

## **Specificity of the Partial Employment Contract: A Comparative Study**

Dr. Munketh Abdulrida Ali<sup>1</sup>, Mariam Riyad Issa<sup>2</sup>

### **Abstract**

*Labor law now is very important, as this law regulates the relationship between employers and workers who constitute the largest segment of society. A large number of businesses in our modern era. The increase in the number of private institutions and companies of various forms and types necessarily entailed an increase in the number of labor required to operate those institutions and companies. As a logical result, this required the existence of strict, developed, and accurate labor laws to govern the various labor relations and contracts that link the owners of these companies and institutions with the workforce that conducts their business. By drawing the boundaries of those relations and setting controls and provisions through specific characteristics and elements for them. Moreover, finding appropriate solutions for any obstacles or disputes that may arise thereof, and the guarantor and clarification of the rights of both parties.*

**Keywords:** *employment, labour, law.*

### **Introduction**

Labor law now is very important, as this law regulates the relationship between employers and workers who constitute the largest segment of society. A large number of businesses in our modern era. The increase in the number of private institutions and companies of various forms and types necessarily entailed an increase in the number of labor required to operate those institutions and companies. As a logical result, this required the existence of strict, developed, and accurate labor laws to govern the various labor relations and contracts that link the owners of these companies and institutions with the workforce that conducts their business. By drawing the boundaries of those relations and setting controls and provisions through specific characteristics and elements for them. Moreover, finding appropriate solutions for any obstacles or disputes that may arise thereof, and the guarantor and clarification of the rights of both parties.

The scientific importance of choosing the topic in terms of the fact that the work contract is considered the main subject of social law. Moreover, it is nothing but projections of its rules, which requires studying it in some detail in part, which is the specificity of the partial work contract. Where the wage is considered the preoccupation of every person who performs an activity for others. As it is always the position of the balance and the relationship between the parties to the contract are among the important topics included in the work contract.

The subject of the employment contract must be an activity carried out by the worker on behalf of the work, without distinction, whether this activity is manual or intellectual.

---

<sup>1</sup> College of Law, University of Basrah, Basrah, Iraq, munketh.abdulridha@uobasrah.edu.iq

<sup>2</sup> College of Law, University of Basrah, Basrah, Iraq, meriamryadh93@gmail.com

What counts is that the work is personal and voluntary. On the one hand, the worker must undertake to do his work personally without assigning others to do so, since the work contract is one of the contracts in which the worker's personality is a subject of consideration for the contract. On the other hand, the employee must perform the activity voluntarily, i.e. with his full will, since the contract is based on the meeting of two or more wills to produce binding obligations for both parties.

Therefore, as a result of the employers' abuse of their power and financial influence, the workers found themselves in conditions in which injustice and tyranny prevailed. Therefore, it was necessary for the legislator to intervene and approve legal provisions aimed at protecting the employment relationship and securing the rights of users while carrying out their work. The Labor Law came to regulate this relationship in a strict manner, as its provisions were considered related to the protective public order due to its direct impact on the indicators of social justice and economic life.

This law takes care of the dependent and waged work relationship between employers and employees in the private sector, which entails the availability of characteristics and elements in the contractual relationship to give it the status of an employment contract and its submission to its provisions.

Accordingly, we raise the following dilemma. As it is clear that the idea of part-time work. Which was issued in Iraq recently, did not explicitly explain that the worker with a part-time work contract allows him to work for more than one employer at the same time or not, and whether or not the approval of the original employer is required.

In answering the problem, we extract the most important elements and characteristics that distinguish the partial work contract from other types of contracts, namely the characteristics of the contract, the subject, the effect, and the duration. As for its elements, they are the elements of work, wages, and subordination. The worker must be subordinate to the employer in the sense that he is subject to his control and supervision, and the work performed by the worker in the service of the employer must be paid work.

Finally, we will divide this research into two sections. In the first, we will deal with the elements of the partial work contract, and in the second, the characteristics of the partial work contract.

## **First topic**

### **Elements of a part-time contract**

The work contract is defined in Iraqi legislation, where it defined it as (any agreement, whether express or implied, verbally or in writing, according to which the worker performs work or provides a service under the management and supervision of the employer in exchange for wages of any kind). Also defined the partial work contract as ( Part-time work, which is work that takes place in working hours less than the normal daily working hours stipulated in this law, whether the work is performed on a daily basis or for some days of the week, and those working hours are calculated on a weekly basis or on the average basis for a specific period of employment. as well as comparative legislation where these legislations stand on the fact that the part-time work contract has three basic elements, which are work, wages, and dependency, and it is necessary to specify the elements necessary for the existence of work.

When all these elements are available, the contract is a partial work contract, and if one of them fails, the contract falls within another category of contracts, so we will discuss in this topic the following demands.

## The first requirement

### The work element in the part-time employment contract

First, the meaning of work must be clarified in the legal sense because of the importance it contains in adapting the contract and then applying the legal rules that differ according to the adaptation prescribed for it. Is it a partial work contract, a contracting contract, or a company contract? It omitted the definition of work and then came back and defined it in the current Labor Law as (every intellectual or physical human effort exerted by the worker in return for wages, whether it is permanent, accidental, temporary, partial or seasonal) and accordingly the subject of work in the partial work contract must be possible Not impossible, legitimate, and not contrary to public order and morals, otherwise the contract is void.

