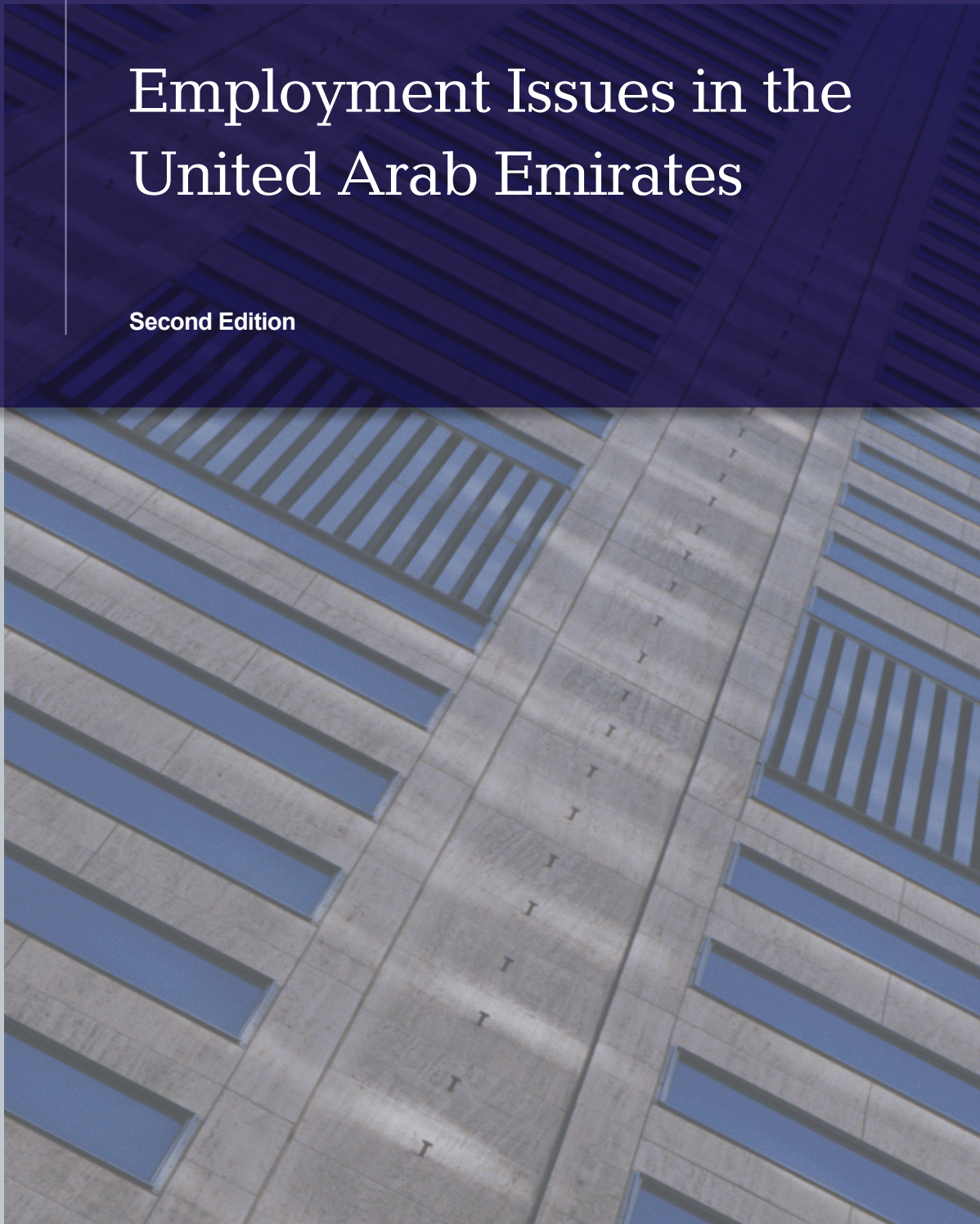


Employment Issues in the United Arab Emirates

Second Edition



The purpose of this memorandum is to summarise employment issues arising in the United Arab Emirates (UAE). This note focuses on the UAE Federal Law No. 8 of 1980 (the Labour Law). It also describes the employment law that applies in the Dubai International Finance Centre (the DIFC) in Dubai.

