

7 days' leave without consent results in absconding report



LEGAL VIEW
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I was working for a company based in Abu Dhabi for nine years. I had gone on vacation on May 22. My joining back date was June 17. On June 16, the company communicated to me that there is an ambiguity whether I should join the company or resign. On June 18, I sent my resignation letter to the company. After a few days someone from the accounts department called my home country, India, and enquired about me from my family members. I sent a mail to them and asked the reason for the call.

They asked me when I was returning to join duty. I said I have already communicated to my senior and also sent my resignation letter as well as passport copies. I also told them that there was a communication gap between them. After a month I followed up on my settlement but there was no reply. I still kept following up. Two months after my resignation, they replied saying I have absconded. I replied that this is incorrect and requested them to settle my accounts.

I have proof of all communication I had with them and whatever I have sent to them. I wish to have a good relation with the company but at the same time I do not wish to lose my end of service amounts. Please advice.

It is understood that you were em-

ployed by a company in Abu Dhabi for nine years and you were on annual leave from May 22 to June 16. Further, it is understood that pursuant to various communication between you and your employer you resigned on June 18. It is assumed that your employment is subject to provisions of the Federal Law No. 8 of 1989 Reg: Regulation of Labour Relations (the "Labour Law"). Since you have completed nine years of service with your company you are entitled for end of service benefits. Article 132 of the Labour Law relating to regulation of Labour Regulations states: "A worker who has completed a period of one or more years of continuous service shall be entitled to severance pay on the termination of his employment. The days of absence from work without pay shall not be included in calculating the period of service. The severance pay shall be calculated as follows:

- a) 21 days' remuneration for each year of the first five years of service.
- b) 30 days' remuneration for each additional year of service provided the aggregate amount of severance pay shall not exceed two year's remuneration."

In your case, it is understood that you proceeded on annual leave with full knowledge and consent of your employer. Further you have mentioned that during the period of your leave there has been multiple communications between you and your employer which confirms that your

employer was fully aware of your whereabouts. Therefore, filing an absconding complaint by your employer with the Ministry of Labour would be without bona fide reasons.

Article 1 of the Ministerial Resolution No. (721) for 2006 of Labour Law on escape report procedures issued by Ministry of Labour states: "An escape report is applied on the case of the worker who has stopped working for more than seven consecutive days if the employer pledged that he does not know his whereabouts or has a legitimate reason for his absence in accordance with the provisions of this Ministerial Resolution."

Further to the aforementioned laws, Article 90 of Labour Law states: "Without prejudice to cases in which an employer is entitled to dismiss a worker without notice or without the indemnity provided for in this Law, an employer shall not dismiss a worker or serve notice of dismissal on him while the worker is on leave within the meaning of this chapter."

In the backdrop of the foregoing, it is still not very clear whether your employer has actually filed an absconding complaint against you, since they have only mentioned about the same on one instance. However, in the event an absconding complaint has already been filed by your employer, it may be advised that you may, directly or through your legal representative in the UAE, attempt to amicably resolve the grievances with your employer pursuant to which the employer may withdraw the absconding complaint filed with the Ministry of Labour and settle your

end of service benefits.

In the event the employer refuses to withdraw the absconding complaint, you may choose to appoint a legal practitioner by issuing a duly notarised and legalised power of attorney to such legal practitioner, who may subsequently represent you at the offices of the Ministry of Labour or represent you in the courts having the competent jurisdiction to handle labour grievances for settlement of disputes pertaining to your end of service benefits, your unpaid salaries and also for dropping the absconding complaint filed against you, at the Ministry of Labour.

**No ban for certain categories
I work as a Civil Engineer on an engineer's visa on unlimited contract. I have completed six months, and due to the company's mismanagement and irresponsibility, I am resigning from my current job. I have already given my 30 days notice. Upon resigning, will there be any employment ban on me? My employer has agreed to provide me with an NOC, so after cancelling my current visa and exiting the country, can I re-enter with my second employer's engineer visa, which is offering me a better job? (salary may not be Dh12,000 or above). Could you please explain the details regarding labour ban and contracts in this case?**

It is understood that you are working as an engineer under an unlimited contract with a company in the UAE and that you have completed six months of service with this company. It is assumed that your

employment is subject to provisions of the Federal Law No. 8 of 1989 Reg: Regulation of Labour Relations (the "Labour Law").

Pursuant to your question, it may be advised that normally the Ministry of Labour imposes a six-month ban for employees who resign from their employment before completion of one year of employment. But in your case there may not be a labour ban before completion of the one year of service. The Labour Law exempts certain professionals from a ban and permit them to change their employment at any point of time. This is in accordance with Article 2 of the Ministerial Order No. 13 of 1991 of the Labour Law on 'The organisation of the transfer of sponsorships of non-national labours the rules governing the same which states:

"Non-national labourers may be allowed to transfer one job to another and hence transfer their sponsorship if they fall under certain categories.

Further, it is advised that since you are working under an unlimited period contract, you are required

to serve a notice period of 30 days should you terminate the employment contract, in accordance with Article 113 of the Labour Law which states as follows:

"A contract of employment shall terminate in any of the following cases:

- If both parties agree to its termination, on condition that the worker's consent is given in writing;

- On the expiry of the period prescribed in the contract, unless the contract is expressly or tacitly extended in accordance with the provisions of this Law;

- If either of the parties of a contract concluded for an unlimited period, expresses his intention to terminate the contract; provided that the provisions of the Law regarding the period of notice are observed and on grounds accepted for the non-arbitrary termination of the contract."

Since your employer is willing to give you a 'No Objection Certificate' upon completion of your notice period, you may take up employment with your new employer.

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