However, it should be noted, that the current labor law has equated a person's physical effort with his intellectual counterpart in terms of classifying it as (work) to provide it with protection on one level. as the object of the worker's obligation is not a material thing, but rather the labor force that the employer does not have right directly on it, but is limited to his right to seek compensation for damage when the worker fails to implement his obligation in the contract. The legal texts have launched the term work to include every type of human activity, whether physical or mental, and that this difference was nothing but a picture of the development of historical and civilized in the view of work, so in the past, manual or physical work was seen as a specific criterion that determined the rank of the worker only, while mental or mental work did not elevate its owner to the level of the worker.

However, modern legislation has begun to atrophy the idea of distinguishing between one work and another, given that human activity is diverse with the diversity of the need for it. as the Iraqi constitution of 2005 stipulates that work is a right for all Iraqis in a way that guarantees a decent life, provided that the relationship between workers and employers is regulated by law on economic bases that take into account The rules of social justice.

The Iraqi Labor Law stipulates that work is a right for every citizen who is capable of it, and the state works to provide it on the basis of equal opportunities without any kind of discrimination. It is also not necessary to specify the details of the work in the contract because that is left to the custom of the profession or place. The place where the work required of the worker is done must be determined, and in the event that this place is not mentioned, this is deduced from the nature of the required work.

Therefore, the work element is considered an essential element in the partial work contract. Accordingly, the contract does not exist if it does not include an effort or activity carried out by the worker. it is noted that the idea of work is very broad, as this idea may appear in multiple agreements or other contracts, Therefore, it was necessary to specify certain conditions to distinguish this idea within the scope of the partial work contract, and these conditions are:

#### The first condition: the personal capacity to perform the work

The Labor Law in force stipulated this condition in the text of Article (42/Second/A), where it stipulated that (the worker himself performs the duties surrounding him with accuracy and integrity in accordance with the work contract. The provisions of this law the instructions and decisions issued for its implementation, and the work regulations in the establishments issued by the employer And that the care of the person be expended in that in a way that does not contradict the provisions of the Labor Law), as well as the text of the Iraqi civil law on the obligations of the worker, where the worker is obligated to perform the work himself and to exert in performing it the care that the usual person exerts.

Hence, we can say that the worker must perform the work himself, because the personality of the worker in the employment contract is a matter of consideration, so the worker is often chosen based on the appreciation of his experience, talents, and the qualifications he possesses of his own, and this personal character that accompanies him in that he is the origin is a commitment. The worker performs the work entrusted to him by himself, and he thus justifies the annulment or termination of the work contract with the death of the worker, as it is not considered a right and therefore is not transferred to the heirs with the death of their inheritor, and the personal rights related to this contract are due for performance as soon as the required work is completed and the social life of the worker continues.

As for the employer, it is different from that, so it is not considered subject to consideration, unless it was taken into account when concluding the partial work contract. In spite of this, the personal capacity in the performance of the work is not considered from the general system if the contracting parties have the right to agree explicitly or implicitly to the contrary, and thus the obligation to work can be performed to a person other than the public.

The second condition: that the person who performs the work is not within the category of those excluded from being subject to the Labor Law

Article (3) of the Iraqi Labor Law in force stipulates that (First: The provisions of this law apply to all workers in the Republic of Iraq or those under their rule, unless item (Second) of this article stipulates otherwise.

Second: The provisions of this law do not apply to (a) public officials concerned according to the civil service law or a special legal text. b) members of the armed forces and members of the police and internal security.

Through this text, it becomes clear to us that when the work is carried out within the scope of the public position, it is subject to the laws and regulations specific to these jobs, and is not subject to the labor law. Not every dependent work can fall within the scope of the employment contract, so this work must fulfill this condition, just as It is the Lebanese labor law that extracted a group of them (servants in individual homes, agricultural unions that have nothing to do with trade and industry, institutions in which family members work under the management of the father, mother or guardian, government departments and municipal bodies with regard to daily and temporary employees and procedures that are not covered by the personnel system A special legislation will be established for them.”

The same is the case, as the Egyptian law excluded the majority of workers from its provisions, as Article (4) of the Egyptian Labor Law stipulated this and stated in it (the provisions of this law do not apply to).

- a. Workers in state agencies, including local administration units and public authorities.
- b. Domestic workers and the like.
- c. Family members of the business owner who actually supports them.

This is unless there is a text to the contrary), and based on the foregoing, the employees have their own legal system and the labor law does not apply to them, and this is what came in the decision of the Iraqi Federal Court of Cassation, which confirms this difference, as the Federal Court of Cassation ruled in its decision No. 11 / Expanded Civil Authority / 2007 on 1/25/2007,

which stated in (The Labor Law has defined its scope of application as it applies to all workers in the private, mixed and cooperative sectors, and accordingly, whoever works

under a temporary contract with state departments is not subject to the provisions of the Labor Law because it is not stipulated in its provisions).

The second requirement

The wage component of the part-time employment contract

The wage in the language is the penalty for the work, the Iraqi labor law in force defined the wage as (everything that is due to the worker from the employer in cash or in kind of any kind, and it is attached to it and is considered among its complements all that gives the worker of allowances of any kind, and wages payable for overtime.

The Egyptian Labor Law in force defines the wage as (everything that the worker receives in exchange for currency, whether fixed or variable, in cash or in kind. It is considered a wage in particular for the following (commission that falls within the framework of the work relationship, percentage, bonuses, benefits in kind, grants Allowance, share of the worker in the profits, endowment).

The wage is the money that the employer is obligated to pay to the worker in return for the worker's commitment to perform the work subject of the contract, and the wage is the essential element of the elements of the partial work contract and a condition of the existence of the partial work contract. It is subject to the labor law, because the part-time work contract is considered a netting contract in which both parties receive consideration for what they give, regardless of the amount of wages or the method of payment, whether the consideration is in cash or in kind, or whether it is called wages, salary, or fees paid monthly, weekly, or daily. or otherwise.

