

Labour & Employment 2021

Contributing editors

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Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

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No photocopying without a CLA licence.
First published 2006
Sixteenth edition
ISBN 978-1-83862-680-8

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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**Matthew Howse, K Lesli Ligorner, Walter Ahrens,
Michael D Schlemmer and Sabine Smith-Vidal**

Morgan, Lewis & Bockius LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Labour & Employment*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Hong Kong, Hungary, Mauritius, Romania, Singapore and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Matthew Howse, K Lesli Ligorner, Walter Ahrens, Michael D Schlemmer and Sabine Smith-Vidal of Morgan, Lewis & Bockius LLP, for their continued assistance with this volume.



London
April 2021

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This article was first published in May 2021
For further information please contact editorial@gettingthedealthrough.com

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United Arab Emirates

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LEGISLATION AND AGENCIES

Primary and secondary legislation

1 | What are the main statutes and regulations relating to employment?

The main statutes and regulations relating to employment are Federal Law No. 8 of 1980 Regulating Labour Relations, as amended by Federal Laws Nos. 24 of 1981, 15 of 1985, 12 of 1986, 14 of 1999 and 8 of 2007, Federal Decree-Law No. 6 of 2019 and Federal Decree-Law 6 of 2020 (the Labour Law), and applicable ministerial orders implementing its provisions. These statutes and regulations apply to all employees working in the United Arab Emirates (UAE), including foreign nationals, apart from:

- members of the following categories of worker:
 - officials, employees and workers in federal and local government departments, or appointed for federal and local government projects;
 - members of the armed forces, police and security officers;
 - domestic servants working in private residences; and
 - workers employed in agriculture (apart from employees of agricultural companies engaged in processing products, or operating or repairing machinery required for agriculture); and
- employees working for a company with a place of business in the Dubai International Financial Centre (DIFC) and who are based in, or ordinarily work in, the DIFC (these employees are subject to DIFC Employment Law No. 2 of 2019, as amended (the DIFC Employment Law)) and the DIFC 2020 Employment Regulations (the DIFC Employment Regulations); and
- employees working for a company with a place of business in the Abu Dhabi Global Market (ADGM) and who are based in, or ordinarily work in, the ADGM (these employees are subject to the ADGM Employment Regulations 2019 (the ADGM Employment Regulations)).

Employees working in one of the many free zones in the UAE, including foreign nationals, are subject to the Labour Law in addition to employment regulations introduced in the relevant free zone. Where the free zone regulations are not consistent with the Labour Law, the Labour Law provisions take precedence unless they are less favourable than the relevant free-zone regulations.

Protected employee categories

2 | Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Discrimination

Recent amendments to the Labour Law have introduced a prohibition against discrimination. Previously, discrimination was prohibited only

in certain specified cases; for example, it was prohibited to discriminate between disabled and non-disabled employees performing the same role. Now, however, discrimination is prohibited between persons if it weakens the adequacy of opportunities or prejudices equality concerning access to or continuity of employment or concerning the enjoyment of employment rights. Discrimination among employees in a single job category is also prohibited.

In the event of an employee suffering a partial disability, the Labour Law stipulates that the employer must allow the employee to perform another role if he or she is capable of doing so and wants to undertake the other role. The employee must be paid the same salary as a non-disabled employee performing the same role. Also, the Labour Law provides that women must be paid the same as men if they are performing the same role.

The DIFC Employment Law states that employers must not discriminate (that is, withhold or limit access to opportunities, benefits and advantages that are available to other persons) against any person based on their sex, marital status, race, nationality, religion or mental or physical disability. Under the DIFC Employment Law, any programme or activity can be undertaken that is intended to benefit disadvantaged individuals or groups, including those with a mental or physical disability.

Recent amendments to the Labour Law have also introduced a prohibition against employers discriminating against pregnant female employees. An employer may not terminate the service of a female employee or give her notice of termination owing to her pregnancy. Any termination of a female employee in those cases is deemed to be arbitrary.

The Employment and Sponsorship Regulations 2016 of the Abu Dhabi Media Free Zone Authority contain anti-discrimination provisions. These regulations state that the authority aims to 'create an environment where employment and advancement is based on merit and an employee is not treated less favourably by reason of gender, marital status, religion or disability'. The regulations further state that employers in the free zone must consider this non-discrimination principle during the recruitment process.

Also, Cabinet Decision No. 43 of 2018 On the Support of Employment of Persons with Disabilities (People of Determination) includes specific protections against discrimination for persons with disabilities. Discrimination is defined as 'any distinction, exclusion or restriction because of disability, having the purpose or effect of impairing, damaging or nullifying the recognition of any of the prescribed rights according to the legislation in force at the State, enjoying or exercising the same on an equal basis'. The specific protections against discrimination include:

- ensuring non-discrimination in respect of working conditions or benefits;
- protections against discrimination in all matters related to the employees' rights such as salaries, wages, incentives, rewards and other functional privileges granted to the other employees; and
- ensuring that the wording of any announcement of a job vacancy does not contain any discriminatory language, such as the use of

language referring to the need for applicants to be free of disabilities and impairments, or without visual, motor and auditory impairments, particularly if the nature of the vacancy does not require proper sensory and physiological abilities.

Also, Federal Decree-Law No. 2 of 2015 introduced general prohibitions on discrimination and hate crimes. It specifically prohibits discrimination based on religion, creed, doctrine, sect, caste, race, colour or ethnic origin.

