

UAE Employment Law Update

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2 February 2022 saw the introduction of a new UAE Labour Law in the form of UAE Federal Law No. 33 of 2021, Regulating Labour Relations (“**New Law**”), repealing the existing UAE Labour Law, UAE Federal Law No. 8 of 1980 as amended (“**Previous Law**”). In addition to the introduction of the New Law, a set of companion Executive Regulations were issued on 3 February 2022, fleshing out certain provisions of the New Law.

The following is a non-exhaustive overview of the principal provisions of the New Law and the Executive Regulations.

Whilst the New Law makes several significant introductions, it equally maintains the status quo in others, as such what we see here is more evolution rather than revolution in terms of the regulation of employment relations governed by the New Law.

As with the Previous Law, the New Law does not apply to employees in the Dubai International Financial Centre or the Abu Dhabi Global Market which both have their own standalone employment laws and regulations. In addition, employees of federal and local government agencies, members of the armed forces, police and security employees and domestic service workers (Article 3(2) of the New Law) are not subject to the New Law.

1. **Employment Arrangements**

The New Law and Executive Regulations (Article 5) introduces the following models of work:

1. Full time – working for a single employer full time;
2. Part time – working for a single employer part time;
3. Temporary work – work carried out for a specified time and for a specific task;
4. Flexible work – work that allows changing work hours to take into account operational needs of an employer;
5. Remote work – work that is performed outside of the workplace and which may be either full time or part time; and
6. Job sharing – work is divided between one or more employees on a part time basis.

Furthermore, the Executive Regulations provide that additional employment arrangements can be introduced based on labour market demands.

2. Work Permits

The Executive Regulations (Article 6) stipulates the types of work permits available and the corresponding processes for obtaining, renewing and cancelling the same are as set in Article 7 of the Executive Regulations:

1. Work permits for recruitment for employee's outside of the UAE;
2. Transfer work permit allowing a non-UAE national's employment to be transferred between establishments registered with the Ministry of Human Resources and Emiratisation ("**MOHRE**" / "**Ministry**");
3. Relative work permit allowing a person who is on the residence visa of a family member to work for an employer registered with the MOHRE;
4. A temporary work permit for where an employer is employed for a job whose performance or completion requires a specified period;
5. A task work / mission permit allowing for an employer to bring an employee from outside of the country in order to perform temporary work or a specific project for a definite term;
6. A part time work permit;
7. A juvenile work permit allowing for an employer to employ a juvenile between the age of 15 and 18;
8. A student training and employment permit allowing for an employer to train or employ a student over the age of 15;
9. GCC national work permit allowing employers to employ nationals of other GCC states;
10. Golden visa work permit allowing the employment of an employee in the UAE who holds a golden visa;
11. National trainee work permit; and
12. Self-employment permit allowing individuals to engage in freelance work (under self residence for foreign nationals).

Additional types of work permits may be introduced in accordance with the provisions of the New Law.

3. Equality and Non-Discrimination

The New Law introduces the prohibition of discrimination on the basis of: race, ethnicity, sex, religion, national origin, or on the grounds of disability (Article 4 of the New Law).

Women are entitled to identical wages for the same work (Article 4(4) of the New Law).

4. Employment Contracts

Article 10(1) of the Executive Regulations provides the minimum requirements necessary for the purpose of a valid employment contract.

Article 10(2) of the Executive Regulations specifically permits an employer (with the consent of an employee) to add additional provisions (over those stipulated under Article 10(1) of the Executive Regulations) provided that the same are not in contradiction with the provisions of the New Law and the Executive Regulations.

The Ministry shall prepare (pursuant to Article 10(4) of the Executive Regulations) contract forms for:

1. Full time employment;
2. Part time employment;
3. Flexible work employment;
4. Remote work employment; and
5. Job sharing employment.

The Ministry may as required introduce further standard form contracts. It will be interesting to see if free zones (e.g.: JAFZA, DAFZA, DMCC and DDA) which are subject to the New Law follow suite. At the date of this client alert not all free zones have introduced new standard form contracts in compliance with the New Law and Executive Regulations.

5. Salary

All employers registered with the Ministry are required to pay employees under the Wage Protection System (“WPS”) (Article 16(1)(b) Executive Regulations). All wages are to be paid in AED unless agreed otherwise by the contracting parties. How this will work in practice given WPS has previously provided for payment only AED remains to be seen.

Article 25 of the New Law sets out permitted deductions from an employee’s salary. Notably Article 25(1)(b) of the New Law puts a limit on the percentage of salary that can be deducted at 20%, it is unclear if this is a given month or during a year. Consideration will need to be given to circumstances where housing loans or the like are advanced and then repaid.

