

Ban can be lifted on basis of qualification



LEGAL VIEW
ASHISH MEHTA

I am working on a limited contract period of two years on an engineer visa. I have been offered another job at a monthly salary of Dh10,000. I contacted the Ministry of Labour's call centre and was informed that I need a minimum salary of Dh12,000 to avoid a labour ban. Can you elaborate on the exact salary I need to avoid the ban?

It is presumed that your employment is subject to provisions of the Federal Law No 8 of 1980 on Regulation of Labour Relations and the consequent ministerial orders. Pursuant to your question, it may be noted that an employee who may terminate his/her employment before the completion of two years of continuous service, may not be imposed an employment ban if such employee is subsequently offered a salary in accordance with his/her professional qualifications.

This is in accordance with Article 4 of the Ministerial Order No. 1186 of 2010, which states: "As an exception to the provision of the Item No. (2) of Article 2 of this Resolution, the Ministry may issue a work permit to an employee without requiring the two-year period in the following cases:

(a) In the event that the employee is starting his new position at the first, second or third professional levels after fulfilling the conditions for joining any of these levels according to the rules in force at the Ministry, and provided that his new wage is not less than Dh12,000 at the first professional level, Dh7,000 at the second professional level and Dh5,000 at the third professional level..."

It is assumed that you are an engineering graduate and therefore you fall under the purview of first professional level, under which Dh12,000 monthly salary is required to take up new employment before expiry of your limited contract. Since you are working on an engineer's visa, it is assumed that your professional education certificates are duly attested as per the requirements of the Ministry of Labour.

In this regard, it may be noted that certain professionals are exempted from imposition of a labour ban during change of employment from one employer to the other.

This is in accordance with Article 2 of the Ministerial Order No. 13 of 1991 on 'The organisation of the transfer of sponsorships of non-national labours the rules governing the same', which states: "Non-national labourers may be allowed to transfer one job to another and hence transfer of their sponsorship if they fall under the following categories:

- (a) Engineers
- (b) Doctors, pharmacists and male and female nurses
- (c) Agricultural guides
- (d) Qualified accountants and account auditors

(e) Qualified administrative officials

(f) Technicians operating on electronic equipment and laboratories

(g) Drivers who are licensed to drive heavy vehicles and buses."

Based on the foregoing, your prospective employer may apply for lifting the ban based on your professional qualification.

Changing jobs after renewing contract

I have been working as a specialist doctor in a hospital. I finished the first two-year limited period contract with my current employer, and six months of the renewed two-year limited period contract.

I want to know whether I can move to another hospital after serving a three-month notice period. Will I need a no objection certificate (NOC) from my current employer? Will there be a ban or any other legal sanction if my salary is more than Dh12,000 per month?

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 noted that employees working under a limited period employment contract are not required to serve a notice period in accordance with the Labour Law. Further, in case of a limited period employment contract, both the employer and the employee may be liable to compensate the other party if either of them terminates the employment contract before the completion of the term of the employment contract, as stated below:

(a) In case of breach by the employer — the employer shall be liable to compensate the employee with three months of remuneration as stated in Article 115 of the Labour Law which states as follows:

"Where an employment contract is for a definite term and the employer revokes it for reasons other than those specified in Article 120 he shall be required to compensate the worker for any damage the latter sustains, provided that the amount of compensation shall in no case exceed the aggregate wage due for a period of three months or the remaining period of the contract, whichever is shorter, unless otherwise stipulated in the contract."

“Where a job contract is for a definite term and the employer revokes it for reasons other than those specified in Article 120, he shall be required to compensate the worker for any damage the latter sustains

(b) In case of breach by the employee — the employee shall be liable to compensate the employer for up to half the employee's remuneration for three months. This is in accordance with in Article 116 of the Labour Law which states:

"Where a contract is revoked by the worker for reasons other than those specified in Article 121, he shall be required to compensate the employer for any damage the latter sustains as a result, provided that the amount of compensation shall not exceed half a month wage for three months or for the remaining period of the contract, whichever is shorter, unless otherwise stipulated in the contract."

Further, the employee may not take up employment with the new employer for one year.

In case your current employer is willing to provide you the NOC to work with another hospital (employer) then the issue of labour ban shall not arise. But in case your employer is not willing to provide the NOC and wish to cancel your labour contract upon breach of labour contract by you, the Ministry of Labour may impose a labour ban on you.

However, in the event a ban gets imposed, your prospective employer may apply for lifting the ban based on your professional qualification in accordance with Article 2 of the Ministerial Order No. 13 of 1991 on

'The organisation of the transfer of sponsorships of non-national labours the rules governing the same' (as answered in the previous question).

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 for further information. Readers may e-mail their questions to: news@khaleejtimes.com or send them to Legal View, Khaleej Times, PO Box 11243, Dubai.