

KUWAIT PRIVATE SECTOR LABOUR LAW

(Compiled by Adv. Rajesh Sagar)

Dear Members,

This is an attempt to give you a brief outline on the major aspects of the private sector labor law in Kuwait. However, the points discussed below are not complete or comprehensive and shall not be taken as a final legal advice as each labor dispute or issue needs to be considered separately based on the factual aspects pertaining to such issue and specific provisions of law applicable on such cases.

As you may aware, Labor regulations in the private sector are enforced by the Ministry of Social Affairs & Labour (MSA&L) in State of Kuwait.
Contract of Employment

An employee's terms of service are contained in his employment contract, which may be for a fixed time or it may be for an indefinite period. The labor law specifies minimum limits below which terms of service may not fall, and if a clause in a contract gives an employee a lesser benefit than the basic rights prescribed under the law, he is entitled to the minimum specified by the law for that particular term. An employment contract may be verbal or in writing. In either case, it must contain at least the following;

- the remuneration payable
- description of the job
- the date of appointment
- its duration (if fixed)

If a contract is verbal then, in the event of a dispute, either side can use circumstantial evidence to prove what is in it. If the contract is in writing, it should be preferably in Arabic. A translation into another language may be attached but the Arabic version is authoritative, i.e. only the Arabic version will be considered while resolving a labor dispute in MSA&L or in a court of law.

An employee may be hired on probation for 100 days at most. During this time the employer can terminate him without notice, though accrued indemnity but not holding pay must be paid. The same employer may not put an employee on probation more than once.

Remuneration & Deductions

Remuneration includes basic pay and all regularly paid incentives, commissions, obligatory bonuses, gratuities from third parties and allowances from which the employee benefits (such as housing allowance), but excludes allowances on account of expenses and profit shares. Payment

of a bonus is obligatory if it is stipulated in the contract of employment or in the by-laws of the firm or it has been paid in the same amount regularly on every year.

What is included in total remuneration is important, as this is the figure that must be used when calculating terminal indemnity or compensation on account of injury. Where an employee is paid on hourly basis the last salary payable is used, but if he is paid on a piecework basis then the average wage actually payable to him during the previous three months is used for calculating terminal indemnity or compensation on account of injury.

Payments

There is no minimum wages prescribed under the present law. Salaried employees must be paid at least once in a month. Piece-workers and those on hourly or weekly wages must be paid every two weeks.

Persons working for a subcontractor, who has failed to pay their salaries, may demand payment from their employer's superior contract/Main Contractor to the extent that the latter owner their employer money for work done. When an employer goes bankrupt the outstanding salaries and termination benefits of his employees must be paid before his other creditors.

Deductions

An employee may not be obliged to buy products made by his employer, if he owes his employer money then no more than 10% of his salary may be deducted to pay off his debt and he may not be charged with interest for the same. Where an employee's salary is attached on account of debts to third parties, the deduction is limited to 25 % of his salary.

Working Hours

The working hours of an adult are limited to eight hours a day and 48 hours a week. A rest break of at least one-hour must be allowed after five consecutive hours of work. Rest periods are not included in the calculation of working hours. These standard hours may be increased or decreased by the MSA&L in certain cases, such as hotel workers and workers in certain other fields.

Holidays

An employee is entitled to one full day off per week with pay. The traditional day off is Friday, but this may be adjusted according to the requirement of the work. An employee also has the right for eight public holiday's in a year with full pay as follows:

- One day on Hijri New Year's Day
- One day on Ascension Day
- Two days for Eid Al-fitr
- Two days for Eid Al-Adha
- One day for the prophet Mohammed Birthday (PBUH)
- One day for National day

Liberation Day is not yet a statutory holiday in the private sector.

Annual Leave

An employee with up to five years of continuous service is entitled to 14 days leave a year on full day, provided he has completed one year of services, and 21 days after more than 5 years of continuous service. Official holidays and days of sick leave may not be counted as part of annual leave. The employer has the right to fix the date of leave.

An employee must be given his holidays pay before he goes on leave and the last salary payable before the holidays must be used to calculate the amount due. If an employee's services are terminated then he is entitled to a cash payment in lieu of accumulated leave, irrespective of the number of years of leave due, and payment for the accumulated leave must be calculated on the basis of the last salary payable on the date of termination.

Sick Leave

Subject to a satisfactory medical report, an employee is entitled to sick leave for

- The first six days of illness on full pay
- The next six days on three-quarters pay
- The next six days on half pay
- The next six days on quarter pay
- The next six days without pay

This entitlement is the total entitlement in one year and not per period of sickness.

Overtime

An employee may be required to work overtime provided it is necessary and the employer's express order/instruction. Overtime rates of pay are:

- 1.25 times the basic hourly rate for excess hours worked on ordinary days
- 1.50times the basic hourly rate for all hours worked on the weekly day off
- Twice the basic hourly rate for all hours worked on public holidays.

An employee has the right to refuse to work overtime.

