

INSIDE THE MINDS™

EMPLOYMENT LAW CLIENT  
STRATEGIES IN THE  
MIDDLE EAST AND AFRICA

LEADING LAWYERS ON UNDERSTANDING LOCAL  
COURTS, ADDRESSING COMPLIANCE ISSUES, AND  
RESOLVING EMPLOYER-EMPLOYEE DISPUTES



ASPATORE

Leila Alem Hammoud, Alem and Associates Law Firm  
Ala' Z. M. Jardaneh, Jardaneh Law Firm  
Ofar Dekel, GKH Law Offices  
Retha Beerman, DLA Cliffe Dekker Hofmeyr Inc.  
Stuart Walker, Afridi & Angell

Understanding Employment  
Law Issues in the  
United Arab Emirates

Stuart Walker

*Partner*

Afridi & Angell



ASPATORE

### Employment Law in the UAE

Employment relationships in the United Arab Emirates (UAE) are governed by UAE Federal Law No. 8 of 1980 on Labour and Employees, 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
- 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)

The above categories of employees are not subject to the Labor Law for public policy reasons. As a practical matter, the exclusion of these categories of employees poses few issues for the majority of employers in the UAE. This is because the vast majority of employers are foreign, private companies.

Employees who are based in the many free zones of the UAE are often subject to some regulations and policies that are specific to the relevant free zone. (Free zones are discreet geographical areas, each with specific industry focus. For example, Media City is a free zone where the majority of businesses registered and located inside that free zone are connected in some way with the media industry.) In particular, the Dubai International

Financial Centre has its own employment law and court system. This is separate and distinct from the general employment law regime applicable in the wider UAE. There are, however, many similarities in the material provisions of the Labor Law and the Dubai International Financial Centre employment law. This chapter refrains from discussing the employment regulations of each of the many free zones in the UAE. (At last count, there were in excess of forty different 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. For example, the Labor Law provides for an end-of-service gratuity to be paid to qualifying employees. The Labor Law contains detailed provisions as to the calculation of the amount of the end-of-service gratuity. Any contractual provision that provided for a lower amount would not be upheld by a UAE court if the employee sought a ruling that the relevant provision was contrary to law. However, if the contractual provision resulted in a greater amount being due to the employee, the UAE courts would enforce that additional contractual right. Unscrupulous or poorly advised employers have been known to issue employment contracts containing fewer rights and benefits than are mandated by the Labor Law. Unfortunately, many employees are unaware of their full legal rights and are therefore prepared to accept the terms set out in their contract of employment.

As approximately 80 percent of residents of the UAE are foreigners (i.e., not citizens of the UAE), employment law is closely linked to immigration law and related issues. Any consideration of employment issues must also consider the consequences of any planned action from an immigration point of view. For example, the decision to terminate the employment of an individual means that he or she then has a maximum of thirty days within which to leave the country (and, in some instances, the imposition of a six-to-twelve-month ban on finding alternative employment in the UAE). If the employee has family in the UAE, this can result in a significant disruption to their lives. To avoid this disruption, an employee will often be willing to

accept a variation to the terms of their employment contract in order to avoid outright termination.

### Enforcement and Disputes

Enforcement of the Labor Law is the task of the UAE Federal Ministry of Labour (the Ministry). 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.

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.

Disputes must be referred to court within one year of the start of the dispute. A party to a dispute loses the right to refer the matter to court if the one-year period has ended.

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.

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 thirty days from the date on which the decision was rendered.

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. Labor claimants are not required to appoint counsel, and may instead appear in court on their own behalf. 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.

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 the Labor Law provides, even in exchange for more generous contractual benefits. In the event that the Ministry cannot resolve an employment dispute, either party may have the matter referred to the relevant court of first instance in the UAE legal system.

At the same time, a large segment of the UAE workforce 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 recently of allowing collective bargaining.

### Termination

With the general downturn in economic activity in the UAE in the past eighteen months, there has been an increase in the number of people losing their jobs. The Labor Law does not include any express provisions relating

to redundancy. However, the general trend at the moment is that employees will be awarded three months' pay if they make a complaint that their termination was due to the economic downturn.

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 the Labor Law on the part of the employer, such resignation would be treated (either by the Ministry or by the relevant Court of First Instance) as constructive dismissal. This will generally result in a finding of arbitrary dismissal on the part of the employer, which means compensation will be payable to the employee.

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

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
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.

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 forty-eight 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)
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
10. The employee is absent from work, without valid reason, for more than twenty non-consecutive days in one year or more than seven consecutive days

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.

An employee may terminate his or her employment contract without notice in the following circumstances, provided 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:

1. 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
2. The employee is assaulted by the employer or the employer's representative

In such cases, the employer will be liable to compensate the employee for the damages suffered because of the termination.

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 thirty days' prior written notice. 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
3. One month, if the employee has been employed for not less than five years

The validity of the contract of employment continues throughout the notice period. The employee is entitled to full salary calculated based on 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.

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

## Severance and Compensation

The Labor Law provides for severance pay (the end-of-service gratuity mentioned above) for employees who have completed a period of at least one year of continuous service, which is calculated as follows:

1. Twenty-one days' salary for each year of the first five years of employment, and
2. Thirty days' salary for each additional year of employment, provided that the aggregate amount thereof does not exceed two years' salary

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.

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 is null and void.

The Labor Law provides for compensation to be paid to an employee who has been dismissed for arbitrary reasons.

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

## Employer Errors

There are a number of common mistakes foreign employers make, which lead to difficulty in dealing with employees and contracts. These mistakes can be avoided if the employers are aware of the pitfalls. It may be prudent for employers entering the UAE for the first time to have their standard-form employment contract reviewed by a suitably experienced UAE legal consultant. In addition, all contracts for major hires should be properly vetted by local counsel before being signed.

