
CHAMBERS GLOBAL PRACTICE GUIDES

Employment 2022

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**UAE: Law & Practice
and
UAE: Trends & Developments**

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Law and Practice

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Contents

1. Introduction	p.3	6. Collective Relations	p.9
1.1 Main Changes in the Past Year	p.3	6.1 Status/Role of Unions	p.9
2. Terms of Employment	p.4	6.2 Employee Representative Bodies	p.10
2.1 Status of Employee	p.4	6.3 Collective Bargaining Agreements	p.10
2.2 Contractual Relationship	p.4	7. Termination of Employment	p.10
2.3 Working Hours	p.5	7.1 Grounds for Termination	p.10
2.4 Compensation	p.6	7.2 Notice Periods/Severance	p.10
2.5 Other Terms of Employment	p.7	7.3 Dismissal for (Serious) Cause (Summary Dismissal)	p.12
3. Restrictive Covenants	p.8	7.4 Termination Agreements	p.13
3.1 Non-competition Clauses	p.8	7.5 Protected Employees	p.13
3.2 Non-solicitation Clauses – Enforceability/Standards	p.8	8. Employment Disputes	p.13
4. Data Privacy Law	p.8	8.1 Wrongful Dismissal Claims	p.13
4.1 General Overview	p.8	8.2 Anti-discrimination Issues	p.13
5. Foreign Workers	p.9	9. Dispute Resolution	p.14
5.1 Limitations on the Use of Foreign Workers	p.9	9.1 Judicial Procedures	p.14
5.2 Registration Requirements	p.9	9.2 Alternative Dispute Resolution	p.15
		9.3 Awarding Attorney's Fees	p.15

1. Introduction

1.1 Main Changes in the Past Year

The UAE employment law has experienced significant changes and progress in 2022. A new legal landscape is emerging, with UAE Federal Law No 8 of 1980 (as amended) being repealed in its entirety on 2 February 2022 and replaced by Federal Decree Law No 33 of 2021 (the “Labour Law”) and supplemented by Cabinet Resolution No 1 of 2022 (the “Executive Regulations”). This is the first major change to the UAE labour laws in over 40 years, aligning the country with other global labour laws and practices.

The Labour Law and Executive Regulations govern and apply to all establishments, employers and employees in the private sector within the UAE, with the exception of the financial free zones of the Dubai International Free Zone (DIFC) and the Abu Dhabi Global Market (ADGM), which are subject to their own labour and employment laws.

The introduction of the new Labour Law brings increased benefits to employees, such as a longer period of statutory paid maternity leave and new benefits such as paid paternity, bereavement and study leave entitlements. Under the new Labour Law, various prohibitions and protections have been introduced against any form of discrimination on the basis of race, colour, sex, religion and disability to name but a few. As a result of the amendments to the law, equal pay is now addressed, strengthening the UAE government’s commitment to ensuring gender equality and diversity.

All non-national employees require a residency visa and work permit in order to live and work in the UAE. The work permit will allow the employee to carry out work at the employer’s premises as identified in the employer’s commercial license. Generally speaking, the location

of the employment is static; it is not permissible to work in locations other than those of the employer unless permission is granted from the relevant UAE authorities.

While there remain strict immigration procedures to follow in order to obtain both residency and work permits for expatriate employees in the UAE, an overhaul of the immigration laws has allowed for additional and more flexible working arrangements including job sharing, part time working arrangements, remote working and self-employment.

Another crucial advancement in the UAE has been its approach to Emiratisation. Emiratisation is a UAE government initiative to ensure the employment of its citizens in a meaningful and efficient manner in the public and private sectors. It imposes a quota system on private sector employers whereby companies are obliged to recruit and retain a stipulated number of UAE nationals in their workforce. While this concept has existed since the inception of UAE labour laws, practically its promotion and enforcement has been limited to certain sectors. Starting 2022, all onshore entities will be subject to Emiratisation. Therefore, companies now need to ensure that they employ the requisite number of UAE nationals under the Emiratisation programme to avoid monetary sanctions levied against their business licences.

The UAE offers investors more than 40 multi-disciplinary free zones, in which expatriates and foreign investors can have full ownership of companies. These zones are characterised by their highly efficient infrastructure, and distinct services that facilitate smooth workflows, saving businesses substantial time and effort. Currently, Emiratisation does not extend to the UAE’s many ‘free zones’, however, this may change in the future with the introduction of foreign direct investment onshore in the UAE.

2. Terms of Employment

2.1 Status of Employee

There is no relevant legal distinction between the terms employee or worker in the UAE.

