
The Criminal Responsibility of The Employer for Breaching the Duties of Occupational Therapy and Safety (A Comparative Study)

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Abstract

The right to health is an important human right, because it is the duty of the employer to ensure its fulfillment. The category of workers is the group that has effective role at all political, economic and social levels, which prompted the legislation to take care and protect it, preserve its rights and clarify its duties, especially in the matter of protecting workers in terms of health and the prevention of work accidents and work injuries. Rights, settlement and penalties arise therefrom. Ensuring the legal protection of workers' health requires the intervention of the legislator to regulate the professions related to them. So we see the goal of imposing a criminal penalty on employers is the purpose of providing security for workers and maintaining their health and occupational safety in the facilities in which they work.. Therefore, we dealt with the subject of the research through two sections, the first topic, what is the criminal responsibility of the owner, and by clarifying who the employer is, he may be a natural or legal person. Prevention of work injuries, then we explained in the second section the legal provisions for the crime of breaching occupational health and safety by clarifying the elements of the crime of breaching the duties of occupational health and safety and attributing the crime to the criminally responsible person and the penalty resulting from this crime, in addition to that we showed the procedural provisions in initiating the criminal case against The employer is from the competent judiciary, which is the labor court organized by the Iraqi legislator in Labor Law No. 37 of 2015.

Keywords: criminal, responsibility, employer, duties, occupational, health, safety.

Introduction

The environment the work is the place that Practice in it The Worker his activity professional, And from then Should that Provides for him owner the work All and the liquid that From Shana protect it From the dangers professional, because his right in protection health and security inside Places the work and protect workers from dangers accidents Work and disease professional. Where occupational health and safety mainly contribute to the development of the national economy, and work and the work environment are among the main determinants of health. Unsafe working conditions lead to health risks. There is a reciprocal relationship between health and work. Workers who enjoy health services contribute effectively to increasing and improving the quality of production. Unhealthy working conditions negatively affect health, and the reality in Iraq is no different from the rest of the world with regard to employers' breach of occupational health and safety duties, income of the establishments, and from this point of view, with the aim of achieving the penal responsibility of the employer for his compliance with the duties of occupational health and safety by submitting This study is to assess the reality of occupational health and safety.

Literature review

What is the penal responsibility of the employer for breaching occupational health and safety duties?

The criminal responsibility of the owner must be clarified. Working in two ways:

The concept of criminal liability for the employer:

In order for criminal responsibility to be realized (Hamad, 1967), two things must be available or achieved, the first of which is awareness or discrimination, and the second is freedom of choice, and without them or one of them, a person is not worthy of this responsibility. Therefore, we will show the definition of the criminal responsibility of the employer in two branches, the first section is the definition of the employer, and the second section is the nature of the legal relationship between the employer and the worker.

Definition of the employer:

Concerning the definition of the employer has been defined from the side of jurisprudence and law, at the level of jurisprudence there are multiple definitions provided by jurisprudence, where some of them defined the employer ((as the natural person who uses the labor power of others and directs the practice of that wage labor force for his benefit for which he works and be responsible for it)) (Sadiq, 1976), and it becomes clear to us through this definition that the business owner can only be a natural person and thus the legal person is excluded from the list of the business owner. Others went to the definition of the employer ((every natural or legal person who is employed in any capacity as a worker or a wage earner in an industrial, commercial or agricultural project, even if this wage is something in kind or a share of the profits)) (Ramadan, 1983). We note that this definition is mentioned in most of the laws that dealt with the definition of the following employer. And the business owner was defined as ((that person who employs workers and has authority over them with regard to will or control, and the one who provides his work is called an employee, a wage-earner or a worker)) (Jalal, 1972). Year is not allotted. On the level of legislation, the Iraqi legislator defined in Article 1/8 of the Iraqi Labor Law No. 37 of 2015 the employer every ((a natural or legal person who employs one or more workers in return for wages of any kind)). From this definition, it is clear that in order to acquire a person as an employer must meet the following conditions: To be a natural or legal person, it is unlike the worker who must be a natural person only. If the person is a legal person, he must be a private legal person, but if the person is a public legal person, he is not subject to the Labor Law (Federal Court of Cassation) To work under his supervision and direction by one or more workers, and therefore if a person does not employ a worker, he is not considered an employer and therefore he is out of subjection to the provisions of the Labor Law. To pay the person who works under his supervision and direction a wage as consideration for the work, regardless of this wage, whether in cash or in kind, and whatever the name given to this consideration. Article (1) of the Egyptian Labor Law No. 12 of 2003 defines the employer ((every natural or legal person who employs one or more workers in return for a wage)). It is clear from the definitions that the employer is natural or moral, with regard to the natural employer is the human being because the original In personality, it is for the human being alone, given that the economic and social life is based on the human being alone, and this is what prompted legislators in various countries to take into consideration the economic and social conditions when enacting laws. The term “natural person” refers to man to distinguish him from the legal person, as they alone enjoy legal personality. As for the moral business owner what is meant by a legal person in general is a group of individuals aiming to achieve a specific purpose or a group of funds allocated to achieve a specific purpose. On this basis, the moral employer can be defined as a group of funds or private persons for which the law recognizes the legal personality and employs one or more workers in return for a wage. The Iraqi legislator did not define the legal personality precisely, but he mentioned the provisions related to the legal personality in the Iraqi Civil Law No. (40) for the year 1951 in Articles (47-49), where Article (47/C) stipulates (each group of persons or funds granted by the law a personal and Article (48) clarified the characteristics of the legal personality (... 2 - The legal person enjoys all rights except what is inherent in the capacity of the natural person, within the limits determined by the law, 3 - It has an independent financial liability, 4 - It has the capacity to perform, within the limits Among them is its establishment contract and which are imposed by law) . As for the types of legal persons, there have been various interpretations about them, and with the difference of these divisions and the foundations on which they are based, the most acceptable is their binary division based on the nature of the activity that they undertake or practice. They are either public legal persons or private (Ramadan, 1992)

