

THE LITTLER MENDELSON GUIDE TO
INTERNATIONAL EMPLOYMENT
AND LABOR LAW
Fifth Edition

UNITED ARAB EMIRATES

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IMPORTANT NOTICE

This publication is not a do-it-yourself guide to resolving employment disputes or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although the major developments are generally covered, this publication is not all inclusive, and the current status of any decision or principle of law should be verified by counsel. To adhere to publication deadlines, developments and decisions subsequent to March 1, 2016 are generally not covered.

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SYNOPSIS

§ 1 I. SOURCES OF LAW

- § 1.1 A. What are the primary constitutional provisions, statutes and regulations related to employment?
- § 1.2 B. What international treaties apply to employment?
- § 1.3 C. What are the primary mechanisms for enforcement?
- § 1.4 D. What are the primary means for resolving disputes between employees and employers?
- § 1.5 E. What are the definitions of employee, employer, independent contractor, and contingent worker (i.e., a temporary or agency worker)?
- § 1.6 F. What are the most important characteristics of the legal culture relating to employment?

§ 2 II. HIRING

- § 2.1 A. Must a foreign employer set up a local entity to employ local workers, and if so, what are the requirements?
- § 2.2 B. What rules apply to the employment of foreign nationals? How much time should an employer allow to obtain the required work authorization documents?
 - § 2.2(a) *Employment Visa*
 - § 2.2(b) *Investor Visa*
 - § 2.2(c) *Property Ownership Visa*
- § 2.3 C. What rules apply to background checks?
- § 2.4 D. What rules apply to medical examinations or health-related tests?
- § 2.5 E. May an employer require drug and alcohol testing?
- § 2.6 F. Are there mandated preferences in hiring?
- § 2.7 G. Are there mandated sources for recruiting employees, such as local labor authorities, agencies, or to recruit from within an existing workforce?
- § 2.8 H. Are there requirements to advertise or post openings in particular places?
- § 2.9 I. Are there restrictions on filling openings with contingent workers?
- § 2.10 J. What are the consequences of misclassifying a worker as an independent contractor, contingent worker, or temporary worker?

§ 3 III. EMPLOYMENT CONTRACTS

- § 3.1 A. Are written employment contracts required for certain employees?
- § 3.2 B. Are there certain essential terms in employment contracts?
- § 3.3 C. In what language(s) must employment contracts be written?
- § 3.4 D. What rules exist relating to the duration of employment contracts?
- § 3.5 E. Are probationary periods allowed, and if so, what restrictions apply?
- § 3.6 F. Must employment contracts specify termination provisions, and if so, with what degree of specificity?
- § 3.7 G. Do employment contracts customarily contain covenants to safeguard the employer's intellectual property, covenants not to compete and/or agreements to not solicit the employer's customers or employees?
- § 3.8 H. Are the terms of employment contracts considered confidential?

§ 4 IV. DISCRIMINATION IN EMPLOYMENT

- § 4.1 A. What prohibitions against discrimination exist and how are they defined?
- § 4.2 B. What prohibitions exist against religious discrimination, and what accommodations of religious practices are required of the employer?
- § 4.3 C. What prohibitions exist against disability discrimination, and what accommodations of disabilities are required of the employer?
- § 4.4 D. What prohibitions are there against harassment?
- § 4.5 E. What exceptions are permitted to the prohibitions against discrimination (e.g., job requirements that mandate hiring candidates of a certain age or gender, or quotas to address past discrimination)?
- § 4.6 F. What are the potential remedies for prohibited discrimination and harassment?
- § 4.7 G. What prohibitions exist regarding retaliation/reprisal?
- § 4.8 H. May individual persons be liable for discrimination, harassment, or retaliation/reprisal?

§ 5 V. COMPENSATION

- § 5.1 A. What restrictions are there on hours that may be worked?
- § 5.2 B. What minimum wage requirements exist?
- § 5.3 C. What is the required schedule for paying wages, and in what form and currency must they be paid?

- § 5.4 D. What overtime pay requirements exist?
- § 5.5 E. What rules apply to the payment of commissions?
- § 5.6 F. What bonuses are mandated or customary?
- § 5.7 G. What special rules exist for stock options or stock grants?
- § 6 VI. TIME OFF FROM WORK
 - § 6.1 A. What public, statutory or national holidays are required, and what are the requirements if employees work on such holidays?
 - § 6.2 B. What are the requirements for short-term sick pay, and who pays it?
 - § 6.3 C. What are the requirements for paid vacation or annual leave?
 - § 6.4 D. May the employer mandate when vacation is taken under any circumstances (e.g., year-end shutdown, furlough, prohibitions on vacation use in busy periods)?
 - § 6.5 E. What requirements exist for paid or unpaid maternity and paternity leave?
 - § 6.6 F. What requirements are there for new mothers (e.g., part-time work, breaks for breast feeding, day care)?
 - § 6.7 G. What requirements exist for paid or unpaid medical leaves of absence, and how do these differ from short-term sick pay?
 - § 6.8 H. What are the employer's duties if an employee requests a flexible working schedule?
 - § 6.9 I. What other paid or unpaid leaves of absence must be provided by employers?
- § 7 VII. BENEFITS
 - § 7.1 A. What benefits must employers furnish to employees?
 - § 7.2 B. What health benefits must be provided to employees (and their families), and what is the employer's role in the provision of these benefits?
 - § 7.3 C. What pension contributions must be made and to whom?
 - § 7.4 D. What percentage of overall compensation do benefits usually represent?
 - § 7.5 E. What requirements exist for mandatory retirement?
- § 8 VIII. TAXATION
 - § 8.1 A. What taxes must be paid by the employer and employee, at what rates, and which taxes must the employer withhold from wages?
 - § 8.2 B. Are there specialized tax or pension requirements for expatriates?
- § 9 IX. INTELLECTUAL PROPERTY
 - § 9.1 A. Who owns intellectual property created during the employment relationship?
 - § 9.2 B. What are the primary means that employers use to prevent theft of trade secrets?
 - § 9.3 C. After employment ends, what restrictions exist on the employer's ability to impose covenants not to compete or covenants not to solicit customers or employees?
 - § 9.4 D. What duties do employees have to their present and former employers with respect to intellectual property?
- § 10 X. CODES OF CONDUCT
 - § 10.1 A. What requirements exist for a code of conduct governing employees?
 - § 10.2 B. What whistleblowing protections exist?
 - § 10.3 C. How are codes of conduct (including whistleblowing protections) enforced?
- § 11 XI. EMPLOYMENT INFORMATION & PRIVACY
 - § 11.1 A. What rules protect the privacy of data about employees?
 - § 11.2 B. What restrictions are there on electronic surveillance of employees and on the employer's ability to monitor use of computers, personal digital assistants (PDAs), telephones, or other technology?
 - § 11.3 C. What restrictions apply to the export of data to related companies in the United States?
 - § 11.4 D. What information must the employer provide to employees before processing (e.g., collecting, storing, using, disclosing, etc.) their personal data?
 - § 11.5 E. What access do employees have to records kept about them by the employer?
 - § 11.6 F. What record-retention duties does the employer have with respect to information about employees?
- § 12 XII. REPRESENTATION OF WORKERS
 - § 12.1 A. Do workers have a freedom of association and representation?
 - § 12.2 B. How may workers obtain trade union representation?
 - § 12.3 C. Are there workers who, by law, must be represented by one or more trade unions?
 - § 12.4 D. What is the role of unions or works councils on a day-to-day basis?
 - § 12.5 E. What is the scope of the employer's duty to bargain?