IMMIGRATION ISSUES

Prior to commencing any work in the UAE, all non-UAE nationals must obtain a work permit and residency visa which enables them to live and work in the country. These documents are obtained via sponsorship with an employer (or local sponsor) which is licensed and registered with the Federal Ministry of Labour and Social Affairs (the Ministry of Labour). A residency visa is usually tied to the employment visa application and will allow the employee the right to reside and work in the UAE for the duration of his/her employment only. The UAE has designated a number of Free Zone areas to provide exemption from many UAE laws to encourage foreign investment. If an employee is employed by an organisation which is based in a Free Zone, such as the DIFC, the free zone authority will be the sponsoring entity.

There are significant penalties for both the employer and employee for failure to comply with immigration procedures and requirements.

APPLICABLE LABOUR LAW

The Labour Law applies to employees working in the UAE, whether they are UAE nationals or not, except for employees working in the DIFC, whose employment is governed by the employment law of the DIFC (DIFC Law No. 3 of 2012, the DIFC Employment Law) (see below). Other Free Zones, such as the Jebel-Ali Free Zone and the Dubai Airport Free Zone, often have their own laws and regulations, including certain provisions regarding employment, but these are much less prescriptive than the DIFC Employment Law, and accordingly the Labour Law continues to apply in these Free Zones.

Certain categories of individuals are exempted from the Labour Law, including:

- (a) Domestic servants
- (b) Staff and workers who are employed by the federal government
- (c) Members of the armed forces and police

The Labour Law provides for minimum standards for employing employees in the UAE which employers cannot contract out of.

EMIRATISATION

The UAE government introduced the Emiratisation programme in 2004 to encourage employment for its citizens in both the public and private sectors. The programme aims to reduce the UAE's dependence on foreign workers and to ensure that UAE citizens benefit from the economic growth in the country. Similar programmes are being pursued by other Gulf Cooperation Council countries including Oman, Bahrain, Qatar and Saudi Arabia. Emiratisation does not currently apply in any of the Free Zones.

The Labour Law provides that employers should prioritise UAE nationals (followed by other Arab nationals) over any other nationalities when seeking employees. This means that — in theory — the Ministry of Labour will not permit non-UAE nationals to be recruited where ministry records show unemployed nationals could perform that role. These requirements are not currently applied in the DIFC but may be applied in other Free Zone areas.

As part of its Emiratisation programme, the UAE has sought to identify suitable industries in which UAE nationals can work. Banking and insurance were identified as two such industries and companies operating in these sectors must now meet specific annual quotas.

The government established the National Human Resource Development and Employment Authority (TANMIA) to assist with the Emiratisation programme. TANMIA provides career guidance and training to UAE nationals. All employers in the UAE should be registered with TANMIA.

The Ministry of Labour may impose fines on companies that do not meet the Emiratisation requirements.

MOVING JOBS

Historically when non-UAE nationals wished to transfer to a new job in the UAE, upon cancellation of their work permit with their previous employer, the Ministry of Labour would impose a six-month ban on the non-UAE national applying for a new work permit, unless the previous employer provided a "Certificate of No Objection", otherwise the employee would be required to pay a fee.

Since 1 January 2011 however, this six-month ban is no longer automatically applied, provided that the employment contract is terminated by mutual consent or in accordance with the terms of the contract (*i.e.* requisite notice is given) and the employee has a minimum level of qualifications, or has at least two years' service with his previous employer.

EMPLOYMENT CONTRACTS

As part of the work permit and residency visa application process, non-UAE nationals will be required to enter into a short, standard-form employment contract provided by the Ministry of Labour.

All employees are entitled to a written contract of employment. The Ministry of Labour has a prescribed form of employment contract, although an employer can choose to use his or her own form, provided it contains certain provisions (as summarised below). All employment contracts must be registered with the Ministry of Labour (in Arabic).

The Labour Law envisages two types of employment contracts — fixed-term and open-ended (which is terminable on notice). A fixed-term contract must be for a term of four years or less although it can be renewed by mutual consent for a similar or lesser period.

Any employment contract which does not include a termination date will be deemed an open-ended contract.

The Labour Law provides that the following information must be included in the employment contract:

- (a) Salary
- (b) Date of employment contract
- (c) Commencement date of employment term
- (d) Nature of the employment contract (whether fixed or open-ended)
- (e) Job description
- (f) Term of contract (for fixed-term contracts)
- (g) Location of employment

TERMINATION OF EMPLOYMENT

The Labour Law provides for the initial employment period to be classed as a probationary period. The probationary period can last up to six months. During this period the employer may terminate the employment immediately.

After the probationary period, the Labour Law provides for a 30-day minimum notice period provided the employer provides an “acceptable” reason. An acceptable reason is not defined in the Labour Law but is generally considered to be a reason for termination that must relate to the employee’s work (which is therefore quite broad). Employers can make a payment in lieu of notice rather than allowing the employee to work out his or her notice period.

