

Update on Labour Bans in Qatar

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It has been just over three months since Qatar's new sponsorship law, Law No. 21 of 2015, regulating the entry, exit and residence of expatriates in Qatar as amended (the Expatriates' Law) took effect.

The Executive Regulations regarding the implementation of the Expatriates' Law have not yet been released, however, given that many employers in Qatar will have undergone their annual performance appraisal processes in recent months, it seems an appropriate time to review how the new Expatriates' Law impacts the ability of employees in Qatar to change jobs.

Reliance on this article

For the avoidance of any doubt, the opinions expressed in this article do not reflect the views of the Ministry of Administrative Development, Labour and Social Affairs (MADLSA) or the Ministry of Interior (MOI) in Qatar. However, this article is based not only on a reading of the Expatriates' Law, but also on comments made by MADLSA officials at various presentations regarding the new Expatriates' Law. The understanding as at the date of this article may be clarified further and/or be amended once the Executive Regulations are released.

Further, the matters contained in this article will not apply to employees working in the Qatar Financial Centre, which has its own (separate) laws regarding employment and immigration matters.

Bans prior to 13 December 2016

Until 13 December 2016 (the date on which the Expatriates' Law took effect), all transfers of employment in Qatar required a no objection certificate (NOC) from the outgoing employer. If the outgoing employer refused to provide a NOC, the employee was automatically banned from working for any other employer in Qatar for a period of two years.

The new rules regarding bans

Under the new Expatriates' Law, the automatic ban has been softened. The ability of an employee to transfer his/her employment to another employer in Qatar (and the extent of any employment ban) will depend upon factors including the following matters:

- whether the employment contract is stated to be for a fixed term or for an indefinite period;
- whether the employment contract is terminated by the employer or the employee, or whether termination is due to a "change in circumstances" (discussed below);
- if the employment contract is terminated by the employer, whether termination is due to "gross misconduct" on the part of the employee;
- if the employment contract is terminated by the employee, whether this was due to the employer breaching a fundamental term of the employment contract;
- the length of the employee's continuous service with his/her employer as at the date of termination;
- whether the employee is bound by any valid post-termination restrictive covenants (note that a non-compete provision must be reasonable, and should only restrain conduct to the extent

necessary to protect the employer's legitimate business and legal interests. It should therefore be limited in time/duration; place/geographical scope and nature/ business sought to be restricted); and

- whether there are any overriding "public interest" considerations relevant to the transfer.

In order to illustrate how these considerations impact whether or not an employee will be subject to an employment ban post termination, we have prepared the following summary (this summary is based on a reading of the Expatriates' Law together with comments made by MADLSA officials regarding the application of the Expatriates' Law):

Party Terminating	Circumstances of termination	Can employee transfer without a NOC and will any ban be imposed?
Employee	Employee is employed on a fixed term contract , employee resigns (without fault of the employer).	<p>If the employee is employed on a fixed-term employment contract: for the duration of the agreed fixed term, the employee will continue to require a NOC in order to transfer his employment; however</p> <p>once the agreed fixed term expires, with effect from 13 December 2016, the employee may transfer to another employer in Qatar without having to obtain a NOC from his former employer (the employee still needs to notify his former employer and abide by any minimum notice provisions). We understand that the Expatriates' Law applies with retrospective effect, therefore, the original date of employment will apply (i.e. the term does not restart on 13 December 2016).</p> <p>In situation (a) above, if the former employer refuses to provide the NOC, we understand that the employee will be unable to work for another employer in Qatar until the expiry of the fixed term agreed with his/her original employer. The only exception to this is where it would be in the public interest to allow the individual to transfer without having to wait (in which case the authorities have the power to approve the transfer). What is meant by "public interest" in this context remains to be seen, and is perhaps a matter that will be discussed further in the Executive Regulations.</p>

Employee Employee is employed on an **open/indefinite** term contract, employee resigns (without fault of the employer).

If the employee is employed on an unlimited contract, then: if the employee has less than five years' continuous service with his/her former employer as at the date of termination, the employee will continue to require a NOC in order to transfer his/her employment; however if the employee has more than five years' continuous service with his former employer as at the date of termination, with effect from 13 December 2016, the employee will be able to transfer his/her employment to a new employer in Qatar without having to obtain a NOC from his/her former employer (the employee still needs to notify his/her former employer and abide by any minimum notice provisions). We understand that the Expatriates' Law applies with retrospective effect, therefore, the original date of employment will apply for the purposes of calculating the five years' continuous service period (i.e. continuous service does not restart on 13 December 2016, the date on which the Expatriates' Law took effect).

In situation (a) above, if the former employer refuses to provide the NOC, we understand that the employee will be unable to work for another employer in Qatar until the date on which the employee would have completed five years' continuous service with his original employer. The only exception to this is where it would be in the public interest to allow the individual to transfer without having to wait (in which case the authorities have the power to approve the transfer). What is meant by "public interest" in this context remains to be seen, and is perhaps a matter that will be discussed further in the Executive Regulations.

