

How can an Employer Effectively Manage its Employees?

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June – July 2019

On 3 January 2019 news broke that a football coach of one of the UK's leading clubs, Craig Bellamy, had "*temporarily removed*" himself from his coaching position in order to co-operate with the club's investigation into various allegations of bullying. It is not clear whether a temporary removal would amount to a resignation or rather a request to be placed on a period of suspension pending the outcome of an investigation. This scenario has prompted a number of questions into the steps an employer can take when it becomes aware of allegations into employee misconduct. If Craig Bellamy is found guilty of these allegations, would this justify a fair dismissal? We consider the position from a UAE perspective below.

Investigations and Disciplinary Action

In the UAE, the statutory investigatory and disciplinary processes are watered down in comparison to many other jurisdictions including the UK and Europe.

Prior to any disciplinary sanction being imposed, the UAE Labour Law requires an employer to ensure that:

1. the employee has been notified in writing of the allegations against him;
2. the employee has been given an opportunity to comment on or provide an explanation relating to the allegations; and
3. it has investigated any defence provided by the employee in respect of the allegations.

An employer must initiate this procedure within 30 calendar days of discovering the alleged misconduct, and any disciplinary sanction must be imposed within 60 calendar days of the investigation having been concluded and a decision to uphold the allegations.

Ensuring the correct procedure is followed before implementing a particular disciplinary sanction is important to avoid litigation and best protects the employer should a claim be filed by an employee.

Unlike other jurisdictions, there are no best practice guidelines detailing the conduct of any disciplinary meetings or notifications, apart from providing the employee an opportunity to comment on the allegations against him/her and to provide any relevant explanation or defence.

Irrespective of an employee's misconduct, if an employer fails to comply with the statutory procedure, any subsequent dismissal could be deemed by the Labour Courts as unfair. The Labour Law permits an employer to impose certain penalties on its employees, which include a warning, fine, or dismissal (with or without notice) subject to the employer having first followed the above disciplinary process.

Suspensions

In certain circumstances, for example, in Craig Bellamy's case and in light of the club's safeguarding concerns, an employer may be minded to temporarily suspend an employee pending

the outcome of the internal investigation. But can an employer do this in the UAE?

The answer is, yes. The UAE Labour Law makes two references to suspension: one as a form of disciplinary penalty; and the other where an employee is charged with a crime. Suspension is rarely applied as a disciplinary sanction and if so, it is limited to 10 days as 'reduced' pay.

It is much more common that an employer will temporarily suspend an employee where a suspension would help to protect the integrity of its investigation. It is considered best practice to suspend the employee with pay and this is the most common approach adopted in the UAE. Whilst the Labour Law does not specify a specific timeframe for paid suspensions, practically, the employer should ensure that the investigation is completed in a timely manner, and any period of suspension is kept to a minimum.

An employee may however be suspended from work without pay where a criminal complaint has been submitted and is undergoing investigation. If the UAE public prosecution does not issue an indictment or if it does but the employee is acquitted of the crime by the criminal courts, the employee must then be reinstated and paid for the period of the suspension. However, if the employee is convicted, there is no requirement to pay the employee for the suspension period and he/she may then be summarily dismissed based on the conviction. We look at terminations below in more detail.

Terminations

In general, an unlimited term contract may either be terminated at any time on written notice, or summarily for gross misconduct. If, in this case, the allegations against Craig Bellamy were upheld, the club should consider whether the termination of his employment is warranted under the circumstances.

Where a contract is terminated on notice, this must be for a 'valid reason'. Although there is no definition of a 'valid reason' in the UAE Labour Law, an employee's employment will be deemed to have been arbitrarily terminated if the reason for the termination was 'irrelevant to the work'. In such circumstances, an employee has the ability to bring a claim for unfair/arbitrary dismissal which, if successful, would be payable in addition to his/her contractual and statutory entitlements.

The maximum compensation arising from a finding by the Labour Court of arbitrary termination is three months' total salary. The actual amount of the award, if any, is ultimately determined by the Labour Court and is generally dependent on service length. Where a detailed disciplinary procedure has been undertaken in advance of the dismissal, this assists in mitigating the risk of any award for arbitrary dismissal compensation.

In our experience, in order to successfully rely on an employee's performance or misconduct as a reason for termination, the Labour Court would expect to see that three or four warnings have been issued to an employee prior to dismissal.

In contrast to the UK position, the UAE Labour Law sets out an exhaustive list of circumstances in which an employee's employment may be terminated summarily and without end of service gratuity. The threshold for a summary dismissal for gross misconduct is extremely high and often requires a criminal conviction prior to dismissal. Where such a dismissal is not justified, it is very likely that the employee will proceed to file a claim at the Labour Court, which the employer will be unable to defend.

In all circumstances, it is recommended that termination advice be sought on a case by case basis.

What Should an Employer do in Practice?

In order to circumvent the legal consequences associated with the termination of an employee on disciplinary grounds, it is important that the employer follows a fair and reasonable process. It is recommended that employers introduce and thereafter maintain a disciplinary policy, which not only complies with the UAE Labour Law disciplinary procedure, but also provides a degree of flexibility allowing the employer to exercise its reasonable discretion. Employees should have access to the policy, which should serve as a guide throughout the disciplinary process. Where disciplinary action is taken, this should always be justifiable and considered in light of the specific and particular circumstances of the situation.

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