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## COMPENSATION AWARD FOR WRONGFUL DISMISSAL OF PREGNANT WOMEN IN ISRAEL

ABSTRACT. Ilany Yael, *Compensation Award for Wrongful Dismissal of Pregnant Women in Israel* [Odszkodowanie za bezprawne zwolnienie z pracy kobiet w ciąży w Izraelu]. *Studia Edukacyjne* nr 41, 2016, Poznań 2016, pp. 359-388. Adam Mickiewicz University Press. ISSN 1233-6688. DOI: 10.14746/se.2016.41.22

The employment issues relating to women in the workplace, including the employment and dismissal rights of women and in particular the dismissal of pregnant women, are important topics in the Israeli conversation on the equality of women in the workplace. The dismissal of pregnant women in Israel is deemed to be a wrongful dismissal and is a frequent topic of claims submitted to the Israeli Labor Court. Consequently, the subject is of major interest to Israeli employers and employees. This article presents a review of empirical legal research and analysis of Israeli Labor Court rulings of compensation awards for wrongful dismissal of pregnant women. The objective of the research is to reveal the factors influencing compensation awards by the court and to indicate tendencies apparent in court assessment of compensation.

**Key words:** labor court, wrongful dismissal, pregnant women, compensation

### Introduction

Sharon Rabin Margalioth claims that the broad protection of women from dismissal provided by Israeli legislation and judicial rulings, leads to reluctance by employers to employ women. On account of prohibitions, regulations and court mandated restrictions protecting women and pregnant women in particular, it is claimed that it is not economically justified to employ women.<sup>1</sup> The article examines some of the costs resulting from regulations protecting women employment and examines the factors that influence

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<sup>1</sup> S. Rabin-Margalioth, *Turning Points in individual labor law*, 6 *Din Ve Dvarim*, 2011, 1-25, (Hebrew), at 17.

courts in determining compensation awards in cases of wrongful dismissal of pregnant women.

A number of labor statutes prohibit or limit the right to dismiss an employee.<sup>2</sup>

The legal rule in Israel is that a dismissal contrary to a protective or mandatory law is *void ab initio*.<sup>3</sup> Therefore, the result of such a violation is that the dismissal is deemed to have had no effect and the employee is entitled to retain his or her job. The dismissal is invalid and void. Nevertheless, in most cases, the remedy actually awarded to the plaintiff claiming wrongful dismissal will be compensation and not reinstatement.

This article presents empirical legal research of court rulings on compensation awards for violation of two specific labor statutes which regulate wrongful dismissal of pregnant women, among other issues.<sup>4</sup> The first statute is the *Women Employment Law* ("WEL")<sup>5</sup> and the second statute is the *Equal Opportunities Employment Law* ("EOEL").<sup>6</sup>

Part 1 of this article presents the issue of wrongful dismissal itself in violation of the WEL and EOEL. Part 2 explores the compensation awarded for wrongful dismissal in violation of these statutes. Part 3 presents the research questions examined and explains the data gathering process for the research. Part 4 presents the findings and conclusions of the research for cases applying the WEL, cases applying the EOEL and those applying both WEL and EOEL. The conclusions of the research are presented that propose factors influencing court determinations of compensation.

<sup>2</sup> See e.g. presented at: FEINBERG NACHUM & GOLDBERG MENACHEM, *TERMINATION OF THE LABOR RELATIONSHIP*, Sadan Press, 2009 (Hebrew) at 32-46. And at: LUBOTZKY YITZHAK, *TERMINATION OF EMPLOYMENT* 3-71, Bar association publication, 4th ed. Sep. 2013 (Hebrew) chapter 5 at 3-18.

<sup>3</sup> D48/8-3 (National), Avner Koppel, *Insurance Agency v. Adi Weiss Arlovich*, PD 20, 57 Nevo, 1988 at 59. The employee was dismissal contrary to the Women Employment Law and the court determined that she was entitled to continue her employment or receive compensation in the rate of her salary, because the dismissal was void. And see: Lubotzky Yitzhak, Frenkel David A., *The Dilemmas Involved in the Managers' Prerogative to Dismiss, in the "Constitutional Revolution" Era*, 3 LAW AND BUSINESS, 161-188(July 2005) (Hebrew) at 164. And see: LUBOTZKY YITZHAK, *supra* note 2, chapter 5 at 6 and 3, and see there reference to: LA 1334/02 Haley Nosezky v. State of Israel, PDL 40, 16, Nevo, 2004 at 27 Paragraph 20.

<sup>4</sup> See about the legal empirical research: Eisenberg Theodore, *The Origins, Nature, and Promise of Empirical Legal Studies*, 34 Tel Aviv U. L. Rev. 303, 2011(Hebrew). The legal empirical research is a collection of facts from the computerized legal database. Theodore Eisenberg claims the modest aim is to collect data about the way the legal system operates. It is a way to collect systematical substantial data, without connection to the normative implications, at 310.

<sup>5</sup> Woman Employment Law, 1954, Book of Laws 1954 160, 154. [Hereinafter: WEL]

<sup>6</sup> Equal Opportunities Employment Law, 1988, Book of Laws 1988, 1240, 3. [Hereinafter: EOEL]

## Wrongful dismissal of pregnant women

Wrongful dismissal may violate several labor statutes and the Labor Court may determine the rate of compensation based on several sources and do so cumulatively.<sup>7</sup> Claims for wrongful dismissal of a pregnant woman may be submitted according to either the WEL or the EOEL or both laws when they both apply to the circumstances.<sup>8</sup> A claim submitted under both statutes occurs when a wrongful dismissal violates the specific dismissal prohibitions provided under the WEL and will also violate the EOEL for a dismissal that is discriminatory. Israeli court rulings have determined that the dismissal of a pregnant women is *per se* discriminatory even if no specifically legislated protective statute applies to the dismissal. This is due to the widely held principle of equality in Israeli law, a fundamental principle applicable to the entire Israeli legal system. Dismissal in this context is a violation of the obligation to operate under the labor contract in good faith.<sup>9</sup> The enactment of the Basic Law: Human Dignity and Liberty has elevated this principle of good faith to the level of a constitutional right.<sup>10</sup>

*Wrongful dismissal contrary to WEL.* The WEL provides prohibitions and limitations on the termination of the employment of a woman during pregnancy, fertility treatments, or maternity leave, as well as, during the sixty day period following the woman's return to work from such an event (the "protected period").<sup>11</sup> The prohibitions apply once certain conditions have occurred, such as the employee has been employed in the specific workplace for six month or more.<sup>12</sup> The legal rule under the WEL is that the dismissal of the pregnant women is prohibited. There are two exceptions to the rule. The first is that the rule only applies after six month of employment.<sup>13</sup> However, once the employee is entitled, the prohibition is absolute and any such dismissal would be void, subject to the second exception.

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<sup>7</sup> E.g., LA (National) 1156/04 Home Center (Do it yourself) Ltd. v Orit Goren, Nevo, 2007 at 30. And see BSA (National) 135/10 Naman counselling and guidance for the golden age v Adva Zafon Benyamin, Nevo, 2011 at 14 paragraph 16.4. The relationship between the EOEL and the WEL is that they coexist and the rates of compensation are cumulative.

<sup>8</sup> See for example: LA 1353/02, Margalith Appelboim v Niza Holtzman, PD 39, 495, Nevo.

<sup>9</sup> *Id.* at 507, paragraph 12.

<sup>10</sup> LA (National) 627/06 Orly Morey v M.D.P. Yellow Ltd., Nevo 2008 at 19 paragraph 36. And see: Basic law: Human Dignity and Liberty, 1992, Book of Laws 1992, 1391, 150.

<sup>11</sup> WEL, *supra* note 5 §§ 9(a); 9(e) (1); 9(c) (1); 9(c) (1a).

<sup>12</sup> *Id.* § 9(a).

<sup>13</sup> Margalith Appelboim, *supra* note 8 at 504 paragraph 8.

The second exception is that it would be possible to terminate the woman's employee contract with the permission of the authorized government minister. However, in order to approve the dismissal, the minister has to be convinced that the dismissal was not connected to the employees' pregnancy, fertility treatments or maternity leave or that the dismissal involved a situation where the employer had ceased to operate or declared bankruptcy.<sup>14</sup> Once the authorized minister is convinced the dismissal was connected to the pregnancy, the minister is not permitted to address or consider the issue of the quality of the employees' work. It is no longer relevant if there are other reasons for dismissal.<sup>15</sup>

*Wrongful dismissal contrary to EOEL.* A discriminatory dismissal is prohibited by the EOEL.<sup>16</sup> Employers are prohibited from discriminating between workers and work applicants on factors such as gender, sexual inclination, personal status, pregnancy, parenthood, age, race, religion and nationality.<sup>17</sup> The prohibition applies not only to dismissal, but also to hiring practice and working conditions.<sup>18</sup> Thus, dismissal of a pregnant woman would violate the discriminatory provisions of the EOEL relating to gender, parenthood and pregnancy of the employee and would be deemed a wrongful dismissal.

### Compensation for wrongful dismissal

There are two main categories of compensation awarded for wrongful dismissal in violation of a labor statute. Pecuniary compensation (P) is

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<sup>14</sup> Minister of Economy, formerly was Minister of Industry, Commerce, and Employment (formerly the Minister of Labor and Welfare). WEL, *supra* note 5 §§ 9(c) (a); 9 (c) (b); 9B. And see: The official announcement gazette, 5815, 5.6.2010, 3309: The authority of the minister was transferred to the manager of administration regularization and enforcement in the Ministry of Economy.