Finally, the ADGM Employment Regulations also include a prohibition against employers from discriminating against an employee regarding employment or any term or condition of employment on the grounds of the employee's gender, marital status, race, nationality, colour, religion, age or disability. Moreover, the Cabinet may promulgate rules favourable to national employees based upon a request for them from the Minister of Human Resources and Emiratisation.

Harassment

There are no specific rules under the Labour Law protecting employees from harassment, but assaulting another employee is grounds for summary dismissal. Also, there are UAE ministerial resolutions imposing sanctions on certain behaviour, including harassment.

Under the DIFC Employment Law, employers must provide and maintain a workplace that is free from harassment, safe and without risk to employees' health. Also, an employer must not threaten, intimidate or coerce an employee because of a complaint or investigation.

Similarly, under the ADGM Employment Regulations, employers are required to provide and maintain a workplace that is free of harassment, safe and without risk to employees' health.

Enforcement agencies

3 | What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Ministry of Human Resources and Emiratisation is primarily responsible for the enforcement of the Labour Law. The Ministry issues work permits and levies fines and bans on non-conforming employers or employees, and it also forms and implements labour policies supporting the Labour Law.

The DIFC Authority is responsible for the administration of the DIFC Employment Law.

The ADGM Authority is responsible for the administration of the ADGM Employment Regulations.

WORKER REPRESENTATION

Legal basis

4 | Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

There is currently no legislation mandating or allowing the establishment of a workers' council or committee in the workplace. There are no trade unions in the United Arab Emirates, and employee representatives are not common.

Powers of representatives

5 | What are their powers?

This question is not applicable in this jurisdiction as there is currently no legislation regulating workers' councils, trade unions, employee representatives or their applicable powers under UAE law.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

The Labour Law imposes no restrictions on background checks on applicants. Checks can be conducted by a third party or by the employer. The Dubai International Financial Centre (DIFC) Employment Law and the Abu Dhabi Global Market (ADGM) Employment Regulations similarly impose no such restrictions on background checks.

Medical examinations

7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

There are no restrictions on employer-imposed medical examinations. An employer can refuse to hire an applicant who does not submit to a medical examination.

Moreover, because foreign nationals are a majority of the workforce in the UAE, medical examinations are a routine part of the hiring process. One of the requirements for obtaining a residence visa in the United Arab Emirates (UAE) is to pass a medical examination at a government-approved hospital or clinic. A prospective employee is screened for HIV, hepatitis B and C, leprosy and tuberculosis before being granted a residence visa. A positive result in any of these tests will result in the prospective employee being rejected for a residence visa and deported to his or her home country.

Drug and alcohol testing

8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no restrictions on employer-imposed drug and alcohol testing. An employer can refuse to hire an applicant who does not submit to testing.

Further, the prohibitions in the UAE on the possession and use of drugs are very strict. Therefore, a positive test result before hiring would indicate criminal activity, which would be another reason to refuse to hire the applicant.

The DIFC Employment Law and the ADGM Employment Regulations similarly do not provide any restrictions or prohibitions against drug and alcohol testing.

HIRING OF EMPLOYEES

Preference and discrimination

9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

The Labour Law and various ministerial decisions contain the following provisions that are favourable to the hiring of United Arab Emirates (UAE) nationals.

- UAE nationals have priority to work in the UAE. Persons of other nationalities can only be employed in the private sector if there are no unemployed nationals capable of undertaking the role and if there is appropriate approval from the authorities and they obtain a residence visa and labour (or identity) card. The foreign employee must also have the professional competence or educational qualification that the state requires.

- If no UAE national is available to take up a position, preference must first be given to persons who are nationals of an Arab country, and then to persons of other nationalities.

10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

As part of the residence visa and labour card application process, an employee must receive a written offer letter from the prospective employer. Thereafter, the parties must enter into a standard-template dual-language contract provided by the Ministry of Human Resources and Emiratisation, the terms of which must comply with the terms of the offer letter. Under the Labour Law, the contract must specify:

- the start date and duration of the employment (which may be for an unspecified period);
- the nature (ie, job title);
- the place of employment; and
- the salary.

Some free zones require the parties to enter into employment contracts using a template specific to the relevant free zone. Subject to the provisions of the Labour Law, the information that must be included in employment contracts varies among the free zones.

The Dubai International Financial Centre (DIFC) Employment Law requires employers to provide their employees with a written contract of employment. The contract of employment must specify:

- the names of the employer and employee;
- the start date;
- the employee's wages;
- the applicable pay period;
- the terms and conditions relating to hours of work;
- the terms and conditions relating to:
 - vacation leave and vacation pay;
 - national holidays and pay for national holidays;
 - sick leave and sick pay;
- the length of notice that the employee and employer must give and receive to terminate the employment;
- the employee's job title or a brief description of his or her work;
- the period for which the employment is expected to continue or, if it is for a fixed term, the date when it is to end (where the employment is temporary);
- the place of work;
- applicable disciplinary rules and grievances procedures;
- any applicable probationary period up to a maximum of six months;
- a reference to any applicable policies and procedures, including any code of conduct, and where these can be accessed; and
- any other matter that may be prescribed in any regulations issued under the DIFC Employment Law.

The DIFC Employment Law requires that if an employer intends any employment term to be subject to its policies, and so can be changed at the employer's discretion, then this must be expressly provided for in the employment contract.