The relationship between the wage element and the work element in the part-time employment contract is a conditional and complementary relationship, as it means that the execution of the work by the worker is a condition that obliges the employer to pay the wage to which the worker is entitled.

However, a partial work contract may be valid even if the worker's wage is not mentioned in it, as long as the intention of the contracting parties is to grant the wage, unless the contract includes something expressly or implicitly indicating otherwise. And in the case of a difference in determining the wage, it goes to the wage of the same. It should be noted that the legislator has assumed in two cases that the work is paid even if the parties did not agree on that.

The first case is that a person performs a service that consists of work that is not customary to consider as a donation, while the second case is represented by a person doing work within his profession.

This is what the Iraqi Civil Law stipulates in Article (903), where it states: "The performance of the service is supposed to be paid if the basis for this service is work that is not customary to be donated to, or work within the profession of the one who performs it, and if the contract does not stipulate an amount remuneration is equal.

Despite this, we would have preferred if the legislator provided for a specific mechanism for the purpose of determining the amount of wages in the event of the parties' silence than specifying it in the part-time work contract.

Likewise, the employer is not obligated to fulfill the wage that he owes, unless the worker performs his work in the manner stipulated in the work and to the extent required, and it should be noted that the worker in the partial work contract deserves the wage from the date of receiving the work and not from the time of concluding the contract.

Where the principal in entitlement to wages is in return for the work performed by the worker.

However, in some cases, the worker deserves the wage despite not performing the work entrusted to him, and that is if the worker's failure to perform the work is due to a

compelling reason that he has no hand in and is not predictable and impossible to push, so it is considered a force majeure that makes the implementation of the obligation impossible for the worker.

But if this impossibility is temporary in nature, it does not lead to the rescission of the partial work contract by the force of the law, but rather leads to its mere cessation, because the rescission does not occur except with the final impossibility, and also the worker is entitled to a full wage in the event of not performing the work despite expressing his willingness to do so, and the reason is due to the error of the owner Work is like closing the establishments by a court ruling, and accordingly, if the worker came to his place of work at the time specified for work and was ready to start work, and there were reasons due to the employer, he was considered as if he had actually performed his work and deserved the full wage. Based on the principle of the contract, the law of the contracting parties.

But the application of this principle leads to the imposition of the stronger party, which is the employer, on the weak party, who is the worker, which is insufficient or unfair. The minimum wage for a worker is (350) thousand dinars instead of (25) thousand dinars, which was determined by the council according to Resolution 178 of 2013, based on the provisions of Article (63 / second) of the Labor Law.

provided that this decision is implemented starting from 1/1 / 2018 The decision came in order to take into account the general level of wages in the country and take into account the costs of the standard of living in addition to limiting the competitive advantage of foreign labor, but if the worker has a part-time contract with the employer and the total working hours entitle him to a monthly wage that is less than the minimum As stipulated in the special recommendations, the worker has the right to claim the difference because his legal entitlement is to not be less than the minimum wage if he has worked all the working hours agreed upon in his employment contract.

The legislator took into account another financial aspect that did not stipulate that it be considered a wage, but is related to it indirectly, and the employer must take it into account in studying his costs and financial burdens, including the worker's allowances for radiation. An additional allowance for the worker when working in radiation, and it was called an allowance for protection against exposure to radiation sources, and its value was determined at thirty percent (30%) of his nominal salary.

Also, additional work allowances for his work, additional hours of work without specifying the amount of, that does not impose a criminal penalty when violating this, up to imprisonment for a full year, and the wage is calculated on the basis of the duration of work, the time wage, i.e. calculating the wage on the basis of a specific unit of time such as the hour or day, week, or month without regard to the amount of production achieved by the worker, and this method should not be confused between the specified period of the contract, as this period may be a year, and the wage that may be calculated by the day or hour, or according to the amount of work, i.e. according to the absolute cut-off The inequality between the lazy and the hard working worker, or the wage and the deduction that combines the advantages of the two methods of time calculation and piecemeal calculation. A certain wage may be set for him in exchange for a certain production during a certain time, so that its completion in a lesser time deserves an additional wage for the worker for the time he saved or for what he produced in the remaining time..

As for the Egyptian and Lebanese labor laws, they have followed the path taken by the Iraqi legislator in the wage component. As for the allowances for feeding the pregnant woman, the Iraqi legislator in the Labor Law has neglected his special status for the worker with a partial work contract, if she is a woman when she goes through the period of pregnancy and breastfeeding, i.e. a period of an average of (33) thirty-three months, then her wages for adequate nutrition during that period is added.

Which, although the Labor Law was silent about it, we see that it is obligatory to be paid to the worker under the Convention on the Elimination of All Forms of Discrimination against Women, which is related to that because Iraq has ratified it by the Labor Law.

The third requirement

The dependency element in the partial employment contract

As the partial work contract is only based on the mutual consent of the two parties that one of the contracting parties performs work under his authority or the supervision of the other party, and it follows that there is no possibility of a partial work contract if the right of the employer to supervise or to manage or what is expressed in the element of dependency is excluded, it must be specified to determine Necessary items.

