



PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2011/12

LABOUR AND EMPLOYEE BENEFITS

The law and leading lawyers worldwide

Essential legal questions answered
in 36 key jurisdictions

Rankings and recommended
lawyers in 49 jurisdictions

Analysis of critical
legal issues

Top 10 global firms
identified





United Arab Emirates



Charles Laubach
Afridi & Angell

www.practicallaw.com/6-503-3460

SCOPE OF EMPLOYMENT REGULATION

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

Federal Law No. 8 of 1980 Regulating Labour Relations, as amended by Federal Laws No. 24 of 1981, No. 15 of 1985, No. 12 of 1986 and No. 8 of 2007 (Labour Law), and applicable Ministerial Orders implementing its provisions, applies to all employees working in the UAE, including foreign nationals, apart from:

- Members of the following categories of worker:
 - officials, employees and workers in federal and local government departments, or appointed for federal and local government projects;
 - members of the armed forces, police and security officers;
 - domestic servants working in private residences;
 - workers employed in agriculture (apart from employees of agricultural companies engaged in processing products, or operating or repairing machinery required for agriculture).
- Employees working for a company with a place of business in the Dubai International Financial Centre (DIFC) and who are based in, or ordinarily work in, the DIFC. These employees are subject to the DIFC Employment Law No. 4 of 2005 (DIFC Employment Law).

Employees working in one of the many free zones in the UAE, including foreign nationals, are subject to the Labour Law in addition to employment regulations introduced in the relevant free zone. Where the free zone regulations are not consistent with the Federal Labour Law, the Federal Labour Law provisions take precedence unless they are less favourable than the relevant free zone regulations.

Where no mandatory laws apply, the law applying to the contract governs the contractual employment relationship. The parties can choose the law applying to the contract, but during litigation the UAE courts generally assume jurisdiction and apply the Labour Law.

Laws applicable to nationals working abroad

The Labour Law or DIFC Employment Law only applies to nationals working abroad if this has been contractually agreed between the parties, subject to the jurisdiction they are working in (that is, the laws of other jurisdictions may prevent non-local laws being agreed between the parties).

RESTRICTIONS ON MANAGERS AND DIRECTORS

2. Are there any restrictions on who can be a manager or company director?

Age restrictions

Directors and managers must be at least 18 years old. However, a person under the age of 21 is considered to be a minor and is therefore subject to legal supervisory authority by a guardian. There is no upper age limit. However, individuals over the age of 60 or 65 may find it difficult to obtain the appropriate residence visa or labour card (*see Question 4*) (depending on their qualifications and the nature of the work).

Nationality restrictions

There are no formal nationality restrictions, but individuals of certain nationalities are subject to added security checks and it can be difficult for people of these nationalities to obtain visas.

RECRUITMENT INCENTIVES

3. Are any grants or incentives available for employing people? If so, please give details.

The Emiratisation policy applicable in the UAE (but not in the DIFC) seeks to increase the number of UAE nationals working in the private sector by providing recruitment targets. The government offers lower transaction fees for processing employment permits, residency visas and labour (or ID) cards for employers meeting these targets and maintaining a diverse workforce.

PERMISSION TO WORK

4. What prior approvals do foreign nationals require to work in your country?

A foreign national must have all of the following to work in the UAE:

- Entry permit for employment purposes.



COUNTRY Q&A

- Residence visa.
- Labour card. However, an employee working in a free zone or the DIFC must obtain an identity (ID) card rather than a labour card.

Visa

Procedure for obtaining approval. Once the employee enters the UAE on an entry permit, they must make an application for a residence visa to the immigration authorities. They must pass a medical examination before being granted a visa.

These requirements should be satisfied within 60 days of the employee's entry into the UAE on their entry permit, but it is advisable to meet them within 30 days.

Cost. The total cost (for the visa and the required permits) is about US\$800 (as at 1 August 2011, EUR1 was about US\$1.4).