2.2 Contractual Relationship

Contract Form

Historically, there have been two main types of employment contracts in the UAE, namely one for a fixed “limited” term and the other for an unspecified “unlimited” duration. Both forms of contract held different rights and remedies although all were governed by the applicable federal labour law.

The Labour Law now requires all employment contracts to be for a fixed term to a maximum of three years (which can be auto-renewed in practice) and include a minimum notice period of 30 days to a maximum notice period of 90 days.

The Labour Law requires that employment contracts must be in writing and include the following information:

- The name and address of the employer.
- The employee’s name, nationality, date of birth, qualification and occupation.
- An agreement on the amount of and proportion of the total wages to be paid in basic salary and allowances.
- The date on which the employment contract was entered into between the parties.
- The date on which the employment commenced or is due to commence.
- The duration of the employment contract.
- The location of the workplace.
- Probationary period (if any).
- Annual leave entitlement.
- Notice period and procedures for terminating the employment contract.

For onshore UAE, a standard form dual language (Arabic/English) Ministry of Human Resources and Emiratisation (MOHRE) employment contract must be signed in two counterparts with one being retained by the employee and the other by the employer. MOHRE is the UAE government’s regulatory body governing employment relationships and the Emiratisation initiative. It plays an important role in overseeing the UAE’s workforce and regulating the employment process for the private sector in the UAE.

Due to the rigid nature of the standard form MOHRE contracts, it is customary in the UAE for employers and employees to enter into a supplementary private contract that expands on the terms set out within the standard form contract. It is important to note that where the terms set out in either contract conflict with the other, it is the practice of the UAE courts to allow the employee to rely on whichever of the two conflicting terms is most favourable to the employee.

In the vast majority of cases, the relevant free zones each have their own standard form employment contract. Standard form contracts for free zones are also bilingual contracts that set out the core terms of employment derived from the Labour Law and any relevant free zone rules and regulations.

Free zones in the UAE are areas that have a special tax, customs and imports regime and are governed by their own framework of rules and regulations (with the exception of the UAE criminal law which applies both within and outside of the free zones). Private sector companies located within the UAE’s free zones, while not governed by the MOHRE, are subject to the Labour Law (with the exception of the financial free zones of the DIFC and ADGM, which have their own employment laws).

It is important to note that irrespective of varying free zone employment rules and regulations (again excluding the DIFC and ADGM), the Labour Law overrides any free zone employment regulation that may be in contravention of the Labour Law and it is ultimately the Labour Law which prevails in the event of a dispute involving employment rights and remedies before the local labour courts.

In the event an employer seeks to utilise a post termination restriction, this must be clearly depicted within with the MOHRE/relevant free zone employment contract or the internal employment contract, failing which the employment will be deemed restriction free.

It should be noted that in cases where there is a discrepancy between the contractual provisions of a standard form MOHRE or free zone employment contract, and the provisions of an internal company employment contract, the terms more favourable to the employee will prevail.

Changing Contractual Employment Terms

It is important to note that when seeking to change terms and conditions of employment, the Labour Law provides that the parties are free to agree to any contractual terms provided that the terms are not less beneficial to the employee than the provisions of the Labour Law. Therefore, where the employee's express written consent is given, then any change is permitted provided that it does not reduce his/her protected minimum statutory entitlements under the Labour Law.

MOHRE will require that any amendments that seek to reduce benefits for an employee be signed before a MOHRE officer to ensure that the employee is not signing new terms or a new contract under any kind of duress or misunderstanding. The effect on end of service gratuity

entitlement must also be agreed where reducing an employee's basic salary.

2.3 Working Hours

Maximum Working Hours

There is a maximum working hours limit of 48 hours per week over six days or 40 hours per week over five days (however, the UAE Cabinet, may at its discretion increase or decrease daily working hours for certain sectors or certain categories of workers). This equates to a maximum of eight hours per day, which is reduced to six hours per day (36 hours per week) during the holy month of Ramadan. Subject to the exceptions listed below, the total average working hours must not exceed 144 hours every three weeks.

Rest Days (eg, Weekends)

An employee is entitled to a weekly paid rest period of not less than one day. For most office workers for example, the rest days will be Saturdays and Sundays, although in practice, the rest day(s) could be any day of the week.

Overtime Rates

Generally speaking, overtime must not exceed more than two hours per day, unless necessary to prevent or alleviate a substantial loss or serious accident. Overtime rates for eligible employees are summarised below.

Ordinary overtime hours

Pay equivalent to the basic wage paid during ordinary working hours of work plus an additional amount of not less than 25% of the basic wage for each additional hour worked Article 19 (2).

