

Military Leave Under Egyptian Employment Law

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The Egyptian Labour Law is pro-employee and imposes limits on employers' rights. For example, if local parties under a fixed-term contract continue the working relationship beyond the original term of the contract, or agree to automatic renewal and create no new contract, the contract is automatically renewed and becomes an indefinite-term contract, thus limiting the employer's right to terminate the employee. Thus, an employer that does not wish to be put in the position where it cannot terminate an employee whose performance is dissatisfying should consider entering into a fixed-term contract of short duration, renewable as many times, but pursuant to new analogous contracts freshly executed each time. Once this expires, the employee will have no rights of termination compensation under the law.

Military leave

While the Labour Law largely dictates employment requirements, there is a question over an employer's position with regard to an employee who is required to undertake military service. If an employee is on a fixed-term contract and must undertake military service and returns after his contract ends, is the employer bound to reinstate him in accordance with the Law on Military and Patriotic Service (No. 127 of 1980)?

Article 43 of the law (as amended) provides that (Arabic text prevailing):

"The administrative body of the state, municipality units, general authorities, public sector companies, business public sector companies, private companies, associations and institutions and employers must keep, to whom is undertaking his military service, staying thereafter or called in for service thereafter amongst the employees, their position or analogous position until the end of the military service, the stay thereafter or the call in thereafter. The said position may be filled on temporary basis during such period....

The employee or worker shall return to his job or work kept therefore if he so requests within thirty days from the day he is released from military service or the stay thereafter and within one week from the date of his release after the in-call for service.

He must be returned to work within sixty days from the date of submitting the request. The date of submitting the request shall be the date of his reinstatement at work....

If the employee or worker does not submit his request on time or start his work within thirty days or a week, respectively, from the date of the reinstatement order, the request to be reinstated may be rejected unless the delay is for due cause.

The employee or worker shall remain entitled during his military service, the staying thereafter and the in-call for service thereafter, to his promotions and bonuses, as if he were performing his work. The service period shall be added to their work period and accounted for in respect of the bonus and pension. He shall also be accounted for the additional service periods and additions in the calculation of such bonus or pension according to Law No. 90 for the year 1975 on Insurance, Retirement and Pensions of the Armed Forces.

The service period shall be deemed successfully completed if the employment was under probation. During the period of stay after the military service and the in-call for service, all material and moral rights and other advantages including allowances, bonuses and production incentives disbursed to their peers at their original work locations shall be paid thereto in addition to what the Ministry of Defense pays therefore for the stay or call period.”

Because the law does not stipulate whether reinstatement is obligatory, even if an employee is on a fixed-term contract that has expired, several questions are raised. Does Article 43 create a new right for the employee and impose a new obligation on the employer? Is Article 43 limited to indefinite-term employment contracts and events where the period of absence for military service does not extend beyond the term of the fixed-term employment contract?

It appears from Cassation Court Case no. 876 of the Judicial Year 48 that the Egyptian Court of Cassation does not view Article 43 as a special clause that prevails over the Labour Law and the employee contract. They have adopted the opinion of many scholars that there should be no automatic extension with regard to fixed-term contracts. The undertaking of military service is not a tool to prevail over the nature of terms and conditions of the employment contract.

It is a step towards equality between the interests of the employer in relation to those of the employee.

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