Time frame. The process should be completed within 30 days, but it is often completed more quickly.

Permits

Procedure for obtaining approval. Employers must seek the Ministry of Labour and Social Affairs' approval (or the relevant alternative authority's approval if the employee is to be employed in the DIFC or a free zone) before the employee enters the UAE for employment purposes. The Ministry's criteria for granting an employment permit includes satisfying itself that there are no unemployed nationals who are able to perform the relevant job.

When an employee enters the UAE on an entry permit for employment purposes, they must apply for a labour card or ID card (if they are employed in the DIFC or a free zone) within 30 days of their arrival. Labour cards and ID cards are normally valid for three years.

Cost. The total cost (for the visa and the required permits) is about US\$800.

Time frame. The process should be completed within 30 days, but it is often completed more quickly.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

5. How is the employment relationship governed and regulated?

Written employment contract

As part of the residence visa and labour card application process, an employee must enter into a standard template dual language contract provided by the Ministry of Labour. The contract must specify the (*Labour Law*):

- Date of its conclusion.
- Date the employment is to commence.
- Nature and place of employment.
- Length of the contract, if it is a limited (fixed) term contract.

Some free zones require the parties to enter into employment contracts using a template specific to the relevant free zone. Subject to the provisions of the Labour Law, the information that must be included in employment contracts varies among the free zones.

The DIFC Employment Law requires employers to provide their employees with a written statement of particulars of employment. This obligation is waived if the statement requirements are contained in an employment contract. The written statement must specify:

- The names of the employer and employee.
- The date the employment starts.
- The scale or rate of remuneration, or the method of calculating remuneration.
- The intervals at which remuneration is paid (that is, weekly, monthly or at other specified intervals).
- The terms and conditions relating to hours of work.
- The terms and conditions relating to:
 - holiday leave;
 - holiday pay;
 - national holidays and pay for national holidays;
 - sick leave;
 - sick pay.
- The length of notice that the employee must give and receive to terminate the employment.
- The employee's job title or a brief description of their work.
- The period for which the employment is expected to continue or, if it is for a fixed term, the date when it is to end (where the employment is temporary).
- The place of work.
- The applicable disciplinary rules and grievance procedures.
- The general rights of the employee under the DIFC Employment Law.
- Any other matter which may be prescribed in any regulations issued under the DIFC Employment Law.

Implied terms

The obligation of good faith is implied into employment contracts, although the UAE courts have very wide discretion.

In the DIFC, implied obligations in a contract relate to (*DIFC Contract Law No. 6 of 2004 (DIFC Contract Law)*):

- The nature and purpose of the contract.
- Practices established between the parties and relating to usage.
- Good faith and fair dealing.
- Reasonableness.

Collective agreements

There are no trade unions in the UAE and employee representatives are not common. Collective agreements therefore do not exist.



6. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

An employer cannot generally unilaterally introduce changes to employment terms and conditions that are unfavourable to employees. In these cases, employee consent to these changes should be obtained in advance. A non-consenting employee can resign on the grounds of constructive dismissal by the employer.

MINIMUM WAGE

7. Is there a national (or regional) minimum wage?

There is no specified minimum wage.

If an employee wishes to sponsor certain family members to live with them in the UAE, they must earn at least AED4,000 per month (as at 1 August 2011, AED1 was about US\$0.27). This is expected to be increased to AED10,000 per month. The relevant government authorities have not yet announced when this will take place.

