

# THE LITTLER INTERNATIONAL GUIDE

## United Arab Emirates

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### Authors:

Charles Laubach

Alex Vromans

### of:

Afridi & Angell

Dubai, United Arab Emirates

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**UNITED ARAB EMIRATES CHAPTER—CONTACT INFORMATION:**

Charles Laubach    claubach@afриди-angell.com

Alex Vromans      alex@afриди-angell.com

**Mailing address:**

Afridi & Angell

P.O. Box 9371

Dubai, United Arab Emirates

**Telephone:** +971 (4) 330-3900

**Fax:** +971 (4) 330-3800

**Website:** [www.afриди-angell.com](http://www.afриди-angell.com)

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*The Littler International Guide* provides an overview of workplace laws and regulations of over 45 countries and territories. Written by selected attorneys and scholars from around the globe, as well as Littler attorneys, the *Guide* tracks the employment life cycle in a question-and-answer format, covering over 90 workplace law topics under 14 categories. Each jurisdiction provides responses to the same questions, facilitating comparison across jurisdictions. To meet the needs of our expanding audience, it is now available in a variety of electronic formats.

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## EDITORIAL NOTICE

Due to the effects of the COVID-19 pandemic, governments across the world have implemented various measures that affect employers (*e.g.*, to slow the spread of the virus, protect workers' health and safety, assist employers to recover from the economic crisis, etc.). Likewise, employers have had to adjust their operations in numerous ways.

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# UNITED ARAB EMIRATES

## § 1 OVERVIEW OF EMPLOYMENT & LABOR LAWS IN THE UNITED ARAB EMIRATES

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

The UAE's recent enactment of UAE Federal Decree-Law No. 33 of 2021 on the Regulation of Labor Relations ("Labor Law") governs employment relationships in the United Arab Emirates (UAE) with effect from February 2, 2022. Implementing regulations ("Implementing Regulations"), also effective from February 2, 2022, have been promulgated pursuant to Cabinet Resolution No. 1 of 2022. Previously, employment relations in the UAE were governed by UAE Federal Law No. 8 of 1980 Organizing Labor Relations, in conjunction with several amendments and regulations (together, "Old Labor Law").

The Labor Law together with the Implementing Regulations 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:

- employees of federal and local government entities;
- members of the armed forces, police, and security units; and
- domestic servants.

Employees who are based in the many Free Zones of the UAE are often subject to labor regulations that are specific to the relevant Free Zone. This chapter generally refrains from discussing the employment regulations of the Free Zones.

The provisions of the Labor Law are matters of public order; any provision in an employment contract that contravenes the Labor Law is considered null and void, unless it is more advantageous to the employee. Any provision deemed null and void is severable from the remainder of the employment contract, the remaining terms and conditions of which continue to be valid.

## § 1.2 What are the primary mechanisms for enforcement?

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

## § 1.3 What are the primary means for resolving disputes between employees and employers?

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

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

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 Labor Law states that employees are required to file a complaint with the Ministry in accordance with the rules and procedures stated in the Implementing Regulations.

The Minister may impose administrative procedures or measures for the establishment where the existing collective dispute may harm the public interest.

For a dispute that the Ministry is unable to settle amicably, the Cabinet may, based on the Minister’s proposal, form one or more committees under the name “Collective Labor Disputes Committee” to consider such Collective Labor Dispute. The resolution decision issued in such instance shall specify the Committee’s formation, tasks, system of work, mechanism for issuing and implementing the resolution, and other provisions related to the proper workflow before the Committee.<sup>3</sup>

Cases brought by employees or by their beneficiaries under the Labor Law whose value does not exceed AED 100,000 are exempt from court fees at all stages of litigation.<sup>4</sup>

## § 1.4 What are the most important characteristics of the legal culture relating to employment?

The most important aspect of the legal culture relating to employment is paternalism. Labor unions, strikes, and pickets are not permitted. Instead, the government, acting through the Ministry, acts as the guardian of the interests of employees. The Ministry tends to interpret the Labor Law and employment contracts in a

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<sup>1</sup> Labor Law, art. 54.

<sup>2</sup> Labor Law, art. 54.

<sup>3</sup> Labor Law, art. 56.

