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The International Comparative Legal Guide to:
Employment & Labour Law 2011

A practical cross-border insight into employment and labour law

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

Employment relationships in the United Arab Emirates ("U.A.E.") are governed by U.A.E. Federal Law No. 8 of 1980 on Labor and Employees, as amended (the "Labor Law"), together with regulations promulgated pursuant to the Labor Law.

The provisions of the Labor Law are matters of public order; any provision in an employment contract which contravenes the Labor Law is considered null and void, unless it is more advantageous to the employee. Any provision deemed null and void is severable from the remainder of the employment contract, the remaining terms and conditions of which continue to be valid.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

The Labor Law applies to all employees working in the U.A.E., whether national or non-national, with the exception of the following categories: (i) officials and staff employed by the federal government, government departments of the member Emirates, municipalities, public bodies, federal and local public institutions, and those working in federal and local governmental projects; (ii) members of the armed forces, police and security units; (iii) domestic servants; and (iv) agricultural workers and persons engaged in animal husbandry (other than persons employed in corporations processing agricultural products or permanently engaged in the operation or repair of machines required for agriculture).

Employees who are based in the many Free Zones of the U.A.E. are often subject to labour regulations that are specific to the relevant Free Zone. This article generally refrains from discussing the employment regulations of the Free Zones.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

According to the Labor Law, employment contracts and all amendments made thereto are required to be in writing and approved by, and registered with, the U.A.E. Federal Ministry of Labor (the "Ministry"). Notwithstanding the foregoing, the terms and conditions of employment may be proven by any means of proof admissible by law.

Employment contracts for foreign nationals must be in writing in the format approved by the Ministry, although employment contracts for U.A.E. nationals need not be in writing.

1.4 Are any terms implied into contracts of employment?

An employment contract must include the following information: (i) amount of salary; (ii) date on which the employment contract was signed; (iii) employment commencement date; (iv) duration of the employment contract (if it is a specified term contract); and (v) nature and location of the workplace.

The Labor Law applies to any matters not addressed in the employment contract. For instance, if the employment contract were silent on the subject of annual leave, then the employee (if his service exceeds one year) would be entitled to the 30 days of annual leave set forth in the Labor Law.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

There is no minimum wage in the U.A.E. However, the Labor Law contains detailed rules on working hours, annual leave, severance pay, and other mandatory benefits, as discussed in other sections of this article.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

There are no labour unions or collective bargaining in the U.A.E.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

There are no labour unions or works councils in the U.A.E. The authority that is primarily responsible for the protection of the rights of employees in the U.A.E. is the Ministry.

2.2 What rights do trade unions have?

Not applicable in the U.A.E. – please see question 2.1.

2.3 Are there any rules governing a trade union's right to take industrial action?

Not applicable in the U.A.E. – please see question 2.1.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Not applicable in the U.A.E. – please see question 2.1.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

Not applicable in the U.A.E. – please see question 2.1.

2.6 How do the rights of trade unions and works councils interact?

Not applicable in the U.A.E. – please see question 2.1.

2.7 Are employees entitled to representation at board level?

Not applicable in the U.A.E. – please see question 2.1.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

The Labor Law does not address workplace discrimination as a specific type of wrongdoing. However, a decision to terminate services for discriminatory reasons may be viewed under the Labor Law as arbitrary dismissal, exposing the employer to a claim for compensation (see question 6.7). In such a case, the court shall establish the compensation according to the nature of the job, the damage caused to the employee, the employee's service period and the employee's work conditions. However, this compensation shall in all circumstances not exceed the employee's wages for a period of three months.

Employers may settle such claims before or after they are initiated, but the employee can potentially challenge the settlement later and assert his/her original claim. This subsequent action by the employee is precluded only by the passing of the one year time bar set out under the Labor Law.

3.2 What types of discrimination are unlawful and in what circumstances?

Please see question 3.1.

