

THE MAJOR INSIGHTS ON THE NEW LABOR LAW IN PRIVATE SECTOR

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The old Private Sector Labor Law has been replaced by the new law with radical changes in the basic provisions, came into force on 21st February 2010.

The major amendments are as follows;

1. **Employment of Juveniles:** Section 3 of chapter two of the law (Article 19-21) stipulates the minimum age required for an employment in Kuwait as 15 years. Which allow the employees between the age of 15 and 18 to work in a profession or industry, that are not classified as hazardous or harmful to their health and they should undergone periodic medical examinations. They shall work for maximum of six hours a day, with a break of one hour after continuous four hours of work and without overtime.
2. **Employment of women:** Section 4 (Articles 22-26) narrates the provisions regulates the employment of women. It is prohibited to employ women during night from 10.00 PM to 7.00 AM except in hospitals, sanatoriums, private treatment homes, etc., with the prior sanction of the Minister. The employer shall provide them with all security requirements including the transportation means to and from the workplace.

The women are prohibited to be employed in hazardous or arduous works, which are injurious to health and in jobs that violates morals or exploit her femininity. No women shall be compelled to work in any establishment, provides services for men only.

A pregnant employee is entitled to a paid maternity leave for 70 days and eligible for a leave for four months without salary after her delivery.

A working woman is eligible for same remuneration of a man, performing same work.

3. **Employment contracts:** Anyone who completed the age of 15 years shall be eligible to enter into an employment contract. The contracts for specific duration shall not exceed five years and not less than one year. Such contracts shall be deemed renewed for a similar period with same conditions, unless both parties agree to renew it under other conditions.

The remuneration shall not be reduced during the validity period and any agreement to the contrary shall be deemed null and void.

4. **Obligations and Penalties:** The probation period of a worker shall not exceed 100 working days. Either party may terminate the contract during this period without notice. In case the contract is terminated by the employer, the employee shall be eligible for the end of service benefit proportionate to his period of work.

The employer, who employs his workers in Government projects or in remote areas, shall be obliged to provide them free accommodation / accommodation allowance and free transportation facilities.

The employer shall affix a table of violations and the corresponding penalties, which is subject to the review and approval of the Ministry, in a conspicuous place in the work place. No employee shall be punished without giving him a chance to being heard. Deduction of the penalty from his remuneration shall not exceed five days in a month.

The worker may be suspended from the work for a maximum term of ten days during the investigation and in case the employee held not liable for the violation, he shall be paid his remuneration for the period of suspension.

The amounts deducted from the remuneration of the workers shall be kept in a separate fund, which is allocated for the benefit of the social, economic and cultural matters of the workers.

5. Termination and End of Service Benefit: Section three (Art.41-53) deals with the various provisions regarding termination of work contract and end of service benefits.

The employer may terminate the service of a worker without notice, compensation or benefit in the following events:

- a. If the worker has committed a mistake that resulted in a large loss to the employer.
- b. If it was found that the worker obtained the employment through cheating or fraud.
- c. If the worker disclosed the secrets related to the establishment which caused or would have caused real losses.

An employee can be dismissed in the following grounds provided it shall not deny his end of service benefits:

- a. If he found guilty of a crime that relates to honor, trust or morals.
- b. If he committed an act against the public morals at the workplace.
- c. If he assaulted the colleagues, employer or deputy during work.
- d. If he breached or failed to abide by any of the obligations, imposed on him by the contract and the provisions of this law.
- e. If he is found to have repeatedly violated the instructions of the employer.

The employee shall entitled to challenge such suspensions before the labor department and in case it is found in the final verdict that the employer arbitrarily dismissed him, will be eligible for the end of service benefit and a compensation for material and moral damages.

If an employee is absent from the job for seven consecutive days or any twenty days in a year, he shall be considered as resigned from the service and will be eligible for the benefits accordingly.

In case the worker is imprisoned due to an accusation by the employer and he is detained for a particular period and he shall be considered as suspended for such period. The employer cannot terminate his contract prior to the conviction by the final verdict of the court. The employee is entitled for the salary of such period and a fair compensation as estimated by the court upon acquittal.

The both parties shall have the right to terminate the contract by giving a three months notice to the opposite party in case of workers earning monthly salary and one month notice in case of other workers. The party initiates the termination obliged to pay the compensation equal to the remuneration for the same term in lieu of the notice period to the other party.

In the case of termination by the employer, the worker shall have right to be absent for one day per week to search for another job with salary provided he should notify such absence in advance to the employer at least one day.

The service of an employee shall not terminate without any justification or as a result of his activity in the syndicate or a claim of his legal rights as per the provisions of this law or for a reason of gender, race or religion.

Article 48 reveals that the worker shall have right to terminate the contract without notice and shall be entitled to the end of service benefits in the following cases:

- a. If the employer does not comply with the terms of contract or the provisions of the law.
- b. If the worker was assaulted or provoked by the employer or his deputy.
- c. If continuing work will endanger his/her safety and health pursuant to the decision of the medical arbitration committee.
- d. If the employer or his deputy committed fraud or cheating with regard to work conditions upon signing the contract.
- e. If the employer has accused the worker of committing a punishable act and acquitted by the final verdict.
- f. If the employer or his deputy commits an act, which violates public morals against the worker.

Article 49 says the contract shall be terminated upon the death or the proven incapability of the worker to perform his work supported with the documentary evidence issued by the competent medical board.

Article 50 provides the contract shall be deemed terminated when the establishment is finally declared bankrupt or it is permanently closed. In the event of disposal, merger, transfer of ownership by inheritance or donation, the employment contracts shall remain valid with the same conditions.