The legal basis for the nature of the relationship between the employer and the worker

First: The constitutional basis for the nature of the relationship between the employer and the worker: Work is the most important social right, and it is a necessary and basic right to work, and the state is obligated to provide work that is compatible with workers that preserves their dignity and their right to a decent living, since work is a right and a duty guaranteed by the state. According to economic foundations, taking into account the rules of social justice. While the Egyptian Constitution of 2014 emphasized the basic principles and rules related to labor issues, and the establishment of institutions that assist workers in defending their rights and protecting them against the risks of injury, as the Egyptian Constitution stipulated that ((the state is committed to preserving workers' rights and working to build relationships Parallel work between the two parties of the productive relationship, and it guarantees the means of collective negotiation, and it works to protect workers from work risks, and it provides the conditions of occupational security, safety and health, and the prohibition of arbitrary dismissal, all of which is regulated by law. It is clear to us from the foregoing from the position of the constitutions. We believe that the Iraqi constitution states that the necessity of regulating the legal relationship between the employer and the worker related to work issues, social and health security, is directed to the legislative authority, whose application depends on the issuance of legislation that clarifies the mechanism for implementing what is stipulated in the constitution. As for the Egyptian constitution, it has clearly stipulated explicitly issuing legislation regulating the legal relationship between employers and workers and how to implement it, prohibiting arbitrary dismissal of the worker by the employer, and affirming social, health and economic security in a manner that guarantees him the preservation of his dignity and his family.

Second: The legal basis for the nature of the relationship between the employer and the worker: When talking about the legislation regulating labor relations, it is necessary to refer to the criterion that determines the nature of the law that governs the relationship. The work stipulated in the constitutional document, and we note most labor laws in countries are keen to establish a legal mechanism that regulates the relationship between the employer and workers in a way that ensures the achievement of the public interest and the protection of the worker and the preservation of his rights to serve the productive process. It must be pointed out that labor laws are related to public order, protecting the worker and achieving a balance between the rights of the worker and the employer in a manner that serves the public interest. Therefore, we note the labor laws that regulate relations between employers and work, as we find the Iraqi legislator in Labor Law No. 37 of 2015 has organized Relationships between the employer and the workers, as between the rights of the employers and the work and their duties towards the other, and for the purpose of achieving social justice, building and developing the national economy and organizing the work of foreign workers among the employers (Emad , 2015) In addition, we note the Iraqi Civil Code No. 40 of 1951 has also regulated the relations between the employer and the worker under the title of the work contract, and that dealt with it the pillars of the work contract, the provisions of the work contract and the termination of the work contract. As for the Egyptian legislator, the relations between the employer and the worker have been regulated in Labor Law No. 12 of 2003, as the law aims to regulate individual work relations from the duties of workers and working hours, and emphasized occupational health and safety, securing the work environment, social and health services, and inspection in the field of occupational health and safety. .

Occupational health and safety duties of the employer

The legal basis for occupational health and safety duties:

Proceeding from the firm conviction of concern for occupational health and safety, we find the intervention of the international legislator by setting up a unified legislative system, especially after the openness of a group of countries to the outside world, which took into account the format and directions of national policy. In view of the multiple sources of danger that threaten the health and safety of work while they work, international agreements have been issued on maintaining occupational health and safety at work, and national legislation, so we will clarify the legal basis for occupational health and safety duties at the international and national levels. First: International agreements on the maintenance of occupational health and safety. The topics dealt with in the ILO conventions on the issue of occupational health and safety for workers varied, as the International Labor Conference issued in the

year 119 in its first session, and Recommendation No. 12 related to the prevention of blight has been issued by the Labor Organization, and due to the outbreak of an occupational disease resulting from white phosphorus issued The organization, Recommendation No. 6, and issued Recommendation No. 4, sought to protect the health of women and juveniles against occupational disease for the year 1921, and in view of the dangers that this article has posed to the health of workers, the International Conference on Labor unanimously issued Convention No. 13 prohibiting the use of gasoline, lead and products containing These materials are used in the dyeing works carried out inside the structures (Mazioud, 2018). Among these agreements are the following: Convention on Occupational Safety and Health in Port Handling Operations No. 152 of 1979. This agreement referred to a set of duties that should not be adhered to, which are as follows: A- Providing and maintaining safe workplaces, equipment, and work methods that do not represent danger or harm to health. b- Providing the means of access that ensure the safety and maintenance of workers in all workplaces. C- Providing the necessary information, training and control to ensure the protection of workers from the risks of accidents or health damages that result from work or during work. D- Providing workers with any personal protective equipment, protective clothing, and survival equipment. E- Providing and maintaining adequate and appropriate first aid and rescue facilities to face any emergency that may occur.

Occupational Safety and Health and Work Environment Convention No. 155 of 1981: The Occupational Safety and Health Agreement referred to the principles of the national policy on occupational health and safety and the work environment and reviewed them in a way that clarifies the formulation of the national policy on occupational health and safety functions and duties, as follows: Prevention of accidents and health damages resulting from and related to clients or that occur during work, and reducing the causes of risks involved in the work environment to the maximum possible and reasonable extent. Reviews the situation of occupational health and safety and the work environment at appropriate intervals are either in a comprehensive manner or devising effective ways to address them, setting work priorities or evaluating the results.

