

# Aspects of Kuwait Private Sector Labour Law



# ASPECTS OF THE KUWAIT PRIVATE SECTOR LABOUR LAW

## Introduction

Kuwait has a robust private sector which employs a large number of expatriates. Expatriates provide services in many areas of the economy ranging from the oil and gas sector to the financial and business sectors. The government on 21 February 2010 enacted a new labour law, Law No. 6 of 2010 (The Law of Labor in the Private Sector) to replace the now repealed Law No. 38 of 1964 which was widely regarded as archaic and anachronistic. Several concerns and objections had over the years greeted the old law and it seems that the new law<sup>1</sup> has tried to address some of those concerns. Not only does the new law contain more provisions than the repealed law, it introduces new aspects not earlier considered. The new labor law thus provides more modern and 'worker-friendly' labor laws.

Though Law No. 6 introduces new provisions and clarifies certain matters which were vague, many observers however believe that more fundamental changes should have been made. One of such issues not addressed by the new law is the sponsorship system which requires every non-Kuwaiti worker to be under the sponsorship of a Kuwaiti company before being eligible to work. This system hinders free

transferability of employment as the expatriate worker is required to obtain the consent of his employer before moving to another employment. Also the law does not protect domestic workers, though the concerned Minister is required to 'issue a resolution concerning their affairs setting forth the rules that organize their relations with employers'<sup>2</sup>.

Some of the aspects of the law are discussed in this article.

## ▪ Contract of Employment

The labour law requires all contracts of employment to be in writing in the Arabic language<sup>3</sup>, though oral contracts are recognized where their existence can be proved. It is also mandatory for the contract to provide for the execution date, the amount of remuneration, the term of the contract if it is for a specific period<sup>4</sup> and the nature of work to be performed by the employee<sup>5</sup>. Where the period of contract is specified and both parties continue to act thereon even upon expiry, the contract is deemed automatically renewed in the same terms and conditions as the previous contract.

During the validity of the contract, the employer shall not reduce the remuneration paid to the employee

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<sup>2</sup> Art. 5 of Law No. 6 of 2010

<sup>3</sup> Art. 29

<sup>4</sup> The term of the contract must not exceed 5 years.

<sup>5</sup> The employer is required to assign to the employee only work consistent with the nature of the work stated in his contract or suitable for his qualifications and experience.

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<sup>1</sup> The new law has a total of 150 Articles.

and any agreement that allows such reduction renders the contract null and void.

### ▪ **Women**

The law seeks to promote the rights of working women<sup>6</sup>. Under the law, a working woman is entitled to earn the same pay with her male counterpart if they perform the same work<sup>7</sup>. Women are also not to be employed for night work save in certain instances, are not to take up work deemed hazardous or harmful to their health neither are they allowed to work in an environment likely to exploit their femininity.

A pregnant worker is entitled to 70 days paid maternity leave which she must take within the period of childbirth. Taking up her maternity leave does not deprive her of the right to take up any other leave which she is entitled to under the law like her annual leave<sup>8</sup>. Any other leave she takes for the purpose of nursing her baby which shall not exceed 4 months shall be unpaid. It shall be unlawful for an employer to terminate the employment of a pregnant worker while she is on any of these legally recognized leaves or where she is away on a leave of absence due to a pregnancy induced sickness.

Upon resumption of duty after the maternity leave period, a nursing worker is entitled to two hours break each day to enable her go and nurse her baby.

### ▪ **Probation**

The new law clarified the issue of the length of the probationary period to be performed by an employee. Now an employee is expected to work for a period not exceeding 100 working days. During this period both parties may terminate the contract without notice and where such termination is made by the employer, he shall pay the worker for the period worked. It is unlawful for the worker to perform probation more than once.

### ▪ **Disciplinary Actions**

The law requires every employer to notify an employee of any disciplinary action pending against him. Before any penalty is imposed on the employee, the employer must notify him in writing of the alleged wrongdoing and the employee must be given a fair hearing. Where he is found guilty of wrongdoing, he shall be notified in writing of the penalties imposed on him and if deductions are to be made to his remuneration, such deductions shall not exceed 5 days pay for each month until the penalty is fully paid<sup>9</sup>.

Where a worker is suspended from work during the period of an investigation into an alleged wrongdoing, he shall not be on suspension for more than 10 days and if he is not found guilty at the end of the investigation, he shall be

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<sup>6</sup> See section 4 of chapter 1.