UNITED ARAB EMIRATES

- § 12.6 F. Must the employer pay for time spent on union business or allow leaves for union business?
- § 12.7 G. What restrictions exist on picketing, strikes, lockouts, and secondary action?
- § 12.8 H. How are disputes with union-represented workers or with unions resolved?
- § 13 XIII. WORKPLACE SAFETY
 - § 13.1 A. What general health and safety rules apply in the workplace?
 - § 13.2 B. What kinds of specialized workplace safety rules apply in certain industries?
 - § 13.3 C. What compensation is provided for workplace injuries and illnesses?
 - § 13.4 D. What reassignments or “light duty” is required for injured or ill workers?
- § 14 XIV. TERMINATION OF EMPLOYMENT
 - § 14.1 A. What grounds for dismissal are permitted?
 - § 14.1(a) *UAE Nationals*
 - § 14.2 B. Under what circumstances may the employee claim that the employer has breached its contract with the employee or that the employer has “constructively dismissed” the employee?
 - § 14.3 C. What notice requirements are there for dismissal and may the employer provide pay in lieu of notice?
 - § 14.4 D. How is termination pay calculated, including any commissions, and when must it be paid?
 - § 14.5 E. Are there rights to severance pay and how is severance calculated?
 - § 14.6 F. What reasons for dismissal/termination of contract are prohibited, and what remedies does the former employee have?
 - § 14.7 G. How may former employees bring claims on behalf of other workers (i.e., a collective or class action)?
 - § 14.8 H. May employers compel employees to arbitrate claims of wrongful dismissal?
 - § 14.9 I. What restrictions exist on obtaining a release of claims from a former employee?
 - § 14.10 J. What procedures and terms are required to have an enforceable separation agreement with a former employee?
 - § 14.11 K. What are the best practices employers should observe regarding dismissals of employees?
- § 15 XV. COLLECTIVE DISMISSALS (LAYOFFS), BUSINESS CESSATION & SALE OF A BUSINESS
 - § 15.1 A. What rules apply to collective dismissals?
 - § 15.2 B. Are there special rules that apply when an employer ceases operations?
 - § 15.3 C. Are certain employees protected from collective dismissal?
 - § 15.4 D. How long does the collective dismissal process usually take?
 - § 15.5 E. What rules govern the transfer of undertakings (including employment and labor agreements) when a business is sold?
- § 16 XVI. KEY TRAPS TO AVOID
 - § 16.1 A. What are the five most common mistakes foreign employers make and what can be done to avoid them?

UNITED ARAB EMIRATES

§ 1 I. SOURCES OF LAW

§ 1.1 A. What are the primary constitutional provisions, statutes and regulations related to employment?

Employment relationships in the United Arab Emirates (UAE) are governed by UAE Federal Law No. 8 of 1980 Organizing Labor Relations, as amended (the “Labor Law”), together with regulations promulgated pursuant to the Labor Law. The Labor Law and the regulations together set forth rules related to employment contracts, restrictions on the employment of juveniles and women, maintenance of records and files, wages, working hours, leave, safety and protection of employees, medical and social care, codes of discipline, termination of employment contracts, end of service benefits, compensation for occupational diseases, labor inspections, penalties, and employment related accidents, injuries and death.

The Labor Law applies to all employees working in the UAE, whether national or non-national, with the exception of the following categories:

- 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;
- members of the armed forces, police and security units;
- domestic servants; and
- 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 UAE are often subject to labor regulations that are specific to the relevant Free Zone. This chapter generally refrains from discussing the employment regulations of the Free Zones.

The provisions of the Labor Law are matters of public order; any provision in an employment contract that 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 B. What international treaties apply to employment?

The UAE has joined the International Labour Organization (ILO). The international treaties relating to labor relations to which the UAE is a party are as follows:

- The Forced Labor Convention, 1930
- Hours of Work (Industry) Convention, 1919

- ILO Convention No. 81: Labor Inspection, 1947
- ILO Convention No. 89: Night Work for Women, 1948
- ILO Convention No. 100: Equal Remuneration, 1951
- ILO Convention No. 105: Abolition of Forced Labor, 1957
- ILO Convention No. 111: Discrimination in Respect of Employment and Occupation, 1958
- ILO Convention No. 138: Minimum Age, 1973
- ILO Convention No. 182: Worst Forms of Child Labor, 1999

In addition, the UAE has joined 19 Arab League conventions on labor.

§ 1.3 C. What are the primary mechanisms for enforcement?

Enforcement of the Labor Law is the task of the UAE Federal Ministry of Human Resources and Emiratization, previously known as the Ministry of Labor (the “Ministry”), presided over by a Minister who is a member of the UAE Federal Cabinet. Every non-national of the UAE who is employed in the UAE must hold a labor permit issued by the Ministry. The employer must apply for the labor permit, and in support of the application, must submit an employment contract that conforms to the standard form of contract promulgated by the Ministry. A labor grievance would be handled in the first instance by the Ministry, and would proceed to court only if the Ministry were unable to bring about a resolution.

§ 1.4 D. What are the primary means for resolving disputes between employees and employers?

Employment-related disputes must be presented in the first instance to the Ministry. The Ministry is required to summon the parties and conduct a hearing to resolve the dispute amicably, failing which the Ministry is required to submit the dispute to the relevant court within two weeks from the date on which the complaint was filed. The court is then required to schedule a hearing with the parties within three days from the date on which the request was received so it can consider the claim.¹

The prescription period for submitting a dispute to court is one year from the date on which the right arose.²

Somewhat different procedures apply to the resolution of a *collective labor dispute*, defined as any dispute that concerns the joint interests of all employees or of certain employees in a given vocational sector. In the event of a collective labor dispute that cannot be settled amicably, the employees are required to submit their complaint in writing to the employer, with a copy to the Ministry. The employer is required to respond to the complaint within seven working days from the date on which the complaint was received, and send a copy of its response to the Ministry. In the event that the dispute continues to remain unresolved, the Ministry is required to mediate the dispute.³

¹ Labor Law, art. 6.

² Labor Law, art. 6.

³ Labor Law, ch. IX.

Where such mediation does not lead to the settlement of the dispute within ten days, the dispute is brought before a conciliation board. The decision of the board is binding if the parties have so provided in writing; otherwise, the decision may be appealed to the Supreme Arbitration Board of the Ministry within 30 days from the date on which the decision was rendered.⁴

Cases brought by employees or by their beneficiaries under the Labor Law are exempt from court fees at all stages of litigation and final execution, and they are heard on a priority basis. A labor claimant is not required to appoint counsel, and may instead appear in court *pro se*. In the event that the court does not accept the claim, or dismisses the action of the employee, the court may order the employee to pay the court costs or a part thereof.⁵

§ 1.5 E. What are the definitions of employee, employer, independent contractor, and contingent worker (i.e., a temporary or agency worker)?

Pursuant to the Labor Law, an *employee* is any person who receives remuneration of any kind for legitimate work performed in the service of an employer and under its supervision or control. The definition of employee also includes officers and staff who are in the employer's service and subject to the provisions of the Labor Law.⁶

An *independent contractor* is an individual or corporate entity that provides services to an employer. This relationship lacks the element of supervision or control that characterizes the employment relationship.

An *employer* is defined as a person or corporate entity employing one or more employees in return for salary of any kind. *Salary* is defined as including all payments made to an employee in consideration of work performed under the contract of employment, whether in cash or in kind and whether calculated on a yearly, monthly, weekly, daily or hourly basis or on a piece work, production or commission basis. Salary includes the cost of living allowance, as well as any payment provided by the employer to the employee as a reward for the employee's honesty or efficiency, if such grants are provided for in the contract of employment, the employer's internal regulations, or by custom or common practice, and provided that the employees regard such grants as part of their salary and not as discretionary payments.⁷

There is no specific definition for a contingent worker or a temporary worker in the Labor Law. However, *temporary work* is defined in the Labor Law to be any work whose nature requires that it be completed within a specified period of time.

§ 1.6 F. What are the most important characteristics of the legal culture relating to employment?

The most important aspect of the legal culture relating to employment is paternalism. Labor unions, strikes and pickets are not permitted. Instead, the government, acting through the Ministry, acts as the guardian of the interests of employees. The Ministry tends to interpret the Labor Law and employment contracts in a manner designed to protect the interests of employees, and often expressly proceeds from the premise that the employee is the weaker party. It can be very difficult to deprive an employee of the statutory benefits that the Labor Law provides, even

⁴ Labor Law, ch. IX.

⁵ Labor Law, art. 5.

⁶ Labor Law, art. 1.

⁷ Labor Law, art. 1.

in exchange for more generous contractual benefits.

At the same time, a large segment of the UAE work force originates from neighboring countries where good jobs are scarce. They can be extremely reluctant to jeopardize their employment in the UAE, and are therefore easily exploited by unscrupulous employers. In response, the Ministry has begun taking measures to extend further protections to employees, and there has been discussion of allowing collective bargaining.

§ 2 II. HIRING

§ 2.1 A. Must a foreign employer set up a local entity to employ local workers, and if so, what are the requirements?

A foreign employer must establish a branch office or another form of formal corporate presence in the UAE before it can hire any workers. It must then, like any other employer, register with the Ministry before it can employ personnel, whether local or foreign. This registration process requires that certain documentation be submitted to the Ministry, mandates the payment of the applicable registration fees, and may involve an inspection of the employer's place of work.⁸ In general, the registration process should take about ten days to complete, once all appropriate documentation has been received by the Ministry.

§ 2.2 B. What rules apply to the employment of foreign nationals? How much time should an employer allow to obtain the required work authorization documents?

§ 2.2(a) *Employment Visa*

An *employment visa* consists of two components: a labor permit and a residence visa. It requires employment and sponsorship by a UAE-based employer including signing and filing an employment contract with the Ministry. The employee may sponsor his or her spouse and children (sons under 18, daughters until marriage) enabling them to obtain residence visas (see further details in § 5.2). Note that the residence visa does not permit the spouse and/or children to work without a separate employment sponsorship.

