

Probation only for 6 months

If employer doesn't terminate services in this period, it will be deemed confirmation



LEGAL VIEW ASHISH MEHTA

I am working for a free zone company. I was given an offer letter as seen below with a salary of AED X amount.

"You will be under probation for a period of three months from the date of joining and subject to satisfactory performance, you would be confirmed as a regular employee of the company. Upon confirmation, your salary will be revised to AED X+1,000."

It's been a year since I started working for this company. And every time I asked them about the raise, they say they would look into it and come back later. They have never given me any initiation (written or orally) about my performance or made me a permanent employee.

Now I am asked to leave the company (asking me to resign myself with the said notice period) as the project I was working has been completed and they do not need my services.

As I have asked them for my pending dues of Dh9,000 (Dh1,000 per month for nine months), they say that they had given me a confirmation (letter) about me being made permanent. Can I contact the labour department of the free zone? Please advise.

It is understood that you are working for an entity incorporated in a free zone in the United Arab Emirates for the past one year and that

you had been offered a certain salary, and it was promised to you that upon successful completion of the three months of your employment, your salary would be revised and be increased by Dh1,000. Despite your repeated requests for a salary review, your employer never conceded to your requests and your service has also not been regularised.

And it is further understood that your employer is now asking you to resign from your employment saying that they do not need your services anymore.

You have not mentioned the name of the free zone where your employer is registered as an entity. However, it may be advised that certain free zones follow the Federal Law No. 8 of 1980 on the Regulation of Labour Relations (the "Labour Law") whereas others follow their own regulations relating to disputes between the employer and its employee.

It may be further advised that the Labour Law mandates that an employee cannot be put into a probationary service for a period exceeding six months. This is in accordance with Article 37 of the Labour Law which states:

"A worker may be engaged on probation for a period not exceeding six months, during which his services may be terminated by the employer without notice or severance pay: Provided that a worker shall not be engaged on probation more than once in the service of any one em-

ployer. Where a worker successfully completes his period shall be reckoned towards his period of service."

Your employer did not issue any communication to you confirming your employment upon completion of the three months' probation period as per your employment contract and you continue to work till date. Therefore, it may be argued that your employer's failure to terminate your services during the probation period is considered successful completion of your probation period by your employer to its satisfaction and, therefore, your employer is obliged to fulfil its contractual obligation to increase your salary by Dh1,000 per month. It is evident that your employer is committing a great prejudice against you and you may approach the free zone authority with which your employer is incorporated.

Ban on 'escaped' employee is for life

I had worked at Ferrari World Abu Dhabi from 2010 to 2012. While vacationing in India, I decided not to return to my job, due to family problems. The company informed me that they had cancelled my visa and had put an absconding ban. Now, can I come back to the UAE for a new job? If I want to go to another country via Dubai or Abu Dhabi airport, will there be any issue?

It is understood that you used to work at Ferrari World Abu Dhabi and during your annual leave, you decided not to return to resume your employment and continued to stay back in India.

Subsequently, your employer cancelled your visa and you sus-

pect that they may have also registered an absconding case against you and that you may have a ban imposed on you. Pursuant to your question, it may be advised that in the UAE, cases pertaining to absconding or escaped employees are regulated by the Ministerial Resolution No. (721) for 2006 'On Escape Report Procedures' (the "Ministerial Order"). Pursuant to this, an absconding circular results in a labour ban. This is in accordance with the Eleventh Article of the Ministerial Order which states:

"Any worker whose work relation ended in escape, and against whom a final escape circular was issued, shall be permanently deprived from working in the state in accordance with the provisions of this resolution." A labour ban pursuant to an 'escape circular' usually restricts an individual from taking up an employment anywhere in the UAE for life. You may therefore be refrained from taking up employment in the UAE for life.

Pursuant to your second question, it may be advised that you shall be free to enter and travel through the country via any of its airports. In your

case, as you suspect that the ban may have been imposed, you should first ascertain whether your employer imposed a ban on you from taking up any employment and accordingly make an attempt to get the ban lifted on the basis that your employer was fully aware that you were on annual leave and you informed your employer that you will not return to continue your employment.

Revoking a ban shall be at the discretion of the government agency concerned — that is the Ministry of Labour, Abu Dhabi. This is in accordance with the Fourteenth Article of the Ministerial Order which states:

"Department Heads at the Ministry in Abu Dhabi and Dubai, as well as the Directors of the competent Labour Offices are authorised to cancel the escape report and implement the procedures on the violating facilities and workers in accordance with the provisions of the Ministerial Resolution and the resolutions, decisions and regulations issued in implementation of the provisions of the law."

You may take the assistance of a legal practitioner in the UAE who may provide you further assistance.

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