Night-time overtime hours (ie, between the hours of 10pm–4am)

Pay equivalent to the basic wage paid during ordinary working hours of work plus an additional amount of not less than 50% of the basic

wage for each additional hour worked Article 19(3).

Rest day (ie, the employee's contractual day(s) off)

A day off in lieu or pay equivalent to the basic wage paid during ordinary working hours of work plus an additional amount of not less than 50% of the basic wage for each additional hour worked Article 19(4).

Public holidays

A day off in lieu or pay equivalent to the basic wage paid during ordinary working hours of work plus an additional amount of not less than 50% of the basic wage for each additional hour worked Article 28.

Who Is Exempt from Maximum Hours and Overtime Pay?

The Executive Regulations clarify that certain professions are excluded from the maximum working time provisions of the Labour Law (and thus overtime pay), including:

- the Chairman of a board of directors and board members;
- persons occupying supervisory positions (eg, employees in managerial roles, such as general manager);
- employees working on naval vessels, and seamen;
- shift workers (provided that their average working hours do not exceed 56 hours per week); and
- employees engaged in “preparatory or complementary works” that need to be carried out outside of normal working hours.

MOHRE holds the power to issue other exemptions in accordance with the needs of the market at any given time.

Does Travel Time Count towards Working Hours?

In some limited circumstances, travel time between an employee's accommodation and place of work shall be included in the working hours where:

- weather conditions are bad and the employee is required to follow national weather warnings;
- the employee is travelling in the employer's transportation and there is an accident or an emergency malfunction; and
- it is expressly agreed in the employment contract between the two parties.

Consecutive working hours

Employees must not work for more than five consecutive hours without a break of not less than one hour. This is not included within any calculation of working hours. Again, MOHRE has the authority to carve out exemptions to this rule.

It is important to note that the DIFC and ADGM have entirely separate (and differing) working hours and overtime entitlements, which have not been addressed in the above.

2.4 Compensation

There is currently no minimum wage in the UAE; however, the Labour Law affords the MOHRE the right to issue a Ministerial Resolution to determine and enforce a minimum wage at any time.

The payment of employee salaries is regulated by the Wage Protection System (WPS), a clearing system set up by the MOHRE to ensure employees' wages are paid in full and on time. It applies to all onshore and some free zone employers. Under the system, employees' wages are paid by the employer through the WPS, which transfers the money via a clearing system maintained by the UAE Central Bank and on to the employee's bank account. The amount to

be transferred to each employee must cover at least 80% of the minimum salary stipulated in the MOHRE employment contract.

An employer must notify WPS before any employee does not receive their salary or is removed from the payroll as any unexplained shortfall in the monthly transfer is likely to cause difficulties for the employer and require an explanation. In the absence of a valid reason for any salary discrepancy, the MOHRE may sanction fines against an employer, suspend work permit permissions, and refer the matter to the public prosecutor for criminal prosecution.

2.5 Other Terms of Employment

UAE law provides for the following types of statutory leave: annual, maternity, paternity, sick, study and bereavement.

Annual Leave

Minimum of 24 calendar days during the first year of employment (applicable after the first six months – eg, no entitlement during probation) and thereafter a minimum of 30 calendar days after the first year of employment. Employees may carry forward a maximum of half of their annual leave entitlement with the employer's approval or the employer can pay a cash alternative in lieu. Public holidays, as declared by the UAE government, are in addition to the annual leave entitlement.

Unpaid Leave

Unpaid leave may be granted to employees with the employer's consent. Any period of unpaid leave does not count for end of service gratuity entitlement or statutory pension purposes. Employees on maternity leave can take up to 45 calendar days' unpaid annual leave if they obtain medical confirmation of necessity of leave. In the event that an employer terminates an employee's employment, the employee is entitled to one

day of unpaid leave per week during the notice period to look for a new position.

Maternity Leave

A maximum of 60 calendar days of paid leave, calculated as follows:

- 45 days at 100% of the employee's daily wage; then
- 15 days at 50% of the employee's daily wage.

Paternity/Parental Leave

Both male and female employees can take up to five days of paid leave to be taken within six months of delivery.

Sick Leave

A maximum of 90 calendar consecutive or intermittent days paid leave within a 12-month period, calculated as follows:

- 15 days at 100% of the employee's daily wage;
- 30 days at 50% of the employee's daily wage; then
- additional sick leave will be unpaid.

Unpaid sick leave during probation period.

Bereavement Leave

A maximum of five days' paid leave, depending on the degree of relative relationship.

Study Leave

A maximum of ten working days of paid study leave, provided the employee is studying at an accredited university in the UAE, and has completed at least two years of service with the employer.