Article 26 of the New Law provides that a minimum wage may be set in the future.

6. Contract Term

One fundamental change under the New Law is the abolition of unlimited term contracts. The New Law introduces a maximum fixed term of 3 years (Article 8(3) of the New Law), albeit it is our understanding that employers which are Dubai onshore entities will continue to be granted only 2 year work permits and as such fixed term contracts in such instances will be granted on the basis of 2 year renewable terms.

Fixed term contracts may be extended for up to a 3 year period (noting comments above regarding visa terms) or shorter periods one or more times and a renewal does not necessarily have to involve express written notice and consent, instead it can be extended implicitly (Article 8(5) of the New Law).

7. Probationary Period

As with the Previous Law, probationary periods can run for a period not to exceed 6 months (Article 9(1) of the New Law)). An employer wishing to terminate during a probationary period must provide at least 14 days' notice to terminate. In the event that an employee wishes to terminate (Article 9(1) of the New Law during the probationary period, the employee must: provide at least 30 days' notice where they wish to take on employment with another employer in the UAE (Article 9(2) of the New Law); or provide at least 14 days' notice where the employee wishes to leave the UAE (Article 9(3) of the New Law).

8. Employer Obligations

An employer may not assign work to an employee that is "fundamentally different" to the work agreed in the employment contract (Article 12 of the New Law).

An employer is obliged amongst other things to: keep employee files in accordance with the provisions of Article 13(1) of the New Law; invest in the development of skills of employees (Article 13(5) of the New Law); bear the costs of private healthcare in accordance with corresponding legislation (Article 13(8) of the New Law); and provide its employees (upon the employee's request) at termination with a confirmatory notice setting out date of joining, date of expiry, total service, last wage, job title and the reason for termination, even if the contents of that letter reduces the ability of the exiting employee to gain employment (Article 13(11) of the New Law).

9. Employee Obligations

The employee is under various obligations pursuant to Article 16 of the New Law, these include but are not limited to obligations of: confidentiality (Article 16(4) of the New Law); developing functional and professional skills (Article 16(8) of the New Law); and honesty and professionalism in the performance of work (Article 16(2) of the New Law).

10. Working Hours / Overtime

Subject to exceptions under the Executive Regulations, the maximum working hours for an employee is 8 hours a day or 48 hours per week, with an emphasis on the word "or" (Article 17(10) of the New Law).

Article 15(1) of the Executive Regulations stipulates specific circumstances where time spent by an employee travelling to their workplace will count towards their working hours. As a general rule such travel time does not apply (Article 17(3) of the New Law).

Overtime payment mechanisms are set out under Article 19 of the New Law. A maximum of 2 hours overtime a day is permitted (Article 19(1) of the New Law). Overtime is paid at a 25% uplift of basic salary save where the hours of overtime take place between 10pm and 4am when overtime is paid at a 50% uplift of basic salary (Article 19(3) of the New Law).

If work is required on a rest day the overtime payment is paid at a 50% uplift of basic salary (Article 19(4) of the New Law).

Overtime entitlement does not extend to those categories of employees set out in Article 15(4) of the Executive Regulations. Furthermore such categories of worker are also exempt from the maximum work hours. Employees who are exempt include directors and board Chairman and persons holding supervisory positions, it remains to be seen how this will work in practice.

11. End of Service Gratuity

The rules regarding the payment of end of service gratuity under the New Law introduce two key changes: 1) the concept of deductions to gratuity entitlement where an employee terminates their employment (prior to the completion of 5 years' service) is removed; and 2) the law is now specific in terms of UAE nationals employed in the private sector having no rights to end of service gratuity. All other gratuity provisions remain as per the Previous Law i.e. gratuity is payable after 1 years' continuous service, calculated only against base salary, capped at 2 years' salary and calculated on the basis of 21 days base salary for the first 5 years of service and 30 days base salary for service over 5 years. Entitlement to gratuity for part years served after the conclusion of the first year of continuous service remain.

It is worth noting that the New Law does (under Article 51(8)) leaves the possibility that end of service may be replaced by an alternative pensions system likely to be similar to the DEWS system operational in the Dubai International Financial Centre.

Article 53 of the New Law provides that all employee entitlements are to be paid within 14 days from the date of contract expiration.

Article 29 of the Executive Regulations places controls on what deductions an employer can make against end of service gratuity. This does include the repayment of loans (Article 29(1)(a) of the Executive Regulations).

Article 30 of the Executive Regulations regulates how end of service will be paid to employees who are not full time employees.

12. Labour Claims

Article 55(1) of the New Law provides that where an employee has a claim against their employer and the claim does not exceed AED 100,000, then any court fees which would be normally payable by the employee are waived.

