

Employees vs independent contractors under Egyptian law



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Employers often find themselves in need of hiring independent contractors to meet certain business needs. Moreover, independent contractors are generally attractive to employers, as they offer flexible working arrangements without the responsibilities that arise from hiring employees. However, as an in-house lawyer, you are always apprehensive of the risk of misclassification of contractors as employees, and the obligations that would ensue on the employer should such risk materialise.

Legal framework

Employment relationships are regulated through the employer's internal policies and the employment contracts concluded between the employer and the employee, which are subject to the provisions of the Egyptian Labour Law No 12 of 2003 and its executive decrees (ELL). The ELL does not expressly regulate the relationship between independent contractors/service providers and the recipient of their services (ie employers). Such relationship is contractually regulated by way of an agreement between the parties, rendering the executed contract the law of the parties. Accordingly, the employer and the contractor are free to define their rights and obligations as they deem fit, without prejudice to the general rules and regulations of Egyptian law.

From a practical perspective, it may be perceived as somewhat challenging for an employer to walk the line between employees and independent contractors under Egyptian law, which is largely due to the absence of substantial regulations on engaging independent contractors. However, the benefit of the extensively regulated employment sector is that it makes it easier to identify what to avoid when hiring an independent contractor in order to minimise the risk of misclassification.

The key aspect that distinguishes employees apart from independent contractors is the

obligations employers have before employees by virtue of the ELL, which employers are not required to fulfil vis-à-vis contractors. For example, employers are required to:

- provide their employees with the tools and equipment necessary to perform the work;
- withhold and pay the applicable income tax from their employees' salaries;
- register employees under their social insurance file;
- keep track of employees' working hours and leaves;
- increase employees' salaries on an annual basis;
- pay the statutory employee profit share (if applicable); and
- comply with the employment termination regulations under the ELL.

On the other hand, independent contractors are normally responsible for the provision of their own tools and equipment and making their statutory tax and social insurance payments. Furthermore, they are not entitled to any share in the employer's profits, and the employer is not obligated to increase their fees, unless stipulated otherwise in their contractual arrangement.

Risk of misclassification

It would be impractical to disregard the grey area that renders independent contractors comparable to employees, and which ultimately contributes to the risk of misclassification. This is clearly represented in the obligations that the employer can place on both independent contractors and employees, such as:

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- following the employer's orders and instructions;
- compliance with internal policies and codes of conduct;
- assignment of intellectual property rights to the employer, to the extent permitted by law; and
- adhering to a work schedule.

Additionally, should the employer require an independent contractor to comply with obligations that are typically associated with employees, this would alleviate the risk of misclassification being triggered. Obligations such as, among others, exclusivity, compliance with leave policies and post-termination non-compete when imposed collectively increase the associated risks.

In this regard, it should be noted that it takes several elements to build a misclassification case, the same does not merely arise from requiring an independent contractor to comply with any of the abovementioned obligations. However, when these obligations add up, an independent contractor can easily claim before the competent labour court that its relationship with the employer should be classified as an employment relationship under the ELL. In addition to the reclassification, the contractor would typically claim from the employer the benefits granted to their employees; such as: social insurance registration, bonuses, leave payouts etc.

The nature of the relationship between the employer and the independent contractor would be examined by the court, in light of the agreement concluded between them.

In addition, the court would investigate the relevant factors supporting such claim, in terms of subordination, working hours, payment of fixed wages, granting benefits or bonuses etc. If the court concludes that the employer is using the contractor to circumvent the obligations that ensue from employment relationships under the ELL, it will rule in the contractor's favour. Consequently, the employer will be required to reimburse the contractor for any claimed entitlements.

Moving forward

The trick to the classification of employee vs independent contractor lies in the contractual arrangement entered into with the employer. In principle, there should not be an issue with requiring the contractor to comply with obligations that are typically associated with employees. However, it is vital to ensure such matters are handled delicately when drafting the agreement between the employer and the independent contractor to minimise the misclassification risks.

Needless to say, it is recommended not to subject the agreement concluded with an independent contractor to the regulations of the ELL, whether explicitly or implicitly.

About the authors:

Tamer Fawki is a partner at Matouk Bassiouny & Hennawy and is the founding member of the employment and labour practice. Fawki has been with the firm for over 25 years, starting when the law firm was Bassiouny Law Firm.

He is experienced in providing clients with comprehensive legal support in relation to employment and labour laws in Egypt and all human resources matters, as well as a wide range of regulatory advice to clients on day-to-day employment, labour and social

insurance matters including implementation and enforcement.

In addition to this, Fawki has significant experience in advising on all aspects of investing and doing business in Egypt, with particular expertise and a deep bench of experience in all matters relating to employment and labour in Egypt. Furthermore, Fawki also has significant experience in the fields of corporate, real estate, commercial, banking and finance.

Susan Romana is a senior associate at Matouk Bassiouny & Hennawy and a member of the corporate and M&A group. She has over six years of experience in general corporate, commercial and M&A transactions, which include four years' experience in the employment and labour practice.

She advises clients across all sectors on day-to-day employment matters, which include employment and management contracts, social insurance, HR policies, personnel investigations, redundancies, in addition to providing workplace training programmes. Further, Romana has assisted with the employment and labour work streams of several transactions pertaining to cross border acquisitions, internal restructuring, and transfer of business.

Romana is one of the founding members of the employment and labour practice in Matouk Bassiouny & Hennawy, which is the first department dedicated to employment work streams across top tier law firms in Egypt. ■