

Provisions of Domestic Workers Recruitment and Employment Contract

A study of the UAE Federal Law No. 10 of 2017 and its Executive Regulations No. 22 of 2019

By:

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1. INTRODUCTION

Workers' status in communities changes as time changes. Previously, workers were treated as slaves and were considered as buy-and-sell possessions and products. They were also banned from their rights and beaten for the slightest violation of the employer's commands. However, in the present, slavery has stopped, and the worker-employer relationship has evolved to include legislative labor rights and labor protection.

However, the worker-employer relationship has evolved because of law developments and worker protection organizations. The worker, ever since, has been treated more humanely and respectfully. Therefore, the UAE has always been proactive in this field, for it respects the legal and constitutional rights of migrant workers. Such rights include; not allowing recruiting workers in a Corvée (for free) or laborious work, and other guarantees included in the UAE Civil Transactions Law, and later on- for workers, employers, and even recruitment agencies- in the federal law No. 10 of 2017 on domestic workers and its executive regulation No.22 of 2019. Therefore, and in light of the previous law, we find it essential to study the recruitment agencies and their nature.

1.1. The importance of this Research

Nowadays, families and communities consider the dependence on domestic workers a necessity of life. Almost every house has a domestic worker, whether a farmer, gardener, shepherd, babysitter, driver, and other professions. However, the domestic workers' recruitment agency might pretend that the worker is qualified to perform tasks that he/she cannot perform; for example, agriculture, which usually leads to a dispute between the

worker and agency. This, however, puts so much pressure on the workers since both the employer and the recruitment agency take advantage of them.

1.2. Research issues

1. Recruitment agencies take commissions from workers after hiring them.
2. Recruitment agencies do not provide a substitute worker or pay the worker's expenses but let the employer endure that.
3. If the employer rejects the worker after probation, will the recruitment agency be in charge of the worker, right? What is the alternative? What is the worker's situation?

1.3. Study Scope

This study will shed light on the domestic workers' recruitment agency relationship with the worker and the employer without addressing the general provisions. We will also examine the federal law No. 10 of 2017 on domestic workers and the executive regulation No. 22 of 2019.

2. The relationship between the employer and the domestic workers' recruitment agency

The researcher will be discussing domestic worker employment and recruitment agency obligations and rights.

2.1 Domestic Workers Employment and Recruitment Agency's Rights and Obligations

In the first section of this issue, we will state the obligations of the domestic workers' recruitment agency, and then we will examine its rights:

2.1.1. Recruitment and Employment Agency Obligations

These include both the agreed-upon obligations between the employer and the recruitment agency, as well as the ones that the law decrees, as follows:

- 1- Hiring the domestic worker according to the agreed-upon conditions: the recruitment agency should hire the workers per the conditions stipulated by the employer after determining the nature of the work; such conditions include that the worker can drive in the state and is sufficiently qualified to work for the employer. Also, the worker can cook well and has experience in this field. However, if the worker does not have job experience in the country, he/she shall not be hired or assigned. Therefore, recruitment agencies must ensure the experience claimed by the worker before recruitment.¹

¹ See Dr. Jamal Abu Fatooh, Legal System for Negotiations Stage on the Work Contract, Mansoura University, 2018, p. 599.

See Dr. Arifan Mustafa Muhammad, domestic service contract, legal books house, 2010, p. 34, the elementary court of Abu Dhabi has ruled that recruitment agencies must reimburse the employer for the absence of the required professional qualifications and the worker was returned to the recruitment agency during the probation period, case No. 130/ 2020 work-related/ domestic workers, on 22/ 10/ 2020, a sentence published in the judicial department site (Abu Dhabi), visit date 27/10/2020.

- 2- The recruitment agency should bear the costs of repatriating the worker and offering a substitute worker to the employer during the six months' probation period. If the employer refrains from hiring the worker. The employer might not hire the worker, either for lacking the agreed-upon competency to perform tasks, showing misconduct towards traditions and customs, or lacking the physical fitness and capabilities -whether he has experience in the field or not- for example, to work as a farmer. This is per article (9) of the domestic workers' law: "The worker shall be placed under probation for six months from the date of work commencement." Also, this is under article (4), item (4) thereof " Bear the costs of repatriating the worker and either offer the employer an acceptable substitute worker without any additional cost or return to the employer all of the fees paid."

