

The New Anti-Discrimination Law: Will it impact the workplace?

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Following the issuance on 15 July 2015 of Law No. 2 of 2015 against Discrimination and Hatred (the “Law”), the UAE has now introduced federal legislation which specifically prohibits all forms of discrimination on the basis of religion, belief, sect, faith, creed, race, colour or ethnic origin (each being a “Protected Characteristic”). The Law defines “religion” as “the heavenly religions – Islam, Christianity and Judaism” and therefore the law does not apply in respect of discriminatory conduct against an individual based on any other religion.

The Law is drafted in broad terms to ensure that it encompasses all discriminatory conduct regardless of how it is expressed (e.g. through speech, writing, drawing, photography, singing, acting or miming) and irrespective of the means/channels through which it is expressed (e.g. online, by phone or video, and whether written or oral).

Notably, Article 17 of the Law states that a representative, manager or agent of a company will be punished (by the same penalties that would apply if s/he had committed the offence themselves) if a crime prohibited by the Law is committed by any personnel of the company in its name and on its behalf, and provided that the representative, manager or agent is aware of the same.

Furthermore, Article 6 of the Law is a broad catch-all provision which states that a person who commits an act of discrimination may face imprisonment of up to 5 years and/or a fine of between AED 500,000 and AED 1,000,000. The same penalties may be imposed where a discriminatory act is “committed by a public employee upon or due to performing his job” (Article 9). Through this provision, the Anti-Discrimination Law specifically links the prohibition against discrimination to an employment context, however the reference to “public employee” seems to indicate that this Article is limited to governmental employees only. Even if Article 9 only applies to governmental employees, the broad prohibition against discrimination in Article 6 of the Law has the potential to be applied more broadly including within the private sector, and whether in an employment context or otherwise.

In addition, the Law prohibits:

- producing, promoting or selling any products or material which include any expression involving religious contempt, discrimination or hatred speech (or being in possession of such material for the purpose of distribution or display);
- establishing, managing or participating in any group or organisation for the purpose of religious contempt, discrimination or hatred speech;
- organizing or participating in a conference or meeting for the purpose of religious contempt, discrimination or hatred speech; or
- providing, requesting, receiving or delivering money or material support directly or indirectly for the purpose of committing any of the acts which are prohibited by the law.

Potential impact on the workplace

For the first time in the UAE, federal legislation has now been enacted to help protect all individuals in the UAE from discrimination on the basis of a Protected Characteristic. While in our opinion the Law is primarily aimed at preventing and criminalizing hate crimes and the incitement of hatred, particularly in light of recent global events, the Law also seeks to prevent discrimination more broadly and may have flow-on consequences in an employment context.

In light of Article 17 of the Law, companies in the UAE should ensure that appropriate internal policies and procedures are established (and that existing policies are updated) to raise employees' awareness and understanding of the type of conduct which could now constitute a criminal offence under the Law. This should reduce the risk of an employee breaching the Law and the company representative, manager or agent being held responsible for such breach. Such company policies should extend to the use of online forums and social media in the event that certain comments or opinions expressed online by an employee could be construed as discriminating against a Protected Characteristic.

The Law will not interfere with other UAE legislation which affords specific (albeit limited) protection for particular groups of society. This also means that any provisions in UAE Federal Law No. 8 of 1980 (the "UAE Labour Law") which confer particular legal rights on UAE nationals will not be affected by the Law. Pursuant to the UAE Labour Law, employers are required to prioritise UAE nationals over all other nationalities when recruiting in the UAE (followed by Arab nationals). Accordingly, it would not be possible for an employee to bring a discrimination claim against their employer pursuant to the Law in circumstances where one of the employee's colleagues receives more favourable treatment and/or specific protection in accordance with the UAE Labour Law.

It remains to be seen whether an employee in the UAE may be able to rely on the Law to bring a claim against their employer. For example, it is not yet clear how the UAE Courts will adjudicate claims/disputes where an employee feels that they have been afforded less favourable treatment by their employer (for example, by receiving smaller salary increments than their colleagues or missing out on a promotion opportunity) on the basis of one of the employee's Protected Characteristics. Similarly, it remains to be tested whether a dismissed employee may be able to bring a labour claim against their employer pursuant to the UAE Labour Law, as well as a separate claim pursuant to the Law if the employee considers that their employment was terminated on the basis of a Protected Characteristic. Finally, it remains to be seen how the criminal sanctions set out in the Anti-Discrimination Law may be imposed in the context of a dispute between an employee and his/her employer, particularly as an employer's conduct or decisions are not always easily attributable to a particular individual.

While the practical effects of the Law for employers and employees in the UAE remain to be seen, the new law is clearly aimed at encouraging tolerance and acceptance in the UAE, irrespective of a person's religion, belief, sect, faith, creed, race, colour or ethnic group. This is particularly important in such a multicultural country as the UAE where individuals from all around the world come together to live and work. Companies operating in the UAE would be well advised to ensure that internal policies and procedures are implemented (and that existing policies are updated) to ensure that all employees are aware of the conduct expected of them under the new Law.