

2018 Review: Employers in KSA and Bahrain

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

December 2018 – January 2019

There were significant developments throughout 2018 that affected the work environment in both Bahrain and the KSA. Whilst the majority of these occurred in the KSA, there were also some notable changes introduced in Bahrain too which will have important implications going forward.

Introduction

Over the course of the year, Bahrain and the KSA introduced a number of measures to create new opportunities for investors, make it easier to do business, and to help create a safer working environment more aligned with global standards in order to attract further foreign direct investment. In the KSA, the government continued the agenda for reform and diversification of the economy with a focus on making employment of Saudi nationals in the private sector more appealing for individuals and employers. In Bahrain the focus was to build on an established business environment and to encourage innovation and development of a digital economy.

This article will review the key changes that occurred over the course of the past year from an employment perspective in both the KSA and Bahrain.

KSA

Expat Fees

The year started in the KSA with the application by the Ministry of Labour and Social Development ('MLSD') of a fee for expatriate employees. The so called 'expat fee' is payable by employers annually and collected on the issuance or renewal of work permits.

In 2018, an annual fee of SAR 3,600 applied for each expat employee where the number of expat employees did not exceed the number of Saudi employees. Where expat employees exceeded the number of Saudi employees then an annual fee of SAR 4,800 was payable. These fees increased to SAR 6,000 and SAR 7,200 respectively in January 2019 and will further increase to SAR 8,400 and SAR 9,600 in January 2020.

Nationalisation of Jobs

In January 2018, the MLSD announced an expansion of the Saudisation programme to 12 retail sub-sectors affecting around 43 different roles to be implemented over three phases beginning in September 2018. This followed the total Saudisation measures undertaken in 2017. Initial expectations were that the Saudisation requirement would be 100 percent for the affected roles but in July 2018, the MLSD's guidance paper revealed the Saudisation quota would be 70 percent and also that not all roles would be affected.

Rumours circulated throughout the year of roles being Saudised in other sectors of the economy; notably in education and healthcare. No action was taken in the education sector but in September 2018 the Saudi Food and Drug Authority announced that roles for pharmacists working in the field of advertising and the introduction of pharmaceutical products are to be reserved for Saudi nationals. The Saudisation of these roles will occur in stages with 40 percent of roles required to be Saudised by the end of 2019, 80 percent of roles by the end of 2020, and 100 percent of roles by the end of 2021.

Anti-Harassment Law

Further to its agenda to open up the economy to foreign investment and to protect the physical person and dignity of individuals (with an eye on increasing the participation of women in the workplace), the government issued the Anti-Harassment Law by Decision 488 dated 14/9/1439H (the 'Anti-Harassment Law') in June 2018; one week before the lifting of the ban on women driving. The Anti-Harassment Law criminalises sexual harassment regardless of gender and reserves its harshest penalties for conduct that occurs in the workplace.

The Anti-Harassment Law seeks to protect individuals from verbal, physical or sexual innuendo by one individual against another by any means, including modern technology and communications and relates to that person's body, modesty or personal life. It places a duty on anyone suffering or witnessing harassment to report the conduct. All organisations in the public and private sector are under an obligation to take steps to prevent harassment from occurring. Employers are required to put in place an internal complaints mechanism and procedure that deals with matters confidentially, take remedial action for any breaches of the law, and not prevent or replace a victim's right to separately raise a complaint to the KSA authorities.

The penalty for a breach of the Anti-Harassment Law is a two-year prison sentence and/or a fine of SAR 100,000. However, where there is a breach of the Anti-Harassment Law at a place of work, education or care, or where the victim of the harassment is a child, a person of special needs, someone of the same sex as the perpetrator, or if the harassment is perpetrated by someone in a position of power or influence over the victim, or it occurs during a crisis, accident or disaster or when the victim is sleeping or unconscious then the penalty will be a five-year prison sentence and/or a fine of SAR 300,000. Further, the penalties are the same for an accomplice or anyone who makes a false complaint.

