



EMPLOYMENT LEGAL PERSPECTIVE

One of the challenges that enterprises encounter relates to regulating employment related issues. They relate both to contractual relationship with employees as well as compliance with the relevant laws, regulations and directives.

A poorly drafted employment contract or use of templates without fully understanding or visualizing the inherent risks or drafting of contracts without paying due consideration to provisions in the relevant laws and regulations could spell disaster for companies in case of disputes or when they need to take actions under the contracts.

Similarly, initiation of actions or measures against employees without following the right steps or analysis may force employers to pay a huge price. We have seen numerous cases wherein companies found themselves in dire straits and lost lawsuits due to the HR teams not paying the required attention to regulatory provisions.

Term or Period of Contract

On one hand, companies aim to retain good employees for longer durations, on the other hand, they also seek ways and means to not continue with employees whom they may not need or who fail to perform as per their requirements. Therefore, the first and foremost consideration should be the determination of period of contract. While companies may find it apt to enter into a contract with a fixed term of one year enabling them to terminate the contract upon completion; yet, in some cases, a company might find it more appropriate to have a contract for a longer duration to ensure that the company will not lose employees for having invested time and money to recruit them or in honing their skills or in view of their projects. In such a scenario, if the company ends up entering into a long-term employment contract without a specific provision reflecting an agreed compensation in case of termination for an invalid reason, which cannot be lesser than two months wages, it will be forced to pay compensation equivalent to the balance period of the contract, no matter howsoever longer period remained under the contract.



The employers should also be aware of the fact that in the absence of a specific provision of auto-renewal of employment contract upon its expiration, the employment contract for Saudi nationals becomes indefinite period contract in case the parties continue implementing the same after its expiration.

Resignation Vs. Termination



There is a thin line between the phrases 'resignation' and 'termination of contract' by the employee. An employee under an indefinite period contract may tender resignation by serving a notice of two months or a higher period as stipulated in the employment contract. However, an employee under a definite period

employment contract can only terminate his contract upon its expiration by serving a notice of non-renewal as stipulated in the contract. It is also important to note that although, an indefinite period contract allows both parties to terminate it for a reason by serving a notice of 60 days anytime, yet, it is not always easy for employers to establish a 'valid reason' and the labor court might deem such a termination arbitrary and award compensation equivalent to 15 days wages for each year of employment if the contract is void of specific compensation for termination without a valid cause. There are other reasons or conditions wherein parties can terminate the employment: by mutual consent, provided the employee agrees in writing for such termination, the employee reaching the age of 60 years, 'Force Majeure' or closure of a line or section of business.

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Inability To Change OR Amend Conditions OF Employment

One more issue that needs specific attention is the provision in the Labor Law that disallows any change in the employment contract or any amendment to the conditions of employment unless it is deemed more beneficial to the employee. For instance, if an employer agreed to provide for annual leave longer than the minimum required period of (21) days, it cannot reduce it later to the minimum required period. The argument of parties agreeing to such changes shall not stand the legal test nor the defence that the employer adopted the provision as stipulated in the Law.



Similarly, the employee will have the right to refuse accepting any amendment to the contract even if it is not harmful to him. For example, an employee may decline to accept adding in the contract provisions for specific compensation in case of early termination of the contract without a valid cause, if it was not agreed in the employment contract.

Basic Wage Vs. Actual Wage

Many a times, employers err in understanding the difference between 'basic wage' and 'actual wage'. In effect, as per definitions provided in the Labor Law, the term 'Wage' which is applicable for computation of different payments refers to 'actual wages' that in turns includes basic wage and all allowances including in-kind allowances and commissions, incentives, bonuses etc.

As the end of services benefits (EoSB) need to be computed with reference to the last wage of the employee, it is important to agree with the employee that commissions, incentives and bonuses, which are subject to increase and decrease shall not be included in the EoSB.

Transfer of Employees

A company may also like to agree in the employment contract that their employees may be transferred to work in a location that would result in transfer of their residence. If such a provision is not added in the employment contract, the company will require a written consent from the employee for such transfer and the employee may decline to comply with such request.

Work Hours and Weekly Off and Annual Leave

Organizing working hours, working days and availing exceptions in these respects for special arrangements like offshore works require a good understanding of not only the Labor Law and its Executive Regulations but also the relevant directives and circulars issued from time to time by the Ministry of Human Resources and Social Development.



There is also a tendency of writing off any leave not availed by the employee during any calendar year. Seen from the legal perspective, employers are allowed to postpone annual leave of an employee for a period not exceeding (90) days due to work exigencies and any further extension require obtaining written consent of the employee. At the same time, the law provides that the employee will be entitled to wage for the accrued days of leave that he did not avail at the time of termination of employment. Here, the obligation lies upon the employer to set the leave of its employees and make them avail the leave when it is due, if they do not wish employees to accumulate and be entitled for compensation against the leave not availed by them.

