

## inBrief

**UAE Labour Law: Implementing Regulations**

By Charles Laubach | 18 February 2022

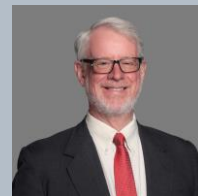
As reported earlier, the new Labour Law of the UAE provides that many of the detailed rules on its implementation will be governed by Implementing Regulations. The first set of Implementing Regulations has been promulgated as Cabinet Resolution No. 1 of 2022. This measure took effect on 2 February 2022, the same effective date as the new Labour Law.

The new Cabinet Resolution provides some clarity in many respects, but it also leaves room for further regulations to address yet more aspects of the new Labour Law. This note discusses some of the more interesting features of the new Cabinet Resolution.

**Non-competition clauses**

The Implementing Regulations introduce new restrictions on the use by employers of non-competition clauses in their employment contracts. Like the new Labour Law, the regulations provide that a non-competition clause must be restricted in geographic scope, must be limited in duration to no more than two years, and must be limited to jobs where competition by an employee could harm the employer. The Implementing Regulations specify that the burden of proof of harm is on the employer if a non-competition clause is contested.

A non-competition clause cannot be enforced in cases where the cause for termination of services is attributable to the employer or to the employer's breach of its statutory or contractual obligations. The employee may also be exempted from a non-competition clause if the employment contract is terminated during the probation period. There is also scope for either the employee or the new employer to render the non-competition clause unenforceable by paying compensation to the former employer in an amount not exceeding three months of salary, provided that the former employer agrees to the same. Moreover, a non-competition clause will not be enforceable in respect of specific job categories

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that will be determined by the Minister of Human Resources and Emiratisation.

In the absence of a non-competition clause, an employee is free to change jobs in the event that:

- The term of the existing contract expires without renewal; or
- The contract is properly terminated in accordance with the Labour Law; or
- The employer terminates the contract for a reason other than fault of the employee.

### **Overtime**

With a few minor adjustments, the new Labour Law continues the previous rules on an employee's entitlement to overtime compensation for work in excess of normal working hours. At the same time, it states that the Implementing Regulations will determine which job categories are not covered by the rules on overtime. This led to an expectation that a broader set of employees would be exempt than before, especially given the general shift away from the 6-day, 48-hour work week that the Labour Law allows.

A significant expansion of exempt categories has yet to occur, although the Implementing Regulations leave some room for a move in this direction. The new Implementing Regulations exempt from overtime the following categories of employees:

- Chairmen and members of Boards of Directors.
- Persons who exercise the authority of the employer by virtue of their supervisory positions.
- Crew of marine vessels and employees who work at sea who enjoy special terms of service because of the nature of their work.
- Tasks whose technical nature requires continuity of work through successive shifts, provided that average working hours do not exceed 56 hours per week.
- Preparatory and supplementary tasks that must be performed outside of normal working hours.

Save for the fifth category noted above, all of these exemptions existed under prior law. However, the new Cabinet Resolution delegates to the Minister the authority to promulgate further rules on these categories of employees in accordance with the requirements of the labour market.

### **Leave**

The Implementing Regulations contain new details on leaves. Previously, a part-time employee received the same entitlement to annual leave that was extended to a full-time employee. This has now been replaced with a fractional entitlement, based upon the actual hours worked by the part-time employee, subject to a minimum of five working days per year. The Implementing Regulations take a similar fractional approach to the end-of-service gratuity entitlement of an employee not serving under a full-time contract.

Unused annual leave may be carried forward, but no more than half of the entitlement may be carried forward from year to year. Unused leave may be cashed in at the rate of the employee's salary. Upon termination of services, an employee is paid a cash allowance for any unused annual leave at the rate of the employee's basic salary.

### **Workplace injury**

As reported earlier, an employer is required to provide medical care for an employee who suffers a workplace injury or sickness. This includes treatment in a government or private treatment facility and includes the hospital stay, surgery, x-rays and tests, pharmaceuticals and rehabilitation equipment and prostheses, and transportation required for the employee's treatment. These costs must be covered until the employee recovers or until the employee's permanent disability has been established.

