

Limited and Unlimited Contracts of Employment

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As the names suggest, a contract of employment for an unlimited term is a contract under which employment continues for an indefinite period of time and a contract of employment for a limited term is a contract under which employment continues for an agreed period of time.

It is interesting that very few employers give much thought to the considerations arising in relation to each when drafting a contract of employment. This paper aims to highlight some of those considerations under Bahrain's Labour Law for the Private Sector promulgated by Legislative Decree No. 23 of 1976 as amended (the '**Bahrain Labour Law**').

A contract of employment for an unlimited term

In general, the employment relationship will continue under a contract of employment for an unlimited term until one or both of the parties take certain action(s) to bring the employment relationship to an end.

A well drafted contract of employment should set out the circumstances under which the employment relationship may be brought to an end and the consequences thereof.

A contract of employment for a limited term

The employer and employee should specify the agreed term in the contract of employment for a limited term, also known as a fixed term contract. Article 106 of the Bahrain Labour Law provides that a contract of employment "made for a definite period shall be automatically terminated at the end of the period". The general principle of a fixed term contract is that the contract will automatically terminate on the expiry of the agreed term without the need for either party to give notice to the other.

A contract can set out certain requirements from the employer and the employee to renew the contract at the end of the term. However, those provisions must be drafted very carefully so as not to result in any ambiguity or confusion. The interpretation of the nature of the contract (limited or unlimited) can be affected. The employers must be careful because the court will interpret any ambiguity in the contract in favour of the employee.

Examples of problem provisions frequently encountered in fixed term contracts include:

- The employment shall be automatically renewed on the expiry of the term, unless either party gives a notice of at least 30 days of the intention not to renew.
- The employment shall be renewed on the expiry of the term for a further term of [•].

If the employer wants to continue to employ an employee on a further contract for a fixed term, the parties must enter into a new contract for a specified term after the end of each preceding term. Article 106 of the Bahrain Labour Law provides that where an employer and employee continue to perform their obligations under a fixed term contract after its expiry, the contract shall be deemed to have been implicitly renewed on the same terms of conditions but for an unlimited term.

Leaving indemnity also known as the end of service gratuity

If the employee terminates the contract of employment

Article 111 of the Bahrain Labour Law provides that an employee who resigns is:

- not entitled to leaving indemnity if he/she resigns after less than 3 years of continuous service; and
- entitled to a third (1/3) of the leaving indemnity if he/she resigns after 3 - 5 years of continuous service.

This means that an employee who resigns will only be entitled to the entire leaving indemnity if his/her continuous service with the employer exceeds the period of 5 years.

An employee who is employed under a fixed term contract is entitled to the entire leaving indemnity where the term expires or where the employee terminates the contract under Article 115 of the Bahrain Labour Law.

If the employer terminates the contract of employment

In contrast, if the employer terminates the contract of employment (for reasons other than under Article 113 of the Bahrain Labour Law) at anytime if the contract of employment is for an unlimited term, or before the term expires if the contract of employment is for a fixed term, the employee will be entitled to the entire leaving indemnity.

Notice under a contract of employment for an unlimited term

Usually the contract of employment for an unlimited term may be terminated by either party giving a written notice to the other party. Article 107 of the Bahrain Labour Law requires either party to give 30 days' written notice prior to termination for monthly paid employees, but the parties may agree to a longer period.

Article 107 of the Bahrain Labour Law provides: "The party terminating the contract of employment without giving the required notice shall pay to the other party compensation equivalent to the amount of salary payable to the employee for the notice period or the unexpired portion thereof". The employment will continue until the expiry of the notice period unless the parties agree to terminate earlier and to make payment in lieu of the notice period or any portion thereof.

Compensation for termination without a legitimate reason

If the employee terminates the contract of employment

If the employee terminates a contract of employment for an unlimited term, the employee's liability toward the employer will be limited to the notice, unless of course the termination falls within an employee's right to terminate (without notice and without affecting end of service gratuity/compensation) under Article 115 of the Bahrain Labour Law.

In contrast, if the employee under a fixed term contract of employment terminates the contract early, the Bahrain Labour Law provides that the employee shall be liable to pay the employer

compensation, unless, the employee has completed more than 5 years of continuous service and/or the termination was for legitimate reason(s).

If the employer terminates the contract of employment

Similarly, if the employer terminates a fixed term contract of employment without legitimate reason(s), the employer shall be liable to pay the employee compensation for damages incurred as a result of the termination.

If the employer terminates the contract of employment for an unlimited term, the employer shall be liable to pay the employee compensation in addition to the notice requirement if the termination was without legitimate reason(s).

Compensation is discretionary and the courts will take all matters into account, including the nature of the work of the employee, the period of employment, and all circumstances in which damages might occur for certain. If the contract of employment is a fixed term contract, the court will also take into consideration the remaining period of the contract, however, the court will not necessarily award the remaining period.

From our experience, the court in Bahrain makes no real or measurable distinction between fixed term contracts and unlimited term contracts, in respect to compensation for termination without legitimate reason(s).

Termination under Article 113 of the Bahrain Labour Law

Irrespective of whether the contract is limited or unlimited, the employer can terminate the contract of employment immediately without notice or leaving indemnity or compensation in any of the circumstances set out in Article 113 of the Bahrain Labour Law.

Is it better to hire an employee on a fixed term or unlimited term?

Whether an employer should hire an employee on contract of employment for a fixed term or an unlimited term will need to be assessed on a case by case basis.

Things to take into consideration include the role of the employee, the nature of the employer's business, the certainty, or lack thereof, of long term work, whether employment will be for the completion of a particular project and/or duration or will be on an ongoing, the costs incurred in hiring the employee, training the employee, etc.

It is worth noting that employees will usually feel more secure under a contract of employment for an unlimited term as this creates an expectation in the mind of the employee that the employment will be long lasting.

Whether the parties agree that employment will be for a fixed term or an unlimited term, it is important to ensure that the contract of employment and any schedules or additional documents or addendums thereto are drafted in clear terms and are drafted consistently with the agreed nature of the contract (whether limited or unlimited) and the provisions of the Bahrain Labour Law.

The Draft Labour Law for the Private Sector (the 'Draft Labour Law')

If passed, the Draft Labour Law will set out a formula for the calculation of the compensation payable for the termination of the contract of employment for an unlimited term and the calculation of the compensation payable for the termination of a fixed term contract.

The Draft Labour Law provides:

- a) If the employer terminates a contract of employment for an indefinite term during the first 3 months of employment, the employee is not entitled to any compensation unless the termination was without legitimate reason(s). In such event, the employee shall be entitled to compensation equal to 1 month's salary.
- b) If the employer terminates a contract of employment for an indefinite term without reason(s) or for illegitimate reason(s) after the expiry of the first 3 months, the employer shall compensate the employee by payment of 2 days' salary for each month of service, provided that the compensation payable shall not be less than 1 month's salary and shall not exceed 12 months' salary.
- c) If the employer terminates a contract of employment for a fixed term without reason(s) or for illegitimate reason(s), the employer shall compensate the employee by payment of ***the remainder period of the contract*** unless the parties agreed to less, provided that the compensation payable shall not be less than 3 months' salary or the remaining period, whichever is less.

It is also worth noting that Article (109) of the Draft Labour Law removes the employee's liability to compensate the employer except under limited circumstances.

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