The Abu Dhabi Global Market (ADGM) Employment Regulations require that the contract of employment shall include as a minimum:

- the names of the employer and employee;
- the date when the employment began, or is to begin;
- the employee's wages;
- the applicable pay period;
- any terms and conditions relating to hours or days of work;
- any terms and conditions relating to:

- vacation leave and vacation pay, national holidays and pay for those national holidays;
- sick leave and sick pay;
- the length of notice that the employee and the employer is obliged to give and is entitled to receive to terminate the employment;
- the title of the employee's job or a brief description of the employee's work;
- the period for which the employment is expected to continue if it is not intended to be for an indefinite duration, or the date when it is to end if it is fixed term;
- the place of work;
- any disciplinary rules or grievance procedures applicable to the employee; and
- any other matter that may be prescribed by the Board by rules.

Further, the ADGM Employment Regulations require that the employment contract must expressly state in writing the matters relating to the employment of the employee that are subject to the employer's policies (if any) that may be changed at the employer's discretion from time to time by way of a written notice to the employee.

11 | To what extent are fixed-term employment contracts permissible?

The Labour Law permits fixed-term employment contracts; however, many employers prefer not to use them because those contracts are difficult to terminate. The Labour Law limits the duration of a fixed-term contract to four years; however, it can be renewed if both parties agree for one or more similar or shorter periods.

The DIFC Employment Law and the ADGM Employment Regulations permit fixed-term contracts; however, there is no specification as to the maximum duration of those contracts.

Probationary period

12 | What is the maximum probationary period permitted by law?

The Labour Law allows a maximum of six months' probationary period. This maximum period may not be extended. If the employee is successful in completing the probationary period, then the probationary period will be considered to be part of the employee's period of continuous service.

The DIFC Employment Law and the ADGM Employment Regulations state that an employer may impose a probationary period of up to a maximum of six months.

Classification as contractor or employee

13 | What are the primary factors that distinguish an independent contractor from an employee?

Under the Labour 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 Labour Law. In the UAE, an employer is required to obtain a labour permit for an employee who is not a UAE national.

By contrast, an independent contractor is an individual or corporate entity that provides services, but without the element of supervision or control that characterises the employment relationship. The employer of an independent contractor does not typically obtain a labour permit for the independent contractor, and the relationship is generally viewed as being outside the scope of the Labour Law.

Temporary agency staffing

14 | Is there any legislation governing temporary staffing through recruitment agencies?

The employer of a proposed non-UAE national employee must obtain a UAE residence visa for the employee (except for an employee whose UAE residence visa is sponsored by the head of household) and a UAE labour permit. Regarding recruitment agencies, an agency may employ an employee directly by sponsoring the employee's residence visa and labour permit. In such a case, the employee would be deployed to the workplace of the recruitment agency's client, under a personal secondment agreement. The personal secondment agreement must be approved by and filed with the Ministry of Human Resources and Emiratisation. The recruitment agency would be primarily responsible to the employee for all the employee's employment entitlements.

In some cases, the recruitment agency instead recruits an employee for its client, but then requires the client to sponsor the prospective employee's UAE residence visa and labour permit. In this case, the employer would be responsible to the employee for all the employment entitlements.

In both cases, the terms of the employment contract must comply with the terms of the offer letter.

FOREIGN WORKERS

Visas

15 | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

Most employer-sponsored United Arab Emirates (UAE) residence visas are valid for a two-year term, after which they must be renewed for the employee to stay in the country. Employers are subject to numerical limitations, but the limitations depend on the employer's business activities. Some of the free zones follow an express visa quota that depends on the size of an employer's business premises.

Visa transfers within the UAE are generally possible for employees who hold bachelor's degrees or higher educational qualifications. The specific requirements on transfers vary somewhat from time to time and from place to place. The transfer of an employee from outside the UAE requires the employer to seek a new UAE residence visa and labour permit for the transferring employee.

Spouses

16 | Are spouses of authorised workers entitled to work?

A spouse is authorised to work if his or her employer obtains a labour permit.

General rules

17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

Under the Labour Law, an employee must apply for approval to the Ministry of Human Resources and Emiratisation and obtain a work permit from their employer subject to the processes specified by the Ministry of Human Resources and Emiratisation. The employee must then apply for an employment visa from the Immigration Authority. Once the visa is obtained and the employee has entered the UAE, the sponsor is responsible for arranging a residence permit for the employee.

Employees employed in the Dubai International Financial Centre (DIFC), the Abu Dhabi Global Market (ADGM) and other free zones must obtain similar permits using the forms pertinent to their free zones.

Knowingly employing a worker who does not have the right to work in the jurisdiction is punishable by a fine or a prison term.

Resident labour market test

18 | Is a labour market test required as a precursor to a short or long-term visa?

Under the Labour Law, UAE nationals are given top priority to fill employee positions. The Ministry of Human Resources and Emiratisation is required to certify a need for non-nationals in the event of a non-availability of national workers. This is generally, however, a pro forma exercise.

The DIFC Employment Law and the ADGM Employment Regulations do not give priority to UAE nationals; therefore, no labour market tests are required in the DIFC and the ADGM.

TERMS OF EMPLOYMENT

Working hours

19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The Labour Law applies the following restrictions on working hours:

- working hours must not exceed eight hours per day, or 48 hours per week, over a six-day week;
- employees cannot work more than five consecutive hours without receiving break times of at least one hour in total for rest, food and prayer. This break time does not constitute a working hour; and
- the normal weekly holiday is Friday unless the employee works on a daily wage basis.

An employee may not opt out of those restrictions or limitations.

These provisions do not apply to certain employees working in a senior or managerial capacity, or ship crews and seamen who work under special service conditions owing to the nature of their work.

