

# Disciplinary Action and Arbitrary Dismissal in the UAE

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Many businesses in this region regard a potential disciplinary process as a minefield full of possible (or probable for some employers!) hazards and pitfalls.

However, where a reasonable disciplinary procedure is undertaken by an employer, it can be time and money well spent, particularly where it results in the satisfactory improvement of an employee's performance or conduct, or the lawful dismissal of a difficult employee.

In the UAE (including all freezones in the UAE other than the DIFC), private employers are required to comply with UAE Federal Law No.8 of 1980, as amended ("UAE Labour Law") – the principal legislation regarding employment matters in the UAE – when implementing disciplinary action against an employee.

## **Disciplinary action**

The statutory provisions governing disciplinary procedures are 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. Article 110 of the UAE Labour Law sets out strict legal formalities, which provide 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; and
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.

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 must be determined within 60 calendar days of the investigation being concluded.

Getting the procedure right before implementation of a particular disciplinary sanction is important to avoid litigation or, in a worst case scenario, protect the employer should a claim be filed by an employee. In particular, if an employer fails to comply with the statutory procedure, the final disciplinary penalty could be found by the Labour Courts to be unlawful (irrespective of the employee's poor performance or conduct).

## **Arbitrary dismissal**

Following the termination of employment, employees in the UAE may pursue claims for arbitrary dismissal under the UAE Labour Law, which is similar to the UK concept of unfair dismissal. Whether an employee will be successful with any such claim will ultimately depend on the reason

for the termination and the process the employer undertook prior to terminating the employment. Therefore, it is essential for employers to follow the correct procedure from the outset.

An employer may terminate an employee working under an unlimited term contract at any time on written notice, provided the employer follows the process set out above, gives the employee the correct written notice of termination in accordance with the employment contract and the dismissal is for a “valid reason”. The notice period should be at least 30 calendar days. Although there is no definition of a “valid reason” 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 Courts only accept a termination to be “valid” and thus decline to award arbitrary dismissal compensation, where either (i) the employee is guilty of one of the specified (and exhaustive) gross misconduct type reasons listed in Articles 88 and 120 of the UAE Labour Law, or (ii) the employee is a poor performer (and there is documentary evidence supporting the poor performance or misconduct).

The maximum compensation that can be awarded to an employee pursuant to an arbitrary dismissal claim is three months’ remuneration, calculated based on 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 regular or guaranteed bonus or commission payments, these may also be taken into account by the Court when determining the employee’s remuneration. The actual amount of the award, if any, is ultimately determined by the Court. Whilst the cap on compensation might be perceived from a costs-benefits ratio as fairly low-risk by some employers, what should not be overlooked or discounted is the inevitable management time and legal costs that will be incurred in defending a claim presented by an aggrieved employee.

### **Best practice**

In order to avoid the potential consequences of dismissing or imposing lesser sanctions on employees, it is important that the employer follows a fair and reasonable process and any sanction is supported and justified with documentary evidence. This should apply equally to cases of terminations for poor performance and summary dismissal for gross misconduct under Articles 88 and 120 of the UAE Labour Law. Subject to the nature of the misconduct, employers may be required to notify the applicable governmental authority (which varies depending on the type of offence committed) or file a police complaint and await a final judgment against the employee, before confirming its final decision. For completeness, any type of dismissal of a UAE national employee requires the employer to notify the Ministry of Labour 30 days prior to confirming its decision.

We recommend that employers operate a company disciplinary policy (whether as part of the contract of employment, the staff handbook or a free-standing policy), which addresses the minimum requirements set out in the UAE Labour Law. 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.

Ultimately any disciplinary sanction taken should always be justifiable, be supported by written evidence, be subject to a reasonable disciplinary procedure and considered in light of the particular circumstances of the case and the requirements of the UAE Labour Law.