RESTRICTIONS ON WORKING TIME

8. Are there restrictions on working hours?

Working hours

The following restrictions apply (*Labour Law*):

- Working hours must not exceed eight hours per day, or 48 hours per week, over a six-day week.
- Overtime must not exceed two hours per day, unless the work is necessary to prevent substantial loss or serious accident (or to eliminate or alleviate its effects).
- Overtime pay amounts to 125% of an employee's normal remuneration for the period of overtime worked (unless the employee is required to work overtime during the hours of 9.00pm and 4.00am, in which case this rises to 150%).
- The normal weekly holiday is Friday, unless the employee works on a daily wage basis. Where an employee is required to work on a Friday they are granted one day leave in lieu, or paid 150% of their normal remuneration for the Friday worked. Other than labourers, no employee can work more than two consecutive Fridays.
- Weekly working hours must not exceed, on average, 48 hours over a seven-day period, unless the employer first obtains the employee's consent, in writing, to a greater number of hours.
- An employer cannot require, or directly or indirectly allow, an employee to work excessive hours detrimental to the employee's health and safety.

Rest breaks

The following restrictions apply:

- Employees cannot work more than five consecutive hours without receiving break times of not less than one hour in total for rest, food and prayer. This break time does not constitute a working hour.
- An employee who works more than six hours per day is entitled to rest and prayer breaks of not less than one hour on aggregate during that period.
- An employee is entitled to a rest break of not less than 11 consecutive hours in each 24-hour period.
- An employee is entitled to an uninterrupted rest period of not less than 24 hours in each seven-day week.

Shift workers

These provisions do not apply to certain employees working in a senior or managerial capacity, or ship crews and seamen who work under special service conditions due to the nature of their work.

The position differs in the DIFC, where the following provisions apply (*DIFC Employment Law*):

9. Is there a minimum holiday entitlement?

Minimum holiday entitlement

For each year of service, an employee is entitled to paid leave of not less than:

- Two calendar days per month, for an employee who has more than six months' service but less than one year's service.
- 30 calendar days per annum, for an employee with more than one year's service.

The minimum pay for annual leave and national holidays is the employee's basic pay plus housing allowance.

In the DIFC, an employee is entitled to paid annual leave of 20 working days, in addition to national holidays, if they have at least three months' service (*DIFC Employment Law*). This is accrued pro rata in the first year, calculated at the rate of 1:12 of the employee's leave entitlement on the first day of each month of service. There is no minimum pay for annual leave, but pay for national holidays is calculated at the employee's hourly or daily rate.

Public holidays

Leave is in addition to the seven national holidays. The Ministry of Labour and Social Affairs declares the length of each national holiday (which can fall on any day of the week each year) before the holiday takes place. The lunar calendar determines the dates of some national holidays.

If a public holiday falls on a weekend, an employer is not obliged to provide payment to an employee in place of the public holiday.



COUNTRY Q&A

ILLNESS AND INJURY OF EMPLOYEES

10. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Can an employer recover any of the cost from the government?

Entitlement to time off

An employee is not entitled to paid sick leave during their probationary period. If an employee has worked continuously for their employer for three months, after the end of their probationary period they are entitled to 90 days' sick leave per year (either continuously or on aggregate).

Entitlement to paid time off

Whilst on sick leave:

- First 15 days are with full pay.
- Next 30 days are with half pay.
- Remaining 45 days are not paid.

Under the DIFC Employment Law, an employee is entitled to 90 days' paid sick leave per year, which cannot be carried forward into the next 12-month period.

Recovery of sick pay from the state

There is no state sick pay (either in the UAE or the DIFC).

11. What are the statutory rights of employees who are:

- Parents (including maternity, paternity, surrogacy, adoption and parental rights, where applicable)?
- Carers (including those of disabled children and adult dependants)?

Maternity rights

A woman with at least one year's continuous service for her employer is entitled to 45 days' maternity leave with full pay. A woman with less than one year's service is entitled to 45 days at half pay.

A woman can take a maximum of 100 (consecutive or non-consecutive) days' leave, without pay, if she suffers an illness resulting from pregnancy or birth. This is in addition to the 45 days' paid leave entitlement.

For 18 months after the date of birth, a nursing mother is entitled to two additional breaks each working day, each not exceeding half an hour, in which to nurse the child. These breaks form part of her working hours and there is no reduction of her remuneration.