<sup>15</sup> And see: LA (National) 593/08, Neot Hasharon Nursing Center v Isa Walla, Nevo 2010, 10-11 paragraph 17. There is also no legal relevance to the knowledge of the employer about the employee being pregnant. It is enough that the employee was pregnant when dismissed even if the employer was not aware of it.

<sup>16</sup> EOEL, *supra* note 6 § 2(5). Another law prohibiting discriminatory dismissal: The Equal Rights of Persons with Disabilities Law, 1998, Book of Laws 1658, 1998, 152, §8(A) (5).

<sup>17</sup> EOEL, *supra* note 6 § 2(a): additional bases of discrimination are: fertility treatments, in vitro fertilization treatment, country of origin, residence, outlook, political party, military reserve force, call to serve in the military reserve force or expected service including the duration and frequency of the service. See e.g.: LC 9466/08 Yoram Shoval v. I.B.M. Global Services Israel, Nevo, 2011. Wrongful dismissal due to age discrimination.

<sup>18</sup> *Id.* § 2(a) (5). Other situations discrimination is prohibited are: promotion at work, professional training, payments and benefits granted to the retiring employees.

awarded for the actual damage caused under the specific circumstances of the dismissal which includes loss of income. The second compensatory award is non-pecuniary compensation (NP) for intangible damage such as mental anguish.

*Compensation for wrongful dismissal contrary to WEL.* The dismissal of a pregnant woman is prohibited under the *WEL* and is deemed a wrongful dismissal.<sup>19</sup> The *WEL* determines the compensation will be not less than 150% of the monthly salary that the worker was entitled to during the period that the prohibition for dismissal applies, unless the court decides to award compensation of another amount for reasons that it will note in its opinion. The court also is entitled to issue an injunction for reinstatement and to award compensation without proof of damage.<sup>20</sup> Moreover, the *WEL* provides that the court may award an amount it deems fit in the circumstances, even if financial damage was not caused to the plaintiff (NP damage).<sup>21</sup> The objective of the statute is to increase deterrence and promote enforcement of the law on employers to prohibit the dismissal of pregnant women.<sup>22</sup>

*Compensation for wrongful dismissal contrary to EOEL.* The *EOEL* provides that a plaintiff is entitled to compensation for NP damage at the rate the court finds appropriate under the circumstances. The court may award an amount up to the statutory limit set forth in the statute and without proof of damage.<sup>23</sup> The court has the discretion to decide upon the rate of compensation within the allowed limit (although in rare situations a court may make an award in excess of the limits). The statutory limit was originally NIS 50,000 (approximately EUR 11,000). In 2013 this amount was raised to NIS 120,000 (approximately EUR 28,000).<sup>24</sup> In a recent 2016 decision, the Israeli Supreme Court ruled that when NP compensation is awarded, it is not appropriate to award in addition compensation without proof of damage. However, due to the difficulty to quantify and prove NP damage, there is

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<sup>19</sup> *WEL* § 9.

<sup>20</sup> *Id.* § 13 A. And see Orly Morey v M.D.P. Yellow Ltd., *supra* note 10 at 13 paragraph 27: the amount of compensation is not less than 150%. And the court should note special reasons to award less than 150% of the salary. Additionally, violation of the law is not only a civil violation it is also a criminal offence- see *WEL*, *supra* note 5 §14. This is not relevant to the research. The state is the plaintiff in this case.

<sup>21</sup> *WEL*, *supra* note 5 § 13A (A) (1).

<sup>22</sup> Proposal Women Employment Law (amendment number 36) (remedies and jurisdiction), 2005, Law Proposals- Knesset, 23.11.2005, 46, explanatory comments of amendment of § 13A.

<sup>23</sup> *EOEL*, *supra* note 6 § 10 (a) (1).

<sup>24</sup> Amendment number 18 of the Equal Opportunities Employment Law, Book of Laws 2406, 2013,203.

often no difference between NP compensation and compensation without proof of damage. This decision dating from 2016 is not reflected in the judgments gathered for the research for the period from 2013 to 2014.<sup>25</sup>

In court rulings where discrimination is the main reason for dismissal, the plaintiff may be awarded P damages in the amount of her salary from the time of dismissal until the time of birth and payment for the 60 day protected period post-maternity, as well as, a childbirth payment. In addition, NP damages without proof of damage may be awarded, taking into account the severity of the discrimination against the pregnant woman.<sup>26</sup> The court declared that the statutory compensation without required proof of damage is punitive and aims to deter employers. The amount, however, must be reasonable and proportional to the circumstances.<sup>27</sup>

Moreover, even if pregnancy was only one of several reasons for dismissal, it will "stain" the dismissal as wrongful. This is the "staining model" applied by the courts, whereby it is enough that one of the reasons considered by the employer was the pregnancy in order to categorize the entire dismissal as wrongful.<sup>28</sup>

### **Research of compensation award for wrongful dismissal of pregnant women**

*Research Questions.* The research questions concern the factors examined in order to understand their influence on court rulings of compensation.<sup>29</sup> The assumption of the research was that the following four factors influence the court determination of compensation:

<sup>25</sup> CA SC 7426/14 Plonit v Ori Daniel, Nevo 14/3/2016, at 71 Paragraph 79. The court determined that compensation without proof of damage up to the statutory limit is one alternative route. The other route is proven damage such as P damage and NP damage.

<sup>26</sup> LA (National) 363/07, Sharona Arbiv v Poamix Ltd., Nevo, 2010 at 27 paragraph 44.

<sup>27</sup> See for example: LA 697/09 Plonit v Almony, Nevo 2011 at 18 paragraph 24. LA 178/06 Plony v Almonit, Nevo 2010 at 31 paragraph 32: the amount of compensation awarded should be proportionate to the severity and the circumstances of the case.

<sup>28</sup> Sharona Arbiv, *supra* note 26 at 13 paragraph 19. Additionally, see EOEL, *supra* note 6 § 15 Violation of the law is not only a civil violation it is also a criminal offence.

<sup>29</sup> In court rulings some auxiliary tests were used for determining the rate of compensation: See LA (National) 21781-10-10, Lulu Rashad v Regional Committee for planning and construction- Alonim, Nevo, July 2013, at 31 paragraph 65. And see: LUBOTZKY YITZHAK, *supra* note 2 chapter 5 at 68 note 332. Lubotzky presents auxiliary tests set by The National Labor Court such as: the employment circumstances, resignation of the employee from his previous work in order to take this job, the circumstances of dismissal, time of unemployment after dismissal, time spent finding other work and how long it took to find it.

1. The salary earned by the employee: does the level of wages influence the compensation determination?

2. The reason for dismissal: does a justified or unjustified cause for dismissal due to the conduct of the employee or the employer influence the compensation determination?

3. Period the plaintiff was employed in the workplace: does the seniority of the employee influence the compensation determination?

4. The occupation or type of work performed by the employee: does the occupation of the employee influence the compensation determination?

*Methodology* used in the research is legal empirical research.<sup>30</sup>

*The database* of cases for the research includes court rulings gathered from the online computerized electronic legal database published by "Nevo Publishing Ltd."

*The research period* includes court rulings of compensation from 1/1/2013 to 31/12/2014.<sup>31</sup> The recent tendency prevailing in Israeli courts is the focus of interest of the research and therefore it is the decisions of recent years that compromise the period reviewed. The research does not look for changes occurring during the years examined.

*Search keywords* from the database are the following: "labor"; "equal opportunity employment"; "pregnant women"; "pregnancy"; "parenthood"; "women employment"; "dismissal of pregnant women"; and "equality".

*Cases gathered* by the research, yielded 30 cases which are listed in Appendix A:<sup>32</sup>

- 9 cases applied the WEL;
- 15 cases applied the EOEL;
- 6 cases applied both the EOEL and WEL.

*The rulings included in the study* were those that granted compensation awards for violations of the WEL and EOEL statutes. Cases that ordered reinstatement or cases where compensation was denied by the court were not included in the study.

*The study reviewed decisions of the following court:* rulings of the Regional Labor Court and National Labor Court.<sup>33</sup> For cases that were commenced in the Regional Labor Court and appealed to the National Labor Court, only the decision of the National Labor Court was included in the study since this

<sup>30</sup> See about legal empirical research, *supra* note 4.

<sup>31</sup> 2015 data for the full year was not available at time of research.

<sup>32</sup> Appendix A - all cases of the research cited.

<sup>33</sup> The lower instance is the Regional labor Court and the higher instance is the National Labor Court. See: The Labor Court Law, 1969, Book of Laws 553, 70 § 2.

was the final ruling of the particular case. However, some cases have an appeal pending in the National Labor Court that still has not been decided upon. These cases and the status of the appeal are indicated in appendix A, including the current legal proceedings.

## Findings of research

*Presentation of research findings.* The compensation awarded by the court is categorized as P damages and NP damages. In some cases other payments were awarded due to obligatory payments triggered by a discontinuance of employment, such as severance pay. These payments are specific to the case and incident to dismissal, but are not connected to wrongful dismissal. Nevertheless, they are part of the total amount awarded.