The element of dependency distinguishes the part-time work contract from other contracts. Although there are two elements of work and wages, and they are two basic elements in the part-time work contract, they are not sufficient. The dependency valued by the Labor Law takes precedence, i.e. the worker's submission to the observations and directives issued by the employer. Directing orders and prohibitions and the imposition of penalties. That is, the worker does not carry out his activity freely, but rather he is in the subordinate position, through defining the worker in the Iraqi Labor Law in the text of Article (1 / Sixth) that he (is every natural person, whether male or female, who works under the direction and supervision of the employer and under his management). Likewise, the definition of the worker in the Egyptian Labor Law in the text of Article (1/a) as (every natural person who works for a wage for an employer and under his management or supervision).

In addition to defining the work contract by law, obligations and contracts for the Lebanese in Article (624/1) and defined it as (a contract whereby one of the contracting parties undertakes to make his work dependent on the service of the other party and under its management...), dependency has two meanings, the first meaning is legal dependency, while the meaning The second is economic dependency. What is meant by legal dependency is the worker's submission to the employer's supervision, control, or guidance during the period in which the contract is concluded between them.

Or it is the subordination of the worker during the implementation of his obligations to the authority of the employer in terms of supervision and control, so he is obligated to obey the orders and instructions issued by the employer in relation to the performance of the work and is subject to the penalties imposed by the latter on him if he violates the instructions.

And that the concept of legal dependency that makes the worker in a legal position less than the legal status of the employer and is offset by the fact that the worker does not bear any economic risks for his activity on the one hand, and on the other hand this authority (dependency) explains the legal protection that the worker is surrounded by.

legal dependency varies according to the varying capabilities The employer in using his authority and differs with him functionally according to the existence of the worker, so the source of this dependence is the contractual bond that subjects the worker to the authority of the employer, and for the establishment of legal dependency, the following conditions are met:

1. The one who undertakes to perform the work must be a natural person and not a legal person.
2. The absence of the intention to participate for those who are committed to carrying out the work towards the second party.
3. Whoever undertakes the work must put himself at the disposal of the other person.

4. The one who is obligated to do the work is to carry it out himself, and he is not allowed to employ workers who undertake the execution of the work for his use, without the permission of the employer, provided that these workers are directly related to the original employer without the worker.

It must be noted that there are two forms of legal dependency:

The first form: is technical dependence, and it means the worker's direct submission to the employer's orders, which means the worker's complete submission to the employer's supervision in all matters related to work, whether subtle, essential, or partial. The work and the worker is subject to the supervision and control of the employer at every moment while performing the work.

In order for this subordination to be possible, the employer must have a sufficient degree of judgment in all the partial and essential details of the work, and be competent in the type of work, or at least be able to direct the worker and manage the work, as well as monitor his good performance and intervene whenever he appears to be shortcomings, negligence or deviation.

The second picture: is the organizational and administrative subordination, and it is sufficient to consider the legal subordination available that the role of the employer supervising is limited to defining the conditions under which work is carried out and regulating the external circumstances that surround its implementation, such as determining the type of work or working times and inspecting them from time to time, without necessarily including supervision The essence of the work.

Based on the foregoing, it becomes clear to us that dependency is the most important element of the partial work contract, and its importance appears in distinguishing the partial work contract from other similar contracts related to work, such as contracting, agency and company contracts.

As for economic dependence, it means the subordination of the worker to the employer from the economic point of view. in the sense that one employer is affected by the efforts of a worker in return for a wage that is considered for this worker the main source of his livelihood in a way that makes the latter in the position of dependent on the employer from the economic point of view. Because he depends in his livelihood mainly on the wages he receives from him. Economic dependence is based on the worker's need for his wages and his attachment to his effort, if he will depend on it as a means of subsistence and fulfill all his strength in obtaining it.

Where the partial work contract concluded between the employer and the workers who work in their homes without control or supervision from the employer is considered a partial work contract, despite the lack of legal dependency, there is economic dependency.

That the motives behind advocating purely economic and social dependency are their intent to introduce this type of dependency into consideration so that it can extend the protection of labor laws to sects to which these laws do not apply because there is no dependency in the legal sense, i.e. the lack of supervision or guidance authority from the employer On factor (1), because the economist's concept of dependency was not accepted by jurisprudence and judiciary due to the ambiguity of the concept of economic dependence.

Also, the income resulting from work is the main source for all people in light of the contemporary economic conditions. This leads to the dominance of the partial work contract over other contracts that are related to work. and that the adoption of this concept leads to making the conditioning of the partial work contract dependent on an external element, which is the economic condition of the worker, and it is not reasonable to attach the conditioning of the contract to the study of the social status of the worker In addition, economic dependence represents an element outside the construction of the

partial work contract, as its realization depends on an external element about it, which is the worker's economic condition, and the worker may have other resources, whatever their source.

Whereas, the Iraqi legislator took the legal dependency as an essential element of the work contract, through the Iraqi civil law as well as the labor law, which emphasized the necessity for the worker to perform his work under the supervision and management of the employer, and also the Lebanese legislator explicitly understood the legal dependency in the text of Article (624) of The law of obligations and contracts for the Lebanese, who defined the work contract as (a contract whereby one of the contracting parties undertakes to make his work dependent on the service of the other party and under its management...). As whoever makes his work subject to the service of the employer and under his management and supervision, and this is the meaning of legal subordination.

The Egyptian legislator followed the example of the Iraqi and Lebanese legislators with the concept of legal subordination, as the Labor Law included defining the worker as every natural person who works for a wage for an employer and under his management and supervision. Therefore, if the legal affiliation fails, there is no room for applying the Labor Law to the relationship.