However, in the Article (4) of the domestic worker law, the Emirate legislator has defined the recruitment agency's obligations towards the worker and the employer but has forgotten to set a duration for offering a substitute worker; therefore, causing delay and damage to the employer.²

- 3- Reimbursing the employer of the amounts paid to hire a worker: The recruitment agency is obliged to reimburse the employer of the amounts paid to the agency in two cases, which we need to distinguish:
- First case: Reimbursing the employer during the six months: The employer may only refrain from hiring the worker and ask for reimbursement if the worker lacks competency, physical fitness, or experience; or shows misconduct. In addition, the recruitment agency shall reimburse the employer if the worker, during the probation period, quit working or terminates the contract.³
 - Second Case: Reimbursing after the probation period: The probation period is set to test the experience, competency, and physical abilities of the worker. Therefore, recruitment agencies do not reimburse the employer after probation unless the worker terminates the contract for a reason not related to the employer or without a valid reason. However, if the worker terminates the contract for a reason not related to the recruitment agency, the agency shall return the outstanding amount, which is calculated as follows: (Gross recruitment cost/ Contract duration in months) x the outstanding work duration. For

² See Dr. Ahmad bin Abd-Alrahman bin Abdullah Al-Thwani, Provisions of domestic work, Imam Mohammad Ibn Saud Islamic University, 2013, PAGE 41

See Dr. Bander Majed Sharar, Legal Organization for Domestic Workers, Kuwait University, 2018, page 84

³ See Dr. Abdullah Al-Zubaidi, Probation Condition Rule in the Work Contract which limits the Duration and Outcomes, Scientific Association for Research and Strategic Studies, 2020, P.301-302; See Dr. Ghaleb Ali Al-Dawdi, Labor Law Explanation, Culture House, First Edition, 2011, p. 178, Ras Al-Khaimah elementary court ruled in obliging the recruitment agency to reimburse the employer if the worker leaves the work for a non-valid and not acceptable reason, Case No. 98/2020 Commercial partial, on 12/3/2020, and the court ruled with the same to the same reasons and facts in case No. 99/2020 Commercial Partial, on 24/2/2020, Two judgments published in East Laws website, visit date 15/10/2020.

example, if the recruitment cost is 15000AED and the contract period is two years, i.e.24 months, and the remaining period is one year, i.e., 12 months, and according to the period as mentioned above, the equation is solved as follows: $(15000/24) \times 12 = 7500$ AED. ⁴

According to Article (10) of the executive regulation of domestic workers law, item (3), the recruitment agency is exempted from the reimbursement if -under the employer's discretion-it approves to hire of the worker whom the employer, namely, selected, i.e., the employer is responsible for his choice.

In all cases, the recruitment agency should reimburse the employer in less than a month from the date of returning or reporting the worker to the agency, either during or after the probation period. This is in accordance with paragraph 4 article 10 of the executive regulations of domestic workers law, which stipulates: “ whereas this item states that the agency should reimburse the employer during a month from the date of returning or reporting the worker”. However, if the employer chooses the worker by name and under his/her discretion, the recruitment agency is exempted from reimbursement.

2.1.2 Recruitment and Employment agency's rights

I previously stated the obligations of the recruitment agency towards the employer. In this section, we will examine the employer's obligations towards the recruitment agency as follows:⁵

2.2 Employer's Rights and Obligations

In this issue, we will examine the employer's obligations first and examine his/her rights.

2.2.1 Employer's obligations

Domestic workers' contracts are considered adhesion contracts; because employers need those workers to help them manage and perform their private jobs, either inside or outside the residence place. That, for sure, depends on the nature of the occupation the worker wants to perform. Therefore, the employer should pay the fees and commissions that the recruitment agency defines. According to article 8 in the executive regulations of the domestic workers' law, which stipulates: "After the cabinet's approval, the minister or an authorized person

⁴This is in accordance with Article (10) of the domestic workers' law and its executive regulation, see Osama Ismail Ajroush, Lebanese Labor Law, Zain Library, Third Edition, 2011, pp 33-32; see Dr. Suleiman Badr Al-Nasri, Labor law, modern university office, 2010, p.144.

Ras Al Khaimah elementary court ruled on obligating the recruitment agency to reimburse part of the amounts paid by the employer in case the worker quits his/her services after probation period, case No. 10/2020 commercial partial, on 22/1/2020, as well as applying the same sentence for the same reasons in case No. 167/2020 commercial partial, on 30/3/2020, both sentences are released in Eastlaw website, visit date: 15/10/2020.