3. Restrictive Covenants

3.1 Non-competition Clauses

During the course of employment, in accordance with the Labour Law, employees owe a statutory duty of fidelity to their employer, which includes an obligation not to compete with the employer.

The Labour Law includes an option to have a contractual “non-compete” provision for certain employees (we understand that some skill levels and jobs may be excluded in the future, which may include junior employees), limiting any inclusion of a post termination restriction to a maximum restriction of two years post the termination date.

The provision must be “reasonable” in terms of geographical location, time and the type of work, and only to the extent necessary to protect the lawful interests of the company.

The Labour Law also confirms nullification of a post termination restriction when the employer terminates an employee or acts in breach of the Labour Law.

Currently, there remains a lack of injunctive relief capability and the Executive Regulations (which accompany the Labour Law) appear to cap compensation available to the employer to three months’ total salary (payable by the employee or by the new employer), in exchange for a written agreement between the parties to waive the non-compete restriction.

In accordance with the Executive Regulations, in the event of a court claim regarding breach of this clause, the burden of proving damages falls on the employer (this confirms the previous position, whereby the employer was put to strict proof of financial loss in all cases, even where the employment contract contained a clause of liquidated damages). This means that enforcing

such a clause in the local courts is still likely to prove difficult, and the purpose of such a clause will be primarily for deterrent purposes.

3.2 Non-solicitation Clauses – Enforceability/Standards

There is no statutory prevention of solicitation, however, it is not uncommon to hold a non-solicitation clause within an employment contract.

The lack of any injunctive relief function under UAE law makes it difficult to remedy a breach of a non-solicitation clause, which are generally used only as a deterrent.

The UAE Commercial Transactions Law contains provisions relating to unfair competition which state that a trader cannot induce the employees or workers of another trader in order to aid themselves in usurping/taking over the customers of the competitor, or so that the employees leave employment for new employment with a competitor and disclose to the new employer the secrets of their previous employer. A civil claim for damages is a potential remedy, however it is incredibly difficult to achieve.

4. Data Privacy Law

4.1 General Overview

The UAE Federal Decree Law No 45 of 2021, regarding the Protection of Personal Data, became effective on 2 January 2022, with the aim of aligning the UAE with global data protection principles. The Executive Regulations are due to be issued in 2022, which will contain additional detail on the provisions of the law and assist employers with their compliance requirements.

The DIFC and ADGM free zones have their own data protection laws.

The UAE Constitution and various other pieces of legislation, including the Penal Code, as well as some Emirate level and sector specific laws and regulations, contain provisions intended to safeguard the privacy of individuals.

5. Foreign Workers

5.1 Limitations on the Use of Foreign Workers

All expatriates, in order to lawfully reside and work in the UAE, must be holders of a UAE residency visa and work permit. Historically, the UAE's employment regime was inextricably linked to the immigration regime, which was itself fairly static and employees would have had to be sponsored by a locally licensed and registered entity for the purposes of obtaining a UAE work permit and residency visa. Such sponsorship was both employer and location specific, entitling the employee to work only for their sponsoring employer and at the premises under which their visa had been obtained.

However, the recent overhaul of both the Labour Law and Immigration rules and regulations have provided for more flexible living and working arrangements.

On 18 April 2022, the UAE Cabinet approved the Executive Regulations to Federal Decree-Law on Entry and Residence of Foreigners (the Regulations). The Regulations introduce a plethora of new, flexible visas to the UAE and residency permits which include benefits for individuals and their families.

The Regulations expand the eligibility criteria for the 10-year Golden Visa; introduce a new five-year Green Visa, which extends to family members and does not require a sponsor or employer; and allow for the issuance of a range

of flexible and renewable entry visas to the UAE that are valid for a period of 60 to 90 days.

The introduction of the new system is a welcome initiative that will be of particular interest and benefit to investors, skilled employees, freelancers and their families. It will attract and retain talent to the UAE, along with easing the red tape burden of moving country.

Other than in relation to the immigration requirements, there are no limitations to using foreign workers.

5.2 Registration Requirements

Employers must ensure their employees hold a lawful residence visa and ensure compliance with the Labour Law in securing the relevant work permit enabling the employee to commence their employment lawfully. Failure to do so may lead to financial sanctions being levied against the employer and/or employee.

Medical insurance must also be provided by the employer for each employee in compliance with local health insurance laws.

6. Collective Relations

6.1 Status/Role of Unions

Unlike employment legislation in many other jurisdictions, the law in the UAE does not in fact provide for the concept of redundancy. This means that there is no required redundancy procedure and that there is scope for dispute over the termination payments to be made.