The total amount of compensation awarded by the court is displayed as the equivalent number of salaries of the plaintiff. The total monetary amount is divided by the salary of the plaintiff to produce number of salaries. Thus, there is a comparative base for analyzing the data and comparing between the different court rulings and different sums of compensation awarded. The term "salary number" will be used hereinafter to refer to the amount of compensation in equivalent number of salaries of the plaintiff.

In Israel, there is a mixed attitude regarding the calculation basis for measuring salaries in awards of compensation. The P compensation which is the actual damage of loss of income is calculated according to the law by number of salaries. However, determination of the NP damage is up to the court to rule upon and *prima facie* is not connected to the salary of the plaintiff. Judge Ilan Itah in *Plonit v. Almonit* contends that the determination of the compensation rate for mental anguish (an NP category) should not be calculated on the basis of the employee's monthly salary. The sorrow resulting from dismissal for an employee earning a high salary is not greater than the sorrow of an employee that earns a low salary.<sup>34</sup> Similarly, Reut Shemer-Begas<sup>35</sup> claims that the rate of compensation for NP damages awarded to an employee should embody the intensity of his injury and is not connected to the employee's salary.<sup>36</sup>

<sup>34</sup> LA (National) 43380-06-11, Plony V Almonit, Nevo, 2014.

<sup>35</sup> Shemer Begas Reut, *Procedural justice and employee dignity in dismissal – reflection on the rule of hearing*, LABOR SOCIETY AND LAW, Vol. 13, 175-217(2012) (Hebrew).

<sup>36</sup> *Id.* at 216-217. However, Shemer-Begas notes that in cases of wrongful dismissal without a hearing, the regional Labor Courts actually award compensation on basis of the number of periodic salaries. She argues that this provides the wrong message to employees and employ-

## Dismissal contrary to WEL

*Number of salaries and division between P and NP compensation (see: Appendix B)*

The average number of salaries of compensation awarded in the WEL cases surveyed was 11 salaries. The lowest number of salaries awarded was 4 salaries and the highest number was 16.5 salaries.<sup>37</sup> An analysis of the division between P compensation and NP compensation in awards shows that the greatest influence on the total amount of compensation was due to the P compensation, the actual damage. Generally, when the P compensation was high, the total number of salaries was high<sup>38</sup> and when the P compensation was low, the number of salaries was low.<sup>39</sup> The court determined that the amount awarded for P damages must be considered as an influencing factor in the total amount awarded. Similarly, the amount awarded must reflect the circumstances of dismissal.<sup>40</sup>

Generally, the compensation awards show that no NP compensation was included or only very low amount and that the courts were cautious when exercising their discretion to award NP compensation. However, in two cases a different approach was apparent and the NP compensation was higher even than the P compensation and provided the greatest influence on

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ers that the dignity of employees is derived from their level of salary. The worthy judicial policy should be to disconnect the rate of compensation from the salary and to decide each case on its merit. See there for elaboration on the hearing procedure: In Israel an employee has the right for a hearing prior to dismissal.

<sup>37</sup> According to WEL the actual damages (P damages) are salaries multiple by 150%. So calculation of the total amount divided by the salary does not produce an accurate number of salaries but rather a higher number of salaries. When the P damages are calculated by 150% salary, the lowest amount of salaries was 2.5 salaries and the highest was 9.7 salaries. In this case the average of salaries was 7.6 salaries. However, not every case was awarded 150% salary.

<sup>38</sup> LD 50851-02-11, Simcha Mamu v Eldad- Segev Law Firm, Nevo, June 2013; LD 52260-11-10, Enbar Amiga v Hagit Tasa Ltd., Nevo, October 2013; LD 51501-03-12, Naama Peleg v Am Haadma Ltd., Nevo, January 2014 ; LCR 11423-09 , Alberta Skora v Kochava Mizrachi, Nevo, January 2014; LD 43970-10-11, Vinugray Elizabeta v Karl Berg Ltd., Nevo, October 2014.

<sup>39</sup> LC 6664-09, Shiri Rubin v Mz point I.T. Ltd. Nevo, February 2013 ; LC 5000-09 , Tatiana Zaslavsky v Tectile Technologies Ltd., Nevo, May 2013. Number of salaries that are awarded for loss of income are influenced by the time left till birth. If the dismissal is at the beginning of the pregnancy the loss of income is greater (P). Later on during the pregnancy, during the protected period of 60 days after return from maternity leave or at the end of this period, the loss of income is very low or may be none. This is true for P damages in all cases researches, WEL, EOEL and both statutes claimed together.

<sup>40</sup> Enbar Amiga, *supra* note 38. A false reason for dismissal was given by the employer. In this case the P compensation was high (10 salaries) and the NP compensation was lower (3.6 salaries).

the total amount awarded.<sup>41</sup> For instance, in one of these cases, *Hadas Yekotiely Boubllil*, the court looked at recent National Labor Court ruling and concluded that the NP damages amount awarded of NIS 25,000 (approximately EUR 5,840) is appropriate and therefore, awarded NP damage in a similar amount.<sup>42</sup> The court used this set amount as an outline comparable to this case in ruling the NP damages amount. The case illustrates a tendency of the court to reach decisions on NP compensation, by looking to a total sum amount that is perceived as an appropriate amount by the court.

Furthermore, the total amount bestowed by the court in WEL cases may have been a high aggregate sum, but they were not the highest awards in relation to the number of salaries. In examining the cases, it appears that the higher the employee's salary, the higher the total amount of compensation awarded upon wrongful dismissal.<sup>43</sup> So it seems the level of wages is a primary factor that influences the total sum of compensation.

*Reason for dismissal.* It is important to clarify again that where the WEL applies, the prohibition to dismiss pregnant women is absolute. However, when the dismissal was justified on account of redundancy, or due to the liquidation of the business, the NP compensation was zero.<sup>44</sup> When the reason for dismissal was the end of a project and not connected to the pregnancy, the courts awarded NP compensation in an amount of less than one

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<sup>41</sup> In LD 57763-02-13, *Helena Maymaran v kochav Zurim Ltd., Nevo*, September 2014 supra note 32, the P compensation was low but the NP was high and so the total number of salaries was high. In LD 41145-05-12 *Hadas Yekotiely Boubllil v Education Association, Nevo*, September 2014, supra note 32, the whole amount of compensation awarded was NP compensation.

<sup>42</sup> *Hadas Yekotiely Boubllil*, supra note 41 - This amount includes compensation for way of dismissal - without hearing and there is no place for separate compensation, as was determined in the *Orly Murry* case. However, the plaintiff claimed a lower amount and that amount was bestowed by the court.

<sup>43</sup> For example, in case *Tatiana Zaslavsky*, supra note 39 the total amount was NIS 176,083 (approximately EUR 40,489). The equivalent in number of salaries was 7.2 salaries. The reason for the high amount of money was due to the high level of salary: Zaslavsky earned a relatively high salary of NIS 24,200 (approximately EUR 5564). By contrast, in case *Alberta Skora*, supra note 38, the plaintiff received 11.5 salaries, which is a higher number of salaries but the total amount awarded was low - NIS 7,070 (approximately EUR 1642). The reason was the low level of salary that was NIS 612 (approximately EUR 142). Although in the *Alberta Skora* case 7.9 salaries (P) of 150% were awarded and in *Tatiana Zaslavsky* only 4 salaries (P) of 150% were awarded, the total amount was different, due to the difference in level of salary. Another example, in case *Simcha Mamu*, supra note 38 equivalent to 15 salaries of NIS 3,000 (approximately EUR 690) was awarded and the total amount was NIS 45,450 (approximately EUR 10,450). A high number of salaries (15) than the *Zaslavsky* case (7.2) produced a lower total sum of money.

<sup>44</sup> *Naama Peleg*, supra note 38; *Tatiana Zaslavsky*, supra note 39.

salary.<sup>45</sup> This shows that for NP compensation, the reason for the dismissal influences the amount of the NP award.

Justifications for dismissal due to the conduct of the employee also seem to be an influencing factor. For instance, an employee who attempted to steal from her employer, did not receive NP compensation.<sup>46</sup> Similarly, in *Simcha Mamu* case, the employee refused to return to work offered by the employer, after the employer canceled the wrongful dismissal and offered reinstatement. The court determined that the negative conduct of the employee would result in a low NP compensation. However, it should be noted that in that case the NP compensation was nonetheless the equivalent of 5 salaries. This number of salaries does not seem particularly low, although the court claimed it to be so in its ruling.<sup>47</sup> In *Vinugray Elizabeta* case, involving conduct of the employee, the plaintiff did not act to minimize her damages and was denied part of the compensation to be awarded by the court.<sup>48</sup> In conclusion, the courts seem to find different justifications for adjusting or denying NP compensation.

As mentioned, the conduct of the employer also seems to be an important influencing factor and can significantly increase the compensation award. In instances where an employer gave a false reason for dismissal<sup>49</sup> or an employer caused the plaintiff mental anguish and violated the WEL and EOEL, NP compensation awarded by the court were quite high.<sup>50</sup>

*Period of employment.* In *Shiri Rubin* case, the court has noted that the length of employment is a factor influencing the compensation rate. There, the court considered 1.5 years of employment as short and the NP compensation awarded was less than one salary.<sup>51</sup> However, *Shiri Rubin* case involved other factors that were taken into account to reduce the award, such as a reason for the dismissal was the end of the project. Nonetheless, in other cases the time of employment has not been mentioned as a factor by the court. There was also no recognizable tendency in the court rulings studied basing NP awards on this factor. It seems that period of employment overall has little influence on the amount of compensation awarded.<sup>52</sup>

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<sup>45</sup> Shiri Rubin, *supra* note 39.

