

Unpaid dues: Complain in 2 months

Absconding report not legal if employer knows employee's whereabouts, can bring him to ministry



LEGAL VIEW
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I had been working in a company for more than one year (16 months) under an unlimited contract. The company closed down because of some problem in October 2012 and the owner started another company in Jumeirah Lake Towers (JLT) in the same month. I was to come there and work as a freelancer. I was there till May 15, 2013. I was then asked not to come to work. I told my employer to cancel my visa and settle my dues, to which he said he won't give me anything. I registered a complaint with the Ministry of Labour online on May 18.

My employer then called me and asked to sign my cancellation papers, to which I said I would do so only if I get my dues. He then filed an absconding complaint against me on May 23.

The labour officer called for a hearing and she was supporting my employers. I asked them to transfer my case to the court and I was called for a hearing. Now, the employer has paid me my dues, but I still have a false absconding case against me and a one-year ban. What do I do to lift the absconding case?

The UAE Ministry of Labour had recently laid down guidelines pertaining to duties of an employee, in the event of the closure of a business of the company where he was employed. As per the guidelines, an employee should file a complaint at the ministry within two months of the closure if the employer does not cancel his work permit and residence visa, after the final settlement and payment of his end-of-service entitlements. In case the employee fails to lodge the complaint as such, he may face the imposition of a labour ban, which

may be for a period of one year.

It is understood that you were working with an entity registered in JLT as a freelancer whereas your employment visa was issued by the previous company of your employer. This is in violation of the existing employment and labour laws of the UAE.

Article 2 of the Cabinet Resolution No. 25 of 2010 on Work Permits Applicable in the Ministry of Labour states, "No Employer may hire a UAE national or non-national worker resident in the state in any of his establishments except after obtaining any of the following internal work permits from the ministry:

1. Worker transfer permit: That is the permit whereby the non-national worker is transferred from/to another firm registered in the ministry.

2. Temporary work permit: It is the permit whereby a national or non-national is employed in a job, the nature or accomplishment of which takes a period of not more than six months in any establishment.

3. Part-time work permit: It is the permit whereby a national or non-national is recruited in a job with working hours less than the normal working hours of full-time workers engaged in the same job at a firm.

4. Work permit for those sponsored by their families: It is the permit whereby those sponsored by their families are recruited in a firm.

5. Juveniles work permit: It is the permit whereby a national or non-national whose age is between 15 and 18 years is recruited in a firm.

Pursuant to the absconding case filed against you, you may defend yourself on the plea that actually you were not absconding and that

you had maintained regular communication with your employer and your employer had full knowledge on your whereabouts; provided you have enough evidence to that effect.

This in accordance with Articles 4(1) and 4(3) of Ministerial Resolution No. 721 for 2006 on Escape Reports Procedures, which states, "The competent employee shall confirm, at his own responsibility, when looking into the request to register an escape report or its cancellation, and that the conditions

721 for 2006 on Escape Reports Procedures, which states, "If the escape report was fictitious or malicious, the facility shall be obliged to pay ten thousand dirhams in fees for the delay in amending its status in accordance with the table attached to the First Article of the mentioned Ministerial Resolution No. 19 for 2005.

The ministry may ban the facility and all other facilities owned by any of the owner or partners or in which any of them are partners, provided they do not include a

of the Federal Law No. 8 of 1980 on Labour Relations (the "Labour Law").

Article 75 of the Federal Law No. 8 of 1980 states, "Every worker shall, within each year of service, be granted a period of annual leave of not less than:

(a) two a month, where the worker's period of service is more than six months but less than one year;

(b) 30 days a year, where the worker's period of service is more than one year.

"When a worker's service is terminated, he shall be entitled to the annual leave in respect of the fractions of the last year." Further, Article 78 of the Federal Law No 8 of 1980 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.

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

Pursuant to the aforementioned provisions of the Labour Law, an employee is eligible for a paid annual leave of at least two days a month, once he successfully com-

pletes six months of service within a year of service with the employer; and after completion of one year, he is eligible for a leave of 30 days in a year. Subsequently, it shall also be unlawful for your employer to make you work in respect of the number of days taken in leave.

However, you have mentioned that your employer is insisting on not deducting four days from your annual leave in furtherance of a new contract.

But this contract will have no validity, as you had taken the four days' leave based on a prior agreement with your employer and presumably your employer had not imposed any conditions upon your leave at that point of time.

Did you sign this new contract? If not, then you are not bound by the terms of this new contract.

Otherwise also, this new contract shall have no validity in accordance with Article 40 of the Labour Law which states, "Where the two parties continue to perform the contract, without an expressed agreement, after the expiry of its initial period or after the completion of the work agreed upon, the original contract shall be deemed to have been tacitly extended on the same conditions as those already contained therein, other than the condition respecting its duration."

Should your employer not pay you your entitlements, you may file a complaint at the Ministry of Labour against your employer.

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for an escape report are met in general. An escape report may not be registered in some of the following cases:

4 (1) If the worker concerned on whom a report is to be filed had a complaint or labour claim tried before the ministry or the competent court;

4 (3) If the facility is aware of the place where the worker is and the competent officer sees that it is possible to call him and bring him to the ministry without apprehension."

Further, if you are able to prove your innocence in the absconding case, your employer may be penalised in case the court concludes that the absconding complaint filed against you was a frivolous one and filed with a mala fide intent.

This is in accordance with Article 12(3) of Ministerial Resolution No.

partner whose name was not mentioned in the violating facility, until the requested fee is paid."

Conditions in unsigned contract not enforceable

I work for a call centre as a sales consultant. I took four days of my annual leave earlier this month and when I left, I was on target with my production. When I came back, I was told that I had to make eight extra sales for the days I was on leave because there is no longer deduction on annual leave according to a new contract that is drawn.

Please advise if this is allowed. I did not know about the new rule before I went on leave.

The sales target set by your employer may not be in contravention of your entitlement to your annual leave as per the provisions

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