

Limitations on Labour Contracts

Eman Ahmad

e.ahmad@tamimi.com

Hussain Al Matrood

h.almatrood@tamimi.com

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One of the main restrictions is the procedure which must be followed by an employee to collect her dues in case of a dispute with the employer. The procedure, which is mandatory and strictly followed, requires the employee to first contact the Ministry of Labour (or the relevant authority) and then file a labour claim with the court. The UAE courts, as detailed below, view this procedure and the court's jurisdiction over labour disputes as a matter of public policy.

In cassation appeal 123/2009, the Dubai Court of Cassation heard a challenge to the lower court's judgment denying the defendant employer's request to dismiss the case for want of jurisdiction. The defendant argued that the labour contract with the employee contained an arbitration clause which precludes the Dubai Courts from hearing the case. The Defendant argued that Article 203 of the Civil Procedure Law allows parties to a contract to agree to an arbitration clause and the employee agreed to the clause, therefore the court should respect the parties' wishes and arbitration agreement.

The Court in its analysis quoted Article 7 of the Labour Law which states: "any condition contrary to the provisions of this Law, even if was made prior to its commencement, shall be null and void, unless they are more beneficial to the Employee". The Court reasoned that this article evidences the legislative intent and makes the employee's rights given under the Labour Law part of public policy. Matters of public policy, the Court explained, are not matters which can be waived or conciliated. Therefore a labour contract may grant an employee more rights than the ones provided by law; however, an employee may not waive his rights under the law as this waiver would be contrary to public policy.

The court, for example, has affirmed an employee's claim of 3 months payment in lieu of notice based on a clause in the employee's contract which granted the employee more benefits than the Labour Law. (Cassation 65/2008). On the other hand, an employee's agreement to clauses in a labour contract which lessens his rights as compared to the basic rights in the Labour Law is seen as waiver and is invalid.

As regards the arbitration clause, the Court quoted Article 203 (4) of the Civil Procedure Code which states that "It shall not be permissible to arbitrate matters in which conciliation is not permissible" and read it along with Article 7 of the Labour Law to conclude that conciliation is not permissible in labour disputes and therefore arbitration is not permissible either. Therefore, even if the parties agreed to an arbitration clause in their contract, the jurisdiction will remain with the Court since the clause would be against public policy.