Article 120 of the Labour Law sets out the circumstances under which an employer can dismiss without notice, payment in lieu of notice or entitlement to end of service gratuity (see page 4). These circumstances include failing to carry out his/her basic duties under the employment contract or being found drunk or intoxicated by drugs during working hours.

No specific regulations apply regarding redundancies or lay-offs. Therefore, employers need not consider information or consultation obligations when implementing a redundancy programme.

Additional considerations apply to dismissals of UAE nationals. Under Ministerial Decision No. 176, which came into force in February 2009 concerning the dismissal of UAE national employees in the private sector, it is unlawful to dismiss a UAE national if any of the following apply:

- (a) Other than for a summary dismissal reason as set out in Article 120 of the Labour Law
- (b) If a non-national is performing the role of the national who was dismissed
- (c) If the employer failed to file a notice to the Ministry of Labour at least 30 days prior to the effective date of dismissal, or failed to follow any Ministry of Labour instructions relating to the notice of dismissal
- (d) If the UAE national was not paid all retirement and end of service entitlements, as specified in the Labour Law

Whilst compensation for arbitrary dismissal is usually capped at three months' pay, whether that compensation cap would apply to the dismissal of an Emirati in violation of Ministerial Decision No. 176 is unclear. Further, whether the employer could be ordered to reinstate the dismissed Emirati also remains unclear. One consequence that is clear — if the employer applied for new work permits, the Ministry of Labour would not issue any until the court had issued its final judgment in the matter.

WORKING HOURS

The maximum working hours for an adult employee is eight hours per day (although normal work hours are reduced by two hours during Ramadan) and employees are entitled to a rest break after five consecutive hours of work. The Labour Law provides that overtime hours must not exceed two hours per day (unless the work is to prevent occurrence of a major loss or a serious accident or to remove or mitigate the consequences of such loss or accident). Overtime hours are to be paid at an increased salary of 25 percent, or where the employee works overtime between the hours of 9 p.m. and 4 a.m., overtime should be paid at an increased salary of 50 percent. If the employee is required to work on a Friday, the employee is entitled to a day off or an increased salary of 50 percent. Employees cannot be required to work for two consecutive Fridays unless their salary is calculated on a daily basis.

Employers cannot ask employees to “opt-out” of these working time obligations although the working time and overtime provisions do not apply to “persons holding senior executive managerial supervisory positions”, if such persons have the powers of employer over the employees. The Ministry of Labour has categorised such people as:

- (i) Chairpersons and members of boards of directors
- (ii) General managers
- (iii) Managers of departments
- (iv) Individuals working in supervisory posts who have dedicated powers of authority over other employees

EMPLOYEE BENEFITS/ENTITLEMENTS

Vacation

Employees are entitled to 30 calendar days of paid vacation after they have been employed for one year. This is roughly equivalent to 22 working days. In addition, employees are entitled to official public holidays declared for the sector in which they are working (public or private). Muslim employees are also entitled to 30 days' unpaid leave once during their employment to perform Hajj (pilgrimage).

Sick Leave

Employees are not entitled to paid sick leave during the probation period. After the probation period, employees are entitled to full pay for the first 15 days and half pay for the next 30 days. Employees are required to provide evidence of their sickness by way of an official medical certificate.

Family Leave

Under the Labour Law, women are entitled to 45 days of paid maternity leave (although the Sharjah Executive Council has increased this to 60 days for women employed in the emirate of Sharjah). This leave is based on full pay if the employee has completed one year of service and half pay if the employee has completed less than one year's service. At the end of this 45-day period, women have a right to take a further 100 days of unpaid leave. The Labour Law provides no paternity entitlement (although male employees in Sharjah are entitled to three days of fatherhood leave).

Repatriation

If an employee is dismissed, the employer is responsible for the repatriation costs to the place of recruitment or to any other place agreed with the employee, unless the employee is commencing new employment with another employer in the UAE — in which case the new employer assumes responsibility for the employee's repatriation costs upon termination of that employment.

HEALTH INSURANCE

Under Dubai Law No. 11 of 2013, since January 2014 employers in Dubai are required to provide basic health insurance to employees. This law is being implemented in stages — meaning companies with 1,000 or more employees must provide their workers with health insurance by October 2014, companies with 100 to 999 employees must comply by July 2015 and companies with fewer than 100 workers must comply by June 2016.

