

# The limitation period for labour claims under UAE law - when does it start?

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The Employee was hired by the Company in 2001 under an indefinite term employment contract on a monthly salary of AED 5,000 but with the promise of commission at 10% of the Company's net profit. The Employee alleged that the Company failed to pay him the full commission agreed upon for 2005 and 2006. The Employee lodged a complaint with the Labour Department, which was then referred to court.

## **Procedural History**

The Court of First Instance appointed an expert to determine whether the Employee was employed by the Company on a commission or monthly salary basis and the total commission to which he was entitled.

After receiving the expert's report, the Court of First Instance ordered the Company to pay the Employee the sum of AED 40,561 with 9% interest from the date of the claim (2 May 2007) until full payment.

The Company appealed in Labour Appeal No. 1214 of 2007, as did the Employee in Labour Appeal No. 1218 of 2007. After joining the related appeals, the Court of Appeal proceeded, on 28 February 2008, to amend the lower Court's award to AED 35,561 while affirming the rest of the judgment.

The Court of Appeal held that the claim for the 2005 commission was barred by the one-year statute of limitations. The Court found that the commission was earned on 31 December 2005 but that the Employee had lodged his complaint with the Labor Department more than one year after that date (2 May 2007). The Court stated that "the fact that the Company was preparing its budget is no legal excuse for the Employee not to claim his rights, for he could have commenced court proceedings the next day after earning his commission on 31 December 2005 to have an expert appointed to determine his entitlements and the court rule in his favor on the basis of the expert's findings".

Both parties appealed to the Court of Cassation.

## **The Court of Cassation**

The Employee argued that the Court of Appeal erred in holding that, because 2005 commission was due on 31 December 2005 (the end of the Company's financial year) the claim for this commission was barred by the one-year statute of limitations.

As per the documents filed by the Company, the audit which looks at the budget from a profitability standpoint is completed in June of the year following the year for which the accounts are audited. By then the Company would have received the revenue from its market sales. Profits cannot be calculated whilst Company goods are with its customers and have not yet been paid for. Profit and loss can only be determined once actual payment has been received for the goods. The auditor then examines all the accounts and fixes the date of announcement of the profit and loss results that have been audited by the

Company accountant in order to arrive at the amount due to the Employee as profit commission.

The Company's 2005 audit report confirms that the results were announced not on 31 December 2005 as the Company alleged, but on 6 June 2006. This was verified by the Court-appointed expert in his report after confirming the Employee's entitlement to commission. The expert had come across a Company email dated 4 July 2005 that included a calculation of the Employee's commission for 2004. This showed that the commission payouts became known only at the date of announcement of budget results, more than six months following the end of the budget year. The Court of Appeal should therefore have used 6 June 2006, not 31 December 2005, as the date when the statute of limitations period for the 2005 commission began to run.

The Cassation Court allowed the appeal and held as follows:

1. It has been well settled by the Court of Cassation that according to Article 6 of the Labour Law and Article 478 of the Civil Transactions Law, the one year statute of limitations for any claim under the Labour Law or an employment contract starts running from the date when the right is capable of being exercised.
2. Accordingly, the due date for the employee's profit commission falls on the day when the results of the Company's operations are announced. Profitability can then be determined along with the employee's share of the profits.

The Court of Appeal's conclusion was not well-reasoned as it did not look into the actual date of the announcement of the Company's operation results for 2005, which is the date to be relied upon in determining the Employee's entitlement. The Court of Appeal's decision must therefore be quashed.

### **Practice note**

Labour claims have a short limitation period of only a year. This Court of Cassation judgment is helpful in clarifying that this period will only start once the right becomes capable of being exercised, which in claims for commission is when the profits of the company are announced.

The Court of Appeal's approach (that the employee should have filed a claim seeking an expert determination before the official profits are announced) would have forced employees to file unnecessary claims simply to ensure the limitation period did not expire, despite there being no reason to doubt that the commission would be paid once the profits are announced.

The Court of Cassation's judgment is therefore helpful to both employees and employers.