

Restrictions on employee mobility in the UAE Healthcare sector

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The healthcare sector within the UAE is growing apace. This is clear from the wider industry that has developed around both primary and secondary healthcare, most recently in the Dubai Government's publication of Law No. 11 of 2013 concerning Health Insurance in the Emirate of Dubai.

This note briefly addresses the general considerations regarding the employees' designated place of work and also the use of overseas practitioners to meet demand for specialist healthcare services in the UAE.

In common with the development of business generally, many healthcare service providers now operate from more than one site. The ability to transfer staff from one site to another (whether on a temporary or on a mobile daily basis), is a key economic issue. Thus it is important for businesses to be permitted to transfer staff to other sites from time to time or to assign them to a more "mobile" place of work rather than have to recruit someone with similar specialist skills at one of their other sites.

The Place of Work

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An individual must be directly engaged (i.e. "employed") by a locally licensed and registered employing entity in order to work lawfully in the UAE. There is no recognised concept of self-employment or other atypical working status, which are commonplace in other jurisdictions. As a general principle, an expatriate seeking to live and work in the UAE must enter into a Ministry of Labour ("MOL") standard form contract (or that of an applicable free zone).

It is an offence for an employer in the UAE to permit any sponsored employee to work for (which includes "providing services for") another entity or person in the UAE, without the appropriate consent. Within the healthcare sector this could prove to be problematic not least because the nature of healthcare provision may require a medical professional to provide services to another entity or end-user, potentially at their premises.

The work permit will allow the employee to carry out work for the employer and at the employer's premises (identified in the employer's commercial licence). The location of employment is defined and fixed. As such, the employee will not be permitted to work at locations other than those of the employer. This raises the question of how the employer can properly perform its activity.

Notwithstanding the restrictions upon the employee's "place of work", official "consent" for an

employee to work at other locations may be forthcoming where the work falls into one of the following example categories:

- **Outsourced Manpower:** Personnel provided by manpower companies will often be based at their end-user/customer's site. This is strictly subject to terms of the manpower company's licence. Such arrangement would need to be approved by the MOL on a case-by-case basis. Within the healthcare sector this type of commercial licence potentially provides a solution to restrictions on workforce mobility and supply of services to clients.
- **Permission from the appropriate authority:** By way of example, in Dubai, the DHCC Authority (in case of the free zone or MOL in case of onshore entities) may give permission for an employee to work at more than one site. However, the DHCC Authority permission is restricted to sites within DHCC. Similarly, the equivalent MOL permission only extends to organisations regulated by the MOL. For example, the DHCC cannot give approval for a consultant to work onshore and likewise the MOL cannot give its approval for a consultant to work in DHCC.
- **Secondment Agreement (of limited duration):** Relevant consents must be obtained from the MOL (directly from the MOL Inspections Department or, more commonly, through a temporary work permit approved by the MOL). Temporary permits may also be obtained from (for example) a free zone authority for an onshore or other free zone employee. In practice it is highly unusual for the MOL to permit a free zone employee to work onshore.
- **Discrete Services:** Services/activities which, by their very nature, are "discrete" and can only take place at the customer's premises may be permitted provided that the service provider has the particular activity on its commercial licence. First-aid and paramedic services may indeed be considered discrete. However, there is no current clearly-defined category for the provision of such services within the healthcare sector. We are aware, from experience, of a case where the provision of paramedic staff to a "customer" was regarded as manpower supply. It is essential that the appropriate commercial licence covers the service provided. This will also be important from an insurance perspective.

Insurance

Mobile employment carries an inherent risk. Under the UAE Labour Law, employers are liable (on a "no fault" basis) for workplace injuries. The definition is broad and includes accidents/injuries sustained by an employee, not only in the course of their work but, also in transit to and from the place of work. Where any injury is sustained when travelling, the liability arises only where the journey was made without "delay, default or diversion" from their normal route. Given that in a more mobile context an employee's route is unlikely to be standard, this would appear to be subject to some interpretation.

Overseas Medical Professionals

Medical professionals qualified in other jurisdictions must obtain the appropriate approvals to practise in the UAE. By way of example, the Dubai Health Authority ("DHA") publishes very clear licensing requirements which are aimed at ensuring the quality of medical professionals within the Emirate. The stated aim of its Director General is that of "facilitating and simplifying access to healthcare services". The DHA recognises that it cannot properly meet its service provision without a substantial number of suitably qualified practitioners from overseas. To ensure the quality of service, the licensing process requires overseas applicants to have achieved prescribed levels of qualification within their domestic jurisdiction in order to practise medicine in the Emirate. The same principles and requirements apply throughout the UAE.

Given that within the UAE there is no recognition of the concept of self-employment or other atypical working status, it raises the question of how an overseas visiting medical professional would be able to work in the UAE. For example, one might consider how a specialist consultant might be able to bring unique skills to the region for a particular operation/procedure during a short-

term visit.

One would reasonably expect that the short-term mission or business visa route would be applicable depending upon the nature of the service being provided by the visiting overseas professional. In such a case it would be essential to obtain short-term permits and/or approvals to work on sites other than those of the immediate direct sponsor (as referred to above).