With regard to this category of work authorization, the first step in the entry process for an expatriate professional employee is to enter the UAE on an employment visa. In order to obtain an employment visa from the Ministry, the following documents are required:

- a copy of the employee's passport;
- two passport photographs of the employee;
- copies of the fully authenticated diplomas and transcripts evidencing the employee's educational qualifications;⁹
- salary details of the employee;

⁸ Labor Law, art. 13.

⁹ The diplomas and transcripts of the employee will need to be notarized and fully authenticated up to the level of the UAE Embassy in the expatriate's home country and subsequently by the UAE Ministry of Foreign Affairs.

- the offer letter signed by the employee;
- a copy of the company's UAE License;
- a fully authenticated copy of the Power of Attorney in favor of the Authorized Signatory;
- a copy of the Authorized Signatory's Specimen Signature;
- an original Authorized Signatory's e-card;
- a copy of the Establishment Card from the Immigration Department; and
- a copy of the Labor Computer Card.

The documents referred to above must be submitted to one of the "typing centers" approved by the Ministry together with a completed application form.

After an expatriate professional employee has obtained an employment visa from the Ministry, a residence visa application has to be submitted to the Immigration Department within 60 days of the expatriate employee's arrival in the UAE (i.e., the employee's arrival on the employment visa described above). The documents required for applying for a residence visa are as follows:

- the documents referred to above;
- the original employment visa that was stamped by the UAE officials upon entry;
- the employment contract;
- a copy of the Emirates ID card; and
- a copy of the employee's medical certificate.¹⁰

In addition, after an expatriate professional employee has obtained an employment visa from the Ministry, the employer is required to complete the procedures for issuance of a labor permit within 60 days of an employee's arrival in the UAE. The documents required to process a labor permit are as follows:

- the original passport with the residence visa stamped in one of the pages.

Pursuant to Ministerial Resolution No. 764 of 2015, an employer must adhere to a standard form of employment contract mandated by the Ministry. The employer is also required, as part of the recruitment process, to obtain the signature of the employee on an offer letter that conforms with the standard form of employment contract. Any departures from the standard form must be specifically approved by the Ministry to be enforceable.

§ 2.2(b) *Investor Visa*

A foreign investor who owns shares in a company incorporated in the UAE is eligible to apply for

¹⁰ To obtain a medical certificate, the employee must go to a hospital or medical clinic and have a blood test and medical examination at the expense of the employer. The results are usually available within a few days.

a residence visa. The investor may also sponsor his or her spouse and children enabling them to obtain residence visas.

§ 2.2(c) *Property Ownership Visa*

Dubai previously had a property ownership visa that allowed non-UAE nationals to acquire a three-year residence visa by purchasing real property in Dubai. This visa has currently become a property ownership entry permit that allows property owners to enter Dubai for six months, subject to renewal. This permit extends to the property owner's spouse and children.

§ 2.3 C. What rules apply to background checks?

The Labor Law does not provide for rules regarding background checks of employees. The UAE authorities conduct background checks of foreign nationals applying for residence visas or labor permits.

§ 2.4 D. What rules apply to medical examinations or health-related tests?

Prior to the issuance of a residence visa or labor permit, the foreign national must undergo certain medical tests at a medical facility designated by the Ministry. If the medical tests produce unfavorable results, the employment visa or labor permit will not be issued by the Ministry, and the foreign national will be required to leave the UAE. The tests are specifically directed at HIV, hepatitis B and C, tuberculosis and leprosy. No similar tests are required for UAE national employees.

§ 2.5 E. May an employer require drug and alcohol testing?

While mandatory medical testing is required for the employment of foreign nationals, there is no specific test required for alcohol usage. Drug use and possession are crimes in the UAE, and the possession or consumption of alcoholic beverages without a liquor permit is also an offense.

§ 2.6 F. Are there mandated preferences in hiring?

According to the Labor Law, a priority in hiring is provided to UAE nationals, then to nationals of other Arab League member states, and finally to persons of other nationalities. In practice, however, preference in hiring is accorded only to UAE nationals. Ministerial Resolution No. 635 of 2008 provides that an employer that has 100 employees or more must have a Public Relations Officer (responsible for representing the employer in interactions with government regulators) who is a national of the UAE or of another Gulf Cooperation GCC) country.¹¹ Foreign nationals may work in the UAE only with the approval of the Ministry, documented in the form of a labor permit.

§ 2.7 G. Are there mandated sources for recruiting employees, such as local labor authorities, agencies, or to recruit from within an existing workforce?

No, other than the rules relating to the mandated preferences in hiring, there are no mandated sources for recruiting employees.

Furthermore, no person may act as a contractor to supply foreign labor unless licensed to do so. When it is necessary, such a license shall be issued to nationals only. In such cases, the license is to be personally issued by the Minister. The license shall be valid for one renewable year and the

¹¹ The GCC countries are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE.

license shall be under the Ministry's supervision and control. No such license shall be issued where the Ministry or an agency approved by it has a recruitment office in the area capable of acting as an intermediary for the supply of labor.¹²

§ 2.8 H. Are there requirements to advertise or post openings in particular places?

There are no requirements to advertise or post openings in particular places.

§ 2.9 I. Are there restrictions on filling openings with contingent workers?

No. Other than the rules relating to the mandated preferences in hiring (see § 2.6 above), there are no restrictions on filling openings with contingent workers.

§ 2.10 J. What are the consequences of misclassifying a worker as an independent contractor, contingent worker, or temporary worker?

Again, there are no specific provisions in the Labor Law that contemplate either an independent contractor, contingent worker, or temporary worker. Irrespective of how long a foreign national works in the UAE, such an employee would still be required to obtain an employment visa (a labor permit and a residence visa).

§ 3 III. EMPLOYMENT CONTRACTS

§ 3.1 A. Are written employment contracts required for certain employees?

According to the Labor Law, employment contracts and all amendments made thereto are required to be in writing¹³ and approved by, and registered with, the Ministry. Notwithstanding the foregoing, the terms and conditions of employment may be proved 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 UAE nationals need not be in writing.

§ 3.2 B. Are there certain essential terms in employment contracts?

An employment contract must include the following information:

1. amount of salary;
2. date on which the employment contract was signed;
3. employment commencement date;
4. duration of the employment contract (if it is a specified term contract); and
5. nature and location of the workplace.¹⁴

¹² Labor Law, art. 17.

¹³ Labor Law, art. 35.

¹⁴ Labor Law, art. 36.

§ 3.3 C. In what language(s) must employment contracts be written?

The Labor Law requires employment contracts to be in the Arabic language, and in the event that a second language is included, the Arabic version remains the authoritative version.¹⁵

§ 3.4 D. What rules exist relating to the duration of employment contracts?

Employment contracts may either be for a specified period of employment or for an unspecified period of time.

A specified-term employment contract may not exceed four years in duration, but may be renewed by the parties for similar or shorter time periods. Nevertheless, the contract forms that the Ministry introduced in late 2015 allow specified-term contracts to have terms of no more than two years.¹⁶ Where the employment contract is renewed, the renewed periods are deemed to be extensions to the original period.¹⁷

An employment contract for an unspecified duration contains a commencement date but not a date of termination. The following types of employment arrangements are also deemed to constitute employment contracts for an unspecified duration, which are considered effective as of the date of their commencement:

1. where the employment is not evidenced by a written contract;
2. where there is continued performance of an employment contract after its stipulated termination date; and
3. where no termination date has been stipulated in the employment agreement and, due to the nature of the work to be performed, the services are likely to continue.¹⁸

Where the parties continue to perform under the employment contract after its termination date or following completion of the services agreed upon, in the absence of a written agreement, the original contract is deemed to have been extended for an unspecified term upon the same terms and conditions.¹⁹

§ 3.5 E. Are probationary periods allowed, and if so, what restrictions apply?

Employees in the UAE are generally hired on an initial probationary basis, although this is not a legal condition for employment. The probationary period of an employee cannot exceed a period of six months.²⁰

During or upon completion of the probationary period, an employee may be dismissed by the employer for any reason, without notice or compensation.

In the event that the employee remains in employment following completion of the probationary

¹⁵ Labor Law, art. 2.

¹⁶ See § 2.2(a) above.

¹⁷ Labor Law, art. 38.

¹⁸ Labor Law, art. 39.

¹⁹ Labor Law, art. 40.

²⁰ Labor Law, art. 37.

period, such period is counted in the employee's overall period of service.

§ 3.6 F. Must employment contracts specify termination provisions, and if so, with what degree of specificity?