<sup>4</sup> Labor Law, art. 55.

manner designed to protect the interests of employees, and often expressly proceeds from the premise that the employee is the weaker party. It can be very difficult to deprive an employee of the statutory benefits that the Labor Law provides, even in exchange for more generous contractual benefits.

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

## **§ 1.5 What are the five most common mistakes foreign employers make and what can be done to help avoid them?**

Some of the most common mistakes foreign employers can make include:

1. Employers often terminate employment contracts without notice.

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

2. Employers often disregard local overtime rules.

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

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

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

4. Employers often include noncompetition clauses in employment agreements that are excessively broad.

Noncompetition clauses are permitted by the Labor Law; however, in order for them to be enforceable, they must be limited for a specific period of time not in excess of two years after the expiry date of the contract and must be geographically limited. Moreover, a noncompetition clause could be denied enforcement if the employer improperly terminated the employment agreement.

5. The new Labor Law introduces a notice requirement for termination during the probation period.

Pursuant to the Labor Law, the parties can agree to a probation period at the beginning of the employment for a period of up to six months. Previously, either party could terminate the employment agreement without notice during the probationary period. However, the Labor

Law now requires that either party must provide 14 days' notice where they wish to terminate the employment agreement.

## § 2 HIRING

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

Pursuant to the Labor Law, an *employee (worker)* is every physical person authorized by the Ministry to work for one of the licensed *establishments* in the UAE under the supervision and direction of the *employer* (as defined below).<sup>5</sup>

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

An *employer* is defined as every physical or legal person who employs one or more employees in return for salary of any kind. *Salary* is defined as basic salary, in addition to the cash payments and benefits-in-kind that the employer is obligated to provide to the employee, or their cash equivalent, if they are prescribed as part of the salary in the employment contract or the establishment's system, or the allowances that the employee is entitled to in return for their work, or the risks the employee is exposed to in the performance of their work, or any other reasons, or the allowances given to meet the cost of living, or a percentage of sales, or a percentage of the profits paid for what the employee markets, produces, or collects.<sup>6</sup>

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

### § 2.2 What are the consequences of misclassifying a worker as an independent contractor, contingent worker, or temporary worker?

Again, there are no specific provisions in the Labor Law that contemplate an independent contractor, contingent worker, or temporary worker. However, the Labor Law does contemplate various "work patterns" to be contracted upon. Such work patterns include full-time, temporary work, *flexible work* (which is defined as work whose working hours or days change according to the volume of work and the economic and operational variables of the employer). Under flexible work patterns, the worker may work for the employer at variable times in accordance with the work conditions and requirements. Note that irrespective of how long a foreign national works in the UAE, and whichever work pattern is applicable, such person must hold a residence visa to reside in the UAE, and such person's employer must obtain a labor permit for the person to be properly employed.<sup>7</sup>

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<sup>5</sup> Labor Law, art. 1.

<sup>6</sup> Labor Law, art. 1.

<sup>7</sup> Labor Law, art. 7.

### **§ 2.3 Does your jurisdiction allow or prohibit outsourcing? If allowed, what are an employer's obligations to avoid liability?**

Outsourcing of work by the employee is prohibited under the Labor Law, which provides that the employee must complete work under the direction and supervision of the employer or its representative and shall not outsource the work to any other employee or person.<sup>8</sup>

However, an employer may entrust another employer with the performance of any of its original works or part thereof, and the latter (being the second employer) shall be solely responsible for the rights of the employees or workers who carry out the work unless the parties agree otherwise.<sup>9</sup>

### **§ 2.4 What rules apply to background checks?**

The Labor Law does not provide for rules regarding background checks of employees, but see § 2.11(a) regarding the requirement for a certificate of good conduct. The UAE authorities conduct background checks of foreign nationals applying for residence visas or labor permits.

### **§ 2.5 What rules apply to medical examinations or health-related tests?**

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

### **§ 2.6 May an employer require drug and alcohol testing?**

While mandatory medical testing is required for the employment of foreign nationals, there is no specific test required for alcohol usage. Drug use and possession are crimes in the UAE. Although the possession or consumption of alcoholic beverages without a liquor permit has been decriminalized, public intoxication continues to be an offense.

