

Severance pay calculated on clauses beneficial to employee



LEGAL VIEW
ASHISH MEHTA

I have been working in an Abu Dhabi-based company since July 1987 on a unlimited contract with provisions for an annual leave and air ticket. According to my visa, my designation is 'executive secretary'. In my labour contract, my basic salary is Dh3,000 plus family accommodation. The contract came into effect from April 13, 2003. On July 1, 2008, a revised letter of employment was issued in which my basic salary is Dh3,500; housing allowance Dh1,500; cost of living allowance Dh500; and transport allowance Dh350 — a total of Dh5,850. My labour contract, however, remains unchanged. Please clarify if my labour contract or revised letter of employment will be taken into account for my end of service dues. Can I claim the family accommodation as per the first contract?

It is understood that you are employed by a company in Abu Dhabi for the past 28 years on an unlimited contract as an executive secretary drawing Dh3,000 as your basic salary plus family accommodation. It is also understood that your bilingual labour contract (the "Contract") was registered with the Ministry of Labour (the "Ministry") in the year 2003 wherein your basic pay is mentioned as Dh3,000 in addition to family accommodation and it is also noted that the Contract was the only contract drawn on the template of the Ministry between you and your employer. Further, we understand that, in the year 2008 your employer issued you a revised employment letter (the "Letter") wherein your basic salary was increased and the Letter also mentioned allowances for housing, cost of living and transportation. It is presumed that your employment is subject to provisions of the Federal Law No 8 of 1980 (the "Labour Law").

Pursuant to your question, it may be noted that in principle, for calcu-

lation of end of service benefits, usually the labour contract filed with the Ministry is taken for reference. Thus for all cases of employment regulated by the Labour Law, it is essential to draw up a bilingual employment contract and register the same with the Ministry. However, based on the requirement, an employer and an employee may execute more employment contracts to further specify the terms and conditions pertaining to the employment. In this regard Article 35 of the "Labour Law" may be noted which states -

"Subject to the provisions of Article 2, a contract of employment shall be written in two copies, one being delivered to the worker and the other to the employer. In the absence of written contract, adequate proof of its terms may be established by any means of evidence."

However, it may be noted that within the purview of Labour Law, if there occurs a conflict between concurrent provisions of the same matter in the two employment contracts, the provision which is more advantageous to the employee usually is given precedence over the other. This is in accordance with Article 7 of the Labour Law, which states:

"Any stipulations contrary to the provisions of this Law, even if it was made prior to its commencement, shall be null and void unless they are more advantageous to the worker."

Thus in view of the foregoing, it

may be advised that for calculation of your end of service benefits, both the Contract and the Letter shall be taken into consideration, and the provisions which are more advantageous or beneficial to you shall be applicable. Your end of service benefits should be calculated on the last salary drawn. Since you have not mentioned the amount for family accommodation as stated in the Contract, it may be advised that if you find that the Contract provides a higher allowance for family accommodation, in comparison with the Letter, you may try to prevail upon your employer to calculate your end of service benefits in accordance with the Contract only. Although your employer may argue that the Letter supersedes the Contract.

Employee failed to honour pay hike promise

I have been working with a company based in the Sharjah International Airport Free Zone (SAIFZ) for the past six years. Due to repeated false promises from the employer, some of us resigned. A year ago, our employer had given us an internal memo with appraisal and notified the same with the SAIFZ and revised our contract accordingly. But our employer failed to deposit the revised salary in our account. When asked, the company said it is paying us as per the previous contract and doesn't consider the revised salary based on the internal memo. The employer claims that the internal memo cannot be im-

plemented and is not part of the contract. What are the legal options available to me?

It is understood that you are working at an entity incorporated at the Sharjah International Airport Free Zone (the 'SAIFZ') for the last six years. Further it is noted that about a year back, your employer had issued to all of you an 'internal memo' regarding appraisal of salaries to you and your colleagues, and the same was notified by your employer to SAIFZ and subsequently your employment contracts were revised. However, your employer never paid you the salary as per the revised contract.

Pursuant to your question, it may be noted that for all matters pertaining to labour and employment relations, the provisions of Federal Law No. 8 of 1980 on the Regulation of Labour Relations (the "Labour Law") are applied.

Pursuant to your question, it is noted that your employment contracts are renewed in accordance with the 'internal memo' that was issued to you. Further to this you may carefully go through the terms and conditions of the updated employment contract in the format prescribed by SAIFZ. It is learnt that employment contracts executed in the prescribed format of SAIFZ usually contain a provision which states - "This contract supersedes any previously dated Contract between the employer and the employee, or later dated contracts not registered with SAIF-Zone." In view of the foregoing, if you find such a clause in your contract, you may try to prevail upon your employer to pay your salaries in accordance with the revised employment contract as it supersedes the first and any subsequent employment contract executed by you and your employer and is the only memorandum of your employment relation.

However, in the event your employer refuses to pay you revised salaries, you may choose to leave the employment without giving a notice to your employer, in accordance with Article 121 of the Labour Law which states -

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

A - If the employer fails 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."

Further you may consider filing a complaint with the Client & Investor services department of SAIF-Zone in writing, stating that your employer has defaulted in payment of salary as stated in the revised employment contract.

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