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## LIMITED AND UNLIMITED CONTRACTS OF EMPLOYMENT

Amel Al Aseeri, January 28, 2013

As the names suggest, a contract of employment for an unlimited term is a contract under which employment continues for an indefinite period of time and a contract of employment for a limited term, also known as a fixed term contract, is a contract under which employment continues for an agreed period of time. Few employers give much thought to the considerations arising in relation to each when drafting a contract of employment. This paper aims to highlight some of those considerations under Bahrain's new Labour Law for the Private Sector promulgated by Legislative Decree No. (36) of 2012, which came into effect on September 2, 2012 (the '**Labour Law**').

### **A contract of employment for an unlimited term**

In general, the employment relationship will continue under a contract of employment for an unlimited term until one or both of the parties take certain action(s) to bring the employment relationship to an end. A well drafted contract of employment should set out the circumstances under which the employment relationship may be brought to an end and the consequences thereof.

A contract of employment for an unlimited term is normally terminated by one party giving a written notice to the other party. The minimum statutory notice period under Article 99 (a) of the Labour Law is 30 days prior written notice. The employment will continue throughout the notice period (unless the parties agree that the employment will terminate earlier and to make payment in lieu of notice).

### **A contract of employment for a limited term**

The employer and employee should specify the agreed term in the contract of employment for a limited term. Article 96 of the Labour Law provides that a contract of employment "made for a definite period shall terminate at the end of the period". The general principle of a fixed term contract is that the contract will automatically terminate on the expiry of the agreed term without the need for either party to give notice to the other.

Under the repealed Labour Law No. (23) of 1976 and its amendments (the '**Old Labour Law**'), the company and the employee were free to agree to enter into any number of successive fixed-term



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contracts. Under the new Labour Law, however, any contract of employment, including any renewals, exceeding five consecutive years will be considered an indefinite term contract.

A contract can set out certain requirements from the employer and the employee to renew the contract at the end of the term. However, those provisions must be drafted very carefully so as not to result in any ambiguity or confusion as to the nature of the contract (limited or unlimited).

If the employer wants to continue to employ an employee on a further contract for a fixed term, the parties must enter into a written contract for a specified term after the end of each preceding term. Article 98 (4) of the Labour Law provides that where an employer and employee continue to perform their obligations under a fixed term contract after its expiry, the contract shall be deemed to have been implicitly renewed on the same terms of conditions but for an unlimited term.

## **Compensation for termination without a legitimate reason**

### If the employee terminates the contract of employment

If the employee terminates a contract of employment for an unlimited term, the employee's liability toward the employer will be limited to the notice, unless of course the termination falls within an employee's right to terminate.

Under the Old Labour Law, if the employee under a fixed term contract of employment terminates the contract early, the employee was potentially liable to pay the employer compensation, unless, the employee has completed more than 5 years of continuous service and/or the termination was for legitimate reason(s). The New Labour Law has removed the employee's liability to compensate the employer except under very limited circumstances.

### If the employer terminates the contract of employment

If the employer terminates a fixed term contract of employment without legitimate reason(s), the employer shall be liable to pay the employee compensation. If the employer terminates the contract of employment for an unlimited term, the employer shall be liable to pay the employee compensation in addition to the notice requirement.



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Under the Old Labour Law there was no real or measurable distinction between fixed term contracts and unlimited term contracts in respect to compensation for termination without legitimate reason(s). Compensation was discretionary and the court took all matters into account, including the remaining period of the contract (in fixed term employment contracts), the nature of the work of the employee, the period of employment, and the damages incurred by the employee. The New Labour Law has introduced a fixed formula for the calculation of compensation for each type of contract.

Careful consideration should therefore be given before entering into a fixed term contract if early termination is likely. Article 111 (g) of the Labour Law provides that where the employer terminates a fixed term employment contract prior to the expiry of its term without a legitimate reason, the employer must compensate the employee by payment of the remaining period of the contract, unless the contract contains an agreement setting out an alternative amount (provided it is not less than (i) the aggregate of 3 months' salary or (ii) the remaining period of the contract, whichever is less).

## **Termination under Article 107 of the Labour Law**

Irrespective of whether the contract is limited or unlimited, the employer can terminate the contract of employment immediately without notice or compensation in any of the circumstances set out in Article 107 of the Bahrain Labour Law. The circumstances set out in Article 107 of the Labour Law are exhaustive.

## **Is it better to hire an employee on a fixed term or unlimited term?**

Whether an employer should hire an employee on a contract of employment for a fixed term or an indefinite term will need to be assessed on a case-by-case basis. Things to take into consideration include the role of the employee, the nature of the employer's business, the certainty, or lack thereof, of long term work, whether employment will be for the completion of a particular project and/or duration or will be long term, the costs incurred in recruiting the employee, training the employee, etc.

It is worth noting that new employees will usually feel more secure under a contract of employment for a fixed term as this creates an expectation in the mind of the employee that the employment will continue for the agreed term.



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Whether the parties agree that employment will be for a fixed term or an unlimited term, it is important to ensure that the contract of employment and any schedules or additional documents or addendums thereto are drafted in clear terms and are consistent with the agreed nature of the contract (limited or unlimited) and the provisions of the Labour Law.

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**For more information please contact**

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Reem Al Rayes

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[reem@zeenatalmansoori.com](mailto:reem@zeenatalmansoori.com)

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