As there are no specific redundancy provisions in the law, an employer must ensure when carrying out redundancies that it complies with existing provisions in the UAE law in respect of the termination of employment and the payments to be made.

In addition, there are no collective consultation obligations under the Labour Law nor are there any statutory individual consultation requirements.

Furthermore, works councils and/or employee bodies/unions are not permitted in the UAE.

6.2 Employee Representative Bodies

There are no trade unions in the UAE and employee representatives are not common.

6.3 Collective Bargaining Agreements

There are no trade unions in the UAE and employee representatives are not common. As a result, collective agreements do not exist.

7. Termination of Employment

7.1 Grounds for Termination

The Labour Law provides that an employment contract can be terminated for various reasons including but not limited to the following:

- (i) mutual agreement as agreed by the parties in writing;
- (ii) by either party, subject to the provisions of the Labour Law and subject to honouring the contractual notice period.

The Labour Law further provides that for (ii) above either party may terminate the employment contract based on any “legitimate reason” upon serving written notice to the other party. The Labour Law does not define or elaborate on what a “legitimate reason” means or includes. There is no guidance or case law in respect of this yet (given the infancy of the law), however, it is likely to be that poor performance or conduct reasons, as well as employer bankruptcy, may constitute legitimate reasons for termination by the employer subject to various burdens of proof.

There is no legal provision governing collective redundancy.

The Labour Law mandates that in the event an employer terminates an employees’ employment, the employee is entitled to one day of unpaid leave per week during the notice period in order to look for a new position.

7.2 Notice Periods/Severance

As per the Labour Law, all employees must be placed on fixed term contracts with a maximum period of three years, with a minimum notice period of 30 days and a maximum notice period of 90 days.

Notice Within Probation

Termination

Where an employer terminates an employee’s employment, a minimum of 14 days’ written notice must be served on the employee.

Resignation

Where an employee resigns during the probationary period, they must serve the employer with a written notice of resignation in compliance with the Labour Law as set out below:

- Minimum of 30 days’ notice where the employee is resigning in order to take up employment with a different UAE employer. In this instance, the new UAE employer shall be required to compensate the company for the employee’s recruitment costs in accordance with the Labour Law.
- Minimum of 14 days’ notice in all other cases. In the event where an employee leaves the UAE and subsequently returns to the country within three months to take up a new employment, the new UAE employer shall be required to compensate the previous UAE employer for the employee’s recruitment costs in compliance with the Labour Law.

If notice is not served, the party that terminates the contract must pay the other party compensation equal to the amount of the employee's salary for the notice period.

Entitlements Following Termination

Termination entitles you to the following entitlements:

- Accrued benefits - as provided under the terms of the employment contract (for eg, any outstanding incentive payments).
- Normal salary and benefits - up to and inclusive of the termination date (notice can be paid in lieu upon mutual consent).
- Accrued but untaken annual leave.
- End of service gratuity (ESG) – ESG is payable upon termination of employment for all employees who have completed one year or more of continuous service with the employer. This is calculated on the basic salary at the rate of 21 days per year (pro-rated) for continuous service between one and five years, and thereafter at the rate of 30 days per year for continuous service over five years.
- Repatriation flight – an employer must pay for the employee to be repatriated to their home country, or other location as agreed. This would not be payable in the event that the employee does not repatriate or if the employee resigns.

In accordance with the Labour Law, the above entitlements must be paid on termination, and in any event no later than 14 days from the termination date. In the event an employer does not pay within the required timeframe, it may face a financial penalty for acting in breach of the Labour Law.

UAE national employees are subject to a different procedure that must be addressed before the relevant authorities in advance of any termination.

Arbitrary Dismissal Compensation

Historically, any termination that was not based on poor performance or gross misconduct in accordance with the relevant strict provisions of the law gave rise to a compensation entitlement of up to three months' gross salary for unfair dismissal.

The Labour Law now refers to a compensation of three months' wages for "unlawful termination" of employment where an employee's service is terminated due to the employee raising a serious complaint with the MOHRE/relevant free zone, or with the courts, and such claims were upheld. Whilst the wording of this article at first glance suggests that unlawful termination compensation is strictly limited to these reasons, given the infancy of the newly enacted Labour Law we anticipate future court claims will likely demonstrate how this compensation will be awarded in practice by the labour courts.

Post-termination Procedures

An employer can terminate the employment by providing notice to the employee, without reference to the MOHRE. It is advisable to issue notice in writing given the degree of reliance on documentary evidence under UAE civil procedure rules and it is not uncommon for the termination notice to thereafter be emailed to the employee given this now satisfies the newly amended UAE civil procedure code in respect of document service.