No, it is not required that employment contracts specify termination provisions. An employment contract shall be terminated in any of the following cases:²¹

1. If the two parties agree to cancel the contract, provided that the employee consents to this in writing.
2. In a specific-term contract if the specified term comes to an end, unless the contract has been implicitly or explicitly renewed according to the provisions of the Labor Law.
3. If one of the two parties to an unspecified-term labor contract wishes to terminate the contract, provided that the party cancelling the contract observes the provisions of the Labor Law regarding notices and acceptable reasons to cancel the contract without prejudice.

There are, however, various instances where the 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.²²

In addition, an employer is prohibited from terminating an unspecified-term employment contract for arbitrary reasons without providing compensation to the employee.²³

The Labor Law provides that a foreign national who leaves his or her employment without valid reason may not undertake another employment in the UAE for one year without the prior consent of the Ministry and his or her original employer;²⁴ however, this provision is not always strictly applied.

§ 3.7 G. Do employment contracts customarily contain covenants to safeguard the employer's intellectual property, covenants not to compete and/or agreements to not solicit the employer's customers or employees?

These types of provisions are becoming more frequent in employment contracts in the UAE.

In the event that the nature of an employee's labor permits the employee to gain knowledge of the employer's clients or the secrets of its business, the employment contract may contain a noncompetition 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).

²¹ Labor Law, art. 113.

²² Labor Law, art. 124.

²³ Labor Law, art. 123.

²⁴ Labor Law, art. 128.

In order for a noncompetition 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 noncompetition clause must be limited in time, place and nature and only to the extent necessary to safeguard the employer's business.²⁵ It is the general view that such restrictions on subsequent employment should remain in effect for, at most, one year.

§ 3.8 H. Are the terms of employment contracts considered confidential?

Not applicable.

§ 4 IV. DISCRIMINATION IN EMPLOYMENT

§ 4.1 A. What prohibitions against discrimination exist and how are they defined?

The Labor Law does not contain provisions regarding workplace discrimination.

However, Federal Decree-Law No. 2 of 2015 On Combating Discrimination and Hatred contains general prohibitions on discrimination, which are potentially applicable to hiring practices and to conduct in the workplace. Article 6 of Decree-Law No. 2 of 2015 makes it a crime to commit any act of discrimination of any form by any means of expression. *Discrimination* is defined as any distinction, exclusion, restriction or preference among individuals or groups based on the ground of religion, creed, doctrine, sect, caste, race, color or ethnic origin.

§ 4.2 B. What prohibitions exist against religious discrimination, and what accommodations of religious practices are required of the employer?

The Labor Law does not contain provisions regarding religious discrimination. However, workplace discrimination on the basis of religion, creed, doctrine or sect could offend the prohibitions established by Federal Decree-Law No. 2 of 2015, discussed above.

Muslim employees are entitled to a Hajj leave without pay not exceeding 30 days once during their service, and this leave is not deductible from other leave entitlements.²⁶ During Ramadan, the ordinary working hours for all employees, irrespective of religious practices, shall be reduced by two hours per day.²⁷

§ 4.3 C. What prohibitions exist against disability discrimination, and what accommodations of disabilities are required of the employer?

The Labor Law does not contain provisions regarding the accommodation of disabilities by employers.

Where an employee has become disabled during his or her period of employment, and if the employee's disability was partial and he or she was able to perform other work that suits the employee's health, the employer may transfer the employee at the employee's own request to

²⁵ Labor Law, art. 127. Moreover, Ministerial Resolution No. 297 of 2016 authorizes the Ministry to deny or revoke a labor permit application for an individual who is subject to a covenant not to compete that has been upheld by a U.A.E. court.

²⁶ Labor Law, art. 87.

²⁷ Labor Law, art. 65.

another job and give the employee the same wage paid for a similar job.²⁸

§ 4.4 D. What prohibitions are there against harassment?

The Labor Law does not contain provisions regarding workplace harassment. Depending on the conduct at issue, remedies might exist under applicable civil and criminal statutes. For example, the use of obscene language or obscene gestures can constitute a criminal offense, subject to fines and imprisonment.

§ 4.5 E. What exceptions are permitted to the prohibitions against discrimination (e.g., job requirements that mandate hiring candidates of a certain age or gender, or quotas to address past discrimination)?

Not applicable.

§ 4.6 F. What are the potential remedies for prohibited discrimination and harassment?

Not applicable under the Labor Law. Remedies might be available under applicable civil and criminal statutes. For example, as noted above in § 4.4, some forms of harassment can constitute a criminal offense.

§ 4.7 G. What prohibitions exist regarding retaliation/reprisal?

If the employer terminates an employee's services for an improper reason, and particularly if done in retaliation for the filing of a labor grievance by the employee, then the employer could be liable for damages for wrongful termination. Such damages could equal up to three months of the employee's salary.²⁹

§ 4.8 H. May individual persons be liable for discrimination, harassment, or retaliation/reprisal?

Not under the Labor Law. However, remedies might be available under applicable civil and criminal statutes. For example, as noted above in § 4.4, some forms of harassment can constitute a criminal offense. An act of discrimination under Federal Decree-Law No. 2 of 2015 may be punished by imprisonment up to five years and/or a fine of not less than AED 500,000 and not more than AED 1 million.

It should be noted that an employer cannot dismiss an employee arbitrarily. However, there are no provisions that address the making of hiring decisions on an arbitrary basis. More generally, an employee is protected by the Labor Law only after the employment relationship is created, but not before.

§ 5 V. COMPENSATION

§ 5.1 A. What restrictions are there on hours that may be worked?

The maximum prescribed working hours for adult employees is eight hours per day or 48 hours per week.³⁰ In respect of commercial establishments, hotels, cafes, guard duties and other

²⁸ Labor Law, art. 114.

²⁹ Labor Law, arts. 122–123.

³⁰ Labor Law, art. 65.

operations included in an order of the Minister, the prescribed working hours are nine per day.³¹ In the cases of difficult or unhealthy work environments, the Minister may, by order, reduce the daily working hours. Ministerial Resolution No. 335 of 2008 sets forth a general requirement that employees who work out of doors under the sun must be permitted to rest in the shade between 12:30 P.M. and 3:30 P.M.

During Ramadan, prescribed working hours are reduced by two hours per day.³²

The daily work hours must be organized in such a manner that no employee is required to work for more than five consecutive hours without a break, which, in the aggregate, may not be less than one hour. Breaks are not counted as work hours.³³

§ 5.2 B. What minimum wage requirements exist?

The Labor Law does not prescribe a minimum wage.

Note, however, that employees with a monthly salary of less than UAE Dirham (AED) 4,000 (approx. USD 1,090) are not permitted to sponsor UAE residence visas for their spouses and children. (The figure might be higher for some nationalities.) To sponsor parents, the employee must have a monthly salary of AED 20,000 (approx. USD 5,500).

§ 5.3 C. What is the required schedule for paying wages, and in what form and currency must they be paid?

An employee's salary must be paid on a working day, at the place of work and in the currency of the UAE Dirham. Employees must be paid at least once a month for those engaged on a yearly or monthly basis and at least once every two weeks for those engaged on a different basis.³⁴

A Wages Protection System (WPS) was introduced in 2009, applicable to all employers registered with the Ministry. Ministerial Resolution No. 788 of 2009 on Protection of Wages ("Resolution No. 788") specifically provides that all employers registered with the Ministry must pay their workers' wages at least once a month, or on the dates specified in the work contract if the wages are to be paid more frequently than monthly. It further provides that the payment of wages should comply with the procedures and dates specified in Resolution No. 788, and that the employers should, when requested, present all supporting documents that wages have been paid. Government-related entities and companies registered with free zones are among those exempt from the Resolution No. 788, as they are not registered with the Ministry. The WPS involves the transfer of salaries through a few selected financial institutions, which are authorized and regulated by the government.

Employers with 100 or more employees were given three months to comply fully with this system, with the deadline set at the end of November 2009; employers with 15 to 99 employees were given six months to comply, with the deadline set at the end of February 2010; and employers with 15 or fewer employees were required to comply by May 31, 2010.³⁵

³¹ Labor Law, art. 65.

³² Labor Law, art. 65.

³³ Labor Law, art. 66.

³⁴ Labor Law, arts. 55–56.

³⁵ Resolution No. 788, art. 3. Ministerial Resolution No. 739 of 2016 enhances the penalties on employers that were introduced by Resolution No. 788.

Resolution No. 788 directs the Ministry to stop issuing new labor permits to any employer that violates the provisions of Resolution No. 788 and to refer those responsible to court. No labor permit shall be issued to such employer or any of its subsidiaries or affiliates until completion of the judicial proceedings or the employer's rectification of the violation, whichever comes first.