In the DIFC, an employee is entitled to a minimum of three months' paid maternity leave if she (*DIFC Employment Law*):

- Has been continuously employed with her employer for at least 12 months preceding the eighth week before the expected week of childbirth.
- Notifies her employer in writing that she is pregnant at least eight weeks before the expected week of childbirth.

- If required by the employer, provides a medical practitioner's certificate stating the expected or actual birth date.
- Notifies her employer in writing at least 21 days before the day she proposes to begin her maternity leave.

An employer must pay maternity pay at (*DIFC Employment Law*):

- The employee's normal weekly rate for the first 45 days of maternity leave.
- 50% of the employee's normal weekly rate for the next 45 days.

An employee can return to work at the end of the maternity leave on the same terms and conditions, and with the same seniority rights, as she would have had if she had not taken maternity leave. An employer must not, because of an employee's pregnancy or maternity leave (*DIFC Employment Law*):

- Terminate the employment.
- Change the employee's role or terms of employment without obtaining the employee's prior written consent.

Paternity rights

There are no specific paternity rights.

Surrogacy

There are no specific provisions relating to surrogacy.

Adoption rights

Where a female employee is adopting a child of less than three months' old, she is entitled to the normal maternity leave, subject to the normal provisions concerning continuous employment and notification requirements (*DIFC Employment Law*) (see above, *Maternity rights*).

There are no adoption rights under the Labour Law or in the free zones.

Parental rights

There are no specific parental rights.

Carers' rights

There are no specific carers' rights.

CONTINUOUS PERIODS OF EMPLOYMENT

12. Does a period of continuous employment create any benefits for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Benefits created

To be entitled to a gratuity payment on termination of employment, an employee must have accrued one year's service and the dismissal must not be for gross misconduct. An end of service gratuity is calculated with reference to the employee's last basic pay before termination at the rate of:

- 21 days' pay for each year of service up to the first five years' service.
- 30 days' pay for each year of service in excess of five years' service.



This also applies in the DIFC (see *Question 17, Severance payments*).

An employee with an unlimited contract who resigns from their employment with less than five years' service is entitled to a reduced gratuity payment, calculated by reference to length of service, as follows:

- An employee who has more than one year but less than three years' service is entitled to one-third of the total gratuity entitlement.
- An employee who has more than three years' but less than five years' service is entitled to two-thirds of the total gratuity entitlement.
- An employee who has more than five years' service is entitled to the full gratuity entitlement.

An employee with a limited contract who resigns from their employment with less than five years' service is not entitled to a gratuity payment.

This also applies in some free zones, but not in the DIFC.

An employee is not entitled to an end of service gratuity payment in either of the following circumstances:

- They are entitled to a company pension which complies with the provisions of the Labour Law or DIFC laws (as appropriate).
- Pension contributions are made on their behalf to the General Pension and Social Security Authority (GPSSA) (see *Questions 21 and 27*).

Length of service is also relevant for the calculation of:

- Annual leave (see *Question 9*).
- Sick leave (see *Question 10*).
- Maternity leave (see *Question 11*).

Consequences of a transfer of employee

There are no transfer regulations and an individual's employment with their first employer is treated as having terminated on the transfer to a new employer.

TEMPORARY AND AGENCY WORKERS

13. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees?

There are no provisions specific to temporary or agency workers under the Labour Law (including the free zones) or the DIFC Employment Law. A temporary or agency worker is entitled to the same rights and benefits as a permanent employee.

DATA PROTECTION

14. What data protection rights do employees have?

There are no specific data protection rights for employees under the Labour Law or in the free zones. However, there are general protections in the Civil Code.

DIFC Law No. 1 of 2007 (DIFC Data Protection Law) imposes a number of obligations on anyone who processes personal data. Employees have a number of rights concerning their personal data, including the right to have their information processed fairly, securely and in accordance with necessary and legitimate purposes. There must also be adequate protection when data is transferred to a jurisdiction outside the DIFC.