⁵see Dr. Bin Azuz bin Saber, Algeria Law Explanation, House of Modern University, 2010, P. 74-75

See Dr. Sameer Alia, Introduction for Law and Sharia', University Organizations for research and publications, first edition, 2002, p. 119

issues a resolution on the amounts of fees which the dealers pay to the recruitment agency). i.e., dealers are the employers who pay those fees to the recruitment agency. It is not an obligation of the domestic worker. However, those fees typically differ depending on the worker's experiences, the field of expertise, and the distance to his country.⁶

2.2.2 Employer's rights

The obligations of the recruitment agency imply the employer's rights. The employer pays fees and commissions to the recruitment agency against recruiting a worker based on the agreed-upon conditions, or the conditions defined by the employer. However, fees are calculated under the conditions mentioned above. Moreover, the recruitment agency is obliged to reimburse the employer, to repatriate the worker, and offer a substitute worker for the employer, as explained previously.⁷

3. Recruitment agency- worker relationship

In this topic, we will examine the recruitment agency's rights and obligations towards workers and vice versa.

3.1 The Recruitment and Employment Agency's Rights and Obligations

In the first section, we will examine the recruitment agency's obligations towards the worker; then, we will examine its rights in the second section.

3.1.1 The obligations of the recruitment agency towards the worker

The recruitment agency's obligations towards the worker are divided into two sections, as follows:

First: domestic worker's pre-entry obligations

The recruitment procedures begin while the worker is outside the country. However, the pre-entry obligations of the worker while he/she is outside the country are different from when he is inside the country, as follows:

- 1- Informing the worker: This means to inform the worker of the type and nature of the work to be performed and to choose an occupation from the domestic workers' legal annex. For example, informing the worker that he/she will work as a farmer, cook, or driver...etc. In return, the recruitment agency should inform the worker of the total wage offered as stipulated in article (4), item (1) of the domestic workers' law. Besides, the agency should inform the worker of the employer's conditions so as he /she decides if they can work for the employer or not.⁸
- 2- Carrying out the medical tests: According to article (4), item (3) of the domestic workers' law, the recruitment agency should carry out the medical tests for the worker no more than 30 days before he/she

⁶See Dr.BandarMajedSharar, Domestic workers legal organization, Kuwait University, 2018, p.80.

See Arifan Mustafa Muhammad, Domestic work contract, legal books house, 2010, pp. 143-144

⁷ See Dr. Ahmad Al-Khamiri, Introduction to the Study of Legal Sciences, Al-Ma'aref Printer, First edition, 2012, p.164.

⁸See Dr. Nada Yusef Al-Da'ej, protecting private maids in light of international law rules, Kuwait university, 2019, p. 202-203.

enters the country. Also, the agency bears the tests' costs to ensure the worker's health preparedness to perform the work.⁹

3-Providing accommodation to the domestic worker: The recruitment agency should provide temporary accommodation for the worker until a contract is made with an employer. The accommodation must be decently equipped and prepared with the necessities, such as water, bed, electricity... etc.; according to article (4), item (6) of the domesticworkers' law.¹⁰

Domestic worker's obligations after his/her entry to the country

The recruitment agency begins implementing these obligations after the worker enters the country, as follows:

1. Avoid harmful and discriminatory behaviors against the worker: Recruitment agencies should not discriminate against workers based on their origin, color, or religion. For example, favoring one worker over other workers for his/her nationality or gender or color, or favoring a Muslim over non-Muslim and vice versa. This is in accordance with article 3, item 3 of the domestic workers' law, which stipulates: "Discrimination among workers on the basis of race, color, gender, religion, political opinion, national or social origin."¹¹

Other harmful and abusive behaviors that the recruitment agency owner or someone on behalf is prohibited from include harassing the worker verbally or sexually, whether the worker is a man or a woman. This is in accordance with article (3), item (3) of the domestic workers' federal law, which stipulates; "The worker's verbal or physical sexual harassment."

Initially, the worker contracts with the recruitment agency to have a decent legal paid job. Therefore, the recruitment agency is prohibited from forcing the worker from performing illegal tasks or abusing him/her on human trafficking, even if the worker wishes to. This is in accordance with article (3), item (3), which stipulates: "Forcedlabor or human trafficking as defined in national laws and ratified international conventions"¹²

2. Refraining from taking commission: the recruitment agency or a third party should refrain from asking for a commission in return for the worker's employment, whether the agency asks the worker or the third

⁹ See Dr. Muhammad Hussain Mansour, Labor Law, AL-Halabi Legal Publications, First Edition, 2010, P.374

See Dr.Ahmad Abd Al-Kareem Abu Shanab, Labor law explanation, Culture house, Fifth Edition, 2010, P.253.