Agreement on Sanitary Rules in Commerce and Offices No. 120 of 1964: Appropriate measures shall be taken to protect workers from harmful, unhealthy or harmful materials, processes and techniques for any reason, and the competent authority shall require the use of personal protective equipment whenever the nature of the work so requires. Every facility or institution to which the agreement applies may have a private dispensary, a first aid center, or first aid boxes or bags. c- Providing all places used by workers with adequate and suitable ventilation. D- Maintaining all equipment and machines used by workers in the workplace and maintaining the cleanliness of the places where workers are located. Second: National legislation on maintaining occupational health and safety: We find that the legal basis for maintaining occupational health and safety is in Article (113) of the Iraqi Labor Law No. 37 of 2015, where the National Center for Occupational Health and Safety manages the planning and control of the implementation of occupational health and safety affairs in a manner that ensures the dissemination of a culture of safety and protection of workers, in various work sites , from occupational diseases and work injuries, as well as expressing cooperation between the employer or the administration and the workers or workers' representatives in the project is an essential element in the measures taken to improve occupational health and safety conditions at the level of the project and the workplace , as well as the occupational health and safety instructions No. 3 of 2018 referred to in Article (1/First) A committee shall be formed in the National Center for Occupational Health and Safety called the Committee (Granting Authorization for Engineering Examination) to examine electric elevators, various pressure vessels, lifting tools of all kinds and devices attached to them, and to issue an annual examination certificate for machines and equipment, as well as instructions' references to conducting periodic medical examinations to work according to instructions Issued by the doctor or the health authority responsible for them to ensure their safety and health fitness. These checks are recorded in the worker's file and shall be Available for inspection. As for the position of comparative legislation, we find the Egyptian legislator in Labor Law No. 12 of 2003 in Article (208) Article 208 ((The establishment and its branches are obligated to provide means of occupational safety and health and to secure the work environment in the workplace to ensure the prevention of physical risks arising from the following in general. Especially heat and cold stress, noise and vibration, lighting, harmful and dangerous radiation, changes in atmospheric pressure, explosion hazards.

Occupational health and safety duties

Prepare Occupational Health and Safety It is the field that aims to protect workers from various types of risks associated with work or its conditions. This is done by addressing the personal or technical factors that lead to these risks, which helps to improve the work environment and conditions, so that workers remain in permanent physical and mental health. Among the dusty occupational health and safety duties on the employer are as follows: Providing a decent, healthy, easy, safe and secure work environment, Training employees on how to avoid occupational hazards., Spreading a culture of occupational health and safety among employees and reducing the controls related to occupational risks in a visible place in the workplace., Providing medical first aid supplies at work sites, Ensure that primary and periodic medical examinations are conducted for all workers with regard to occupational health and safety and the work environment, provided that all accidents, injuries and occupational diseases that occur during work or are related to it are included., Notify the authorized health authority of work accidents and injuries and occupational diseases when they occur and notify the center of that. The notification includes data about the project, the employer, the injured person, the nature of the injury or occupational disease, the workplace and the circumstances of the accident. The National Occupational Health and Safety Center prepares an annual report on accidents and injuries to work sites with more than 50 or more workers., Take all necessary measures to ensure the effective protection of the health and safety of workers from all occupational hazards, and conduct annual periodic examinations on steam boilers, pressure devices, electric elevators, lifting tools and their accessories from competent authorities authorized by the National Center for Occupational Health and Safety., Providing appropriate personal protective equipment for workers and none of them bears financial costs for it., Ensuring the safety of harmful machinery and equipment (boilers, elevators, cranes...etc.) through reports proving their validity to work safely from authorities officially authorized by the National Center for Occupational Health and Safety and regulated by instructions issued by the Minister, The Center may grant occupational health and safety licenses to the project after all safety requirements are met and workers are examined in return for fees determined by instructions issued by the Minister., Supervising the organization of dealing with the emergency plan.

Legal provisions for the crime of violating occupational health and safety instructions:

The health and safety of workers are affected by the different working conditions, and it consists of the sum of the natural physical conditions that surround the worker at the work site and cannot be definitively enumerated, as it differs from one industry to another and from one region to another, such as extractive industries.

Based on this, we shall clarify the objective and procedural provisions of the crime of violating occupational health and safety instructions in two demands.

Objective provisions for the crime of breaching occupational health and safety instructions:

The concept of the crime of breaching occupational health and safety duties:

The development of life in general and the means of production and work in particular has led to an increase in the risks of modern work, which requires labor legislation to confront this increase by developing methods of treatment and prevention of occupational diseases and work injuries (Saba, 2013). Health risks are meant as ((administrative activities related to protecting workers from risks resulting from workplaces that lead to their injury to diseases and accidents)), while occupational safety has been defined as ((protecting workers from injuries resulting from labor accidents)) (Amer, 2013 Attention to occupational health and safety is one of the manifestations of administrative development and successful economic planning, and they are among the main tasks of any institution or establishment that seeks to preserve the safety of its workers from occupational risks and injuries (Alouti, 2015). The Iraqi Labor Law requires the employer to take all necessary precautions to protect workers from work hazards and injury, and obliges workers to adhere to the orders, regulations, and instructions for their protection and occupational safety (Sadiq, 1976), in addition to the employer's obligations to suspend the instructions for prevention from a visible place. In the workplace, informing them in writing of the dangers of the