Female Employees

A women performing the same work as a man must be paid equal remuneration. The standard working hours for women are the same as for men.

But may not work at night (7pm to 6 pm) except in clinics, pharmacies, hotels, nursery schools, homes for the handicapped, airline and tourist offices, theaters and Entertainment City.

They may work up to midnight in cooperative societies and public utilities, beauty salons, tailoring shops, banks and offices. Nighttime working hours may be extended by the MSA&L during Ramadan, and on Eids and public holidays. Employers are obliged to arrange transport for women working at night.

Maternity Leave

A woman is entitled to maternity leave to a maximum of 30 days prior to delivery and 40 days after delivery on full day. Thereafter she may be absent from work without pay for up to 100 consecutive or non-consecutive days, provided she presents a medical certificate stating that she is ill as result of gestation and parturition. The annual leave entitlements of a women who makes use of her maternity for leave privileges in any year are forfeit on day-per-day basis until her annual leave entitlement for that year is extinguished.

Termination Benefits

When the employment is terminated, an employee is entitled to a lump sum payment called termination indemnity.

Calculation

For those paid on monthly basis, termination indemnity is 15 days remuneration for each completed year of service for first 5 years and 30 days for each completed year beyond 5 years, but the total indemnity is limited to one and a half year's remuneration. For piece-rate workers and those paid on an hourly, daily or weekly basis, the indemnity is 10 days remuneration for each completed year of service for the first 5 years, and 15 days pay for each completed year beyond 5 years, subject to a limit of one year's remuneration. In both cases part years are calculated pro-rata.

Restrictions

An employee who resigns with less than five years service is not entitled to indemnity. One who resigns with five years or more of services is entitled to 50% indemnity. But employees who are made redundant (irrespective of length of service), who reach retirement

ages, who are disabled at work, or who die while in service are entitled to full indemnity. And woman who marries while she is an employee and who resigns within six months of marriage is entitled to full indemnity.

Disciplinary Notices & penalties

All employees related regulations must be issued as circulars or bulletins written in Arabic. Miscreant employees may be penalized provided the employee is issued with regulations specifying the acts that are punishable. Penalties must be progressive and are limited as follows:

- Only one punishment may be inflicted for each act of misbehavior
- A penalty cannot be imposed for an act committed outside the work place unless it was related to work
- A pay deduction cannot exceed 5 days have a month
- A suspension from duty cannot exceed 10 days a month
- A penalty cannot be imposed for any act once 15 days have elapsed since the act was proved or since the usual date for the payment of wages.

Termination

Where an employment contract is for a fixed period, it terminates automatically at the end of the period, but if both parties then continue to implement it, it is deemed to be renewed indefinitely under the same terms and conditions.

If either party terminates the contract before the end of the fixed period (and there is no clause in the contract to cover this) then the party terminating the contract must compensate the other. Where termination is made by the employer, compensation is limited to the wage the employee would have earned from the day of termination to the expiry of his contract. Where it is the employee who quits, compensation is limited to the employer's actual loss.

Where an employment contract is for an unlimited period, either party may terminate it by notifying the other in writing at least 15 days prior to termination (the minimum period prescribed under the labor law) and/or the notice period as prescribed under the employment contract. Either party may pay the other 15 days salary or equal to the notice period prescribed under the contract, as appropriate, in lieu of notice.

An employer has the right to terminate an employee without notice, and without paying indemnity and compensation, if the employee:

- Commits a wrongful act resulting in serious loss to the employer
- Repeatedly disobeys the instructions of the employer
- Disobeys the employer's instructions concerning safety at work
- absent from work for more than seven consecutive days without due cause
- convicted in a crime affecting honor, honesty or morality
- Commits an act against public morality in the workplace
- Assaults a fellow employee, the employer or his agent at work or on

account of work

- Fails to carry out his obligations under the terms of his contract or the labor law

- used fraudulent means to obtain work

- Reveals any secrets relating to his employment to third parties

An employee has the right to quit without notice before the expiry of his contract, and to collect his indemnity and not pay compensation, if:

- His employer fails to abide by the provision of his contract or the labor law

- The employee has been assaulted by the employer or his agent

- To continue in work would endanger his health

An employee's contract is terminated if he dies. It may be terminated if he fails (without fault) to perform his work or he exhausts his entitled sick leave. In all these cases his indemnity must be paid.

An employee's contract is automatically terminated if his firm goes into liquidation or merges with another, or there is a lockout, or the firm is sold or inherited, the new owner while reserving his right to indemnity, though the employee may continue in service with the new owner while reserving his right to indemnity for his previous service.

Health & Safety

Employers are obliged to take precautions to protect their employees against physical hazards and occupational diseases work. They are also required to ensure that places of work are clean, well ventilated, adequately lit and in sanitary condition. Employers must supply first aid kits containing medicines, antiseptics and bandages, and place them visibly within reach of employees.