The position differs in the Dubai International Financial Centre (DIFC), where the following provisions apply:

- weekly working hours must not exceed, on average, 48 hours over a seven-day period unless the employer first obtains the employee's consent, in writing, to a greater number of hours;
- an employee who works more than six hours per day is entitled to rest and prayer breaks of at least one hour on aggregate during that period;
- an employee is entitled to a rest break of at least 11 consecutive hours in each 24-hour period; and
- an employee is entitled to an uninterrupted rest period of at least 24 hours in each seven-day week.

An employee may not waive these restrictions.

- Under the Abu Dhabi Global Market (ADGM) Employment Regulations:
- an employee's working time shall not exceed an average of 48 hours for each seven-day period (although there are overtime provisions);
 - an employee is entitled to a rest period of not less than 11 consecutive hours in each 24-hour period;
 - an employee is entitled to an uninterrupted rest period of not less than 24 hours in each seven-day work period (although some exceptions apply); and
 - where an employee's daily working time is more than six hours, the employee is entitled to rest and prayer breaks of not less than one hour on aggregate. The rest and prayer breaks may be spent away from the employee's workstation.

Overtime pay

20 | What categories of workers are entitled to overtime pay and how is it calculated?

Overtime must not exceed two hours per day unless the work is necessary to prevent a substantial or serious accident (or to eliminate or alleviate its effects). Overtime pay amounts to 125 per cent of an employee's remuneration for the period of overtime worked (unless the employee is required to work overtime between the hours of 9pm and 4am, in which case this rises to 150 per cent). Where an employee is required to work on a Friday, he or she is granted one day's leave in lieu, or paid 150 per cent of his or her basic wage for the Friday worked. Other than labourers on a daily wage, no employee can work more than two consecutive Fridays.

These provisions do not apply to certain employees working in a senior or managerial capacity, or ship crews and seamen who work under special service conditions owing to the nature of their work.

The DIFC Employment Law references but does not specifically define 'overtime'.

The ADGM Employment Regulations permit payment of overtime to employees where they have worked more than the threshold over a reference period (ie, a number of working hours calculated over a quarter of the year). Overtime compensation is either monetary or by time in lieu, or a combination of both, as decided by the employer. Monetary overtime compensation is in addition to the daily wage and is payable at the rate of 25 per cent of the hourly rate (or time in lieu, as appropriate). For overtime worked between 9pm and 4am, the overtime compensation rate is 50 per cent of the hourly rate (or time in lieu, as appropriate). Monetary overtime payments must be paid no later than one month after the expiration of the reference period in which they accrued.

21 | Can employees contractually waive the right to overtime pay?

No, such a waiver by an employee would be unenforceable.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

The Labour Law requires that, for each year of service, employees are entitled to paid leave of not less than:

- two calendar days per month, for employees who have more than six months' service but less than one year's service; or
- 30 calendar days per annum, for employees with more than one year's service.

Leave is in addition to the seven national holidays. The United Arab Emirates (UAE) Cabinet declares the length of each national holiday (which can fall on any day of the week each year) before the holiday takes place. The lunar calendar determines the dates of some national holidays.

The minimum pay for annual leave and national holidays is the employee's basic pay plus housing allowance (if applicable). However, if a public holiday falls on a weekend, an employer is not obliged to provide payment to an employee in place of the public holiday.

The DIFC Employment Law requires an employee to be entitled to paid annual leave of 20 working days, in addition to national holidays, if he or she has at least 90 days' service. This is accrued pro rata in the first year, calculated at a rate of 1:12 of the employee's leave entitlement on the first day of each month of service. There is no minimum pay for annual leave, but pay for national holidays is calculated at the employee's daily wage.

The ADGM Employment Regulations entitle an employee to a minimum paid annual leave of 20 working days, in addition to national holidays, if he or she has at least 90 days' service. These 90 days are to be accrued pro rata for employees who have been employed for at least 90 days. An employee is entitled to carry forward his or her accrued but untaken vacation leave up to a maximum of five business days into the next year for a maximum period of 12 months, after which the unused leave expires.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

Under the Labour Law, an employee is not entitled to paid sick leave during his or her probationary period. If an employee has worked continuously for an employer for three months, after the end of his or her probationary period, he or she is entitled to 90 days' sick leave per year (either continuously or on aggregate), of which:

- the first 15 days are with full pay;
- the next 30 days are with half pay; and
- the remaining 45 days are unpaid.

Under the DIFC Employment Law, an employee is entitled to 60 working days' paid sick leave per year, which cannot be carried forward into the next 12-month period. The first 10 days are with full pay. The next 20 days are with half pay, and the remaining 30 days are unpaid.

Under the ADGM Employment Regulations, an employee is entitled to 60 working days' paid sick leave per year. The first 10 days are with full pay. The next 20 days are with half pay, and the remaining 30 days are unpaid.

There is no state sick pay (neither in the UAE nor the DIFC).

Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

There is no entitlement to a leave of absence other than for the reasons set out in the Labour Law (eg, annual leave and sick leave). Employers and employees are free to reach agreement on leaves of absence on a case-by-case basis.

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

The Labour Law provides many benefits to employees that cannot be waived by contract. Among these benefits are:

- protection from arbitrary termination;
- an assurance via the Wage Protection System that salaries will be paid monthly;
- entitlement to overtime compensation;
- termination benefits;
- repatriation benefits; and
- an administrative and judicial grievance procedure where fees are waived for employees.

Employers in the emirates of Abu Dhabi and Dubai must provide health insurance to their employees.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

Under the Labour Law, part-time employees have the same rights as other employees, although they work shorter hours. The same is true for short-term employees. Employers are still required to obtain labour permits for part-time and short-term employees.

