

The impact of new Ministerial Resolutions introducing COVID-19 measures

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By the end of March 2020, the Ministry of Human Resources and Emiratization 'MOHRE' issued a series of ministerial resolutions in response to the outbreak of the novel coronavirus ('COVID-19'). This article considers the impact of each resolution, all of which were effective as of 26 March 2020.

Ministerial Resolution No. (279) of 2020 Concerning the Employment Stability in Establishments of the Private Sector During the Application of Precautionary Measures to Control Novel Coronavirus Outbreak ('Resolution')

The Resolution aims to protect the position of non-UAE national employees by private sector employers (who operate under the remit of the MOHRE and those in free zones that follow MOHRE resolutions) during the application of the precautionary COVID-19 measures by the UAE government.

The Resolution confirms existing measures and provisions which are currently applicable under the Federal Law No 8 of 1980 ('UAE Labour Law') and, importantly, introduced new measures that may be taken by employers who are affected by the precautionary COVID-19 measures and the associated economic crisis.

The following options are open to employers to explore:

1. working from home,
2. leave with pay,
3. unpaid leave,
4. temporary reduction of salaries,
5. permanent reduction of salaries; and
6. redundancy.

The Resolution gives the employer the right to take the above listed measures (steps 3-5 require written employee consent) and provides that those measures should be taken 'gradually'. It remains to be seen how this will be applied in practice as many employers will not be in a position to take such steps on a gradual basis and are likely to have to take drastic measures on an expedited basis. Below we consider some of these measures in further detail:

Leave with pay

The Resolution confirms the employer's entitlement to ask employees to utilise their annual leave in accordance with the provisions of UAE Labour Law. The Resolution states that this measure should only be taken with the consent of the employee however, this contradicts the UAE Labour Law provision which gives the employer the right to determine the date of commencement of any leave

based on business needs.

It is established practice that in the event of a contradiction between an applicable law and a resolution, the provisions of the law supersede the resolution. On this basis we believe that businesses can continue to rely upon the provisions within the UAE Labour Law.

Unpaid leave

Subject to the employer obtaining the written consent of the employee, the Resolution allows the employer to place employees on unpaid leave. This is a newly introduced measure as the concept of unpaid leaves is not specified in UAE Labour Law.

The Resolution does not refer to a maximum duration of unpaid leave which would give the employer the right to specify the required period of unpaid leave according to its requirements.

Temporary salary reduction

The Resolution sets out the following requirements when the parties agree that the employer will temporarily reduce salary:

1. prepare a 'temporary additional supplement' to the MOHRE labour contract between the two parties (in a form provided by MOHRE) with the reduction in salary being valid until the period stipulated in the supplement or until the end of the validity of the decision (essentially when the Resolution is later repealed), whichever comes first;
2. prepare two copies of the supplement, one for each party, to enable the employer to disclose its copy upon request by the MOHRE; and
3. if required, renew the supplement referred to above with the approval of both parties.

Permanent salary reduction

The Resolution allows the employer and the employee to agree on a permanent reduction of salary. Where the salary is to be permanently reduced, the employer must apply to the MOHRE for the MOHRE labour contract to be amended. This is reflective of the required practice prior to the Resolution being issued.

Redundancies

Most importantly the Resolution makes provision for redundancy. The concept of redundancy is not recognised by either the UAE Labour Law or the local courts. The Resolution provides procedural guidance to protect employees in circumstances where the employer identifies a surplus of non-national workers.

Significantly, the Resolution provides that the employer must continue to provide the outgoing employees' housing and all of their entitlements (save for their basic salary) until the earlier of the individual exiting the UAE or obtaining the necessary authorisation to work for another establishment (or the repeal of the Resolution upon the precautionary COVID-19 measures being

removed). This is a material development and will act as a disincentive for employers when considering whether to reduce headcount.

In such circumstances the employer is required to offer outgoing employees the option of registering their details on the MOHRE's portal for jobseekers known as the 'Virtual Labour Market System'. Accordingly, these employees can be rotated and utilised by other establishments seeking to hire candidates within the UAE given the suspension of foreign recruitment. These employees can then be hired and authorisation obtained electronically for the necessary work permits (work transfer permit to new employer, temporary work permit or part-time work permit).

