



Withholding passport without employee's consent is unlawful



LEGAL VIEW
ASHISH MEHTA

I am a woman teacher at a school in Dubai. I have been working here for over a year now and want to return home as I'm unhappy with the work conditions. I informed the management about my intention to resign and sent them a letter stating a month's notice period as mentioned in the contract. But I'm yet to hear from them.

My passport is with them and this delay is affecting my travel plans. I mailed them again last week, reminding them about my resignation, but there is no response in writing. I think they're delaying my departure till the end of the school term. What should I do? Should I complain to the labour department? My passport is still with the school.

The condition of serving a notice period prior to termination of an employment contract generally applies to employment contracts of unlimited duration in accordance with the various provisions of the Federal Law No. 8 of 1980 on Labour Relations (the 'Labour Law'). Since your contract required you to serve a notice period, it may be assumed that your contract of employment is of unlimited duration and therefore you are required to serve notice to your 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 a contract concluded for an unlimited period expresses his intention to terminate the contract, provided the provisions of the law regarding the period of notice are observed and on ground accepted for the non-arbitrary termination of the contract".

In terms of the notice period you are required to serve a notice of 30 days 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 notice in writing at least 30 days before termination.

(2) In case of workers working on a daily basis, the period of notice shall be as follows:

(a) one week, if the worker has been employed for more than six months but less than one year; (b) two weeks, if the worker has been employed for not less than one

year; (c) one month, if the worker has been employed for not less than five years;"

Detention of the passport of an employee by the employer without the consent of the employee is unlawful in the UAE.

You may file a complaint against your employer at the Ministry of Labour in the UAE in respect of (i) the termination of your employment contract; (ii) settlement of your end of service benefits; and unlawful detention of your passport. However, prior to doing the aforesaid you may ensure that you have served the required notice period. In the event you are not satisfied by the resolution of the complaint filed with the ministry you may request the ministry to refer the complaint to the Dubai courts.

You may also consider filing a complaint with the police in Dubai against your employer for unlawful detention of your passport.

Residence visa for wife

My question is, after marriage, can a person bring his spouse to UAE on a visit visa, or do I have to bring my wife on visit visa and then convert it to a residence visa sponsored by me? I don't have my wife's name in my passport, but have all the marriage documents which have been duly attested. Should I first make the addition to my passport before applying for the visa?

Your wife could either enter the UAE on a visit visa or she may enter on a residence visa. Should she enter on a visit visa you could obtain a residence visa if you fulfill the necessary criteria in respect of salary conditions and accommodation. Thereafter a UAE residence visa may be affixed on her passport subject to a clear medical test report.

It is understood that it is not a precondition to mention the name of your wife on your passport for a residence visa for your wife.

Ashish Mehta, LLB, F.L.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.