

Emiratisation: A Recap

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With an estimated 80% of residents in the United Arab Emirates (“UAE”) being made up of expatriates, the workforce is probably one of the most diverse in the world.

Whilst there are many benefits to this, the potential pitfall is that UAE nationals are in some sectors being overlooked for roles in favour of their expatriate counterparts. Year on year statistics and comparative studies at various levels continue to highlight the growing divide between the hiring of UAE nationals in the public and private sectors, as well as the increasing need to effectively redress this imbalance to ensure UAE nationals are gaining meaningful employment in the private sector, and are not being recruited solely to meet Emiratisation targets or employer-specific quotas.

This article sets out a brief recap of the Emiratisation laws applied in the private sector.

Scope of Emiratisation Laws

The UAE Labour Law provides that foreign nationals can only be employed after approval from the Ministry of Labour and only where there are no qualified UAE nationals to undertake the role. These preferential provisions are an extension of the UAE Constitution which states that the UAE Government must ensure that employment is available for all UAE nationals.

Despite this, UAE nationals are under-represented in the private sector. Accordingly, in recent years, a number of ministerial orders have been implemented with a view to increasing employment of UAE nationals in all areas with a particular focus on the private sector.

Ministerial Orders No. 41, No. 42 and No. 43 of 2005 impose on private sector employers a “quota” system, whereby every company is obliged to recruit (and retain on the payroll) a sufficient number of UAE nationals to ensure that the UAE nationals component of its workforce constitutes a specified (minimum) percentage of the overall number of staff.

The applicable quotas are as follows:

- 2% for commercial entities (where the entity has over 50 employees);
- 4% for banks; and
- 5% for insurance companies (where the entity has over 50 employees).

Irrespective of the above, the Central Bank and Insurance Authority have the discretion to determine quotas and year on year increases for banks and insurance companies.

In addition to the above, Council of Ministers Order No. 26 and Ministerial Order No. 1187, issued in August and November of 2010 respectively, implement a system of classification as an incentive to those adhering to their Emiratisation obligations. Essentially, where employers strictly observe government policies with regard to Emiratisation they will not be required to provide a financial guarantee for employees. Companies with lower gradings are required to file mandatory financial guarantees, the amount of which will depend on the category of the employer (as set out in the

relevant Order).

Strictly speaking, the rules do not apply in the free zones as they have their own employment regulations and in theory, their own Emiratisation requirements (although none of the free zones have yet implemented any Emiratisation requirements).

Specific Roles

Ministerial Resolution No. (635) of 2008 on Public Relations Officers states that any company which employs over 100 workers must employ an UAE national PRO. There are no other role specific requirements in relation to Emiratisation.

Enforcement

The rules and incentives set out above are useful in showing the intentions of the authorities in terms of Emiratisation. Practically however they are somewhat lacking in enforcement capabilities and in reality a relaxed approach has been taken in respect of meeting Emiratisation quotas.

The Ministry of Labour can block a work permit and residency visa application from any private-sector employer if unemployed registered nationals are qualified for the role. In practice however this does not often happen.

Whilst the Ministry of Labour does not take a very robust approach to Emiratisation, other authorities do. By way of example, in some cases the Insurance Authority has refused to renew commercial licences of businesses where Emiratisation targets are not met. Only when the employer demonstrates that it has met the Emiratisation quota has the commercial licence been renewed.

Going forward, the indications are that the UAE Government will take steps to increase Emiratisation but not by more rigorously policing whether quotas are being met. Instead, one indication of the Government's approach to this is that the UAE Labour Law is to be amended to increase entitlements in the private sector to make jobs appealing to Emirati nationals. This is intended to close the perceived gap between the public and private sector insofar as pay and benefits are concerned.

Employment and termination of Emirati Nationals

The engaging of UAE national employees is a relatively simple process. It is significantly less complex than hiring non-UAE nationals insofar as there is no requirement to obtain a work visa for UAE national employees (although there is a requirement to obtain a work permit). Instead, an employer must notify the Labour Department within 15 days of appointing a UAE national employee and provide specific information in respect of the UAE national employee including a breakdown of their remuneration package.

In addition, the employer must enter into the Ministry of Labour UAE national standard form contract with the UAE national employee and file a signed copy of that agreement with the Labour Department. This does not preclude an employer entering into a supplemental employment contract containing further details of the tasks to be assigned to the employee, working conditions, confidentiality and intellectual property restrictions, restrictive covenants, etc. This is more usual where senior employees are concerned.

Every qualifying UAE national should also be registered by his or her employer with the General Pension and Social Security Authority ("GPSSA") and thereafter the employer must provide pension contributions to the GPSSA on the employee's behalf. Throughout employment, the GPSSA must also be kept up to date with any employment changes that may affect an employee's

salary for instance periods of unpaid leave or work injuries.

Termination of UAE nationals is difficult. Essentially, termination of employment involving a UAE national is deemed to be 'unlawful' where:

- the dismissal is for a reason other than those set out in section 120 of the UAE Labour Law; or
- a non-UAE national working in the same position is retained; or
- the Ministry of Labour is not notified of the termination at least 30 days in advance.

Accordingly, employers are often unable to dismiss employees who are, for example, poor performers since this reason does not fall within the exhaustive list set out in Article 120 of the Labour Law. Where dismissals do involve UAE nationals, it is advisable for employers to seek advice before taking any action to ensure that they do not fall foul of the rigid guidelines in place in this regard.