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Egypt

EMPLOYMENT & LABOUR LAW

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This country-specific Q&A provides an overview of employment & labour law laws and regulations applicable in Egypt.

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EGYPT EMPLOYMENT & LABOUR LAW



1. What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

The Ministry of Health has issued a plan of co-existence with the COVID-19 virus in 2020. The plan includes the precautionary measures and social distancing rules. Additionally, Law no. 170 of 2020 in respect of the joint contribution to face some of the economic repercussions resulting from the spread of pandemics or natural disasters occurrence has been issued. The said Law provides that 1% of the net income of the employees resulting from their work shall be deducted monthly and for a period of twelve months (which should have ended by now). Additionally, 0.5% of the net receivables from the pensions established in accordance with the Social Insurance Law shall be deducted as a contribution to face economic repercussions resulting from the spread of pandemics or the occurrence of natural disasters. There was no general issuance on protecting employees from redundancies, however, the Ministry of Tourism for example has in fact executed random inspection campaigns on some touristic establishments and has withdrawn the license of those who have laid off employees due to the current COVID-19 situation. The Ministry stated that even though there is no Ministerial decree issued in such respect, the action to withdraw the license has been taken according to the instruction of the government and is to be taken seriously by the owners of touristic establishments.

2. Following the covid-19 pandemic, have new employee rights or protections been introduced in respect of flexible or remote working arrangements?

No, however, in practice it is common in the private sector that employees are either working remotely/from home or rotating between working remotely and from the office.

3. Does an employer need a reason in order to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

The Labour Law no. 12 of 2003 (the “**Labour Law**”) aims for the protection of the employees’ rights. Hence, terminating an employment agreement by the employer is rather difficult. Nevertheless, the Labour Law has given the right to the employer to terminate the employment agreement in certain cases. With respect to definite period agreements, the agreement is terminated without need for notice or any legal or judicial procedure upon expiry of the period stated in the agreement, or termination of the task, project or season, as the case may be. However, we must note that, at the date of expiry, as a precautionary measure it is recommended that the employer notifies the employee of the end of the employment agreement. If the employee continues to work past the end date of the definite term contract, the employment agreement shall be automatically transformed into an indefinite employment agreement. As for terminating an indefinite term employment agreement, the employer must notify the employee of its wish to terminate at least two months prior to the actual termination. Nevertheless, if the employment relationship exceeds ten years, the employer must notify the employee of its wish to terminate the agreement at least three months in advance.

In all cases, the employer may not terminate the employment agreement (whether definite or indefinite) unless the employee commits any of the acts or omissions mentioned as an example in Article 69 of the Labour Law as follows:

- The employee assumed a false identity or submitted false documents;
- The employee acted negligently, causing the employer considerable loss, provided the employer notifies the competent authorities of the incident within 24 hours of becoming aware of it;
- The employee failed to observe written

instructions, displayed in a prominent place, compliance with which is necessary to ensure the safety of the workers and of the establishment, despite of his/her receipt of a previous written warning;

- The employee has been absent without a valid reason for more than twenty days a year, or for more than ten consecutive days, provided that the worker is first warned in writing by registered mail with acknowledgment of receipt by the employer after ten days' absence in the former case and after five days in the latter;
- The employee divulged confidential information of the establishment where they are employed, which caused serious damages to the establishment;
- The employee has been competing with the employer in the same field of activity;
- The employee has been found in a state of obvious intoxication or under the influence of drugs or alcohol during working hours;
- The employee assaulted the employer or the employer's representative, or has committed a serious act of violence against any of his/her superiors during or in connection with his work; and/or

The employee has not respected the provisions regulating the right to strike.

4. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

The Law does not discuss redundancies or large numbers of dismissals except for employers who are facing bad economic circumstances whereby the establishment must undergo cost reductions ("**Economic Circumstances**"), to terminate the agreement of some of its employees in accordance with the business needs. In all cases, the assessment of the Economic Circumstances is subject to the Labour Office's review. It should be noted, however, that for an employer to claim that its establishment is facing Economic Circumstances, they have to provide supporting legal arguments and documents. Such documents shall include the financial statements of the establishment that prove the financial situation requiring the cost reduction needed.

It is difficult to apply the above mentioned provision in practice. The alternatives the employer would be facing

are as follows:

- i. reach an amicable settlement to have the employee resign wilfully. Amicable settlement shall include providing the employees with all their rights which they have received throughout their period of work (compensation, benefits etc...) as agreed in their employment contracts, as a matter of fact and as per the Labour Law;
- ii. it may be suggested to the employees who are about to reach the age of 60 (retirement age) and have been employed for a long period of time, to be compensated by being paid the remaining years they have in the company until reaching the age of 60, as a lump sum amount and be required to resign immediately. For those who refuse to resign, they can be paid their salary monthly in arrears over their remaining years until reaching the age of 60, and stay on garden leave until reaching that age. or
- iii. dismiss them and pay them an amount equal to their salary for the remaining period of their definite term contract. In the case of an indefinite term contract, the minimum compensation which is also the usual compensation.

5. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

The employer must obtain the approval of the employees before their termination. If they refuse, the employer may terminate them and face their legal claims of being unlawfully dismissed or the employer to offer an amicable settlement.

6. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

For terminating an indefinite term employment agreement, the employer must notify the employee of its wish to terminate at least two months prior to the actual termination. Nevertheless, if the employment relationship exceeds ten years, the employer must notify the employee of its wish to terminate the agreement at least three months in advance.

7. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

Yes, if the employee agrees to resign wilfully and be offered a settlement.

8. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

Yes, this is possible.

9. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

The employer must provide the employee with a notice period before termination and such termination must be for one of the reasons stipulated upon in the Labour Law (be approved by the labour courts). If the employee agrees to resign wilfully, the latter will sign a resignation and form 6 of the social insurance authority. The employer must close the social insurance file of the employee and inform the social insurance authority that the employee is terminated.

10. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

If the employer does not provide a notice period or the employee does not wilfully resign or is being terminated for material breach, it shall be considered an unlawful dismissal. Thus, the Laws have set out compensation for unlawful termination by the employer as follows:

- Unlawful termination of definite term employment agreements: in this case, the employee shall be entitled to all his entitlements in addition to the gross salary of the remaining period of the employment agreement. Furthermore, the employee shall be entitled to any bonus amounts, leaves balance, and any additional amounts regularly paid by the employer.

- Unlawful termination of indefinite term employment agreements: in this case, the employee shall be entitled to a compensation determined by the court of law, but in all cases may not be less than the two months' gross salary for each year of service in addition to any entitlements (i.e.: bonus amounts, leaves balance, and any additional amounts regularly paid by the employer).

If the employer does not inform the Social Insurance Authority that the employee has ended his employment, the employer shall pay an amount equal to 20% of the contribution value from the last month of the period of subscription, all in accordance with the provisions of the executive regulations of the Social Insurance Law. Additionally, violating this provision would lead to imprisonment or a fine with substantial amount.

11. How, if at all, are collective agreements relevant to the termination of employment?

A collective agreement can be established between the management of the company and the trade union representing the workers subject to the labour office's review and decision to terminate the employees collectively or reduce their wages instead of discharging them.

12. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

Yes, the permission of the labour office should be granted. If the employer decides to dismiss the employee without resorting to court for approval, the employee may raise a claim for being unlawfully dismissed. The compensation issued by the courts for unlawful dismissal is 2 months' wage for each year of service for an indefinite term contract and the remaining period of a definite term contract.

13. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

The Labour Law provides for specific protection for the

following protected characteristics: sex, race, origin, marital status, religion, political affiliation or any other personal belief and/or mental or physical disability. The Labour Law provides that employees may not be discriminated against by reason of one of the protected characteristics mentioned above or be terminated based on such discrimination. The Law further provides for specific provisions for employment of women and children. The Law also provides for non-discrimination against women as well as employment conditions that must be observed for the employment of women or children.

There are provisions around harassment in the Penal Code that should be observed but not in the Labour Law. The Penal Code penalizes approaching another person in public or private with relation to sexual or offensive subjects, suggestions or allusions through gestures, words, or actions by any means including wired and wireless means of communication.

14. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

Please see answers above.

15. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

The Labor Law sets out unjustified and illegitimate reasons for termination such as employees' right to use their leaves, family obligations and pregnancy. Additionally, the employer shall be prohibited to terminate an employee during her maternity leave.

16. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Such protection is available to members of the labor union as the courts may protect those employees from being terminated because of their job.

17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

For definite term employment agreements, the employee shall be entitled to all his entitlements in addition to the gross salary of the remaining period of the employment agreement as for indefinite term employment agreements, the employee shall be entitled to a compensation equal to the one determined by the court of law, which in all cases would not be less than two months' gross salary for each year of service.

18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

The general rule is that employers and employees cannot agree to reduce the latter's rights, or else such agreement would be deemed null and void. However, the employer and employee may agree for instance to a pay in lieu of leave credit.

19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

In practice, the employment contract may usually include a restriction of non-competition after termination. However, it is not guaranteed that the court would necessarily rule for it unless actual damage occurred as a result of breaching the non-competition clause. Further, the term of the said non-compete clause should not be exaggerated by the employer.

20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes.

21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

Only a certificate of employment is granted by the employer to the employee. The certificate may include the period of employment, nature of work, benefits, experience and may include the salary and reason of termination subject to the request of the employee.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

Terminating indefinite term contracts is the most common difficulty employers face. Given that the courts are employee biased, makes termination of that type of contract nearly impossible without payment of a substantive compensation. To avoid such obstacle, it is suggested that the employer establishes a definite

employment contract to be renewed by a new contract or by project from the beginning to avoid the hassle of terminating indefinite term contracts.

23. Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

A new Labour Law to replace the existing Labour Law is currently being discussed in the Egyptian Parliament. Though several important amendments are being discussed, the general direction in Parliament is still unclear. There are still more developments that need to be made in improving the Labour Law. In our experience, employers have no desire to limit the rights of employees. Instead, we have seen that employers wish they could deal easily with their employees without the need to resort to unregulated solutions that may expose them to legal liability. Thus, we believe the necessity to improve the Labour Law is vital.

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