Regulation of Occupational Safety and Health Management

In July 2018, the government issued the Regulation of Occupational Safety and Health Management (the 'Regulation') giving employers a practical framework to manage health and safety issues. The Regulation applies to employers with 50 or more employees. It categorises employers into low, medium and high-risk environments. Broadly speaking, medium risk environment employers operate in heavy industry and manufacturing (e.g. construction, oil and gas, electricity, water, health services, petrochemicals, mines and quarries, etc.). Low risk environment employers carry out other commercial activities. High-risk environment employers are not defined but are expected to undertake a self-assessment to determine whether they should comply with the requirements of this category.

The Regulation sets out minimum requirements which include having:

- a written policy;
- health and safety training for employees;
- the appointment of a member of the management team to carry out health and safety duties, periodic reviews and assessments of health and safety in the workplace; and
- control measures to manage risks.

Additional requirements for employers operating in the medium and high-risk environments include:

- the need for consultations with employees;
- maintaining records on work injuries/illnesses/accidents, training and workplace risks;
- a plan of action for implementing occupational health and safety processes; and
- putting in place a monitoring system for measuring compliance and for investigating accidents and breaches.

Reform of the Judicial System and the New Labour Courts

As part of its agenda for reform under Vision 2030 and the National Transformation Program, the government has sought to improve the judicial system to create an attractive environment for local and international investors and to boost their confidence in the economy. These measures have included the digitalisation of the court system to make it 'paperless' and to enable the filing of lawsuits online, allowing the parties to access all information related to their case electronically, as well as enabling judicial notifications and court summonses to be communicated via SMS, email addresses and accounts registered on government automated systems.

In November 2018, the Ministry of Justice launched the new Labour Courts, which have jurisdiction to hear all cases related to the Labour Law, such as disputes concerning employment contracts, workers' rights, work injuries and compensations, the imposition of disciplinary sanctions on employees, and termination of employment. The Labour Courts are located in each of the country's major cities of Riyadh, Jeddah, Dammam, Mecca, Medina, Abha and Buraidah.

In December 2018, the MLSA announced the establishment of an Amicable Resolution Department ('ARD') in every labour office to mediate disputes in all matters that fall within the jurisdiction of the Labour Courts. Mediation is mandatory for labour disputes, which will only be referred on to the Labour Court where the ARD is unsuccessful in brokering a settlement. The mediation process requires that the ARD hold the first mediation session within 10 working days of the registration of a complaint. If a settlement is not achieved within 21 working days then the ARD will refer the complaint to the Labour Court.

Unlike the previous mediation regime that was administered by the MLSA, a party will be penalised where it fails to attend a mediation session. If the complainant fails to attend a session then the conciliator will close the process but the complainant will be able to request that it be reopened if the 21-day period has not lapsed. If it has lapsed then the complainant will be able to file a new complaint. Where the respondent is an employer and fails to attend a session then its access to services provided by the MLSA will be suspended until it does attend. If the employer fails to attend any sessions then the complainant employee will be able to transfer his employment to another employer without requiring the consent of the respondent employer, and the complaint will be automatically referred to the Labour Court at the end of the 21-day period.

Bahrain

In Bahrain, the legislators were not as active but the laws introduced during 2018 were no less significant to businesses, workers and the work environment.

Minimum Salary for Sponsoring Dependants

In January 2018, the government raised the minimum salary requirement on expatriates who wish to sponsor their dependants to reside with them from BHD 200 to BHD 400. The change affected new entrants to Bahrain immediately and applied to dependants already residing in the country on renewal of their visas.

Health Insurance Law

In May 2018, the government issued the Health Insurance Law No.23 of 2018 (the 'Health Insurance Law'), which makes health insurance coverage compulsory for all citizens, residents and visitors to the country from January 2019. The insurance will be funded through subscriptions to insurance packages that are specific to each category of an insured person.

The government will pay subscriptions for Bahraini citizens. Visitors are required to provide cover for themselves. Employers are required to pay subscriptions for their non-Bahraini workers. Employees under probation will be covered by the compulsory health package for residents. Temporary workers will need to be enrolled onto the visitors' insurance package.