### **§ 2.7 Are there mandated preferences in hiring?**

According to the Labor Law, there is a priority in hiring UAE nationals. Ministerial Resolution No. 635 of 2008 provides that an employer that has 100 employees or more must have a Public Relations Officer (responsible for representing the employer in interactions with government regulators) who is a national of the UAE or of another Gulf Cooperation GCC) country.<sup>10</sup> Foreign nationals may work in the UAE only with the approval of the Ministry, documented in the form of a labor permit. Furthermore, in recent amendments to the Labor Law, language was inserted allowing the Cabinet of the UAE, upon proposal from the Ministry to promulgate resolutions that promote the participation of UAE nationals in the labor market, and to regulate the employment of personnel at the workplace.

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<sup>8</sup> Labor Law, art. 16.

<sup>9</sup> Labor Law, art. 11.

<sup>10</sup> The GCC countries are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE.

**§ 2.8 Are there any rules regarding inquiry into an applicant’s salary history or prior compensation? Are there any requirements related to employers disclosing the salary range for open positions?**

The Labor Law imposes no prohibitions or restrictions on an employer’s inquiry into an applicant’s salary history or prior compensation. On the contrary, applicants with in-country employment history would typically be required to submit a “service certificate” from each of their prior employers, which would state the employee’s final salary in addition to other particulars.<sup>11</sup> There are also no requirements in the Labor Law that employers disclose the salary range for open positions.

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

No. Other than the rules relating to the mandated preferences in hiring (see § 2.7), there are no restrictions on filling openings with contingent workers.

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

A foreign employer must establish a branch office or another form of formal corporate presence in the UAE before it can hire any workers. It must then, like any other employer, register with the Ministry before it can employ personnel, whether local or foreign. This registration process requires that certain documentation be submitted to the Ministry, mandates the payment of the applicable registration fees, and may involve an inspection of the employer’s place of work.<sup>12</sup> In general, the registration process should take about 10 days to complete, once all appropriate documentation has been received by the Ministry.

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

**§ 2.11(a) *Employment Visa***

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

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

- a copy of the employee’s passport;

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<sup>11</sup> The service certificate will contain details of the date of commencement and termination of employment, the total duration of employment, the type of work performed, the last paid wage, and any supplements.

<sup>12</sup> Labor Law, art. 6.

- two passport photographs of the employee;
- copies of the fully authenticated diplomas and transcripts evidencing the employee's educational qualifications;<sup>13</sup>
- salary details of the employee;
- the offer letter signed by the employee;
- a certificate of good conduct;<sup>14</sup>
- a copy of the company's UAE License;
- a fully authenticated copy of the Power of Attorney in favor of the Authorized Signatory;
- a copy of the Authorized Signatory's Specimen Signature;
- an original Authorized Signatory's e-card;
- a copy of the Establishment Card from the Immigration Department; and
- a copy of the Labor Computer Card.

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

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

- the documents referred to above;
- the original employment visa that was stamped by the UAE officials upon entry;
- the employment contract;
- a copy of the Emirates ID card; and
- a copy of the employee's medical certificate.<sup>15</sup>

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<sup>13</sup> The diplomas and transcripts of the employee will need to be notarized and fully authenticated up to the level of the UAE Embassy in the expatriate's home country and subsequently by the UAE Ministry of Foreign Affairs.

<sup>14</sup> As of February 4, 2018, all new entrants to the UAE applying for a labor permit will need to obtain and submit a certificate of good conduct issued by the relevant authority (usually the police or other government department) in the country in which they have resided for the past five years. Officials have announced that this requirement will not apply to existing employees in the UAE that change employers.

<sup>15</sup> To obtain a medical certificate, the employee must go to a hospital or medical clinic and have a blood test and medical examination at the expense of the employer. The results are usually available within a few days.

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

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

An employer must adhere to a standard form of employment contract mandated by the Ministry. The employer is also required, as part of the recruitment process, to obtain the signature of the employee on an offer letter that conforms with the standard form of employment contract. Any departures from the standard form must be specifically approved by the Ministry to be enforceable.

