

Remote working: here to stay in the UAE?

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For many working in traditional office roles prior to the beginning of this year, the concept of “working from home” was foreign. However, due to the recent COVID-19 pandemic, it has now become the new normal for employees across the world and it begs the question, is working from home here to stay in the UAE?

Legal position prior to the pandemic

Remote working in the UAE is a relatively new concept, as the legal position is that employees are generally required to work for a specific employer at a specific geographical location (i.e. an employer’s business premises as set out in its commercial trade licence). Whilst homeworking has been actively encouraged by the Ministry of Human Resources and Emiratisation (‘MoHRE’) for onshore UAE national employees since 2017, previously there was no similar recognition for expatriate employees and the key employment legislative framework throughout the UAE (both onshore and within the free zones (including the Dubai International Financial Centre (‘DIFC’) and Abu Dhabi Global Market (‘ADGM’)) does not provide for the concept of remote working. However, the position changed dramatically in March of this year when the UAE government introduced a number of measures to curb the spread of COVID-19, and as a result, employees within both the public and private sectors in the UAE were required to work remotely, where possible.

Legal position following COVID-19 outbreak

In response to the COVID-19 outbreak, the MoHRE released a Temporary Guide Regulating the Remote Work in Private Establishments annexed to the Ministerial Resolution No. 281 of 2020, in addition to the enactment of the Ministerial Resolution No. 279 of 2020 which gives an employer (amongst other emergency measures) the explicit right to request that an employee works remotely.

Whilst both Resolutions were introduced on a temporary basis, they remain in force, and it is yet to be seen whether the MoHRE will extend this guidance beyond the current circumstances and make permanent legislative changes. Application of these Resolutions varies within free zones, however, a number of the free zones, such as the Dubai Multi Commodities Centre (‘DMCC’), introduced their own guidance or best practice drawing on the terms of these two Resolutions.

For employees within the DIFC, the DIFC implemented the Presidential Directive No. 4 of 2020 (‘Directive’) which introduced a range of emergency employment related measures, one of which was to impose remote working conditions and requirements on employees. The Directive was however formally revoked as of 31 July 2020 and there have been no further legislative amendments announced by the DIFC to date. No additional measures or directives have been implemented in the ADGM to date.

In the Emirate of Dubai, it has been permissible, since June, for companies (both onshore and within the free zones) to operate at 100 per cent capacity, however, despite this, many private sector companies continue to operate remote working entirely or alternatively, have introduced atypical working arrangements and have amended and/or implemented company policies reflecting these arrangements.

For public sector employees within the Emirate, the Dubai government has recently introduced a number of innovative measures including a flexible working system across all government departments and a “work from home” policy to support female employees where their children are undertaking distance learning. A restriction on the number of employees on business premises remains within the Emirate of Abu Dhabi, currently at 60 per cent occupancy.

Remote working - the future

Undoubtedly COVID-19 has changed the way in which remote working is viewed and has removed any stigma that may have previously been attached to the phrase “working from home”, which for many had connotations of ‘working’ from the sofa in pyjamas. Over the past eight months, employees have been able to successfully demonstrate to their employers that they can work in an efficient and productive manner outside the four walls of their office, helped significantly of course by modern day technology. Specifically, for the UAE, remote working has seen the introduction/expansion of videoconferencing platforms like Zoom and Microsoft Teams. Recent months have also highlighted a number of additional benefits to remote working and/ or atypical working arrangements including employees reporting higher job satisfaction, increased work/life balance, greater flexibility, elimination of tiresome commutes and importantly for businesses struggling through a global recession, a potential decrease in overhead expenditure. However, it is of course recognised that not everyone can or wants to work from home and future arrangements will vary. For many, the past few months have served as a reminder of how much they enjoy social interaction in the workplace, and a return to the office resembles a sense of normality. However, with several global household names such as Twitter and Facebook publicly announcing that their employees are free to work from home indefinitely, the indication is certainly that remote working will remain a feature not just within the UAE but worldwide. There has been a steady increase in recent years of private sector companies allowing flexible working arrangements for their employees and this has increasingly been recognised as an important factor in employee recruitment and retention. However, this general trend has been fast tracked in recent months due to the virus and accordingly, there is now an expectation on companies to amend their current workplace practices and policies in order to adopt to the new “normal”, retain employees, and attract the best future talent. As this is a developing area of the law, it is important that legal advice is sought to ensure that any applicable remote working policies are consistent with local laws and practice.

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