Probation

While it is possible to extend probation of an employee for an additional period of (90) days, it is not a blanket provision. It will require consent of the employee who shall have the right to terminate the contract in case he does not agree to such an extension. Besides, more importantly, unless, it is specifically stipulated in the contract that the employer only will have the right to terminate the contract, both parties shall be entitled to terminate the contract during the probation period. Companies may like to have this right restricted to themselves to disallow employees to terminate the employment for having incurred expenses in recruiting the employees.



Penalties and Termination for Misconduct

There are provisions for imposing penalties and fines upon the employees for different violations. However, they need to follow a sequence and are subject to restrictions and compliance with the required mechanism. For instance, although, an employer may impose penalty of (3) days salary deduction upon an employee for reporting late to work by an hour consecutively fourth time; yet, the employer needs to follow the sequence of starting the penalty with a written notice for first time violation; (1) days salary deduction on second such violation, (2) days salary cut on third violation.

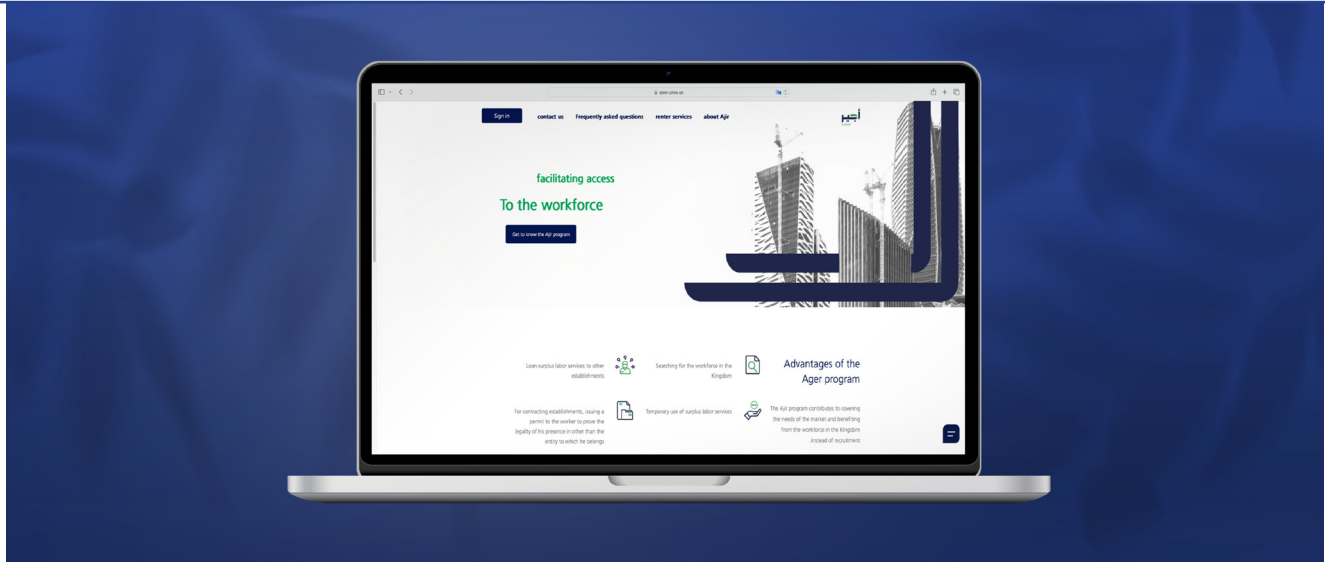


Similarly, the right to terminate the employment of an employee without any notice, compensation and EoS for any misconduct or any act of dishonesty committed by the employee is not absolute and unconditional. It calls for the employer to allow the employee to present his position before a committee duly formed by the employer within a period not exceeding (30) days from the day of discovery of the act.

Compliance

This is a very crucial part and any lapse, negligence, or misinformation could lead to fines and other consequences. The compliance part includes enrolling and complying with the 'wage protection system'; organizing 'unified employment contracts' for all employees; maintaining 'Work Rules Regulations', duly endorsed by the Ministry of Human Resources and Social Development. Besides maintaining the required Saudization under the 'Nitaqaat' system, companies are also required to have Saudization related to specific occupations within the organization, such as, accounting professionals, IT professionals, engineering occupations etc.





Ajeer System

One unique arrangement which companies, which have affiliates and do not need the services of Non Saudi employees during any particular period or require services for partial period of a day or week, could consider opting for Ajeer System.

In short, Ajeer System enables secondment of Non Saudi employees by one entity to another with certain conditions through its portal that is fully integrated with 'Qiwa' portal of the MHRSD. There are several conditions for utilizing the services under Ajeer System, which include:

- Classification of both entities as 'low green' or above about Nitaqaat
- Written consent of employee
- Employees who have not completed twelve months of services after their first entry in Saudi Arabia will not qualify to work under the aforesaid permit.
- There should not be any overlap about days and time.

Conclusion

The key to organizing and regulating employment related issues lies in having a thorough understanding of the regulatory framework and keeping abreast of developments in this arena. As the employment landscape will continue to change and attract talent and skill sets towards the burgeoning economy, HR teams will have to play a pivotal role in handling manpower requirements of organizations in line with the regulatory set up.

<https://ajeer.qiwa.sa>