If the employer is a natural person and a non-Bahraini, or if he is a worker sponsoring himself, then he is required to pay the subscription for himself and his dependants residing in Bahrain. Anyone who is sponsoring an individual who does not have an employer in Bahrain must pay the subscription for that person.

The Health Insurance Law prohibits an employer from hiring a foreign worker without providing him with health insurance cover, and prohibits the employer from obtaining any compensation from the worker in exchange for providing health insurance cover. Where the employment contract requires it, the employer must provide health insurance for the employee's dependants.

Data Protection Law

In July 2018, the government published the Personal Data Protection Law No.30 of 2018 ('PDPL'), which will come into effect on 1st August 2019. The PDPL will require businesses to adopt certain practices when processing personal data in Bahrain or about residents of Bahrain. It will apply to the processing of personal data by automated means, whether in full or part, or by a manual process that is part of an organised filing system. Personal data is defined as information relating to an identified or identifiable individual.

“Over the course of the year, Bahrain and the KSA introduced a number of measures between them to create new opportunities for investors, make it easier to do business, and to help create a safer working environment more aligned with global standards in order to attract further foreign direct investment”.

The PDPL will give individuals rights over how their personal data can be collected, processed and stored, which will be exercisable directly against the data manager (usually referred to as the 'data controller' in other jurisdictions). Businesses will be obligated to manage data to ensure that it is processed fairly and securely, that it is collected for legitimate, specific and clear purposes, and is adequate, relevant and not excessive as to the purpose for which it is collected, and that data owners (commonly referred to as 'data subjects' in other jurisdictions) are notified of when their personal data is collected and processed.

The PDPL will prohibit transfers of personal data out of Bahrain unless the transfer is to a jurisdiction that provides an equivalent or greater level of protection to personal data, or the data owner consents to the transfer, or the transfer falls under a specific exemption, such as where it is necessary for the performance of contracts, protection of the data owner's vital interests or required for legal proceedings.

Penalties for a violation of the PDPL can include fines of up to BHD 20,000 and/or imprisonment for a term of up to one year. Individuals who suffer damage because of the way in which a data manager processes their personal data may be able to claim compensation.

Prohibition of Discrimination and Sexual Harassment

In December 2018, the government amended the Labour Law No. 36 of 2012 (the 'Labour Law') by

introducing two new articles. The first of these is a general prohibition on discrimination between workers based on race, origin, language, religion or belief. The second makes it unlawful for an employer or a worker to abuse or sexually harass a worker in the workplace whether verbally, physically or by any means whatsoever. Where a worker abuses or harasses another worker then the penalty will be imprisonment for a period not exceeding one year or a penalty fine of up to BHD 100. If the employer or its representative commits the abuse or harassment then the penalty will be imprisonment for a period not less than six months or a fine not less than BHD 500 and not more than BHD 1,000.

Conclusion

The measures introduced by the KSA and Bahrain governments to enhance their attractiveness for local and international investment have been broadly welcomed and, in some cases, long overdue; particularly the changes to the management of labour disputes in the KSA and mandatory health insurance cover in Bahrain. The reform of the legal system in the KSA has been a longstanding project for its government and the unveiling of the new Labour Courts and digitalisation of the legal process should mean that labour disputes will be dealt with more consistently, fairly and expeditiously. The Anti-Harassment Law and the Regulation will help in creating confidence in a safer working environment in the KSA, as will the PDPL and the amendments to the Labour Law in Bahrain. As both the KSA and Bahrain are keen to continue the drive for diversification of their economies, and to create opportunities for both employers and workers, we can expect further measures will be taken in 2019 that will impact the work environment in a significant way.

Al Tamimi & Company's [Employment & Incentives team](#) regularly advises on employment issues in the KSA and Bahrain. For further information on any of the matters discussed in this article, please contact [Zahir Qayum \(z.qayum@tamimi.com\)](mailto:z.qayum@tamimi.com).