End of service benefit: The worker shall be entitled for an end of service benefit as follows:

- a. Ten days remuneration for each of the first five years and 15 days each for remaining years with the limit of an amount not exceeding one year total salary for the workers, paid on hourly, daily, weekly or piece work basis.
- b. Fifteen days remuneration for each of the first five years and one month remuneration each for the rest with the limit of one and a half year salary for the employees who are paid on monthly basis.

The worker shall be entitled for full end of service benefits in the following cases:

- a. If the employer terminates the contract.
- b. If the duration of the contract expired without being renewed.
- c. If the termination is as per the provisions of Articles 48, 49 and 50.
- d. If the female worker terminates her contract within one year of the marriage.

A worker , who terminate the contract with indefinite term shall entitled for half of the indemnity in case of his service is more than three years and less than five years, two third in case of the service more than five years and less than ten years and entire benefit for those having more than ten years service. The worker terminates his service shall be eligible for an end of service certificate from the employer.

The remuneration: The remuneration means the basic pay the worker receives or should receive consideration of his work, which includes the payments made to the worker on periodic basis such as bonus, benefits, allowances, grants, endowments etc. the payment shall not be delayed for more than seven days from the due date. The payment shall be through the employee's bank account and one copy of the statement to be submitted before the Ministry of Social Affairs and Labor.

No employer shall be allowed to transfer a worker, who is paid on monthly basis to another category without his written consent. No deductions shall be allowed more than ten percent for the loans or debts due to the employer or twenty five percent for the debt of alimony provided the alimony debt shall have priority over the other debts.

The calculation of the workers entitlements shall be made on the basis of the last remuneration received by him and his remuneration may not be reduced for any reason during the period of service.

Working hours: it is forbidden to allow workers to work more than 48 hours a week or 8 hours a day provided he shall not be required to work for more than five consecutive hours without a break for one hour, not included in the working hours. The working hours during the month of Ramadan shall be 36 hours per week.

The workers may be required to work overtime in necessity and the overtime hours shall not exceeds two hours a day and 180 hours a year, three days a week or 90 days a year. The overtime pay shall be 125% of his normal salary.

He shall be entitled for the paid weekend off for 24 continuous hours after every six working days. He shall be eligible for a 50% increase over his normal salary for the overtime hours along with a compensatory day off.

Article 68 provides the worker the official holidays for 13 days per year and he shall be entitled to a double remuneration and an additional day off, in case he required to work those holidays.

Sick leave: A worker shall be entitled for sick leaves per year on the basis of medical reports issued by the doctor, who is appointed by the employer or of the Government medical center as follows:

- 15 days – full pay
- 10 days – three fourth of the pay
- 10 days – half pay
- 10 days - quarter pay
- 30 days – without pay

Annual leave: The worker shall be entitled to a 30 days paid annual leave excluding the official holidays and sick leaves. He is eligible for the annual leave after nine months of his service. He shall be paid for his annual leave in advance.

The worker shall be entitled for an encashment for his accumulated annual leaves upon the expiry / termination of the contract.

The employee shall not waive his annual leave with or without compensation. The employer can recover the amount paid to a worker for the annual leave, in case he found the worker had worked for another employer during the leave.

Then employer may grand the worker a paid academic leave to obtain a higher degree in his work field, provided he shall work for the employer for an equal term of the academic leave should not exceed five years. He shall be liable to repay such remuneration in case of violation of this clause.

The worker is entitled for a paid compassionate leave for three days in connection with the death of his first/second degree relative. A Muslim widow is entitled for paid leave for four months and ten days and a non-Muslim for 21 days from the death of her husband.

Safety and Occupational Health: Part One of Section Four (Article 80-88) describe the rules of safety and occupational health. The employer is obliged to take all necessary safety measures and precautions to protect his workers, machines, materials, visitors against work risk and the workers from the health damage and occupational diseases.

In case of a worker met with an accident, which took place by cause of or during the work or while travelling to or from the work, the employer shall immediately report the incident to the nearest Police Station, nearest Labor department and Public Institution for Social Security or the relevant Insurance company. The employer shall bear all the cost of treatment of such worker.

The worker suffers a work injury or occupational disease shall be entitled for a full remuneration throughout the period of his treatment as recommended by the doctor. In case the treatment exceeds six months, he shall be entitled for half salary until complete recovery or proven disabled or dead. The worker or his dependants shall have right to claim for compensation for such injury or diseases.

Collective Work Relation: Chapter Five of the law deals with the Collective work relations. Section one of this chapter provides the Kuwaiti workers, the right to organize syndicates or unions to protect their interests, improve their financial and social conditions and to represent them.

Sections two and three regulate the provisions for collective work contracts and disputes respectively.

Work Inspection and Penalties: Chapter Six of the law deals with the periodic inspections to be conducted by the concerned authorities in the relevant work places to ensure the implementation of this law and provisions of penalties stipulated for various violations.

Final Provisions: Chapter Seven (Article 143-150) describe the procedures to be followed in the institution of lawsuits against the disputes or differences as per the provisions of this law and further the procedure to be adopted by the Minister to ensure the effective implementation and enforceability of the law.

The lawsuits filed by the worker after the expiry of one year from the date of termination of the contract shall not be entertained. The law suits filed under this law will be exempted from the court fees.

Prior to the lawsuit, the worker shall submit an application before the Ministry of Social Affairs and Labor, in order to settle the matter they shall summon the opposite party and in case the Ministry is unable to settle the matter amicably, refer the case to the Court of First Instance for settlement. The labor matters shall be heard in summary manner.

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