



No-objection letter could help you avoid labour ban



LEGAL VIEW
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I am an outsourced bank employee working as a sales professional. After completing my one-year contract with the bank, I decided to leave the job as I got a new one. The company that has outsourced me to the bank is ready to cancel my visa and gave me a relieving letter. My employment contract is of unlimited duration and I hold an MBA degree. The new employer is asking me for a no-objection letter to avoid a ban. My last salary was Dh5,500 and the new offer is Dh6,000 plus car. Please advise whether a labour ban will be imposed on me. If so, is there any possibility of lifting the ban?

Your visa was not sponsored by the bank but by the entity, which had outsourced your services to the bank, and therefore, you are the employee of this entity and not the bank.

Labour ban may get imposed on an individual who may terminate his employment before the completion of two years of continuous service with the same employer. And upon imposition of an employment ban, a new work permit may not be issued for a period of at least six months.

However, it may be noted that employees who terminate their employment after the completion of two years of continuous service, may not have to face an employment ban if both the employer and the employee have agreed to such termination of the employment contract. This is in accordance with Article 2 of the Ministerial Order No. 1186 of 2010 on "Rules and Conditions of Granting a New Work Permit to an Employee after Termination of the Work Relationship in Order to Move from One Establishment to Another" (the "Ministerial Order"), which states:

"Article (2) The following two conditions must be met in order to

grant the work permit mentioned in Article (1) of this resolution:

> Agreement between the employee and the employer to conclude the work relationship.

> The employee must have spent at least two years with the employer."

If you can secure a no-objection letter from your current employer no employment ban should be imposed on you. The no-objection letter must be to the effect that your employer does not wish to impose a ban on you and further it has no objection to your joining another employer in the UAE after termination of your current employment. Since your employer has already assured you of cancellation of your employment visa, you may seek a letter of no-objection from your employer to avoid the imposition of any ban on you. You may further check with the Ministry of Labour on provisions pertaining to the imposition of an employment ban.

No salary, no work
My friend, who has been working with an entity engaged in the business of tourism, has not been paid her salary for about three months. When she lodged a complaint with the Ministry of Labour, her employer asked her not to come to work without providing her a formal letter of termination of employment. What should she do now? Does she have to go for a negotiation with the company for a cash settlement or wait for a say from the ministry? How can she avoid imposition of an employment ban?

Pursuant to your questions, it may be advised that your friend may continue to follow-up on her complaint against her employer at the Ministry of Labour. The Ministry of Labour provides a forum for resolution of disputes between the employer and the employee. Pursuant to which your friend may

negotiate and also seek payment of her pending salaries and end of service benefits and cancellation of her visa.

Further, if her employer is offering her a cash settlement which is acceptable to your friend, she may consider taking the money and withdraw her complaint once all her other entitlements are settled.

However, if the money being offered by the employer is not acceptable to your friend, she may consider to approach the labour disputes section of the court of competent jurisdiction and seek full payment of her salaries and any other benefit(s) that she may be entitled to receive including leave salaries for the number of days of leave she had not availed and also her severance pay.

Further on the question of imposition of an employment ban, it may be noted that employees who may terminate their employment after the completion of two years of continuous service, may not be imposed an employment ban if both the employer and the employee have agreed to such termination of the employment contract. This is in accordance with Article 2 of the Ministerial Order No. 1186 of 2010 on "Rules and Conditions of Granting a New Work Permit to an Employee after Termination of the Work Relationship in Order to Move from One Establishment to Another" (the "Ministerial Order"), which states:

"Article (2) The following two conditions must be met in order to grant the work permit mentioned in Article (1) of this resolution:

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ee and the employer to conclude the work relationship.

> The employee must have spent at least two years with the employer."

Pursuant to the foregoing, your friend may seek a no-objection letter from her current employer to avoid the imposition of a labour ban.

Alternately, it may be noted that no employment ban will be imposed on your friend, if after termination of her existing employment contract, she is subsequently offered a salary in accordance with her professional qualifications. This is in accordance with Article 4 of the ministerial order 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..."

However, it may also be noted that termination of an employment contract in pursuance of a court order may also preclude the concerned employee from being imposed a labour ban.

It is further advised that your friend may take the assistance of a legal practitioner who may provide comprehensive counselling and litigation support in this regard.

Ashish Mehta is the founder and managing partner of Ashish Mehta & Associates, Dubai. 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. Readers may e-mail their questions to: news@khaleejtimes.com or send them to Legal View, Khaleej Times, PO Box 11243, Dubai.