¹⁰ see Dr. Anas Muhammad Abd Al-Ghaffar, the mediator in labor law and social insurances, legal books house and Shatat for publications house, 2017, p. 222 See Dr.Husam Al-Deen Mahmoud, Domestic workers, and their equivalents' rights, Arabic Studies Centers, First Edition, 2020, p.96.

¹¹ See Dr. Ahmad Rashad Ameen, Brief in the Bahraini labor law based online Science University, First Edition, 2010, p.306

¹² See Mus'ab Ismail Ayesh, comparative study in the domestic worker's rights in the Jordanian law with the international conventions, Amman Arab University, 2019, P. 39-40

party asks the agency for the commission before or post-employment. This is in accordance with article (4), item (2) of the domestic workers' federal law, which stipulates: "Refrain from soliciting, directly or through a third party, or accepting from any worker, whether prior to or after employment, any form of commission in return for his employment or from collecting any expenses from the worker."

It is hard to investigate before manners, as mentioned above, since domestic workers are usually vulnerable and need money. Thus, recruitment agencies or third parties abuse and force workers to pay commissions in return for employment. Moreover, the agency sometimes requires part of the worker's wage during the contractual period. Therefore, and to ensure the worker understands that no one has the right to take a commission from him/her, I suggest adding a legal text. This might stipulate legal protection for the worker from abuse, such as the worker must attend a lecture in which a clarification for his/her rights is presented. Also, the domestic worker cannot start working for the employer unless he/she has attended that lecture.¹³

3. Raise the worker's awareness and clarify the customs and traditions of UAE to him/her: This is in accordance with article (4), item (5) of the domestic workers' law, which stipulates "Raise the worker's awareness and introduce him/her to the customs and traditions of the UAE community." regardless of the worker's occupation.¹⁴
4. The recruitment agency should treat the worker correctly that does not contain lousy wording, harm, or discrimination against him. This is the following Article (4), item (7) of the domestic workers' law, which stipulates, "Treat the worker in a good way and shield him/her from any and all forms of violence." i.e., the worker must be shielded from violence, such as beating, cursing, and other forms of violence.¹⁵
5. The recruitment agency should introduce to the worker the authorities that are mandated to consider his/her complaint about the agency or the employer for violating his/her rights. This is under Article (4), item (8) of the domestic workers' law, which stipulates, "Raise the worker's awareness about the

¹³ See Ismail Abdul Balhoush, workers and employers' guide, the Future Library, 2018, p. 45

See Dr. Ragheed Abdulhamid Fattal, job relationships law explanation and the principles of social insurances, Al-Afaq Al-Moshriqa, Third Edition, 2020, p.99.

¹⁴ See Dr. Ahmad bin Abd-Alrahman bin Abdullah Al-Thwani, Provisions of domestic work, Imam Mohammad Ibn Saud Islamic University, 2013, p.57.

¹⁵ See Dr. Muhammad Jamal Mutleqany explanation, Economy and Law Library, 2012, p.145.

authorities that are mandated to consider a worker's complaint regarding the violation of any of his/her rights or freedoms". Such authorities are:

- a. Police stations
- b. Ministry of Human Resources and Emiratization
- c. Judicial authorities¹⁶

3.1.2 Recruitment and Employment Agency's Rights towards the Worker

Whereas the recruitment agency has obligations, it also has rights from the worker. On the one hand, the agency should shield the worker-who is the vulnerable party in the contract- from all forms of abusing,i.e., raising his awareness about the official authorities and treating him well. On the other hand, the worker might indirectly report false information about the agency; thus, harming its reputation. Therefore, we will look closely into the worker's responsibility of not reporting false

information or quitting his /her work for the employer for a not acceptable or unjustifiable reason.¹⁷

3.2 Worker's rights and obligations towards the recruitment and employment agency

First, we will examine the worker's obligations towards the agency; then move to the worker's rights from the agency's part.

