

Unused leave should be compensated



LEGAL VIEW

Ashish Mehta

One of my employees resigned before completing one year at our company. He recently travelled to his country without resigning and wanted to avail 14 of his 24 days' annual leaves (the number for employees with less than one year's service).

A month later, his mother died, and he considered himself on emergency leave. After 67 days away, he finally submitted his resignation from his home country.

Do I need to pay him legally? I believe there is no gratuity or leave balance since he has already availed his leave. He has not served his notice period, too. Is he eligible for emergency leave before completing one year?

Pursuant to your questions, you should pay the said employee for the 14 days of annual leave and for the balance of annual leave not availed by the employee in accordance with Article 79 of the Federal Law No. 8 of 1980 regulating Employment Relations in UAE (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 leaves 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." Further, Article 75 of the Labour Law reads: "Every worker shall, within each year of service, be granted a period of annual leave of not less than:

(a) two a month, where the worker's period of service is more than six months but less than one year;

(b) 30 days a year, where the worker's period of service is more than one year. Where a worker's service is terminated, he shall be entitled to annual leave in respect of fractions of the last year."

The Labour Law is silent about emergency leave and therefore the employee may not be eligible for emergency leave before or after completion of one year of employment. However, depending on the policy of the employer, the employer may treat the emergency leave availed by the employee as an extension of his annual leave.

In this particular instance, due to the demise of the mother of the employee the employer may at discretion grant emergency leave to an employee on humanitarian grounds. The employee is not eligible for severance pay as he has not completed one year of employment.

We assume that the said employee's work permit and visa are cancelled. In this scenario you may not be in a position to claim any compensation from the employee. In case his work permit is not cancelled, you may be able to

Know the law

Where an employer or a worker fails to give the party notice of the termination of the contract or reduces the period of notice, the party obliged to give notice shall pay the other party compensation, called 'compensation in lieu of notice'.

claim compensation from the employee on the grounds that he has not served the 'notice period' in accordance to Article 119 of the Labour Law which states: "Where an employer or a worker fails to give the party notice of the termination of the contract or reduces the period of notice, the party obliged to give notice shall pay the other party compensation, called "compensation in lieu of notice", even where no prejudice has been sustained by the other party as a result of such failure or reduction.

The said compensation shall be equal to the worker's remuneration in respect of the entire period of notice or the time by which it was reduced. Compensation in lieu of notice shall be calculated on the basis of the remuneration last received, in the case of worker remunerated on a monthly, weekly, daily or hourly basis or in the case of a worker remunerated at piece rates, on the basis of the average daily remuneration referred to in article 57 of this Law."

Employment visas not possible from 2 GCC countries
I have a resident visa in the UAE and I go back and forth to the Kingdom of Saudi Arabia for work. If I get a Saudi employment visa, will I have any problem visiting Dubai if I hold residency visas for both countries?

Pursuant to your question, it is assumed that you are holding an employment visa issued in the UAE. As per the existing regulations, a person holding residence/employment visa issued by a member country of the GCC should not be issued an employment visa from another member country of the GCC.

Therefore, to obtain an employment visa from Saudi Arabia, you should cancel the employment visa held by you in the UAE. But if the resident visa you are holding in the UAE is an investor visa, you may obtain a Saudi Arabia employment visa if any company is willing to sponsor you, as an employee.

Ashish Mehta is the founder and Managing Partner of Ashish Mehta & Associates. He is qualified to practise law in Dubai, the United Kingdom, Singapore and India. Full details of his firm on: www.amalawyers.com. Readers may e-mail their questions to: news@khaleejtimes.com or send them to Legal View, Khaleej Times, PO Box 11243, Dubai.