Within 48 hours of termination of the employment, the employer should take steps to notify the MOHRE of the fact of termination, and the employer and employee should proceed to complete the visa cancellation formalities in relation to the residence visa and work permit. In the event an employee is not sponsored for residency purposes by an employer, the employer may proceed to cancel the work permit of the employee.

Any failure to comply with the MOHRE notification and visa/work permits cancellation requirements may result in a fine or penalty being imposed on the employer and employee. In some cases, the MOHRE may restrict the employer's ability to apply for new residence visas and work permits or refuse the employee a new work permit with a different UAE employer.

7.3 Dismissal for (Serious) Cause (Summary Dismissal)

An employer can terminate the employee's employment contract with immediate effect after conducting a written investigation in accordance with the Labour Law (and/or its internal policies, where applicable), where an employee has:

- assumed a false identity or forged documents;
- made a mistake causing gross material loss to the employer;
- violated the company's policies related to safety at work;
- continuously failed to perform their main duties as per the employment contract and despite an investigation and at least two warnings of dismissal if their behaviour is repeated;
- disclosed trade secrets or intellectual property and such disclosure resulted in loss to the employer or personal gain for the employee;
- been in an intoxicated state or under the influence of illegal drugs or committed immoral acts in the workplace during working hours;
- committed any form of assault (verbal or physical) against the employer, the manager, supervisors or co-workers;
- been absent from work for more than 20 non-consecutive days or seven consecutive days without a legitimate reason or justification which is acceptable to the employer;
- misused his position for private gain; and/or

- joined another employer without complying with necessary requirements and permission as provided by the Labour Law.

There are varying reporting obligations for an employer to action before terminating an employee for any of the above reasons which must be complied with to ensure there is no risk of the termination being deemed unfair and the employee raising a claim before the local labour courts seeking compensation.

Employees who have been summarily dismissed for gross misconduct are entitled to their full ESG entitlement.

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apply for new residence visas and work permits or refuse the employee a new work permit with a different UAE employer.

7.4 Termination Agreements

It is common practice to use termination and settlement agreements. This type of agreement does not require a specific form and does not have a specific name. In practice, these agreements are often described as “settlement agreements” or “final settlement and release agreements”.

An employee cannot waive their rights under the Labour Law meaning that where an employee has entered into a settlement agreement, the employee remains able to challenge the settlement later if desired and assert their original claim subject to a one-year time bar under the Labour Law. The time bar limitation for any claim under the Labour Law commences from the date the employment entitlement became due – in practice this is generally the employee’s termination date.

Irrespective of the risk of an employee challenging a previously agreed settlement, settlement agreements are commonly used and adhered to. Where a claim lands before the labour court, the presiding judge will give due consideration to a settlement agreement and will generally accept the same as being a binding document.

7.5 Protected Employees

UAE National Employees

UAE National employees enjoy special protections. In order to successfully exit a UAE National employee, strict procedures and permissions must be obtained from the relevant UAE authorities in advance of termination.

Whistle-Blowers

Outside of the DIFC, whistle-blowing protections are limited given the UAE’s strict privacy laws.

8. Employment Disputes

8.1 Wrongful Dismissal Claims

Historically, any termination that was not based on poor performance or gross misconduct in accordance with the relevant strict provisions of the law gave rise to a compensation entitlement of up to three months’ gross salary for unfair dismissal.

The Labour Law now refers to a compensation of three months’ wages for “unlawful termination” of employment where an employee’s service is terminated due to the employee raising a serious complaint to the MOHRE/relevant free zone, or to the courts, and such claims were upheld. Whilst the wording of this article at first glance suggests that unlawful termination compensation is strictly limited to these reasons, given the infancy of the newly enacted Labour Law we anticipate future court claims will likely demonstrate how this compensation will be awarded in practice by the labour courts.

8.2 Anti-discrimination Issues

The Labour Law has now introduced equality and anti-discrimination provisions which prohibits all forms of discrimination based on race, colour, sex, religion, national or social origin or disability.

The Labour Law also now prohibits any action by the employer that would:

- prevent the possibility of equal opportunity; and
- prejudice equal access to, or continuation of, employment and enjoyment of rights.

Employees are now protected from sexual harassment, bullying, verbal, physical or psychological violence in the workplace.

An employer is prohibited from coercing or threatening an employee to undertake work or provide services against their will.

Employers may not terminate, or threaten to terminate, a female employee's employment by virtue of pregnancy or if on maternity leave.

Any breach by an employer may give rise to a claim for three months' gross salary in compensation.

