

Domestic workers outside purview of 'Labour Law'



LEGAL VIEW
ASHISH MEHTA

I work for a family in Al Ain as driver on their sponsorship. I completed my first contract of two years and am into my second contract. I have done 18 months on this contract. Can I cancel my visa on my own if the sponsor does not cancel my visa? What can I do to take a new job in Dubai? I have an offer letter from a company which is valid for 30 days. Please advise.

It is understood that you are working as a driver for a family based in Al Ain and that you have already completed two and a half years with your current employer. It is presumed that your employment is subject to the conditions laid out in your contract/offer letter and that your employment is under the purview of the General Directorate of Residency and Foreigners' Affairs (the immigration department) in Al Ain.

Further to your questions, it may be noted here that employment related matters for domestic workers are outside the purview of the Federal Law No 8 of 1980 Regulation of Labour Relations (the "Labour Law") as visa for domestic workers is issued directly by the General Directorate of Residency and Foreigners' Affairs (the immigration department). Thus it may be advised that you may terminate your contract in accordance with the procedure mentioned in your employment contract.

In the event your employer does not wish to terminate your employment contract, you may also approach the office of the General Directorate of Residency and Foreigners' Affairs at Al Ain for further information and assistance in this regard. The General Directorate may at its discretion, cancel your visa based on your application. Once the visa is cancelled you shall have a grace period of 30 days to exit the country. During this period you may look for a new employment.

However, if you already have a new offer of employment from Dubai you may avail the same. In order to take up the new employment you may follow up on the appropriate procedures from your prospective employer.

Alternatively, you may wait for your current visa to expire and upon its expiry do not renew it.

Compensation for arbitrary termination

I joined Company X in Sharjah on September 1 last year as a Jr. Developer with a salary offer of Dh3,000 per month and three months' probation. The

offer said that after probation my salary would be raised to Dh5,000 per month. On October 31 the company made me sign a labour contract that said my probation period would be six months. Upon questioning, the management said this was just an agreement with the ministry and that they would follow what the offer letter says. I am on my father's visa. On March 31 this year, I received a memo of immediate termination (without any notice period). The company never paid the Dh5,000 they promised. Every month I used to ask them at least thrice about the revision and they would promise to adjust it the next month. Now, they are offering me the March salary as my total dues and compensation which is very unfair.

Could you please advise me if I should approach the Ministry of Labour in Sharjah with a complaint?

Does my offer letter hold more value over the labour contract?

It is understood that you were working with an entity incorporated in Sharjah, wherein you were first offered a salary of Dh3,000 during a probation period of three months and then a salary of Dh5,000 on completion of the probation period in accordance with your offer letter. However, in the employment contract drawn up in the Ministry of Labour format (the "MOL Contract") it was provided that your probation period shall be of six months. In this regard, it may be presumed that your employment is subject to provisions of the Federal Law No 8 of 1980 Regulation of Labour Relations (the "Labour Law").

Pursuant to your questions, as you have not mentioned the duration of your employment contract or the mode of its termination, it is difficult to suggest whether the termination of your employment was arbitrary and also the quantum of benefits that you are enti-

led to as of now. However, if you find that there are discrepancies in the concurring provisions of your offer letter and the MOL contract, you may approach the office of the Ministry of Labour in Sharjah and lodge a complaint against your employer for settlement of your end-of-service benefits.

You may also seek compensation from your employer for arbitrary termination if you feel that the reason for termination of your service was unrelated to your work and unreasonable. The amount of compensation may be determined in accordance with Article 123 of the Labour Law which states: "Article 123:

a) Where a worker is arbitrarily dismissed, the competent court may order the employer to pay him compensation. The court shall assess such compensation with due regard to the nature of the work, the amount of prejudice he has sustained and his period of service, and after investigating the circumstances of the work. The amount of the compensation shall in no case exceed the worker's remuneration for three months calculated on the basis of the last remuneration he was entitled to.

b) The provisions of the preceding paragraph shall not prejudice the worker's right to the gratuity he is entitled to and the termination notice allowance provided for in this law."

Further, it may be noted here that in the UAE, in case of a dispute arising between concurring provisions of the labour law and of the employment contract, or between the employment contract and the offer letter, the provisions which are more beneficial to the employee shall be effective and shall be held applicable. This is in accordance with Article 7 of the Labour Law which states:

"Any stipulations contrary to the provisions of this Law, even if it was made prior to its commencement, shall be null and void unless they are more advantageous to the worker."

Thus it may be advised that within the purview of the Labour Law, the charter which provides more benefits to the employee shall be held applicable in your case.

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