

You can complain against firm if it fails to deliver service



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LEGAL VIEW

Q I had signed an agreement with a tour company in April 2018 in order to avail hotel bookings for a period of two years wherein I would be offered a 6 days/ nights hotel booking per year. I made a payment of Dh9,000 to the tour company. However, when I tried to utilise the facilities offered to me in the agreement, I was unable to do so as the office of the company was closed with a board stating that it is under maintenance. Their landline is not reachable. The company had posted a mobile number as contact at the entrance of their office but no representative responds on it. How can I recover the money I have paid to the tour company?

A: We assume that you and the tour company are based in the emirate of Dubai. It may be noted that the provisions of Federal Law No. 5 of 1985 on Civil Transactions Law of the United Arab Emirates (the 'Civil Transactions Law') and Federal Law No. 24 of 2006 on Consumer Protection ('Consumer Protection Law') shall be applicable.

As per the provisions of the Consumer Protection Law, a Consumer Protection Department is instituted under the Ministry of Economy, wherein a consumer may file a complaint before the department. This is in accordance with Article 4 (6) of the Consumer Protection Law, which states: "A department shall be set up in the Ministry under the name of the Consumer Protection Department and shall carry out the following competencies:

Receive consumers' complaints and adopt the procedures in this regard or refer them to the competent authorities. The complaint may be submitted directly by the consumer. It may be filed by the consumer protection association for it is considered a representative of the complainant." Based on the aforementioned provision of the Consumer Protection Law, you may file a complaint against the company with the Consumer Protection Department based in the Department of Economic Development office.

As per the provisions of the Civil Transactions Law, the parties to an agreement have an obligation to each other to perform the contract in a manner which is in consonance with principles of good faith. This is in accordance with Article 246 (1) of the Civil Transactions Law, which states: "The contract shall be implemented, according to the provisions contained therein and in a manner consistent with the requirements of good faith." Therefore, it may be construed that

the tour company with which you have entered into an agreement may not be acting in good faith as they have not been available at their office and they have not been responding to your calls which has subsequently made you to not avail the facilities which were promised to you.

It may be pertinent to note that as the amount that has been paid to the company by you is

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A contract between a company and consumer shall be implemented, according to the provisions contained therein and in a manner consistent with the requirements of good faith

Dh9,000, it is recommended that you lodge a civil complaint against the firm at the Centre for Amicable Settlement of Disputes at Dubai Court (the 'Centre'). The Centre is a reconciliation department which deals with debts/claims amounting below Dh50,000. While filing the civil complaint against the company, it would be prudent on your part to take along with you any supporting documentary evidence (agreement with the company, payment to company as stated by you) and submit them to the Centre for registering the civil complaint. You may approach the centre for further details.

When leave provisions become null and void

Q My employment contract states that I am entitled to 30 days of unpaid leave for one year. What are my rights regarding paid leave and how can I avail of it?

A: Pursuant to your query, we assume that you are employed by an employer based in the mainland of UAE and therefore, the provisions of Federal Law No. (8) of 1980 regulating employment relations in the UAE (the 'Employment Law') shall be applicable.

As per the provisions of the Employment Law, it may be noted that an employee shall be entitled to a paid annual leave of 30 days upon completion of one year of employment with an employer. This is in accordance with Article 75 of the Employment Law. It may be noted that your employer should pay you salary, which includes basic pay and housing allowance if applicable as part of your annual leave salary. This is in accordance with Article 78 of the Employment Law.

Your employer is obligated to pay you salary for the annual leave which are accrued to you as on the date of commencement of your annual vacation. The annual leave salary may be paid by your employer prior to the commencement of

your vacation. This is in accordance with Article 80 of the Employment Law, which states: "Before the commencement of an employee's annual leave, his employer shall pay the full remuneration due to him plus the leave pay prescribed for him under this law."

Any leave taken by you beyond the annual leave may be an unpaid leave. This is in accordance with Article 89 of the Employment Law, which states: "Subject to the provisions of this law, any employee who fails to resume work immediately after the expiry of his leave shall automatically forfeit his remuneration for the period of his absence, with effect from the day immediately following that on which the leave expires."

If the 30 days of leave specified in your employment contract is in addition to the annual leave then your employer is not under an obligation to remunerate you for the additional 30 days of leave as mentioned in your job agreement.

However, if your employer construes the clause related to 30 days of unpaid leave mentioned in the employment contract as the regular annual leave entitlement, then such provision is contrary to the Employment Law and may be considered as null and void. This is in accordance with Article

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Any employee who fails to resume work immediately after the expiry of his leave shall automatically forfeit his remuneration for the period of his absence

7 of the Employment Law, which states, "Any stipulations contrary to the provisions of this law, even if it were made prior to its commencement, shall be null and void unless they are more advantageous to the employee."

Based on the aforementioned provision of the Employment Law, your employer is obligated to remunerate you for the annual leave. However, any further leaves, other than annual leave and sick leave, availed by you shall be unpaid and the employer may not be under an obligation to remunerate you for any additional leaves taken. In the event your employer does not pay your salary for the annual leaves or any accrued annual leaves, you may file a complaint against your employer with the Ministry of Human Resources and Emiratisation (MOHRE) related to non-payment of salary for annual leaves.

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