

Can work for competitor outside UAE



LEGAL VIEW
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I have been working as a sales manager for an Abu Dhabi-based company since September 7, 2011. My contract is unlimited and as per my contract, either party can terminate by giving three months notice period.

I have received a better offer from a competitor who is willing to employ me outside the UAE because of the clause given below in my offer of employment - 'Confidentiality and Non-competition'.

Throughout the duration of your employment and for two years after termination or expiry, you will not disclose to unauthorised third parties, any information which the Company considers to be Confidential or Proprietary, including, but not limited to, information relating to business plans, on-going projects, pricing and selling policies and/or practices.

Should you decide to terminate your employment with our company, you agree that, without prior written consent of the Company, for a period of six months after termination, you will not accept work or provide services, similar to your work for us, for a company, which competes with the business of our company".

Kindly advise if I can join the new job after my notice period of three months since the new job is based outside the UAE.

Do I need to wait to complete my two years to resign?

Am I eligible to end-of-service benefits and how much I can expect?

It is assumed that your employment is subject to provisions of the Federal Law No (8) of 1980 on Labour Regulations (the "Labour Law").

Your current employer is within its rights to include a clause pertaining to 'Confidentiality and Non-Competition' into your employment contract, and your current employer based on the aforesaid clause can restrict you from joining an employer who is in competition with your current employer, in accordance with the provisions of Labour Law and Federal Law No. 5 of 1985 on 'Civil Transactions Law'.

However, the said clause may be applied pursuant to certain conditions like 'time, place and type of work', in accordance with Article (909) of Federal Law No. 5 of 1985 which states:

"> If a worker, in the course of his work, has access to the secrets of the work or gets acquainted with the customers of the firm, the two parties may agree that the worker may not compete with the employer or take part in a work competitive to his work after the expiry of the contract.

> Nevertheless, such an agreement shall not be valid unless it is restricted to time, place and type of work, to the extent which is necessary for the protection of the legitimate concerns of the employer.

> An employer may not abide by such an agreement if the contract is terminated and if nothing occurs on the part of the worker that justifies termination, nor may he abide by the agreement if

he acts in a manner that justifies the termination of the contract by the worker."

Pursuant to the aforementioned provision of the Labour Law, you may work for an employer who is in competition with your current employer, outside the United Arab Emirates as the jurisdiction of the Labour Law is confined within the United Arab Emirates.

However the 'Confidentiality and Non-Competition' clause as quoted in your aforesaid question is not confined to you working for a competitor of your employer within the United Arab Emirates. In fact, the aforesaid clause is silent on the jurisdiction for application of the aforesaid clause. Therefore, your current employer may initiate a civil claim against you demanding financial compensation for causing losses to them due to breach of the aforesaid 'Confidentiality and Non-Competition' clause, provided they can substantiate losses caused by you to your current employer, failing which their claim may not be maintainable.

Since you are working under an employment contract of unlimited duration, you may resign in accordance with the provisions of your employment contract or by furnishing three months' notice to your current employer, in accordance with 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 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."

Further, you will be entitled to certain end-of-service benefits as you have completed one year of employment, as per the provisions of Article 132 of the Labour Law, which 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:

> 21 days' remuneration for each year of the first 5 years of service.

> 30 days' remuneration for each additional year of service provided that the aggregate amount of severance pay shall not exceed 2 years' remuneration."

Since you are employed on an employment contract of unlimited duration your gratuity shall be calculated in accordance with the provisions of Article 137 of the Labour Law which states - "Where a worker, who is bound by a contract of unlimited duration, leaves his work of his own accord after continuous service of not less than one year and not more than three years' he shall be entitled to one-third of the severance pay provided for in the preceding article; where the continuous period of service exceeds three years but does not exceed

five years, he shall be entitled to two-third of such severance pay; where the continuous period of service exceeds five years, he shall be entitled to the full severance pay."

File complaint with MoL if end-of-service benefits are denied

I have been working in Abu Dhabi for a private company since May 2010 on an unlimited contract. My residency visa which is from Dubai will expire soon. Instead of my visa renewal the company is now in the process of cancelling my Dubai visa and will transfer it to an Abu Dhabi visa under another employer name. But the other employer's name also belongs to same company. I have not received my end of service benefits after signing the cancellation papers. My questions are: Once my visa will be cancelled, can I request my employer not to process the new Abu Dhabi visa since I don't have time to give them one month notice? If the employer asks for notice period, can I work after cancellation of my visa to finish one month notice period? If my Dubai visa is cancelled and the employer is in process for another Abu Dhabi visa during this time, can I resign?

Normally an employee should receive all his end-of-service benefits and final settlement amount from the employer at the time the employer seeks the signature of the employee on the Ministry of Labour document confirming receipt of all end-of-service benefits and final settlement amount by the employee.

You may file a complaint with the Ministry of Labour against your employer if he refuses to pay your end-of-service benefits and final settlement amount due towards you. Pursuant to this the Ministry of Labour will call upon your previous employer to pay your end-of-service benefits and final settlement amount.

In the event your employer fails to pay your end-of-service benefits and final settlement amount, you may seek a letter from the Ministry of Labour which will enable you to file a case against your previous employer before the court of competent jurisdiction in Dubai.

Prior to expiry of your current employment visa, you may notify your employer, in writing, of your decision not to renew the employment contract, upon its expiry. Further you may notify your employer that you are not interested to work for their associated/group entity in Abu Dhabi.

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