profession, providing first aid and medical care for workers, and granting the Minister of Labor the power to close the workplace in case of non-compliance with these instructions (Selman, 1975) In Egypt, the sanctions list was taken from the model list, which listed the occupational health and safety violation as among the criminal offenses related to the work system. The Egyptian Labor Law gave occupational safety and health special attention when it singled out the fifth book of the law. Work to take the necessary precautions for prevention, including, but not limited to, physical hazards, including noise, vibration, lighting, harmful and dangerous radiation, and changes in atmospheric pressure, explosion risks, and others. Accordingly, the legislator stipulates securing the work environment for workers in a manner that achieves for them the physical risks resulting from it, as well as mechanical, biological, chemical, fire and other risks, and that they must be adhered to, and the employer will not be subjected to criminal penalties. In order for the crime to be realized, there must be certain pillars to investigate criminal responsibility. First: the special element: the legal model of the crime, in addition to the material and moral elements, may require other elements called the crime-specific elements that are not required to be present in every crime (Adel, 2019):

A- The criminal liability of the employer as a natural person: The employer may commit some acts that fall within the framework of violation of the labor law and the director of the neighborhood facility is the subject of criminalization and punishment, and criminal responsibility does not fall on those who lost life, and a group of jurisprudence goes to say that the obligation of the employer and his bearing the penal responsibility towards the workers who employ them inside the workplace It is a legal obligation stipulated in the labor law that regulates the legal relationship between the employer and the worker (Fathi, 1985). On the other hand, another aspect of jurisprudence is that the basis of the employer's responsibility towards the workers under his supervision and in his establishment is a work contract, as it is one of the contracts binding on two parties, and thus becomes an obligation imposed by the work contract on the employer in the event the worker is exposed to an injury error by the employer or third parties. (Ibrahim, 1988) This will show the criminal responsibility of the business owner for his personal act and the penal responsibility for the act of others:

- *Criminal responsibility for his personal act:* Personal penal responsibility means that a person is only criminally responsible for the actions and behaviors committed by him in his personal capacity, and he is not asked about the positive or negative action that occurs from others in application of the rule of personal punishment, and this rule is one of the general principles on which the criminal system depends, and it is required for the establishment of penal responsibility That there are two active elements of the crime and the act of a criminal, i.e. the occurrence of the crime by violating a legal text by a contrary act, carrying out a criminal and mental activity in accordance with the principle of personality. Punishment does not extend to anyone other than the offender in all cases (Ali, 2002)
- *Criminal responsibility for the act of another:* Criminal responsibility for an act is widespread in the industrial and economic field, especially the head of an institution or business owner through his relationship with his workers (Ahsan, 2000) and indirect. A - Penal liability for the act of third parties indirect responsibility: This issue relates to the extent to which the employer bears the obligation to pay the fine that is imposed on his worker without holding him criminally liable. And this responsibility is not a criminal liability as much as it is a civil liability that imposes the obligation on the employer to pay the fine that goes to the state treasury and is not compensation obtained by the victim of the crime. B - Penal responsibility is a direct responsibility: This responsibility is established when the worker commits and criminally punishes the employer. Labor legislation has paid attention to protecting workers and protecting them from work hazards and occupational diseases to which they are exposed. Therefore, the employer is obligated to observe work safety under labor laws (Mohammed, 1997) As for the position of the Iraqi legislator in the Iraqi Labor Law No. 37 of 2015, the employer was defined in Article (1/8) and its definition is clear that the employer is in most cases a natural person (human) who employs a group of workers in return for a wage. As for the Egyptian legislator, it has been mentioned in the Penal Code on the personality of the penalties and can only be imposed on the person who committed the crime. As a result, the criminal responsibility is personal and that the person committing the crime is the basic and essential condition for the establishment of criminal responsibility and the application of criminal penalties (Mohamed, 1945), as for the law The Egyptian Labor Act No. 12 of 2003 has a similar definition in terms of meaning in the Iraqi Labor Law.