3.3 Are there any defences to a discrimination claim?

Please see question 3.1.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Please see question 3.1.

3.5 What remedies are available to employees in successful discrimination claims?

Please see question 3.1.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

An employee is entitled to maternity leave with full salary for a period of 45 days, including the period preceding and following delivery, provided that she has been in her employer's service for a continuous period of not less than one year. If her employment with the employer has been for less than one year, she is entitled to such maternity leave with half salary.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

An employee is entitled to full salary while on maternity leave.

4.3 What rights does a woman have upon her return to work from maternity leave?

Following her maternity leave, a female employee can be absent from work without a salary for a maximum period of 100 days (consecutive or otherwise), if that absence is due to an illness resulting from pregnancy or delivery that prevents her from resuming her work. The illness must be confirmed by a certified government physician licensed by the competent health authority.

During the first 18 months after delivery, an employee nursing her infant is entitled, in addition to her normal break periods, to two additional breaks each day, neither of which may exceed one half hour. Such additional break periods are considered as part of the employee's normal work hours and may not result in any reduction in her salary.

4.4 Do fathers have the right to take paternity leave?

There are no rights granted for paternity leave.

4.5 Are there any other parental leave rights that employers have to observe?

There are no rights granted to adoptive parents or carers.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependents?

The Labor Law does not make provision for any rights pertaining to a flexible work schedule.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

If the business transfer takes the form of a share sale, in which the shareholders of the employer change while the employer itself continues to exist, then the employees will remain with the employer.

If the transfer takes the form of an asset sale, in which the corporate identity of the employer will change, then the transfer process will not be automatic but will have to be implemented after the transfer takes effect. New labour permits and employment contracts for the employees are required, and the consent of each employee is required for that employee's transfer.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

In the event that a change occurs in the form or legal status of the employer, employment contracts that are valid at the time of such change remain valid with the new employer, and the employees' services are deemed to be continuous.

Both the previous employer and the new employer are jointly liable for a period of six months for the fulfilment of all obligations in the employment contracts, after which time the new employer bears sole liability.

There are no collective bargaining agreements in the U.A.E.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Employees do not have a right to be consulted in connection with a business sale.

5.4 Can employees be dismissed in connection with a business sale?

There are no special rules on protection from dismissal arising from a business sale. However, the same general rules governing termination of employment contracts apply (see section 6). A business sale would normally be viewed as a legitimate reason to terminate an unspecified-term employment contract.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

If an employee's terms and conditions of employment are made less favourable, then that employee's consent is required for the new terms and conditions to take effect.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

If the employment contract is for an unspecified term, with the exception of employees who are employed on a daily basis, either party may terminate it for a legitimate reason with 30 days' prior written notice.

In the case of employees working on a daily basis, the period of notice is calculated as follows: (i) one week, if the employee has been employed for more than six months but less than one year; (ii) two weeks, if the employee has been employed for not less than one year; (iii) one month, if the employee has been employed for not less than five years.

The validity of the employment contract continues throughout the notice period. The employee is entitled to full salary calculated on the basis of the employee's last salary and is required to work throughout such period, unless the employer determines that the employee should not be required to work throughout the notice period. This latter circumstance is equivalent to pay in lieu of notice.

The Labor Law provides that the notice requirement cannot be reduced or dispensed with, but may only be increased. In the event that proper notice is not provided prior to the termination of the contract of employment, the party having such obligation must provide compensation in lieu thereof equal to the employee's last salary for the time period by which proper notice was reduced.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

An employer is free to order an employee to serve a period of "garden leave" during the notice periods provided above. However, an employee on such "garden leave" is entitled to full salary and his/her employment contract remains valid throughout the prescribed notice period.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

Pursuant to the Labor Law, a contract of employment may terminate in any of the following ways: (i) upon mutual agreement by the parties, provided that the employee's agreement to such termination is made in writing; (ii) in the event that the employment contract is for a specified term and the specified duration has expired, unless the contract has been expressly or implicitly extended by the parties; or (iii) in the event that the employment contract is for an unspecified duration, and the parties have expressed an intention to terminate the contract, subject to the appropriate notice period having been provided by one party to the other and provided that the contract is not terminated for arbitrary reasons.