13. Holiday Entitlement

The New Law provides for a minimum holiday entitlement of 30 days (typically this is reflected in employment contracts as 25 working days) (Article 29(1) of the New Law). For new employees holiday entitlement accrues at 2 days per month for the first 6 months of service.

Part time workers are entitled to holiday pursuant to the requirements of Article 18 of the Executive Regulations.

Article 19 of the Executive Regulations provides that where an employer has allowed for the carry over of balance of unused holiday entitlement (Article 29(5) of the New Law). Article 19(1) of the Executive Regulations provides that an employee may carry forward no more than half of their annual leave into the following year.

Article 19(2) of the Executive Regulations provides that where an employee's service is terminated, a cash allowance for accrued but unused holiday at the date of termination is payable based on basic salary.

14. Maternity Leave

Article 30 of the New Law provides 60 days of maternity leave, 45 days at full pay and 15 days at half pay. Additional unpaid leave is available in certain medical circumstances.

For employees returning from their maternity leave, and for a period not exceeding 6 months from the date of delivery shall be entitled to 2 daily rest periods for breastfeeding not to exceed an hour each day of entitlement.

15. Sick Leave

Following the completion of a probation period, an employee is entitled (under Article 31 of the New Law) to sick leave of no more than 90 consecutive or intermittent days each year based on: a) 15 days full pay; b) 30 days with half pay; and c) the period thereafter unpaid.

An employer may terminate the service of an employee after sick leave has been exhausted (Article 31(5) of the New Law).

Article 20(1) of the Executive Regulations recognises that no sick leave will be paid where illness relates to abuse of drugs or alcohol or a violation of an employer's safety instructions.

16. Various Leaves

The New Law (Article 32 and Article 21 of the Executive Regulations) introduces a number of additional leave entitlements including parental leave, study leave, mourning leave, sabbatical leave for UAE nationals performing national or reserve service. Unpaid leave entitlement is covered under Article 33 of the New Law.

17. Wrongful Termination

The arbitrary dismissal provisions under the Previous Law have been abolished and replaced by Article 47 of the New Law, which provides that an employee's termination is unlawful if the termination relates to: a) filing a serious complaint with the Ministry; or b) filing a case against the employer which has proven to be correct.

Any successful wrongful termination claim compensation is capped at 3 months of salary-subject to the court's discretion.

18. Non-Competes

Article 10 of the New Law allows non-compete provisions to be applied to protect legitimate business interests. Such non-competes are not to exceed 2 years.

Article 12 of the Executive Regulations provides that in order for a non-competition clause to apply then the following must be specified: a) geographical scope; b) term not to exceed 2 years; and c) nature of work that is being prohibited.

Any non-compete provision will have no standing where the employer has terminated the employee's employment. Article 12(2) provides that the enforcement of any non-compete requires the employer to demonstrate damage arising from the breach.

Article 12(c) of the Executive Regulations provides that certain categories of employee may not be subject to non competes.

19. Suspension

An employer may suspend an employee for a period of 30 days for the purposes of conducting a disciplinary investigation (Article 40(1) of the New Law). During that suspension period an employer is entitled to suspend half of the suspended employee's salary. Insofar as the employee is not terminated following their suspension, the employee's suspended salary shall be repaid.

Further suspension rights exist where an employee has been accused of assault or criminal behaviour involving fraud or dishonesty.

20. Disciplinary Rules

Article 39 of the New Law together with Article 24 of the Executive Regulations regulate disciplinary rules and sanctions, which broadly speaking run from written notices, wage deductions and suspensions.

21. Termination of Employment

Article 42 of the New Law provides that a contract of employment can be terminated as follows: a) mutual agreement; b) expiry of a contract term unless renewed; c) death of the employee or permanent incapacity; d) final judgment involving a prison sentence of greater than 3 months; e) closure of the employer; f) insolvency of the employer; or g) failure of the employee to renew their work permit.

Under Article 43 of the New Law, either party is entitled to terminate the contract of employment for any legitimate reason, provided that notice is given. Minimum notice is 30 days and maximum notice is 90 days.

Article 44 of the New Law is in effect the new Article 120 from the Previous Law. Article 44 sets out circumstances in which termination without notice can occur.

Article 46 of the New Law provides that an employee's service cannot be terminated by an employer before exhausting all sick leave.

22. Compliance

Employers are required to ensure that unlimited term employment contracts are converted to fixed term arrangements in accordance with the New Law and Executive Regulations within 1 year of the adoption of the New Law, i.e., 2 February 2023.

The provisions of the New Law and Executive Regulations apply to all unlimited term contracts governed pursuant to the Previous Law.