B- The criminal liability of the employer as a legal person: The basis is penal responsibility in accordance with the provisions that the person is sane, enjoys freedom of choice and is the focus of his actions in order to be subject to criminal responsibility. There is a difference between jurisprudence regarding the extent of the legal person's responsibility. The first opinion held that legal persons are not criminally responsible for the actions that occur from their representatives during the performance of their duties, even if they were committed for their account or in their name. The responsibility goes to the one who committed the act personally, as if he had committed it for his own account. As for the second opinion, it tends to recognize the criminal responsibility of legal persons, as this person represents a real existence, considering the interests that he targets, which makes them independent from the personalities of the stakeholders so that he can sue them (Adwar, 1978). For the legal person, as a result of the increase in the activities carried out by the legal persons, the idea of the criminal responsibility of the legal person has received wide support from the side of modern jurisprudence, especially in the field of economic laws for the success of the economic policy, and the Iraqi legislator took this direction in the Penal Code, where the Iraqi legislator stipulated In Article (80) of the Penal Code No. 111 of 1969 (for legal persons, with the exception of government interests and its official and semi-official departments Any person criminally responsible for crimes committed by its representatives, directors or agents for its account or in its name . It is not permissible to pass judgment on it other than a fine, confiscation and the precautionary measures prescribed for the crime legally. If the law determines for the crime an original penalty other than the fine, it shall be substituted for the fine. This does not prevent the perpetrator of the crime from being personally punished with the penalties prescribed for the crime in the law. Excluding public moral persons from criminal responsibility in the Iraqi and Jordanian Penal Code It is due to considerations necessitated by the nature of these persons from the political and legal aspects, the fact that their function is to satisfy public needs, and that the accompanying activities that they practice and the administrative decisions they take are regulated by public law. The Egyptian legislator did not stipulate the responsibility of the legal person, if the general rule in Egypt is that only the person who committed it is criminally liable, and the case is not brought against the owner of the moral business, but against his representative or its constituent members who committed the crime. The legislation restricts the civil liability of the legal person only without the penal responsibility, given that the criminal responsibility of the legal person is an abnormal responsibility, and there is no necessity from its culprits and it does not comply with the provisions of the Penal Code. With the responsibility of the natural person stipulated in this law, the legal person is responsible for the crimes stipulated in this law if they occurred for his account or in his name or through one of his agencies or representatives or one of their employees, and the legal person is sentenced to a fine, suspension of his activity or cancellation of the license to practice the activity Permanently). The description of the victim: The victim requires that he be a worker. Under the concept of the victim, each ((whoever was the victim of the crime and the one to whom the damage extends)). The worker was defined in the Iraqi labor law in Article (1/VI)) ((every natural person, whether male or female, who works under the direction and supervision of an employer and under his management, whether he works under a written or oral contract, express or tacit, or by way of training or testing, or performing intellectual or physical work in return for remuneration of any kind under this law. ((All that is due to the worker from the employer, in cash or in kind, in return for work of any kind)) Second: The material element: The material element is achieved in a crime by violating a duty of safety, and does not include a violation of the duty of caution or the general duty to preserve what is stipulated in the Labor Law, but on the contrary, it is a violation of a duty specific to the considered case, and the basis of this error is a violation of the health and safety obligation. Professionalism (Rana, 2011), and that the employer does not ask about the doctor's mistake in treating one of the workers because he committed himself to stopping the provision of ambulances and medical treatment, the Egyptian judiciary requires a certain degree of material error from the employer, rather it is satisfied with the occurrence of an error that entails his own responsibility For example, the employer's omission in taking preventive measures is considered a perpetrator and criminally responsible (Samir, 2006) Third: The moral pillar : it means the availability of psychological factors in the person of the employer that express himself and his danger to society in general and workers in particular, and he must be qualified to assume penal responsibility, aware and able to understand the nature of the work that If the employer is not qualified to bear the penal responsibility, the free will of the employer is not qualified to bear the penal responsibility, so the free will of the employer is an essential condition in the criminal responsibility, whether it is an intentional or unintentional crime (Fakhri, 2010)

Punishment for the offense of breaching occupational health and safety duties

The Iraqi Labor Law stipulates that the employer shall be punished with imprisonment for a period of no more than six months and no less than two months, and a fine of no more than one million dinars and no

less than five hundred thousand dinars in case of violation of the provisions stipulated for work precautions. As for the Egyptian Labor Law, it has established an administrative and a criminal penalty for the employer's violation of the provisions related to occupational health and safety and securing the work environment. In the event that the violation poses a threat to the health and safety of the workers, and the decision of total and partial closure does not prejudice the right of the administrative body to remove the causes of the violation by means of direct implementation at the expense of the facility (Hussain, 2021). The criminal penalty is imprisonment for a period of no less than three months and a fine of no less than one thousand pounds and not more than ten thousand pounds, or one of the two penalties. The two penalties of imprisonment and a fine are obligatory if the crime results in death or serious injury, and the fine is doubled in case of recurrence.

We note that the Iraqi legislator was not successful in defining the occupational risks to which the worker is exposed. Rather, he merely mentioned precautions and preventive measures compared to the Egyptian legislator in the Egyptian Labor Law. The worker or his severe injury has referred this case to the Iraqi Penal Code No. 111 of 1969, but the Egyptian legislator addressed this case and this crime is considered a premeditated crime. In addition, there is a special intent represented by the certain knowledge that the worker's protected interest by law is the interest of society.

Procedural provisions for the offense of breach of occupational health and safety

The second section is the effect of the penal judgment on the work contract.

Initiating a criminal case against the employer:

Initiating a criminal case against the employer is a procedure that opens the criminal litigation, we can consider it a procedural action issued by the claimant worker to obtain his goal from the case, while the criminal case can be defined as ((a set of procedures determined by the law and aimed at reaching a court ruling that decides Correct application in the matter of a specific criminal situation (Mohammed, 2011,(As for what is meant by initiating the criminal case, it is to start conducting it and conducting it before the competent authorities. Article (11) of the Iraqi Labor Law in force ("the right to submit a complaint to the competent labor court which provided the worker with the right to resort to the labor court to file a complaint about his exposure to a form to Violations in the workplace)). In the criminal case, it was not required that the complaint be written or oral. In this context, Article 1 / A of the Code of Criminal Procedure No. 23 of 1971, as amended, stipulates the manner or method by which the criminal case is initiated, provided that (the criminal case is filed with a complaint Oral or written submissions are submitted to the investigation judge, the investigator, any official in the police station, any member of the judicial police, who is harmed by the crime, or whoever is legally established, or any person who has knowledge of its occurrence, or with news submitted to any of them from the Public Prosecution, unless the law provides otherwise. The complaint may be submitted in case of flagrante delicto to any of the police officers and commissioners who are present. Accordingly, the complaint can be submitted orally by the worker against the employer, and in this case he intended to initiate the criminal case only, unless he explicitly requested a claim on the civil side if it was submitted in writing, then this means that Al-Amal has requested to initiate the lawsuit from both the criminal and civil sides against the employer, It should be noted that the legislator in the Code of Criminal Procedure has divided the initiation of the criminal case into two ways: the complaint , which is a request submitted by the worker who was the victim or the victim of the crime or his legal representative to the legally competent authority, and it may be oral or it may be written , and the news is the way The second method of initiating the criminal case is that the criminal case is moved by news that any person who knows about the crime shall submit to the Public Prosecution or other bodies stipulated by law. The Iraqi legislator, members of the judicial police, must carry out the process of collecting evidence after receiving the complaint and news of the occurrence of the crime. Only in the cases provided for by law.