In the event that discrimination, bullying or sexual harassment is found to be in a workplace, no explicit remedy is provided under the Labour Law for the employee, however, employers may be liable for fines ranging between AED5,000 and AED1 million with a possible multiplier effect for the number of employees affected by the breach.

9. Dispute Resolution

9.1 Judicial Procedures

For onshore entities, an employer, or employee can file a complaint to the MOHRE in the event of a breach of the terms of an employment contract or a breach of the Labour Law.

For free zone-located entities, an employer or employee can file a complaint to the relevant free zone authority in the event of a breach of the terms of an employment contract, a breach of the Labour Law, or a breach of the relevant free zone employment regulations.

In the first instance a mediation meeting between the parties will be arranged. This meeting is fairly informal and the MOHRE or relevant free zone authority will attempt to mediate and resolve the dispute. The mediator will hear representations from both parties and offer guidance and a suggested approach on resolving matters.

The MOHRE and relevant free zone hold no legal power, and in the event the matter is not resolved during the mediation, it will be referred to the Labour Court where the first hearing will be before the Court of First Instance.

For any action to be filed before the labour court, the MOHRE must issue a court referral letter granting permission for a claim to be filed. This letter is generally valid for a period of three weeks.

All proceedings brought before the labour court must be issued in Arabic. Generally, an employer and an employee will appoint a UAE-qualified advocate through a power of attorney to appear in court and present their case.

The Labour Courts consists of three tiers; namely, the Court of First Instance, the Court of Appeal and the Cassation Court, which is the highest level of the court system (along with the Federal and Supreme Courts). The claim will proceed initially with the Court of First Instance until a judgment is provided (or the matter is settled) which can be appealed in the Court of Appeal. The Court of Appeal will then consider the matter further and thereafter a final avenue of appeal (subject to various caveats) is available before the Cassation Court. A Court of Cassation judgment cannot be appealed and will be considered as the final judgment on the matter. Thereafter, the winning party must execute and enforce the Judgment through the Execution Court.

Employees are exempt from paying court fees for any claim raised below the value of AED100,000.

Unlike many common law jurisdictions, in the UAE, each party is responsible for their own legal costs as well as disbursements, which are not recoverable from by a winning party, with the exception of a small nominal amount (between AED2,000–AED5,000) awarded at the final hear-

ing to the winning party at the complete discretion of the court.

In all cases, no claim for any rights due will be heard after one year from the date of violation.

Labour litigation can be protracted and expensive for all involved and is best avoided where possible.

9.2 Alternative Dispute Resolution

The Labour Law confers the same employment rights on all employees in the UAE with the exception of workers in the following categories:

- Employees of the federal government and local governmental entities.
- Members of the armed forces, police and security.
- Domestic servants employed in private households and the like.

The Labour Law therefore assumes legal jurisdiction over all employment related matters.

The MOHRE necessitates the execution of a MOHRE issued employment contract (containing confirmation of the governing and applicable laws) in order to validate and legalise any employment arrangement. Any attempt to circumvent this would be deemed a conflict of public order and unlawful.

9.3 Awarding Attorney's Fees

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Trends and Developments

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UAE – A Top Destination for Professional Expatriates

Introduction

The United Arab Emirates (UAE) is an attractive destination for expatriates in search of employment due to its tax-free salaries, glorious sunshine and countless employment opportunities. Located in a fairly central location, it is easily accessible for many individuals seeking to better their financial prosperity and future through employment or investment opportunities.

The UAE's expatriate population has now reached around 9.8 million, representing approximately 89% of its population. UAE nationals, or Emiratis, make up only 11% of the population today, or 1.15 million. The country, while relatively small, is full of personality and continues to prosper and thrive following a challenging pandemic period, when the employment regulator, the Ministry of Human Resources and Emiratisation (MOHRE), together with the UAE government, successfully mitigated and relaxed various employment and immigration laws, to navigate thousands of businesses through extraordinary times. The motivation behind this approach was to best protect and preserve the country's skilled workforce and business assets. There have been lessons learned and a new dawn is now emerging in employment law and practice.

Employment landscape

The UAE employment regime underwent sweeping changes in 2022. Federal Law No 8 of 1980 (as amended) (the "Old Labour Law") was repealed in full and replaced with a revised and progressive labour law in the form of Federal Decree Law No 33 of 2021 (the "New Labour

Law") and supplemented by Cabinet Resolution No 1 of 2022 (the "Executive Regulations"). It is the first major change of the UAE labour laws in over 40 years, aligning the UAE with other global labour laws and practices.

It is an exciting and welcome change for both employers and employees alike. In line with the UAE government's vision, the change advances the region's efforts to ensure a labour market in the UAE that empowers Emiratis and attracts global talent.