<sup>46</sup> Alberta Skora, *supra* note 38.

<sup>47</sup> Simcha Mamu, *supra* note 38.

<sup>48</sup> Vinugray Elizabeta, *supra* note 38.

<sup>49</sup> Enbar Amiga, *supra* note 38, NP compensation awarded by the court was 3.6 salaries.

<sup>50</sup> Helena Maymaran, *supra* note 41, NP compensation awarded by the court was 4.5 salaries.

<sup>51</sup> Shiri Rubin, *supra* note 39.

<sup>52</sup> For example, in *Simcha Mamu*, *supra* note 38, period of employment was 9 month and number of salaries awarded 15. In *Helena Maymaran*, *supra* note 41, was employed for 10

*Occupation.* The type of job performed by the employee was not mentioned by the court as an influencing factor. However, it does seem that higher level positions (for example, a project manager or computer programmer) with the higher salaries actually received wrongful dismissal compensation equivalent to a lower number of salaries, although the total sum of the award was high due to the high salary.<sup>53</sup> Lower ranking jobs, such as a cleaner, secretary or a clerk, received a higher number of salaries, although, the total amount of compensation was lower due to the lower salary of these positions.<sup>54</sup> Does the court look to the occupation as a factor or does the court look to the level of salary that accompanies that occupation? The cases examined do not provide a clear cut answer to this question. It may be that the court looks to the bottom line of total amount awarded, but the cases were inconclusive on this issue.

### Dismissal contrary to EOEL

*Number of salaries and division between P and NP compensation (see: Appendix C)*

In cases of wrongful dismissal under the EOEL, the number of salaries awarded by the court ranged between 2.5 to 22.5 salaries with the average number of salaries awarded being 10 salaries. In the cases where a low level of compensation was awarded, the award of P compensation was low or nonexistent and also a low number of salaries for NP compensation was awarded.<sup>55</sup> In contrast, where a high number of salaries were awarded, there was both a high actual damage award of P compensation and a high NP damage award. Furthermore, it seems that the court does not limit itself to rigid definitions of the origin for the compensation amount awarded and

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month and received 9.4 salaries. . In *Vinugray Elizabeta*, *supra* note 38, worked 6 month and received 10 salaries.

<sup>53</sup> A project manager Shiri Rubin, *supra* note 39, with a salary of NIS 13,000 (Approximately EUR 2989) was awarded a total amount of compensation equivalent to 4 salaries, which is relatively low. A computer programmer Tatiana Zaslavsky, *supra* note 39, with a salary of NIS 24,200 (approximately EUR 5564), received compensation equivalent to 7.2 salaries.

<sup>54</sup> Alberta Skora, *supra* note 38, a cleaner at a private home received 11.5 salaries but the salary was low NIS 612 (approximately EUR 142) and the total amount was low NIS 7,070 (approximately EUR 1642). A secretary, Simcha Mamu, *supra* note 38 received amount of compensation equivalent to 15 salaries. Due to the low salary the total amount was not relatively high. A clerk was awarded 9.4 salaries Helena Maymaran, *supra* note 41.

<sup>55</sup> For example: Zero salaries of P compensation and 2 salaries of NP in LD 25795-02-13, *Shdamit Har Zahav v R.A.S Ltd., Nevo*; August 2014.

will award NP compensation based on several factors in accordance with the circumstances.<sup>56</sup> Nevertheless, it seems the court exercises its discretion and awards NP compensation with less reluctance in EOEL cases than in the WEL cases.<sup>57</sup>

The case of *Orit Busy* is a leading case of the National Labor Court and is binding for all Labor Courts. It had not yet been published at the time of the study of the cases surveyed in the research and as such the cases do not yet reflect the influence of this decision.<sup>58</sup> In *Orit Busy*, the National Labor Court reduced an award of compensation by the Regional Labor Court, because it considered it exceptional and not proportional.<sup>59</sup> The court determined that the level of salary should not influence the compensation sum, but it may be a factor in some circumstances and have an influence on deterrence considerations. The court determined that the overall situation of the case should be examined and the amount of P damages awarded should be taken into account.

Nonetheless, it seems the level of salary does have an influence on the total amount of compensation. A high number of salaries awarded does not necessarily mean a larger sum of total compensation, if the salary itself is low. Conversely, a low number of salaries does not mean low total sum of compensation, if the salary is high.<sup>60</sup>

Furthermore, it seems that there are different perspectives in the courts regarding a low or high total compensation amount. Two cases awarded the same number of salaries, yet it was regarded in one case as a low level of compensation and in the other case as a high level of compensation.<sup>61</sup> This

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<sup>56</sup> LD 7097-09-12, Anat Bashearim v Maymon David Ltd., Nevo, November 2014 - total of 22.5 salaries were awarded, the P compensation awarded was 8 salaries, and the NP compensation was 7.6 salaries: 3 salaries due to EOEL and 4.6 salaries due to hearing, violation of good faith duty and breach of contract.

<sup>57</sup> The lowest amount of NP compensation bestowed by the court was equivalent to 2 salaries. The highest amount bestowed was 8.8 salaries. See appendix C.

<sup>58</sup> LA (National) 30585-09-12, Yisum company Ltd., - Orit Busy, Nevo; August 2013.

<sup>59</sup> *Id.*, 13.8 salaries were awarded. The court reduced the award from 21.6 salaries. P - 4.9 salaries were reduced from 7 salaries. NP - 8.8 salaries were reduced from 14.6 salaries

<sup>60</sup> For example, 18.4 salaries awarded in LD 10332-09-11, Efrat Rubin v E.T Cooperation, Nevo, May 2014, reached a total amount of NIS 58,360 (approximately EUR 13,539), the salary was NIS 3,170 (approximately EUR 735). In LC 12179-09, Lital Berenfeld levy v Modiin Mall Ltd., Nevo, June 2014, 7 salaries were awarded to a total of NIS 56,790 (approximately EUR 13,175), the salary was NIS 8,000 (approximately EUR 1,856). So higher number of salaries awarded led to approximately the same amount of compensation. When the salary was relatively high, the total amount of compensation was high even if number of salaries was not relatively high.

<sup>61</sup> In LD 24547-12-12, Nataly Yitzhaky v Pina Barosh Ltd., Nevo, October 2014, the NP compensation of 3 salaries of NIS 5280 (approximately EUR 1,225) was total amount of NIS

illustrates that the definition of low or high compensation is not uniform among the courts. It also seems to show that the individual salary level will influence the approach to the total sum of compensation awarded.

*Reason for dismissal.* The reason for the dismissal plays a role in determining the amount of compensation. In *Anat Bashearim*, a high total compensation amount was awarded to the plaintiff due to the severe conduct of the employer that dismissed the plaintiff solely due to her pregnancy. In addition the employer accused the plaintiff of being unprofessional in order to cover the real reason for dismissal. The employer provided a false reason for dismissal and caused mental anguish to the plaintiff.<sup>62</sup> *Ela Greenberg Nachshon* case, in which the primary cause of dismissal was discrimination due to pregnancy, the court determined that the plaintiff was entitled to all the direct damages resulting from the dismissal. In addition, the plaintiff was awarded NP compensation and this was deemed a violation of WEL, although it was not applicable.<sup>63</sup> In *Nataly Yitzhaky* case in which the only reason for dismissal was the pregnancy, the court granted NP compensation taking into account the severity of the injury to the plaintiff and the violation of the principle of equality under Israeli law.<sup>64</sup>

In contrast, low NP compensation was awarded where there was justification for the dismissal through the conduct of the plaintiff. In *Danit Zachariah* case, the main reason for dismissal was the apparently unjustified absence of the plaintiff from work.<sup>65</sup> In *Liron Biton* case, the defendant

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15,850 (approximately EUR 3,664) and was regarded by the court as a high level of compensation due to the circumstances. In LD 4954-09-11, *Karin Ortesy v Maya Tor Ltd.*, Nevo, May 2014, award of 3 salaries of NIS 6,250 (approximately EUR 1450) was a total of NIS 20,000 (approximately EUR 4,624), was regarded as low compensation. However, in terms of sum of money, the low compensation in case *Karin Ortesy* was actually higher than the high compensation of case *Nataly Yitzhaky*.

<sup>62</sup> *Anat Bashearim*, *supra* note 56 – 22.5 salaries were awarded by the court. The court award of NP compensation took into consideration the injury to an engineer at the beginning of her career.

<sup>63</sup> LCT 3404-10, *Ela Greenberg Nachshon v Proporzia*, Nevo, June 2013. The number of salaries awarded by the court was 14.3.

<sup>64</sup> *Nataly Yitzhaky*, *supra* note 61, the total amount of compensation awarded was not high: 6.6 salaries. This was due to reducing other earning of the plaintiff in this time form the P compensation. Another reason was that the plaintiff claimed a lower amount than the amount she was entitled to and this amount was what the court considered. Also the short time of employment (3.5 month) was considered by the court.

