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## Unvested Stock Options During Unpaid Leave – Coronavirus Update

The coronavirus is spreading throughout the world, greatly affecting the Israeli economy and leading many companies to consider laying off employees or asking them to take an unpaid leave.

In order to assist employees the Israeli Government has decided to allow those employees on unpaid leave to collect unemployment benefits, despite not having been laid off, with a view to their returning to the same company following the crisis, to (hopefully) mitigate further impact on the public and the economy.

Unpaid leave is coupled with many labor law issues and impacts an employee's salary and pension payments. We refer you to a series of memoranda published by Tadmor Levy's Employment Practice Group, including:

[16.03.20 | Guidelines for Employers from \*Bituach Leumi\* \(National Insurance\)](#)

[15.03.20 | Q&A: Employer Guide to Coronavirus](#)

[12.02.20 | Regulations for Employers of Quarantined Employees](#)

In this short memorandum we discuss some of the issues that arise with respect to unvested employee stock options.

**What happens when an employee remains on unpaid leave for an extended period of time? Would unvested stock options expire? Would the unpaid leave period affect the vesting period of the options?**

To answer these questions we first recommend reviewing the applicable stock option plan and individual grant letters signed by each employee. Commonly, by their terms, stock option plans and grant letters do not state that going on an unpaid leave would have results similar to termination of employment. Given the nature of the unpaid leave and the relationship maintained during its term between the employee and the company, it is reasonable to assume that an unpaid leave does not in itself cause unvested stock options to expire nor does it mandate options to be exercised in order for them not to expire.

As for the vesting period, it is common for option plans to specifically state that unpaid leave periods are excluded from the vesting period. Amending this provision would be difficult once plans have been filed with the Israeli Tax

Authorities. It would be similarly difficult to amend a grant agreement without the consent of the employee (and amending it may also affect eligibility under Section 102 of the Tax Ordinance).

Even if the option plan and grant letter do not specifically address this issue, there are good grounds to argue that unpaid leave terms should be interpreted as excluded from the vesting period. The reason for this is twofold:

*Firstly*, during an unpaid leave employer-employee relationships are suspended (although not severed); moreover, seniority calculations and related labor law matters are ordinarily excluded too during such period.

*Secondly*, because stock options are designed to assure that the employee remains committed to the company's success, which during an extended leave period is of course much less relevant.

### **Acceleration of the vesting period as a solution to compensate an employee after returning to work for the company**

Companies should take into consideration that employees who went on leave and later on returned to work may be in a disadvantage with regard to that portion of their stock options that did not vest due to the leave period. This is particularly true in the event of an exit or upon termination of employment, at which the unvested portion of the options expires.

In these circumstances, one method to compensate the employee would be to allow for an acceleration of the vesting period for the portion that did not vest because of the leave period.

In ordinary times, acceleration of stock options on an individual basis is not welcomed by the Income Tax Authority. Even an overall acceleration provision that applies to all employees of the company, if approved, would typically be coupled with a requirement to recount the mandatory two-year holding period by the tax trustee.

However, these are definitely extraordinary times. In our opinion, in this unprecedented period the Income Tax Authority should act to minimize the negative impact on employees that are sent on extended unpaid leave terms, and allow for the acceleration of stock option vesting periods so as to protect against unwanted expirations of unvested stock options. In this rough period there is no reason to punish employees who find themselves on an extended unpaid leave, by having their stock options expire.

If you would like more information on this matter or assistance in approaching the Income Tax Authority, feel free to contact Boaz Feinberg or Hen Cohen.

We remain at your disposal for any question you may have on this or any other matter.