

Recent Key Developments in UAE Employment Law

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Employment relationships in the United Arab Emirates (UAE) are generally regulated by the UAE Federal Law No. 8 of 1980, Regulating Labour Relations, as amended (Labour Law) together with regulations promulgated under that law.

The Labour Law applies to all employees working in the UAE, whether national or non-national, with the exception of certain categories of people. One of the exempted categories are employees working in the Dubai International Financial Centre (DIFC) are subject to the DIFC Employment Law No. 4 of 2005 (Employment Law). The legislative regime in the DIFC (save for certain laws such as criminal and immigration) is independent from the UAE. The DIFC has its own laws and regulations which govern commerce within the DIFC supported by its own independent English language common law court system.

The UAE faces relatively unique challenges, in that its population and workforce are predominantly made up of expatriates (for example, figures released last year indicated that 93 percent of the private sector workforce was made up of expatriates). The UAE must therefore balance the need for access to jobs and training for its local population and the retention of expatriates, particularly in light of the recent changes provoked by the economic climate.

Key developments

It is possible to characterise recent key developments in the laws as addressing certain areas which, as identified above, result from the UAE's unique position and broadly fall into three main categories, (1) management of the movement of workers; (2) protection of UAE nationals; and (3) developing practices to ensure that the UAE is in line with international standards for workers. Each of these is dealt with in turn.

1. Management of the movement of workers

Labour Bans

Prior to January 2011, the Ministry of Labour (Ministry) imposed an automatic 6-month ban on all expatriates leaving their employer. This applied to all employees falling within their jurisdiction (i.e. outside the free zones or the DIFC) and could only be lifted for those individuals with more than one year's service by way of a "no objection certificate" provided by the former employer and/or payment of a fee (depending upon length of service). However, during the economic downturn of 2009/2010, the automatic ban affected employees who had been made redundant by their employer, and this in turn resulted in the loss of some skilled workers with local UAE knowledge.

From January 2011, the practice has been amended and in accordance with a Ministerial resolution, the automatic ban will not be imposed in certain circumstances, having regard to issues such as length of service, level of expertise, and reason for dismissal, including whether the termination is due to a business reorganisation. In addition, in practice, the Ministry has further relaxed the enforcement of the employment ban provisions, so that at present, employees are free to move between employers (subject to any post-termination restrictions or other issues raised before the Ministry). However, the Ministerial resolution remains in place and may be more

rigorously enforced in the future.

Internal work permits

In order to work in the UAE, an expatriate must obtain a residency visa and work permit. If the employee works within a free zone, their residency visa and ID card (work permit) is obtained via the relevant free zone (for example, DIFC).

The use of work permits is a further method by which the authorities are able to manage the movement of workers. From January 2011, the Ministry introduced five new work permits, which are applicable in cases where an individual already has a residence visa (or, in the case of a UAE national, is entitled to reside in the UAE). These permits are for a work transfer, temporary work, part-time work, cases where individuals are sponsored by family members and juveniles. One of the aims of the temporary work permit is to allow expatriates to obtain employment from another employer, pending the outcome of any ongoing litigation with their former employer (with whom they retain their visa). The part-time work permit is open for use by both expatriate and UAE nationals, although it is likely that one of the aims of the permit is to encourage UAE national females into the workforce. As with all permits, these are only issued upon the approval of the Ministry and therefore they are tightly controlled. The use of the part-time permit remains in doubt, in light of the fact that the Labour Law does not make any provision for part-time work and therefore minimum provisions applicable to full time employment (such as annual leave and sickness absence entitlement) will continue to apply to part time employees.

Retirement

As noted above, all employees must have approval to work, by way of a work permit or ID card from the relevant authority. Prior to January 2011, employees falling under the Ministry jurisdiction were required to obtain express approval to continue working once they reached the age of 60 years. The age limit after which such express approval must be obtained has been increased to 65 years.

2. Protection of UAE nationals

The UAE operates a policy of “Emiratisation”, which seeks to encourage private sector employers falling under the jurisdiction of the Ministry to maintain minimum levels of UAE nationals in their workforce. Whilst prior to January 2011, the Emiratisation policy was relatively indiscriminate, focusing purely on the number of UAE nationals in the workforce, a Ministry resolution which came into force in January 2011 now addresses the requirement for UAE nationals to fall within the white collar labour force and in particular, UAE nationals should make up 3 percent of the top three professional categories in an employer’s workforce. The professional categories have to date been based upon educational qualifications, although there is a move towards reclassifying these, based upon professional experience.

