

UAE: Employment Law

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Introduction

Employment law is governed in the United Arab Emirates (UAE) by Federal Law No. 8 of 1980 (“Labour Law”). In it an employee is defined under Article 1 as any individual “working for a remuneration of any kind in the service of an employer and under his management as well as every hired individual who works in the service of an employer and who is subject to the provisions of this law”.

Thus, if an employer is subject to UAE law, any individual working in that entity would also be governed by UAE law.

Employment contracts

Arabic

Article 2 of the Labour Law says that Arabic must be used in all records, employment contracts, files, statements and other documents, as well as in instructions and memos to employees. Foreign language texts may be used also but, in the event of inconsistency, the Arabic text will prevail.

Duration

Employment contracts can be limited or unlimited in duration according to Article 38 of the Labour Law. A fixed-term contract must specify an end date no more than four years after the date of execution. Of course, fixed-term contracts can be renewed and, in the event such a contract continues after its expiry without a written agreement, it will become an indefinite term contract (provided there is no explicit agreement to have it remain a fixed-term contract).

Wages

UAE Labour Law distinguishes between the “total” and the “basic” wage of an employee. Under Article 1, the basic wage does not include any allowances

while the total wage refers to an employee's whole remuneration package, and may include allowances for travel, accommodation, medical insurance and any other benefit the employer has stipulated.

This aspect of the Labour Law is also relevant to any termination gratuity because, under Article 134, it is only the basic wage which is taken into account when calculating a gratuity for end-of-service, not the total wage. Since allowances can be up to 40 percent of a total wage in some cases, the precise structure of a remuneration package is important for employers calculating termination costs.

Other relevant provisions

In general, what is included in the employment contract is at the employer's discretion. Employers frequently provide allowances in the form of housing, travel and, in many instances, schooling. Many employers also include medical and health insurance although most of the Emirates do not yet require it. In the Emirate of Abu Dhabi, a law requiring employers to provide health insurance to their staff was recently announced and the Emirate of Dubai is in the early stages of pushing through a mandatory health insurance scheme. Pensions are not yet required although they are referred to in the Labour Law.

Terminating employment

Employers need to be aware of a number of things when letting employees go. Six-month probationary periods are commonplace and allow some flexibility in determining if an employee is right for a company and a position. Under Article 37 of the Labour Law, during a probation period an employer may cancel the employment at any time without notice and without end-of-service benefits.

Notice

With an indefinite-term contract, the minimum statutory notice period is 30 days, as per Article 117, or whatever longer notice period has been agreed upon by the parties. In this instance, the parties are permitted to terminate the employment provided the notice period is observed. Under Article 118 of the Labour Law, the parties can extend the notice period or pay the employee in lieu of notice, but cannot cancel it or reduce its duration.

It should be noted however that termination in line with the applicable notice period does not preclude an employee from initiating an action for unfair dismissal (Article 122).

According to Article 115, an employer ending an employee's contract before the expiry date is in breach of the law (and must provide compensation)

unless the reason for the termination falls within Article 120. Article 120 allows employers to dismiss employees early and without notice if they:

- cause grave financial loss to the company;
- disclose company secrets; or
- are drunk or disorderly on the job.

Likewise, the employee will usually be in breach if he or she terminates a fixed-term contract early. Of course the parties can mutually agree to terminate an agreement provided the employee has given written consent.

Severance compensation

There are essentially three elements of severance pay under the Labour Law:

- an end-of-service gratuity;
- holiday pay;
- the costs of repatriation.

Under Article 132, an employee is entitled to an end-of-service gratuity only if he or she has completed at least one year of continuous employment. In that case, the employer must pay the equivalent of 21 days' wages for each of the first five years of employment, and 30 days' wages for each additional year, provided that the total amount is no more than two years' wages. Gratuities are calculated from the basic wage, excluding all allowances. Again, if the employee is dismissed under Article 120, or resigns to avoid such termination, he or she is not entitled to a pay-out.

Regarding payment in lieu of holiday, Article 79 of the Labour Law stipulates that once an employee is dismissed or has resigned, he or she shall be entitled to payment for any annual leave not taken. One scenario that has repeatedly arisen concerns leave that carries over from year to year. Article 78 of the Labour Law simply says that leave can be carried forward but does not provide any restrictions or substantive information. In some instances the employer's company policy for carrying over leave is used, or the detail can be included in an employee's contract.

The final element of severance, repatriation cost, is described in Article 131. It states that on termination of employment the employer must cover the cost of repatriation of the employee to the country from where he or she was recruited, or any other place agreed on by the two parties. If the employee ends the contract, the employer need not pay the statutory costs of repatriation provided the employee can afford to repatriate. Normally, and according to statute, the employer pays for the travel ticket. If more favourable terms are in the employment contract or within the employer's company policy, an employee may get additional repatriation coverage.

Aside from these three elements, extra compensation may be due for non-discretionary bonuses, stock options, or other items in the contract that would provide the employee with additional benefits. In terms of deductions, Article 135 allows an employer to deduct from the gratuity any monies due to it from the employee, such as loans or school fees paid after the termination date.

Non-competition

One growing issue concerns non-competition agreements in employment contracts. As more companies set up in the UAE, the need for non-competition provisions has escalated. Under Article 127 of the Labour Law, when the employee's position involves knowledge of the company's clients or confidential information, employers may stipulate that, upon termination, the employee must not become part of any competing project. Article 127 requires that the agreement shall, as far as time, place and the nature of work are concerned, be limited to what is necessary to protect the legal interests of the work. In practice, this provision is being tested case-by-case in the courts.

Non-competition agreements have been enforced in a number of instances. In one recent case an employee was forced by a court to pay his former employer 120,000 UAE dirhams after he was found working for a competitor within two years of his termination.

Employment of foreigners

The UAE Labour Law governs both the employment of nationals and non-nationals. Article 9 of the Labour Law states that work is a right of UAE nationals and non-nationals must follow the procedures set out in the Labour Law and by the ministry of labour and social affairs to work in the UAE. The primary requirement under Article 13 is that non-national must not be recruited for work in the UAE except after obtaining the approval of the Labour Department and after obtaining a work permit from the ministry of labour and social affairs.



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