§ 5.4 D. What overtime pay requirements exist?

Pursuant to the Labor Law, employees must be compensated for overtime work performed, with the exception of the following categories:

1. persons holding responsible managerial or supervisory positions, if such positions confer authority over the employees; and
2. employees making up crews of seagoing ships and employees employed at sea benefiting from special conditions as a result of the nature of their work, except for dock workers engaged in loading, unloading and related operations.³⁶

All periods of time worked in excess of the prescribed number of working hours is considered as overtime and entitles the employees to receive salary equal to that corresponding to their normal working hours plus an additional amount equal to at least 25% thereof.³⁷

Should overtime be worked between the hours of 9:00 P.M. and 4:00 A.M., the employee is entitled to receive, in addition to the employee's standard salary for his or her normal working hours, an amount equal to at least 50% thereof.³⁸

The maximum number of overtime hours must not exceed two per day, unless the nature of the work required is necessary to prevent the occurrence of a substantial loss or serious accident or is necessary to mitigate any negative consequences thereof.³⁹

Friday is the prescribed day of rest for all employees except those who are paid on a daily basis. Where an employee is required to work on a Friday, the employee must be given another day off or the employee is to be compensated his or her standard salary for his or her normal hours of work plus an additional amount equal to at least 50% thereof.⁴⁰ No employees other than employees paid on a daily basis may be required to work on more than two successive Fridays.⁴¹

§ 5.5 E. What rules apply to the payment of commissions?

The Labor Law does not contain provisions regarding the payment of commissions.

§ 5.6 F. What bonuses are mandated or customary?

The Labor Law does not address the issue of mandatory bonuses. Customary bonuses in the UAE vary with respect to the nature of the employment and vary from employer to employer, and may consist of housing, transportation and traveling allowances, representation allowances, cashier's allowances, children's education allowances and allowances for recreational and social facilities.

³⁶ Labor Law, art. 72.

³⁷ Labor Law, art. 67.

³⁸ Labor Law, art. 68.

³⁹ Labor Law, art. 69.

⁴⁰ Labor Law, art. 70.

⁴¹ Labor Law, art. 71.

§ 5.7 G. What special rules exist for stock options or stock grants?

The Labor Law does not contain provisions regarding stock options or stock grants.

§ 6 VI. TIME OFF FROM WORK

§ 6.1 A. What public, statutory or national holidays are required, and what are the requirements if employees work on such holidays?

The Labor Law provides for the following paid statutory holidays:⁴²

Holiday	Date
Hijra New Year's Day	1 day
Gregorian New Year's Day	1 day
Eid Al-Fitr	2 days
Eid Al Adha	3 days
Birthday of the Prophet Muhammad	1 day
Al-Isra wal-Miraj	1 day
UAE National Day ⁴¹	1 day

In the event that an employee is required to work during a statutory holiday or a Friday (and is entitled to receive full or partial salary), the employer must provide the employee with a compensatory leave equal to such days worked, as well as a bonus equal to 50% of the employee's salary for such days, or if the employer does not provide the employee with days of leave, the employer must pay the employee a bonus equal to 150% of his or her base salary for each of the days so worked.⁴³

§ 6.2 B. What are the requirements for short-term sick pay, and who pays it?

An employee who has completed at least three months following the probation period in the continuous service of the employer is entitled to sick leave not exceeding 90 days per year, which may be taken consecutively or otherwise.⁴⁴

An employee's sick leave is calculated as follows:

- the first 15 days with full salary;
- the following 30 days with half-day salary; and
- all subsequent days without salary.⁴⁵

An employer is not required to remunerate an employee on sick leave if such leave is a direct result of the employee's misconduct, including the consumption of alcohol or narcotic drugs.⁴⁶

⁴² Labor Law, art. 74.

⁴³ Labor Law, art. 81.

⁴⁴ Labor Law, art. 83(2).

⁴⁵ Labor Law, art. 83(2).

⁴⁶ Labor Law, art. 84.

§ 6.3 C. What are the requirements for paid vacation or annual leave?

During every year of employment, employees are entitled to a period of annual leave of not less than:

- two days per month, if the employee's period of employment is more than six months but less than one year; or
- 30 days per year, where the employee's period of employment is more than one year.⁴⁷

The employer may fix the dates for the employee's annual leave, and such annual leave may not be divided into more than two periods.⁴⁸ Any statutory holidays or sick days falling within an annual leave constitute part of the annual leave and are not treated separately.⁴⁹

Prior to the commencement of the employee's annual leave, the employer is required to pay the employee his or her entire salary due⁵⁰ in addition to the leave salary (which is equal to the employee's base salary plus any housing allowance) prescribed for the employee. If an employee is required to work during his or her scheduled annual leave, and such time is not carried forward to the following year, the employer must compensate the employee at a rate that is equal to the employee's base salary for the days worked.⁵¹

In the event that an employee's services are terminated, the employee is entitled to an annual leave calculated as a fraction of the last year and may be compensated in respect to any annual leave that is not taken, calculated on the basis of the salary earned on the date on which the leave became due.⁵²

§ 6.4 D. May the employer mandate when vacation is taken under any circumstances (e.g., year-end shutdown, furlough, prohibitions on vacation use in busy periods)?

The employer may fix the dates for the annual leave of the employee, and such annual leave may not be divided into more than two periods.⁵³

§ 6.5 E. What requirements exist for paid or unpaid maternity and paternity leave?

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.⁵⁴

Following her maternity leave, a female employee may be absent from work without salary for a

⁴⁷ Labor Law, art. 75.

⁴⁸ Labor Law, art. 76.

⁴⁹ Labor Law, art. 77.

⁵⁰ Labor Law, art. 80.

⁵¹ Labor Law, art. 78.

⁵² Labor Law, art. 79.

⁵³ Labor Law, art. 76.

⁵⁴ Labor Law, art. 30.

maximum period of 100 days (consecutive or otherwise) if such absence is due to an illness resulting from pregnancy or delivery that prevents her from resuming her work, provided that such illness is evidenced by a medical certificate.⁵⁵

There are no equivalent provisions on paternity leave.

§ 6.6 F. What requirements are there for new mothers (e.g., part-time work, breaks for breast feeding, day care)?

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.⁵⁶

§ 6.7 G. What requirements exist for paid or unpaid medical leaves of absence, and how do these differ from short-term sick pay?

Medical leaves of absence are discussed in § 6.2 above regarding sick leave.

§ 6.8 H. What are the employer's duties if an employee requests a flexible working schedule?

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

§ 6.9 I. What other paid or unpaid leaves of absence must be provided by employers?

Every Muslim employee must be granted, once during the course of employment with a given employer, a special unpaid leave, which leave must not exceed 30 days, to make the Hajj pilgrimage to Mecca.⁵⁷

§ 7 VII. BENEFITS

§ 7.1 A. What benefits must employers furnish to employees?

The Labor Law provides for a severance pay benefit for employees at the termination of their employment (discussed below in § 14.5).

§ 7.2 B. What health benefits must be provided to employees (and their families), and what is the employer's role in the provision of these benefits?

The Labor Law states that every employer shall provide its employees with the means of medical care up to the standard determined by the Minister in consultation with the Minister of Health.⁵⁸

In Abu Dhabi, in accordance with Abu Dhabi Decision No. 25 of 2006, employers are obligated to provide health insurance coverage to employees and their dependents.⁵⁹

⁵⁵ Labor Law, art. 30.

⁵⁶ Labor Law, art. 31.

⁵⁷ Labor Law, art. 87.

⁵⁸ Labor Law, art. 96.

⁵⁹ Abu Dhabi Decision No. 25 of 2006, art. 11.

In Dubai, Dubai Law No. 11 of 2013 on Health Insurance in the Emirate of Dubai requires employers to provide health insurance coverage to employees.⁶⁰ This was phased in over two years, and as of June 30, 2016, all employees in Dubai must be covered. Failing this, the employer will be subject to a penalty of AED 500 (approx. USD 136) to AED 150,000 (approx. USD 40,839). This insurance, however, does not cover the employee's dependents, unlike that of Abu Dhabi.

In both cases, the health insurance coverage is valid throughout the employment period.

§ 7.3 C. What pension contributions must be made and to whom?

Pursuant to UAE Federal Law No. 7 of 1999 for Pension and Social Security, UAE nationals are entitled to contribute to, and collect from, the federally administered pension plan.

The monthly pension contribution is equivalent to a total of 20% of the employee's total salary, of which 5% is deducted directly from the employee's salary and 15% is payable by the employer (of which 2.5% is subsidized by the government). The contribution is payable to the UAE General Pension and Social Security Authority.

§ 7.4 D. What percentage of overall compensation do benefits usually represent?

