

Labour contract is more valid than appointment letter



LEGAL VIEW
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My company issued me an appointment letter for a managerial post (as consultant) for one year with a provision to terminate the contract with three months notice by either side. I was asked to sign the labour contract (limited contract) for two years as per the UAE law. Now one year is about to be completed. I wish to continue my job for another year as per the labour contract, but my company wants to terminate my services based on the original appointment letter issued by them (and signed by me). What are my legal options if I wish to continue my services as per the labour contract?

It is understood that you want to complete your term of service with your current employer in accordance with the provisions of your employment contract, while on the other hand, your employer is insisting on terminating your employment contract based on the terms of the appointment letter. However, by virtue of the various provisions under the UAE Federal Law No. (8) of 1980 on Labour Relations (the "Labour Law"), your labour contract shall have a greater degree of applicability than your appointment letter.

In all cases of employment regulated by the Labour Law, it is primarily required to draw up an employment contract, in accordance with Article 35 of the Labour Law which states: "Subject to the provisions of article 2, a contract of employment shall be written in two copies, one being delivered to the worker and the other to the employer. In the absence of written contract, adequate proof of its terms may be established by any means of evidence."

Further, Article 36 of the Labour Law states: "A contract of employment shall more particularly specify the date of its conclusion, the date on which work is to begin, the

nature and the place of the work, the duration of the contract (if it is for a limited period) and the amount of the remuneration."

Pursuant to the above provisions of the Labour Law, your employment with your current employer should be governed by your employment contract. The employment contract shall be the one drawn on the Ministry of Labour template and registered with the Ministry; drafted in both Arabic and English and signed by you and your employer with a copy delivered to both. Such employment contract should essentially specify the duration of the contract and the start and end dates of employment along with other terms and conditions.

Other stipulations provided in documents like appointment letter, shall be applicable only to the extent that they do not violate any provisions of the Labour Law, or if they do, they are more advantageous to the employee, in accordance with Article 7 of the Labour Law, which states: "Any stipulations contrary to the provisions of this Law, even if it was made prior to its commencement, shall be null and void unless they are more advantageous to the worker."

Your employment may be terminated based on the provisions of Article 113 of the Labour Law which states: "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 re-

garding the period of notice are observed and on grounds accepted for the non-arbitrary termination of the contract."

Since you do not wish to terminate the employment contract, your employer cannot unilaterally terminate the contract in good faith. In the event your employer terminates the contract, it may be deemed to be arbitrary termination in accordance with Article 122, which states: "A worker's service shall be deemed to have been arbitrarily terminated by his employer if the reason for the termination is irrelevant to the worker and, more particularly, if the reason is that the worker has submitted a serious complaint to the competent authorities or has instituted legal proceedings against the employer that has proved to be valid."

Also, he shall be liable to compensate you for any prejudice suffered due to the termination, in accordance with Article 123, which states:

"A) Where a worker is arbitrarily dismissed, the competent court may order the employer to pay him compensation. The court shall assess such compensation with due regard to the nature of the work, the amount of prejudice he has sustained and his period of service, and after investigating the circumstances of the work. The amount of the compensation shall in no case exceed the worker's remuneration for three months calculated on the basis of the last remuneration he was entitled to.

B) The provisions of the preced-

ing paragraph shall not prejudice the worker's right to the gratuity he is entitled to and the termination notice allowance provided for in this law."

Mother's sponsorship

I work in Dubai with a salary of Dh5,000. My wife works as a nurse with a salary of Dh9,600 (she gets a total of around Dh12,000 every month with OT). We have a two-bedroom apartment in Sharjah and tenancy contract is in my wife's name. My mother is alone at my home country because my father separated from her, but not legally. I want to take care of her but I am not able to submit a divorce certificate. Is it possible for my wife to sponsor my mother? What is the procedure to get a visa for my mother?

It is understood that you wish to sponsor your mother for a residence visa to reside with you in the UAE and that your mother is still legally married to your father. The General Directorate of Residency & Foreigners Affairs considers such matters as a special case and do not have a general policy to apply in cases where you want to obtain a residence visa for your mother alone while she is married to your father who will not obtain a residence visa for the UAE.

You may contact the General Directorate of Residency & Foreigners Affairs in Sharjah for requirements and procedures to obtain a residence visa for your mother.

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Driving Inspectors are provided with iPads to ease testing procedures. — Wam

Inspectors to keep a tab on new drivers

Staff Reporter

DUBAI — Driving inspectors are the latest to jump into the digital age, as Dubai's Roads and Transport Authority (RTA) hands out tablet computers on which they will assess people sitting for their driving tests.

The iPads have been distributed to driving inspectors at several testing centres around Dubai, though the RTA says the rest will follow.

Sultan Al Marzouqi, Director of the Drivers Licensing Department at RTA, said his department "saw a need" to upgrade technology to keep pace with developments in the world, the RTA and other technological leaders in Dubai.

The tablets, which would be used by inspectors in practical tests, would ease the testing procedures.

"By recording observations and

errors committed by the trainee during the test in a very accurate and clear manner than the old handwriting method on paper, these tablets can calculate all errors, once connected to the Internet they are directly linked to the electronic traffic system and show the final result of the trainee."

Those being tested can also get a printed result sheet in Arabic and English, which will display all errors committed during the test to help them improve on areas of weakness and prepare for future tests. The tablet tests would also keep track of the time taken to complete the test.

Al Marzouqi pointed out that in the coming period the iPad tablets would be distributed to the rest of the driving centres with its branches in Dubai, in order to improve the services provided to the public "so that we are pioneers in the utilisation of this advanced technology in the training centres".

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