<sup>65</sup> LD19728-07-10, *Danit Zachariah v Insurance Services Lamizrach Ltd*, Nevo, November 2013. Similarly, in case *Shdamit Har Zahav*, *supra* note 55, the court doubted that the dismissal was connected to the pregnancy. The reason for dismissal was the conduct of the plaintiff that was absent from work. The total amount awarded was 2.5 salaries from which the NP compensation was 2 salaries.

cancelled the dismissal and offered to reinstate the employee, however, the plaintiff refused. The court determined that in these circumstances, there was no room for punitive compensation and awarded a low level of NP compensation.<sup>66</sup> In *Karin Ortesy* case where the dismissal was due to incompatibility, but the timing of dismissal was due to the pregnancy, the court determined the staining model applied. NP compensation was awarded, but the amount was influenced by the weak causation between the discrimination and the dismissal.<sup>67</sup>

It seems that the reason of dismissal is an influencing factor on compensation rates. Justified cause for dismissal may lead to a lower NP compensation rate.<sup>68</sup> Where the cause of dismissal is solely due to pregnancy it will lead to higher compensation rates.<sup>69</sup>

*Period of employment.* The period of employment is a major factor influencing compensation rates in EOEL cases. The court has addressed this factor in two situations. The first is connected to the timing of the dismissal. In several cases the dismissal was hurried and swift in order to avoid the six month employment condition and the application of WEL.<sup>70</sup> In *Yafit Galy* case, a plaintiff was dismissed swiftly after 5 month and 11 days of employment. The court determined that the timing of the dismissal was due to the pregnancy and in order to avoid application of WEL. As such, NP compensation was awarded as punitive damages.<sup>71</sup>

Similarly, *Efrat Rubin*, was dismissed two days prior to reaching 6 months of employment.<sup>72</sup> *Enbal Harel* was dismissed after 5 month and 27 days of employment. There the court awarded damages and determined

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<sup>66</sup> LD44586-12-10, *Liron Biton v Ben Shemen Youth village, Nevo*, December 2013. NP compensation was 2 salaries.

<sup>67</sup> The reason of dismissal in *Karin Ortesy*, *supra* note 61, was that the employer was not satisfied with the plaintiffs work, therefore the NP compensation for discrimination was relatively low (3 salaries). However, one of the reasons for dismissal was the pregnancy and according to the staining model it is wrongful dismissal.

<sup>68</sup> *Liron Biton*, *supra* note 66 - 3.5; *Shdamit Har Zahav*, *supra* note 55 - 2.5 salaries; LD 55016-06-12, *Adi Arel v Onot Ltd., Nevo*, November 2014- The NP compensation was 2.3 salaries; *Lital Berenfeld levy*, *supra* note 60, The NP salaries was 2.4.

<sup>69</sup> *Ela Greenberg Nachshon*, *supra* note 63 - 14.3 salaries; *Anat Bashearim*, *supra* note 56 - 22.5 salaries

<sup>70</sup> WEL, *supra* note 5, § 9(a).

<sup>71</sup> LD 27457-03-12, *Yafit Galy v Formaika Center Ltd., Nevo*, July 2013 - was awarded 14 salaries. The court determined dismissal due to pregnancy is conduct without good faith and entitles the plaintiff to P and NP damages. Taken into account the period of employment and the aim of the statute.

<sup>72</sup> *Efrat Rubin*, *supra* note 60. The total amount awarded was 18.4 salaries.

that the pregnancy was a major factor in the timing of the dismissal in order to avoid the application of WEL.<sup>73</sup>

A second situation is where the courts have addressed the factor of time in connection with awards based on the length of employment itself. For example, an employee that was wrongfully dismissed for pregnancy after a short period of employment (2 months) was awarded a low NP compensation. The court determined the time of employment is a factor that needs to be taken into account.<sup>74</sup> Similarly, the court awarded low NP compensation for a wrongfully dismissed plaintiff employed for only 1.5 month.<sup>75</sup>

*Occupation.* In the case of *Anat Bashearim*, the occupation was a factor taken into account by the court leading to a high NP compensation. The plaintiff was an engineer at the beginning of her career, accused by the employer of being unprofessional in order to cover the real reason of dismissal – pregnancy.<sup>76</sup> However, apart from this case, it seems the occupation does not have an influence on the compensation award and the courts have not mentioned it. Furthermore, plaintiffs having similar occupations received different compensation amounts.<sup>77</sup> It seems there was no apparent tendency concerning the occupation of the plaintiff.<sup>78</sup>

### Dismissal contrary to both WEL & EOEL

*Number of salaries and division between P and NP compensation (see: Appendix D)*

<sup>73</sup> LD 51666-06-12, Enbal Harel v Global Israel, Nevo, September 2013, was awarded 9.5 salaries

<sup>74</sup> LD11/07/4344, Shlomit Matana v Al Batuach company Ltd., Nevo, July 2014. The court awarded the plaintiff 9 salaries, from which 2 salaries were for NP damage.

<sup>75</sup> Shdamit Har Zahav, *supra* note 55, the court awarded 2.5 salaries taking into account the short time of employment (1.5 month). However, the low compensation awarded where due also to the doubt that the dismissal was connected to the pregnancy and the conduct of the plaintiff that was absent from work. And see: LD 43908-02-12, Yazbalam Kabada v S. Albert Public works Ltd., Nevo, August 2014, the court mentioned the 4 month employment as a factor taken into account for assessing the compensation rate. And see: Adi Arel, *supra* note 68, the court awarded NP compensation of 2.3 salaries and determined the NP was influenced by the period of employment. However, there were other reasons for dismissal apart from the pregnancy and so the NP compensation was lower. In total compensation was 7.8 salaries.

<sup>76</sup> Anat Bashearim, *supra* 56, was awarded 22.5 salaries

<sup>77</sup> A Telephone sales representative Danit Zachariah, *supra* note 65, and a Telemarketing and phone answering person Efrat Rubin, *supra* note 60, that are similar occupations - received 7.8 salaries and 18.4 salaries respectively.

<sup>78</sup> A coordinator service and legal advisor - received 14.3 salaries, a secretary - received 14 salaries, quality inspector - 13.8 salaries, sales person - 9.5 salaries, social instructor - 3.5 salaries, accountant - 7.7 salaries, marketing manager - 7 salaries.

The average amount of salaries awarded in cases where there were violations of both the WEL and EOEL was equivalent to 18 salaries. The case with the lowest number of salaries awarded was 8.3 salaries and that with the highest number of salaries was 42.2 salaries. In most cases, the same amount of NP compensation was awarded for the violations of each of the statutes – WEL and EOEL.<sup>79</sup> However, in *Malky Graivsky* the court held that it must take into account the cumulative amount of money paid due to the different sources of damage and awarded one NP compensation amount together for both statutes (WEL and EOEL). An additional amount of NP compensation was awarded due to wrongful dismissal, mental anguish and the employer's failure to provide a hearing. As such, the total NP compensation was from different sources, including those provided by both the WEL and EOEL.<sup>80</sup> It is apparent from this case that the court does not limit itself to rigid sources of compensation.<sup>81</sup>

In most of the cases involving both statutes, the P compensation was nonexistent or very low. Most of the compensation awarded was due to NP compensation. This means there was no actual damage or low actual damage resulting from the dismissal, at the end of the protected period (60 days after return from maternity leave, there is no loss of income), yet the tendency of the courts was to award relatively high NP compensation.<sup>82</sup> In some of the cases, the court declared that the high NP award was on account of punitive and deterrence considerations. In *Plonit v Almonit*, in which the highest number of salaries was awarded, the court explained that punitive considerations were important factors leading to the substantial amount of compensation awarded.<sup>83</sup> Nevertheless, the court determined compensation should be reasonable.<sup>84</sup>

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<sup>79</sup> LCT 12137-09, *Plonit v Almonit*, Nevo, March 2013; LD 23806-04-12, *Shiran Batito v Abraham Asiag*, Nevo, June 2014 ; LD 32358-10-10, *Lilach Rosenberg v Milouoof Ltd.*, Nevo, June 2014; LCR 1003-09, *Nurit Kurtznizky v Developing company Ltd.*, Nevo, October 2013.

<sup>80</sup> LC 3238-09, *Malky Graivsky v Delta Ltd.*, Nevo; January 2013 - the lowest number of salaries was awarded, 8.3 salaries.

<sup>81</sup> See Anat Bashearim, *supra* note 56.

<sup>82</sup> See example: LD 28334-07-12, *Inesa Volloshin v Shemesh Hay Ltd.*, Nevo, September 2014, the NP compensation awarded was 9.3 salaries and the total number of salaries awarded was 19.5 salaries. The court denied claim for mental anguish compensation because it determined it was included in compensation awarded for EOEL.

<sup>83</sup> *Plonit v Almonit*, *supra* note 79, the same amount of NP compensation was awarded for each of the statutes: WEL and EOEL 9.2 salaries each to a total of 18.4 salaries. The total award was 42.2 salaries.

<sup>84</sup> *Shiran Batito*, *supra* note 79, the total compensation bestowed by the court was equivalent to 14.3 salaries. The award of NP compensation was for WEL and for EOEL 6.9 salaries each and together total of 13.8 salaries. The plaintiff suffered a natural abortion 3 days after

In cases in which both WEL and EOEL apply, it happens that the highest number of salaries awarded was also the largest total amount of compensation.<sup>85</sup> However, the lowest number of salaries bestowed was not the lowest total amount of compensation.<sup>86</sup> Therefore, it would appear that the level of salary influenced the total amount of compensation.

