

How to Navigate Conflict of Laws for International Employees in the UAE: Myth Vs Reality

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Multinational companies, with offices in the UAE, have recently been facing conflict of law issues rising upon termination of an employment agreement when an employee is transferred abroad within their network of offices.

Among the significant amount of claims handled by BSA, a classic case was one where an employee was arbitrarily dismissed without any legal justification, and was deprived from his full monetary compensation. The employer had allegedly paid the end-of-service gratuity for the employment period abroad, but excluded that period when calculating the end-of-service gratuity upon termination of employment in the UAE. The employer argued that the initial period of employment should be considered from 2012, the year the employee was transferred to the UAE.

The employer failed to provide a release letter signed by the employee upon transfer, in addition the employee illustrated documents establishing that the commencement of employment was in May 2005. Consequently, the Appeal Court obliged the employer to pay end-of-service gratuity covering the employment period spent in the company's office abroad and in the UAE.

So how do multinational companies in the UAE avoid the risk of paying end-of-service gratuity twice when transferring an employee to the UAE, and the law of which country should be applied?

Although there are no guaranties on the outcome of such disputes, given the fact that there are no identical claims, BSA provides guidelines to multinational companies established in the UAE on how to minimize the risk of paying end-of-service gratuity twice.

When transferring an employee to the UAE from a branch abroad, a company must initially decide on one of two options:

1) the employers would not pay end-of-service gratuity in the country where the employee was transferred from and then fully compensate the employee upon termination of his/her employment in the UAE.

However, this option means that the employer will eventually have to pay a 'onetime' significant lump sum payment, especially to senior employees who

may have been employed with the company for a long period of time; or

2) settle an employee's entitlements (including end-of-service gratuity) in the previous country of employment before transferring to the UAE. In this case, the employment period in the UAE would be considered on a new employment contract, and consequently the employer will avoid paying the end-of-service gratuity for the employment period in the office abroad.

If a company opts for this option, there are certain guidelines which need to be followed to avoid disputes regarding the payment of end-of-service gratuity twice:

a) The employer must keep records of all payments (including the end-of-service payment) in the branch where the employee was transferred from and those records must comply with the requirements under the UAE Labour Law; and

b) the company must obtain the employee's written acknowledgement that he/she has received the end-of-service gratuity from the previous office, as well as a release which clearly states that the employee

will not be claiming end-of-service gratuity for the employment period spent at previous offices.

It must be highlighted that the same rules apply to the companies headquartered in other countries, leaving two choices when transferring their staff:

- 1) terminate their initial employment agreement; or
- 2) ensure all records of payments upon termination of their working relationship meet the requirements of both countries.

Needless to say, lack of adequate documentation of proof, will result in a 'double dipping' opportunity in favour of the employee.

In conclusion, many multinational companies are seeking to establish their business in the UAE, considering the lucrative business environment. Companies should be aware of the risks associated with transferring employees from their offices abroad, and follow the requirements of the UAE Laws to minimize such risks and exposure.

Document information

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Relevant Companies

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