First: The competent authority to investigate the employer: The Iraqi legislator stipulated in the effective Labor Law No. 37 of 2015 and this preliminary stage to refer the subject to trial and end its procedures and it is a guarantee for the victim worker, the offending employer and the community at the same time. The Iraqi legislator in the labor law sets ways to resolve the collective conflict in the event of disputes between the employer and one of his workers or some of them or all of them.

The method of conciliation and the method of arbitration

Conciliation method: It is a method for resolving the labor dispute in an amicable and consensual manner on the basis of the mediation of another party, and through a solution that satisfies the parties to the dispute. The Iraqi Labor Law has clarified and distinguished between two cases: A- In the event of a dispute over the rights enjoyed by workers and derived from the labor law and laws relating to workers, or derived from a collective agreement in force or an arbitration decision, the Iraqi labor law is obligated to refer the dispute to the Labor Department by the worker and the employer, the right to work in case of unfairness from The employer has the right to go to the labor department in his place of work, and the department has the right to summon the employer and interrogate him. The Iraqi Labor Law, in Article (157) first, defines these procedures as follows. Here, the law requires the Labor Department to decide on the dispute and issue an appropriate decision to resolve the dispute presented to it within a period of (14) from the date of receipt of that written notice. As for the failure to reach a way to resolve the existing dispute, such as the failure of the parties to the dispute or one of them to be convinced of the content of the decision issued by the Labor Department, the effective Iraqi labor law permits the working parties and the employer to resort to the competent labor court to resolve the dispute. B- Either of the two parties to the dispute, whether it is related to existing rights or related to future interests, has the right to deliver to the Labor Department a written notice of the existence of the dispute, and he must provide copies of this notice to the other parties to the dispute, then this department will determine and appoint a mediator when it receives the notification, and the mediator must have experience When carrying out mediation tasks (Mohamed, 2015), in order to bring the views closer to an agreement to settle the dispute between the concerned parties, such as the worker and the employer, for the purpose of reviewing the overall circumstances related to this dispute, and the mediator performs this task within a period not exceeding (5) days In the event that a solution satisfactory to both parties is not reached, the law requires the mediator to prepare a report that includes a summary on the subject, the proposed solutions and the position of the parties to the dispute in them for a period of 14 days from the date of the first session. The mediator may propose to the two parties to submit a written request to the competent labor department to resolve their dispute through voluntary arbitration (Hewa, 2016).

Optional arbitration method: The Iraqi Labor Law referred in Article (160/a) to the formation of a panel called the Arbitration Panel to deal with future disputes of interests. The competent authority shall refer it directly to the arbitration panel, without going through mediation, and the request must be accompanied by a memorandum explaining the details of the subject of the dispute. The competent administrative authority shall refer the dispute to the arbitration panel within a week at most from the date of submitting the arbitration request (Hamza, 2010). The Egyptian legislator has specified the directly competent authority in Article (70) of the Labor Law. It obligated the victim worker to file a complaint himself or his representative against the offending employer to the competent administrative authority within 30 days of the dispute, and in turn it undertakes that The entity investigates and hears the statements of the employer. Through the foregoing, the Iraqi Labor Law has specified the parties to which labor disputes are presented before initiating the criminal case, and hearing the statements of the employer starting with the sub-committees in each province of the state, and that the Iraqi legislator in the Labor Law did not stipulate in its articles the necessity of resorting to Arbitration by describing the ways and means by which the dispute can be settled before it is submitted to the competent labor court. There is no objection to resorting to arbitration.

Second: The court competent to hear the criminal case for workers: The Iraqi legislator stipulated in Law No. 37 of 2015 the jurisdiction of the Labor Court to consider all issues and disputes raised by labor relations regarding the application of the Labor Law within the scope of criminal and civil cases. Every worker who suffers any harm from the employer may file a complaint with the competent labor court (Abbas, 2007), and this is stipulated in Article (11/First) ((First: The worker has the right to resort to the Labor Court to file a complaint when he is exposed to any form of forced labor, discrimination or harassment in employment and a breach of the duties of health and safety of the profession)). In Iraq, we note that the labor departments in their branches in the governorates were granted the power to settle the dispute between the worker and the employer, and in the event of their failure, the Labor Court may initiate the labor criminal case. The conviction of either party to the dispute, the worker and the employer, of the content of the department's decision, are the council deems necessary to settle the dispute.

Establishment of a labor court The Iraqi Labor Law defines the composition of the work court in its seventeenth chapter under the labor justice clause. The Iraqi legislator clarified the formation of this court. It required the establishment of a labor court in each Iraqi governorate, and the above article of the Labor Law stipulated that this court is headed by a judge nominated by the Supreme Judicial Council based on a proposal from the head of the Court of Appeal, and a representative of the most representative general union of workers and another of employers, and it is clear from the legal quorum for the meeting

The Labor Court requires the availability of three members, provided that the court convenes under the chairmanship of the judge. This article does not require that the other members of the court be judges, but rather specify their qualities and descriptions. Since the appointment of the head of the work court is done by the head of the Supreme Judicial Council, as he must be a judge. He was appointed in this capacity based on the provisions of the amended Judicial Organization Law. Because of the particularity of the one who undertakes this task, unlike the rest of the court members, as it is named by the Ministry of Labor and Social Affairs based on the nomination of one of them from the Federation of Trade Unions and the nomination of the other member from the Federation of Employers as their representatives.

