

No ban if employer gives no-objection letter



LEGAL VIEW
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I have been working for a Dubai-based supermarket as a retail manager. However, on the visa my profession is mentioned as a follow-up clerk. It's a limited contract and I completed my two years contract in February. The contract has been renewed for two more years, but I want to resign as the company is not increasing my salary. Currently, I am drawing Dh 8,000 salary.

My question is about my next offer. I am a MBA degree holder but it is not attested from the authorities. My graduation degree is attested. If I resign from my current job will there be a labour ban on me? What would be the case if I get my MBA degree attested?

It is understood that you are working as a retail manager for a supermarket in Dubai while in your visa your designation is mentioned as that of a 'follow-up clerk' and you are employed under a limited period employment contract which has recently been renewed for a period of two years. And while your current salary is Dh8,000, you wish to resign from this employment. It is presumed that your employment is subject to provisions of the Federal Law No 8 of 1980 on Regulation of Labour Relations and the consequent ministerial orders.

Pursuant to your question, it may be noted that employment bans may be imposed even if an employee terminates its employment contract after two years of continuous employment. Upon imposition of an employment ban, a new work permit may not be issued for a period of at least six months.

However, it may be noted that employees who may terminate their employment after the completion of two years of continuous service, may not be imposed an employment ban if both the employer and the employee have agreed to such termination of the employment contract. This is in accordance with Article 2 of the Ministerial Order No. 1186 of 2010 on "Rules and Conditions of Granting a New Work Permit to an Employee after Termination of the Work Relationship in Order to Move from One Establishment to Another" (the "Ministerial Order"), which states:

"Article (2) The following two conditions must be met in order to grant the work permit mentioned in Article (1) of this resolution:

1) Agreement between the employee and the employer to conclude the work relationship.

2) The employee must have spent at least two years with the employer."

Pursuant to this, if you secure a no-objection letter from your current employer, no employment ban should be imposed on you. The no-objection letter must be to the effect that your employer does not wish to impose a ban on you and further it has no objection to your joining another employer in the UAE after termination of your current employment. Alternately, it may be noted that no employment ban will be imposed on you, if after termination of your existing employment contract, you are subsequently offered a salary in accordance with your professional qualifications.

This is in accordance with Article 4 of the Ministerial Order which states:

"As an exception to the provision of the Item No. (2) of Article 2 of this Resolution, the Ministry may issue a work permit to an 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, seven thousand dirhams at the second professional level and five thousand dirhams at the third professional level..."

Further, it may be noted that certain professionals are exempted from imposition of a labour ban during a change of employment from one employer to the other. This is in accordance with Article 2 of the Ministerial Order No. 13 of 1991 on "The organisation of the transfer of sponsorships of non-national labours the rules governing the same" which states:

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

- Engineers
- Doctors, pharmacists and male and female nurses
- Agricultural guides
- Qualified accountants and account auditors
- Qualified administrative officials

“ An employee is not required to continue his employment after the last day of contract period, unless the contract is being renewed

f) Technicians operating on electronic equipment and laboratories

g) Drivers who are licensed to drive heavy vehicles and buses."

However, professionals holding the degree of 'Master of Business Administration' (MBA) are not included amongst the list of professionals who are exempted from employment bans. Thus, it may be advised that even if you attest your MBA degree, you will still require an NOC or you must be having an employment offer where your monthly salary is at least Dh12,000. You may consider to contact the Ministry of Labour for any further clarifications in this regard.

Leaving without resignation letter

Some employees wanting to leave in our company are planning their exit close to their contract expiry and are asking the company for a letter telling them not to renew the contract. They are not giving any resignation letters. This was started by one employee who left the company six months ago and many others are following it. Even when the company insists for resignation letter, they refuse to give.

We would like to know:

1) Why they are not giving resignation letter?

2) What difference does it make if they give us a letter asking not to renew the contract?

3) Whether there is a way for the company as per labour law to force the employee to give resignation letter? It is understood that some individuals employed by your company who are working under limited period employment contracts intend to leave the em-

ployment, by working up to the last day of the employment contract.

Pursuant to the first part of your question, it may not be said to a certainty as to why the employees are not giving a resignation letter on their own. It may be assumed that your employees are aware that it is not mandatory to submit a resignation letter and therefore the employees choose to let the current employment contract expire.

It may further be assumed that the terms of the employment contract may be to the financial benefit of the employees if they let the employment contract expire rather than submit a resignation. It may perhaps be further assumed that the employees are taking this step to avoid the imposition of an employment ban after the termination of the contract or cancellation of the employment visa.

However, pursuant to the second part of your question, it may be further noted that, it does not usually make any difference whether a letter of non-renewal of employment contract is issued by the employer or the employee. Since a limited period contract commences for a stipulated period of time, an employee usually does not face an employment ban or other sanctions, if he/she duly completes the period of employment contract. Also, an employee is not required to continue his/her employment after the last day of contract period, unless the contract is being renewed. A letter of non-renewal of employment contract in this regard only serves the purpose of better communication between the employer and the employee.

Further in view of the aforesaid and based on the prevailing laws, the employer may not force or compel its employees to issue a resignation letter.

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