

Firms could be fined up to Dh150k for denying health insurance to staff



ASHISH MEHTA

LEGAL VIEW

Q I have been on unpaid leave since May 2020 and my employer wants to extend it until the end of December 2020. He has also mentioned that it might be extended until the end of Q1 of 2021. Besides, he did not renew my health insurance since May 2020 even though I am still employed by the company. How long can an employer extend an unpaid leave? What should I do to get my health insurance?

A We assume that you are employed by a mainland company based in the emirate of Dubai and further assume that you have been put on unpaid leave due to Covid-19. Therefore the provisions of Ministerial Resolution No. (279) of 2020 concerning the employment stability in establishments of the private sector during the application of precautionary measures to control novel coronavirus outbreak (the 'Ministerial Resolution No. 279 of 2020') and the provisions of Dubai Law No. (11) of 2013 concerning health insurance in Dubai (the 'Dubai Health Insurance Law') are applicable.

It should be noted that an employer in the UAE may call upon an employee to avail of unpaid leave if the employer is affected by the Covid-19 pandemic. This is in accordance with Article 2 of the Ministerial Resolution No. 279 of 2020, which states: "Establishments affected by the precautionary measures referred to above, who wish to reorganise its employment relations, shall take the following measures gradually and in agreement with the non-national employee, as per the following:

1. Apply a remote working system.
2. Granting a paid leave.
3. Granting an unpaid leave.
4. Temporarily reduction of salary during the mentioned period.
5. Permanent reduction of salary."

The aforesaid requires a non-national employee to agree with the employer to be put on unpaid leave. You have not mentioned if you agreed to be put on unpaid leave. If you did agree, then based on the aforementioned provision of law your employer may currently exercise the provisions of the Ministerial Resolution

No 279 of 2020 as it has not been repealed by the Ministry of Human Resources & Emiratisation (the 'Mohre').

Further, your employer is obligated to provide you with health insurance cover. This is in accordance with Article 10 of the Dubai Health Insurance Law, which states: "The employer shall be obliged to do the following:

1. Cover the employees thereof by health insurance in accordance with the health insurance policy applicable thereby, providing to comply with the provisions of this law and the resolutions issued pursuant thereto.
2. Bear the costs for such health insurance coverage rather than making the beneficiaries bear such costs.
3. Verify that the health insurance of the employees thereof is valid for the length of their work period at the employer.
4. Bear the health services and medical intervention costs in emergencies for any of the employees thereof, if any of them has no health insurance in accordance with the provisions of this law.
5. Give the employees thereof the health insurance card.
6. Provide the health insurance policy upon the residence issuance or renewal of the employees thereof.
7. Any other obligations specified by the authority pursuant to the resolutions issued thereby in such concern."

Know the law



An employer in the UAE may call upon an employee to avail of unpaid leave if the employer is affected by the Covid-19 pandemic

Therefore, based on the aforementioned provision of law, your employer should provide you with health insurance during the period of your employment. Article 23 of the Dubai Health Insurance Law states that if an employer fails to provide health insurance, the authority concerned or the Dubai Health Authority (the 'DHA') may impose penalties ranging from Dh500 to Dh150,000. If the employer violates this law repeatedly, penalties may go up to Dh500,000.

If you did not agree with your employer to be put on unpaid leave, then you may lodge a complaint with the

Mohre. If your employer does not provide you with health insurance cover, you may lodge a complaint against him with the Mohre and DHA.

Lodge a complaint to claim deposits done for processing foreign permits

Q I had applied for processing of Canada work permit through an immigration consultancy firm here in Dubai. I paid them Dh3,600, which was mentioned as refundable at the end of the one-year agreement. After one year when I am asking for refund, they are making excuses and show no intention of giving me back my money. How can I get the refund?

A It is assumed that Dh3,600 is the initial payment or deposit paid by you to the immigration consultancy firm (the 'consultant') to avail the services of processing a work permit for Canada. It is also assumed that you had entered into a written agreement with the consultant at the time of paying the payment. Therefore, the provisions of Federal Law No. (5) of 1985 on the Issuance of the Civil Transactions Law of the UAE (the 'Civil Transactions Law') and the provisions of Federal Law No. (24) of 2006 on Consumer Protection (the 'Consumer Protection Law') are applicable.

In the event the agreement between you and the consultant states that the it should refund the amount received from you if the process of obtaining a work permit of Canada is not completed within one year, then you are eligible to claim from the consultant the initial payment of Dh3,600 paid by you. This is in accordance with Article 148 of the Federal Law No.5 of 1985 on the issuance of the Civil Transaction Law of the UAE, which states: "1. Payment of advance money shall be considered evidence that the contract has become finally binding, and no one can withdraw from it unless the agreement or custom requires otherwise.

2. If two contracting parties agree that the earnest money be considered a penalty against the party who withdraws from the contract, either one of them shall be entitled to withdraw, and whoever pays the earnest money shall lose it if he withdraws, and whoever receives it, shall make restitution thereof plus an equivalent amount if he withdraws."

Based on the aforementioned provision of law, in the event you default, then you may not be able to claim this amount from the consultant. However, as the consultant has defaulted and has no intention of refunding the amount paid by you upon completion of one year as mentioned in the agreement, you may approach the Department of Economic Development based in the emirate of Dubai and file a complaint against the firm. This is in

Know the law



Payment of advance money shall be considered evidence that the contract has become finally binding, and no one can withdraw from it unless the agreement or custom requires otherwise

accordance with Article 4 (6) of the Consumer Protection Law, which states: "A department shall be set up in the Ministry under the name of the Consumer Protection Department and shall carry out the following competencies:

Receive consumers' complaints and adopt the procedures in this regard or refer them to the competent authorities. The complaint may be submitted directly by the consumer. It may be filed by the consumer protection association for it is considered a representative of the complainant."

Alternatively, you may lodge a civil complaint against the consultant at the Centre for Amicable Settlement of Disputes at Dubai Court. The centre is a reconciliation department which deals with debts/claims amounting below Dh50,000. While filing the civil complaint against the consultant, it would be prudent on your part to take along with you any supporting documentary evidence (agreement with the firm, payment made to it as stated by you) and submit them to the centre for registering the civil complaint. You may approach the centre for further details.

ASHISH MEHTA is the founder and Managing Partner of Ashish Mehta & Associates. He is qualified to practise law in Dubai, the United Kingdom, Singapore and India. Full details of his firm on: www.amalawyers.com. Readers may e-mail their questions to: news@khaleejtimes.com or send them to Legal View, Khaleej Times, PO Box 11243, Dubai.