*Reason for dismissal* – In all cases involving a violation of both the WEL and EOEL, the reason for dismissal was the employee's pregnancy. This seems to have led to a relatively high NP compensation amounts.<sup>87</sup> In *Plonit v Almonit*, the maximum amount stipulated in the EOEL for NP compensation (NIS 50,000 or approximately EUR 11,490) was awarded for violation of each of the statutes: WEL and EOEL. The dismissal was deemed discriminatory on the basis of parenthood, pregnancy and worldview. The court determined the dismissal violated primary rights and therefore punitive considerations resulted in a substantial award.<sup>88</sup>

In the *Shiran Batito* case, the court also found a direct connection between the pregnancy and the dismissal. The court determined that the plaintiff was entitled not only to compensation for her suffering and humiliation, but punitive compensation as well in order to deter employers from such actions.<sup>89</sup> In several cases, the court has found that pregnancy was the reason of dismissal where the plaintiff was dismissed at the end of the protected period without receiving the opportunity to reintegrate in work. The court in calculating the compensation took into account the mental anguish suffered by the plaintiff, the violations themselves of both the WEL and EOEL, the circumstances of the dismissal and the period the employee worked.<sup>90</sup>

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dismissal and so P compensation was accordingly low (3 days salary). NP compensation was awarded due to suffering and humiliation and punitive compensation that aim to deter employers

<sup>85</sup> *Plonit v Almonit*, *supra* note 79, 42.2 salaries total amount NIS 227,800 (approximately EUR 52,380).

<sup>86</sup> The lowest number of salaries was 8.3 salaries in Malky Graivsky, *supra* note 80, at a total of NIS 71,040 (approximately EUR 16,325). However, 14.3 salaries in Shiran Batito, *supra* note 79, produced total of NIS 62,570 (approximately EUR 14,532).

<sup>87</sup> In Inesa Volloshin, *supra* note 82, the court determined the pregnancy was the only reason for dismissal and this influences the amount of compensation. The amount equivalent to 19.5 salaries was awarded, which 9.3 salaries ascribed to NP compensation.

<sup>88</sup> *Plonit v Almonit*, *supra* note 79, 42.2 salaries total amount NIS 227,800 (approximately EUR 52,380).

<sup>89</sup> *Shiran Batito*, *supra* note 79, the main reason for dismissal was the pregnancy and the total compensation bestowed by the court was equivalent to 14.3 salaries.

<sup>90</sup> Malky Graivsky, *supra* note 80. Similarly, in Lilach Rosenberg, *supra* note 79, the court determined that the reason of dismissal was clearly the pregnancy and parenthood. NP compensation bestowed was due to not returning the plaintiff to work after 60 days of protected period and due to violation of EOEL. The plaintiff was awarded compensation amount equiva-

*Period of employment* – The court has mentioned the period of employment as a factor taken into account in several cases, yet it seems the period of employment was a minor factor in determining the amount of compensation. For example, in the *Malky Graivsky* case, the court took into account plaintiff's 5 years employment together with the circumstances involved.<sup>91</sup> In the case of *Plonit v Almonit* the court stated that an 8 year period of employment was taken into account.<sup>92</sup> However, in several other cases the time of employment was not mentioned at all and plaintiffs who worked the same period of time received differing amounts of compensation.<sup>93</sup> At the same time, plaintiffs with different lengths of employment service were awarded a similar number of salaries in compensation.<sup>94</sup>

*Occupation* – The occupation or type of work performed by the plaintiff was not mentioned by the court in cases involving violations of both statutes. Furthermore, it would seem that the occupation of the plaintiff had little or no influence on the compensation amount. No tendency to consider occupation by the court was apparent. Cases involving a secretary, a clerk, and a worker in a shop did not receive different amounts of compensation than a department coordinator in research and development station or salesperson.<sup>95</sup> The only exception was a teacher that received a substantially

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lent to 11.4 salaries. Similarly, Nurit Kurtznizky, *supra* note 79, the plaintiff was dismissed without permission of the minister after end of protected period and the court awarded an amount equivalent to 12.8 salaries.

<sup>91</sup> Malky Graivsky, *supra* note 80, the amount of compensation awarded was equivalent to 8.3 salaries.

<sup>92</sup> There the amount bestowed was substantial and equivalent to 42.2 salaries.

<sup>93</sup> In Lilach Rosenberg, *supra* note 79, the time of employment was 9 month and the compensation amount bestowed was equivalent to 11.4 salaries. The same time of employment of 9 month was in Shiran Batito, *supra* note 79, and the amount of the compensation awarded was equivalent to 14.3 salaries.

<sup>94</sup> In Nurit Kurtznizky, *supra* note 79, the plaintiff worked for 9 years in the workplace and the compensation awarded was equivalent to 12.8 salaries. Compare to Lilach Rosenberg, *supra* note 79, the time of employment was 9 month and the compensation amount bestowed was equivalent to 11.4 salaries. And compare: Amount of the compensation equivalent to 19.5 salaries was awarded in Inesa Volloshin, *supra* note 82. The plaintiff was employed for 3 years, the court determined that the amount of compensation was influenced by the pregnancy being the only reason for dismissal.

<sup>95</sup> In Malky Graivsky, *supra* note 80, equivalent of 8.3 salaries was awarded to a secretary, coordinator, and book-keeper. In Nurit Kurtznizky, *supra* note 79, equivalent of 12.8 salaries was awarded to a department coordinator in research and development station. A salesperson was awarded an amount equivalent to 11.4 salaries in Lilach Rosenberg, *supra* note 79. A seller in a shop was awarded the amount equivalent to 14.3 salaries in Shiran Batito, *supra* note 79. A clerk was awarded an amount equivalent to 19.5 salaries in Inesa Volloshin, *supra* note 82.

higher amount of compensation however, it seems that several factors together led to this result.<sup>96</sup>

### Summary and conclusions: (see: Appendix E)

The findings from the examination of the court rulings are not uniform or constant, but rather diverging. Nonetheless, the findings show that several factors influence the determination of compensation rates awarded for wrongful dismissal of pregnant women. There were two factors among those presented that at first were not assumed to be influencing factors, but were revealed to be material in the research.

The first of these factors was the specific statute or statutes that were violated by the wrongful dismissal – whether the WEL, EOEL or both statutes. It was found that a lower number of salaries were awarded in cases of wrongful dismissal in violation of the WEL or in violations of the EOEL. Claims submitted for violations of both statutes (WEL and EOEL) together received a higher number of salaries award.<sup>97</sup> In these cases, the court awarded NP compensation for each of the statutes cumulatively and the amount of compensation in equivalent number of salaries was higher. Furthermore, in most cases involving violations of both statutes, the court awarded a similar amount of NP compensation for the violation of each of the statutes.<sup>98</sup>

The second factor was the division in awards between P damages and NP damages. The highest number of salaries for P compensation were awarded in WEL cases,<sup>99</sup> while the lowest number of salaries for P compensation were awarded in cases involving both WEL and EOEL violations.<sup>100</sup> On the other hand, cases involving violations of both WEL and EOEL

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<sup>96</sup> *Plonit v Almonit*, *supra* note 79, the court awarded amount of compensation equivalent of 42.2 salaries.

<sup>97</sup> WEL+EOEL average number of salaries was 18. WEL – average number of salaries was 11. EOEL - average number of salaries was 10.

<sup>98</sup> This is apparent in four cases out of the six cases in which compensation was awarded by the two statutes. (*Plonit v Almonit*; *Nurit Kurtznizky*; *Lilach Rosenberg*; *Shiran Batito*, *supra* note 79). In one case NP compensation was awarded together for the two statutes (*Shiran Batito*, *supra* note 79). In one case the court awarded NP compensation for violation of EOEL (9.3 salaries that is a high number) and explained that this includes the claim for mental anguish (*Inesa Volloshin*, *supra* note 82).

<sup>99</sup> 2 to 12.7 salaries.

<sup>100</sup> Zero to 3.6 salaries.

awarded the highest number of salaries for NP compensation.<sup>101</sup> In WEL cases, the court generally exercised its discretion cautiously and refrained from awarding NP compensation or awarded a low amount.<sup>102</sup>

It seems generally, the actual damage (P) calculated by the loss of income was to a lesser degree subject to the courts discretion, if at all. As such, it was to a lesser degree an influencing factor on the total sum amount awarded. On the other hand, the NP compensation which was subject to the discretion of the court and therefore to a greater degree in its control, had a greater influence on the total sum awarded to the plaintiff. The courts have been relatively unrestricted in determining the amount of total compensation through adjustment of the NP compensation. This supports the conclusion that the courts look to the bottom line of the amount awarded to the plaintiff. Furthermore, this reinforces the assertion that the courts use punitive damages to apply policy considerations to both deter and educate employers – a policy actually stated openly by the court.<sup>103</sup>

The findings also show that many of the factors that were assumed to influence compensation awards indeed do so. Only the role of the employee's occupation rarely seems to be an influencing factor. The circumstances of the dismissal also influence the amount of NP compensation awarded and include several factors. One factor is the reason for the dismissal. A second factor is the conduct of the parties and a third factor is the length of employment.