Employee	Employee resigns due to his employer breaching a fundamental term of the employment contract (i.e. employer fault).	<p>If the employee resigns (either part way through his/her fixed term contract, or before five years' continuous service in the case of an indefinite contract), then where the resignation is due to the employer breaching a fundamental term of the employment contract (which must be proven), the employee will be permitted to transfer his/her employment without the need for a NOC from his/her former employer. The employee must lodge a complaint and the employer's breach must be proven before the transfer will be approved.</p> <p>The Expatriates' Law does not state what type of breach would be sufficient to prove that it was a fundamental breach, however, under the Qatari Labour Law (Law No. 14 of 2004, as amended from time to time), an employee has the right to resign with immediate effect and remain entitled to end of service gratuity (if applicable) in the following cases:</p> <ul style="list-style-type: none"> if the employer commits a breach of its obligations under the employment contract or the provisions of the Labour Law; if the employer or its responsible manager commits a physical assault or immoral act upon the employee or any of his/her family members; if the employer or its representative has misled the employee at any time in relation to the entering into of the employment contract and/or as to the terms and conditions of the work; and/or if continuance with the work endangers the safety and health of the employee provided that the employer is aware of the danger and does not take the necessary steps to remove it. <p>The above scenarios (under the Labour Law) may provide some guidance regarding the seriousness of the breach required under the Expatriates' Law in order to prove that the employer has breached a fundamental term of the employment contract, however, this is perhaps a matter that will be clarified by the Executive Regulations.</p>
Employer	Dismissal for gross misconduct (i.e. for one of the reasons set out in Article 61 of the Labour Law).	<p>If the employee is guilty of gross misconduct and is summarily dismissed by his/her employer, the employee will not be able to transfer his/her employment to any other employer in Qatar. In fact, in accordance with Article 26 of the Expatriates' Law, the individual will be banned from returning to Qatar for a period of four years.</p>

Employer	Dismissal for any reason other than gross misconduct (e.g. redundancy, poor performance etc).	<p>We understand that where the employer is the party terminating the employment contract, and termination is not due to gross misconduct on the part of the employee, the employee may transfer his/her employment to a new employer in Qatar without the need for a NOC from his former employer. It seems that when the employer is the party terminating the employment, the employee is free to seek suitable alternative employment, however, this matter is not expressly contained in the Expatriates' Law and the exact position cannot be confirmed until the Executive Regulations are released.</p> <p>Relevantly, if the employee has agreed to be bound by a non-compete provision, then provided that the restraint is reasonable (as outlined above) and enforceable, the employer may rely on the provision to prevent the transfer of the employee's employment to a competitor in Qatar. The mere existence of the restraint will not act as a blanket ban, rather the onus will be on the employer to prove that the new employer is a competing entity, and that the role that the employee would be performing would amount to a breach of the restraint agreed between the original employer and the outgoing employee.</p>
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Change of circumstances	Death of employer (if employer is an individual or company ceases to exist (if employer is a corporate entity))	<p>If: the employer is an individual and the employer dies; or if employer is a corporate entity and the company ceases to exist, the employee's employment will terminate due to a "change of circumstances" and the employee may transfer to a new employer in Qatar without the need for a NOC from his former employer.</p>
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In all cases, the employee will still require the usual approvals (namely approval from the MOI and the MADLSA) and will need to provide the usual documentation (such as a police clearance certificate) in order for the transfer to take place.

A special committee, namely the Expatriates' Exit Grievances Committee, has been established to hear disputes in relation to the Expatriates' Law, including disputes regarding requests to transfer employment. The committee comprises members from the MOI, the MADLSA and the National Human Rights Committee.

Practical considerations for employers

Due to the automatic employment bans that applied in Qatar prior to 13 December 2016, in practice, employers did not need to rely on contractual non-compete provisions to prevent an employee from working for a competitor. The previous law (Law No. 4 of 2009 as amended from time to time) acted as an automatic bar to any such competitive activity post termination. In the light of the changes introduced on 13 December 2016, employers should review any post termination restrictions contained in the employment agreements for its key personnel and also consider whether the legitimate interests of their business would be sufficiently protected in the event that a key employee sought to transfer his/her employment under the new rules.

Once the changes introduced under the Expatriates' Law become clearer and also more widely understood, we are likely to see employees in Qatar gaining more leverage in terms of their ability to change employers. Undoubtedly, attracting and retaining good employees is a key consideration for any business in any region. However, until recently, employers in Qatar have largely been able to rely on the local laws (and the built in employment ban) to retain key employees. Going forward, given that there is no ready supply of candidates in the market (because employees may only work

in the country if they are validly sponsored to do so), employers in Qatar will need to consider practical ways to incentivise employees to stay, particularly key employees, including for example through the use of long term incentive plans. We will continue to closely monitor the position and will provide an update upon issuance of the Executive Regulations and/or any substantive change in approach by MADLSA or the MOI.

As the largest dedicated specialised employment law team in the Middle East, Al Tamimi & Company's Employment team regularly advises employers on contentious and non-contentious employment law issues. For further information in respect of Qatari employment law considerations please contact Kamaljit Dosanjh (k.dosanjh@tamimi.com).