

UAE Labour Market Reform Update: What Employers Need to Know

Sarah Anderson
s.anderson@tamimi.com

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Al Tamimi's recent article on the UAE labour market reform provided a summary of the new employment rules introduced by the Ministry of Labour ("MOL") by way of the following three Ministerial Decrees:-

- Ministerial Decree No. (764) of 2015 ("Decree No. 764") – confirms the documents an employer must issue to a foreign employee when offering him/her employment.
- Ministerial Decree No. (765) of 2015 ("Decree No. 765") – deals with the termination of limited and unlimited term contracts.
- Ministerial Decree No. (766) of 2015 ("Decree No. 766") – sets out the circumstances in which a worker will be issued with a new work permit (and not be subject to a labour ban).

The above came into force on 1 January 2016. The decrees do not formally amend Federal Law No 8 of 1980, as amended ("UAE Labour Law") and, if there is conflict then between them, the UAE Labour Law will prevail. The decrees have attracted much media attention and have been hailed as providing employees with more flexibility and greater protection.

Our October article provided a detailed analysis of the new rules and their implications. However, given they are now in force, we thought it timely to provide an update on the key points employers need to bear in mind:-

Offering Employment

From 1 January 2016, when offering employment to foreign nationals, as part of the visa and work permit application process employers will be required to submit an offer letter signed by the employee. The terms in the offer letter must be consistent with those subsequently included in the MOL Contract (Decree 764).

A copy of the template offer letter ("Offer Letter") (English / Arabic version) is now available from the MOL. Interestingly the Offer Letter (four pages) is longer than the MOL standard form contract (2 pages). It contains the key terms of the employment relationship. If the employee does not speak English or Arabic, the Offer Letter will also need to be in their local language (in addition to English and Arabic) and there are further templates in various languages available from the MOL.

Terminating Contracts – Unlimited and Limited Term

Decree 765 sets out the circumstances under which unlimited and limited term contracts may be terminated. In short, employers may still terminate for the same reasons as before. However, the decree sets out the legal steps an employer must follow and confirms that the termination must be in accordance with "due process / legally mandated procedures." The current procedure under UAE Labour Law is set out in Articles 110 and 111. However, given this new terminology of "due process / legally mandated procedures", it is possible that the MOL may issue further guidance on what this entails. Employers should review their termination procedures and ensure they consider the steps prescribed by Decree 765 prior to terminating an employee's employment.

In addition to the above, Decree 765 provides the following:-

Unlimited term contracts

Notice - Decree 765 states that the notice to terminate an unlimited contract cannot be less than one month (which is consistent with UAE Labour Law). However, it also requires that notice should not exceed three months. Therefore, employers who have in place notice periods which exceed three months should be mindful that this could be subject to challenge. This is likely to be a challenge for educational institutions (which usually have long notice periods in order to reduce staff turnover during the academic year) and in respect of employers with very senior executives with more than 3 months' notice. Employers may want to consider reviewing their template employment contracts and considering length of notice periods generally.

Limited term contracts

Duration - Limited term contracts should be for a maximum duration of 2 years, compared with 4 years previously. Employers should be mindful of this when offering limited term contracts.

Notice - Previously the position was that limited term contracts did not necessarily need to include a notice period, they simply ended upon expiry. Decree 765 now requires that notice of between 1 to 3 months' is given. Employers should therefore consider updating their standard form limited term contracts to include a notice period. Where a limited term contract is renewed and no notice period is agreed, the default position will be a notice period of 3 months. There is a conflict between this provision and the UAE Labour Law which does not stipulate any notice period for fixed term contracts. It remains to be seen how the Courts will deal with this but until such time as it is clarified the safest option would be to provide for one month notice.

Early termination compensation / indemnification - Decree 765 also confirms that, in the event of termination, each party must indemnify the other to the level that was agreed (the agreed indemnity cannot exceed three months' gross wages). Under UAE Labour Law an employer who terminates an employee's limited term before its expiry is liable to pay the employee three months' pay as "early termination compensation". It is unclear whether the agreed indemnity amount is intended to be in lieu of early termination compensation (to allow parties to agree a lesser amount than the three months' pay) or is in addition to this (in which case it would conflict with the UAE Labour Law). In our view the agreed amount is intended to be instead of the early termination compensation. It remains to be seen whether the Courts would actually allow the lesser amount if an employee sought to challenge this.

Given the uncertainty concerning how these new decrees will operate in practical terms, especially in relation to the giving of notice and seeking to agree the amount of compensation / indemnification for early termination, employers are likely to avoid entering into limited term contracts unless strictly necessary.

Labour Ban

Decree 766 lists the circumstances in which an employee will be issued with a new work permit and will not be at risk of being subject to a labour ban. Either party can unilaterally terminate the employment relationship (if a fixed term contract then after the expiry of

the first fixed term; if an unlimited contract then after 6 months (unless the employee has a high school diploma in which case the 6 month period is waived)) without fear of a labour ban being imposed provided that the terminating party (i) gives notice to the other party as per the MOL Contract, and (ii) honours the contractual obligations for the duration of the notice period.