

Stuck as employer goes missing

Free zone authority cannot withhold passport, employee may approach court



LEGAL VIEW
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I am working as an office assistant on a visa issued by the Fujairah Free Zone Authority. The visa is valid until August 18, 2016. The company I work for deals in import/export of iron ore, but the employer has left the country and has not been traceable for the past few months. I have not received my salary for the past two months. Upon approaching the free zone authority to transfer my visa to another company (also registered in the same zone) — where I have been offered a job — they have asked me to bring the employer to cancel my visa. The zone has retained my passport and is insisting that the owner be present to cancel the visa or trade licence of the company.

I am unable to transfer my visa or leave the country without my passport. I am stuck in the country without any work or salary.

Can you please guide me on the procedure to get my visa cancelled or transferred to another company? Also, how can I get my passport back?

Pursuant to your question (as I understand it), it may be advised that you may formally resign from your employment and then approach the employee's affairs department of the Fujairah Free Zone Authority (the "FFZA") for settlement of your end-of-service benefits and cancellation of your visa. If your employer still fails to turn up, the FFZA may invoke its authority to duly cancel your visa and settle your end-of-service benefits. In the event the FFZA still seeks the presence of your employer to cancel your visa, you may approach the labour division of the Fujairah Courts with a petition pertaining to your matter.

Further, it may be noted that in the UAE, it is unlawful for any individual or authority to withhold the

passport of any individual without a specific court order to that effect. Therefore, if you wish to retrieve your passport from the authority, you may file a petition to that effect at the Fujairah Courts.

No provision for seeking money instead of insurance

I am working as an operations assistant at a children's nursery on an unlimited contract, drawing a monthly salary of Dh6,000. My visa is under my husband's sponsorship. As per my employment contract, I am entitled to receive health insurance, but I already have one from my husband's company. Can I ask the nursery to give me money instead of the insurance?

According to my appointment letter, I need to give three months' notice if I wish to terminate employment. However, according to the green bilingual labour contract, I just need to serve 30 days' notice. Please clarify the period of notice I need to serve as per the law.

I wish to pursue better opportunities as there are no monetary benefits here. If I move before completing two years, will there be a labour ban? Can I also ask my employer to give me money for visa renewal or air tickets? I have a master's degree in commerce and post graduate diploma in international business.

It is presumed that your employment is subject to provisions of the Federal Law No 8 of 1980 on the Regulation of Labour Relations (the "Labour Law").

Pursuant to your question (as I understand it), it may be noted that a number of employers in the UAE now provide health insurance coverage for their employees. However, there are no specific provisions in the Labour Law or elsewhere, as to whether any employee should be

“ A number of employers in the UAE now provide health insurance coverage for their employees. However, there are no specific provisions in the Labour Law or elsewhere, as to whether any employee should be provided additional monetary benefits in lieu of an insurance coverage

provided additional monetary benefits in lieu of an insurance coverage. Therefore, it will depend upon your employer's policy on payment of money in lieu of the insurance coverage provided by the employer. You may discuss with your employer in this regard.

Since you are working under an unlimited contract, you may terminate your employment contract by giving a notice of 30 days prior to the intended day of termination, even though your appointment letter provides a notice period of three months. In this regard, it may be noted that where there is a conflict between concurrent provisions in the Labour Law and an employment contract, the provision which is more beneficial to the employee is 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."

It is learnt that if any individual working at an entity governed by the Labour Law in the UAE terminates his/her contract before completion of one year of continuous employment, a labour ban is automatically imposed on such individual. And, during the operative period of a labour ban, which may be either six or twelve months, a new work permit may not be issued to such individual. However, the labour ban may be lifted upon fulfilment of certain conditions like:

If the individual belongs to certain category of professionals in

accordance with Article 2 of the Ministerial Order No (13) of 1991 on 'The organisation of the transfer of sponsorships of non-national labourers the rules governing the same' which states:

"Non-national labourers may be allowed to transfer one job to another and hence transfer of their sponsorship if they fall under the following categories:

- (a) Engineers
- (b) Doctors, pharmacists and male and female nurses
- (c) Agricultural guides
- (d) Qualified accountants and account auditors
- (e) Qualified administrative officials
- (f) Technician operating on electronic equipment and laboratories
- (g) Drivers who are licensed to drive heavy vehicles and buses (in case of transfer of sponsorship from a private firm to another or from a private firm to another or to a government department)."

Apart from the foregoing, labour ban may be lifted if the individual

is offered an employment which satisfies the minimum salary criteria in accordance with Article (4) of the Ministerial Resolution No. 1,186 of 2010 which states:

"As an exception to the provision of Item No. (2) of Article (2) of this Resolution, the Ministry may issue a work permit to the 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.

(b) In the event that the employer violates his legally stipulated obligations to the employee, or in the event that the employee is not the cause for terminating the work relationship as mentioned in Article (3) of this Resolution.

(c) In the event that the employee moves to another establishment owned solely or jointly by the same employer."

Further, it may be advised that since your visa is sponsored by your husband you may not be entitled to claim the cost for such visa from your employer. However, you are entitled to claim cost of air tickets to your hometown as a cost of repatriation after termination of your employment contract.

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