## Absenteeism

Under Article 44 of the new Labour Law, an employer is able to terminate the services of an employee without notice if the employee is improperly absent from work for more than seven consecutive days. In such case, the employer must be unaware of the employee's whereabouts and unable to communicate with the employee. The employer is required to report the employee's absence to the Ministry in accordance with procedures that will be promulgated by the Ministry.

An employee who is improperly absent from work may be denied another work permit for another employer for a period of up to one year. Exempted from this are employees whose visas are sponsored by family members, holders of golden visas, employees having a level of professional skill or knowledge required by the UAE, or employees in one of the categories that will be designated by the Ministry.

## Employment models

The new Cabinet Resolution recognises that there are many different models for work other than full-time employment with a single employer. It contemplates that there will be arrangements for remote work (where the employee and employer are in different locations) and job sharing (where a task is assigned to multiple employees).

The new Cabinet Resolution also details many types of work permits, reflecting the multiple types of arrangements. The types of work permits that are addressed by the Implementing Regulations are:

- A work permit for an employee recruited from outside the UAE.
- A transfer work permit.
- A work permit for a person whose residence visa is sponsored by a family member.
- A temporary work permit.
- A work permit for a specific task (similar to the "mission visas" that were available under prior law).
- A part-time work permit, allowing an employee to work for multiple employers.
- A juvenile work permit, for an employee between the ages of 15 and 18.
- A student training permit.
- A work permit for citizens of the GCC countries.
- A work permit for a golden visa holder.
- A work permit for a national trainee.
- A self-employment work permit.

Additional types of work permits may be promulgated by resolution of the Minister. The Implementing Regulations also contain specific provisions on freelance work and on the activities of employment agencies.

## End-of-service gratuity

A number of issues remain to be clarified by regulations. One of these concerns is the calculation of end-of-service gratuity, discussed in our [inBrief dated 15 December 2021](#) and our [Legal Alert dated 19 December 2021](#).

Article 51 of the new Labour Law states that an employee will receive end-of-service gratuity that is calculated on the basis of working days. This is inconsistent with the previous approach, which expressed end-of-service gratuity in terms of "days" as opposed to "working days". Moreover, Federal Decree-Law No. 47 of 2021, on

the uniform general rules of work in the UAE, which is supposed to harmonise the public and private sectors, refers to end-of-service gratuity based upon “days” and not “working days.”

A calculation based upon working days raises the issue of how that term is defined. This is not clarified by the Implementing Regulations. One approach is to calculate basic salary for a working day as equal to 22/30 of the employee’s basic salary for a month. An employer that has a five-day work week would have 22 working days in most months, because of the two-day weekends. However, an employee who works a six-day work week would have a working day basic salary equal to 26/30 of the employee’s basic salary for a month. Two similarly-positioned employees could receive end-of-service gratuity payments differing by as much as 14 per cent as a result of the employer’s work week.

Alternatively, a working day could be calculated as a fraction of annual calendar days as opposed to monthly calendar days, and the calculation could take account of official holidays as well as weekends. Perhaps the approved calculation will appear in further regulations.

### **Specified-term contracts**

Another issue involves the treatment of specified-term contracts. Applied literally, a specified-term contract ends upon its expiration. No affirmative action by either the employer or the employee is required to bring the relationship to an end. Thus, immediately upon expiration of a specified-term contract, it would be the right of the employer to proceed with termination of the employee’s labour permit and residence visa, and it would likewise be the right of the employee to demand that the employer pay the applicable end-of-service package and to seek other employment.

In order for the relationship to continue, the parties must either continue to do so by conduct, in which case the contract would be deemed renewed for a similar period. It is not clear what length of conduct would have this effect. It would also be possible for the parties to reach express agreement on extension or renewal of a specified-term contract. Perhaps an employment contract should be drafted to contain a clause requiring the parties to provide advance notice of intent to renew or not to renew the contract. ■

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