

No provision for paternity leave as per federal law



LEGAL VIEW
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I have been working in a company in Hamriyah Free Zone, Sharjah, for more than three years. I would like to know if I am eligible for paternity leave according to law. My wife has just delivered a child and I'd like to avail of leave if it is per-

mitted by the labour law.

It is understood that you have been working at an entity incorporated at the Hamriyah Free Zone for more than three years and you have become a father very recently.

Further to your queries it may be noted that at the Hamriyah Free

Zone, matters pertaining to employment is governed by the provisions of Federal Law No. 8 of 1980, relating to Regulation of Labour Relations (the "Labour Law").

Since there is no specific provision for paternity leave in the Federal Law No. 8 of 1980, you may avail your annual for the aforesaid purpose in accordance with the provisions of Article 75 of the Federal Law No. 8 of 1980 which states:

"Every worker shall, within each

year of service, be granted a period of annual leave of not less than:

(a) Two days a month, where the worker's period of service is more than six months but less than one year;

(b) 30 days a year, where the worker's period of service is more than one year.

Where a worker's service is terminated, he shall be entitled to annual leave in respect of fractions of the last year."

However, your employer may allow you to avail your annual leave in two parts in accordance with Article 76, which states:

"The employer may fix the date of commencement of annual leave and, if necessary, divide such leave into not more than two periods (notwithstanding the foregoing, the provision respecting the division of leave shall not apply to leave fixed for young persons)."

You may therefore check with your employer on its policy on paternal leave as Federal Law No. 8 of 1980 does not specifically deal with the issue.

Non-fulfilment of employer obligations

My cousin joined a travel company in Dubai. During salary negotiations, it was agreed that he would be given Dh7,500 per month and his designation would be 'operations manager'. He got an offer letter to this effect from the company. However, there was a condition. His employer told him that in the WPS file, the salary would be reflected as Dh5,000 and the balance Dh2,500 would be given in cash. Both parties agreed to this arrangement.

On a casual basis, he was asked how much sales he could achieve in a month, to which he replied around Dh50,000. However, nothing was communicated to him in writing or otherwise that he would need to meet this 'target'. He exited from Dubai for changing his visa. When the company sent him his employment visa, he was shocked to see the designation as 'archive clerk'. When he reached Dubai, his boss told him that he was given this designation "due to technical reasons".

They processed his visa as follows: Visa type - Unlimited Contract with two years validity extendable after mutual understanding; Salary - Dh5,000.

He got his first two salaries of Dh5,000 each in February and March respectively, instead of the Dh7,500 as discussed. Yesterday, he was told at a meeting that his salary would be reduced to Dh3,000 because he was not meeting his Dh50,000 'target'. I know that he cannot approach the labour court for the Dh7,500 salary issue as he had signed a labour contract for Dh5,000 with the company. Now it is further reduced to Dh3,000. What should he do? Can he quit the company and join a new company without facing a ban?

It is understood that your cousin was working at a travel company where initially he was offered a salary of Dh7,500. However, in his employment contract signed at the format of the Ministry of Labour (the 'MOL Contract'), his salary is mentioned as Dh5,000. However, the employer had promised to pay the balance amount of Dh2,500 in cash. Further, he was given the position of 'Archives Clerk' although in his offer letter, the designation offered was that of 'Operations Manager' and that after joining the employment since he could not meet his sales targets, his salary was further reduced to Dh3,000.

Pursuant to your queries, it may be advised that your cousin is within his rights to leave the employment forthwith without giving any notice to his employer, in view of the various prejudicial acts done by the employer. This is in accordance with Article 121 of the Federal Law No 8 of 1980 which states as follows:

"A worker may leave his work without notice in either of the following case:

(a) If the employer fail to comply with his obligations towards him, as provided for in the contract or in this Law;

(b) If he is assaulted by the employer or the employer's legal representative."

Subsequently, your cousin will have to approach the Ministry of Labour and lodge a complaint against his employer citing non-fulfilment of obligations of the employer towards him on issues pertaining to salary.

It may be noted that an offer letter may also be treated as a valid legal document having the nature of a contract if it is signed by the employer and the employee. So if the offer letter given to your cousin had been signed by both his employer and by him, it can be treated as a valid contract. Pursuant to which, your cousin may challenge the terms provided in his MOL Contract citing differences with the terms mentioned in the offer letter. Based on such arguments, your cousin may seek to prevail upon his employer to pay him the full salary as promised.

However, if your cousin decides to leave the employment forthwith, there is a likelihood that he may have to face a labour ban owing to which he may not be able to join another employment for a subsequent period of six months at least.

But it may be noted that the ban may be lifted if your cousin gets a new employment where he is being offered a salary in accordance with his qualifications. This is in accordance with the provisions of 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 ..."

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