WAGES PROTECTION SYSTEM

Workers in the UAE are paid via the wages protection system — an electronic salary transfer system through which employers transfer wages to certain authorised banks, bureaux de change or financial institutions, which then transfer the wages to the workers. This system was implemented to guarantee the timely and full payment of agreed-upon wages.

TAXATION

The UAE government does not collect income tax. Whether or not a non-UAE national will be required to pay tax in his or her home country will depend on the tax regime applicable to each individual. The UAE government does not collect social security contributions for non-UAE nationals. However, with respect to UAE nationals, both the employer and the employee are required to make contributions (12.5 percent employer contribution and five percent employee contribution) to the General Pension and Social Security Authority.

End of Service Gratuity (ESG)

Employees who have provided more than one year's service may be entitled to an ESG payment. An ESG payment is calculated as the sum of the following:

- (i) 21 days' salary for each year of the first five years of service
- (ii) 30 days' salary for each additional year of service

The maximum ESG entitlement is two years of salary. If an employee resigns that individual is entitled to 1/3 of their ESG payment if his or her length of service is between one and three years; 2/3 of their ESG payment if his or her length of service is between three and five years; and a full ESG payment if his or her length of service is more than five years.

The employee is not entitled to an ESG payment if the employee is terminated for one of the reasons set out in Article 120 of the Labour Law (as described earlier).

ESG is calculated based on an employee's basic wage, *i.e.*, excluding any allowances such as housing or transport allowances.

WORKS COUNCILS, UNIONS OR EMPLOYEE CONSULTATION

The UAE does not provide a right to freedom of association, therefore, trade unions and collective bargaining are not currently permitted. No statutory provisions relate to works councils or employee consultation, and any collective industrial action — such as striking — is a criminal offence as set out in the criminal code.

DISPUTES

If an employee has a dispute relating to his or her employment or the termination of his or her employment, this dispute should be raised with the Ministry of Labour who will handle the conciliation process, or submit the dispute to court, if necessary. If a court determines that an employee has been dismissed 'arbitrarily', *i.e.*, without a fair reason, the court may order the employer to pay compensation to the employee of up to three months' salary.

DIFC EMPLOYMENT LAW

As stated previously, the DIFC has its own independent legal framework and judicial system. The main differences between the Labour Law and the DIFC Employment Law are as follows:

- (i) **Probation period and notice period** – The DIFC Employment Law provides no specific probationary period. The employee and employer are entitled to the following minimum periods of notice:
 - (a) Seven days if the period of continuous employment is less than three months
 - (b) 30 days if the period of continuous employment is three months or more but less than five years
 - (c) 90 days if the period of continuous employment is five years or more.

The employee and employer can agree to waive the notice period.

- (ii) **Summary dismissal** — The Employment Law does not provide list of circumstances which justify summary dismissal. The employer is entitled to dismiss immediately for "cause" being where the conduct of the employee warrants termination and where a reasonable employer would have terminated the employment. Therefore, this arguably allows the employer greater flexibility than under the Labour Law.
- (iii) **ESG payment** — The DIFC Employment Law calculates the ESG payment in the same way as the Labour Law. However, the DIFC Employment Law includes no provision to reduce the ESG payment if the employee initiates the departure.
- (iv) **Working hours** — An employee's working time shall not exceed 48 hours per week. However, the employer can obtain the employee's consent to opt-out of these working time provisions.

- (v) **Vacation** — Vacation entitlement for employees with more than one year's service is 20 working days plus official public holidays for the sector in which they are working (public or private). Employees are only entitled to the 30 days' unpaid leave for the Hajj pilgrimage if they have worked for a minimum of 12 months.
- (vi) **Maternity leave** — Maternity leave is 65 days (33 days of full pay and thereafter 32 days of half pay) provided the woman has been employed for at least one year preceding the expected week of childbirth. This leave is also available to employees adopting a child three months or younger (unlike the Labour Law which is silent regarding adoption leave).
- (vii) **Sick leave** — The maximum annual sick leave entitlement is 60 days of full pay.
- (viii) **Discrimination** — Unlike the Labour Law, which does not include any provisions regarding discrimination, the DIFC Employment Law expressly prohibits employers from discriminating against employees on the grounds of sex, marital status, race, nationality, religion or disability. Employers are also required to provide and maintain workplaces which are free of harassment.

NOTE

This memorandum is a summary of the key requirements under UAE Labour law as of 1 July 2014. Please note that this information is provided for guidance purposes only and should not be taken as a definitive statement of law. The information provided is only applicable to employers in the private sector.

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