

READY FOR REFORM ACROSS THE REGION?

A host of employment law changes have been introduced across the GCC which mean employers will have to think again about who they recruit and retain, and the penalties for failure to comply with other new requirements. Employment law experts from across the GCC explain the points to watch in each jurisdiction.

WORK PERMITS

"In Oman, the focus has been on employment of non-Omani workers as in January, the Manpower Ministry issued a Ministerial Decision imposing a temporary ban on bringing non-Omani workers into the country to work in certain professions in the private sector," Erik Penz, Special Counsel at Al Busaidy, Mansoor Jamal & Co explains. "These included specific IT professionals, architects and certain engineers (including civil engineers), certain insurance agents and certain business administration and HR professionals. The ban is in effect for six months, labour permits issued before the ban are exempt from it as are certain small and medium enterprises. It is thought to have been put in place because of Oman's relatively high unemployment rate which was 16.9% in December and the Council of Ministers aim to create for 25,000 jobs for Omanis in the private and public sectors by June 2018."

"Anecdotal evidence suggests the temporary ban is affecting companies in certain industries, where finding suitable Omani replacements may not be as straightforward as previously thought," Penz continues. "Companies in the construction sector are finding it hard to complete building projects where they cannot



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obtain labour permits for expatriate workers for project management and construction, white-collar workers for project management and blue-collar for implementation."

"In addition, the Manpower Ministry has said labour permits should not be given to expatriates who have not employed any Omani nationals," Penz states.

"This could mean start-ups, including foreign company branch offices may need to first employ Omani nationals before they can get labour permits for expatriate staff. All eyes will be on the Manpower Ministry this summer when the temporary ban is due be lifted to see whether instead they opt to extend it or perhaps even expands it to other professions," Penz adds.

"Saudi Authorities have also been looking at the employment of non-nationals," Sara Khoja, Partner at Clyde & Co explains.

"From September 2017, applicable quotas under the Nitaqat system have been

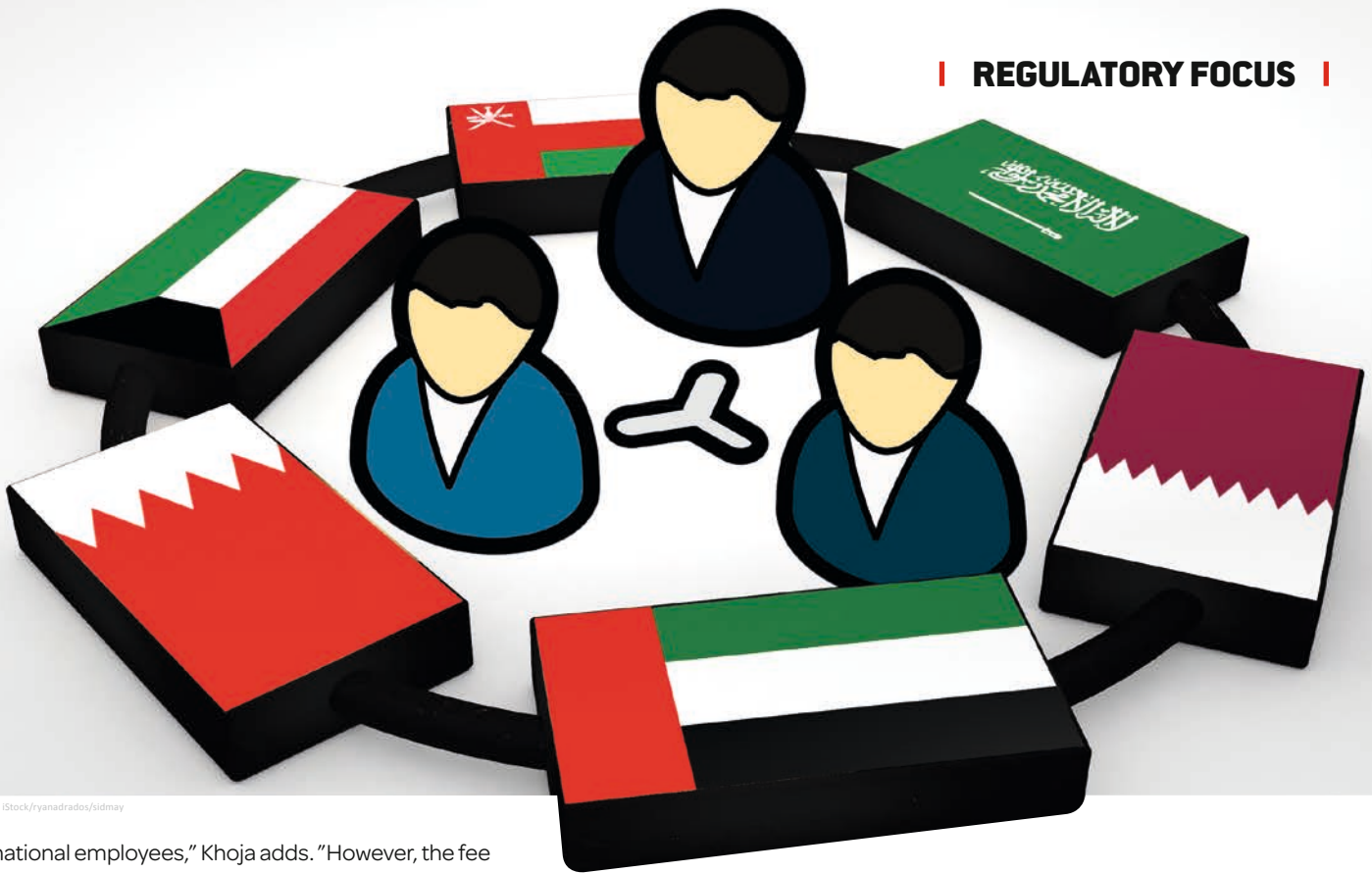
significantly increased and categorisations are now based on bands of compliance with the applicable quota. Only employers in the two highest compliance categories high green and platinum can apply for block visas," Khoja continues. "In addition, from the new Islamic year (approximately in August 2018) 12 new sectors or activities must be entirely staffed by Saudi employees and implementation of the change will be carried out over five months from the start of the New Islamic Year. Employers will have to start planning now for how they will resource this change. A new expatriate levy was also introduced in the January 2018 Government budget which introduces a fee payable by employers for every expatriate worker (regardless of the employer's ratio of Saudi to non-Saudi

