

Employment cases to be filed in 1 year



LEGAL VIEW Ashish Mehta

What is the legal time limit for pursuing and claiming outstanding amounts under an "arbitrary dismissal" where the employer has not paid the employees their due and got the labour ministry papers signed and visas cancelled? What is the procedure for filing such cases and which government departments/offices in Dubai should people go to for seeking redressal? My case is with a local LLC trading agency, with whom I was on an open contract as assistant general manager. They paid only one month's salary and gratuity calculated from the date of permanent visa stamping which was done over six months after I had actually started attending office in Dubai. The probation period of three months and 3.5 months delay in employment visa stamping were not taken into consideration.

I can see that two months' salary (Dh37,500 x 2) + 21 days/annum prorated for six months has been withheld illegally against the UAE labour laws (over Dh80,000). The termination letter stated that the "company was restructuring and my services were no longer required."

I have a recommendation letter mentioning the full period of service from them (actual date of joining to till last day at office). I was asked to stay back for 15 days more after the last day, 'at full pay and perks' to help complete the project that was in progress at that time, which I agreed and completed before handing in my passport for visa cancellation.

Please advise if the case has any merit, and is within the permitted time limitations to claim?

It is understood that you were working as an assistant general manager on an unlimited (open) period contract and you were terminated due to restructuring of the company without any prior notice

period. You understand that you were terminated arbitrarily and your employer has paid you only one month salary and not paid the severance pay on the prorated basis for six months. Further, we understand that your visa was not stamped for six months and you were on probation for a period of three months. It is also understood that you have a letter from your employer stating the actual date of joining and the last day of employment with your company.

Pursuant to your questions, it is the responsibility of the employee to verify the contents mentioned in the final settlement form and employment/visa cancellation form pertaining to payment of the end of service entitlements before signing the said form with his/her employer.

If the employee feels that the end of service benefits mentioned in the settlement form are incorrect he may inform the same to his employer and in case the employer disagrees with the employee, the employee may approach the Ministry of Human Resources and Emiratization (the 'Ministry').

An employee or an employer can file a case in the court for employment-related matters within a period of one year in accordance with Article 6 of the Federal Law No. 8 of 1980 (the 'Labour Law') regulating Labour Relations in the UAE, which states: "Without prejudice to the provisions concerning collective labour disputes stated in this Law, if the employer or the worker or any beneficiary thereof raised a claim concerning any of the rights accruing to any of them according to the provisions of this Law, he shall submit a request thereof to the labour department concerned. This department shall summon the two parties to the dispute and shall take whatever it deems necessary to settle the dispute amicably.

If an amicable settlement is not reached, the said the department must, within two weeks from date of submitting request, submit the dispute to the court concerned. The submission must be accom-



Know the law

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panied by a note including a summary of the dispute, the arguments of the two parties and the observation of the department. The court shall, within three days from date of receiving the request, fix a sitting to consider the claim and the two parties shall be notified thereof. The court may summon a representative of the Labour Department to explain the note submitted by it.

In all cases, no claim of any entitlement due under the provisions of this law, shall be heard if brought to

of time; however, the action against a repudiating party shall not be heard after the lapse of 15 years without a legal excuse without prejudice to special provisions contained therein."

No compensation during probation

I have 13 years of sales experience in the UAE. I was working as a sales manager in a leading MNC for the past nine years. I shifted to a relatively new and small company as sales director in November 2015 with 3 months probation period in the offer letter and six months probation period in labour contract. Now after completing just four months, they have given me a month's notice to relieve. They have mentioned 'The reason for this is due to serious financial issues which are simply not sustainable'. The company is facing financial crisis and out of the total 10 employees, they have retained only two and given notice to rest of the eight. All the employees have demanded three months' salary as compensation from the company. As I am still on probation, am I eligible for the compensation? Can I demand compensation as I left a stable and secure job in an MNC to join this company? Also, can my employer impose a labour ban on me in any case?

Based on your labour contract you may not be eligible for any compensation except to that of your unpaid salaries and annual leave salary as you are on probation period in accordance with Article 120(b) of the Federal Law No. 8 of 1980 (the 'Labour Law') related to Labour Relations in the UAE, which states: "An employer may dismiss a worker without notice if the worker is engaged on probation and is dismissed during the probationary or on its expiry."

However, you may claim compensation from your employer in case your offer letter, which states probation period as three months, is filed with the ministry. Thereby if

there is contradiction regarding the labour contract and the offer letter, then whichever agreement is advantageous to the employee is normally taken into consideration 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."

Further, the courts may not grant you any compensation for leaving a stable and secure job in a multi-national company and joining the current employer as this decision was purely on your own accord.

There shall be no labour ban on you even though you have not completed six months of service with your employer provided you fulfill your salary criteria as per your educational qualifications in accordance with Article I (2) of Article II (2) of Ministerial Decree 766 of 2015 on Rules and Conditions for granting a permit to a worker for employment by a new employer depending on nature of your employment contract which is also read with Article 4 of the Ministerial Order No. 1186 of 2010 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, Dh7,000 at the second professional level and Dh5,000 at the third professional level."

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