### **§ 2.11(b) *Investor Visa***

A foreign investor who owns shares in a company incorporated in the UAE is eligible to apply for a residence visa. Investors may also sponsor their spouse and children enabling them to obtain residence visas.

### **§ 2.11(c) *Property Ownership Visa***

The UAE Cabinet has introduced a five-year residency visa for investors in UAE real estate.

A five-year residency visa may be applied for by investors in real estate in the UAE if the following conditions are met:

1. the investor must have invested in one or more properties in the UAE with a total value of no less than AED 5 million;
2. the amount invested must not be derived from the proceeds of a loan (consequently, it will not be possible for there to be a mortgage over the property if the visa is to be applied for);
3. the property must be owned by the investor for at least three years from the date of issuance of the residency visa;
4. the investor must not be financially liable for any claims or civil judgements which reduce their financial solvency below a certain amount; and
5. investors must have a comprehensive health insurance policy covering themselves and their family members.

In addition, Dubai issues a property ownership entry permit that allows property owners to enter Dubai for six months, subject to renewal. The holder of this permit is not permitted to work in Dubai. This permit extends to the property owner's spouse and children.

### **§ 2.11(d) *Golden Visa***

In 2019, the UAE implemented a new system for long-term residence visas. The new system enables foreigners to live, work, and study in the UAE without the need of a national sponsor and with 100% ownership of their business on the UAE's mainland. Golden Visas may be granted to investors and entrepreneurs as well as individuals demonstrating exceptional academic performance with promising scientific capabilities or individuals with specialized talents, including researchers in various scientific fields. These visas are issued for a period of either five or 10 years and renew automatically.



Where an individual is eligible for a Golden Visa on the basis of specialized talents and researchers, such eligibility may be granted to doctors, specialists, scientists or inventors. In addition, creative individuals in the field of culture and art may also be eligible for a Golden Visa on the grounds of demonstrating a specialized talent.

### **§ 2.11(e) Remote Work Visa**

The UAE Cabinet has recently introduced a Remote Work Visa, which is valid for one year. The new Remote Work Visa scheme was enacted to enable employees to work remotely from the UAE, even for employers located overseas. The one-year visa allows a foreign national to enter the UAE for work under an employment contract, but it does not require the employer to sponsor the visa. So far, implementation of the new visa has been uneven.

The applicant must hold a passport with at least six months' validity and must have health insurance. Where the applicant is the employee, the employee will need to provide the following:

- proof of employment with a contract valid for one year from the current employer;
- proof of a minimum salary of USD 5,000 per month; and
- the applicant's salary slips for the last month and bank statements for the preceding three months.

Where the applicant is the proprietor of the company, the applicant will need to provide:

- proof of ownership of company for one year or more;
- proof of an average monthly income of USD 5,000 per month; and
- company account bank statements for the preceding three months.

## **§ 3 EMPLOYMENT CONTRACTS**

### **§ 3.1 Are written employment contracts required for certain employees?**

According to the Labor Law, employment contracts and all amendments made thereto are required to be in writing<sup>16</sup> and approved by, and registered with, the Ministry. Notwithstanding the foregoing, the terms and conditions of employment may be proved by any means of proof admissible by law.

Employment contracts for foreign nationals must be in writing in the format approved by the Ministry, although employment contracts for UAE nationals need not be in writing.

### **§ 3.2 What terms are required in employment contracts (if any)?**

An employment contract must include the following information:

- amount of salary;

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<sup>16</sup> Labor Law, art. 8.

- date on which the employment contract was signed;
- employment commencement date;
- duration of the employment contract, which must be a specified term not in excess of three years; and
- nature and location of the workplace.<sup>17</sup>

It is not required that employment contracts specify termination provisions. See discussion in § 14 regarding termination of employment contracts.

### **§ 3.3 In what language(s) must employment contracts be written?**

The Labor Law requires employment contracts to be in the Arabic language, and in the event that a second language is included, the Arabic version remains the authoritative version.<sup>18</sup>

### **§ 3.4 What rules exist relating to the duration of employment contracts?**

Previously, employment contracts could either be for specified or unspecified terms. Under the new Labor Law, an employment contract must be for a specified term not in excess three years. With the agreement of both parties, the contract may be extended or renewed, on a single occasion or on multiple occasions, for another similar period or for a shorter period.<sup>19</sup>

In the event of contract extension or renewal, the new period or periods shall be considered an extension of the original period for purpose of calculation of the employee's end-of-service benefits and entitlements.