<sup>7</sup> Art. 26

<sup>8</sup> Art. 24

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<sup>9</sup> Art. 38

entitled to his remuneration for the period he was away on suspension<sup>10</sup>.

## ▪ Termination of Employment

Subject to the provision of Art 37 of the law (that is notification of pending disciplinary action against employee) an employer may terminate a contract of employment without notice, compensation or benefit if a worker:

- (1) commits a mistake that results in huge loss for his employer; or
- (2) has obtained his employment by cheating or fraud (for example if he tendered forged certificates); or
- (3) divulges secrets of the company causing or likely to cause the company losses.

An employee may also be dismissed by his employer if he is guilty of committing a crime that relates to honor, trust or morals (e.g if he steals); commits acts against public morals at the work place; if he assaults his colleagues or superiors; fails to abide by any rules imposed by his contract or the law; or repeatedly violates his employer's instructions. Though dismissed, he shall still be entitled to his end of service benefits. In all cases of dismissal, the employee shall still have a right to appeal the decision to dismiss him before the competent labor department and where it is established that his dismissal was arbitrary, he shall be entitled to his end of service benefits plus

compensation for moral and material damages<sup>11</sup>. Nothing in the law compels the employer who has acted arbitrarily in dismissing an employee to reinstate such an employee. For fixed term employment, a party who terminates the contract arbitrarily shall compensate the other and this compensation should not exceed the remuneration of the worker for the remaining period of the contract<sup>12</sup>.

A worker who absents himself from work for 7 consecutive days or 20 separate days in a year without a valid reason would be deemed to have resigned his appointment. Also if an employee is imprisoned based on an accusation made by his employer, his employment is deemed suspended until a final verdict is obtained in the matter. If the employee is acquitted then he shall be paid remuneration for the period of suspension including a fair compensation to be determined by the court.

In any other case, parties to an indefinite contract may bring their contract to an end by either giving notice to the other or the payment of salary in lieu of notice. The law specifies a 3 months' notice period for a monthly wage earner and one month notice for other employees<sup>13</sup>.

The law specifies instances in which the employee can terminate his employment without the need to comply with the requirement to give

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<sup>11</sup> Art. 41

<sup>12</sup> Art. 47

<sup>13</sup> Art. 44. Cf with Art. 53 of Law No. 38 which had provided a 15days notice period for monthly wage earners and 7 days notice for other types of employees.

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<sup>10</sup> Art. 39

notice and shall still be entitled to his end of service benefits<sup>14</sup>. Such instances include:

(a) if the employer does not abide by the terms of the contract or the provisions of the law; or

(b) if the worker was assaulted or provoked by either his employer or deputy; or

(c) if continuing work will endanger his safety and health pursuant to the decision of the medical arbitration committee at the Ministry of Health; or

(d) if the employer or his deputy committed an act of cheating or fraud with regard to work conditions upon signing the contract; or

(e) if the employer has accused the worker of committing a punishable act and the final verdict acquitted him; or

(f) if the employer or his deputy commits an act that violates public morals against the employee.

A contract will also be terminated upon the death of the employee, bankruptcy of the employer or if the establishment is permanently closed<sup>15</sup>. In the case of the merger or acquisition of the company, the employee who is retained is entitled to work upon at least the same terms and conditions of his previous employment.

## ▪ Terminal Benefits

The law makes provision for the payment of full terminal benefits to an employee<sup>16</sup> where:

(a) the employer terminates the contract;

(b) the duration of the contract has expired without being renewed;

(c) the contract was terminated because the employee exercised his right to terminate as provided in Art. 48 or upon the death or permanent incapacitation of the employee or if the company is declared bankrupt or the company closes down;

(d) a female resigns her appointment within one year of getting married.

The law allows a worker who is engaged under an indefinite contract to terminate his contract of employment receive some or all his terminal benefits depending on the number of years so long as he has worked at least 3 years for his employer<sup>17</sup>. A monthly paid worker is entitled to half of his salary for each of the first five years worked, two-thirds of his salary if he has worked between five to ten years and then his full salary if he has worked over ten years. The terminal benefits payable to such an employee shall however

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<sup>14</sup> Art. 48.

<sup>15</sup> Arts. 49 & 50

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<sup>16</sup> Art. 52

<sup>17</sup> Art. 53 of Law No. 6

not exceed his remuneration for one and half years<sup>18</sup>.