The Worker's Obligations towards the Recruitment Agency

The worker should abide by the following:

- 1- Reporting correct information, such as:
 - a. The resume: some documents, which state the worker's experience in any field.
 - b. Age: not younger than 18 or older than 60 years old
 - c. Work-related license
 - d. Physical fitness

The worker must abide by the obligations mentioned above and give correct information – for example, not to claim that he/she is knowledgeable and competent in agriculture- to the recruitment agency. Otherwise, the recruitment agency will have to offer a substitute worker or repatriate the current worker during the six

¹⁶ See Dr. Ahmad bin Abd-Alrahman bin Abdullah Al-Thwani, Provisions of domestic work, Imam Mohammad Ibn Saud Islamic University, 2013, p.57.

¹⁷ See Dr. Bakr Abd Al-Fattah Al-Sarhan, Introduction to the Emirates Law, Dar AlnahdaAlarabia and Dar Alnahda for Science, First Edition, 2018, P.138-139..... See Dr. Ali Hadi Al-Obaidi and Dr. Ahmad Al-Jabeer, Introduction to the Study of Law, Bright Horizons Publishers, 2017, P. 232-233

months' probation period, which allows the employer to notice any lack of experience or competency on the worker's part. Thus, the employer returns the worker to the agency.¹⁸

- 2- The worker should not leave the work- even after the probation period- for a non-valid or not acceptable reason. Otherwise, the agency shall reimburse the employer.¹⁹

3.2.2The worker's rights towards the Recruitment and Employment Agency

The domestic work contract is considered a synallagmatic contract. Therefore, the domestic worker's rights are the same obligations the recruitment agency has towards him/her. Such rights include; introducing the worker to the country's traditions and customs, raising his/her awareness about the authorities that are mandated to consider any violation of his/her rights, providing temporary accommodation to the worker until the employer provides a place for him/her. Moreover, the agency shall not take a commission from the worker, as explained previously.²⁰

4.Conclusion

Throughout this research, we have come to the following outcomes and recommendations.

Outcomes:

In this research, we have come to the following essential outcomes:

Based on the research's reasons, the recruitment agency shall offer a new substitute worker when the employer returns the worker during the probation period. However, the Emirate legislator has not set a duration to offering a substitute worker,

1. The recruitment agency shall not solicit or accept a commission from the domestic worker, although it is hard to make sure.

¹⁸ See Dr. Muhammad Jamal Mutleq, Labor Law explanation, Economy and Law Library, First edition, 2012, p. 184-185

See Dr. Ahmad Abd Al-Kareem Abo Shanab, Labor Law explanation, Culture House, Fifth edition, 2010, p. 273-274

¹⁹ See Dr. Seid Mahmoud Ramadan, the mediator in explaining the Labor Law, Culture House, First Edition, 2006, p. 243

See Dr. Humam Muhammad Mahmoud, Labor Law – Single Employment Contract, New University Publishing House, 2005, p.325.

²⁰ See Dr. Muhammad Hasan Qasem, Introduction to the Study of Law, Alhalabi for Publications, First Edition, 2006, p. 120

See Dr. Muhammad Jamal Mutleq, Introduction to the Study of Law, Law Theory- Right Theory, Law and Economy Library, 2012, p. 227-228

2. The recruitment agency shall raise the worker's awareness and introduce him/her to the UAE's traditions and customs. However, it is hard to apply this text, especially when a person on the agency's owner's behalf is not a citizen. Thus, how will he perform this obligation?
3. The recruitment agency shall raise the worker's awareness about the authorities mandated to consider the violation of his/her rights. However, the agency might abuse the worker's vulnerability and negligence about the country's prevailing laws; thus, avoid this obligation, so the worker does not file complaints about it.

Recommendations:

We have a set of important recommendations about the research:

- 1- I suggest setting a limited duration for offering a substitute worker by the recruitment agency to the employer; so the agency does not procrastinate or harm the employer.
- 2- The legislator shall provide legal protection to the worker; by stipulating a lecture to be run by a competent authority. In the lecture, the worker's rights and obligations shall be clarified; to shield him/her from the forms of abuse. Moreover, the worker must not start working for the employer unless he/she has attended the lecture; to ensure that he/she will not give commission to the agency; either from him/her, the agency, or a third party.
- 3- I suggest that only the recruitment agency owner or the competent authority-Ministry of Human resources and Emiratization- bears the responsibility of raising the worker's awareness about the country's traditions and customs and ensuring it before he/she starts working for the employer. Otherwise, the employer will return the worker to the agency, which is terrible for both sides.
- 4- The legislator shall add a legal text that obliges the competent authority to raise the worker's awareness about the authorities mandated to consider his/her complaints; to ensure the domestic workers' rights and provide legal protection for them.

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