

# Minority Rights in the KSA: Does Positive Discrimination Work for Saudi Workers?

by Zahir Qayum - z.qayum@tamimi.com - Manama

November 2016

Positive discrimination is institutionalised in employment in the Kingdom of Saudi Arabia, as it is in all of the GCC states. However, as the most populous of the Gulf states and with more than half of its population under the age of 25, an educated but underutilised female workforce, and a private sector dominated by expatriate workers, Saudi Arabia faces a unique set of problems in maintaining a competitive economy and workforce in the face of the plummeted oil price.

## Introduction

The Saudi government is under a tremendous amount of pressure which is unprecedented in its remarkable recent history. In an age of austerity with the days of oil prices commanding upwards of \$150 per barrel long gone, Saudi Arabia is grappling with a new reality and vision for its future. The National Transformation Plan and Vision 2030 are the buzz words for an ambitious programme that seeks to marshal all of the Kingdom's resources to steer it away from its dependency on its most significant asset. To be successful, Saudi Arabia is looking for its minority workers in the private sector to step up to the fore and be counted in increasing numbers.

## Who are the Minorities?

In spite of the fact that expatriates comprise roughly one third of the country's total population, they nevertheless significantly outnumber Saudi nationals working in the private sector. The vast number of jobs outside of the public sector are low skilled and poorly paid and do not match the expectations of most Saudis; yet performance of these roles remain vital to a proper functioning economy. At the other end of the spectrum, an ambitious and eager Saudi female graduate base is effectively locked out of the jobs market largely as a consequence of a society that draws its identity and social mores from a conservative branch of Islam. There is also a sizeable minority of disabled citizens who the government is keen to take up employment in the private sector.

The Saudi government is seeking to unleash the potential of its national workforce with a raft of positive discrimination measures to increase the number of Saudi nationals employed in the private sector and legislation to prohibit discrimination of disabled workers. These measures are discussed below.

## Positively Saudi

The Saudi Labour Law issued by Royal Decree No. M/51 dated 23 Sha'ban 1426 (the "Labour Law") positively discriminates in favour of Saudi nationals in that it requires "all firms in all fields, and regardless of number of workers, shall work to attract and employ Saudis, provide conditions to keep them on the job and avail them of an opportunity to prove their suitability for the job by guiding, training and qualifying them for their assigned jobs" (Article 26(1)). Further, Article 26(2) stipulates that the percentage of Saudi workers employed shall not be less than 75 per cent of the total workforce of the employer. This requirement has been diluted by successive iterations of the government's Saudisation programme and by its recent incarnation, *Nitaqat*, which means 'ranges' in Arabic and assigns percentage quotas for employers based on the economic activity they perform and their size in terms of employee numbers. Employers who comply with or exceed the

quotas are placed in the 'Green' and 'Platinum' categories respectively and afforded preferential treatment in the allocation of new visa for foreign workers and renewal of existing workers. Employers who are failing or have not complied with their Saudisation quotas are placed in the 'Yellow' and 'Red' categories and are penalised through the denial of visas and licence being given to their employees to change employers without their consent and take up employment with Green or Platinum category employers. The government has taken a number of steps since unveiling its Vision 2030 plan earlier this year to improve the effectiveness of its Saudisation policies, as follows:

i. Compulsory registration with *Taqat*

Article 25 of the Labour Law has always required that employers should send to the labour office a list of vacant and new jobs within 15 days of a vacancy arising or a new post being created. Additionally, Article 33 set out that the conditions for granting work permits for foreign workers including the requirement that the foreign worker possess the professional and academic qualifications which the country needs and which are not possessed by citizens or there are an insufficient number of suitably qualified citizens available to meet the needs of the employer. In the past, the Saudi authorities granted employers their request for block visas for the recruitment of foreign workers with little scrutiny; however, there is now a requirement for all employers seeking to recruit a foreign worker to justify their recruitment by first registering the vacancy with the national jobs portal called *Taqat* and thereby giving an opportunity to Saudi nationals to be appointed to the role. It is unclear as to how long the position must be kept open in *Taqat* and whether employers need to evidence that applications have been received and considered, or that Saudi candidates have been interviewed and have been found wanting, or that there have been an insufficient number of candidates. Early indications on anecdotal evidence do not suggest a curtailment in the number of visas being issued to employers.

ii. Total Saudisation

In a dramatic move designed to increase employment opportunities for Saudi nationals, the government completed its total Saudisation of the mobile phone sector in September 2016 and is considering proposals to Saudise the automobile and healthcare sectors. To what extent, if at all, these proposals come to fruition in these other sectors will likely depend on the impact of Saudisation in the mobile phone sector.

