

Employer can list you as absconding if resignation letter is not given



LEGAL VIEW
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We are a Dubai-based start up and hired an employee after providing him with an employment visa and air ticket to Dubai. A month later, he asked us for a week's holiday as his father was very sick. We agreed, and provided him with some extra funds which would help him find a good medical option for his father and also paid a month's advance salary. After a week he called us and said he didn't want to work with us and that he would remain in India.

After a few months, we found he was planning to come back to Dubai and was helping our competitors with business ideas and strategy. How do we take legal action against him? Can we put out an absconding case against him for cheating us?

It is understood that you recently started up an entity in Dubai and hired an employee on an employment visa. After a month of taking up the employment with your entity the said employee requested for an emergency leave due to illness of his father. Upon your approval he left the UAE with a month's advance salary and some extra funds provided by you on humanitarian grounds for his father's treatment. Further it is noted that a week after his departure from the UAE he contacted you and informed that he will not return to the UAE and wished to stay in India. However, it is understood the said employee is planning to return to Dubai and is supporting your competitors with business ideas and strategies. It is presumed that your entity is subject to provisions of the Federal Law No 8 of 1980 on the Regulation of Labour Relations (Labour Law).

Pursuant to your question, it may be noted that matters pertaining to absconding employees are regulated by the provisions of the Ministerial

Resolution No. (721) for 2006 of Federal Law No. 8 of 1980 on Escape Report Procedures, issued by the Ministry of Labour of UAE (Ministerial Resolution). Article 1 of the Ministerial Resolution states: "An escape report is applied on the case of the worker who has stopped working for more than seven consecutive days if the employer pledged that he does not know his whereabouts or has a legitimate reason for his absence in accordance with the provisions of this Ministerial Resolution."

Further to the aforementioned provision of the Ministerial Resolution, it is assumed that you had signed an employment contract with the employee and registered the same with the Ministry of Labour and obtained a work permit. This permits you to file an absconding complaint with the Ministry of Labour stating that the employee is continuously absent for more than seven working days and he has extended his leave without the consent of the employer.

You have mentioned that the employee had called you to inform you of his intention of not returning to the UAE on your employment, but it is not mentioned by you whether the employee had sent you a written resignation.

In the event the employee failed to provide his resignation in writing, you may file a complaint against the latter for absconding from employment and for not providing a formal communication of his resignation. At the time of filing the absconding case against the employee you will have to provide prima facie evidence that your employee has been absconding from work. Once the absconding charges are proved, the Ministry of Labour may take disciplinary action against the employee and such action may include cancellation of the employee's work permit issued for your entity and also the

imposition of an employment ban as stated above. However, in the event the employee had submitted his resignation, the latter shall have the option to make a representation for him and challenge your complaint at the Ministry of Labour with the plea that you had full information of his whereabouts and he had duly informed you of his decision to discontinue the employment.

Further, it may also be noted that an expatriate employee who absconded from his place of employment may be barred from taking up employment with Article 128 of the Labour Law states, "A non-national worker, who abandons his work without a valid reason before the expiry of his definite term contract, may not, even with the employer's consent, take up other employment until the lapse of one year from the date on which he abandons his work. No other employer may knowingly recruit such worker or keep him in his service before the lapse of such period."

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It may also be noted that if the employee has been staying outside the UAE for a continuous period of 6 months or more then it can be presumed that his visa is automatically invalidated in accordance with the existing rules. And, a new employment visa cannot be issued to him

unless the existing visa is formally cancelled by the General Directorate of Residency and Foreigners Affairs. However if he has returned to the UAE on the same visa, and is now working for a different employer then he is committing a violation of the Labour Law.

In view of the foregoing, you may contact the General Directorate of Residency and Foreigners Affairs and try to find out if the employee has returned to the UAE. Subsequently you may choose to initiate legal action in the manner stated hereinabove.

Offer letter is an agreement, not a contract

I am from Pakistan and visited Dubai last November and cleared an interview. I was chosen for the post of sales coordinator and was given the offer letter. I returned to Pakistan but the company didn't contact me and the manager did not respond to my mails or calls. Is an offer letter valid for a case to be filed against the company which is a reputed firm?

It is understood you had visited Dubai in the month of November, 2014 and upon your successful completion of interview with an entity in Dubai, you were offered the job of a sales coordinator. It is further noted that the said entity had given you the employment offer letter. Thereafter since your return to Pakistan the entity which provided you the offer to be employed never contacted you, and the manager of that entity also never responded to your emails and telephone calls.

We assume that both the entity and you had signed the offer letter. There is a difference between the terms 'Offer Letter' and the 'Employment Contract'. 'Offer Letter' is only the proposal made by the proposed employer to provide you with the employment, which is also treated as an agreement. But the 'Employment Contract' is the contract between the parties and it is an agreement too.

“ All contracts are agreements, but all agreements are not contracts

Normally the basic terms of contractual obligations stipulates that "All Contracts are Agreements, but all Agreements are not Contracts". In your case the 'Offer Letter' is deemed to be an agreement but not a binding contract. You may not have a bona fide reason to file a complaint with the Ministry of Labour and under the provisions of Federal Law No. 8 of 1980 regulating the relationship between employer and employee in the UAE (Labour Law) against the said company which offered you the job. However, you have the option of filing a civil suit in any one of the UAE Courts which has jurisdiction over the said matter.

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