

Labour law prevails over staff handbook



LEGAL VIEW ASHISH MEHTA

I am a chartered accountant from India working for an audit firm in Dubai Multi Commodities Centre (DMCC). I have been working here for more than a year but now another company has offered me a better job, which I wish to accept. However, I'm worried about two points in the offer letter my current company sent and their employee handbook: "(1) Resignation — Each employee is expected to complete his/her first contract period, that is, two years. Any employee who does not complete his/her employment contract will have to bear the training and induction cost of Dh12,000 or as agreed in the contract. (2) Notice Period — Notice period for termination of employment contract by the employee shall be one month from the date of resignation. The firm reserves its right to insist continuity of the contract should such

notice fall after December 1 in any year. In such an event, the effective notice period — solely at the firm's discretion — will be up to the June 30 of the next year or as per above stated, whichever is later. Notice period for termination of employment contract by the firm shall be one month from the effective date of termination."

Question 1: The DMCC employment contract I signed has no such clauses; it just mentions that if I want to resign, I have to serve 30 days' notice. Can I resign and join the new company by serving a notice of 30 days? Or will I have to pay the 'training and induction cost' of Dh12,000?

Question 2: I am on a Free Zone visa and as per the UAE Labour Law can pay 45 days salary as penalty, serve a notice of 30 days and can join the new employer. I am ready to pay 45

days salary as penalty and serve 30 days' notice. I have completed 13 months at work and never took annual leave. So can I utilise the 30 days accumulated paid leave to pay the penalty? Can I resign and join the new company by serving 30 days notice paying a 15-day salary as penalty (as I have already 30 days of paid annual leave)?

You are a chartered accountant and you have been employed for over one year by an auditing firm established under the laws of the Dubai Multi Commodities Centre (DMCC). Now you wish to take up another employment where you are being offered a better position from your current job. However, you have not mentioned whether your employment contract is of limited or unlimited duration.

Your employment will be subject to provisions of the Federal Law No 8 of 1980 on Labour Regulation (the "Labour Law"), as this is the law that regulates labour relations in the DMCC.

Pursuant to your first question, you have cited provisions from your Employees' Handbook.

“ If you are employed pursuant to a limited period contract and wish to terminate the same, then you are not required to serve a prior notice 30 days before the intended date of termination

The provisions of the Labour Law should prevail over the Employee Handbook if the provisions of the Employees' Handbook (i) conflict with the provisions of the Labour Law; and (ii) are disadvantageous to the employee. Your employment contract is the document which was executed by you and your employer and is filed with DMCC. Therefore the employment contract filed with DMCC should prevail based upon the aforesaid.

As it is not very clear whether you are working under a contract of limited duration of a contract of unlimited duration, it may be said that, if you are employed pursuant to an unlimited period contract, then you could give a prior notice of 30 days to resign from your employment.

This is in accordance with Article 117 of the Labour Law, which states:

"(1) Both the employer and the worker may terminate a contract of employment of unlimited duration for a valid reason at any time following its conclusion by giving the other party notice in writing at least 30 days before the termination."

However, if you are employed pursuant to a limited period contract and wish to terminate the same, then you are not required to serve a prior notice 30 days before the intended date of termination and in such a case you should compensate your employer up to

your salary for 45 days or the residual period of your employment contract whichever is shorter. This is in accordance with Article 116 of the Labour Law, which states: "Where a contract is revoked by the worker for reasons other than those specified in Article (121), he shall be required to compensate the employer for any prejudice the latter sustains as a result: Provided that the amount of compensation shall not exceed half the worker's remuneration for three months or the residual period of the contract whichever is shorter unless the contract contains a provision to the contrary."

Further to the aforementioned provisions of the Labour Law, you may refer to your employment contract, and you may proceed to terminate your employment contract depending on whether your contract is of limited or unlimited duration.

Subsequently, it may be advised that you are required to reimburse your employer Dh12,000 against your 'training and induction' costs incurred by your employer. However, it is pertinent to mention here that, where any training is provided by the employer to its employees, a separate training contract should be entered between the employer and the employee where certain specific provisions regarding remuneration of the employee and other obligations should be specified.

This is in accordance with the provisions of Articles 47 and 48 of the Labour Law, which state as follows:

"Article 47 - A worker may undertake in the training contract that, on the completion of his

training, he will work for the employer, or in the establishment where he has been trained, for a period not exceeding twice the period of training.

The employer may undertake in the contract to employ the trainee on the completion of the latter's period of training. Article 48 - A training contract shall specify the remuneration payable during each phase.

The remuneration payable in the final phase shall not be less than the minimum prescribed for similar work and shall not in any circumstances whatsoever be fixed on a piece-rate or output basis."

Further to your second question, it may be advised that you shall be eligible to receive your remuneration for annual leave which are not utilised by you. This is in accordance with Article 79 of the Labour Law which states:

"Where a worker is dismissed or leaves his job after the period of notice prescribed by law, he shall be entitled to remuneration in respect of any days of annual leave not taken. Such remuneration shall be calculated on the basis of the remuneration that he earned on the date on which the leave became due."

Pursuant to the above mentioned provision of Labour Law, at the time of settlement of your end-of-service benefits, should you be required to compensate your employer up to 45 days of salary, you may ask your employer to adjust 30 days against the leave salary payable to you by your employer and you may pay for the remaining 15 days of salary, to your employer.

Ashish Mehta, LLB, F.I.C.A., M.C.I.T., M.C.I.Arb., is the founder and Managing Partner of Ashish Mehta & Associates. He is qualified to practise law in Dubai, the United Kingdom, Singapore and India. He manages a multi-jurisdictional law firm practice, providing analysis and counselling on complex legal documents, and policies including but not limited to corporate matters, commercial transactions, banking and finance, property and construction, real estates acquisitions, mergers and acquisitions, financial restructuring, arbitration and mediation, family matters, general crime and litigation issues. Visit www.amalawyers.com for further information. Readers may e-mail their questions to: news@khaleejtimes.com or send them to Legal View, Khaleej Times, PO Box 11243, Dubai.