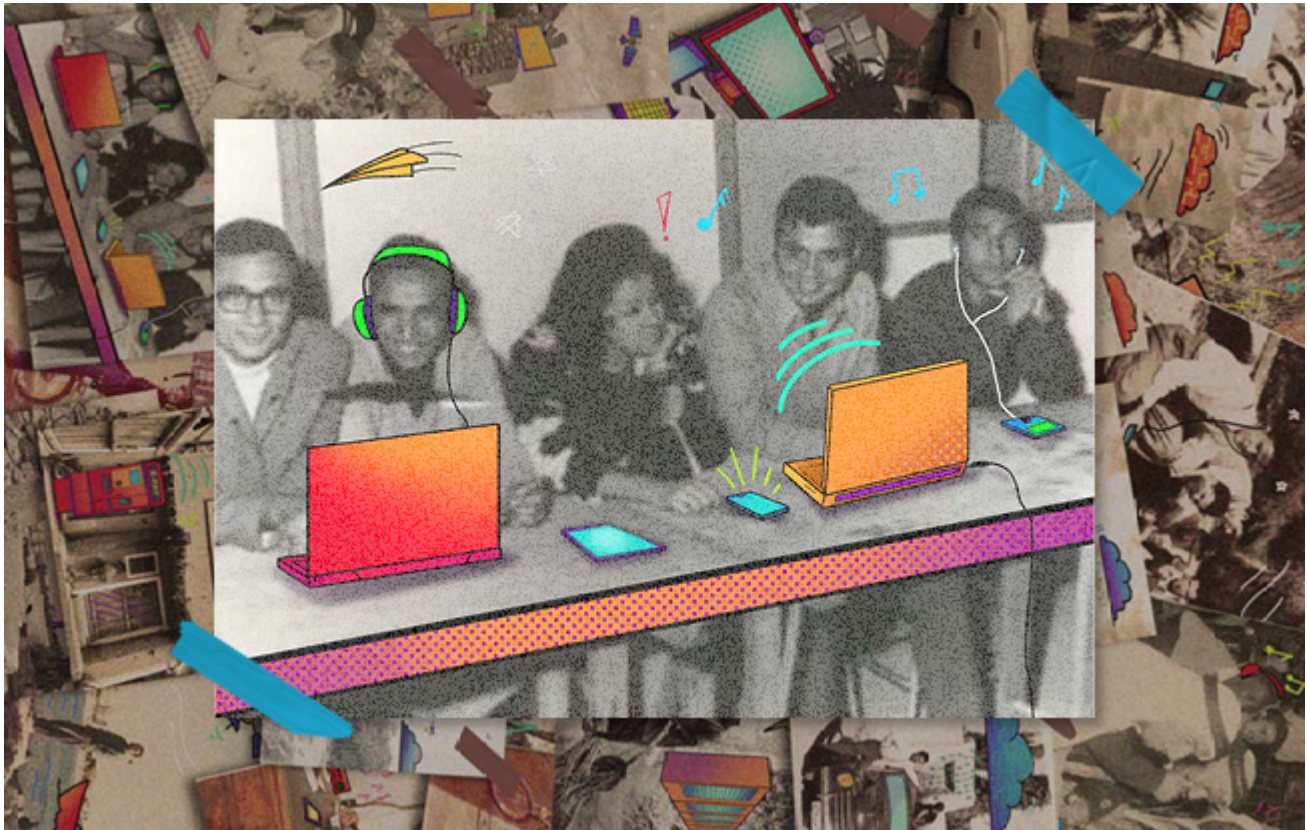


New Ways of Working in the UAE: The Impact of the Pandemic

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Introduction

The economic impact of Covid-19 has affected a significant number of companies causing many to a break away from existing business models and focus upon alternative working arrangements, including remote and flexi working.

Pre-Covid remote working was not particularly prevalent. However, over the last 18 months, the UAE government, in an effort to combat the spread of Covid-19, implemented a number of working from home regulations, directives and guidelines. Many of these protocols continue to be adopted by employers meaning that a large proportion of the workforce continue to work from home, whether exclusively or in part.

As a result in the shift towards remote working, many employers are now considering implementing a permanent working from home (“**WFH**”) / flexible working arrangement. This is particularly prevalent in the tech sector, where the majority of employees can log on remotely and work irrespective of whether they are in the office, at home, or in another part of the world.

This article addresses some of the key issues that arise in the context of this transition.

Can an employer lawfully implement a WFH arrangement?

There is currently no statutory right within the UAE Federal Law No 8 of 1980 as amended for an employee to WFH and as such, it had historically been considered unregulated given the legislative failure to address it. Notwithstanding this, in March 2020, the Ministry of Human Resources and Emiratisation (“**MOHRE**”) released two ministerial resolutions – No. 281 of 2020 and No. 279 of 2020 which gives an employer the right to request that an employee works remotely. These resolutions remain in force, and it remains to be seen as to whether the resolutions will (i) be revoked by the MOHRE in the future; or (ii) be subject to future legislative change.