It is inevitable to say that the elements of a partial work contract are three: each of the work that the worker does, and it makes no difference if it is an intellectual work or a physical work, and the wage that the worker receives in return for his work and expresses an essential element of the contract's elements. We are in front of a donation contract, and as for the dependency element, it is considered the distinguishing element, the partial work contract and the basis that distinguishes the partial work contract from other contracts, and therefore if one of the aforementioned elements fails, the partial work contract has lost its description and we are facing another contract.

## **The second topic**

### Characteristics of a part-time contract

The partial work contract has characteristics that distinguish it from the rest of the other contracts, as the partial work contract is distinguished according to its special nature with the advantages of characteristics that are unique to it from civil contracts, but at the same time they differ from each other as the partial work contract is characterized as a consensual contract, and it is also considered a contract Netting, which is also one of the so-called contracts, and it is one of the binding contracts on both sides, and it is one of the specific contracts, and it is one of the term contracts, so we will address all these characteristics in turn for the following demands.

### The first requirement

#### In terms of meeting

The principle in concluding any contract is consent, which is the first pillar of the contract, and it is known as the principle of consent in the contract, It is not required for a specific formality to be held and formulated in a specific form. In order for the contract to be valid, the agreement must be issued by a qualified person and not tainted by one of the defects of consent, which is error, coercion and fraud, and he is responsible for assessing the validity of the agreement and the availability of its conditions. With a defect of the will that is subject to nullification according to the interest of the party whose will is defective. As for the second pillar of the partial work contract, it is the object that is represented by the wage for the employer and the work for the worker, as it must fulfill the conditions, which does not affect the validity of the contract.

As for the third pillar, it is the reason according to the traditional theory, which is represented by mutual obligations. The commitment of each party is a reason for the commitment of the other party according to the modern theory of the reason, and it is the motive that drives the contract, in which it is required that it be legitimate and not violate public order and morals.

The offer and acceptance do not have to be in specific words, as no special words were stipulated, but it is permissible for the worker and the employer to use any word that indicates the conclusion of the contract, and this is what the Labor Law stipulated in Article (37) that stipulated that the partial work contract be verbal or written, and this condition The legislator put it to facilitate the process of proof and not to convene, and this is confirmed by what was stated in the same article, as it permitted the employer and the worker to prove the existence of the contract in the absence of writing by all methods of proof and to present data on any rights and claims they have under the contract, and that the presence of a written word does not represent the formality that The part-time employment contract negates the consensual quality considered legally, including evidence and presumptions.

Accordingly, in such a case, it is permissible to resort to all methods of proof. As for what is related to the lack of data stipulated by Iraqi law as a minimum limit in the contract, as if the working hours and the method of dividing them were not mentioned, then the contract does not have a legal character, but is considered a legal contract, based on the law The work that stipulates that (in the absence of a written contract between the worker and the employer, the method of proving the existence of the contract falls on both of them and presenting data on any rights and claims they have with the existence of the contract).

But if the worker, according to a verbal partial labor contract, denies receiving all or part of his wages in such a case, the legislator obliges the employer to prove that the worker has handed over his wages in the partial work contract, when the law stipulates that when the worker receives his wages, this should be through his signature on the wages register. Otherwise, the duty of the employer remains preoccupied with those wages, whether the documentation is through paper notation or through approved electronic notation, as a result of the development taking place in the workplace and the entry of international companies, despite the consensual character of the partial work contract, it does not deny that it is a contract Obedience, and what is meant by (the contract of adhesion is the contract in which the acceptor delivers on predetermined conditions that do not accept negotiation, and in which the commodity or service is related to a necessary facility subject to a legal or actual monopoly or the subject of a limited scope discussion).

The partial work contract is one of the contracts of compliance when the terms of the contract are determined by the employer without the worker having the right to discuss them, so the worker's acceptance of the contract is merely compliance with what the employer dictates, so the worker either accepts the contract as it is or rejects it completely, but the idea of this compliance It has diminished at the present time due to the intervention of the legislator to organize the provisions of this contract and to put in place the texts that restrict the freedom of business owners to set the terms of the contract in a manner that provides effective and necessary protection for workers. The partial work contract, then, is a consensual contract, and it is a contract of bargaining or negotiation and not a contract of acquiescence.

As for the Egyptian Labor Law, it stipulates that the employment contract must be written in the Arabic language through the text of Article (32) which states that (the employer is obligated to write the work contract in Arabic in three copies, the employer keeps one and delivers a copy to the worker The third is deposited with the competent social insurance office, as behind that text it is intended to protect the workers in the event that they work

under the management of a foreign employer in order to cut off any dispute between the worker and the employer that may arise from that.

As for the Lebanese Labor Law, it stipulates that (the employment contract can be either written or oral, and in both cases it is subject to the provisions of the labor law. The written contract must be drawn up in Arabic, and it may be translated into a foreign language if the employer or the employee is a foreigner who does not know the Arabic language), from Throughout the text, it becomes clear that the Lebanese legislator allowed the contract to be written, and it could also be oral, as the Iraqi legislator did. However, we see that both the Iraqi and the Lebanese legislators must follow the path of the Egyptian legislator in the employer's commitment to drafting the contract concluded between him and the worker, for two reasons. The first matter is the ease of proof in the event of a dispute between them, while the second matter is preserving the rights of the worker from loss.

The second requirement

In terms of topic

The part-time work contract is from the category of named contracts, and the named contract is known as what the law singled out for a specific name and regulated by legislative texts because it is common among people and individuals and has special rules governing it.