DISCRIMINATION AND HARASSMENT

15. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from discrimination

There are no specific anti-discrimination protections for employees under the Labour Law or in the free zones. The Labour Law and various ministerial decisions contain the following provisions that are favourable to UAE nationals:

- UAE nationals have priority to work in the UAE. Foreign nationals can only be employed in the private sector if both the following apply:
 - there is appropriate approval from the authorities, and if they obtain a residence visa and labour or ID card (see *Question 4*);
 - the employee has the professional competence or educational qualifications that the state requires.
- If no UAE national is available to take up a position, preference must first be given to persons who are nationals of an Arab country, and then to persons of other nationalities.
- There are certain limitations on the ability of companies to dismiss UAE nationals (see *Question 17*).

In the DIFC, employers must not discriminate (that is, withhold or limit access to opportunities, benefits and advantages that are available to other persons) against any person on the basis of their (*DIFC Employment Law*):

- Sex.
- Marital status.
- Race.
- Nationality.
- Religion.
- Mental or physical disability.

Discrimination includes failing to make reasonable adjustments to the workplace, or working practices, that would enable a disabled person to meet their occupational requirements. This covers:

- Refusal to employ a person.
- Refusal to continue to employ a person.
- Discriminating against a person concerning their employment or any term or condition of their employment.

Any programme or activity can be undertaken that is intended to benefit disadvantaged individuals or groups, including those with mental or physical disability (*DIFC Employment Law*).



COUNTRY Q&A

Protection from harassment

There are no specific rules under the Labour Law protecting employees from harassment. However, assaulting another employee is grounds for summary dismissal. In addition, there are UAE ministerial resolutions imposing sanctions on certain behaviour, including harassment.

Employers must provide and maintain a workplace that is free from harassment, safe and without risks to employees' health (*DIFC Employment Law*). In addition, an employer must not threaten, intimidate or coerce an employee because of a complaint or investigation (*DIFC Employment Law*).

WHISTLEBLOWERS

16. Do whistleblowers have any protection?

There is no specific protection for whistleblowers under the Labour Law or the DIFC Employment Law.

DISMISSAL OF EMPLOYEES

17. What rights do employees have when their employment contract is terminated?

Notice periods

The minimum notice period is 30 days (*Labour Law*). An employer and employee can mutually agree to a longer notice period, but they cannot shorten notice to less than the statutory minimum period. If either party defaults on the agreed notice period, they must pay compensation in lieu of notice based on the employee's current pay (in proportion to the number of days in default).

An employer can dismiss an employee without notice if the employee commits an act of gross misconduct or is on probation. The offences which constitute gross misconduct are limited to the following (*Labour Law*):

- Adopting a false identity or nationality, or submitting forged certificates or documents.
- Making a mistake resulting in substantial material loss for the employer, if the employer notifies the Ministry of Labour of the incident within 48 hours of becoming aware of its occurrence.
- Disobeying instructions concerning industrial safety or the safety of the workplace, if the instructions are in writing and displayed clearly. If the employee is illiterate, the employer should have read the instructions to them.
- Failing to perform their basic duties under the contract of employment and persisting in violating them despite the fact that they have been both:
 - the subject of a written investigation;
 - warned that they will be dismissed if their behaviour continues.
- Revealing company secrets.
- A competent court has sentenced the employee for an offence involving honour, honesty or public morals.

- Being found drunk or under the influence of a drug during working hours.
- Assaulting an employer, a responsible manager or a colleague during working hours.
- Being absent without a valid reason for more than 20 non-consecutive days, or more than seven consecutive days.

In the DIFC, the minimum notice period is (*DIFC Employment Law*):

- One week, if the period of continuous employment is less than three months.
- One month, if the period of continuous employment is at least three months but less than five years.
- Three months, if the period of continuous employment is five years or more.