The percentage of overall compensation that benefits generally represent varies with respect to the nature of the employment as well as to the employer.

§ 7.5 E. What requirements exist for mandatory retirement?

There is no mandatory retirement in the UAE. However, labor permits are not routinely granted for non-UAE nationals over the age of 60.

§ 8 VIII. TAXATION

§ 8.1 A. What taxes must be paid by the employer and employee, at what rates, and which taxes must the employer withhold from wages?

UAE legislation does not provide for the payment or withholding of employment-related taxes.

§ 8.2 B. Are there specialized tax or pension requirements for expatriates?

Foreign employees are not subject to any special employment-related taxes or pension requirements in the UAE.

§ 9 IX. INTELLECTUAL PROPERTY

§ 9.1 A. Who owns intellectual property created during the employment relationship?

The Labor Law does not address ownership of intellectual property created during the employment relationship. Such matters would be addressed in the employment contract. If it is not addressed, then the employee who created the intellectual property would be viewed as its

⁶⁰ Dubai Law No. 11 of 2013, art. 10.

owner.

§ 9.2 B. What are the primary means that employers use to prevent theft of trade secrets?

The primary means available to an employer in the UAE to prevent the theft of its trade secrets would be the inclusion of a provision relating to confidentiality of trade secrets in the employment contract registered with the Ministry. Such a provision must be specifically added, as the standard form used by the Ministry does not contain such a provision.

An employer may also require an employee to sign a confidentiality agreement as part of the employee’s employment documentation.

§ 9.3 C. After employment ends, what restrictions exist on the employer’s ability to impose covenants not to compete or covenants not to solicit customers or employees?

See discussion in § 3.7 above.

§ 9.4 D. What duties do employees have to their present and former employers with respect to intellectual property?

According to the Labor Law, an employee has the following obligations towards the employer:

1. to perform his or her basic duties under the employment contract in an honest and competent manner respecting public morals;⁶¹
2. to follow instructions relating to industrial and workplace safety,⁶² and
3. to retain the confidentiality of any “secret of the establishment” for which the employee is employed. Breach of such obligation may result in the termination of the employee’s employment without notice or compensation.⁶³

§ 10 X. CODES OF CONDUCT

§ 10.1 A. What requirements exist for a code of conduct governing employees?

The Labor Law requires that any employer who employs 15 or more employees shall keep prominently displayed in the place of work disciplinary actions, citing measures that may be taken against those who violate regulations and conditions of its application.⁶⁴ It further contemplates that the Minister shall issue a model regulation for fines and penalties, which shall be considered as a guide to employers when making their own regulations in this regard.⁶⁵ Such model regulations were promulgated pursuant to Ministerial Resolution No. 28 of 1981.

⁶¹ Labor Law, art. 120.4

⁶² Labor Law, arts. 100 and 120(4).

⁶³ Labor Law, art. 54(4).

⁶⁴ Labor Law, art. 103.

⁶⁵ Labor Law, art. 122.

§ 10.2 B. What whistleblowing protections exist?

The Labor Law makes no provision for such protection. However, if the employer dismisses an employee without a reason, for a non-work-related reason, or because the employee filed a labor complaint or a court case against the employer, then such dismissal shall be considered arbitrary.⁶⁶ Accordingly, an employee who is fired for whistleblowing might possibly be able to sue for wrongful or arbitrary termination.

§ 10.3 C. How are codes of conduct (including whistleblowing protections) enforced?

In general, it may be expected that the authorities will enforce a code of conduct that complies with the requirements discussed above in § 10.1. However, the authorities may not enforce a code of conduct: that was not prominently displayed in the workplace, that was not consistently followed in practice by the employer, or that contained penalties that the authorities view as unfair or as inconsistent with the provisions of the Labor Law. In any event, enforcement would begin with the employer's detection of an employee's infraction and the implementation of the sanctions set forth in the code of conduct. Any formal challenge by the employee would take the form of a grievance filed with the Ministry.

§ 11 XI. EMPLOYMENT INFORMATION & PRIVACY

§ 11.1 A. What rules protect the privacy of data about employees?

The Labor Law does not contain provisions regarding the protection of employees' personal information.

§ 11.2 B. What restrictions are there on electronic surveillance of employees and on the employer's ability to monitor use of computers, personal digital assistants (PDAs), telephones, or other technology?

The Labor Law does not address the electronic surveillance of employees, nor does it address the monitoring of employees' use of computers, telephones, PDAs and other technology. It is generally viewed that the employee has no right of privacy in the workplace.

§ 11.3 C. What restrictions apply to the export of data to related companies in the United States?

The Labor Law does not contain provisions regarding the export of information to related companies in the United States.

§ 11.4 D. What information must the employer provide to employees before processing (e.g., collecting, storing, using, disclosing, etc.) their personal data?

The Labor Law provides an obligation on the part of the employer to disclose information related to industrial and workplace safety (discussed below in § 13.1).

§ 11.5 E. What access do employees have to records kept about them by the employer?

The Labor Law does not address the right of employees to access their employment records.

⁶⁶ Labor Law, art. 122.

§ 11.6 F. What record-retention duties does the employer have with respect to information about employees?

Any employer who employs five or more employees shall comply with the following:

1. Keep a file for every employee that includes the employee's: name; trade or craft; age; nationality; place of residence; marital status; commencement of service; wage and changes in pay scale; disciplinary measures; vocational illness and injuries; and the termination of service and reasons for leaving of service.
2. Keep a "Leave Card" for every employee to be put in his or her file. The Leave Card shall be divided into three sections: (1) annual leaves; (2) sick leaves; and (3) other leaves. The employer (or the employer's deputy) shall record on this card all leaves taken by the employee to be used as a reference when the employee applies for leave.⁶⁷

Any employer who employs 15 or more employees shall keep in every shop, branch or place of work the following records:

1. A record of payroll listing the employees' names according to the date of their recruitment and giving the daily, weekly or monthly wage and any allowances (or the wage of piece work, or commission) for each of them, length of service and the date of leaving the job.
2. A record of work injuries listing occupational diseases or work injuries as soon as the employer knows about them.⁶⁸

The Labor Law provides that every employer shall assign one or more physicians to examine, at least once every six months, those employees who are exposed to the possibility of contracting one of the occupational diseases listed in the schedule attached to the law. The employer shall record the examination results in the employer's records and in the employee's file.⁶⁹

§ 12 XII. REPRESENTATION OF WORKERS

§ 12.1 A. Do workers have a freedom of association and representation?

The Labor Law does not permit the formation of trade unions.

§ 12.2 B. How may workers obtain trade union representation?

Not applicable.

§ 12.3 C. Are there workers who, by law, must be represented by one or more trade unions?

Not applicable.

⁶⁷ Labor Law, art. 53.

⁶⁸ Labor Law, art. 54.

⁶⁹ Labor Law, art. 95.

§ 12.4 D. What is the role of unions or works councils on a day-to-day basis?

Not applicable.

§ 12.5 E. What is the scope of the employer's duty to bargain?

Not applicable.

§ 12.6 F. Must the employer pay for time spent on union business or allow leaves for union business?

Not applicable.

§ 12.7 G. What restrictions exist on picketing, strikes, lockouts, and secondary action?

Not applicable.

§ 12.8 H. How are disputes with union-represented workers or with unions resolved?

Not applicable.

§ 13 XIII. WORKPLACE SAFETY

§ 13.1 A. What general health and safety rules apply in the workplace?

Pursuant to the Labor Law, the employer is under the obligation to inform each employee, at the time of the employee's recruitment, of the dangers related to his or her occupation.⁷⁰

The employer must also display instructions in an accessible location in the workplace detailing the protective measures necessary to prevent fire and protect the employees against hazards to which they may be exposed in the workplace.⁷¹

Employees are required to comply with the employer's instructions regarding industrial and workplace safety. Employees are also required to use the protective equipment and clothing supplied by the employer against the dangers of workplace accidents and occupational diseases and fire and other hazards and to not misuse, damage or destroy such equipment.⁷²

Employers must, in addition, ensure the cleanliness, ventilation and adequate lighting of, as well as the availability of adequate drinking water and toilets in, the workplace.⁷³ It is also prohibited for an employer to permit alcoholic beverages in the workplace for consumption therein or to permit any person in a state of drunkenness to enter or remain in the establishment.⁷⁴

⁷⁰ Labor Law, art. 98.

⁷¹ Labor Law, art. 92.

⁷² Labor Law, art. 100.

⁷³ Labor Law, art. 94.

⁷⁴ Labor Law, art. 99.

§ 13.2 B. What kinds of specialized workplace safety rules apply in certain industries?

