it in the Official Gazette.

2- The General Treasury bears (15%) of the same category of subscription income, and if the subscriber is late in paying the percentage of his subscriptions until after the end of the current year, the subscriber shall bear the contribution of the General Treasury in addition to the percentage of his subscriptions for the period of his delay .Investment returns on the sources of the pension funds.¹⁷

Conclusion

Despite the tremendous scientific development that swept the world in the last century, the individual's need for economic and social protection in his society still exists. It has become a technical legal problem in the precise sense that can only be solved by providing the simplest and most common method of social insurance systems and according to the circumstances of the country and society in which the law is applied. Many social security systems have multiple aspects, each of which addresses a specific issue of the risks that a person may face. The most organized (economically and legally) and most luxurious alternatives in terms of caring for the people of their country are the countries that sponsor legislation that looks to the future as it looks to the present. The well-being and protection of the people of society does not mean enjoying job positions and appropriate financial compensation and luxurious living as a result of it, but rather means securing the future of this worker in the future when facing natural risks expected for every person (with the stability of society) such as disability and old age and even unexpected risks that push him to work with the aim of building a country that takes care of his life and future. Based on the above presentation, we provide the following recommendations: 1- Amend the text regarding the right to optional membership for those over the age of fifty, due to the existence of multiple cases requiring inclusion in optional membership. 2- The delay in the implementation of the relevant legislation by the State Council has caused a delay in the demand for registration for the new benefits and has certainly caused multiple problems in implementation by the Social Security Department.

Endnotes

¹ What are the effects of poverty and unemployment on development in the ESCWA region? United Nations, New York, 2002

& https://aujfps.uoanbar.edu.iq/article_182532.html?lang=ar

The role of governance mechanisms in balancing labor relations according to Labor Law The Iraqi No. (37) of 2015 _A comparative study_ Zahraa Fadel Qasim; Saba Noman Rasheed , journal of Anbar Universty for law and political sciences, Volume 14, Issue: 1 part 1, March 2024, Page 560-993.

² (Unemployment means the worker losing his job for a reason beyond his control, such as in the case of economic crises that affect the economy as a whole or one of its sectors, or the failure of a factory, or the lack of job opportunities for the worker despite his ability and desire to do so) Aqadi Hussein Abdul Latif Hamdan, Social Security, Al-Halabi, 2009, p. 183
Rasheed, S. N. (2024). Legal Protection for Labours with Occupational Cancer in the New Iraqis Social Security No (18) for 2023 (Comparative Study). Journal of Legal Sciences, 39(1).

³ (Unemployment leads to competition among workers, which leads to a reduction in wages, which in turn leads to an increase in the severity and aggravation of the crisis... The state intervenes on its part to modify the prevailing structure of national income distribution. As for unemployment and periodic crises, the state has increased its scope of intervention to limit these crises and their results or prevent their occurrence. In this area, the state uses budget policy and financial policy tools such as taxes and spending...) Dr. Amr Mohi El-Din and Dr. Abdel Rahman Youssef, Principles of Economics, Dar Al-Nahda Al-Arabiya - Beirut, 1974, p. 48.

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dr.saba noaman Rasheed & dary matrod , legal regulation for labour protection , journal of legal science < vol 36 (2021) special issue for teachers and postgraduate, 2.

⁴ Germany adopted the unemployment insurance system in 1927, France in 1955, and England in 1905 in industrial centers by establishing committees and departments to help employ the unemployed as an alternative to unemployment benefits. However, in England in 1911, the National Insurance Act was issued as the first mandatory social insurance system,

covering sickness, maternity, disability, and unemployment. Despite these measures, Britain doubled assistance during unemployment to issue in 1920 to confront unemployment resulting from discharge from the military shortly after the end of World War I. Dr. Abdul Aziz Ibrahim, Studies in Social Security Laws, Vol. 1, Baghdad, 1972, p. 40

⁵ (Unemployment: The case in which the insured loses his job opportunity for any reason despite his ability to

The (unemployment guarantee branch) is one of the good indications in the new law, which is considered one of the reform axioms that cannot be overlooked, in addition to the benefits of (unemployment guarantee) in addition to (the optional joining guarantee branch). The changing economic conditions in the local and global markets have imposed the termination of many projects that practice professions that are almost extinct due to the cheaper alternative and the same quality in global markets or dispensing with them in the most modern and technologically advanced economic markets, not to mention the extinction of projects affiliated with the public sector and the privatization of many of them (and the intention is to move towards the rest in that). Therefore, the Iraqi workforce with working capacity between two categories (15-16) suffered from unemployment for the above reasons and more in that there is no temporary alternative to meet personal and family needs until finding work or Finding alternative work and changing the profession - adapting it to market requirements) and therefore we indicated that it is a correct step similar to the insurance legislation in the countries of the world and the countries of comparative study.

⁶ Article (61) Retirement and Social Security Law No. (18) of 2023.

⁷ Article (62) &(63)) of the Retirement and Social Security Law No. (18) of 2023.

⁸ The insured is entitled to unemployment compensation three times during the period covered by the provisions of the law, provided that the period is not less than

⁹ Article (65/Second) of the Retirement and Social Security Law No. (18) of 2023.

¹⁰ Article (65/Second) of the Retirement and Social Security Law No. (18) of 2023.

¹¹ Article 67/Second Retirement and Social Security Law No. (18) of 2023.

¹² ILO Recommendation No. 204 concerning the transition from the informal to the formal economy, issued at the 104th session of the ILO on June 1, 2015.

¹³) According to the Labor Recommendation No. (204) on the transition from the informal to the formal economy to the informal, the expansion of the informal economy is a major challenge to labor rights, social protection, decent working conditions, comprehensive development, and the rule of law. Since there are multiple reasons for the informal character, including structural issues and issues of good governance, public policies can accelerate the process of transition to the formal economy in the context of social dialogue.

Dr. Saba Noman Rashid, The Problem of Compliance with the Legal Frameworks Regulating the Transition from the Informal to the Formal Sector

Obstacles and Solutions, ILO Conference held in Baghdad, Al-Meliya Mansour Hotel, dated 17\0\2004, p. 54

¹⁴ Article (70/Second) of the Retirement and Social Security Law No. (18) of 2023.

¹⁵ Article (70/Fifth) Retirement and Social Security Law No. (18) of 2023. & notice the research, 38(1), 708-732. <https://doi.org/10.35246/jols.v38i1.626> litigation in social legislation by DR.saba noaman Rasheed “ journal of legal science ,vol 38 no 1 2023 first issue ,pp 708 – 732 .

¹⁶) Article (72) of the Retirement and Social Security Law No. (18) of 2023.

¹⁷ Article (73) of the Retirement and Social Security Law No. (18) of 2023. It is noted that the(Board of Directors may add other branches to the optional retirement guarantee, provided that this is determined in accordance with controls determined by the Board of Directors and approved by the Minister. See Article (75) of the Retirement and Social Security Law No. (18) of 2023.

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Second – Legislations

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- XIV. Iraqis labour law no (37) for 2015
- XV. Retirement and Social Security Law No. (18) of 2023