
Is it possible to successfully sue the employer for failing to formalize the employment relationship and execute the actual employment contract, following the offer letter? The answer is YES!

In the case at hand, the case was straightforward: an employee received an offer from a new employer, which he took, and resigned from his previous job. Following the resignation, he approached the new employer to formalize and sign his employment contract so that he could report to his new work. However, the new employer refused to execute the employment contract without providing any explanation. This, naturally translated into damages to the employee, who lost a good and stable job for what was promised to be a better one.

Steering Legal advised to file a Compensation Claim before the Civil Panel, and not before the Labour Panel, for the following reasons:

1. The employee did not have an official labour contract and so the Ministry of Human Resources & Emiratization would have refused to register the complaint.¹
2. To request more than three months' statutory salary compensation, which is the maximum allowed by the Labour Law.

Subsequent to the filing of the court case, a judgment was issued by the Dubai Courts (Civil Panel) whereby the company who issued the offer letter to one of the candidates chosen to fill a vacancy within the entity, was later ordered to compensate the candidate with 5 times the offered salary. The Court considered that the company's failure to execute, without a valid reason (or no reason at all for that matter), the ensuing formal labour contract reflecting, inter alia, the terms contained in the offer letter, were an abuse of rights in breach of Article 104 of the UAE Civil Code.²

Article 104 establishes that whomever lawfully exercises a right, in good faith, will not be liable for any harm arising therefrom. On the flip side, however, the exercise of a right will be deemed to be unlawful if there is an intention of infringing or if it involves malice and the sole intention of the person exercising the right is to cause harm to another, or if the interests to be achieved are contrary to the provisions of Islamic Shari'a or of the law, or are against public order or morals, or if the interests involved are not proportionate to the harm that will be done to others thereby or if the exercise of the right exceeds the bounds of usage and custom.

On that basis, the Court concluded that the lack of reason (or even a minimum explanation proffered to our client) for not executing the ensuing labour contract with the "employee" was an abuse of right which caused him harm, as he had already resigned from his former job and was left stranded with numerous financial obligations. Thus, he had to be compensated.

¹ Pursuant to the Labour Law, it is compulsory to file a labour complaint before presenting the case before the Court.

² Article 104, UAE Civil Code "*The doing of what is permitted by law negates liability, and no person who lawfully exercises his rights shall be liable for any harm arising thereout.*"

Furthermore, because there was no labour contract signed between the company and the “employee”, the matter had been rightly referred to the Civil Courts which as a result upheld jurisdiction. This, naturally allowed the compensation to be considerably superior to any compensation that would have been awarded by the Labour Courts – which tends to be of no more than 3 months of salary.

That said, it is paramount that employers in the UAE bear in mind the importance of the obligation to act in good faith and not to abuse one's rights while exercising them.

Should you require further information on the recent ruling, or legal advice in relation thereto, please do not hesitate to contact us. We would be delighted to assist you.

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