For employees who are in danger of being exposed to contracting certain specific occupational diseases, an employer is required to arrange for their thorough medical examinations at least once every six months.⁷⁵

§ 13.3 C. What compensation is provided for workplace injuries and illnesses?

Pursuant to the Labor Law, an *employment injury* includes injuries arising from the workplace and that may be sustained by an employee while traveling to and from the workplace provided that there was no diversion during such voyages.⁷⁶

When an employee has sustained a workplace injury or contracts an occupational disease, the employer is required to pay for the cost of the employee's treatment in a local government or public medical center until the employee recovers or until the employee's disability is confirmed.⁷⁷

Where the workplace injury prevents an employee from carrying out the employee's work, the employer must pay the employee a cash allowance equal to: (1) the employee's full salary based on his or her last salary received throughout the period of treatment; or (2) for a period of six months, whichever is shorter. Where the treatment lasts for more than six months, the allowance is reduced by one-half for: (1) a further period of six months; or (2) until the employee fully recovers, the employee's disability is confirmed, or the employee passes away, whichever occurs first.⁷⁸

Where an employee dies as a result of an employment accident or an occupational disease, the employee's family members are entitled to compensation equal to the employee's latest base salary for 24 months, provided that such compensation shall not be less than AED 18,000 (approx. USD 4,900) or more than AED 35,000 (approx. USD 9,800).⁷⁹

Where an employment accident or an occupational disease results in permanent partial disability, the employee shall be entitled to compensation at a specified rate depending on the type of disability sustained.⁸⁰ In the event of permanent total disability, the amount of compensation payable to an employee is in the same amount as that payable to him or her in the event of death.⁸¹

Should it be determined that an injury or a disability suffered by an employee that does not result in death was willfully brought on by the employee or caused by the employee's gross and deliberate misconduct, an intentional violation by the employee of the workplace safety instructions, or due to the use of narcotics or alcohol by the employee or because the employee had refused to submit to a medical examination or undergo the recommended treatment, the employee is not entitled to compensation, and the employer is not under the obligation to provide

⁷⁵ Labor Law, art. 95.

⁷⁶ Labor Law, art. 1.

⁷⁷ Labor Law, art. 144.

⁷⁸ Labor Law, art. 145.

⁷⁹ Labor Law, art. 149.

⁸⁰ Labor Law, art. 150.

⁸¹ Labor Law, art. 151.

treatment for the employee or to pay the employee any cash allowance.⁸²

§ 13.4 D. What reassignments or “light duty” is required for injured or ill workers?

The Labor Law does not address reassignments or light duty for injured or ill workers.

§ 14 XIV. TERMINATION OF EMPLOYMENT

§ 14.1 A. What grounds for dismissal are permitted?

Pursuant to the Labor Law, a contract of employment may terminate in any of the following ways:⁸³

1. upon mutual agreement by the parties, provided that the employee’s agreement to such termination is made in writing;
2. 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
3. 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.

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:

1. the reason for the termination provided by the employer does not relate to the employee’s work; or
2. the employee has submitted a serious complaint to the competent authorities or instituted legal proceedings against the employer that were shown to be valid.⁸⁴

An employer may terminate a contract of employment without notice or compensation in the following circumstances:

1. during the employee’s probation period;
2. the employee assumed a false identity or nationality, or otherwise submits false certificates or documents;
3. 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);
4. 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;

⁸² Labor Law, art. 153.

⁸³ Labor Law, art. 113.

⁸⁴ Labor Law, art. 122.

UNITED ARAB EMIRATES

5. 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;
6. the employee reveals a “secret of the establishment;”
7. the employee is found guilty for an offense involving honor, honesty or public morals;
8. the employee is found, during working hours, in a state of drunkenness or under the influence of narcotic drugs;
9. the employee, during working hours, assaults his or her employer, manager or any colleagues; or
10. the employee is absent from work, without valid reason, for more than 20 nonconsecutive days in one year or more than seven consecutive days.⁸⁵

If the employment contract is for a specified term, in the event that the employer terminates it for any reason other than those mentioned above, 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.⁸⁶

An employee may terminate his or her employment contract without notice in the following circumstances (provided that the employee shall compensate the employer for any prejudice sustained, at up to half of the employee’s salary, for the lesser of: (1) three months; or (2) the remaining period of the contract, unless otherwise stipulated in the contract of employment):⁸⁷

1. if the employer has not fulfilled its obligations with respect to the employee as provided for in the employment contract or pursuant to the Labor Law; or
2. if the employee is assaulted by the employer or the employer’s representative.⁸⁸

In such cases, the employer will be liable to compensate the employee for the damages suffered as a result of the termination.⁸⁹

⁸⁵ Labor Law, art. 120.

⁸⁶ Labor Law, art. 115.

⁸⁷ Labor Law, art. 115.

⁸⁸ Labor Law, art. 121.

⁸⁹ Labor Law, art. 115.

§ 14.1(a) UAE Nationals

It is important to note a decision, effective February 2009, regarding the termination of UAE national employees. Ministerial Resolution No. 176 of 2009 Restricting the Dismissal of UAE National Employees (“Resolution No. 176”) states that dismissal of a UAE national employee will be regarded as “illegal” (literally “without legal ground”) in any of the following four circumstances:⁹⁰

1. where the UAE national is dismissed for reasons other than those mentioned in Article 120 of the Labor Law (i.e., for reasons other than summary dismissal),⁹¹
2. if it is proven that the employer retains a non-UAE national who is performing work similar to that performed by the dismissed UAE national;⁹²
3. where there was failure to inform the Ministry 30 days prior to the dismissal, or failure to comply with the Ministry’s instructions within the designated times;⁹³ and
4. if it is proved that the UAE national was not paid the full compensation and full retirement benefits as specified in the Labor Law, its implementing regulations, the contract of employment or any other contractually binding document.

Resolution No. 176 also provides the consequences of “illegally” dismissing a UAE national employee.⁹⁴ If the Ministry is not convinced that the dismissal was legitimate, it will inform the employer. The employer has 15 days to resolve the dispute with the UAE 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 put on hold the issue of all new labor permits (applied for by the employer) until the court renders a final judgment in the matter.

§ 14.2 B. Under what circumstances may the employee claim that the employer has breached its contract with the employee or that the employer has “constructively dismissed” the employee?

The Labor Law does not provide a formal definition of constructive dismissal. However, if an employee resigns because of a breach of the contract or breach of the Labor Law on the part of the employer, then such resignation would be treated as constructive dismissal.

Ministerial Resolutions Nos. 765 and 766 of 2015 are designed to make it easier for employees to switch employers in a number of specified situations. One such situation is the employer’s failure to perform its contractual or legal obligations to the employee, including failure to pay salary for 60 days.

§ 14.3 C. What notice requirements are there for dismissal and may the employer provide pay in lieu of notice?

If the contract of employment 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’

⁹⁰ Resolution No. 176, art. 1.

⁹¹ Resolution No. 176, art. 1.1.

⁹² Resolution No. 176, art. 1.2.

⁹³ Resolution No. 176, art. 1.3.

⁹⁴ Resolution No. 176, art. 3.

prior written notice.⁹⁵ In the case of employees working on a daily basis, the period of notice is calculated as follows:

1. one week, if the employee has been employed for more than six months but less than one year;
2. two weeks, if the employee has been employed for not less than one year; and
3. one month, if the employee has been employed for not less than five years.⁹⁶

The validity of the contract of employment 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.⁹⁷

The Labor Law provides that the notice requirement cannot be reduced or dispensed with, but may only be increased.⁹⁸ 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.⁹⁹

§ 14.4 D. How is termination pay calculated, including any commissions, and when must it be paid?

Severance pay is discussed below in § 14.5.

§ 14.5 E. Are there rights to severance pay and how is severance calculated?

The Labor Law provides for severance pay for employees who have completed a period of at least one year of continuous service, which is calculated as follows:

1. 21 days' salary for each year of the first five years of employment; and
2. 30 days' salary for each additional year of employment, provided that the aggregate amount thereof does not exceed two years' salary.¹⁰⁰

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.¹⁰¹

Repatriation costs are also to be paid if the employee was hired outside of the UAE. The cost

⁹⁵ Labor Law, art. 117(1).

⁹⁶ Labor Law, art. 117(2).

⁹⁷ Labor Law, art. 118.

⁹⁸ Labor Law, art. 118.

⁹⁹ Labor Law, art. 119.

¹⁰⁰ Labor Law, art. 132.

¹⁰¹ Labor Law, art. 134.

would be the equivalent of a price of a travel ticket, as well as any other travel expense as stipulated in the employment contract.¹⁰²

§ 14.6 F. What reasons for dismissal/termination of contract are prohibited, and what remedies does the former employee have?

