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## CLARITY IN RELATION TO EMPLOYEE COMPENSATION - PUTTING ON THE PRESSURE

Zaid Khonji, September 23, 2012

Compensation for termination of an employment contract without a legitimate reason was almost always uncertain, and the subject of dispute in legal proceedings, for the main reason that there was no formula or clear basis for calculating how much compensation, if any, an employee is entitled to where he/she is terminated by the employer without a legitimate reason. On September 2, 2012, Law No. 36 of 2012 Promulgating the Labour Law for the Private Sector (the **New Labour Law**) came into effect and replaced the Law No. 23 of 1976 and its many amendments. The New Labour Law sets out a formula for calculating compensation for unlimited contracts entered into for an indefinite term and a formula for limited contracts entered into for a fixed term in an attempt to put pressure on businesses to pay a fair compensation and, generally, keep terminations in check and put an end to drawn-out court proceedings.

### Previously under the Labour Law for the Private Sector

Under the repealed Law No. 23 of 1976 Promulgating the Labour Law for the Private Sector as amended (the **Old Labour Law**) there was no statutory formula or basis for the calculation of compensation and compensation was considered and awarded on a case-by-case basis.

An employer who terminates an employee without a legitimate reason is in breach of contract. Under Article (108) of the Old Labour Law, an employer was "...liable to compensate the employee for the damages suffered by the employee as a result of the termination, having regard to customs, the nature of the work, and, generally, all circumstances in which damages occur for certain...". The judge considered everything put forth to him including, the years of service, whether the contract is an unlimited or limited contract, the age of the employee, his/her family responsibilities, whether the employee found alternative employment, the reason for the termination, any disciplinary action taken against the employee, relocation costs, etc. Such wide discretion caused much confusion and uncertainty for both employers and employees and, inevitably, there were some inconsistencies in court awards.

Legitimate reasons are hard to prove and unless the reason for termination fell under Article (113) of the Old Labour Law, or where the business was closing down, at least partially, or where the employer committed a repeated offence in accordance with the disciplinary procedure under Order No. 22 of 1976 or the business's



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own disciplinary procedure (approved by the Ministry of Labour), it was *likely* that the judge will award the employee some compensation. Parties were free to agree the basis and calculation of compensation, whether a fixed amount or lump sum, or an amount based on the basic salary or the gross salary, and/or based on the years of service, etc.

## **Under the New Labour Law for the Private Sector**

In accordance with Article (101) of the New Labour Law, an employee who is terminated without a legitimate reason shall have the right to compensation. Article (111) of the New Labour Law provides as follows:

- Where an employer terminates an indefinite term contract (without a legitimate reason) after three months from the start date of employment, the employer is required to compensate the employee two days for each month of service provided the compensation is not less than one month and not more than 12 months.
- Where an employer terminates an indefinite term contract within the first three months from the start date of employment, the employer is not liable to pay compensation unless the termination was unjustified in accordance with any of the provisions of Articles (104) and (105) of the New Labour Law. If the termination was unjustified, the employer is required to compensate the employee by one month's salary.
- Where the employer terminates a fixed term contract of employment (without a legitimate reason) prior to its expiry, the employer is required to compensate the employee by the salary due for the remaining period of the contract unless the parties agree otherwise (the agreement must be at least three months' salary or the remaining period of the contract, whichever is less). In accordance therewith, it is important to seek legal advice when drafting the termination provision in an employment contract.

Article (47) of the New Labour Law provides that the compensation payable under Article (111) should be calculated on the basis of the basic salary (as defined under the Law) plus social allowance, if any. It is worth noting that the employee shall be entitled to 150% of the above compensation where the unlawful termination falls under either Article (104) or (105) of the New Labour Law.

Under the New Labour Law, the employee is only required to compensate the employer if the employee terminates a fixed term contract early under limited circumstances that are set out under Article (112).

## **Conclusion**



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Our business clients terminating an employee's employment often put to us two questions: (1) is the reason for terminating an employee legitimate? And (2) how much compensation, if any, is the company liable to pay to the employee? While the New Labour Law answers the second question for many, employers should obtain legal advice on their respective rights and obligations and liabilities before terminating an employee.

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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