Functions of the Labor Court: The Labor Law No. 37 of 2015 granted a set of powers to the Labor Court, which are of two types: A- Competences of the Labor Law in the consideration of the labor criminal case In view of the fact that the employer has a material power that can impose his conditions on the worker and the difference in legal status, the legislator deliberately tightened the penalties he imposed on the employer in order to ensure his compliance with the rules regulating the work contract and the provisions related to legal obligations. Committing a crime and specifying the penal penalties, which are imprisonment and a fine, or both, including a violation of the duties of occupational health and safety in question. b- The competencies of the Labor Court to consider labor civil cases: The Iraqi Labor Law in force has empowered the Labor Court with the right to nullify every condition or agreement that contradicts the peremptory provisions of the provisions of this law. Judgment to compensate the worker for any damage sustained at work or in return for work injuries, in addition to that, any waiver of rights contained in the Labor Law is considered invalid, and that is the desire of the court to protect a worker from the authority of the employer. Compensation for the injury and damage caused to the worker: - Invalidity of agreements that violate jus cogens: the rules of the labor law specify peremptory rules that it is not permissible to agree on violating them by both parties, even if it is with their consent, except in the case if the agreement is in the interest of the worker.

The effect of the penal ruling on the work contract for the employer

First: The effect of the penal judgment on the employer if he is a natural person

The effective Iraqi Labor Law No. 37 of 2015 stipulates many penalties that affect the employer in himself or his money, and criminal penalties range from imprisonment to a fine. The crime was committed against them. While the position of the Egyptian Labor Law did not stipulate a prison sentence for the employer if he was a natural person, except in the field of a crime of violating the rules of occupational safety and health. Second: The effect of the penal judgment on the employer if he is a legal person: The application of the penalty to the legal person is unacceptable because it involves a kind of violation of the principle of the personality of the penalty. As the criminal laws go to lay down a set of penalties that correspond to the nature of the legal person, including, for example, what affects the financial liability of the legal person and his existence, such as dissolution, endowment, and fine, including what Related to practicing his professional activity (Linda, 2018)

- Dissolution and endowment of the moral employer: It is intended to end the existence of the moral employer from a legal point of view and remove it from a realistic point of view. The Iraqi legislator stipulated the penalty for dissolving the moral employer in Article (122/Second), which granted the Minister of Labor and Social Affairs to close the workplace if he refrained from implementing Occupational health and safety instructions. As for the Egyptian legislator in Labor Law No. 12 of 2003, the term dissolved, but rather used the term closure and suspension, as Article 215 stipulates the penalty for closing the facility and in the event of a violation of the work environment insurance instructions, as well as Article 225, which granted the competent administrative authority the power to close the facility completely or Partially based on the report of the occupational health and safety inspection body and in the event of a danger to workers, the safety of the facility or the work environment.
- The fine is intended to deduct compulsory cash for free and permanently in accordance with the legal rules and includes the money of natural and legal persons (Obeid, 2016). Work on the penalty of the criminal fine in the sixth book under the title of inspection, as well as doubling the fine in the case of recurrence and multiplying it by the number of workers regarding the violations committed against them.

Conclusions

1. The criterion of criminalization between the employer and the worker takes the standard established in the criminal laws themselves in terms of harm and danger and in most aspects of labor relations, although the Iraqi and Egyptian legislators have criminalized violating the mandatory rules of work, but he permitted that and allowed a violation whenever it was in the interest of the worker, which is the best condition.
2. The crime of breach stipulated in the Labor Law is the same as the crimes stipulated in the Penal Code, because there must be a crime without realizing its material and moral pillars.
3. The criminal penalties contained in the Iraqi and comparative labor law are imprisonment and a fine, meaning it is a misdemeanor or a violation, and in most cases, the penalty of a financial fine is imposed in the event of the violation.
4. The criminal responsibility of legal persons is still limited to private legal persons, not to public ones, as the Iraqi legislator, when he determined the penalties for the legal person with regard to his suspension and dissolution, and taking precautionary measures.
5. The Iraqi legislator in the labor law has singled out special protection for workers, by establishing a special judiciary to dispute them in order to deter owners and limit their crimes against workers, thus achieving the rule of law and stability in labor relations and the establishment of a labor court in each of Iraq's governorates.
6. In the labor law, the Egyptian legislator mentioned the occupational risks to which the worker is exposed, for example, unlike the Iraqi legislator, who merely mentioned the measures that the employer must follow in order to protect workers and maintain their safety.

Recommendations

1. We call on the Iraqi legislator to establish a balance in the field of criminalization in labor relations in order to enhance the worker's keenness while performing his work.
2. Pay more attention to the health of workers than the psychological and social risks that they cause through work injuries.
3. That the inspection committees have a major role in monitoring the implementation of the legislative and regulatory provisions related to labor relations.