There are various instances where an employer is prohibited from dismissing an employee, for example: (1) during the employee's annual leave; (2) based on health reasons if the employee is on sick leave; or (3) prior to the employee having exhausted the periods of sick leave to which he or she is entitled under the Labor Law. Any agreement to the contrary is null and void.

An employer is prohibited from terminating an unspecified-term employment contract for arbitrary reasons without providing compensation to the employee (see question 7.8). If the employment contract is for a specified term and the employer terminates it before the end of its term for any reason other than those under Article 120 of the Labor Law (see question 7.5), unless the employment contract provides otherwise, the employer is obligated to compensate the employee in the amount equal to the lesser of three months' salary, or the salary for the remaining period of the contract.

Termination of an employee becomes effective upon cancellation of the employee's labour permit and residence visa that the employer sponsored.

If an employer dismisses a U.A.E. national, the employer must inform the Ministry 30 days prior to the dismissal and/or otherwise comply with the Ministry's instructions. Otherwise, an employer need not obtain the consent of a third party before terminating an employee.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

There are restrictions on the dismissal of U.A.E. national employees. As provided by Ministerial Resolution No. 176 of 2009 "Restricting the Dismissal of U.A.E. National Employees" ("Resolution No. 176"), the dismissal of a U.A.E. national is regarded as unlawful in any of the following four circumstances: (i) the U.A.E. national is dismissed for reasons other than those mentioned in Article 120 of the Labor Law (see question 6.5); (ii) it is proven that the employer retains a non-U.A.E. national who is performing work similar to that performed by the dismissed U.A.E. national; (iii) the employer fails to inform the Ministry 30 days prior to the dismissal or fails to comply with the Ministry's instructions within the designated times; (iv) it is proven that the U.A.E. national was not paid the full compensation and full retirement specified in either the Labor Law and its implementing regulations, or the contract of employment or any other contractually binding document.

Resolution No. 176 also sets out the consequences of improper dismissal of a U.A.E. national employee. If the Ministry is not satisfied that the dismissal was legitimate, it will inform the employer. The employer has 15 days to resolve the dispute with the U.A.E. national employee according to the Ministry's directives. If the employer fails to resolve the dispute within this period, the matter is referred immediately to the relevant court and the Ministry will freeze the issuing of any new labour permits applied for by the employer until the court renders a final judgment in the matter.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

As provided under Article 120 of the Labor Law, an employer may terminate a contract of employment without notice or compensation in the following circumstances: (i) during the employee's probation period; (ii) if the employee assumed a false identity or nationality, or otherwise submits false certificates or documents; (iii) if the employee has caused the employer to suffer a material loss (provided that the employer notified the Ministry within 48 hours of discovering such incident); (iv) if the employee fails to carry out instructions regarding industrial or workplace safety, provided that such instructions were in writing and posted in an accessible location or, if the employee is illiterate, he or she had been informed of them orally; (v) if the employee fails to perform his or her basic duties under the employment contract despite knowledge that he or she will be dismissed if such failure continues; (vi) if the employee reveals a "secret of the establishment"; (vii) if the employee is found guilty of an offence involving honour, honesty or public morals; (viii) if the employee is found, during working hours, in a state of drunkenness or under the influence of narcotic drugs; (ix) if the employee, during working hours, assaults his or her employer, manager or any colleagues; or (x) if the employee is absent from work, without valid reason, for more than 20 non-consecutive days in one year or more than seven consecutive days.

There are no special rules for redundancies. If an employer needs to eliminate job positions for economic reasons, then the resulting terminations would usually be treated as being done for a legitimate reason. An unspecified-term contract can therefore be terminated with one month's advance notice, and with full payment of severance benefits (see question 6.6). If a specified-term contract were terminated for reasons of redundancy, then the employer would be required to pay compensation (see question 6.7).