After expiration of the term of the contract, or after completion of the assignment that was agreed, if the parties continue with the employment relationship even without an express agreement, then the original contract shall be deemed implicitly extended on the same conditions.<sup>20</sup>

### **§ 3.5 Are probationary periods allowed, and if so, what restrictions apply?**

Employees in the UAE are generally hired on an initial probationary basis, although this is not a legal condition for employment. The probationary period of an employee cannot exceed a period of six months.<sup>21</sup>

Termination of the employment agreement during the probationary period by either party requires the terminating party to give 14 days' written notice. In the event where a foreign national employee wishes to terminate the employment contract during the probationary period to leave to another employer in the UAE, such employee shall notify the employer in writing within a period not less than one month from the start date of that employee's wish to terminate the contract, and the new employer shall compensate the original

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<sup>17</sup> Labor Law, art. 8.

<sup>18</sup> Labor Law, art. 66.

<sup>19</sup> Labor Law, art. 8.

<sup>20</sup> Labor Law, art. 8.

<sup>21</sup> Labor Law, art. 9.

employer with the costs of recruitment or contracting with the worker, unless otherwise agreed.<sup>22</sup>In the event that the employee wishes to terminate the employment contract during the probationary period, to leave the UAE, the employee shall notify the employer of the same in writing at least 14 days before the date specified for termination of the contract. In the event that the employee wishes to return to the UAE and obtain a new work permit within three months from the date of departure, the new employer shall be obliged to pay the compensation referred to above for recruitment fees to the old employer.<sup>23</sup> If either party terminates the employment agreement without observing the proper notice periods, that party shall pay to the other party compensation equal to the employee's remuneration for the notice period or the remaining period of the notice period.

If the foreign employee leaves the UAE without providing the adequate notice, the employee shall not be granted a work permit to work in the UAE for a period of one year from the date of leaving the UAE.

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

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

In the event that the nature of an employee's employment allows the employee to gain knowledge of the employer's clients or the secrets of its business, the employment contract may contain a noncompetition clause (*e.g.*, following termination of the employment contract, the employee is prohibited from competing with the employer or from taking part in any business competing with that of the employer). However, any noncompete clause would be unenforceable if the employer terminated the employment contract in violation of the provisions of the Labor Law.

For a noncompetition clause to be valid, the noncompetition clause must be limited in time, place, and nature and only to the extent necessary to safeguard the employer's business, and the duration shall not exceed two years from the date of the expiry of the contract.<sup>24</sup>

## **§ 4 DISCRIMINATION, HARASSMENT & RETALIATION**

### **§ 4.1 What prohibitions against discrimination exist and how are they defined (*e.g.*, what are the specific protected categories)?**

The Labor Law prohibits discrimination among persons on the basis of race, color, sex, religion, national origin, social origin, or disability, in a manner that would tend to weaken the adequacy of opportunity or would tend to prejudice equality of access to or continuity of employment or enjoyment of rights. There is a further prohibition against discrimination among employees in a single job category.<sup>25</sup>

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<sup>22</sup> Labor Law, art. 9.3.

<sup>23</sup> Labor Law, art. 9.4.

<sup>24</sup> Labor Law, art. 10. Moreover, Ministerial Resolution No. 297 of 2016 authorizes the Ministry to deny or revoke a labor permit application for an individual who is subject to a covenant not to compete that has been upheld by a U.A.E. court.

<sup>25</sup> Labor Law, art 4.

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

In addition, Cabinet Resolution No. 43 of 2018 On the Support of Employment of Persons with Disabilities (People of Determination) includes specific protections against discrimination regarding 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 nondiscrimination in any work phase or advantage;
- 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 wording of any announcement of a vacant post shall not contain any discriminatory language such as the use of language referring to the need for applicants to be free of defects and impairments, or without visual, motor and auditory defects, particularly if the nature of the vacancy does not require proper sensory and physiological abilities.

