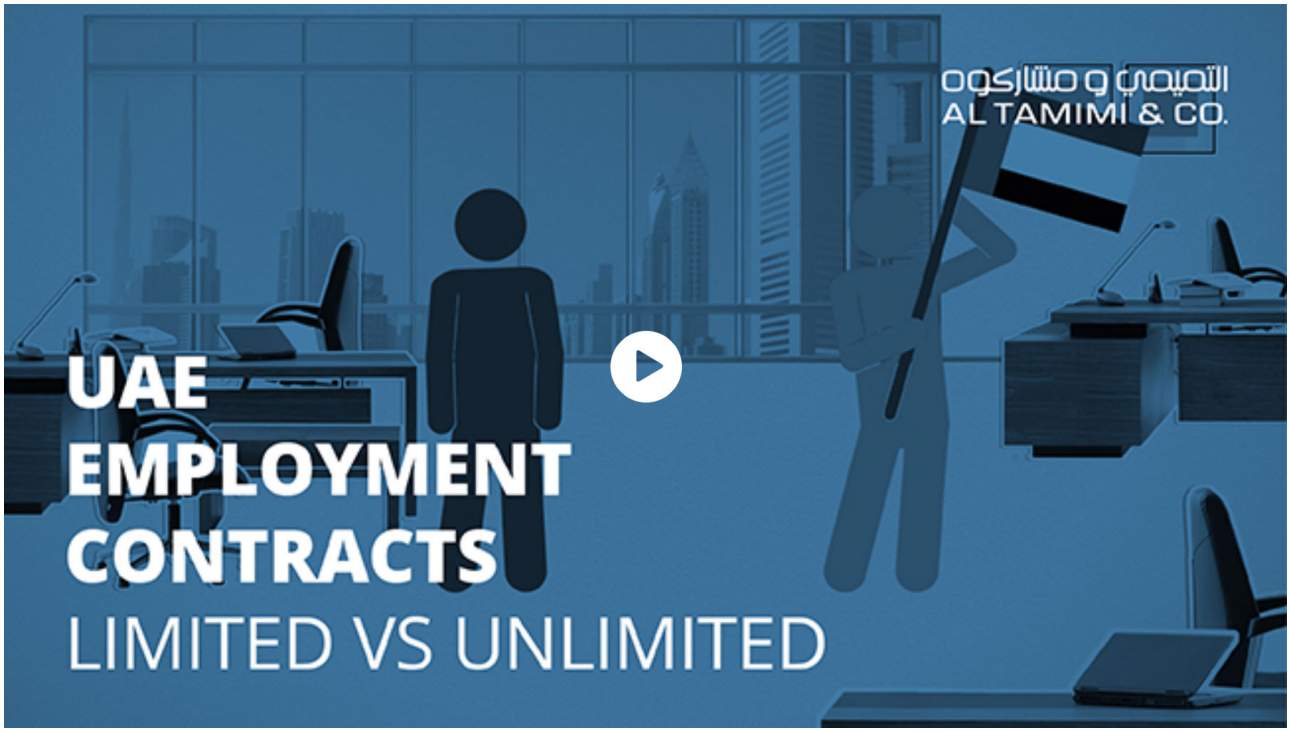
Termination of Unlimited Employment Contract: The Myth and the Truth

Ayen Biar - Senior Associate - Litigation
- Abu Dhabi

Note: Important changes have been introduced to the UAE Labour Law. Scroll down to the bottom of the article to read more.

Choosing the right type of contract at the outset of any employment relationship is important to mitigate risk. Do you know the types of contracts that are available and the main differences?

Watch the video below to find out more:



The employment relationship between employers and employees in the UAE is governed by the provisions of Law No. 8 for the year 1981, otherwise known as the Employment Law. This relationship is usually regulated by way of a contract of employment that sets out the rights and obligations of each party in light of the provisions of the Employment Law.

Types of Employment Contracts

The Employment Law provides two types of contracts – the limited contract that is set for a specific period (which should not exceed four years) and the unlimited contract or an open ended contract (always not less than one year). Although the two contracts are different in their duration, as a general rule each

employment contract must be in writing, specifying the date of its commencement, the remuneration and the nature and place of work.

Although both types of contracts have similar features, they differ when it comes to the requirements of terminating or ending the employment relationship.

Termination of Employment Contracts: Limited and Unlimited Contracts

The general rule under the Employment Law is that any employment contract may be terminated by both parties provided that the employee accepts such termination in writing.

Termination of Limited Employment Contract

Other than in the event of mutual termination, the limited employment contract, according to the provisions of the Employment Law, may be terminated by the employer only upon its expiry. Early termination of the limited contract is allowed only and exclusively at the occurrence of any of the situations specified in article 120 of the Employment Law. If the contract is terminated by the employer for reasons other than those set by the Employment Law, the employer will be said to have terminated the employee arbitrarily and will be liable to pay the employee compensation equivalent to either three months' salary or the residual period of the contract, whichever is shorter.

It would, therefore, be correct to say that the Employment Law has set clear provisions for the termination of the limited contract by which the employer is bound.