In cases involving violations of both the WEL and EOEL, the reason for dismissal – pregnancy related – was a clear and obvious factor influencing the amount of compensation. The court awarded high levels of compensation when the pregnancy was the only reason for dismissal and there was a clear connection between the dismissal and the pregnancy.<sup>104</sup>

In WEL cases when there was a justified reason for dismissal due to the employees' conduct, the no or very low NP compensation was awarded. However, when the court found the circumstances appropriate, it exercised its discretion and awarded NP compensation.

In EOEL cases, the conduct of the employee providing a justification for the dismissal led to lower compensation awards. When the pregnancy was the only reason for dismissal the compensation rate was higher. In addition,

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<sup>101</sup> 5 to 18.4 salaries.

<sup>102</sup> Zero to 5 salaries.

<sup>103</sup> See in: Malky Graivsky, *supra* note 80; Shiran Batito and Plonit v Almonit, *supra* note 79.

<sup>104</sup> In Nurit Kurtznizky, *supra* note 79, the employer claimed redundancy was the reason of dismissal but the court found this as a false reason, so there was no justification for the dismissal.

in situations where the dismissal caused the employee mental anguish, suffering or humiliation, the compensation was influenced by these factors and the compensation was higher.<sup>105</sup> Similarly, in EOEL cases, where the employers' conduct considered the timing of the dismissal and performed hurried and brisk dismissal in order to avoid application of the WEL, this led the court to award higher compensation.<sup>106</sup> Swift and hurried dismissal were also viewed by the court as a dismissal without good faith.<sup>107</sup> The timing of dismissal also was considered by the court in regards to those having been employed for a short time. This usually resulted in lower compensation award. In conclusion, in EOEL cases, the period of employment was a significant factor influencing compensation. In cases involving WEL or both WEL and EOEL together, it was a minor factor, if at all.

Concerning the level of salary, this seems to be a factor influencing compensation although the court determined it should not be a factor. However, the court has stated that it may be a factor in some circumstances and has implications in providing deterrence.<sup>108</sup> On account of the different levels of salary, cases with the highest amount of total compensation awarded were not necessarily those granting the highest number of salaries and vice versa. This was apparent in all the cases involving the WEL alone and cases of the EOEL and most of cases involving both WEL and EOEL.

In awarding compensation, the court provided that the amount awarded should be proportionate and reasonable<sup>109</sup> and be appropriate to the circumstances.<sup>110</sup> The court emphasized the importance of taking into consideration the overall situation and the court also noted that an assessment of the NP compensation must consider the amount awarded for P damages.<sup>111</sup> This indicates that the total sum of money awarded from all sources of compensation is a concern of the court.<sup>112</sup> The questions of whether the court takes the level of salary into consideration and whether the court looks to the total bottom line that will be reached according to the level of salary are essentially the same and the research here suggests they are influencing factors.

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<sup>105</sup> Malky Graivsky, *supra* note 80; Shiran Batito, *supra* note 79.

<sup>106</sup> Yafit Galy, *supra* note 71 - 14 salaries; Enbal Harel, *supra* note 73 - 9.5 salaries; Efrat Rubin, *supra* note 60 - 18.4 salaries.

<sup>107</sup> Enbal Harel, *supra* note 73.

<sup>108</sup> Orit Busy, *supra* note 58.

<sup>109</sup> *Id.*

<sup>110</sup> Nurit Kurtznizky, *supra* note 79; Malky Graivsky, *supra* note 80.

<sup>111</sup> Orit Busy, *supra* note 58.

<sup>112</sup> Malky Graivsky, *supra* note 80.

In my opinion, the amount of compensation finally awarded by the courts in these cases depends more on the judge's approach and perception of the case and the amount he considers as appropriate – and less on the analyses of the more objective factors traditionally used to determine the awards. As such, the basis used by a judge in exercising his or her discretion is not easily predictable and may be quite arbitrary. However, the research of this paper does reveal tendencies regarding certain factors that may help parties predict to some extent the scope of the compensation award to be expected. Unfortunately, the amount a specific judge will award in an individual case still depends on the individual view of the judge and is ultimately not easily predicted.

It also seems that in cases in which several factors together influence the determination of compensation there will result in a higher compensation.<sup>113</sup> The conclusion is that an amalgam of several factors together influence compensation to a greater degree than an isolated factor.

A final comment concerning the influence on the court of the factor of cause of dismissal. The influence of this factor may point to a European influence.<sup>114</sup> In a similar fashion to that of the European legal system, the court considered the factor of circumstances that led to the dismissal, even though the dismissal itself was prohibited. It was found that a justified cause for dismissal did influence compensation and led to low award of compensation. However, in contrast to the European legal system, the prohibited dismissal will not be justified and nonetheless will be deemed wrongful dismissal even if there was a justified cause to dismiss the employee.

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<sup>113</sup> Example: *Plonit v Almonit*, *supra* note 79- The circumstances of dismissal were severe, contrary to WEL and in violation of EOEL. The plaintiff was discriminated on base of parenthood, pregnancy and worldview that are primary rights. Time of employment was substantial (8 years), perhaps also the occupation (teacher) and age (41) were added circumstances that accumulated to the severe situation.

<sup>114</sup> See the rule requiring "sufficient cause" or "just cause" for dismissal in European countries: Davidov Guy, Eshet Ido, *Job security: Toward Balanced Intermediate solutions*, 43 *Mishpatim* 143-181 (2012) (Hebrew) at 148. The American approach of "Employment at Will" see at 147. In Israel the approach to dismissal is unlike that of the European legal systems, yet it has been influenced by both European and American system, and is a unique system.

- The Equal Rights of Persons with Disabilities Law, 1998, Book of Laws 1658, 1998, 152.  
 The Labor Court Law, 1969, Book of Laws 553, 70.  
 Woman Employment Law, 1954, Book of Laws 1954 160, 154.  
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 2005, Law Proposals- Knesset, 23.11.2005, 46, explanatory comments of amendment  
 of §13A.  
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### Case law

- LA 1353/02, Margalith Appelboim v Niza Holtzman, PD 39, 495, Nevo  
 D48/8-3 (National), Avner Koppel, Insurance Agency v. Adi Weiss Arlovich, PD 20, 57  
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 LA 1334/02 Haley Nosezky v. State of Israel, PDL 40, 16, Nevo, 2004  
 LA (National) 1156/04 Home Center (Do it yourself) Ltd. v Orit Goren, Nevo, 2007  
 LA (National) 627/06 Orly Morey v M.D.P. Yellow Ltd., Nevo 2008  
 LA (National) 593/08, Neot Hasharon Nursing Center v Isa Walla, Nevo 2010  
 LA (National) 363/07, Sharona Arbiv v Poamix Ltd., Nevo, 2010  
 LA 178/06 Plony v Almonit, Nevo 2010  
 LC 9466/08 Yoram Shoal v. I.B.M. Global Services Israel, Nevo, 2011  
 BSA (National) 135/10 Naman counselling and guidance for the golden age v Adva Za-  
 fon Benyamin, Nevo, 2011  
 LA 697/09 Plonit v Almony, Nevo 2011  
 LA (National) 21781-10-10, Lulu Rashad v Regional Committee for planning and con-  
 struction- Alonim, Nevo, July 2013  
 LA (National) 43380-06-11, Plony V Almonit, Nevo, 2014  
 CA HC 7426/14 Plonit v Ori Daniel, Nevo 14/3/2016

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 43. (Hebrew)  
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 Rabin-Margalioth S., *Turning Points in individual labor law*, 6 Din Ve Dvarim, 2011. (He-  
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 Shemer Begas R., *Procedural justice and employee dignity in dismissal – reflection on the rule of  
 hearing*, Labor Society and Law, 2012, 13. (Hebrew).

## **Appendix A**

### Research cases list

#### WEL

1. LC 6664-09, Shiri Rubin v Mz point I.T. Ltd, Nevo, February 2013
2. LC 5000-09, Tatiana Zaslavsky v Tectile Technologies Ltd., Nevo, May 2013 Case number 5 (appeal closed - no change)
3. LD 50851-02-11, Simcha Mamu v Eldad- Segev Law Firm, Nevo, June 2013 (appeal – closed in compromise)
4. LD 52260-11-10, Enbar Amiga v Hagit Tasa Ltd., Nevo, October 2013
5. LD 51501-03-12, Naama Peleg v Am Haadma Ltd., Nevo, January 2014 (appeal open)
6. LCR 11423-09 , Alberta Skora v Kochava Mizrachi, Nevo, January 2014
7. LD 57763-02-13, Helena Maymaran v kochav Zurim Ltd., Nevo, September 2014 (appeal closed compromise)
8. LD 43970-10-11, Vinugray Elizabeta v Karl Berg Ltd., Nevo, October 2014
9. LD 41145-05-12, Hadas Yekotiely Boubilil v Education Association, Nevo, September 2014