As for the unnamed contract, it is that contract that the law did not establish with a specific name and did not regulate it, so it is subject to the general rules that were decided for all contracts, because it is less common in dealing than the named contract, and since the Iraqi legislator has regulated the partial work contract in the enforceable Iraqi Labor Law No. 37 of the year 2015, therefore, it includes within its sect the named contracts, and accordingly the provisions of the general rules do not apply to it except for what is not provided for in a special text.

As for the Egyptian legislator, he regulated the partial work contract through the Labor Law. As for the Lebanese legislator, he did not regulate the partial work contract, neither in the Labor Law, nor in the Law of Obligations and Contracts. Therefore, it is not considered one of the so-called contracts in Lebanon. Therefore, we refer to the general rules to apply them to it. The partial work contract is considered a compensation contract, as the worker is obligated to perform his work, respect the employer and preserve the means of work, while the employer is obligated to provide good conditions for work, and most importantly, he is obligated to pay the wage that the worker is entitled to.

and if it is proven that the worker provided currency and His effort is free of charge, the contract negates the description of the partial work contract, and we are faced with a free service provided by the person of the other, and also if the employer provides an amount of money to the worker without obtaining a consideration for that as an act from the worker, then we are facing a voluntary disposition and neither party is subject to the provisions of the Labor Law, so a contract Part-time work revolves with the work that the worker does and the wage that the worker receives from the employer, so it revolves with it whether or not, so the agreement reached by employing the worker without wages or if the wage is fictitious is not real, so it cannot be considered a part-time work contract. Thus, wages are the criterion for differentiating whether the contract is considered a part-time contract or not.

The third requirement

In terms of impact

The partial work contract is one of the reciprocal contracts, as it entails reciprocal rights and obligations for both contracting parties. In addition, the partial work contract is considered one of the contracts binding on both sides, where each party has rights and

obligations. The worker is obligated to perform the work agreed upon and the employer is obligated to pay the agreed wage. The partial work contract is one of the contracts binding on both sides in which each party is a creditor and debtor to the other party, and the contract of the obligated parties is defined as (the contract that creates, since its conclusion, corresponding obligations of the two contracting parties on the existence of exchange so that each of them becomes a creditor and debtor towards the other, and it is in contrast to the binding contract For one side and defines the contract in which the jurist is committed to one of the parties without the other, so one of them is a debtor and the other is a creditor.

Whereas, in fact, the partial work contract in which the employer undertakes to pay the wage in exchange for the worker's commitment to perform the required work, therefore, in the partial work contract that is binding on both sides, there is a link and correspondence in the obligations of the two parties, as the commitment of each party is considered a reason for the commitment of the other party, so it results from the fact that the contract Partial work of contracts binding on both sides is that in the event of a breach or refusal of one of the parties to perform all or some of its obligations, which justifies the other party's request for termination or payment of non-implementation.

From this, the worker may request termination of the partial work contract if the employer is late in paying the wages or mistreats him, and also if the worker refuses to do his work or is absent without permission, then the employer may refrain from paying the wages for the period during which the worker stopped working.

It is worth noting that the partial work contract is one of the limited (realized) contracts, that is, it is determined by the amount of work or effort that the worker performs and the wage he receives, because each party to the partial work contract knows the value of his right and the value of his debt as soon as the contract is concluded, meaning that the worker knows the amount of his work that he It is done by the employer who knows the amount of wages agreed upon with the worker when contracting, unlike contingent contracts, in which the contracting parties are ignorant of the true value of their obligations due to the association of that with an unrealized accident occurring in the future, such as insurance contracts.

#### The fourth requirement

##### In terms of duration

A partial work contract is considered a term or continuous contract of execution, as its implementation takes a period of time whether this period is specified or not in the contract, and time is an essential element so that the time in the work contract is necessary to measure the work that has been completed, determining the period obligations and rights of both parties, the benefit can only be estimated after a certain period of time. However, in rare cases, the part-time work contract is immediate and is executed in one payment, as in the case of the obligation to lift a weight.

The Labor Law indicates that the number of hours of a part-time work contract should not be less than twelve hours and not more than twenty-four hours per week, but what happens in some cases when applying the upper limit for a worker with a part-time work contract, we note that he may find himself obligated to perform hours Work more than the maximum limit of (24) hours, especially in the cases specified by the Iraqi Labor Law in Article (71 / First), and the cases are:

The first case: in the event of the occurrence of an accident or the possibility of its occurrence, or if the work is for the urgent repair of machinery or equipment, or in the case of force majeure, provided that the increase is as necessary as is necessary to avoid stopping the normal work of the legislator.

The second case: In the event that work conditions require continuous work in consecutive shifts, provided that the total weekly working hours do not exceed (56) fifty-six hours, and that this does not affect the worker's right to a rest day grant as compensation for his weekly rest. Is the worker with a partial work contract considered to violate the terms of the period clause, or not? Is he entitled to the additional wages for the difference in the usual working hours, or not?

To answer that, the legislator in the provisions of the Iraqi labor law in force did not clearly and explicitly stipulate exceeding the maximum working hours for the worker under a partial work contract and the value of his wages or the procedures that must be taken when the worker works more than the upper limit. Despite the silence of the legislator about the upper limit, there is no law prohibits working more working hours than the maximum limit specified for the part-time worker, if they entail better rights than the rights prescribed for him under the provisions of this law, according to what was stated in the text of Article (14/First) of the Iraqi labor law in force (the rights mentioned in The provisions of this law are the minimum rights of workers, and these provisions do not affect any of the rights granted to the worker under any other law, work contract, agreement or decision if any of them give the worker better rights than the rights established for him under this law.)