On 1 January 2022, the federal government of the UAE announced that the public sector would transition to a new working week of Monday through Friday and encouraged the private sector to follow suit. The previous rigid labour law did not allow much in terms of flexibility, mandating Fridays to be designated as days of rest, but the New Labour Law permits private sector businesses to implement the working week that best suits their –needs. This is a major coup for global business, and for investors, who are seeking to ensure alignment across all global entities for easier coordination and management of their businesses.

The New Labour Law introduces a statutory protection for employees against all forms of discrimination in the workplace, which has increased employment rights and protections for women, including the long overdue extension of paid maternity leave and the option to take increased unpaid maternity leave while also addressing parental leave for the first time. The increase in employee benefits under the New Law is a positive step that will ensure retention of

the region's elite employment talent and market it as an attractive option for those considering viable options for emigration.

In the event that discrimination, bullying or sexual harassment is found to be occurring in a workplace, no explicit remedy is provided for the employee under the Labour Law as yet, however, employers may be liable for fines ranging between AED5,000 and AED1 million with a possible multiplier effect depending on how many employees are affected by the breach. As the region's employment lawyers navigate the practical hurdles of determining how the labour courts will evaluate what constitutes discrimination and how that must be demonstrated, the next year promises to be challenging one.

Immigration changes

As well as introducing new visa residency options and flexible working opportunities, the year 2022 has also seen comprehensive changes to immigration law.

Historically, all expatriates, in order to lawfully reside and work in the UAE, were required to be sponsored by a locally licensed and registered entity for UAE work permit and residency visa purposes. Sponsorship under such arrangements was both employer and location specific, allowing the employee to work only for their sponsoring employer and at the premises under which their visa was obtained. The UAE's employment regime was inextricably linked to its immigration regime, which itself was fairly static (only limited exceptions were permitted). Self-employment and consultancy were not permitted to any individual within the narrow confines of the framework established by the Old Labour Law and Federal Law No. 6 of 1973 (as amended) (the Old Immigration Law). In light of that framework, any expatriate seeking employment in the UAE, with only a few limited exceptions,

must be sponsored and employed by a licensed UAE employer.

There was also a new immigration law established in this year, namely Federal Decree Law No 29 of 2021 Concerning Entry and Residence of Foreigners (Immigration Law), which relaxed immigration procedural requirements with the UAE Cabinet also approving the Executive Regulations to the Federal Decree-Law on Entry and Residence of Foreigners (the Regulations).

The Regulations introduce a number of new, flexible visas and residency permits to the UAE, including benefits for individuals and their families.

The Regulations expand the eligibility criteria for the ten-year Golden Visa; introduce the new five-year Green Visa which extends to family members and does not require a sponsor or employer; and provide a range of flexible and renewable entry visas valid for 60 to 90 days in the UAE.

The introduction of the new system will be of particular interest and benefit to investors, skilled employees, freelancers and their families. In addition to attracting and retaining talent, it will reduce the burden of moving to the UAE due to the removal of red tape.

Emiratisation

Emiratisation refers to a campaign launched by the UAE Government to ensure the inclusion of Emiratis in the labour market. It imposes a quota system on private sector employers, requiring employers to hire and retain a stipulated number of UAE nationals in their workforce.

In May 2022, the UAE Cabinet approved further measures to increase the Emiratisation rate by 2% annually, for skilled jobs in private sector

companies with 50 or more employees, with an overall target of 10% by 2026.

From January 2023, non-compliant companies will be subject to heavy fines of AED6,000 per month for each Emirati who has not been employed.

The increase applies to Emirati nationals that are employed as of September 2021, therefore those employed prior to that date will not qualify to be included in the Emiratisation rate quota. Currently, the new measures only apply to those companies governed by the MOHRE and those operating in free zones are currently exempt.

While the initiative is understood and largely welcomed by the private sector, the practical implementation may prove difficult for some employers considering the expansive sectors of businesses operating in the region where varying skillsets are required and perhaps not readily available, or desired, by the UAE National population. There are government initiatives in place to help businesses comply and meet the various targets and we watch closely how the programme will be enforced and managed by the relevant authorities.

Conclusion

The UAE is striving to ensure that its labour market empowers Emiratis and attracts talent from around the world. Employers and employees alike have welcomed the recent changes to the employment regime. Employers are now examining staffing approaches in the context of offering different employment set-ups such as remote working, flexible hours, part time work and job sharing. An employment regime that was once fairly static and stringent is now becoming a viable global player in opening employment opportunities for a significant number of people, and the country's vision will continue to change to meet the modern day demands of the global workforce.

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