

No severance pay if sacked for indiscipline after warning



LEGAL VIEW
ASHISH MEHTA

I have been working as a saleswoman in a garment store in Dubai for two years, under Trakhees Free Zone visa. I was recently informed without notice that it was my last day at work and I was asked not to come for duty with immediate effect as they were cancelling my visa. Earlier, I had received a warning letter from the manager about my absence from work. The letter stated that if I continued being absent in the future, they would sack me. But due to ill health, I was forced to take leave again.

As I have now been dismissed from work, I'd like to know what end-of-term benefits I could receive from the company. I joined the firm on June 10, 2011, but my visa was stamped on August 22, 2011. I have not used up any annual leave.

We understand that your employer terminated your employment on the ground of unauthorised absence from work. "Trakhees (Department of Planning and Development, Ports, Customs Free Zone Corporation)" applies Federal Law No. 8 of 1980 Regulating Labour Relations and therefore your employment is governed by the provisions of the aforesaid law.

Article 120 (e) of the aforementioned law states, "An employer may dismiss a worker without notice, if the worker does not perform his basic duties under the contract of employment and persists in violating them despite the fact that he has

been the subject of a written investigation for this reason and that he has been warned that he will be dismissed if such behaviour continues." It is assumed that your employer terminated your employment on the grounds specified hereinabove.

You may not be able to claim the end-of-service benefits from your employer as the employees terminated in accordance with the provisions of Article 120 are not eligible for these benefits in accordance with Article 139 of the aforementioned law which states, "A worker shall forfeit all entitlement to severance pay in any of the following two cases:

(a) if he is dismissed from service for any of the reasons specified in Article 120 of this Law or if he leaves his work in order to avoid being dismissed in accordance with that article;

(b) if he leaves his work of his own accord and without notice, otherwise than in either of the cases specified in Article 121 of this Law (in the case of contracts of unlimited duration) or before completing five years of continuous service (in case of contracts for a limited period)."

However, you should be entitled to the annual leave salary on a pro rata basis till the last date of your employment with your employer in accordance with Article 78 of the Federal Law No.8 of 1980 which states, "Every worker shall be entitled to his basic wage and the housing allowance if applicable in respect of his days of annual leave

where the circumstances of the work make it necessary for a worker to work during all or part of his annual leave and the days of leave on which he works are not carried forward to the following year, the employer shall pay him his remuneration, plus a leave allowance in respect of the days worked at a rate equal to his basic wage."

You may provide a medical certificate to your employer to prove the genuineness of your absence from work on specified days and argue that certain circumstances did not permit you to inform your employer immediately or within two days of sickness as required under Article 82 of the Federal Law No. 8 of 1980 which states, "where a worker contracts an illness otherwise than as a result of an employment injury, he shall report his illness within a maximum of two days and the employer shall thereupon take the necessary steps to have him medically examined immediately for the purpose of verifying his illness."

If you are able to convince the authorities that your absence from work is duly supported by a medical certificate which could not be submitted within the above-stated stipulated time frame, you may consider filing a

complaint with the Ministry of Labour claiming arbitrary termination of employment by your employer.

Clear bank dues before travel I'm a bank defaulter and want to go to my home country for a week. I plan to clear the money owed to the bank. Should I pay the money in the bank or can I pay the money at the immigration counter if I am stopped on my way. Will I be stopped? Please advise.

It is advisable to settle the outstanding amount due to the bank prior to your travel, obtain a 'No Due Certificate' from the bank and further ensure that there is no restriction on you to leave the country, prior to your travel outside the country. It is assumed that the bank must have initiated the legal process and imposed a restriction on you leaving the country by notifying the General Directorate of Residency and Foreigners Affairs.

Should you decide not to follow the above-mentioned process prior to your travel, then you should be prepared to be stopped at the airport by the General Directorate of Residency and Foreigners Affairs which will cause delay in your travel unnecessarily.

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 estate 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 email their questions to: news@khaleejtimes.com or send them to Legal View, Khaleej Times, PO Box 11243, Dubai.