Firms which maintain the required level of UAE nationals at the professional categories, and also comply with certain other Ministry requirements, are categorised as “First Class” companies, out of three possible categories. The Second Class categorisation also focuses on employee diversity, and seeks to limit the percentage of the workforce made up of one of three nationalities (Indian, Pakistani, and Bangladeshi). A Third Class categorisation includes those companies who receive a certain number of fines or “penalty points” issued by the Ministry for breach of Ministerial resolutions, as well as companies undertaking more serious activities, such as human trafficking. The category into which a company falls will determine the amount of fees and bank guarantees that the company will be required to pay to the Ministry, as part of the normal administrative requirements when obtaining Ministerial consent for the employment of staff.

UAE nationals have also enjoyed protection from dismissal, since 2009, when a Ministerial

resolution was provides that the termination of UAE nationals in the private sector is unlawful if the employer does not first notify the Ministry of the proposed dismissal (and at least 30 days before the termination date). The Ministry will investigate whether the employment is being terminated for a legally valid reason. If the Ministry decides the termination is not for a legally valid reason, the employer is given 15 days to resolve the situation. In accordance with the resolution, the termination will not be valid where (a) the employment is being terminated for a reason other than one of ten specified reasons for cause listed in the Labour Law (in practice, the ten reasons listed in the law are very narrowly interpreted); (b) a non-national is undertaking the same role (in other words, the non-national should be dismissed first); or (c) where the UAE national has not received all end of service benefits due to them.

3. Development in line with international best practices

Although it remains the case that collective bargaining and strike action remain illegal in the UAE, there have been a number of recent developments intended to give protection to employees, particularly blue-collar workers who may lack the ability to challenge unfair practices. Recent key developments are:

- In 2009, the Wage Protection System (WPS) was introduced and came into effect in 2010. This applies to all employees falling within the Ministry jurisdiction. Employers are required to pay employees' salary in UAE dirhams through the WPS. This is intended to ensure that employees are paid the correct salary amounts, and that the salaries are paid on time.
- Manpower supply companies are strictly regulated by the Ministry and a Ministerial resolution in 2010 revised the criteria for the issuance of licenses for such entities. The key requirement is that the owner (whether an individual or an entity) must be a UAE national. The resolution was issued in response to complaints that certain employees recruited by manpower supply companies offshore were badly treated or misled over employment opportunities. It was also brought in to stamp out illegal practices by certain entities in the UAE that provide manpower without being appropriately licensed.
- Although the Employment Law contains anti-discrimination protection, the Labour Law only contains positive discrimination provisions. However, the Twofour54 Abu Dhabi Media Free Zone introduced anti-discrimination provisions in its employment regulations in 2011, which state that the free zone aims to create an environment where employment and advancement is based on merit and an employee is not treated less favourably by reason of gender, marital status, race, religion or disability. The regulations also impose an obligation on companies operating in the free zone to be guided by the principle of non-discrimination when employing employees.
- The DIFC Court offers employees an informal forum (the Small Claims Tribunal) in which to bring employment claims. In 2011, the SCT extended its jurisdiction to all employment claims which equal or are less than AED200,000 (approx.. US\$ 55,000). In addition, it is possible for the SCT to hear all employment claims (regardless of size of the amount of the claim), upon consent by both parties.

Looking forward

In light of recent socio-economic and political developments in the region, it is likely that the UAE will remain one of the prime destinations for expatriates but at the same time the UAE government will be keen to continue to ensure that its nationals are protected adequately. After a relatively busy year in 2011 on the legislative front, it is envisaged that the authorities will consolidate the changes implemented.

There has been some discussion of implementing new schemes to encourage Emiratisation, for example, by partnering with the private sector to train and employ UAE nationals for a minimum period in return for subsidies provided by the government.

Pensions for expatriate employees are expected to be high on the agenda for 2012 following widely reported talks between the World Bank and the UAE. Currently expatriate employees are only entitled to statutory end of service gratuity (in the form of a lump sum payment) at the end of service which is calculated by reference to their period of service with employers in the UAE/DIFC. This is seen as one of the key requirements to make employment in the UAE more attractive to expatriates and encourage individuals with specialised expertise to remain in the UAE long term.

Along with the possible changes in the UAE legislation, the DIFC is also likely to implement amendments to the Employment Law. A consultation paper on proposed amendments to the Employment Law was launched in December 2011 with the consultation period ending on 14 January 2012. The proposed amendments are being viewed as an attempt to address some of the inconsistencies in and provide clarity on certain aspects of the law.

We expect that the Arab Spring will continue to have a positive effect in the UAE with more foreign investment earmarked for the region being channelled into the UAE, but at the same time it is likely that the focus will continue to be on the issue of jobs for UAE nationals.