

# Covid-19: Employer can't sack workers while they are on leave



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LEGAL VIEW

**Q** Considering the Covid-19 pandemic and the crisis it has unleashed, my employer is implementing contingency measures by instructing its employees to take unpaid leave. It's actually being forced on us. The company is asking its staff to fill out a waiver letter addressed to their employer, which stipulates that the employee is voluntarily availing of the unpaid leave. It also says that the employer may choose to extend the unpaid leave when it deems it necessary. The aforesaid waiver letter further stipulates that the employee agrees to be made redundant if the duration of the unpaid leave exceeds six months. Is it legal to do so?

**A** We assume that your employment with your employer is governed by the provisions of the Federal Law No. (8) of 1980 regulating employment relations in the UAE (the 'Employment Law').

Pursuant to your query, it may be noted that an employer may terminate an employee on various grounds including but not limited to disciplinary actions, poor performances, long-term health issues and genuine economic challenges faced by the employer. However, an employer shall not terminate an employee while he is on leave. This is in accordance with Article 90 of the Employment Law, which states:

"Without prejudice to the instances in which an employer is entitled to dismiss an employee without notice or without the gratuity provided for in this law, an employer shall not dismiss an employee or serve a notice of dismissal on him while the employee is on a leave provided for under this section."

Whereas, you have mentioned that the waiver letter contains a stipulation which allows the employer to terminate its employee if the duration of the unpaid leave exceeds six months, it may be noted that if an employer is undergoing genuine financial difficulties and if it is able to prove that its deteriorated financial position due to prevailing natural calamity-pandemic health crisis has compelled it to take contingency measures, then the employer may terminate the employee. It may further be noted that the Employment Law is silent on termination due to pandemic health crisis.

However, in continuance it should be noted that the employee must voluntarily sign the waiver letter. The employer cannot force or coax its employees to sign the waiver letter as it is a criminal offence to do so. This is in accordance with Article 397 of Federal Law No. (3)

## Know the law



If an employer is undergoing genuine financial difficulties and if it is able to prove that its deteriorated financial position due to prevailing natural calamity-pandemic health crisis has compelled it to take contingency measures, then the employer may terminate the employee

of 1987 related to issuance of the Penal Code, which states:

"Shall be sanctioned to term imprisonment, whoever obtains by force or threat a deed, a signature on it, amendment or cancellation thereof or destruction."

Based on the aforesaid provision, if the employer has forced an employee to sign a waiver letter, he/she may initiate a criminal complaint against the company.

In view of the foregoing, an employer may terminate employment, if the employee voluntarily issued the waiver letter and the termination was effectuated after the fulfillment of the condition stipulated in the document. However, if the termination takes place without the fulfillment of the condition stipulated in the waiver letter or for the reason that the employee is not willing to sign it, then the employee may approach the employer and request to be compensated for arbitrary dismissal, if such termination is considered arbitrary by the courts.

## You are liable to pay EMIs on home loan despite being out of job

**Q** I am an expat living in the UAE for the last eight years. In 2017, I purchased a two-bedroom apartment in the emirate of Dubai by availing a home loan from a bank. However, in January 2019, I was terminated from my employment due to redundancy and since then, I am unemployed. I have lost all my money and savings and I am not sure as to when I shall be employed again. Further, I am unable to sell the aforesaid property owing to decline in the price of the property by 40 per cent. I do not have enough money to pay the equated monthly installments (EMIs) owed to the bank on the home loan. What options do I have to settle my outstanding amount with the bank?

**A** Pursuant to your query, it may be noted that upon availing a home loan from the bank, you become liable and responsible to pay the installments on a timely basis even if you are not employed. The bank

may consider that the repayment of the outstanding amounts on your home loan and your redundancy are two unrelated issues. Hence, regardless of the termination of your previous employment and the inability to find another employment owing to which you have lost all your money and savings and are unable to pay the EMIs on the home loan, it may be noted that you are liable and responsible to repay the home loan. In the event of a default on your part, the bank's claim for outstanding amounts against you shall subsist.

Further, the bank may try to invoke all the conditions for securing repayment of the home loan set forth in the home loan agreement in the event of a default which may include encashment of a security cheque issued by the borrower in favour of the bank against the home loan along with any other securities provided by the borrower. Based on the assumption that at the time of availing the home loan, you had issued a security cheque to the bank, the bank may choose to deposit the said security cheque for collection upon recurring non-repayment of the EMI. Thereafter, in the event of your bank account not having the requisite balance as the cheque amount, the security cheque may be dishonoured.

In continuance, it should be noted that in the

## Know the law



Detention or a fine shall be imposed upon anyone who, in bad faith, gives a draft (cheque) without a sufficient and drawable balance or who, after giving a cheque, withdraws all or part of the balance

UAE, the dishonour of a cheque is a criminal offence. This is in accordance with Article 401 of the Federal Law No. (3) of 1987 related to issuance of the Penal Code, which states:

"Detention or a fine shall be imposed upon anyone who, in bad faith, gives a draft (cheque) without a sufficient and drawable balance or who, after giving a cheque, withdraws all or part of the balance, making the balance insufficient for settlement of the cheque, or if he orders a drawee not to cash a cheque or makes or signs the cheque in a manner that prevents it from being cashed."

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