References

1. Abbas Ali Muhammad, The Authority of the Labor Court in the Examination of Labor Cases, Research published in the Journal of Karbala University Scientific, Volume V, Issue 4, 2007
2. Adel Youssef Al-Shukri, The Assumed Condition and Its Place in the Legal Model (A Comparative Analytical Study in the Legal Evidence of Crime), Kufa University Journal for Legal and Political Sciences, Volume 12 N Issue 39, 2019, p. 34
3. Ahmed Zaki Badawi, Labor Relations in the Arab Countries, Dar Al-Nahda Al-Arabiya for Publishing and Printing, Beirut, 1985
4. Ali Abdel Qader Al-Qahwaji, Fattouh Abdullah Al-Shazly, Explanation of the Penal Code, General Section, Dar Al-Huda for University Press, Alexandria, Egypt 2002
5. Ali Hamza Assal, Laylat Hamza Radhi Shuber, The Effects of Criminal Responsibility for Satellite Channels, Research published in the Journal of Human Sciences, College of Education for Human Sciences, Volume 33, Issue 2, 2015.
6. Alouti Ashour, Psychological Dimensions of Occupational Health and Safety among the worker within the institution, research published in the Journal of Humanities and Social Sciences, No. 20, Algeria, 2015.
7. Amer Abdul-Latif Kazem Al-Amiri, the impact of occupational health and safety management on the performance of workers, an analytical study of the sectors of the Iraqi Ministry of Industry and Minerals, Journal of the University College of Science, No. 21, year 2013.
8. Edward Ghaleb Al-Dhahabi, Legal Research Group, Criminal Responsibility of Legal Persons, 1st Edition, Dar Al-Nahda Al-Arabiya for Publishing and Distribution, Cairo, 1978
9. Fakhri Abdul Razzaq Al-Hadithi, Explanation of a Law General Penalties, 2nd Edition, Al-Atek, Cairo, 2010.
10. Fathi Abdel-Sabour, Mediator in Labor Law, Income to Individual Labor Relations Legislation, Part 1, Dar Al-Hana for Printing and Publishing, Egypt, 1985.

11. Hamad Zaki Mahmoud, *Effects of Ignorance and Error in Criminal Responsibility*, Dar Al Fikr Al Arabi, Cairo, 1967
12. Hamza Mahmoud Ali Al-Sufani, *The scope of privileges and guarantees provided by the labor law to workers in litigation*, Master's thesis, Faculty of Law, Middle East University, Amman, 2010.
13. Hewa Ali Hussein, *Arbitration, Judiciary of Commercial Disputes*, research published in the Journal of the College of Law for Legal and Political Sciences, Kirkuk University, Volume 5, Number 16, 2016.
14. Hussein Asaisa Abd, *The Criminal Responsibility of the Employer, A Comparative Study*, 1st Edition, Dar Misr for Publishing and Distribution, Cairo, 2021
15. Ibrahim Turki Aknoukh, *Explanation of the Algerian Labor Law*, 2nd Edition, Diwan of University Publications, Algeria, 1988.
16. Jalal Al-Quraishi, *Explanation of the Iraqi Labor Law, a Comparative Study, Part One*, Al-Azhar Press, 19725-Hassan Bou Siqfa, *Al-Wajeez in the General Penal Law*, 12th Edition, Homa House for Printing, Publishing and Distribution, Algeria
17. Linda Azzouz, *Penalties for a Legal Person*, Master Thesis, Mohamed Khider University, Faculty of Law and Political Science, Algeria, 2018.
18. Maher Saleh Allawi, *Mediator in Administrative Law*, Ministry of Higher Education and Scientific Research, 2009
19. Mazyoud Bassifi, *Criminal Protection of Labor Rights*, PhD thesis, Oran University, Faculty of Law and Political Science, 2018.
20. Muhammad Abdel Ghaffar Al-Basiouni, *The Power of the Employer in Solitude to Amend the Employment Contract*, Dar Al-Nahda Al-Arabiya for Publishing and Distribution, Cairo, 1997
21. Muhammad Ali Abd al-Ridha Aflouk, *Mediation in the Resolution of Peaceful Disputes in Iraqi Legislation, A Comparative Study*, Research published in the Journal of Resala Law, University of Karbala, Year Seven, Issue Two, 2015.
22. Muhammad Mustafa al-Qali, *Criminal Responsibility*, Abdullah Wahba Library, Egypt, 1945.
23. Muhammad Saeed Nammour, *The Origins of Criminal Procedures, Explanation of the Criminal Procedure Code*, 2nd Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2011.
24. Obaid Abadiyeh, *Financial fine in criminal matters*, Master's thesis, University of May 8, 1945, Faculty of Law and Political Science, 2016.
25. Ramadan Abu Al-Saud, *Mediator in Explanation of Egyptian and Lebanese Labor Law*, University House, Beirut, 1983.
26. Rana Ibrahim Al-Otour, *The Crime of Endangering Others in the French Penal Code*, Sharjah Journal of Sharia and Legal Sciences, Second Issue, Volume Eight, 2011
27. Sabah Misbah Mahmoud, Hisham Hanash Hussein, *the concept of a secret informant and the value of his testimony in criminal proof*, research published in the Journal of Tikrit University of Law / Volume 1, Number 1, 2016.
28. Sadiq Mahdi Al-Saeed, *Regulating Individual Productive Relationships between Workers and Employers in Iraq and Their Mutual Rights and Duties at Work and Social Security*, Book Two on Labor Economics and Legislation, Labor Culture Press, Baghdad, 1976
29. Sadiq Mahdi Al-Saeed, *Workers and Employers and Their Mutual Duties*, Labor Culture Press, Baghdad, 1976.
30. Samir Abdel-Sami Al-Awden, *The Comprehensive Encyclopedia of Work Injuries and Industrial Security*, Jurisprudence, Law and Judiciary, 1st Edition, Al-Fath for Printing and Publishing, Alexandria, 2000