Similarly, there are no special rules regarding dismissal arising from a business transfer. The same general rules governing termination of employment contracts apply. A business transfer would normally be viewed as a legitimate reason to terminate an unspecified-term contract, but in the case of specified term contracts, the employer would be required to pay compensation.

The Labor Law provides for an end of service gratuity for employees who have completed a period of at least one year of continuous service, which is calculated as follows: (i) 21 days' salary for each year of the first five years of employment; and (ii) 30 days' salary for each additional year of employment, provided that the aggregate amount thereof does not exceed two years' salary.

Salary for the purposes of calculating severance pay is the employee's base salary, and does not include overtime salary; in-kind payments; allowances, such as housing, transportation, travel, representation, currency, children's education, recreational or social allowances; or other allowances or increments.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

If the employment contract is for a specified term, in the event that the employer terminates it for any reason other than those under Article 120 of the Labor Law (see question 6.5), unless the employment contract provides otherwise, the employer is obligated to compensate the employee in the amount equal to the lesser of: (1) three months' salary; or (2) salary for the remaining period of the contract.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

The termination of an employment contract for arbitrary reasons provides the employee with a right to claim compensation. Termination of an employment contract is considered arbitrary and improper if: (i) the reason for the termination provided by the employer does not relate to the employee's work; or (ii) the employee has submitted a serious complaint to the competent authorities or instituted legal proceedings against the employer which were shown to be valid.

If the employer terminates an employee's services for an improper reason, and particularly if done in retaliation for the filing of a labour grievance by the employee, then the employer could be liable for damages for wrongful dismissal. The Labor Law provides for compensation to be paid to an employee who has been dismissed for arbitrary reasons and such damages could equal up to three months of the employee's salary.

6.8 Can employers settle claims before or after they are initiated?

Employers may settle claims before or after they are initiated, but the

employee can potentially challenge the settlement later and assert his/her original claim. This subsequent action by the employee is precluded only by the passing of the one year time bar set out under the Labor Law. For an employee who is not a U.A.E. national, the employer must ensure that the employee's labour permit and residence visa are cancelled after termination of services.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

The Labor Law does not cover collective dismissals *per se*, but it does provide a procedure for collective work disputes (see question 8.2). Accordingly, this procedure is available when employees contest a collective dismissal.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Employees may attempt to contest mass dismissals through the collective work dispute procedure outlined under the Labor Law (see question 8.2). The employer is subject to the decisions reached by the relevant decision-maker at each stage in this process.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

In the event that the nature of an employee's labour permits the employee to gain knowledge of the employer's clients or the secrets of its business, the employment contract may contain a non-competition clause (e.g., following termination of the employment contract, the employee is prohibited from competing with the employer or from taking part in any business competing with that of the employer).

In order for a non-competition clause to be valid, the employee must be at least 21 years of age at the time of signing the employment contract. In addition, the non-competition clause must be limited in time, place and nature to the extent necessary to safeguard the employer's business.

An employer may also include a provision relating to confidentiality in the employment contract registered with the Ministry to prevent the theft of its trade secrets, and/or require an employee to sign a confidentiality agreement as part of the employee's employment documentation.

7.2 When are restrictive covenants enforceable and for what period?

It is the general view that the non-competition clause described above, as well as confidentiality agreements, should remain in effect for, at most, one year.

7.3 Do employees have to be provided with financial compensation in return for covenants?

An employer does not have to pay its former employees remuneration while they are subject to post-termination restrictive covenants.

7.4 How are restrictive covenants enforced?

In the case an employee violates a restrictive covenant, an employer may attempt to obtain a six-month ban stamped in an employee's passport when the employer cancels the employee's labour permit and residence visa. However, the official policy on such bans change frequently. Also, an employee may have a ban removed.

