

Employing Illegal Workers: The Implications And Pitfalls

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Introduction

This article focuses upon the implications of illegal working for the illegal worker, the employing entity and its employee(s) who are responsible for the management of personnel.

The scale of the problem was highlighted in July 2011, when the Acting Director of the Dubai Police Criminal Investigation Department (CID), stated that 'the category of illegal workers comes top on the list of theft crimes in the country' whilst confirming that those who breach the immigration legislation by recruiting illegal workers will be held liable.

In terms of applicable legislation, the legislation governing immigration and residence within the UAE is primarily governed by UAE Federal Law No 6 for 1973 (as amended) (the "Immigration Law") and a series of further Ministerial Resolutions and Decrees. It is also relevant to consider the UAE Federal Law No 8 of 1980 (as amended) (the "Labour Law") which governs employment law in the UAE.

The Issue

Essentially, all expatriate employees who wish to work in the UAE must be employed by an appropriately licensed and approved company and be issued with an entry permit for employment purposes, a labour card (work permit) and a residence visa.

The employer is the "sponsor" of the employee where the company is onshore.

Where a company is based offshore within a free zone, the free zone authority takes on the role of sponsor, in return for the company agreeing to abide by certain terms (usually contained in a Personnel Sponsorship/Secondment Agreement) as the employer. Rather than a labour card being issued by the Ministry of Labour, the relevant free zone will issue an identity card which acts as the work permit.

The employee must work for the employer at the stated place of business and cannot work elsewhere. In some circumstances, it may be possible to obtain approval from a free zone to allow an employee with an onshore visa to temporarily work within the free zone for a group company in that free zone. It is not possible to make arrangements the other way around to enable use of a free zone visa to work onshore.

Press interest in this issue inevitably focuses upon cases whereby large volumes of blue collar workers fall foul of the immigration laws. For example, the recent case of the 160 Filipinas, who were recently arrested for allegedly working illegally at a wedding reception at the World Trade Center in Dubai.

Whilst, such cases are more likely to grab the headlines, this is very much a potential issue for all employers within the region.

The implications: The employer

Where the immigration authorities identify that employees have employed non UAE nationals who do not have valid residence visas and work permits, there is the potential for significant sanctions.

In 2007, Federal Decree Law No7 for 2007 was passed which amended the Immigration Law and increased

the level of potential sanction which can be levied to the employer by the immigration department from 10,000 AED per employee to the present level of 50,000 AED. This is indicative of the approach of the Federal Government to the problem of illegal working.

In addition, for onshore employers, it is open to the Ministry of Labour (MoL) to levy a further fine of 50,000 AED per employee.

For offshore employees, there is the prospect of an additional fine by the relevant free zone authority with the amount of the potential fine per employee varying from free zone to free zone.

If there is a repeat and an employer does not rectify and address the illegal working, there is scope for the Court to double the fines that had been previously issued. The Labour Law also provides that the Court may consider criminal proceedings against the employer where it has issued a warning to the employer which has gone unheeded. The Labour Law makes provision for imprisonment of up to 6 months should *'any person violate any of the obligatory provisions of this Law'*.

The previous Minister of Labour Ali Abdullah Al Kaabi very clearly reiterated the legislative position on illegally working when he stated that:

"Any company that is caught employing illegal workers will face a AED 50,000 fine per worker on the first offence, and a AED 100,000 fine per worker on the second offence. And if the owner of the company is an expatriate, he will be deported and banned from entering the country for life while if the owner is a national, he will be jailed for a minimum of six months."

The implications: The 'employee'

There are also grave implications for the employee who is held to be working illegally.

If the individual has been found to have entered the country illegally, the Immigration Law provides that he shall be imprisoned for a period 'not less than one month' and will receive a fine of 'not less than Ten Thousand Dirham'. To complete the suite of sanctions, the immigration court may also impose a labour ban upon the individual and/or order deportation.

For individuals who enter the country legally but thereafter work illegally, the potential sanctions under the Immigration Law are the same save for the potential length of imprisonment which is for a period 'not exceeding one month'. However, there remains scope for the authorities to impose a greater sentence given that the Labour Law also makes provision for imprisonment of up to 6 months.

The implications: The employee(s) responsible for the management of personnel

Where a breach of the Labour Law is identified (including illegal working), the Labour Law also makes provision for criminal proceedings to be filed against the *'General Manager who is responsible for the management of the establishment and against the employer if circumstances give the belief that he was not unaware of the facts constituting the violation'*.

Therefore, there is the prospect of criminal proceedings being initiated against the 'General Manager' and/or the company where it is shown to be aware of the illegal working.

A General Manager is often not responsible for the management of personnel within the organisation and such responsibility usually falls to an HR manager.

The authorities have not taken a prescriptive approach to the Labour Law by holding the person with the title of 'General Manager' accountable for illegal working within an organisation. Rather the employee who is ultimately responsible for the management of personnel should be aware that they are likely to be held to be accountable.

This approach was brought into sharp focus recently, when an HR professional, an Australian business

graduate, was accused of employing staff illegally on behalf of her employer. The employer was a car parking management company that provided services to Dubai International Financial Centre. Three of the employer's valet drivers were arrested by local police for working without valid visas. The HR manager, who had only been employed by the company for 7 months, was arrested on the basis that she was responsible for employment in the organisation. The HR manager now faces potential imprisonment and a fine when the case calls before the immigration court.

The case has generated publicity given the HR manager's strong conviction that the General Manager and other senior personnel were able to deliberately avoid potential sanction by absolving themselves of responsibility. As a consequence it is the HR manager's position that she has been left to 'carry the can' as she is now reportedly liable for a fine of up to 50,000 AED per employee (150,000 AED in this case) and potential imprisonment for up to 6 months.

This case provides a salutary warning for HR managers throughout the UAE. In the event that illegal working is identified within the organisation, the implications are not restricted to the corporate entity and, irrespective of how harsh it may appear, personal liability is a potential consideration.

Conclusion

There are onerous sanctions for employers, rogue employees and HR managers (or other staff responsible for the management of employees within an organisation). Further, the authorities are aware of the scale of illegal working and wish to address the problem.

Employers would be well advised to undertake a review of their employment records to ensure that all staff have valid residence visas and work permits. A robust system with appropriate checks and balances should be put in place to ensure that visas do not expire without being renewed and copies of valid visas and work permits are retained within personnel records.

There is a vested interest for Human Resources departments to take ownership of the review process given that there is a good prospect that accountability for employing illegal workers may rest within the HR function.

Learn how our employment & Incentive practices offer [law assistance for matters relating to employing illegal workers](#) in the UAE.