However, an employer and employee can agree to:

- A longer or shorter period of notice.
- Waive notice entirely.
- Accept a payment in lieu of notice.

An employer can dismiss an employee without notice where the employee's conduct constitutes misbehaviour. Misbehaviour is not defined in the DIFC Employment Law, but it is described in general terms in the DIFC Employment Law to be where an employee's conduct warrants dismissal and a reasonable employer would have terminated their employment.

Severance payments

Employees who have at least one year's continuous service with an employer are entitled to an end of service gratuity payment on termination of their employment (*Labour Law*) (see *Question 12, Benefits created*).

The position is the same under the DIFC Employment Law (see *Question 12, Benefits*) and there is no reduction in end of service gratuity when an employee resigns.

Procedural requirements for dismissal

Employers must cancel or transfer sponsorship of an employee's residence visa and labour card (or ID card if the employee is working in the DIFC or in the free zones) within 30 days following termination of employment. Employees must sign a final settlement form confirming that they have received all of their legal entitlements before the authorities will cancel their residence visa and labour card (or ID card, if applicable).

18. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection against dismissal

A recent UAE ministerial decision, in response to the global financial crisis, prohibits the dismissal of UAE nationals without the Minister of Labour's approval. This decision is likely to apply indirectly in the free zones (although the decision itself does not make it clear), but not in the DIFC. It is unclear whether it will remain in place permanently.

Employees in the DIFC have no protection against dismissal.



Protected employees

There are no specific categories of protected employees.

REDUNDANCY/LAYOFF

19. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs?

Definition of redundancy/layoff

There is no concept of redundancy under the Labour Law. Redundancies therefore fall under the dismissal provisions. The position is the same in the DIFC.

Procedural requirements

See above, *Definition of redundancy/layoff*.

Redundancy/layoff

See above, *Definition of redundancy/layoff*.

TAXATION OF EMPLOYMENT INCOME

20. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign nationals

The UAE does not impose any personal income taxes on either UAE national or foreign national employees.

Nationals working abroad

Nationals working abroad are not subject to local income taxation, but individuals may be subject to taxation in the jurisdiction where they are working.

21. What is the rate of taxation on employment income? Are any other taxes or social security contributions levied on employers and/or employees?

Income tax

The UAE does not impose any personal income taxes on either UAE nationals or foreign national employees.

Social security contributions

UAE and Gulf Cooperation Council (GCC) nationals who hold a UAE Family Book (that is, a book documenting the lineage of a family in the region) are entitled to a monthly pension contribution from their employers (*Pensions & Social Securities Law, Federal Law No. 7 of 1999 (Pensions Law)*). These contributions are payable to the GPSSA (Pensions Law) (see *Question 12, Benefits created*). Employees must also make monthly contributions, which the employer deducts from the employee's salary and transfers to the GPSSA with the employer's contribution. The rates for UAE nationals are as follows:

- Employer's contribution: 12.5% of the total monthly salary.
- Employee's contribution: 5% of the total monthly salary.

Pension contributions for GCC nationals vary, depending on the requirements of the relevant GCC country.

EMPLOYER AND PARENT COMPANY LIABILITY

22. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer liability

An employer can be vicariously liable for the acts of its employees carried out in the course of their employment.

The DIFC Employment Law provides that an employer is liable for acts of their employees carried out in the course of their employment. An employer is not liable if it proves that it took reasonable steps to prevent the employee from doing the act, or similar acts, in the course of their employment.

Parent company liability

A parent company is generally not liable for the acts of a subsidiary company's employees.

HEALTH AND SAFETY OBLIGATIONS

23. What are an employer's obligations regarding the health and safety of its employees?

The Labour Law and various ministerial resolutions place a positive obligation on the employer to protect employees from hazards, such as:

- Injuries and vocational diseases.
- Fire.
- Those arising out of the use of tools and machinery.