RELATED LEGISLATION

Saudi Arabia Ministerial Decision No. 88478/1439

If an employer enables a non-Saudi employee to work without obtaining a work permit or without renewing it they will be fined up to 20000 Riyals depending on the number of employees involved.

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national employees,” Khoja adds. “However, the fee is higher if the employer’s ratio is not 1:1 and increases incrementally over the next three years. Those who fail to comply with these requirements will face significant fines and a potential suspension of businesses trade licenses. Employers will also have need to assess how many foreign employees they will need to terminate and the cost of termination. Recruitment and succession plans will need to be put in place very quickly,” Khoja states.

“Work permit changes have also been hitting the headlines in the UAE after a new requirement which applies to all new visa applications for non-UAE national employees took effect on 4 February 2018,” Charles Laubach, Partner at Afridi & Angell states. “It means a Good Conduct and Behaviour Certificate must be submitted along with other supporting documents when an employer wishes to sponsor a non-UAE national employee for a residence visa. It also appears to apply throughout the UAE, including the free zones.”

“Like any other foreign document, a prospective employee’s Good Conduct and Behaviour Certificate must be notarised in the country of origin and then authenticated by the country’s Foreign Affairs Ministry, the UAE Embassy for the country and the UAE Foreign Affairs and International Cooperation Ministry,” Laubach adds. “This process often takes several weeks and the Certificate must be issued in the employee’s home country or the country the employee resided in for the five years before the application.”

“However, the Certificate is only required for an employment visa application, so will not be needed for visas for an employee’s dependent family members, or for other types of visas such as transit and visit visas. Fortunately, it does not apply to those who already



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hold employment visas and wish to renew or transfer them. It also appears this requirement does not apply to visa applications that have already been approved by the authorities. The change is part of the UAE authorities’ efforts to achieve high levels of security for UAE residents through improved screening. The authorities have not confirmed what stage in the process these certificates will be required, but it is expected they will be needed before Employment Entry Permits are issued.”

“A major change in Bahrain, is that for the first time ever, the concept of a ‘Flexi permit’ has been introduced,” Joshua Coleman-Pecha, Associate at Morgan, Lewis & Bockius LLP states. “This renewable two year permit allows eligible people to work and live in Bahrain in any job, with any number of employers on a full or part-time basis, without having an employer sponsoring them. This permit makes it legal for individuals to work alone or on a contract basis and allows them a two year renewable residency with rights of entry and return to the country in that time.”

“There are two types of Flexi permit,” Coleman-Pecha continues. The first is a general permit for non-specialist jobs but does not include restaurants, hotels and saloons and there is a ‘Flexi Hospitality permit’ which allows holders to work in non-specialist jobs including restaurants, hotels and saloons. Applications for either permit can be made through the Labour Market Regulatory Authority (LMRA) website.”

