

Employee can quit if he faces harassment



LEGAL VIEW
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I am employed with an Indian school in Dubai as Principal/Administrative officer under limited contract where the contract doesn't have any clauses than the usual given by the labour department.

My employer has taken a supporting agreement as internal agreement in which the clauses below are mentioned.

1) If I wish to resign from the services I need to pay the employer 3 months' salary

2) Accommodation expenses and recruitment charges till

date met by the employer as rent, furnishings and so on since I am provided the same by the employer.

3) Non-competent clause of not to join any other school in the UAE for one year after my exit.

I joined the school in September 2014 and the labour contract (bilingual) was made in October 2014. I am still under probation and wish to resign due to ill treatment and harassment by the employer/chairman. The employer even abuses me which is not acceptable. The employer

wanted me to surrender my passport. When I refused they took my Emirates ID when I went for emergency leave in January for 13 days. Kindly clarify if I can take suitable action against the employer.

When an employee working under a limited period contract terminates his contract, the employee shall be liable to compensate the employer for any prejudice the latter may have suffered owing to such termination up to an amount equal to the employee's 45 days' remuneration or the residual period of the contract, whichever is shorter. This is in accordance with Article 116 of Labour Law which states:

"Where a contract is revoked for reasons other than those specified in article (121), he shall be required

to compensate the employer for any prejudice the latter sustains, provided the compensation shall not exceed half the worker's remuneration for three months or the residual period of the contract whichever is shorter unless the contract contains a provision to the contrary."

In the event you resign, you will not have to pay your employer three months' salary. You will have to compensate for any prejudice suffered with an amount equal to 45 days of your remuneration.

Further it may be noted that the term 'remuneration' provided under Article 116 of the Labour Law includes the basic salary along with all other allowances. Article 1 of the Federal Labour Law defines the term 'remuneration' in the following manner:

"All payments made to the worker on a yearly, monthly, weekly, daily, hourly, piece of work, or production or commission basis, in return for the work he performs under the contract of employment, whether such payments are made in cash or in kind. Remuneration shall include the cost of living allowance. It shall also include any grant given to the worker as a reward for his honesty or efficiency if such amounts are provided for in the contract of employment or in the internal regulations of the establishment or have been granted by custom or common practice to such an extent that the workers of the establishment regard them as part of their remuneration and not as donations."

As such, the term 'remuneration' includes housing allowance. However, it does not include any recruitment expenses, and further to this it may be advised that your employer cannot claim for reimbursement of any recruitment costs from you, if you terminate your employment contract.

It may also be noted that if in the additional employment contract there is a clause which restrains you from taking up employment with a competitor of your employer for a period of one year, then such a clause does have a legal applicability, and you are legally obligated to respect that clause.

Further, it may be advised that if you are facing harassment from your employer, you may consider to leave your employment without giving a notice. This is in accordance with Article 121 of the Labour Law which states:

"Article 121: A worker may abandon his work without notice in either of the following cases:

1) If the employer fails to honour his obligations towards the worker, as provided for in the contract or in this Law.

2) If he is assaulted by the employer or the employer's legal representative." And in view of the foregoing, should you consider to leave your employment, it would be prudent on your part to approach the Ministry of Labour, UAE, and file a complaint against your employer supported by evidence.

Contract not updated annually
I have been working with an advertising agency for six years and I am on an unlimited contract with my company in Dubai. The contract is not updated annually or at the end of two years when the visa is renewed and does not reflect my current salary. The company says it is an oversight and does not foresee any complications. The passport number mentioned is also my expired document. Will this be a problem if I have to renew the visa for a family member.

It is not mandatory for employers and employees to renew an employment contract of unlimited period at the time of renewal of visa. And, in this context we may quote, Article 39 of the Labour Law which reads as follows:

"A contract of employment shall be deemed to be a contract for an unlimited period effective from the date of its commencement in any of the following circumstances:

a) if it is not made in writing;

b) if it is concluded for an unlimited period;

c) if it is made in writing and concluded for a limited period and both parties continue to perform it after the expiry of the period specified without a written agreement between them;

d) if it is concluded for the execution of a specific work for which no period is fixed, due to its nature, is likely to be renewed, and the contract continues after completion of the work agreed upon."

We may presume that when you had applied for visa of a family member, you already satisfied the minimum salary requirements of the General Directorate of Residency and Foreigners Affairs (the Directorate). Therefore, we do not foresee you facing any problem in the renewal of visa for your family member. Also, it may be noted that if your current passport number is not mentioned, you may show your old passport attached with the new one to the directorate.

If however, the directorate refuses to accept the existing employment contract, you may ask your employer to apply for a new employment contract.