This obligation includes:

- Providing employees with clear and detailed instructions, and training, on health and safety.
- Ensuring the provision of adequate ventilation, space, lighting, first aid equipment and so on.

The DIFC Employment Law imposes a number of health and safety obligations on employers, including a general duty to ensure a safe workplace that is free from risks to employees' health. Employers must also minimise risks regarding fire hazards, and provide training and information on protective measures.

Employers must also ensure adequate:

- Ventilation.
- Lighting.
- Cleanliness.
- Drinking water.



COUNTRY Q&A

- Space.
- Sanitary facilities.
- Seating.

EMPLOYEE REPRESENTATION AND CONSULTATION

24. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation

Employees are not entitled to management representation.

Consultation

Employees are not entitled to be consulted.

Major transactions

Employee consultation or consent is not required for major transactions.

25. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

Not applicable (see *Question 24*).

Employee action

Not applicable (see *Question 24*).

CONSEQUENCES OF A BUSINESS TRANSFER

26. Is there any statutory protection of employees on a business transfer?

Automatic transfer of employees

Employees are not automatically transferred with the business on a business transfer.

Protection against dismissal

Employees are not given specific protection against dismissal on a business transfer. The dismissal provisions under the Labour Law apply (see *Question 17*).

Harmonisation of employment terms

There are no regulations concerning harmonising the terms of transferred employees with other (existing) employees of the buyer.

PENSIONS

State pensions

27. Do employers and/or employees make pension contributions to the government in your jurisdiction?

Contributions paid to the government

Foreign national employees and UAE national employees who do not qualify under the Pensions Law (see *Questions 12, Benefits created and 21*) receive an end of service gratuity payment on the termination of their employment. Therefore, no monthly contributions apply.

In relation to pension contributions for other employees, see *Question 21*.

Taxation of contributions

The UAE does not impose any personal income taxes (see *Question 20, Foreign nationals*).

Monthly amount of government pension

In relation to the amount of pension contributions, see *Question 21*.

Supplementary pensions

28. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? Do these schemes provide pensions, the value of which:

- Is linked to the employee's salary?
- Is linked to employer and/or employee contributions and investment return on those contributions?

Linked to the employee's salary

It is not common (or compulsory) for employers to provide supplementary pension schemes.

Linked to employer and/or employee contributions

See above, *Linked to the employee's salary*.

29. Is there a regulatory body that oversees the operation of supplementary pension schemes?

Regulatory body

There is no regulatory body that oversees the operation of supplementary pension schemes.

Regulatory framework

See above, *Regulatory body*.



Tax on pensions

30. Are any tax reliefs available on contributions to supplementary pension schemes (by the employer and employees)?

Tax relief on employer contributions

Not applicable (see Questions 28 and 29).

Tax relief on employee contributions

Not applicable (see Questions 28 and 29).

31. Is there any legal protection of employees' pension rights on a business transfer?

Automatic transfer of pension rights

The pension rights of UAE nationals transfer automatically and are not lost or diminished by business transfers. This protection is not extended by local law for the pension benefits of non-UAE nationals.

Other protection for pension rights

There is no protection for pension benefits under local law except under certain circumstances (see above, *Automatic transfer of pension rights*).

32. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- Employees who are working abroad?
- Employees of a foreign subsidiary company?

Employees working abroad

There is no legal right to participate or obligation on the employer to offer participation.

Employees of a foreign subsidiary company

See above, *Employees working abroad*.

33. Is there any protection provided for pension scheme benefits where the sponsoring employer becomes insolvent? If so, who provides the protection, and how does this operate?

The pension benefits of UAE nationals are guaranteed by the GPSSA and are not affected by employer insolvency. There is no analogous protection for the pension benefits of non-UAE nationals.

BONUSES

34. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded?

Bonus schemes are common in the UAE. There are no statutory restrictions or guidelines on what bonuses can be awarded, either under the Labour Law or DIFC Employment Law.

