

Check for non-competitor clause before resigning



LEGAL VIEW
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I'm an Electrical Engineer by profession, currently working in Dubai on my second job, after completing two years and resigning from my first job. I am not satisfied with my current job and I'm thinking of quitting. However, I am on probation and my job contract is unlimited.

Will there be any labour ban if I quit during my probation period? If so what are the options left for me? Please advise me on this.

It is understood that you are working as an Electrical Engineer in Dubai, and this is your second job after you had resigned from your previous employment on completion of two years there and now you wish to leave your current place of employment during the probation period.

It is presumed that you are working in the capacity of an engineer and that your degree has been duly attested as per the requirements in the UAE.

Pursuant to your questions, we are of the view that no ban should be imposed on you, in case you decide to resign from your current employment as you are employed under an unlimited employment contract and you are qualified as an engineering professional.

However, before leaving your current employment and taking up another employment in the UAE, you should make sure that you have not signed any non-competitor clause or agreement with your current employer which imposes restrictions on you from taking up employment with a competitor of your employer, for a certain period of time after you leave your current employer.

Under such circumstances, your employer shall have the right to take legal action against you for

breach of contract, if you happen to take up employment with a competitor to your employer.

Non-payment of salary
I am currently working with an IT company in Abu Dhabi. My current salary is Dh10,000 per month. My visa is that of a follow-up clerk. My salary is pending from the past four months. I am an MCA (Master of Computer Application) graduated from India and my certificates have been attested. Now I have got a job offer from a Sharjah company. But they are offering only Dh8,000 per month. I have been working with my current company for the last 16 months.

If I resign from the current company and join the new company, will there be any ban? Can you suggest what will be the impact and what precautions I should take?

It is understood that you are presently working in an IT company in Abu Dhabi where you are drawing a salary of Dh10,000 per month and you are designated as a 'Follow-up clerk' on your visa. Subsequently, you have now been offered a job in another IT company in Sharjah where the salary on offer is Dh8,000 per month.

Pursuant to your questions, should you wish to resign from your employment now and join another employer, you may have to face a labour ban because your visa is of a Follow-up Clerk; not a computer engineer.

No ban may be imposed upon you if you complain to the Ministry of Labour that your salary for the past few months is not paid by your employer.

The Ministry of Labour should not impose a ban on you from taking up another employment on the

basis of non-payment of salary by your employer. You are within your rights to leave your employment without notice if your employer does not fulfil his obligations towards you, in accordance with the provisions of Article 121 of the Federal Law No 8 of 1980 on Labour Relations (the "Labour Law") which states: "A worker may leave his work without notice in either of the following case:

i. If the employer fails to comply with his obligations towards him, as provided for in the contract or in this Law;

ii. If he is assaulted by the employer or the employer's legal representative."

Further, you have not mentioned, if you are currently working under a limited period contract or an unlimited one.

In case you are working under an unlimited period contract, and you are leaving your employment, you will be entitled to only a part of your severance pay, in accordance with the provisions of Article 137 of the Labour Law, which states: "Where a worker who is bound by a contract of unlimited duration leaves his work of his own accord after continuous service of not less than one year and not more (than) three years' he shall be entitled to one-third of the severance pay provided for in the preceding article; where the continuous period of service exceeds three years but does not exceed five years, he shall

be entitled to two-thirds of such severance pay; where the continuous period of service exceeds five years, he shall be entitled to the full severance pay."

However, in case you are working under a limited contract, you may not be entitled to receive any severance pay, in accordance with Article 138 of the Labour Law which states: "Where a worker who is bound by a contract for a limited period leaves his work of his own accord before the expiry of his contract period, he shall not be entitled to severance pay unless his continuous period of service exceeds five years."

This provision will however, not be applicable if you complete your contract period and then opt not to renew it.

The aforementioned provisions provide the points which you should take note of before you decide to change your employment.

Subsequently, you should also make sure that you have not signed any non-competitor agreement with your current employer which restricts you from taking up employment with a competitor of your employer, for a certain period of time after you leave your current employment.

On occurrence of such an event, your employer shall have the right to take legal action against you for breach of contract, if you happen to take up employment with a competitor to your employer.

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