The Resolution does not explicitly provide that employers can dismiss employees by reason of redundancy without compensation being payable. However, the recognition of the concept of redundancy within the Resolution (given the lack of recognition of this concept by the UAE authorities to date) may be an indication that the UAE Labour Courts may be more sympathetic to employers implementing redundancy dismissals (during the crisis) than it has previously. This will be reviewed by the courts on a case-by-case basis and the employer's compliance (or otherwise) with the terms of the Resolution may also be a factor that the courts take into consideration.

Wage Protection System

One of the concerns around reducing salaries or placing employees on unpaid leave has been the resultant impact from a Wage Protection System ('WPS') and the fear that the MOHRE may impose a block on an employer's establishment card. With the introduction of the Resolution, it is stipulated that employers follow the procedural steps outlined therein, and we anticipate that the employer should not face any such issues via WPS given that it is a scheme administered by MOHRE.

In summary, the Resolution places a significant burden on employers who choose to reduce headcount during the current COVID-19 crisis. In the alternative, it sets out procedural guidance and affords some flexibility for employers in terms of other steps that may be taken to alleviate cash flow pressure in the current climate.

A. Ministerial Resolution No. (280) of 2020 concerning the creation of a committee for considering the stabilization of citizen conditions in the private sector ('Resolution No 280')

In brief, the Resolution No 280 aims to protect the position of UAE nationals working in the private sector. By virtue of this Resolution No 280 a committee will be formed and assigned with the following mandate:

1. develop support packages to ensure UAE nationals' presence in the labour market;
2. supervise and ensure the implementation of the provisions of the Ministerial Resolution No 212 of 2017 regulating the work of citizens in the private sector;
3. review the termination cases as provided by Tawteen; and
4. provide recommendations for termination cases and submit them to the Minister (of MOHRE) and carry out any task as assigned by the Minister.

B. Ministerial Resolution No. (281) of 2020 Concerning the temporary guide regulating the remote work in private establishments ('Resolution No 281')

As noted above, Resolution No 279 gives the employer the right to implement home working. Furthermore, MOHRE issued Resolution No. 281 offering guidance and regulating remote work in private sector establishments affected by the precautionary measures taken by the government to fight the spread of COVID-19. Resolution No 281 sets out the obligations of the employee and the employer to facilitate remote working arrangements.

For example, employees have certain obligations including that they:

1. perform tasks according to specified timeframes;
2. return/report to work upon request;
3. maintain confidentiality of information, documents and papers; and
4. be contactable on phone or email.

In addition, the employer's obligations include providing the technical equipment necessary for the employee to perform their work facilitating remote workers' communication with their colleagues.

Resolution No 281 requires private sector employers to reduce their workforce physically present at business premises to the minimum necessary for business operations, setting a maximum limit of 30 per cent of total workforce being in attendance. The Resolution also requires that the private sector employers must reduce the number of customers visiting their premises to a maximum amount of 30 per cent of the premises' seating capacity.

Resolution No 281 gives priority to certain individuals who should work such as:

1. pregnant women;
2. employees aged 55 and above;
3. employees with disabilities, respiratory or chronic diseases; and
4. female employees who are mothers of children in grade 9 and below.

Notwithstanding, there are some vital and critical sectors that Resolution No 281 excludes from the remote working requirement, those sectors are as follows:

- financial sector establishments, including banks, exchange centres and money transfer outlets;
- companies in the food industry, including those that manufacture and distribute food;
- establishments in the hospitality sector, including hotels, restaurants and catering companies;
- companies and factories that produce sterilisation and cleaning materials and medical equipment, as well as those that offer cleaning services;
- healthcare facilities, including hospital pharmacies, pharmaceutical factories, clinics and other medical services; and
- infrastructure sector companies, including those that are involved in road and bridge works, water services, sanitation resources, electricity and communication networks, building and construction sites, contracting and construction firms, engineering consultants, catering companies, energy companies (oil companies, oil refineries, power plants, gas stations, fuel sales and distribution).

Conclusion

The scale of the crisis has merited legislative changes at a pace we have not seen before. The

steps taken by the MOHRE in respect of the aforementioned Resolutions are part of the wider measures the UAE government is taking to help support businesses in the private sector that are affected by the precautionary measures. We can anticipate further measures, particularly in some of the free zones that are exempt from the application of these Resolutions and we will continue to provide updates as changes occur.

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