

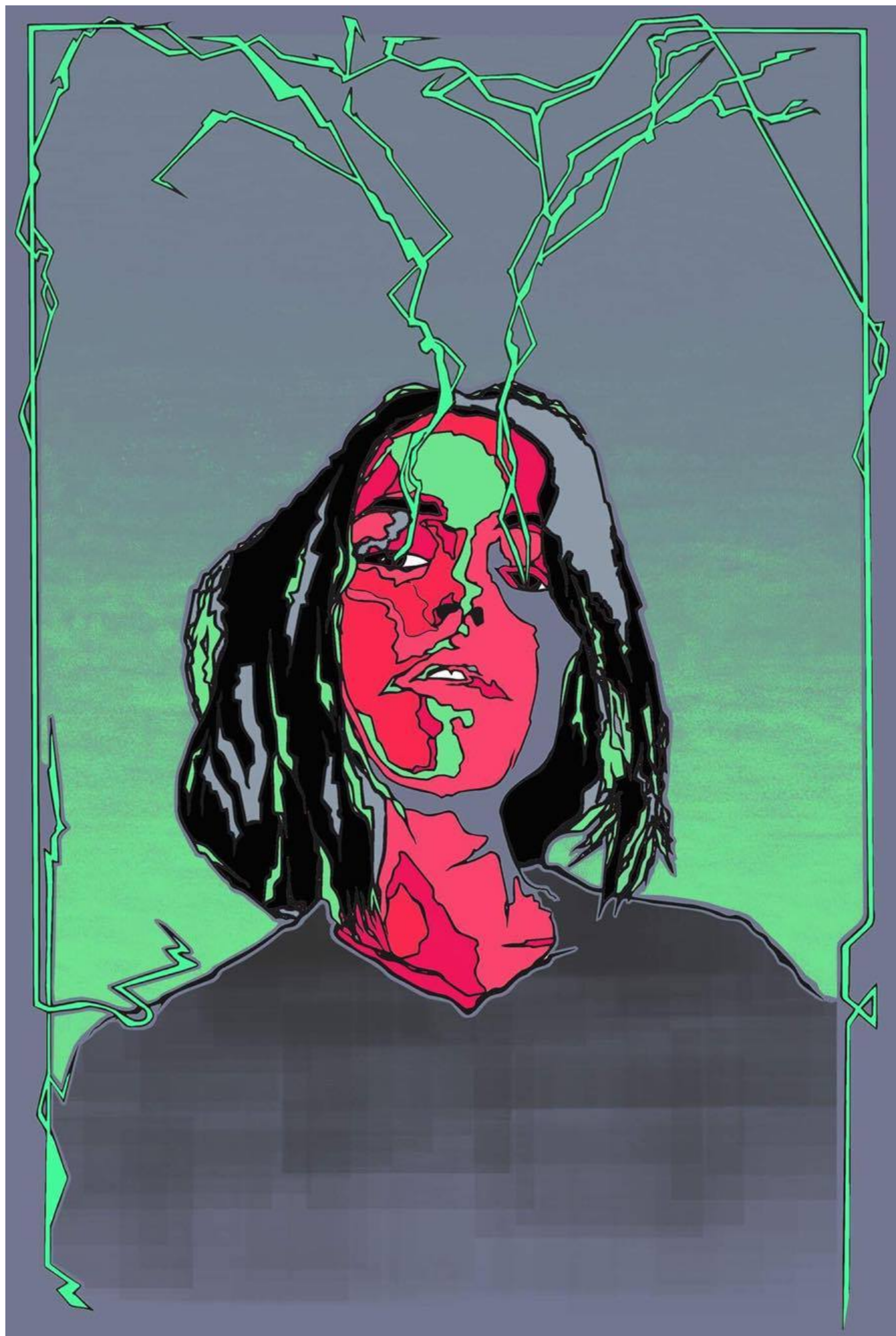
Implementing salary reductions in Bahrain

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The economic impact of Covid-19 has affected companies globally – a substantial number have been forced to close or make mass redundancies. Even for those fortunate enough to maintain their workforce, many have adopted alternative working arrangements including measures such as reducing salaries or placing employees on unpaid leave.

A significant drop in economic activity has ultimately resulted in a decline in most industries, and given the anticipated changes in consumer behaviour there is an expectation that this is likely to extend over the following months. As a result, a number of companies have been unable to sustain their current business operations.

This article examines the legal obligations on employers in Bahrain when considering whether their employees can be required to agree to a salary reduction in order to maintain their employment.

The Legal Position

Unlike other jurisdictions, which allow an employer and an employee to contractually agree to a salary reduction, the legal position in Bahrain is that unless any modification of the employment contract results in better terms and conditions, or terms and conditions which fall within the employer's management purview, such changes would be unenforceable even if the employee did consent.

