(COVID-19) 1981 Government opinion on force majeure salary deductions

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In 1981, the Department of *Fatwa* (Legal Advice) and Legislation, the Department at the UAE Ministry of Justice responsible for advising government agencies on legal issues, issued an opinion on whether an employee who had been out of the country on a work-related trip and could not return due to a force majeure event, was eligible to continue receiving their salary.

The Department established two principles in its opinion:

- The intent of the employee: The provisions on vacation leave do not apply to the case of an employee on a formal work trip abroad when the employee is late in returning to their work for reasons beyond the employee's control because the employee did not consider the delegation of the task entrusted to him as being a vacation but rather as a work mandate.
- Application of force majeure events: If the employee is on a formal work trip abroad, not to consider their failure to return to the United Arab Emirates (or any other designated work location) due to a force majeure event as a break from work that may be deducted from their salary.

The opinion of the Department was laid out as follows:

If an employee is on an official work trip, they are not considered to be on vacation but rather at work, and if force majeure conditions prevent the employee from returning

following the end of their mandate, such cannot be considered a break from work which may be deducted from their vacation days, but rather takes the rule of force majeure that prevents the employee from carrying out their work.

If a force majeure event precludes the possibility of the employee's return following the end of their work mandate, such as the absence of a means of transportation or other reasons that cannot be limited that lead to impeding the return of the employee sent abroad from the workplace, in such a case, this cannot be considered a break from work, which may be deducted from the employee's vacation days, but rather takes the rule of force majeure that prevented the start of work.

What if the employee is in the UAE and not traveling?

In the current state of affairs, a considerable number of employees in the UAE cannot attend their workplace due to the restrictions placed to prevent the spread of COVID-19, whether due to restrictions on accessing the workplace (closure of malls, etc.), or the employee themselves choosing to stay home in adherence with Government instructions, in particular *Cabinet Resolution No. 17/2020 on the Limiting the Spread of the Coronavirus*, and *Federal Public Prosecutor Resolution No. 38/2020 on the Regulations of Cabinet Resolution No. 17/2020*.

The opinion of the Department is significant in that it addresses an employee's inability to return to the place of work but is nonetheless addressive of a situation where the employee was on a work trip outside the country, as opposed to not being able to return whilst they are within the UAE.

However, employees and employers should account for the first principle established by the Department's opinion; that is the intent of the employee and employer on whether the days affected by the force majeure event were to be vacation days

or workdays.

If the restrictions caused by COVID-19 had occurred during days which both the employee and employer had intended on being workdays, but (in reference to the second principle noted above) a force majeure event restricted the employee from attending their place of work, it is precautionary for both employer and employee to refer to and consider the extent to which principles set forth by the Department of *Fatwa* (Legal Advice) and Legislation in its opinion in 1981 would apply in today's circumstances amidst the Coronavirus pandemic.

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