

# Employee entitled to get salary for unused leaves



**LEGAL VIEW**  
**ASHISH MEHTA**

**I am working in a private firm in Abu Dhabi as an IT engineer. I have received an offer letter from another company, which I am willing to accept. I have resigned from my job and have served my 30-day notice period. My last working day was in the first week of May. I joined the new company on May 26, 2010. Please clarify these doubts.**

**a) Can I get leave salary and air ticket (as was mentioned in my job contract) now for the current year?**

**b) How will the final gratuity be calculated? My company is asking me to stay for 60 days, and the new company wants me to join at once and is not willing to wait for me for 60 more days. Even my visa is expiring within a month. What is your advice?**

It is presumed that your employment is subject to the provisions of the Federal Law No 8 of 1980 on the Regulation of Labour Relations (the Labour Law). Pursuant to your question (as per my understanding), it may be advised that all employees are entitled to receiving salaries for the number of days of leave which was not availed by them. The leave salaries so accrued shall be payable even after termination of employment contract and shall be part of the end-of-service entitlements. This is in accordance with the provisions of Ar-

ticle 79 of the Labour Law which states: "A worker who is dismissed or who leaves his job after the period of notice prescribed by law shall be paid for any accrued annual leave days. Such payment shall be calculated on the basis of the worker's wage as on the date when the leave became due."

The entitlement for an air ticket shall depend on the policy of your employer, as there is no clear provision on the same. If your employer had specifically agreed on providing an air ticket for your annual leave, then you may claim for it. However, it may be noted that at the end of the employment, the cost for repatriation of the employee is required to be borne by the employer. This is in accordance with the provisions of Article 131 of the Labour Law which states as follows: "Upon expiry of contract, the employer shall bear the cost of the worker's repatriation to his point of hire or to any other point that was mutually agreed upon. Where a worker joins another employer upon expiry of his contract, the latter shall bear the cost of the worker's repatriation at the end of his service."

Without prejudice to the foregoing, if the employer fails to return the worker or to pay his repatriation expenses, the competent authorities shall do so at the employer's expense and may then recover any expenditure incurred in this connection by attachment. In case the reason for the termination of the contract is attributed to the worker, his repatriation shall be at his own expense if he has the means to pay." For the second part of your question, it may be noted that gratuity or severance pay for an employee is calculated on the basis of the number of years of continuous employment of the employee. The detailed provision regarding this is stated in Article 132 which says: "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:

1. 21 days' remuneration for each year of the first five years of service;

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

However, it may be noted that since your employment contract was of unlimited duration, the calculation for gratuity shall be done in accordance with the provisions of Article 137 of the Labour Law which states: Where a worker under an indefinite term contract abandons his work at his own initiative after a 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. Such a worker shall be entitled to two-thirds of the said severance pay if his continuous service exceeds three years up to five years, and to the full severance pay if it exceeds five years." In view of the aforementioned, it may be ad-

vised that since you are terminating your employment before completion of five years from the date of joining the employment, you shall be entitled to receive two-thirds of 21 days' remuneration for five years. This implies that your gratuity shall be calculated on the basis of your 14 days' remuneration for five years which further implies that you shall be entitled 70 days' remuneration as part of your gratuity. Further, it may be noted that since you are working under an unlimited period of contract, you may terminate your employment contract on a prior notice of 30 days. 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 a written notice at least 30 days before the termination."

Pursuant to the foregoing, it may be noted that you may leave the employment on a prior notice of 30 days only and that you do not have to serve a notice period of 60 days as is being insisted by your employer.

## Provision regarding annual leave and its calculation

**I work as an accounts manager with an insurance broker company incorporated in Dubai Multi Commodities Centre (DMCC) and have been working in this company for more than five years. I have a work experience of 22 years in Dubai. The below mentioned question is an objection raised by the new general manager at my company.**

**Our company is following 30 calendar days in a year and is off on Friday. While the first and third Saturday is a working day, second, fourth and fifth Saturdays are off.**

**When an employee goes on leave, he or she starts working from Saturday (as Friday is off) and end up with Thursday (there after Friday and Saturday off) and joins office on Sunday. The off days of company should be considered as leave days. Please clarify with regard to the UAE Labour law. I am aware that if the leave is taken from Monday to next week until Wednesday — and in between Friday and Saturday are off days — hence both days will be included in leave days.**

It may be noted that matters pertaining to employment and labour issues at DMCC are subject to provisions of the Federal Law No 8 of 1980 on the Regulation of Labour Relations. Pursuant to the foregoing, it may be noted that, in accordance with the provisions of the Labour Law, all employees are entitled to avail 30 days of annual leave for each completed year of

service. This is in accordance with the provisions of Article 75 according to which: "A worker shall, for each year of service, be entitled to an annual leave of not less than:

1. Two days a month, where the worker's period of service is more than six months but less than one year.

2. 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."

Further it may be noted that the date for commencement and expiry of the annual leave may be fixed by the employer. This is in accordance with Article 76 of the Labour Law which states: "The employer may fix the date of commencement of annual leave and, if necessary, divide such leave into not more than two periods. However, the leave division provision shall not apply to leaves of child workers."

Subsequently, it may also be noted that if holidays and leave entitlements on account of sickness and weekend breaks for an employee may not be carried forward if those days happen to fall within the course of annual leave of an employee. As per Article 77: "Holidays stipulated by law or by agreement, and any other days of leave on account of sickness, falling within an annual leave shall be considered as an integral part thereof."

Pursuant to the foregoing provisions of law it may be advised that the provision regarding annual leave and its accurate calculation for start dates and date of expiry shall depend on the mutual understanding between the employer and the employee. For instance it may be explained thus — that if an employee goes on annual leave, and the last day of work is a Thursday, the employee's last day of leave ends on a Thursday, then the employee may resume work on the next working day after the weekly day off.

In the UAE, since Friday is the weekly off day, the employee may re-join duty on the subsequent Saturday or Sunday as per the employer's policies.

However, if due to the nature of the work, the employer has to carry on business even on a Friday, then it shall be the obligation of the employee to resume work on Friday.

Therefore, to put it simply, an employee shall be entitled to 30 days of paid annual leave. The start date and the date of resuming work may be decided upon by the employer. Further, it shall be the duty of the employee to resume his work on the working day immediately subsequent to the day his annual leave concludes. Any days of leave taken in addition shall be part of unpaid leave.

*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](http://www.amalawyers.com) for further information. Readers may e-mail their questions to: [news@khaleejtimes.com](mailto:news@khaleejtimes.com) or send them to Legal View, Khaleej Times, PO Box 11243, Dubai.*