This means that, in order to effect a salary reduction during employment, an employer would be required to formally terminate an employee's employment and rehire that employee on the new (reduced) salary.

Termination of Employment

The Bahrain Labour Law for the Private Sector No. 36 of 2012 (the “**Bahrain Labour Law**”) provides that employment can be terminated by either the employer or the employee serving not less than 30 days' notice in writing (or longer where contractually agreed). Where the employer terminates employment, it must show a valid reason for doing so or it will be exposed to the risk of a claim of unlawful termination by the employee.

In circumstances where a termination and rehire has been agreed with an employee, adverse risk is of course low however, from a legal perspective, on termination, an employee is entitled to their contractual and statutory entitlements under the Bahrain Labour Law (including but not limited to end of service gratuity, notice, a payment in lieu of accrued but untaken annual leave etc.).

Where an employee disputes the termination of their employment, the employee may seek unfair dismissal compensation calculated as follows:

1. Where the employee is employed under an unlimited term contract, compensation calculated on two working days' salary for each month of service, subject to a minimum of one month's salary and a maximum of 12 months' salary; or
2. Where the employee is employed under a fixed term contract, compensation calculated on the basis of the employee's salary for the remaining period of the term.

Practical Approach

In light of the above, and to mitigate risk, it is common for the employer and the employee to enter into a written agreement that the employee's entitlements will roll forward into their 'new' employment

(notwithstanding that the employee's current employment will terminate and they will then be rehired on new terms and conditions of employment) meaning that the term of the employee's employment will be continuous and all termination payments will continue to accrue and be paid on the eventual termination of the employee's employment.

Contractual Salary Reduction

Whilst the process set out above represents the legally compliant approach, it is ultimately time consuming in addition to being financially and administratively burdensome and as such, some employers proceed to contractually agree to a salary reduction with their employees without adopting the termination and rehire process.

This is not recommended for the following reasons:

1. The enforceability of the salary reduction

As set out above, it is not possible for an employer and an employee to contractually agree a salary reduction.

This means that where the employer has decided not to proceed with the termination and rehire approach, and instead contractually agrees a salary reduction with an employee, there remains a risk that an employee may file a successful claim before the Bahrain Labour Court for breach of contract and/or unpaid wages. In addition, an employee may claim that all termination payments are calculated with respect to their salary prior to the reduction.

This approach can create a substantial financial liabilities for the employer and we therefore recommend exercising caution before proceeding in this way.

2. The Bahrain Wage Protection System ("WPS")

In 2019, a new resolution was published (Resolution No. 68 of 2019 on the Wage Protection System (as amended) ("**WPS Law**")) which seeks to ensure that employers commit to the payment of their employees' wages, in accordance with the WPS. The WPS Law obliges employers to pay the wages of employees through any means of payment provided by a bank approved by the Central Bank of Bahrain including by way of transfer to bank accounts, pre-paid cards, and other means provided by such "**Approved Banks**".

Following the payment of wages, the Approved Bank will disclose to the Labour Market Regulatory Authority ("**LMRA**") certain information relating to an employer's employees, including the employees' name, ID number, the wage amount, date of payment, and the employers' ID number or Commercial Registration ("**CR**"), enabling the LMRA to monitor (and where relevant, enforce) compliance with respect to salary transfers.

Resolution No. (22) of 2021 on the Stages of Implementing the WPS ("**WPS Implementation Law**") has also been passed, supplementing the WPS Law and setting out the implementation phases for the WPS Law as follows:

Phase	Size of Employer	Implementation Date
Phase 1	500 and more employees	1 May 2021
Phase 2	50 and 499 employees	1 September 2021
Phase 3	1 to 49 employees	1 January 2022

Employers are to be provided a grace period of six months from the applicable WPS Implementation Date

to comply.

In light of the implementation of WPS, employers should be cautious when contractually agreeing a salary reduction, as doing so will result in a reduction in the salary payments that should be made via an Approved Bank. In such circumstances, the reduced payment may be flagged by the Approved Bank, the WPS and/or the LRMA and may result in various penalties being imposed against the employer. Such penalties can include fines and blocking of the CR resulting in a disruption to business operations.

Conclusion

Consideration should be taken prior to implementing a salary reduction both from an employee management perspective, and to ensure that the employer remains compliant with its legal obligations under Bahrain law.

Any salary reduction should be discussed with the affected employee(s) and it should be explained that a termination and rehire approach will need to be adopted to ensure legal compliance however that this arrangement will not affect the employee's ongoing employment. It is important that the arrangement is documented in writing especially in circumstances where the parties agree that the employees' accrued entitlements will carry forward to their 'new' employment, and will not be paid out on termination.

Legal advice should always be sought prior to implementing any alternative working arrangements to ensure that the most effective approach is taken by the employer to mitigate risks.

For further information, please contact [Sabrina Saxena](#).