iii. Localised *Nitaqat*

Due to be introduced in early December 2016, localised *Nitaqat* or '*Mausun*' will seek to raise the standards of employment for Saudi nationals in terms of pay and roles available to them. Employers compliance with *Mausun* will be judged on the following criteria: 1) the number of Saudi nationals employed in the business; 2) the average salary of Saudi employees; 3) the percentage of Saudi women employees; 4) retention rates of Saudi nationals in employment; and 5) the percentage of Saudi employees in the top 25 per cent of highly paid roles in the business. Employers will be rewarded for their compliance with *Mausun* through the award of points for the number of Saudi nationals employed, the average salary paid to Saudi nationals, the number of Saudi female employees, the average retention period of Saudi employees, and the percentage of Saudi employees in the top 25 per cent of highly paid roles. As the government seeks to raise the number of Saudi nationals employed in the private sector, the medium category of employer under *Nitaqat* will also be revised into three sub-categories of 50 to 99 employees, 100 to 199 employees and 200 to 499 employees.

iv. 'Secondment' of Saudi nationals from the public to the private sector

The Ministry of Labour issued a decision in October 2016 permitting the employment of public sector employees on a temporary basis by private sector employers to enable the latter to boost

their Saudisation quotas. The objective appears to be to incentivise the private sector to take on some of the burden of the payroll for the bloated public sector.

#### v. Proposal for older expatriate workers to count double

The Saudi government is currently considering introducing a change in the law to discourage the recruitment and retention of foreign workers aged 60 years or older. The proposed law would not go so far as prohibiting the employment of foreign workers aged 60 and above but would penalise the employer by having one of these workers count as two foreign workers for the purposes of Nitaqat.

### **Protection for the Disabled**

There is no specific law in Saudi Arabia against discrimination in the workplace. Traditionally, the principal protected category of workers was Saudi nationals; however, earlier this year disabled workers gained an elevated position with regard to protection under the law in recruitment and retention in employment through the implementation of the Executive Regulations of the Labour Law issued by Ministerial Resolution No. (1982) dated 28/6/1437 AH (the "Regulations").

Employers with 25 or more employees who can provide work that can be performed by a disabled person are already obligated by Article 28 of the Labour Law to ensure that 4 per cent of their workforce is comprised of disabled employees. The Regulations now go further and define a disabled person as someone who is suffering from one or more of the following permanent disabilities:

*'vision/hearing/mental/physical/motion disability, learning difficulties, speech difficulties, behavioural disorders, emotional disorders, autism or any other disability requiring any form of facilitating arrangements and services.'*

The Regulations also require employers to modify and adapt the work conditions and physical environment for their disabled staff. More significantly, the Regulations afford disabled employees the same rights and privileges as other workers. Discrimination because of disability has been made unlawful and disability may not itself be a reason for the refusal to employ or promote workers with a disability or to not allow them to benefit from vocational training programs if they have the ability to work.

### **Women's Work**

Saudi women have remained on the periphery of the national workforce for a long period of time, not helped by a deeply conservative society which seeks to segregate the sexes both in and outside of the workplace, and a unique ban on driving. An inaccessible workplace and a paucity of real job opportunities have limited the impact of women workers in the economy. However, the government cannot continue to neglect a growing and significant national resource in women workers who are graduating in increasing numbers from its universities and, in doing so, are challenging the social norm and perceived wisdom regarding their role in the wider society. The government is seeking through Vision 2030 to increase female participation to 30 per cent of the workforce.

To encourage Saudi women into employment in the private sector, the government took the step last year to amend the Labour Law and increase maternity leave entitlements and to make them more flexible. The law was also amended to increase entitlement to bereavement leave to the full Iddah period of 4 months and 10 days for Muslim female employees. Since then, the government has flirted again with telecommuting work for women to overcome transportation issues and has sought to encourage women only mobile phone retail outlets. Beyond this, the government has shown little initiative to progress greater participation of women in the workplace.

## **Conclusion**

If the Saudi government is to realise its plan and vision to transform the economy and diversify it away from oil dependency then it will need a vibrant private sector that does not feel burdened or restricted by the employment of Saudi nationals. Where the Saudisation measures inhibit the private sector from recruiting the best qualified candidates then this will always create tension between the needs of the business and the cost of employing Saudi nationals. Until the national workforce is able to compete on its own merits with expatriates, the Saudi economy will continue to depend on foreign labour much as it is likely to continue to depend on oil for the foreseeable future.