WAGE PAYMENTS

“Bahrain’s Cabinet have also approved the implementation of a new employee wages system in the private sector to ensure employees are not exploited. It

RELATED STORY

Oman: Work Permits for Expatriates in 87 Job Posts Suspended

LNB News 30/01/2018 71
Oman's Manpower Ministry has issued a Decision suspending the issuing of work permits to expatriates in 87 positions. The suspension will last for six months and came into force on 29 January 2018.

is set to launch in May 2018, and will be incrementally implemented, according to establishment size, with full implementation expected by May 2019," Coleman-Pecha explains. "What's important is under this system, staff will only be allowed to be paid through their bank accounts and cash payment of wages will no longer be allowed. In theory, this will prevent employers from not paying their employees at the end of each pay cycle (which

is usually monthly but sometimes weekly)," Coleman-Pecha continues. "Employers who fail to comply, will face penalties ranging from fines through to LMRA sanctions, such as refusals to register new employees or allowing current employees to move employer."

WORKERS' RIGHTS

"In addition, in Bahrain the LMRA has issued a new standard form employment contract which will be compulsory for anyone hiring a domestic worker," Coleman-Pecha adds. "This new unified contract is designed to prevent the exploitation of servants by ensuring employers declare matters like working hours, the nature of the job, provide a mandatory wage and a weekly day off. As statistics show domestic workers make up around 7% of Bahrain's employed labour force, this should mean significant changes for a large number of potentially vulnerable people who previously were not protected by the law. In addition, any violations of the contract will be treated as labour violations and employers will be subject to legal action."

"Qatar has also been making changes designed to improve the rights of expatriate workers there," Matthew Walker, Partner at K&L Gates states.

"One key change is the exit permit rules for expatriate workers under Qatar Law No. 1/2017. In addition, as in Bahrain, a law, Qatar Law No 15/2017 has also been introduced to regulate employment conditions of domestic workers."

LABOUR DISPUTES

"Another significant change in Qatar has been the establishment of Worker's Dispute Resolution Committees under Qatar Law No. 13/2017," Walker notes. "The Emir has also ratified Qatar Cabinet Decision No. 6/2018 to establish committees to resolve labour disputes. This Decision states the rules and procedures to be followed by these committees and mechanisms for implementing decisions and determining their compensation. Parties in such disputes will have a 15 day deadline from the date of a committee's decision before



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the Court of Appeal. This is the most significant change because, these Committees rather than the Labour Court will have the power to resolve any employment disputes covered by the Labour Law, so hopefully disputes will be resolved more quickly. It seems likely this raft of reforms have been introduced in response to International Labour Organisation recommendations. Although, following 2017 improvements to Qatar's labour laws and further promised changes, the Labour Organisation did close a complaint about Qatar's non-observance of the Forced Labour Convention. Further labour reforms, are expected in Qatar, including greater easing of restrictions on expatriate workers' ability to change sponsors and employers, introduction of a minimum wage, setting up a fund to guarantee late wages and easing of visa requirements for a broader range of nationalities."

TERMINATION AND TERMINATION PAYMENTS

"Another change expected in Saudi over the coming year, is that the Labour Law provisions which provides a compensation formula in the event of unjustified termination will be amended as it has been seen as potentially encouraging employers to terminate employees and is seen as unfair by many

employers as it provides the Labour Commissions with no discretion to vary the compensation payable depending on the surrounding circumstances," Khoja explains.

"Meanwhile, the key change in Kuwait has been the amendments to Articles 51 of Kuwait Law No. 6/2010 (the Private Sector Labour Law)," Attorney Khalifah Al Yaqout of Al Yaqout Legal Group explains. "Article 51 has been amended to ensure employees are paid their full end of service indemnity without deductions such as employer's contributions for the employee's social security insurance. Previously, employers in Kuwait could deduct amounts they had incurred on social security insurance payments from the end of service benefits, so this change gives employees greater protection."

LEAVE

"The amendment to Article 70 of Kuwait Law No. 6/2010 involves employees' entitlements to at least 30 days paid annual leave," Al Yaqout says.

"In addition, official holidays including weekly day-offs and sick leave will not be calculated in the annual leave. In practical terms, it means four weekdays off must be added to the minimum 30 days leave making total annual leave 34 days in normal circumstances. The Article 70 amendment also ensures those who have completed six months rather than nine months employment with one employer will qualify for annual leave."