



# Compensation has to be paid in lieu of notice period



**LEGAL VIEW**  
**ASHISH MEHTA**

I have been working in a company for the past two years and my visa will expire on January 29, 2014. I don't want to renew my visa. My labour card will expire on December 23. Until when can I work? How will the gratuity be calculated if I work until my labour card or visa expires? Will this affect my final settlement? My contract is unlimited.

It is understood that the validity of your labour card shall expire on December 23, 2013 and your visa on January 29, 2014. You do not wish to renew your visa. And it is assumed that your employment is governed by provisions of the Federal Law No (8) of 1980 on Labour Relations (Labour Law).

Once the labour card expires, the employer is required to apply for a fresh labour card. An employment visa is meant for employees to work in the UAE, subject to Ministry of Labour approval (if the employee is governed by the Labour Law). As such, you have the right to work in the UAE until the validity of the labour card subsists.

Further, the calculation of your gratuity shall be in accordance with the provisions of Article 132 of the Labour Law which states: "A worker who has completed a period of one or more years of continuous service shall be entitled to severance pay on the termination of his employment. The days of absence from work shall not be included in calculating the period of service. The severance pay shall be calculated as follows:

(1) 21 days' remuneration for each year of the first 5 years of service.

(2) 30 days remuneration for each additional year of service provided that the aggregate amount of severance pay shall not exceed 2 years' remuneration."

In case of employment contracts for an unlimited duration, both the employer and the employee may

terminate a contract of employment by giving the other party a notice 30 days prior to the last working day, in accordance with the provision of Article 117(1) of the Labour Law.

Subsequently, if the party concerned willing to terminate the employment contract, fails to give a notice of termination or reduces such period of notice, he shall be required to provide to the other party 'compensation in lieu of notice', in accordance with the provisions of Article 119 of the Labour Law.

Pursuant to your queries, since you are unable to serve the stipulated notice period to your employer, you shall have to pay compensation in lieu of notice to your employer. The amount of such compensation shall be your remuneration for the number of days by which you have reduced the notice period, i.e. if you are serving a notice of 25 days then you shall have to pay a compensation amounting to your five days' remuneration. Further to it, there shall be no other detrimental impact on receipt of your end of service benefits from your employer, and you shall be entitled to all such benefits.

#### Guarantee cheques issued

**under employer's compulsion**  
I am employed with a reputed travel agency in Dubai. This is my second job in Dubai. In my previous company, I completed three years and gave them one month notice before leaving. I requested my gratuity a month before cancellation and the employer promised that all the end of service benefits would be paid to me after the cancellation. But they did not pay me any of these benefits. I informed the Labour department, which told me not to worry and asked me to get my passport released from my employer. I had to submit guarantee cheques

worth Dh9,000 saying that I had outstanding payable to the company, even though I did not have any outstanding from my end.

When I joined the new company, I realised my new boss was a friend of my old boss. I don't have a work certificate from my former employer yet. The only proof is the visa. Now I am worried as my old company has my guarantee cheques and the old employer is calling my husband's number to pay the Dh9,000 to the company. Please advice.

It is understood that you had previously worked with a company for three years and subsequently you resigned from your employment after serving your employer a notice of one month. Since you had served a notice prior to your leaving the employment, we assume that your employment contract was of unlimited duration, in accordance with the provisions of Article 117 of Federal Law No. 8 of 1980 on Labour Relations, 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 termination.

(2) In case of workers working on a daily basis, the period of notice shall be as follows:

(a) one week, if the worker has been employed for more than six months but less than one year;

(b) two weeks, if the worker has been employed for not less than one year;

(c) one month, if the worker has been employed for not less than five years."

Further, you mentioned that you had approached the Ministry of Labour with complaints against your previous employer for settlement of outstanding dues. It is further understood that your previous employer compelled you to issue guarantee cheques amounting to Dh9,000 as a guarantee against payment of certain dues to the previous employer. However, it is not clear whether your employer had asked you to deposit the guarantee cheques, or it was by virtue of a decision arrived at the Labour Ministry through an amicable settlement between you and your previous employer.

Dishonour of a cheque is a criminal offence in the UAE. It is assumed that the cheques issued by you have now been dishonoured upon presentation to your bank. Therefore you may consider Dh9,000 at the court of competent jurisdiction, and subsequently perhaps consider to file a case of criminal breach of trust against your previous employer for encashing guarantee cheques issued by you, pursuant to inducement and coercion. If this amount of the cheque is due and payable to your previous employer pursuant to an amicable settlement between you and your previous employer, then you should pay this amount to the previous employer.

It would be prudent to take the aid of a legal practitioner in this regard.

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