

Labour ban cannot be imposed on engineers



LEGAL VIEW ASHISH MEHTA

I am a mechanical engineer with an engineer visa, and I have been employed with my current company for the past one and a half years. Can you tell me if I can change my company without invoking a ban?

It is understood that you are qualified as a mechanical engineer and that your current visa states your designation to be that of an engineer and that you have completed one and a half years with your current employer. It is presumed that currently you are not working with a free-zone entity.

Should you wish to leave your current employer and join a new employer, you may be required to comply with the applicable requirements of the Federal Law No 8 of 1980 on Labour Relations (the "Labour Law"). As such, the requirements shall vary depending on whether your employment contract is of limited or unlimited duration.

In case you are working on a limited period contract you may leave your employment on the last working day as mentioned in your employment contract. If, however, you are working under an unlimited period contract, you may leave your employment by giving a prior notice to your employer in this regard. This is in accordance with Article 113 of the Labour Law which states:

"A contract of employment shall terminate in any of the following cases: If both parties agree to its termination, on condition that the worker's consent is given in writing; on the expiry of the period prescribed in the contract, unless the contract is expressly or tacitly extended in accordance with the provisions of this law; if either of the parties of contract concluded for an unlimited period, expresses his intention to terminate the contract provided that the provisions of the

Law regarding the period of notice are observed and on grounds accepted for the non-arbitrary termination of the contract."

Further, if you are working under a limited period contract, and you wish to leave your employment before you complete the contract period, you may have to compensate your employer, in accordance with the provisions of Article 116 of the Labour Law, which states:

"Where a contract is revoked by the worker for reasons other than those specified in article (121), he shall be required to compensate the employer for any prejudice the latter sustains as a result: provided that the amount of compensation shall not exceed half the worker's remuneration for three months or the residual period of contract whichever is shorter unless the contract contains a provision to the contrary."

However, if you are working under an unlimited period contract, you may terminate the contract at any time, upon a prior notice of 30 days. This is in accordance with Article 117(1) of the Labour Law which states:

"(1) Both the employer and the worker may terminate a contract of employment of unlimited duration for a valid reason at any time following its conclusion by giving the other party notice in writing at least 30 days before the termination."

Subsequently it is advised that since you are holding a degree in mechanical engineering, a ban may not be imposed upon you as engineers have been categorised in the list of professionals who may not be imposed with a labour ban. 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 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) Technicians operating on electronic equipment and laboratories
- g) Drivers who are licensed to drive heavy vehicles and buses."

In the event, however, if a ban gets imposed, you may subsequently have the ban lifted on the basis of your qualifications. Also, you may have the ban lifted if your subsequent job provides you the required salary for non-imposition/lifting of a labour ban.

The salary requirement are in accordance with Article (4) of the Ministerial Order No 1186 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 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, Dh7,000 at the second professional level and Dh5,000 at the third professional level."

Women eligible to reside, work in UAE without sponsorship My sister is 32-years-old and holds a Masters Degree. Is it necessary for her to be sponsored by her father or husband to obtain a visa and work in any emirate of the UAE?

Pursuant to your question, it may be advised that it is not mandatory for your sister to be sponsored by her father or her husband in order for her to obtain a visa and work in the UAE. As your sister's age is 32 years and she holds a Masters Degree, she is eligible to reside and work in the UAE. If she is already employed or has been offered employment in the UAE, she may seek an employment visa from her employer.

Further, the visa may be obtained upon the due approval of the competent government authorities only. If the employer is an entity registered and established in a free-zone, the authority concerned shall be the General Directorate of Residency and Foreigner's Affairs and visa shall be issued subject to their approval.

However, if the employer is a non-free zone entity, then the visa shall be issued subject to the approval of the Ministry of Labour.

Ashish Mehta, LLB, F.I.C.A., M.C.I.T., M.C.I.Arb., is the founder and Managing Partner of Ashish Mehta & Associates. He is qualified to practise law in Dubai, the United Kingdom, Singapore and India. He manages a multi-jurisdictional law firm practice, providing analysis and counselling on complex legal documents, and policies including but not limited to corporate matters, commercial transactions, banking and finance, property and construction, real estates acquisitions, mergers and acquisitions, financial restructuring, arbitration and mediation, family matters, general crime and litigation issues. Visit www.amalawyers.com for further information. Readers may e-mail their questions to: news@khaleejtimes.com or send them to Legal View, Khaleej Times, PO Box 11243, Dubai.