As for the wages that we are innocent, they must be estimated according to the value of the overtime hours and not the value of the usual working hours, as long as they are considered additional wages, as permitted by the Iraqi Civil Law (a work contract may be concluded for a specific service or for a specified or indefinite period), the consideration of The part-time work contract is one of the contracts that are continuous in time, and it arranges important results, which are:

First: The termination or invalidity of this contract does not extend to the past, i.e. the invalidity is not retroactive.

Second: Temporary force majeure leads to the suspension of the contract, not its termination.

As for the Egyptian legislator, he did not narrate anything of the kind in the Labor Law, and in the Lebanese legislation, the Lebanese Labor Law stipulates that it is forbidden for a person to be bound by a work contract for the duration of his entire life or to undertake for life to refrain from working in a profession.

And every contract of which the form leads to this result, directly or indirectly, is null and void, as the Lebanese legislator aimed behind that text is to protect the workers from the abuse of the employers and their control over their destinies. This condition is null and void due to its violation of the rule of his order, and this is excluded by this condition, and the contract is concluded for an indefinite period, and the contract period is determined either by agreement to specify it in the contract itself, or it is determined by the type of work subject of the contract or its purpose, such as the performance of a specific service or seasonal work.

Through all of the foregoing, it can be said that the concept of a partial labor contract is explicitly included in the Iraqi labor law in force, while it is not mentioned in the Egyptian labor law or the Lebanese labor law, and that the elements of the labor contract as well as its characteristics carry similar terminological and objective connotations in each of the labor law Iraqi, Egyptian and Lebanese.

## **Conclusion**

First: the results

- 1- The work contract is a voluntary contract that can be concluded as long as the worker and the employer have the same desires, and no action is required, for the agreement to be valid.
- 2- Employment contracts belong to the category of named contracts, which are common in person transactions. They are contracts with specific names stipulated by the law, and therefore are subject to fixed general rules. For all contracts, it is less common for transactions than for specifying contracts.
- 3- The work contract is one of the contracts that are binding on both sides, as it establishes corresponding obligations owed by each of the contracting parties. The worker is obligated to perform the work agreed upon, and the employer is obligated to pay the wages for the work that the worker has accomplished.
- 4- The work contract is considered a partial or non-partial contract, and this means that time is an essential element in the contract and it is the criterion by which the subject matter of the contract is evaluated. Workers are bound to complete the work within a specified or indefinite period of time, so time becomes a necessary measure of work.
- 5- The work is considered everything that the worker pays mentally or physically in return for a wage and is subject to his management and supervision during the work period, as he is entitled to full wages, i.e. basic wages, in addition to bonuses and allowances of any kind.
- 6- It became clear through the research that the employer's dominance over the worker's activities in the course of work, that is, the employer's right to supervise, direct and monitor the worker in two degrees, technical or administrative.
- 7- If the contract specifies the period during which the worker must work, then if the contract is for a specific period, the possibility of extending or renewing that period can also be specified in the contract and specifying responsibilities: the employer can include in the work contract the responsibilities, tasks and obligations that he is expected to perform The employee during his work, and in some cases, if the work is part-time, it is possible to specify the working days and hours that the employee is expected to work.

Second: Recommendations

- 1- We stressed the need for the Iraqi legislator to regulate the remote work contract legislatively to keep abreast of the latest developments in the field of part-time work, due to its importance in strengthening the national economy, taking into account improving the environmental conditions of this type of work to provide real protection for those wishing to practice it.
- 2- Legislative review of the legal rules related to part-time work, whether it is of a fixed-term or indefinite period, to achieve more trust between the parties to the work contract, and this will only come through providing the infrastructure for legal texts and supporting them. By drafting the legal texts regulating that relationship with the aim of protecting the worker from encroaching on his privacy.

## **References**

First: Arabic references

- 1- Ibn Manzoor, *Lisan Al Arab*, Dar Al Maarif, Volume One, Cairo, 1981.
- 2- Ahmed Shawky Mohamed Abdel Rahman, *Termination of the Partial Employment Contract*, Manshaat Al Maarif, Alexandria, 2012.