Amid infectious pandemics, such as the novel coronavirus (COVID-19), employers should consider consulting with local counsel to help ensure that all workplace policies implemented to protect workers from infection are applied uniformly to all employees and job applicants regardless of their ethnicity, race or other protected categories.

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

The Labor Law prohibits discrimination on the basis of religion in addition to the other grounds referred to above.<sup>26</sup> Moreover, workplace discrimination on the basis of religion, creed, doctrine, or sect could offend the prohibitions established by Federal Decree-Law No. 2 of 2015, discussed above.

During Ramadan, the ordinary working hours for all employees, irrespective of religious practices, would previously be reduced by two hours per day. This is continued under the Implementing Regulations.<sup>27</sup>

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

The Labor Law prohibits discrimination on the basis of a disability; however, it does not contain provisions regarding the accommodation of disabilities by employers. As set out in § 4.1, Cabinet Resolution No. 43 of 2018 On the Support of Employment of Persons with Disabilities (People of Determination) includes

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<sup>26</sup> Labor Law, art. 4.

<sup>27</sup> Labor Law, art. 17.

specific protections against discrimination regarding persons with disabilities and includes requirements for employers and the relevant authorities to make reasonable accommodation arrangements for persons with disabilities. *Reasonable accommodation arrangements* are defined as appropriate and convenient adjustments and arrangements that do not impose any inappropriate or unnecessary burden, and which are needed in a specific case to ensure that persons with disabilities enjoy and exercise, based on equality with others, all the human rights and fundamental freedoms.

#### **§ 4.4 What prohibitions are there against harassment?**

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

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

The Labor Law and Cabinet Resolution No. 43 of 2018 On the Support of Employment of Persons with Disabilities (People of Determination) do not contain any exceptions to the prohibitions against discrimination. Moreover, the Labor Law provides that rules and procedures designed to enhance the participation of UAE nationals in the labor market are not considered discrimination.<sup>28</sup>

#### **§ 4.6 What prohibitions exist regarding retaliation/reprisal?**

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

The Labor Law does not specifically address employer retaliation against an employee who advocates pay equity or pay transparency. As noted above, an employer that commits wrongful termination would be exposed to damages. An employer that wished to terminate the services of an employee for disclosing salary information to other employees would have to demonstrate that the information disclosed was confidential.

#### **§ 4.7 May individual persons be liable for discrimination, harassment, or retaliation/reprisal?**

The Labor Law prohibits the sexual harassment, bullying, or any verbal, physical, or psychological violence against the employee from the employer, superiors, colleagues or peers. There is no mention of individual liability for such acts under the Labor Law.<sup>30</sup> Not under the Labor Law. However, remedies might be available under applicable civil and criminal statutes. For example, as noted in § 4.4, some forms of harassment can constitute a criminal offense. An act of discrimination under Federal Decree-Law No. 2 of 2015 may be punished by imprisonment up to five years and/or a fine of not less than AED 500,000 and not more than AED 1 million.

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<sup>28</sup> Labor Law, art. 4.

<sup>29</sup> Labor Law, art. 47.

<sup>30</sup> Labor Law, art. 14.

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

#### **§ 4.8 Are employers required to investigate allegations of sexual harassment from employees?**

The Labor Law does not set out any requirement for employers to investigate allegations of sexual harassment, though such acts are deemed prohibited. Employers may set out a grievance procedure in their internal policies.

However, pursuant to the UAE Penal Code, there is a general duty for persons to report crimes that have been committed. Although there is no free standing antiharassment law in the UAE, there are several provisions of the UAE Penal Code that potentially criminalize conduct amounting to workplace sexual harassment.

#### **§ 4.9 Are employers required to provide antiharassment/antiretaliation training to their workers?**

There is no requirement in the Labor Law for employers to provide their employees with antiharassment and antiretaliation training.

### **§ 5 COMPENSATION**

#### **§ 5.1 What restrictions are there on hours that may be worked?**

The maximum prescribed working hours for adult employees is eight hours per day or 48 hours per week.<sup>31</sup> In the cases of difficult or unhealthy work environments, the Minister may, by order, reduce the daily working hours. Ministerial Resolution No. 335 of 2008 sets forth a general requirement that employees who work out of doors under the sun must be permitted to rest in the shade between 12:30 P.M. and 3:30 P.M.

