

The law is applicable to employees of government authorities & companies in the UAE

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The UAE labour law applies to the majority of employees in the UAE. However employees of governmental or semi-governmental organisations or government companies ("Public Entity or Public Entities") may be subject to the UAE Labour Law or the appropriate civil service law (either Federal or Emirate level) ("Civil Service Law"). In practice the position in respect of the applicable employment law for Public Entities can often be unclear.

From an employer's perspective the UAE Labour Law is a much more beneficial legal framework to work within as the Civil Service Law places quite onerous requirements on the employer, particularly in relation to termination of employment.

In this article we will identify and discuss the law to be applied to the employees of Public Entities both at a Federal level and at an Emirate level.

Federal Level

What are Public Entities?

The UAE Labour Law states that it does not apply to employees of Federal and local public departments and organisations. The terms 'public department' and 'public organisation' are not defined and are capable of very broad interpretation. Meanwhile the Federal Civil Service Law states that it applies to (i) employees who receive their salary from the Federal budget, and (ii) civil servants working in "public federal institutions and bodies". The first category is easy to define but the second one is broader and in some cases difficult to discern, particularly in respect of government companies.

Government companies are not specifically excluded by Article 3(1) of the UAE Labour Law and not specifically included in the Federal Civil Service Law. The question therefore is whether the definition of public entities in the UAE Labour Law includes companies established by the government and either fully or partially owned by the government? To answer this we must look at the court rulings.

In Appeal No. 379/2004 (Judicial Year of 25), the Higher Federal Court held that Article 3(1) means that the UAE Labour Law is not applicable to the officials, employees and workers of the federal and local public departments and organisations and that the Civil Service Law applies to these employees instead. In its decision the Court mentioned that provisions of the particular law creating the company in question did not stipulate that the company was to be considered a public entity, but instead that it was a national joint stock company which enjoys an independent legal personality. The Court therefore found that the company was not to be considered a public entity, and accordingly its employees are not considered to be public servants subject to the Civil Service Law

A further example of this principle can be found in Appeal No.663/2002 (Judicial Year of 23) in which the Federal Supreme Court ruled that Federal Law No. 1 of 1991 (which created the Emirates

Telecommunication Corporation (Etisalat), does not contain any provision stating that the entity is to be considered a public entity. The particular law states that the company is to be managed on a commercial and investment basis, but that the government shall own at least 60% of the company and that five members of the board of directors shall be appointed by the Cabinet to represent the Government. Nonetheless the Court concluded that Etisalat is not to be considered a public entity, but a private joint stock company. This suggests that if the law setting up the company states that the entity shall be managed on a commercial and investment basis, this may indicate that it is to be a private company for the purpose of the applicable law for its employees.

Can a government entity use the Labour Law anyway?

Yes, most of the Court rulings establish that where a Public Entity is not subject to the Civil Service Law then the UAE Labour Law shall apply.

Emirate Level- Abu Dhabi

What are Public Entities?

The Abu Dhabi Civil Service Law states that it only applies to employees who receive their salaries from the General Budget of the Abu Dhabi government. Accordingly it should be a very simple exercise to establish which Public Entities are subject to the Abu Dhabi Civil Service Law. However there have been Court judgements that have applied the Civil Service Law to Public Entities whose employees were not paid from the General Budget but whose founding decree defined it as a public body. Caution must be exercised in this area.

Can a Public Entity use the Labour Law anyway?

It depends. In most cases it will be clear whether the employees receives their salary from the general budget or whether they are working for a government department, in which case the Public Entity does not have any discretion. However in respect of government companies the position must be considered on a case by case basis. There are many government companies in Abu Dhabi that apply the Labour Law. The key to this is often down to the description of the company in the founding decree as the following case illustrates.

In a case last year (Appeal No. 84-2012 (administrative)) the Abu Dhabi Court of Cassation held that although the company's human resources policy and a contract of employment stated that the UAE Labour Law was to apply, because the founding decree establishing the company provides that it is a public entity the Civil Service Law shall be applied instead

This means that if the law establishing the entity states that it is a public company, the Civil Services Law will apply regardless.

Possible Exemptions in Abu Dhabi

The Civil Service Law in Abu Dhabi grants the Abu Dhabi Executive Council the authority to issue a resolution implementing its provisions to any entities or authorities or to exempt same from the application of its provisions (see article 2(2)). It is not clear however whether any exemptions have been granted.

Conclusion

At a Federal level if the law establishing a government company fails to state that the company is to be considered a public entity, then it is likely that the UAE Labour Law will apply. This is especially so where the law states that the company is to be managed on a commercial and investment basis.

In the Emirate of Abu Dhabi, the law applicable for employees of Public Entities is the Civil Service Law unless (i) the founding decree of the government company defines it as public or (ii) the Executive Council issues a resolution granting an exemption.