Termination of Unlimited Contract

However, confusion always arises when it comes to the termination of an unlimited contract – especially amongst employers. There are numerous employment myths often relied upon either to the disadvantage of the employer or the employee. One of these myths is that an employer is free to terminate an unlimited employment contract, after giving the prescribed notice, without any reason whatsoever. This myth actually stems from the wrong interpretation of Article 117 of the Employment Law. Article 117 which reads as follows:

1. "Both the Employer and the Employee may terminate a Contract of Employment of unlimited period for a valid reason at any time following its conclusion by giving the other party notice in less than 30 days before the termination.
2. In case of Employee working on a daily basis the period of notice shall be as follows:
    1. One week if the Employee has been employed for more than six months but less than one year;
    2. Two weeks, if the Employee has been employed for not less than one year;
    3. One month if the Employee has been employed for not less than five years."

A careful reading of the Article above will reveal that an employer's right to terminate an unlimited contract is not free but rather conditional on the existence of a "valid reason" for such termination. This requirement has been stressed in section 3 of Article 113 that the unlimited contract may be terminated mutually by either party only: "if the provisions of the law regarding the period of notice and valid grounds for termination are observed".

The inquiry will then be on what is considered to be a valid reason for terminating an unlimited contract, what is the criteria for specifying or determining such valid reason and who has the authority to determine whether a reason for termination is valid or not?

We have already established that a contract of employment (whether limited or unlimited) may be terminated by employers with immediate effect for reasons provided in article 120 of the Employment Law. Other than these situations, the Employment Law provides that a valid reason for terminating an unlimited contact should be any reason that is "work related".

Article 122 of the Employment Law provides the following:

"A worker's service shall be deemed to have been arbitrarily terminated by his employer, if the reason for the termination is irrelevant to the work, and more particularly, if the reason is that the worker has submitted a serious complaint to the competent authorities or has instituted legal proceedings against the employer that have proven to be valid".

From the above, it is clear that the right of termination of an unlimited contract under the Employment Law is not an unfettered right and is subject to the requirement that an employer demonstrates the existence of a valid reason for such termination.

The legislator was mindful of the fact that businesses differ in both their nature and their requirements and that listing what are considered to be 'work related reasons' may not be exhaustive in the long run due to the changing nature of businesses and their requirements. For this reason, a ministerial order was issued to provide employers with guidelines of what are considered to be work related contraventions and how to deal with them i.e. Ministerial Order no. 28/1 of the Year 1981 regarding Model Disciplinary Code ("Disciplinary Code").

The Disciplinary Code

The Disciplinary Code deals mainly with contraventions committed by employees during working hours and disciplinary penalties that employers may impose upon their employees. The disciplinary penalties vary depending on the frequency and/or severity of the contravention and in some instances may lead to termination. The schedule attached to the Disciplinary Code gives general guidelines to employers on the kind of penalties that they may impose on employees and more importantly, the steps that may be taken by employers in recording such contraventions and actions taken.

The Disciplinary Code is not exhaustive but rather indicative of what are considered to be work related contraventions. Article (1) of the Disciplinary Code provides that: "Employers shall be guided by the attached model disciplinary code in preparing regulations that shall be applied to the workers working in the employer's undertaking".

The Disciplinary Code actually completes and complements the provisions of Article 102 of the Employment Law that deal with penalties which employers or their representatives may impose on employees and provides the authority and reference of imposing such penalties.

In practice, several companies have adopted the Disciplinary Code and have drawn up human resources policies that set out requirements and procedures in dealing with employee contraventions. We have also seen some employers include job targets or requirements for their employees in employment contracts, including the methods of assessing the employees' performance and the action that will be taken in case an employee fails to achieve such job target or requirement. A good example of such requirement is when the employees' performance is linked to the achievement of certain financial or performance targets as set by the employer whereby failure to achieve such targets may allow the employer to terminate the

employment contract.

Failure by the employee to meet such requirements may lead to the termination of their employment. Likewise, failure to follow steps for recording employee's contraventions and action taken may render the employer liable for compensation for unfair termination.

It follows that for the employer's action to be liable the employment contract would have to be terminated for reasons that are either non work related or which fail to honour the legal requirements for terminating the contract, such as not issuing formal warnings, salary deductions, sending notice and so forth.

Reliance on these guidelines and statement of a valid reason for termination does not automatically absolve or relieve employers from liability or inquiry into the validity of the cause of termination. The statement of a valid reason for termination only shifts the burden of proof from the employer to the employee in a way that will make it the latter's duty to prove that the termination was not justified and is not work related.

Furthermore, courts have powers to further examine the reasons provided by the employer in order to determine whether the reason is relevant to the work or not. Courts usually use their discretion in understanding the merits and circumstance of the termination – usually by the facts presented by the parties in light of the Employment Law and any other regulations or guidelines set by employers. The court has the final say in case of dispute.

Conclusion

In conclusion it is true to say that the employers' right to terminate an unlimited employment contract is subject to the adherence to valid reasons for termination. It is therefore crucial to read the provisions of the Employment Law as a whole and not to rely on one provision in isolation of another.

Learn how our employment & incentive practices offer law assistance for issues related to the termination of employment contracts.