

Notice period not needed after employer cancels work permit



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LEGAL VIEW

Q I resigned from my Dubai-based company recently. I was promised a salary increment after my probation period, but my company cut the salary instead due to the impact of Covid-19. My employer cancelled my work permit, but is now saying that I need to serve a month-long notice period. If I work here for a month, I will not be able to find another job because my documents' grace period would have expired. Is it legal to work if the work permit is cancelled?

A We assume that you were employed in a mainland company in Dubai. Further, we assume that you were sponsored by your employer and the employer has cancelled your UAE residency visa.

An employee needs to resign from his employment by serving a notice period which is stipulated in its employment contract registered with the Ministry of Human Resources and Emiratisation (MOHRE). This is in accordance with Article 1 (I) (3) & (II) (2) of the Ministerial Decree No. 765. An employment contract for a limited duration may not have a notice period mentioned in it. Having said that, if both the employer and employee agree on a notice period, then the employment contract for a limited duration may have a notice period mentioned in it.

You and your employer may have signed the work permit cancellation document and submitted the same to MOHRE. Thereafter, your employer may have cancelled your UAE residence visa. It may be noted that once the work permit is cancelled, the employer-employee relationship ends and therefore your employer may not call upon you to serve your notice period. Your employer may have been entitled to call upon you to serve the notice period as mentioned in your employment contract when you had informed him regarding your decision to resign. However, he employer cannot ask you to serve the notice period post the termination of your employment contract

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A fine of Dh50,000 shall be imposed on any person who has used foreigners who is not under his sponsorship without complying with the terms and conditions prescribed for the transfer of sponsorship or without obtaining the necessary permit.

and the cancellation of your work permit. In the event you are employed upon cancellation of your work permit, such employment may be termed as illegal. This is in accordance with Article 34 (1) of the Federal Immigration Law, which states, "A fine of Dh50,000 shall be imposed on any person who has used foreigners who is not under his sponsorship without complying with the terms and conditions prescribed for the transfer of sponsorship or without obtaining the necessary permit.

"The penalty shall be imprisonment and a Dh50,000 fine in case of return to the same act.

"The sponsor shall be punished with the same penalty stipulated in the two preceding paragraphs of this section if he does not employ the sponsored person or let him works for others without following the legal procedures prescribed for such act ..."

Further, any individual who is employed illegally in the UAE or whosoever employs an individual illegally may be deported from the UAE.

My firm deducted 20% of my leave salary. What should I do?

Q I requested my company to remit my annual leave salary for this year instead of taking a vacation. However, they gave me only 80 per cent of the leave salary. When I asked the HR manager about it, she told me that I had agreed to a temporary salary cut due to Covid-19 impact and that leave salary was part of the temporary contract I had signed. Is annual leave salary affected by the temporary salary reduction?

A Pursuant to your queries, we assume that you are employed in a mainland company based in the UAE. Therefore, the provisions of Federal Law No. (8) of 1980 Regulating Employment Relations in the UAE (the 'Employment Law') and the provisions of Ministerial Resolution No. (279) of 2020 Concerning the Employment Stability in Establishments of the Private Sector During the Application of Precautionary Measures to Control Novel Coronavirus Outbreak (the 'MR 279') are applicable.

It should be noted that an employee in the UAE is entitled for cash in lieu of annual leave salary for the annual leave not availed by him. Such payments are calculated based on the salary of the employee. This is in accordance with Article 79 of the Employment Law, which states: "The employee is entitled to receive cash in lieu of annual leave days not availed by him, if he was dismissed or if he left the service, after the period of notice stipulated by law. Cash in lieu of leave is calculated on the

Know the law



"The employee is entitled to receive cash in lieu of annual leave days not availed by him. Cash in lieu of leave is calculated on the basis of pay received by the employee at the time such leave became due."

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Based on the aforementioned provision of law, an employee's annual leave salary shall be computed based on the salary the employee received at the time his annual leave became due. However, since we assume that your annual leave became due after you had signed a temporary employment contract with regard to your salary reduction, you may only be entitled for your annual leave salary in accordance with your current salary as after reduction. Further, the temporary employment contract you have signed stipulates the reduction of your salary which is in accordance to Article 5 (1) of the MR 279, which states, "Establishments that wish to temporarily reduce the salary of a non-national employee during the mentioned period shall take the following actions:

1. Conclude a 'Temporary Additional Addendum' to the employment contract between both parties, in accordance to the template attached to this Resolution, provided that it shall expire at the end of its term or enforceability of this Resolution, whichever comes first."

The aforementioned MR 279 is silent with respect to the payment of annual leave. Therefore, we may have to refer the provisions of Employment Law related to payment of annual leave salary. As mentioned above, Article 79 of the Employment Law clearly states that an employee is entitled for cash in lieu for the annual leave not availed by him and such payment is calculated as per the salary withdrawn by the employee when his annual leave has become due. In view of the foregoing, you may be entitled for annual leave salary as per your current salary which is paid by your employer. It is recommended that you approach the Ministry of Human Resources & Emiratisation and seek further advice on this matter.

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