

Disciplinary action in the United Arab Emirates

October 2013

A key facet of many multinational businesses is that they now operate within a complex matrix of jurisdictions, each of which presents its own unique legal challenges.

When an employee is suspected of misconduct or breach of policy, the employer is faced with a number of issues: whether to initiate its formal disciplinary process against the employee; how and when such processes should be implemented; and what mandatory local law requirements it must additionally follow (if any) prior to or upon imposing a disciplinary sanction on the employee, including but not limited to dismissal.

This article provides a general overview of the relevant legal requirements employers should be mindful of under Federal Law No.8 of 1980, as amended (UAE Labour Law) – the principal legislation regarding employment matters in the UAE (excluding the DIFC) – when proposing to and ultimately implementing disciplinary action and/or sanctions against its employees*.

Disciplinary action – what should an employer do?

In the UAE, the disciplinary process does not vary significantly from procedures across many other jurisdictions such as the UK or Europe, offering some comfort for HR practitioners working for UAE subsidiaries of UK or European companies. Employees in the UAE have the ability to bring claims for unfair/arbitrary dismissal and, depending upon the manner of termination and subject to various eligibility requirements, potentially also a claim for an end-of-service gratuity payment, which could, for long-serving, senior and/or highly remunerated employees, prove incredibly costly.

The statutory requirements governing disciplinaries are themselves fairly minimal but clearly dictate how a disciplinary procedure should be conducted: in accordance with Article 102 of the UAE Labour Law, an employer may impose certain disciplinary penalties on its employees, which include a warning, fine, or dismissal (with or without notice). Article 110 of the UAE Labour Law imposes on the employer compliance with strict legal formalities, providing that the penalties listed under Article 102 may not be imposed unless:

1. The employee has been notified in writing of the allegations against him;
2. The employee has been given an opportunity to comment on the allegations;
3. The employer has investigated any defence provided by the employee in respect of the allegations;
4. The process listed in (1) to (3) above is recorded in the employee's personnel file, and the penalty noted at the bottom of the report.

It is not possible to impose more than one penalty or to combine a disciplinary penalty with a deduction of part of an employee's wages. Article 110 also states that the employee must be notified in writing of the nature of the disciplinary penalty, the reasons for the penalty and the action which would be taken against him in the event of repetition of offence (where relevant). There are very strict time limits within which disciplinary action must be taken. An employer must initiate the disciplinary procedure within 30 calendar days of discovering the misconduct, and any disciplinary sanction within 60 calendar days of the investigation having been concluded and the employee's guilt established.

In contrast to other jurisdictions, there are no statutory provisions or best practice guidelines detailing the notices to be provided to the employee or the conduct of any disciplinary meetings,

apart from providing the employee an opportunity to comment on the allegations against him and to provide any relevant explanation or defence.

Getting the procedure right before implementation of a particular disciplinary sanction (be that dismissal or otherwise) is important – and the implications of a failure to do so was underscored in a case before the UAE Federal Supreme Court (Case No. 208/2003) where the Court, rejected decisions by the Courts of First Instance and Appeal and held that there was no evidence that disciplinary procedures under Article 110 had been properly followed and therefore held that an employer was not entitled to impose a disciplinary penalty. Although the UAE (excluding the DIFC) is not a common law jurisdiction, and so judges are not bound by previous decisions, the judgments of the higher courts – such as the Cassation or Supreme Court – do hold persuasive authority.

The law of unfair dismissal – a word of caution

It is common in the UAE to find employees engaged under unlimited term contracts, unless they are working on specific short-term based projects or temporary assignments, the nature of which lends themselves more to limited term contracts. The type of contract an employee is working under will influence and ultimately dictate the degree of financial (or other) exposure an employer will have on imposing a particular disciplinary sanction, such as dismissal.

An unlimited term contract may terminate at any time, on written notice, provided at least 30 calendar days prior to termination. In accordance with the UAE Labour Law, this must be for a “valid reason”. Although there is no definition of a “valid reason” stated in the UAE Labour Law, an employee’s employment will be deemed to have been arbitrarily terminated if the reason for the termination was “irrelevant to the work”.

In our experience, the Labour Court will generally only accept a termination to be “valid” and thus decline to award arbitrary dismissal compensation, either where the employee is guilty of one of the specified (and exhaustive) gross misconduct reasons listed in Articles 88 and 120 of the UAE Labour Law, or where the employee is a poor performer or guilty of some other misconduct (and there is documentary evidence backing up the poor performance or misconduct). The maximum compensation arising from a finding by the Labour Court of arbitrary termination is three months’ remuneration, based upon the last pay received by the employee prior to dismissal. For these purposes, “remuneration” is the employee’s full pay (basic salary plus any monthly allowances). In addition, where the employee receives commission, or regular or guaranteed bonus payments, these may also be taken into account by the Court for the purposes of calculating the employee’s remuneration. The actual amount of the award, if any, is ultimately determined by the Labour Court. Whilst the cap on compensation might be perceived from a costs-benefits ratio as fairly low-risk by some employers, what cannot be overlooked or discounted is the inevitable management time and legal costs that will be usurped in defending a claim brought by an aggrieved employee.

Best practice

In order to avoid the legal consequences associated with dismissing (or imposing lesser sanctions on) an employee on disciplinary grounds, it is important that the employer follows a fair and reasonable process. This should apply equally to cases of summary dismissal – if not more so – under Articles 88 and 120 of the UAE Labour Law. It is recommended that, if not already in place, employers introduce a disciplinary policy (whether as part of the contract of employment, the staff handbook or a free-standing policy), which takes into consideration the minimum requirements set out in the UAE Labour Law. In addition, because each disciplinary situation will quite often be unique in its facts, there should be an element of flexibility embedded within any such policy to permit the employer the ability to exercise its reasonable discretion. Any disciplinary policy should be communicated to all employees, be readily available for them to access, and serve as a guide throughout the disciplinary process. It goes without saying that any disciplinary action taken, at any

stage, should always be justifiable and considered in light of the specific and particular circumstances of the case, and, of course, the requirements mandated by the UAE Labour Law.

** It should be noted that the termination of UAE national employees in the private sector is regulated by Ministerial Decree No. 176 of 2009, which requires, in certain circumstances, the consent of the Ministry of Labour prior to any decision by the employer to terminate. Such considerations are outside the scope of this article.*