Detailed standards in these matters are contained in resolutions issued by the MSA&L in consultation with the Ministry of public Health. Employees who work in areas not serviced by public transport must be provided with suitable transport. If they work in localities far from populated areas, the employer must provide suitable accommodation, potable water and the means to obtain supplies.

Accidents

If an employee is injured at work, the employer must report the matter to the local police station and the MSA&L. The injured employee has the right to treatment, at the employer's expense, in any government hospital or private clinic as the employer deems suitable, A doctor's report, stating the period of treatment required, any disability arising from the accident and the employee's fitness to continue in work, must be obtained.

During treatment, an injured employee is entitled to full pay for the first six months and, thereafter, half pay until he dies, or recovers, or is proved to be permanently disabled.

Compensation

An employee has the right to get compensation for work-related injuries without having to prove that the employer was at fault, provided he did not injure himself intentionally or was not guilty of gross malpractice (such as expressly contra-veining safely regulation). But where his injuries have made him more than 25% disabled or he has died of them, he or his family will be entitled to compensation even if he was guilty of gross malpractice.

Compensation varies with the severity of the injury. Where death has occurred, it is the greater of:

- 1500 days pay
- the legal blood money which is currently fixed at KD 10,000

For total permanent disability, it is the greater of:

- 2000 days pay
 - one and one-third times the legal blood money
- For partial permanent disability, compensation is calculated as a percentage of what would be due for total permanent disability.

Trade union & Dispute resolution

The formation and activities of trades unions are strictly controlled. Only one union may be established for workers of any firm of profession and person may not join more than one union.

To join a union, a person must:

- Be at least 18 years of age
- Should have a certificate of good conduct from a competent authority

An expatriate must also

- Should have valid work permit
 - Should have been in Kuwait for 5 consecutive years
- The right to vote in the general assembly of a union or to be elected to its executive board is restricted to Kuwaitis. Expatriate members only have the right to delegate one of themselves as their representative to express their views before the executive board.

Collective Labour Disputes.

If a dispute arises between an employer and all or some of his employees regarding terms of work, the following procedures are mandatory:

- direct negotiation must take place between the employer and the employees. If an agreement is reached, it must be registered with the MSA&L within seven days
- If no agreement is reached then the parties should request the MSA&L to intervene
- If the MSA&L fails to settle the dispute within 15 days, it must refer the matter to Labour Disputes Arbitration Committee in the courts. The employer or his representative and representative of the employees may appear before this committee to a limit of three representatives each. The committee's decision is final and binding.

Individual Labor Disputes

The private sector labor law also lays down specific procedures, which must be followed by individual pursuing claims against their employers. The dispute must be submitted to the MSA&L before a lawsuit is started. The Ministry must call the two parties together and try to settle the matter amicably. If no settlement is reached then, within two weeks of being asked by the employee, the MSA&L must refer the dispute to the Labour Court, along with a summary of the matter, the evidence of the parties, and the Ministry's own comment's. Within three days the court must fix a date for a hearing, and notify both parties.

The case is heard in a summary manner.

The time limit for filing cases is one year after the employment is terminated. Labour cases are exempt from the usual court fees .

Expected Changes

Regulations under the private sector labour law are issued at regular intervals. They only become effective when published in Al-Kuwait Al-Youm, the official gazette.

In July 1997 a new draft labour law was finalized by the MSA&L and submitted it to the Parliament/Cabinet for its approval. Terminal indemnity, annual holidays and sick leave are to be increased and the number of public holidays is to be extended to twelve. Haj leave, compassionate leave and Idda leave for new widows, all fully paid, are to be introduced. The new law is expected to make the payment of salaries within seven days of their due date mandatory, and may also bring in a minimum wage plus many other amendments intended to improve rights of the labors. However, the revised draft law is still pending at the Parliament for its final approval.

Disputes and Civil Rights

Expatriates who are finding it difficult to get their legal rights in a work related or other dispute may find the following organizations for assistance..

Labor Departments at the ministry of Social Affairs and Labour

The MSA&L has five labour Departments, one in each governorate. Labour disputes should be referred to one of these departments, along with documents to substantiate a claim. The Department will give advice on the merits of a case and follow the procedures applicable in this regard. However certain disputes will finally decided by the court.
Kuwait Trade Union Federation

The Federation has a special interest in preventing the abuse of expatriate labourers. It provides legal advice to laborers free of

charge and also helps them to take action against their employers.
· Human Rights Committee (HRC) at the National Assembly
Complaints on any matter, whether related to employment or other issues, can be sent to the HRC by letter or by fax, or can be discussed on telephone or by visiting their office at National assembly building in person. Persons who are refused entry to the National Assembly building should call the Committee directly. The HRC are particularly interested in expatriates who are having difficulty in obtaining their passports from their employers, and these persons are asked to send a signed letter in Arabic stating the facts of their case, their civil ID and passport numbers, country of origin, and the name of the their employer by fax to the Committee who will treat the matter in confidence.

Regards
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TKS A LOT FOR THE CONTRIBUTION, RAJESH.

THOMAS PANICKER
PRESIDENT LGFK