#### EOEL

10. LCT 3404-10, Ela Greenberg Nachshon v Proporzia, Nevo, June 2013 (appeal)
11. LD 27457-03-12, Yafit Galy v Formaika Center Ltd., Nevo, July 2013 (appeal standing)
12. LA (National) 30585-09-12 , Yisum company Ltd., - Orit Busy , Nevo, August 2013
13. LD 51666-06-12, Enbal Harel v Global Israel, Nevo, September 2013 (appeal standing)
14. LD19728-07-10, Danit Zachariah v Insurance Services Lamizrach Ltd, Nevo, November 2013
15. LD44586-12-10, Liron Biton v Ben Shemen Youth village, Nevo, December 2013 (appeal deleted for lack of deeds)
16. LD 10332-09-11, Efrat Rubin v E.T Cooperation, Nevo, May 2014
17. LD 4954-09-11, Karin Ortesy v Maya Tor Ltd., Nevo, May 2014
18. LC 12179-09, Lital Berenfled levy v Modiin Mall Ltd., Nevo, June 2014
19. LD11/07/4344, Shlomit Matana v Al Batuach company Ltd., Nevo, July 2014 (request for appeal denied)
20. LD 43908-02-12, Yazbalam Kabada v S. Albert Public works Ltd., Nevo, August 2014 (appeal and decision)
21. LD 25795-02-13, Shdamit Har Zahav v R.A.S Ltd., Nevo, August 2014 (appeal)

22. LD 24547-12-12, Nataly Yitzhaky v Pina Barosh Ltd., Nevo, October 2014 (appeal deleted)
23. LD 7097-09-12, Anat Bashearim v Maymon David Ltd., Nevo, November 2014 (appeal delayed exaction)
24. LD 55016-06-12, Adi Arel v Onot Ltd., Nevo, November 2014 WEL +EOEL
25. LC 3238-09, Malky Graivsky v Delta Ltd., Nevo, January 2013 (appeal closed compromise)
26. LCT 12137-09, Plonit v Almonit, Nevo, March 2013
27. LCR 1003-09, Nurit Kurtvizky v Developing company Ltd., Nevo, October 2013
28. LD 32358-10-10, Lilach Rosenberg v Milouoof Ltd., Nevo, June 2014
29. LD 23806-04-12, Shiran Batito v Abraham Asiag, Nevo, June 2014 (request for delay )
30. LD 28334-07-12, Inesa Volloshin v Shemesh Hay Ltd., Nevo, September 2014 (appeal open)

<http://www.hamara.co.il/currency-exchange/ils-ils/ils-eur/> April till June 2016 currency exchange rate: ils-eur: 0.23...; eur-ils: 4.3....

## Appendix B

WEL - Table number salaries, division between P compensation and NP compensation

Case WEL	Total amount NIS- EUR	Number of salaries total and salary	Number of salaries P compensation	Number of salaries NP compensation
1 Shiri Rubin	NIS 52,370. (approximately EUR 12,000)	4 Salary NIS13,000 (approximately EUR 2989)	2.5 (100%)	Less than 1
2 Tatiana Zaslavsky	NIS 176,083 (approximately EUR 40,489)	7.2 Salary NIS 24,200 (approximately EUR 5564)	4(150%) 5.2 (100%)	0
3 Simcha Mamu	NIS 45,450 (approximately EUR 10,450)	15 Salary NIS 3,000 (approximately EUR 690)	7.2 (100%)	5
4 Enbar Amiga	NIS 66,460 (approximately EUR 15,282)	15 Salary NIS 4,420 (approximately EUR 1,016)	10 (100%)	3.6

Case WEL	Total amount NIS- EUR	Number of salaries total and salary	Number of salaries P compensation	Number of salaries NP compensation
5 Naama Peleg	NIS 58,450 (approximately EUR 13,575)	16.5 Salary NIS 3,500 (approximately EUR 822)	12.7(100%)	0
6 Alberta Skora	NIS 7,070 (approximately EUR 1642)	11.5 Salary NIS 612 (approximately EUR 142)	7.9 (150%)	0
7 Helena Maymaran	NIS 52,060 (approximately EUR 12,091)	9.4 Salary NIS 5,500 (approximately EUR 1277)	2 (100%)	4.5
8 Vinugray Elizabeta	NIS 38,090 (approximately EUR 8847)	10 Salary NIS 3,760 (approximately EUR 873)	6.9 (150%)	0
9 Hadas Yekotiely Boubilil	NIS 22,150 (approximately EUR 5108)	6.3 Salary NIS 3500 (approximately EUR 807)	0	6.3

### Appendix C

EOEL – Table number salaries, division between P compensation and NP compensation

Case EOEL	Total amount NIS- EUR	Number of salaries total and salary	Number of salaries P compensation	Number of salaries NP compensation
10 Ela Greenberg Nachshon	NIS 100,700 (approximately EUR 23,362)	14.3 Salary NIS 7,000 (approximately EUR 1624)	6.2	5.7
11 Yafit Galy	NIS 77,750 (approximately EUR 18,038)	14 salary NIS 5,500 (approximately EUR 1276)	5.9	3.6
12 Orit Busy	NIS 46,970 (approximately EUR 10,897)	13.8 Salary NIS 3,400 (approximately EUR 789)	4.9	8.8
13 Enbal Harel	NIS 76,090 (approximately EUR 17,653)	9.5 salary NIS 8,000 (approximately EUR 1,856)	4.2	3.1

Case EOEL	Total amount NIS- EUR	Number of salaries total and salary	Number of salaries P compensation	Number of salaries NP compensation
14 Danit Zachariah	NIS 17,255 (approximately EUR 4003)	7.8 Salary NIS 2,200 (approximately EUR 510)	4.5	2
15 Liron Biton	NIS 26,050 (approximately EUR 6,043)	3.5 Salary NIS 7,250 (approximately EUR 1682)	0.5	2
16 Efrat Rubin	NIS 58,360 (approximately EUR 13,539)	18.4 Salary NIS 3,170 (approximately EUR 735)	8	5.6
17 Karin Ortesy	NIS 48,537 (approximately EUR 11,260)	7.7 Salary NIS 6,250 (approximately EUR 1450)	4.5	3
18 Lital Ber- enfeld levy	NIS 56,790 (approximately EUR 13,175)	7 Salary NIS 8,000 (approximately EUR 1,856)	4.5	2.4
19 Shlomit Matana	NIS 49,500 (approximately EUR 11,484)	9 Salary NIS 5,500 (approximately EUR 1,276)	6.9	2
20 Yazbalam Kabada	NIS 35,200 (approximately EUR 8,166)	unknown	0	Almost all the sum
21 Shdamit Har Zahav	NIS 18,750 (approximately EUR 4,350)	2.5 Salary NIS 7,500 (approximately EUR 1,740)	0	2
22 Nataly Yitzhaky	NIS 35,300 (approximately EUR 8,189)	6.6 Salary NIS 5,280 (approximately EUR 1,225)	1.8	3
23 Anat Bashearim	NIS 116,200 (approximately EUR 26,958)	22.5 Salary NIS 5,160 (approximately EUR 1,197)	8	3+4.6=7.6
24 Adi Arel	NIS 84,130 (approximately EUR 19,518)	7.8 Salary NIS 10,700 (approximately EUR 2,482)	3.4	2.3

### Appendix D

WEL+EOEL -Table number of salaries and division between P compensation and NP compensation

Case WEL+EOEL	Total amount NIS- EUR	Number of salaries total and salary	Number of salaries P compensation	Number of salaries NP compensation
25 Malky Graivsky	NIS 71,040 (approximately EUR 16,325)	8.3 salary NIS 8,500 (approximately EUR 1,953)	0	3 +3=6
26 Plonit v Almonit	NIS 227,800 (approximately EUR 52,380)	42.2 Salary 5,400 (approximately EUR 1,240)	3 - 150%	WEL 9.2+ EOEL 9.2= 18.4
27 Nurit Kurt-nizky	NIS 115,430 (approximately EUR 26,542)	12.8 Salary NIS 8,960 (approximately EUR 2,060)	0	WEL 2.8+ EOEL 2.8= 5.6
28 Lilach Rosenberg	NIS 91,790 (approximately EUR 21,318)	11.4 Salary NIS 8,000 (approximately EUR 1858)	2	WEL 2.5+ EOEL 2.5= 5
29 Shiran Batito	NIS 62,570 (approximately EUR 14,532).	14.3 Salary NIS 4,360 (approximately EUR 1,012).	3 Days till abortion	WEL 6.9+ EOEL 6.9= 13.8
30 Inesa Vol-loshin	NIS 84,240 (approximately EUR 19,565)	19.5 Salary NIS 4,300 (approximately EUR 1000).	3.6	9.3 EOEL

### Appendix E

Summary: Comparison between cases of WEL, EOEL, WEL+EOEL

Case	Total amount range	Number of salaries range	P and NP compensation
WEL	From NIS 7,070 (approximately EUR 1642)- Till NIS 176,083 (approximately EUR 40,489)	4 salaries - 16.5 salaries The lowest amount of money was equivalent to 11.5 salaries. The highest amount of money	P from 2 salaries - till 12.7 salaries  NP from 0 salaries - till 5 salaries

Case	Total amount range	Number of salaries range	P and NP compensation
		was equivalent to 7.2 salaries.	
EOEL	From NIS 17,255 (approximately EUR 4003)- Till NIS 116,200 (approximately EUR 26,958)	2 salaries- 22.5 salaries The lowest amount was equivalent to 7.8 salaries. The highest amount of money was equivalent to 22.5 salaries.	P from 0 salaries till 8 salaries  NP from 2 salaries till 13.6 salaries
WEL+EOEL	From NIS 62,570 (approximately EUR 14,532) - Till NIS 227,800 (approximately EUR 52,380)	8.3 salaries -42.2 salaries The lowest amount of money was equivalent to 14.3 salaries. The highest amount was equivalent to 42.2 salaries.	P from 0 salaries till 3.6 salaries  NP from 5 salaries till 18.4 salaries