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## Annual Leave Calculation under the New Labour Law for the Private Sector

Amel Alaseeri, November 7, 2012

The Law No. 36 of 2012 Promulgating the Labour Law for the Private Sector (the **New Labour Law**) came into effect on September 2, 2012. Article (58) of the Law provides: "...an employee, who has completed at least one year of continuous service, shall be entitled to an annual leave of no less than thirty days with full pay equivalent to two and a half days for each month".

The abovementioned provision has caused some concern because it does not say whether the 30 days annual leave should be calculated on the basis of working days or calendar days. At the time of publication of this article there are two different views. Employers must carefully consider their decision and obtain legal advice.

### Argument for 30 working days

The old Labour Law of 1976 as amended that was replaced by the New Labour Law (the **Labour Law of 1976**) gave employees 21 days, increasing to 28 days after five continuous years of service, and was also silent on whether the annual leave calculation should be based on working days or calendar days. It was established, however, by the Court of Cassation that public and official holidays and weekly day(s) of rest must be excluded from the annual leave. Article (58) of the New Labour Law is drafted in similar language as Article (84) of the Labour Law of 1976 but changes the number of days to 30 days. It follows from this that Article (58) of the New Labour Law should be subject to the exact same interpretation established by the Court of Cassation. In accordance therewith, the Ministry of Labour gave its opinion that Article (58) of the New Labour Law's silence should be interpreted as 30 working days.

### Argument for 30 calendar days

There is scope to argue that if it was the intention of the New Labour Law to calculate annual leave on the basis of working days it would have simply said so. Elsewhere in the New Labour Law, specifically Hajj leave, it expressly provides for "working days". Under the New Labour Law, time is based on the Gregorian calendar and the two and a half days referred to in Article (58) abovementioned are based on a 30 days' calendar month and not on the working days in each month. Furthermore, annual leave days should not be interpreted differently than maternity leave days and other statutory leaves.



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## **A 6-day working week**

Under the New Labour Law, the weekend is dealt with under a separate section, under Part VII, titled “Working Hours and Resting Periods”. Statutory leaves are dealt with separately, under Part VIII, titled “Leaves”. Article (57) (a) provides: “...every employee is entitled to weekly rest of no less than twenty-four full hours. Friday shall be deemed the day of weekly rest...The employer may give the employee weekly rest with full pay for a period of more than 24 continuous hours provided the working hours in one week do not exceed forty eight hours”. It can be argued therefore that an additional resting day (i.e. Saturdays) is not a statutory holiday and an employee should not be entitled to such resting day(s) if the employee did not work during the preceding week because he/she was on annual leave.

## **Conclusion**

It is anticipated that the annual leave will ultimately be established to be 30 working days. However, it must be emphasized that at the time of publication of this article there is no binding decision in this regard and there is scope under the New Labour Law for challenge. This article aims to put forward the two different views for employers to consider and employers should obtain legal advice going forward.

It is worth noting that any terms and conditions that are more favorable than the minimum requirements of the Law shall continue to apply (Article (4) of the New Labour Law). This means that employees who were employed before the New Labour Law came into effect, will continue to benefit from the annual leave agreed in their contracts of employment, in the company’s policies, or by custom if it is more generous than the 30 days prescribed under the New Labour Law. There are other changes in the new Labour Law affecting annual leave and employers should obtain legal advice thereon.

This information has been prepared by Zeenat Al Mansoori & Associates as a general guide and does not constitute legal advice on any matter. No liability shall be accepted by us for any action taken or not taken as a result of this information. Please contact our office for any further information in relation to this article.

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