

Workers entitled to basic pay, HRA as leave salary



LEGAL VIEW ASHISH MEHTA

I work for an Abu Dhabi-based company and my two-year contract will expire on February 15, 2015. In my contract, my salary breakup is as follows — Basic salary: Dh7,000; House rent allowance (HRA): Nil; Transportation: Nil; and Miscellaneous: Dh3,000. I have availed 32 days of annual leave so far and 28 days are pending.

In the first year, the company paid me Dh10,000 when I went on leave but now they are saying that they made an error while making that payment and that I am eligible only to my basic salary, which is Dh7,000. Please explain if this is legal.

If I go for leave for 28 days from January 17, will the company pay me salary for the time I was on leave?

It is understood that you are working at an entity registered in Abu Dhabi and that your employment contract is due to expire on February 15 this year. It is understood that during the period of your employment, you have availed 32 days for your annual leave. Now that you wish to utilise your accumulated leave, your employer is insisting that you will be entitled to only basic salary for the period of leave. It is presumed that your employment is subject to provisions of the Federal Law No 8 of 1980 on the Regulation of Labour Relations (the "Labour Law").

Pursuant to your questions, it may be noted that your employment contract specifies a basic salary of Dh7,000 and there is no specification on the housing allowance, although an additional amount of Dh3,000 is paid to you as miscellaneous allowance. However, it may be advised that you are entitled to re-

ceive your basic wage in addition to your housing allowance as part of the leave pay, only if there is a provision as such. This is in accordance with the provisions of Article 78 of the Labour Law 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

“ An employer shall pay a worker, before the commencement of the latter’s annual leave, the entire remuneration due to him, plus the leave pay

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.

"It shall be unlawful in any circumstances to employ a worker during his annual leave more than once in two successive years."

In view of the foregoing, it may be advised that your employer is within his rights to pay you the basic salary only, since there is no overhead on housing allowance in your employment contract.

Further it may be noted that you are entitled to receive all your

previous dues from your employer along with the leave salary, before you start for your annual leave. And, therefore even if you wish to go on leave for 28 days and return on the last day of your employment contract, your employer is liable to pay you. This is in accordance with the provisions of Article 80 of the Labour Law which states:

"An employer shall pay a worker, before the commencement of the latter’s annual leave, the entire remuneration due to him, plus the leave pay prescribed for him in accordance with the provisions of this Law."

Employees entitled to receive contract copy

I’m an employee of a construction company and I haven’t been given a copy of my employment contract. My passport is with the company and all I have is my Emirates ID and the offer letter. The HR department in my company keep a close watch on all the employees. Is it legal for the company to withhold the contract? What are my rights in this situation?

It is understood that you are employed at a construction company since five months and you have not been given a copy of your employment contract and that your passport is in the custody of your employer without your consent. It is presumed that your employment

is subject to provisions of the Federal Law No 8 of 1980 on the Regulation of Labour Relations (the "Labour Law").

Pursuant to your question, it may be advised that all employees are entitled to receive a copy of the employment contract and all employers are liable to provide a copy to the employee. This is in accordance with the provisions of Article 35 of the Labour Law which states: "Subject to the provisions of article 2, a contract of employment shall be written in two copies, one being delivered to the worker and the other to the employer. In the absence of written contract, adequate proof of its terms may be established by any means of evidence."

However, it may be noted that an employee may obtain a soft copy of his/her employment contract online, from the website of the Ministry of Labour, UAE.

Further, it may be noted that it is not legal for employers in the UAE to withhold the passports of their employees in the UAE against the latter’s consent. And therefore, you may try to prevail upon your employer to return the passport to you. However, in the event your employer refuses to give your passport, you may consider filing a complaint in the court of competent jurisdiction for recovery of your passport from your employer’s possession.

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