During Ramadan, prescribed working hours continue to be reduced by two hours per day, as confirmed by the Implementing Regulations.<sup>32</sup>

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

#### **§ 5.2 What minimum wage requirements exist?**

The Labor Law does not prescribe a minimum wage.

Note, however, that employees with a monthly salary of less than UAE Dirham (AED) 4,000 (approx. USD 1,090) are not permitted to sponsor UAE residence visas for their spouses and children. (The figure

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<sup>31</sup> Labor Law, art. 17.

<sup>32</sup> Labor Law, art. 17.

<sup>33</sup> Labor Law, art. 17.

might be higher for some nationalities.) To sponsor parents, the employee must have a monthly salary of AED 20,000 (approx. USD 5,500).

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

An employee's salary must be paid on a working day, at the place of work and in the currency of the UAE Dirham or in another currency if it is agreed upon between both parties in the employment contract. Employees must be paid on their due dates in accordance with the regulations approved in the Ministry and the conditions, rules and procedures specified in the Implementing Regulations.<sup>34</sup>

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

Employers with 100 or more employees were given three months to comply fully with this system, with the deadline set at the end of November 2009; employers with 15 to 99 employees were given six months to comply, with the deadline set at the end of February 2010; and employers with 15 or fewer employees were required to comply by May 31, 2010.<sup>35</sup>

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

### **§ 5.4 What overtime pay requirements exist?**

Pursuant to the Labor Law, employees must be compensated for overtime work performed. All periods of time worked in excess of the prescribed number of working hours are considered as overtime, entitling the employees to receive basic salary for the overtime hours worked plus an additional amount equal to at least 25% of basic salary.<sup>36</sup>

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

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<sup>34</sup> This is to be clarified and detailed under the Implementing Regulations which have not been released as of late.

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

<sup>36</sup> Labor Law, art. 19.

Should overtime be worked between the hours of 10:00 P.M. and 4:00 A.M., the employee is entitled to receive the employee’s basic salary for the overtime hours worked plus an additional amount equal to at least 50% of basic salary.<sup>37</sup>

The maximum number of overtime hours must not exceed two per day, and in all cases, the total working hours shall not exceed 144 hours every three weeks.<sup>38</sup>

Employees shall be granted a paid weekly rest of not less than one day which shall be stipulated in the employment contract or the company rules.<sup>39</sup>

Where an employee is required to work on the day of rest specified in the employment contract or the work regulations, the employee must be given another day off or the employee must be paid their basic salary for the overtime hours worked plus an additional amount equal to at least 50% of basic salary.<sup>40</sup> No employees other than employees paid on a daily basis may be required to work on more than two consecutive days of rest.<sup>41</sup>

### **§ 5.5 What bonuses are mandated or customary?**

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

### **§ 5.6 Are there any rules related to pay equity or pay transparency?**

The Labor Law does not include any requirements or prohibitions relating to pay equity or pay transparency.

## **§ 6 TIME OFF FROM WORK**

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

Public holidays are determined by the UAE Cabinet. The UAE Cabinet announced the holidays for both the public and private sectors for 2021/2022 and provided for the following official holidays:

<b>Holiday</b>	<b>Date</b>	<b>Number of Days</b>
Gregorian New Year’s Day	1 January	1 day
Eid Al-Fitr	From 29 Ramadan until 3 Shawwal	
Day of Arafat	9 Dhi Al Hijjah	1 day
Eid Al Adha	10, 11, 12 Dhi Al Hijjah	3 days
Hijri New Year	1 Muharrem	1 day
Birthday of the Prophet Muhammad	12 Rabi’ Al Awwal	1 day
Commemoration Day	1 December 2022	1 day
UAE National Day	2-3 December	2 days

<sup>37</sup> Labor Law, art. 19.

<sup>38</sup> Labor Law, art. 19.

<sup>39</sup> Labor Law, art. 21.

<sup>40</sup> Labor Law, art. 19.

<sup>41</sup> Labor Law, art. 19.