In respect of DIFC-based employees, the DIFC implemented the Presidential Directive No. 4 of 2020 which imposed a number of remote working conditions during the height of the pandemic. The Directive has since been formally revoked however the DIFC has recently issued a new consultation paper proposing various amendments to the DIFC Law No.2 of 2019 as amended (“**DIFC Employment Law**”) which makes express provision for remote working.

Where a WFH arrangement is adopted, it is important for an employer to adopt a WFH policy which sets out the rules that apply to WFH arrangements. Employees should be aware of how the WFH arrangements will work, and what is expected of them.

Can an employer require its employees to return to the office?

Yes, an employer can do so particularly given the legal framework described above and noting the vaccination considerations below.

WFH does not necessarily work for all business models, and some employers require their employees to be in the office on a regular or semi-regular basis. Whilst there is no legal obligation to provide notice, from an employee management perspective, reasonable notice should be given to employees so that they can make any necessary arrangements to return to work.

Do employees need to be vaccinated in order to return to the office?

No, there is no requirement for employees to be vaccinated.

The Abu Dhabi government has confirmed a requirement that all employees (vaccinated and unvaccinated) employed in the private sector must undertake a PCR test every 14 days to ensure that they remain COVID-free. There has been no similar guidance issued in Dubai or any of the other Emirates.

Can an employer require its employees to take the vaccine?

Given that the requirement to take the vaccine is not mandatory, employees can choose whether to take the vaccine and an employer cannot legally force its employees to do so. Notwithstanding this, employers have an obligation to protect the health and safety of their employees in the workplace and therefore employers could argue that an employee's refusal to take a vaccine would result in the employer breaching its obligations. As such, there is a clear conflict between an employee's right to choose whether to be vaccinated and the employer's health and safety obligations.

Employers should be mindful that there are a number of reasons as to why an employee may not be able to take the vaccine, for example, where an employee has certain health conditions including compromised immune systems, many medical practitioners are advising those employees not to take the vaccine.

In respect of DIFC employers, the DIFC Employment Law makes provision for anti-discrimination, including protected characteristics such as religious beliefs and pregnancy and maternity. As such, there is a risk that requiring staff to take the vaccine may give rise to indirect discrimination claims whereby, for example, pregnant women or those with particular religious beliefs are not minded to be vaccinated yet are being compelled to do so by their employer.

The requirement to take the vaccine should therefore be considered on a case by case basis with respect to each employee's personal situation (in addition to their role, and the levels of risk of contracting or passing on the virus in the workplace).

What protective measures should an employer put in place when requiring employees to return to the office?

The UAE authorities have confirmed that despite the fact that the vaccine is being administered (with approximately 80% of the population having received the vaccine to date), this does not mean that protection measures fall away. Employers must therefore continue to ensure that they have taken all of the necessary health and safety measures recommended by the authorities for the workplace and any specific measures required for the employee's role (including the requirement to wear masks, social distancing etc).

Employers may be minded to ask employees to confirm whether they have been vaccinated, and to provide details of the vaccination however, data of this nature (if disclosed) should be retained for 25 years, should not be deleted and should not be transferred outside the UAE in accordance with Federal Law No. 2 of 2019. Additionally the DIFC Law No. 5 of 2020 ("**DPL 2020**") regulates the processing of personal data in the DIFC. The consequences of failure to comply with the DPL 2020 are significant, including fines of up to \$100,000 and scope for larger, unlimited fines for serious violations.

It is therefore important that where health data is requested, in addition to compliance with applicable laws and regulations, express employee consent confirming that an employee is agreeable to the employer collecting, processing and storing their data is obtained in advance.

What new initiatives is the UAE implementing to promote remote working?

In Dubai, a number of innovative measures have been introduced including a flexible working system across all government departments and a WFH policy to support female employees where their children are undertaking distance learning.

In addition, Dubai has launched a new remote working visa. This initiative is addressed to foreign national professionals, entrepreneurs and business owners who wish to relocate to Dubai and work remotely for up to one year. The applicants need to submit an employment contract with a their employer in their home jurisdiction, have a minimum salary of USD 5,000 per month, and be able to cover themselves for health insurance during their period of residence in Dubai.

Conclusion

It is clear that, despite the historic position that all employees must be based at their employer's office during their working day, the UAE is shifting to more flexible working arrangements. This is a welcome approach from both a business and an employment perspective, especially for tech companies, many of whom already operate in this way in many other jurisdictions worldwide, and it is likely that many businesses will be keen to implement some form of flexible working in the future. Flexi-working provides employees with a greater degree of flexibility to manage their personal lives whether that be childcare requirements or other commitments, without affecting their work. From a business perspective, providing employees with a greater level of independence is likely to increase their job satisfaction thereby increasing productivity and work output.

As set out above, where a WFH / flexible working arrangement is adopted, employers should be mindful to ensure that they remain compliant with UAE laws and regulations. Any WFH policy should be carefully considered prior to implementation to ensure that it effectively outlines how the WFH/flexible working arrangements will work, and what is expected of participating employees.

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