The employee is entitled to receive an end of service certificate from his former employer detailing the duration of his employment, his position and his last salary. The employer is refrained under the law from including any statement that may harm the employee or limit his employment prospects.

### ▪ **Work Hours, Overtime and Leave**

The law provides that an employee is entitled to work 48 hours a week or 8 hours a day. During the period of Ramadan work hours are reduced to 36 hours. He is also entitled to a day off each week.

An employee should not work more than two (2) hours overtime per day and must be compensated for such overtime work<sup>19</sup>. Where an employee is required to work on official public holidays, he should also be compensated.

Each employee is entitled to a thirty (30) days paid leave and he can only accumulate his leave for 2 years. For no reason must an employee forfeit his leave whether with compensation or not. An employee is also entitled to take sick leave for which he would be compensated as stated in the law. He must however obtain a medical report from a government medical facility to prove that he was sick. The law provides that official public

holidays and sick leaves should not to be deducted from the annual leave.

An employee is also entitled to certain other paid leaves such as bereavement leave, Hajj leave and academic leave subject however to some conditions.

### ▪ **Health, Safety & Environment**

The employer is required to take all safety measures aimed at protecting workers against work risks. He is also required to take out medical insurance for all his workers (save those already protected under the social security law) covering them from work injuries and occupational diseases<sup>20</sup>.

A worker that suffers a work related injury or occupational disease shall be entitled to his full remuneration throughout the period of treatment specified by the attending physician. If the treatment exceeds 6 months, the employee shall be entitled to half of his salary until he fully recovers or until he is proven to be disabled or dead<sup>21</sup>. In the event that he is proven disabled or dead, he or his relatives shall be entitled to compensation <sup>22</sup>.

### ▪ **Penalties Imposed on Employers**

The new law penalizes employers for failure to comply with certain provisions of the law. For example an employer who brings in workers from

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<sup>18</sup> Art. 51(b)

<sup>19</sup> Art. 66

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<sup>20</sup> Art. 88

<sup>21</sup> Art. 93

<sup>22</sup> Art. 94. See Art. 95 for instances where an employee will not be entitled to any compensation for injury or disease suffered in the course of employment

abroad and does not eventually employ them is liable to pay an amount not exceeding KD500 to the Authority. Also an employer who fails to notify the competent authority annually of the details and numbers of workers working for him shall be liable to pay an amount not exceeding KD500 or more if such a higher sum is stipulated in any other part of the law.

Failure of an employer to put up a work a chart of penalties for infractions committed by workers in a conspicuous place at would attract a term of imprisonment of not more than three years and a fine of not less than KD1,000 or more than KD5,000. Failure of an employer to pay workers' remunerations and benefits into their bank accounts and sending the bank statements issued by those banks to the Ministry of Social Affairs and Labour would also attract a penalty.

### **Limitation of Time**

The law prescribes a timeframe within which an action under the law can be commenced before it becomes statute barred. Thus aggrieved employees can only file a lawsuit within one year of the end of the work contract<sup>23</sup>.

Lawsuits filed by workers or beneficiaries shall be exempted from judicial fees but where such lawsuits are dismissed by the court, the court may order the party who has filed the case to pay all or part of the court fees.

Claims filed by workers shall have a lien over an employer's moveable and immovable assets except his private residence<sup>24</sup>.

### **Conclusion**

The 2010 labor law in the private sector is a huge improvement from what existed under the Law No. 38 of 1964. Though the law has its critics, foreign workers appear to be entitled to improved conditions of service while erring employers are likely to face stiffer sanctions for breach of the provisions of the law.

Government has expressed its intention to abolish the widely criticized "Kafeel" or sponsorship system and in its place establish a new Public Authority for Manpower to handle issues relating to employment and welfare of expatriate workers. It is expected that such a move would reduce drastically cases of visa trading and forced slavery. It is expected that the sponsorship system would be abolished in February 2011<sup>25</sup>.

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<sup>23</sup> Art. 144

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<sup>24</sup> Art. 145. See also Art. 1074 of the Civil Code

<sup>25</sup> See "Kuwait to Scrap Sponsor System" in Arab Times Newspapers of 26 September 2010. See [www.arabtimesonline.com](http://www.arabtimesonline.com); See also "Kuwait to Scrap 'Kafeel' System on <http://www.kuwaittimes.net>