- 3- Ahmed Shawky Mohamed Abdel-Rahman, Explanation of the New Labor Law and Social Security, Manshaat Al-Maaref, Alexandria, 2008.
- 4- Ahmad Abdul-Karim Abu Shanab, Explanation of the Labor Law, House of Culture and Publishing, fifth edition, Amman, 2010.
- 5- Bashir Hadfi, Al-Wajeez in Explanation of the Labor Law, Individual and Collective Labor Relations, Bridges for Publishing and Distribution, second edition, Algeria, 2006.
- 6- Bilal Ali Habib Al-Shaito, Wages in the Labor Law, Halabi Jurist Publications, first edition, without a place to be printed, 2015.
- 7- Tawfiq Hassan Farag, Explanation of the Labor Law, University House, without a place to be printed, 1986.
- 8- Jalal Al-Quraishi, Explanation of the Iraqi Labor Law, a comparative study, Al-Azhar Press, Baghdad, 1972.
- 9- Helmy Bahjat Budouri, The Principles of Commitments, Nuri Press, Cairo, 1943.
- 10-Dr. Mahmoud Salama Jabr, Legal Protection of Wages, Comparative Study, House of Legal Books, Egypt, 2007.
- 11-Dr. Haitham Hamid Al-Masarwa, Labor Law, a Comparative Study of Civil Law, Dar Al-Hamid for Publishing and Distribution, Jordan, 2008.
- 12-Dr. Ruba Al-Haidari, Transformations in the Employment Contract between Civil Law and Labor Law, a comparative study, Modern Book Foundation, Lebanon, first edition, 2015.
- 13-Suleiman Morcos, Al-Wafi fi Explanation of Civil Law, Volume One, Fourth Edition, without a place of printing, without a year of printing.
- 14-Saba Noman Rashid Al-Wisi, Labor Law, The Legal Library, Baghdad, 2022.
- 15-Adel Abdel-Hamid Al-Fajal, Unlawful Termination of the Employment Contract, A Comparative Study, Manshaat Al-Maarif, Alexandria, 2009.
- 16-Abd al-Razzaq al-Sanhouri, The Mediator in Explanation of the New Civil Law, Theory of Obligation, Sources of Obligation, Egyptian Universities Publishing House, Part One, First Edition, Cairo, without a year of printing.
- 17-Abdul Karim Abu Shanab, Explanation of the New Labor Law, Al Thaqafa Library for Publishing and Promotion, first edition, Amman, 1999.
- 18-Adnan Al-Abed and Youssef Elias, The Legal Library, without a place of printing, without a year of printing, p. 201.
- 19-Ali Awad Hasan, Al-Wajeez's Brief Explanation of Labor Law, Dar Al-Fikr Al-Jami'i, without a place to be printed, 2001.
- 20-Emad Hassan Salman, New Labor Law No. (37) of 2015, Dar Al-Sanhouri, Beirut, 2018.
- 21-Judge Shihab Ahmed Yassin, Work Judiciary, Al-Atak, second edition, 2011.
- 22-Judge Hussein Abdul Latif Hamdan, Labor Law, a comparative study, Al-Halabi Human Rights Publications, first edition, without a place to be printed, 2009.
- 23-Muhammad Hussein Mansour, Labor Law in Egypt and Lebanon, Arab Renaissance House, Beirut, 1995.
- 24-Muhammad Ali Al-Taie, Studies in Labor Law, first edition, Baghdad, 2002, p. 71.
- 25-Muhammad Ali Al-Taei, Labor Law According to Law No. 37 of 2015, a comparative study, Dar Al-Sanhouri, Beirut, 2018.
- 26-Muhammad Ali Al-Taie, Labor Law, Dar Al-Hajjah Al-Bayda, second edition, Beirut, 200, p. 168.
- 27-Muhammad Labib Shanab, Explanation of the provisions of the Labor Law, Al-Wafaa Legal Library, first edition, Alexandria, 2010.

- 28-Mahmoud Gamal El-Din Zaki, *The Employment Contract in Comparative Law*, Egyptian General Authority Press, second edition, without a place of printing, 1982.
- 29-Mahmoud Salama Jabr, *Legal Protection of Wages, Comparative Study*, House of Legal Books, Egypt, 2007.
- 30-Nada Al-Shujairi, *The Effects of Nullity of the Contract*, Al-Sanhouri Library, Lebanon, first edition, 2016.
- 31-Hisham Refaat Hisham, *The Work Contract in the Arab Countries*, National House for Printing and Publishing, Cairo, without a year of printing.
- 32-Haitham Hamid Al-Masarwa, *Labor Law, A Comparative Study of Civil Law*, Dar Al-Hamid for Publishing and Distribution, Jordan, 2008.

Second: Foreign references

- 1- G. Couturier, *Les civilist techniques et le droit du travail*, Dr. Soc 1975, P 151et.
- 2- J. Rivero, J. Savatier. *Droit du travail. Themis droit privé*, 13e ed, 1993, p 34.

Third: letters and treatises

- 1- Hussein Abdel Qader Maarouf, *The Personal and Objective Approach in Legal Behavior, A Comparative Study*, a master's thesis submitted to the College of Law, University of Baghdad, 1999.
- 2- Ali Abd Al-Hussein Mansour, *The Idea of No Judgment in the Civil Procedure Law, a comparative study*, a master's thesis submitted to the Council of the College of Law and Politics, University of Basra, 2015.
- 3- Murtaja Daoud Salman Jassim, *The Legal Center for the Maritime Worker, a comparative study*, a master's thesis submitted to the Council of the College of Law, Basra University, 2010.

Fourth: Research and journals

- 1- Prof Dr. Raed Siwan Atwan and Murtaja Dawood Salman, *Civil Responsibility for the Maritime Worker*, research published in the *Journal of Basra Studies*, the thirteenth year, Issue 30, 2018, p. 132.

Fifth: Laws

- 1- The Iraqi Constitution promulgated in 2005.
- 2- Iraqi Labor Law No. (37) of 2015.
- 3- Iraqi Labor Law No. (71) of 1987.
- 4- The Lebanese Labor Law issued on September 23, 1946.
- 5- Egyptian Labor Law No. (12) of 2003.
- 6- The Iraqi Civil Code No. (40) of 1951.
- 7- The Egyptian Civil Code No. 131 of 1948.
- 8- The Lebanese Law of Obligations and Contracts of 1932.
- 9- Law No. 99 of 1980 on protection against ionizing radiation.
- 10-Law No. 66/1986 Ratification of the Convention on the Elimination of All Forms of Discrimination against Women published in *Al-Waqa'i Al-Iraqiya* Issue 3107 on 7/21/1986.

Sixth: Decisions

- 1- The decision of the Iraqi Federal Court of Cassation in its decision No. 263 / Expanded Civil Commission / 2022 dated 8/29/2022, unpublished.
- 2- The decision of the Federal Court of Cassation in its decision No. 4159 / Civil Authority / 2017 on 13/7/2017 is not published.
- 3- The decision of the Iraqi Federal Court of Cassation in its decision No. 167 / Civil / 2006 copied on 27/2/2006.