The position is the same in the DIFC except that short-term employees are given their entitlements on a pro rata basis and are not entitled to a written contract or an itemised pay statement if the employment is for less than 30 days.

In the ADGM, part-time employees are given their leave entitlements on a pro rata basis, and the right of the employer to terminate (for excessive sick leave) applies but is calculated on a pro rata basis.

Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

There are no such requirements in the UAE, the ADGM or the DIFC.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

It is not possible to obtain injunctive relief from the United Arab Emirates (UAE) courts, so contractual restraint of trade clauses are of limited use. However, it is possible to prevent an employee from working in the UAE through Ministry of Human Resources and Emiratisation administrative processes. If an employee resigns before completing one year of service with an employer, the Ministry of Human Resources and Emiratisation enforces an automatic six-month employment ban on the employee. The Ministry can also impose a ban on employees with more than one year's service but less than three years' service; however, this can be lifted on payment of a fee or if the former employer confirms that it does not object.

Free-zone authorities can enforce post-termination restrictions if they are included in an employment contract, but only within the relevant free zone.

In the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), restraint of trade clauses can be included in an employment contract. Injunctive relief is available from the DIFC and ADGM courts, but an injunction order is only enforceable within the DIFC or ADGM respectively.

Post-employment payments

29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Employers do not have to pay former employees any remuneration while they are subject to post-employment restrictive covenants.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?

The Labour Law states that an employer can be vicariously liable for the acts of its employees carried out in the course of their employment.

The Dubai International Financial Centre Employment Law provides that an employer is liable for acts of its employees carried out in the course of employment. An employer is not liable if it proves that it took reasonable steps to prevent the employee from carrying out the act, or similar acts, in the course of employment.

The Abu Dhabi Global Market Employment Regulations do not address this issue.

TAXATION OF EMPLOYEES

Applicable taxes

31 | What employment-related taxes are prescribed by law?

There is no payment or withholding of employment-related taxes.

EMPLOYEE-CREATED IP

Ownership rights

32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

Federal Law No. 7 of 2002 for Copyright and Neighbouring Rights (the Copyright Law) is the governing legislation addressing employee inventions. The Copyright Law provides that the author of a work is its owner. An employer and employee can agree to the contrary in the employment contract, but there are limitations on the disposal of future copyright works. Specifically, purported disposals of more than five future works are void. The author's moral rights to a work are non-transferable. If a work is a collective work, created by co-authors under the direction of the employer and for publications in the employer's own name, then the employer owns the copyright. However, this can be varied by agreement.

Unless the parties have agreed otherwise, an employer has the right to apply to patent any invention created during the course of an employee's employment (Federal Law No. 17 of 2002 Regulation and Protection of Patent and Property Rights in the Industrial Designs and Models (the Patents and Designs Law)). However, the employee has rights to compensation if the economic value of the invention was not anticipated when the employment contract was entered into.

An employee may be entitled to an invention in circumstances where an employee has created an invention and both of the following apply:

- the inventive activity is outside the scope of the employee's duties; and
- he or she uses the employer's resources to make an invention relevant to the employer's business.

The employee will only be entitled to the invention if the employee gives the employer notice of the invention in a written report, and the employer fails to confirm interest in owning the invention after a lapse of four months from receiving the written report.

If the employer does express his or her intention to acquire the rights to owning the invention within the four-month period, the employee shall be entitled to fair compensation, taking into account the significance and economic value of the invention to the employer.

Trade secrets and confidential information

33 | Is there any legislation protecting trade secrets and other confidential business information?

Protection is available under local law in respect of confidential business information that would qualify for protection under the Copyright Law or the Patents and Designs Law.

The Labour Law does not expressly protect confidential business information; however, it provides for the enforceability of post-employment restrictive covenants.

DATA PROTECTION

Rules and obligations

34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

There are no specific data protection rights for employees under the Labour Law or in the free zones, but general protection exists in the Civil Code. There are general data protection laws that apply in the financial free zones (the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM)), which protect employees' rights to privacy and their personal information.

DIFC Law No. 1 of 2007 (the DIFC Data Protection Law) imposes several obligations on anyone who processes personal data. Employees have several rights concerning their personal data, including the right to have their information processed fairly, securely and following necessary and legitimate purposes. There must also be adequate protection when data is transferred to a jurisdiction outside the DIFC.

The ADGM Data Protection Regulations 2015, as amended by Data Protection (Amendment) Regulations 2018, impose similar obligations to the DIFC Data Protection Law.

35 | Do employers need to provide privacy notices or similar information notices to employees and candidates?

There is no provision under the Labour Law or in the free zones concerning the requirement for an employer to provide privacy notices or similar information notices to employees and candidates.

36 | What data privacy rights can employees exercise against employers?

There are no specific privacy rights that employees can exercise against employers except the protection provided by the Civil Code and by the general data protection laws that apply in the financial free zones (the DIFC and ADGM).

BUSINESS TRANSFERS

Employee protections

37 | Is there any legislation to protect employees in the event of a business transfer?

Employees are not automatically transferred with the business or given protection against dismissal in the event of a business transfer. The termination provisions under the Labour Law apply. There are no regulations relating to harmonising the terms of transferred employees with other (existing) employees of the buyer.

TERMINATION OF EMPLOYMENT

Grounds for termination

38 | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

An unspecified term contract may be terminated for a legitimate reason with notice given at least 30 days before the termination. Termination is considered arbitrary and can be adjudicated if the cause for it is not related to the employee's work or is a result of a justifiable action brought by the employee against the employer. A contract may be terminated without notice in limited circumstances.