If an employer discovers a former employee working in breach of a non-competition agreement, the employer may proceed to court and seek an order that the Ministry withdraw the employee's labour permit. However, these types of orders are rarely issued.

An employer may also attempt to bring a civil case against the new employer for "hiring away" the employee and thereby engaging in unfair competition, but again, these types of cases are difficult for an employer to win.

Finally, the employer may attempt to raise a case for monetary damages against the former employee.

Any of these actions could well result in proceedings which would take the employer beyond the term of the non-competition clause, thereby significantly diminishing the value of the victory even if achieved.

8 Court Practice and Procedure

8.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Employees may refer employment-related complaints to the Ministry.

In the case of collective work disputes, the matter is initially sent to the relevant Ministry department. If this Ministry department does not resolve the dispute, then it may be forwarded to a "Conciliation Committee", whose formation is determined by the Minister of Labor and Social Affairs.

The parties to the dispute may then appeal to the "Supreme Committee of Conciliation". The Supreme Committee of Conciliation is established in the Ministry of Labor and Social Affairs and formed as follows: (i) the Minister of Labor and Social Affairs as chairman, and he may delegate the Under Secretary or the Director General of the Ministry to replace him in his absence; (ii) a judge from the Supreme Federal Court to be appointed by the Justice Minister at the nomination of the General Assembly of the Court; and (iii) a prominent person who is known to be impartial shall be appointed by the Minister of Labor and Social Affairs. Two reserve members may be appointed from the same categories as the original members to replace them in their absence. The reserve and original members shall be appointed for three years, renewable by the same authorities responsible for their appointment.

A single employee may also file a civil case in court.

8.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed?

A single employee with an employment-related complaint may file his/her grievance with the Ministry. The Ministry is directed to consider the matter during a two-week period, although in practice it may take longer. If the employee is not satisfied with the Ministry's resolution of the matter, the employee may file a civil case in court.

The Ministry grievance may be filed *pro se* and without any fee. The civil case may also be filed *pro se*, and the fee normally applicable to a civil complaint is waived if the plaintiff is an employee claiming employment entitlements. Once the civil case is filed, the courts are directed to proceed rapidly, and it is usually the case the Court of First Instance issues a judgment within a single year.

In the case of collective work disputes (when a dispute occurs between one or more employers and some or all of their employees), if the parties fail to settle it themselves, a party in the dispute may forward its complaint to the Ministry. The Ministry in turn, either on its own initiative or at the request of the parties, will attempt to mediate and reach a consensual settlement of the dispute.

If the Ministry does not settle the dispute within ten days from the date it became involved, it shall then submit the dispute to the Conciliation Committee, while notifying both parties in writing.

The Conciliation Committee shall announce a majority ruling within two weeks from the date of receiving the complaint. This decision is binding on both parties if they have agreed in writing to accept the Conciliation Committee's decision. Otherwise, each of the two parties may appeal to the "Supreme Committee of Conciliation" within 30 days from the date of the issuing of the decision, or else the Conciliation Committee's decision shall be final and obligatory.

The Supreme Committee of Conciliation shall render a final and definitive decision in all work disputes referred to it. Decisions of the Supreme Committee of Conciliation are reached through majority vote.

8.3 How long do employment-related complaints typically take to be decided?

In the case of a single employee's employment-related complaint, the Ministry phase generally takes 2-4 weeks. If the employee files a case in court, the Court of First Instance generally takes one year. The employee may then appeal to the Court of Appeal and finally to the Court of Cassation, which may take a total two year period. The total time therefore to complete all stages will generally be three years and four weeks.

In the case of collective work disputes, in theory, this would be within the time frames set out under question 8.2 above. However, in practice, there is no track record, because the provisions in the Labor Law on collective disputes are never resorted to.

8.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

The judgment of the Court of First Instance may be appealed to the Court of Appeal, and thereafter to the Court of Cassation. The appeal process in a labour matter typically lasts approximately two years.

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