The employer may not terminate an employee's services because of health reasons until the employee has taken all the days of sick leave to which he or she is entitled by law. Any agreement to the contrary shall be null and void.¹⁰³

The termination of the employee's services by the employer shall be considered arbitrary if the reasons did not relate to his or her work. It shall especially be considered arbitrary if the dismissal happened because of a serious complaint made by the employee to the competent authorities or if the employee brought a claim to court against the employer and the employee's case proved to be genuine.¹⁰⁴ If the employer terminates an employee's services for an improper reason, and particularly if done in retaliation for the filing of a labor grievance by the employee, then the employer could be liable for damages for wrongful termination. 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.¹⁰⁵

§ 14.7 G. How may former employees bring claims on behalf of other workers (i.e., a collective or class action)?

A former employee may bring claims on behalf of other employees only pursuant to the collective labor dispute provisions discussed above in § 1.4. This is encountered very rarely, if at all.

§ 14.8 H. May employers compel employees to arbitrate claims of wrongful dismissal?

Grievances must be referred to the Ministry.¹⁰⁶ Arbitration cannot be compelled, and no resulting award would be enforceable.

§ 14.9 I. What restrictions exist on obtaining a release of claims from a former employee?

The Labor Law does not address the release of claims of a former employee. An employee whose labor permit is cancelled is usually called upon by the Ministry, as part of the cancellation process, to recite that the employee has received all of his or her entitlements. Employees rarely bring claims after the termination of their labor permits. However, the only formal safe harbor for an employer is the one-year time bar on labor claims that is set forth in the Labor Law.¹⁰⁷

§ 14.10 J. What procedures and terms are required to have an enforceable separation agreement with a former employee?

The Labor Law does not address separation agreements with former employees.

¹⁰² Labor Law, art. 131.

¹⁰³ Labor Law, art. 124.

¹⁰⁴ Labor Law, art. 122.

¹⁰⁵ Labor Law, arts. 122–23.

¹⁰⁶ Labor Law, art. 6.

¹⁰⁷ Labor Law, art. 6.

§ 14.11 K. What are the best practices employers should observe regarding dismissals of employees?

See discussion at § 16.1 (paragraph 2), below. In addition, an employer should be aware that the failure to follow proper procedures in termination of services could make it easier for the former employee to transfer to a new employer.

§ 15 XV. COLLECTIVE DISMISSALS (LAYOFFS), BUSINESS CESSATION & SALE OF A BUSINESS

§ 15.1 A. What rules apply to collective dismissals?

The Labor Law provides general rules regarding the termination of contracts of employment; there are no specific provisions relating to company closings and layoffs.

An employer may terminate a specified-term contract of employment but must then compensate the employee for damage sustained, provided that the sum does not exceed the aggregate of the employee’s salary for: (1) three months; or (2) the remainder of the term of the contract, whichever is shorter, unless the contract stipulates otherwise.¹⁰⁸

An employer may terminate an unspecified-term contract of employment for a “valid” reason with 30 days’ prior written notice to the employee.¹⁰⁹ Plant closings, workforce reductions and personnel redundancies are generally viewed by the Ministry and the courts as constituting “valid” reasons for this purpose.

The Labor Law does not cover collective dismissals per se, but it does provide a procedure for collective work disputes (briefly discussed in § 1.4 above). Accordingly, this procedure is available only when a collective dismissal is contested by the employees. If a dispute occurs between one or more employers and some or all of their employees and they fail to settle it, the following steps should be taken:

1. The employees shall complain in writing to the employer and send a copy of their complaint to the Labor Department.
2. The employer shall reply in writing on the complaint or claim of the employees within seven days from the date of its receipt and shall send a copy of this reply to the Labor Department.
3. If the employer does not reply within that period, or if the employer’s reply does not settle the dispute, the competent Labor Department shall, on its own initiative or at the request of both parties, mediate to settle the dispute in a consensual way.¹¹⁰
4. If the complaint was made by the employer, the employer shall take the complaint directly to the Labor Department, which should try to settle the dispute in a consensual way.

If a mediation by the concerned Labor Department does not settle the dispute within ten days from the date that the Department became involved in the incident, it shall then submit the dispute to the relevant “Conciliation Committee” for a settlement while notifying both parties in

¹⁰⁸ Labor Law, art. 115.

¹⁰⁹ Labor Law, art. 117.

¹¹⁰ Labor Law, art. 155.

writing.¹¹¹

A Conciliation Committee shall be set up in every Labor Department, and its formation shall be decided by the Minister.¹¹²

Each of the two parties to a dispute shall follow up with the Conciliation Committee until the dispute is settled, and the Committee shall announce a majority ruling within two weeks from the date of receiving the complaint. This decision shall be binding on both parties if they have agreed in writing to accept the Committee's decision; otherwise, each of the two parties may appeal to the "Supreme Committee of Conciliation" within 30 days from the date of issuing the decision or else the decision shall be final and obligatory.¹¹³

A termination of the contract or the dismissal of the employee's representatives in the Conciliation Committee shall not prevent them from performing their job in the Committee unless the employees choose other representatives.¹¹⁴

There shall be established in the Ministry, a committee called the Supreme Committee of Conciliation to settle work disputes and it shall be formed as follows:

1. The Minister is chairman, and he or she may delegate the Under Secretary or the Director General of the Ministry to act as a replacement in the event of the chairman's absence.
2. A judge from the Supreme Federal Court to be appointed by the Justice Minister at the nomination of the General Assembly of the Court.
3. A prominent person who is known to be impartial and with knowledge in labor matters shall be appointed by the Minister. 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.¹¹⁵

The Supreme Committee of Conciliation shall render final and definitive decisions in all work disputes referred to it by the concerned persons. Its justified decision shall be substantiated by a majority vote.¹¹⁶

§ 15.2 B. Are there special rules that apply when an employer ceases operations?

No, the Labor Law does not make provision for such rules.

§ 15.3 C. Are certain employees protected from collective dismissal?

No, the Labor Law does not make provision for such protection.

¹¹¹ Labor Law, art. 156.

¹¹² Labor Law, art. 157.

¹¹³ Labor Law, art. 158.

¹¹⁴ Labor Law, art. 159.

¹¹⁵ Labor Law, art. 160.

¹¹⁶ Labor Law, art. 161.

§ 15.4 D. How long does the collective dismissal process usually take?

In theory, this would be within the time frames set out in § 15.1 above. However, in practice, there is no track record, because the provisions in the Labor Law on collective disputes are never resorted to.

§ 15.5 E. What rules govern the transfer of undertakings (including employment and labor agreements) when a business is sold?

The employees must be transferred if the corporate employer will change.¹¹⁷ This process involves the transfer of the residence visas and labor permits from the premerger employer to the post-merger employer.

In the event that a change occurs in the form or legal status of the employer, contracts of employment that are valid at the time of such change remain valid with the new employer, and the employees' services are deemed to be continuous.¹¹⁸

Both the previous employer and the new employer are jointly liable for a period of six months for the fulfillment of all obligations in the employment agreements, after which time the new employer bears sole liability.¹¹⁹

§ 16 XVI. KEY TRAPS TO AVOID

§ 16.1 A. What are the five most common mistakes foreign employers make and what can be done to avoid them?

1. Employers often offer their employees specified term contracts.

However, such a contract can be difficult to terminate prior to the end of the specified term. Employers should use unspecified term contracts.

2. Employers often terminate employment contracts without notice.

However, this is permissible only in limited circumstances of employee misconduct. It is generally the case that an employer is required to provide an employee with 30 days' prior notice of termination. Extra care will have to be taken when dismissing an employee who is a UAE national.

3. Employers often disregard local overtime rules.

Overtime salary must be paid to an employee who is eligible for overtime salary, whenever the employee is required to work after hours or on weekends or holidays. In addition, many employers fail to give their non-Muslim employees shorter hours of work during Ramadan, on the premise that only Muslim employees observe Ramadan; however, the Labor Law requires that all employees be accorded shorter working hours during Ramadan, regardless of their religious faith.

¹¹⁷ Labor Law, art. 126.

¹¹⁸ Labor Law, art. 126.

¹¹⁹ Labor Law, art. 129.

4. Employers frequently attempt to change the terms and conditions of employment unilaterally, perhaps by changing the formula for an allowance or other component of compensation.

If the change is not accepted by the employee, then the employee might be able to treat the situation as one of constructive termination by the employer.

5. Employers frequently put their employees in a position to double dip.

The entitlement to the severance payment under the Labor Law is statutory, and it can be replaced by corporate savings and pension plans in only a limited number of circumstances. Too often, employers become obliged to pay managerial employees generous internal severance packages in addition to the severance payment mandated by the Labor Law. Employers should carefully structure their pension and savings documentation and their UAE employment documentation to minimize exposure.