The Dubai International Financial Centre (DIFC) Employment Law requires that an employee be terminated for cause in circumstances where the conduct of the employee warrants termination, and where a reasonable employer would have terminated the employment.

The Abu Dhabi Global Market (ADGM) Employment Regulations anticipate that there may be circumstances in which an employer may terminate an employee for a reason other than cause.

Notice

39 | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

The minimum notice period under the Labour Law is 30 days. An employer and employee can mutually agree to a longer notice period, but they cannot shorten notice to less than the statutory minimum period. If either party defaults on the agreed notice period, he or she must pay compensation in lieu of notice based on the employee's current pay (in proportion to the number of days in default).

In the DIFC, the minimum notice period is:

- seven days if the period of continuous employment is less than three months;
- 30 days if the period of continuous employment is at least three months but less than five years; and
- 90 days if the period of continuous employment is five years or more.

However, an employer and employee can agree to a:

- longer or shorter period of notice;
- waiver of the notice entirely; and
- payment in lieu of notice.

In the ADGM, the minimum notice period is:

- seven days if the period of continuous employment is less than three months; or
- 30 days if the period of continuous employment is three months or more.

This notice period does not apply where the employee is terminated for cause, during probation or for excessive sick leave.

The minimum notice periods do not prevent either an employer and employee from agreeing to a longer period of notice nor does it prevent either party from waiving notice or from accepting a payment in lieu of notice.

40 | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

An employer can dismiss an employee without notice if the employee commits an act of gross misconduct or is on probation. Under the Labour Law, the offences that constitute gross misconduct are limited to the following:

- adopting a false identity or nationality or submitting forged certificates or documents;
- making a mistake resulting in a substantial material loss for the employer, and the employer notified the Ministry of Human Resources and Emiratisation of the incident within 48 hours of becoming aware of its occurrence;
- disobeying instructions concerning industrial safety or the safety of the workplace if the instructions are in writing and displayed clearly. If the employee is illiterate, the employer should have read the instructions to him or her;
- failing to perform basic duties under the contract of employment and persisting in violating them even though he or she has been both the subject of a written investigation and warned that he or she will be dismissed if the behaviour continues;
- revealing company secrets;
- sentencing by a competent court for an offence involving honour, honesty or public morals;
- being found drunk or under the influence of a drug during working hours;
- assaulting an employer, a responsible manager or a colleague during working hours;
- being absent without a valid reason for more than 20 non-consecutive days, or more than seven consecutive days; and
- if the employee works for another employer during his or her annual or sick leave.

An employer in the DIFC may terminate an employee's employment with immediate effect for cause in circumstances where the conduct of the employee warrants termination.

Similarly, in the ADGM, an employer may terminate an employee's employment with immediate effect for cause. Termination by the employer for cause means termination owing to the employee's conduct in circumstances where a reasonable employer would consider immediate termination to be warranted.

Severance pay

41 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

To be entitled to a gratuity or severance payment on termination of employment, the Labour Law requires an employee to have accrued one year's continuous service and the dismissal not to be for gross misconduct. An end-of-service gratuity is calculated regarding the employee's last basic pay at the time of termination at the rate of:

- 21 days' basic pay for each of the first five years of service; and
- 30 days' basic pay for each year of service in excess of five years of service.

The position is the same in the ADGM.

The position is largely the same under the DIFC Employment Law except that the collection of the end-of-service benefit is slightly different, and there is no reduction in the end-of-service gratuity when an employee resigns. The DIFC has recently introduced a mandatory workplace savings scheme whereby the end-of-service benefit for employees is calculated and paid monthly by employers into a workplace savings fund. The monthly contribution amounts that employers are required to make is equal to the rates set out above in the Labour Law. Upon termination or resignation of employment, employees may choose to cash out their benefit or have it remain invested in the fund. This scheme began on 1 February 2020 and will apply to all employee contributions from this date.

An employee with an unlimited contract who resigns from his or her employment with less than five years' service is entitled to a

reduced gratuity payment, calculated by reference to the length of service, as follows:

- an employee who has more than one year but less than three years' service is entitled to one-third of the total gratuity entitlement;
- an employee who has more than three years' but less than five years' service is entitled to two-thirds of the total gratuity entitlement; and
- an employee who has more than five years' service is entitled to the full gratuity entitlement.

An employee is not entitled to an end-of-service gratuity payment in either of the following circumstances:

- he or she is entitled to a company pension that complies with the provisions of the Labour Law or DIFC laws (as appropriate); or
- pension contributions are made on his or her behalf to the General Pension and Social Security Authority.

Procedure

42 | Are there any procedural requirements for dismissing an employee?

The Labour Law requires that employees be granted 30 days' notice before dismissal. Employees can avail themselves of the grievance procedure if they believe that the employer's action was wrongful. Employers must cancel or transfer sponsorship of an employee's residence visa and labour card (or identity card if the employee is working in the DIFC, ADGM or the free zones) within 30 days of termination of employment. Employees must sign a final settlement form confirming that they have received all their legal entitlements before the authorities will cancel their residence visa and labour card (or identity card, if applicable).

Approval from or notification to a government agency is not required, apart from the procedures involved in cancelling the employee's labour permit and residence visa after an employee's contract is terminated.

Employee protections

43 | In what circumstances are employees protected from dismissal?

Employees on specified-term contracts may be terminated only for one of the specified acts of misconduct that are set out in the Labour Law. Employees under unspecified-term contracts can be terminated only for a legitimate reason and with a minimum notice of 30 days.