INTELLECTUAL PROPERTY (IP)

35. If employees create IP rights in the course of their employment, who owns the rights?

The author of a work is its owner (*Federal Law No. 7 of 2002 for Copyright and Neighbouring Rights (Copyright Law)*). An employer and employee can agree to the contrary in the employment contract, but there are limitations on the disposal of future copyright works. Specifically, purported disposals of more than five future works are void. If a work is a collective work, created by co-authors under the direction of the employer and for publication in the employer's own name, then the employer owns the copyright. However, this can be varied by agreement.

Unless the parties have agreed otherwise, an employer has the right to apply to patent any invention created during the course of an employee's employment (*Federal Law No. 17 of 2002 Regulating and Protecting Patent and Property Rights in Industrial Designs and Models (Patents and Designs Law)*). However, the employee has rights to compensation if the economic value of the invention was not anticipated when the employment contract was entered into.

The employee may be entitled to the invention if both:

- This inventive activity is outside the scope of the employee's duties.
- The employer uses their employer's resources to make an invention relevant to the employer's business.

In these circumstances, the employee must give the employer notice of the invention, and if the employer fails to confirm interest in owning the invention, the employee is entitled to own it. If the employer does confirm an interest in owning the invention, the employee is entitled to fair compensation, taking into account the significance and economic value of the invention to the employer.

RESTRAINT OF TRADE

36. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of activities

It is not possible to obtain injunctive relief from the UAE courts, so contractual restraint of trade clauses are of limited use. However, it is possible to prevent an employee from working in the UAE through Ministry of Labour administrative processes. If an employee resigns before completing less than one year of service with an employer, the Ministry of Labour enforces an automatic six-month employment ban on the employee. The Ministry of Labour can also impose a ban on employees with more than one year's service and less than three years' service, but this can be lifted on payment of a fee or if the former employer confirms that it does not object.



Post-employment restrictive covenants

Employers do not have to pay former employees any remuneration while they are subject to post-employment restrictive covenants.

Similarly, free zone authorities can enforce post-termination restrictions if they are included in an employment contract, but only within the relevant free zone.

In the DIFC, restraint of trade clauses can be included in an employment contract. Injunctive relief is available from the DIFC courts, but an injunction order is only enforceable within the DIFC.

PROPOSALS FOR REFORM

37. Are there any proposals to reform employment law or pensions law in your jurisdiction?

It was reported in the press that the Ministerial Committee for Legislation completed a review, on 13 September 2009, of amendments to certain Articles of a draft federal labour law. It was reported that the Bill will be raised with the federal cabinet for consideration and issuance. It is not clear what the amendments are and a proposed timetable for implementation has not been announced.

There are no plans to reform the DIFC Employment Law, but implementing regulations referred to in the DIFC Employment Law have yet to be enacted. The DIFC Authority has not indicated a proposed timetable for issuing the regulations, or provided information regarding their substantive content.

There are no plans currently in place to reform the Pensions Law.

A draft intellectual property law is being prepared in the DIFC, but nothing has yet been implemented.

Further measures to encourage or require the hiring of UAE nationals are also anticipated.

CONTRIBUTOR DETAILS



CHARLES LAUBACH

Afridi & Angell

T +971 4 330 3900

F +971 4 330 3800

E claubach@afriid-angell.com

W www.afriid-angell.com

Qualified. Pennsylvania, US, 1985; District of Columbia, US, 1986

Areas of practice. Projects and project finance; defence, offsets and government contracting; anti-corruption and anti-boycott law; employment and human resources.

Recent transactions

- Advising multiple corporate clients on staff downsizing and compensation reduction in the wake of the recent financial crisis.
- Acting as local counsel on the Sharia-compliant Sun Finance Limited Sorouh securitisation, Abu Dhabi's first real estate asset-backed securitisation.
- Awarded Islamic Finance News UAE Deal of the Year and Structured Finance Deal of the Year.