A 2009 Ministerial Resolution prohibits the dismissal of United Arab Emirates (UAE) nationals without the approval of the Minister of Human Resources and Emiratisation. This measure applies throughout the UAE, including the free zones other than the DIFC.

Employees in the DIFC must be terminated for cause and given a minimum notice period determined by their length of continuous employment with the employer. An employee may request a written statement of reasons for his or her dismissal if he or she has been continuously employed for at least one year.

Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

There are no special rules for mass termination or collective dismissals. Employee contracts must be individually terminated.

The position is the same in the DIFC and ADGM.

Class and collective actions

45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Class actions are not permitted under UAE law. The Dubai Court does not have a mechanism for class actions, so each claim must be filed separately. The Labour Law, however, permits collective work disputes to allow for a quick and amicable resolution of disputes. The aggrieved employees must submit their complaints in writing to their employers and send copies of the complaints to the Ministry of Human Resources and Emiratisation. Employees must reply to the complaint within seven working days of the date of receipt, with a copy submitted to the Ministry. If the employers fail to respond or their replies do not resolve the disputes, the Ministry will mediate to settle the disputes. Failure to settle will result in the referral of the disputes to a conciliation board that is responsible for awarding a decision.

Under the DIFC Employment Law, multiple actions may be combined by applying for a Group Litigation Order from the DIFC Courts.

Mandatory retirement age

46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

The Labour Law imposes a mandatory retirement age of 65 years on foreign nationals. To work beyond the mandatory age of retirement, the approval of the Minister of Human Resources and Emiratisation or undersecretary must be given. Approval is often granted if the employee is an expert or consultant with expertise in a rare speciality.

There is no mandatory retirement age in the DIFC or ADGM.

DISPUTE RESOLUTION

Arbitration

47 | May the parties agree to private arbitration of employment disputes?

The Labour Law does not permit an employee to waive their statutory and contractual rights to potential employment claims.

The position is the same in the DIFC and the ADGM.

Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

The Labour Law does not permit an employee to waive their statutory and contractual rights to potential employment claims.

The position is the same in the DIFC and the ADGM.

Limitation period

49 | What are the limitation periods for bringing employment claims?

Under the Labour Law, the time limitation for bringing employment claims is one year.

UPDATE AND TRENDS

Key developments of the past year

50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

Workplace savings scheme replaces the current end-of-service regime

On 14 January 2020, the Employment Law Amendment Law (the Dubai International Financial Centre (DIFC) Law No. 4 of 2020) and the Employment Regulations (the Amendment) were enacted. The Amendment introduces a new mandatory workplace savings scheme, which replaces the current end-of-service gratuity regime. The new scheme commenced on 1 February 2020.

The main consequences of the Amendment are that:

- although the end-of-service benefits (EOSB) of employees remained in place and continued to accrue until 31 January 2020, the EOSB then stopped accruing and was replaced by the new regime introduced by the Amendment from 1 February 2020 onwards; and
- from 1 February 2020, employers must make monthly mandatory contributions into a professionally managed and regulated savings plan (a qualifying scheme) for the benefit of their employees. Provided that the basic salary is not less than 50 per cent of the employee's total monthly compensation, the monthly mandatory contributions into the scheme must be at least:
 - 5.83 per cent of the employee's basic salary for the first five years of service; and
 - 8.33 per cent of the employee's basic salary for each additional year of service.

This law applies to all DIFC-based employers and employees (with the exceptions listed below). This includes employees under a DIFC visa that are seconded outside the DIFC.

The qualifying scheme does not apply to DIFC-based:

- employees registered with the General Pension and Social Security Authority (typically, nationals of the United Arab Emirates (UAE) and Gulf Cooperation Council countries);
- employees of the DIFC Authority, or other local or federal government entities;
- employees seconded to a DIFC entity from other regions;
- entities that are exempted from the application of DIFC Law No. 2 of 2019 (the DIFC Employment Law) by the President of the DIFC;
- employees serving a notice period on 1 February 2020;
- employees under a fixed-term contract expiring on or before 1 May 2020; and
- equity partners of DIFC entities.

On termination of employment (the end date), the employee shall be paid their EOSB accrued until 31 January 2020 and all the mandatory contributions from 1 February 2020 to the end date. These payments are to be made unless the employee opts to defer receipt of these to a later date.

Although the current workplace savings scheme only applies to DIFC-based companies, there are current proposals to introduce this scheme into the Labour Law so that it applies across the UAE.

Moreover, as a result of the covid-19 pandemic, the UAE has seen a significant shift to online and work-from-home platforms from businesses in a variety of sectors. Many of the professional sectors have incorporated work-from-home options and structures to facilitate reduced office capacity and to ensure the safety of employees during the duration of the pandemic. While the shift initially began in response to the lockdown restrictions imposed by the UAE government in early 2020, this trend appears to be continuing into 2021.

The use of various online platforms such as Zoom, Skype and Microsoft Teams have been instrumental in facilitating the continuation of business activity while allowing businesses to maintain safety measures related to the coronavirus.

Coronavirus

51 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In response to the covid-19 pandemic, the UAE government issued several new regulations and circulars aiming to reduce the spread of covid-19 as well as to provide relief and guidance to businesses that may be impacted both financially and practically by the pandemic.

Ministerial Resolution No. 281 of 2020

The Ministry of Human Resources and Emiratisation issued Resolution 281 of 2020 regulating remote working in private-sector enterprises during the implementation of the precautionary measures to limit the spread of covid-19.

Ministerial Resolution No. 281 of 2020 and the attached provisional guidelines detail the procedures that were to be carried out by the employers and employees during the height of the covid-19 precautionary measures in March of 2020. Ministerial Resolution No. 281 of 2020 and the attached provisional guidelines included restrictions on the number of employees permitted in communal areas, preventing gatherings and suspending all activities in labour and housing areas. The Resolution also required that all employers test their employees for fever and other symptoms of covid-19 at least twice a day upon entering and upon leaving the workplace. It is worth noting that while Ministerial Resolution No. 281 of 2020 has not been formally repealed, the Dubai Economic Department announced on 30 December 2020 that effective from 1 January 2021, thermal scanners and manual temperature checks would no longer be required for businesses.

Ministerial Resolution No. 279 of 2020

The Ministry of Human Resources and Emiratisation also issued Ministerial Resolution No. 279 of 2020 that encourages employers to consider alternative means of reducing staffing costs rather than terminations and makes clear that certain measures should be with an employee's express written agreement. Ministerial Resolution No. 279 of 2020 provides that employees may work from home and also includes measures such as leaves from work. The Resolution details measures that employers in the private sector may progressively implement for their non-UAE national employees. The specific measures that are permitted by the Resolution include:

- working remotely;
- paid leave;
- unpaid leave;
- temporary salary reduction during the relevant period; and
- permanent salary reduction.

An employer seeking to put an employee on unpaid leave or to reduce the salary of an employee temporarily must prepare a temporary supplement to the employment contract, on a form promulgated by the Ministry, which would be signed by both the employer and the employee. The supplement must be notified to the Ministry upon the Ministry's request. An employer that wishes to permanently reduce an employee's salary must prepare an amendment to the employment contract through the Ministry's online portal.

The measures detailed in Resolution No. 279 are available only to employers who are registered with the Ministry, which means that employers in the many free zones of the UAE are not covered. The Resolution will remain in effect only as long as the coronavirus crisis continues, the duration of which remains uncertain.

Ministerial Resolution No. 280 of 2020

The Ministry of Human Resources and Emiratisation issued Ministerial Resolution No. 280 of 2020 and Circular No. 4 of 2020 in respect of the stability of the UAE national workforce. Ministerial Resolution No. 280 of 2020 establishes a committee to monitor the stability of the conditions of UAE nationals working in the private sector and to make recommendations to the Minister for measures to be introduced to promote stability of employment for UAE nationals while Circular No. 4 of 2020 restricts the ability to restructure a UAE national workforce by imposing certain requirements including:

- notifying the Ministry of Human Resources (Taween) of any intention to re-structure or reorganise;
- referring the matter to the committee (referred to above) established under Ministerial Resolution No. 280 of 2020;
- adopting and implementing alternative measures such as those described above under Ministerial Resolution No. 279 of 2020; and
- not proceeding with a restructure until alternative measures by the committee have been implemented and agreed with by the employee.

Following the approach adopted by the UAE federal government, the DIFC has also issued various announcements and guidance throughout the covid-19 pandemic.

Presidential Directive No. 4 of 2020 in respect of the COVID-19 Emergency Measures, outlined certain measures for employers during the Emergency Period, which ended on 31 July 2020. Presidential Directive No. 4 included guidance addressing the suspension of employee visas that may have expired during the Emergency Period when offices responsible for the renewal procedures may not have been operating.

Presidential Directive No. 4 also addressed covid-19-related sick leave (as well as regular sick leave), and outlined procedures for employees working from home, as well as measures that may be imposed by the employer such as vacation leave, or reductions in remuneration or imposing reduced working hours or leave without pay. One key distinction between the DIFC approach and the measures imposed onshore by the Ministry of Human Resources and Emiratisation is the issue of employee consent. Under the DIFC structure, the employer was able to impose the aforementioned measures without the employee's consent temporarily for the prescribed period under the law.

Additionally, the DIFC has allocated a website for DIFC updates on covid-19 and issued the Back to Office Guide that outlines the COVID-19 Guidelines. The Back to Office Guide includes sector-specific guidance related to capacity limitations and sanitation requirements as well as general rules of application including mandatory mask-wearing and social distancing. Moreover, the Back to Office Guide highlights the current measures exercised by the DIFC authority aimed to keep employees and customers safe.

Abu Dhabi has taken a stricter approach generally with the application of covid-19 related measures and the ADGM has largely followed this position too. The ADGM issued the Coronavirus (COVID-19) Employment Framework on 2 April 2020, which addresses various questions that both employees and employers may have concerning the labour queries in light of the covid-19 pandemic. Such guidance includes the rights of employees for termination during the covid-19 pandemic, the calculation of end-of-service and gratuity payments and the employee's rights concerning various measures such as those outlined above

including working from home, imposed salary reduction and vacation or unpaid leave imposed by the employer. The guidance also addresses possible queries related to healthcare coverage in the event of termination of employment as a result of, or during the duration of the covid-19 pandemic, and the various duties owed by each of the employees and the employer by the ADGM during the covid-19 pandemic.

Another significant covid-19-related relief measure included the announcement by the UAE government of all suspended visas to all foreigners (resident visa holders and tourist visa holders). The relief measure was in response to various travel restrictions preventing individuals from leaving the UAE. Moreover, the UAE released various economic stimulus packages and relief packages that provided relief to businesses suffering economic loss as a result of the pandemic.

The General Pension and Social Security Authority (GPSSA) granted subscriber private-sector companies to defer subscription payments to the GPSSA for their employees for three months from March to May 2020.

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