The UAE Cabinet has not addressed the requirements of whether employers should have employees work on such public holidays. However, such cases are usually handled in accordance with the requirements that apply to working on the weekly day of rest, discussed in § 5.4.

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

An employee who has completed at least three months following the probation period in the continuous service of the employer is entitled to sick leave not exceeding 90 days per year, which may be taken consecutively or otherwise.<sup>42</sup>

An employee's sick leave is calculated as follows:

- the first 15 days with full salary;
- the following 30 days with half salary; and
- all subsequent days without salary.<sup>43</sup>

An employer is not required to remunerate an employee on sick leave if such leave is a direct result of the employee's misconduct, including the consumption of alcohol or narcotic drugs.<sup>44</sup>

## **§ 6.3 What are the requirements for paid vacation or annual leave?**

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

- two days per month, if the employee's period of employment is more than six months but less than one year;
- 30 days per year, where the employee's period of employment is more than one year; or
- leave for fractions of the last year the employee spent at work, in case service ends before the employee uses the annual leave balance.<sup>45</sup>

A part-time employee shall be entitled to an annual leave according to the actual working hours spent by the employee with the employer with the duration of such leave to be determined in the employment agreement.<sup>46</sup>

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<sup>42</sup> Labor Law, art. 31.

<sup>43</sup> Labor Law, art. 31.

<sup>44</sup> Labor Law, art. 31.

<sup>45</sup> Labor Law, art. 29.

<sup>46</sup> Labor Law, art. 29.

The employer may fix the dates for the employee's annual leave, and such annual leave may not be divided into more than two periods.<sup>47</sup> Any statutory holidays or sick days falling within an annual leave constitute part of the annual leave and are not treated separately.<sup>48</sup>

If an employee is required to work during their scheduled annual leave, and such time is not carried forward to the following year, the employer must compensate the employee on the basis of the employee's salary when the leave entitlement arose.<sup>49</sup>

In the event that an employee's services are terminated, the employee is entitled to basic salary in respect of any annual leave that remained not utilized.<sup>50</sup>

## **§ 6.4 What requirements exist for paid or unpaid maternity and paternity leave?**

An employee is entitled to maternity leave of 60 days, with full salary for the first 45 days and half pay for the following 15 days.<sup>51</sup>

Following her maternity leave, a female employee may be absent from work without salary for a maximum period of 45 days (consecutive or otherwise) if such absence is due to an illness resulting from pregnancy or delivery that prevents her from resuming her work, provided that such illness is evidenced by a medical certificate.<sup>52</sup>

An employee also has the right to take five paid days of parental leave at any time from the birth of a new child until the child reaches six months of age. This right is given regardless of the employee's gender. This right would therefore benefit a female employee (in addition to the provisions on maternity leave) and a male employee. Moreover, this right would appear to attach immediately upon commencement of employment.

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

After returning from maternity leave and for a period not exceeding six months after delivery, an employee nursing her infant is entitled, in addition to her normal break periods, to two additional breaks each day, neither of which may exceed one half hour. Such additional break periods are considered as part of the employee's normal work hours and may not result in any reduction in her salary.<sup>53</sup>

## **§ 6.6 What requirements exist for paid or unpaid medical leaves of absence?**

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

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<sup>47</sup> Labor Law, art. 29.

<sup>48</sup> Labor Law, art. 29.

<sup>49</sup> Labor Law, art. 29; Implementing Regulations, art. 19.

<sup>50</sup> Labor Law, art. 29.

<sup>51</sup> Labor Law, art. 30.

<sup>52</sup> Labor Law, art. 30.

<sup>53</sup> Labor Law, art. 30.

## **§ 6.7 What other paid or unpaid leaves of absence must be provided by employers?**

Employees are entitled to a bereavement leave for five days in the event of death of the husband or wife, and three days in the event of death of the mother, father, child, brother, sister, grandchild, grandfather, or grandmother, starting from the date of death.

An employee may be granted a study leave for a period of 10 working days per year, if they are affiliated or regularly studying in one of the educational institutions approved in the UAE, in order to sit for the exams, provided that the period of service with the employer is not less than two years.

A national worker may also be entitled to a sabbatical leave to perform national military and reserve force service with pay, in accordance with UAE legislation.

To obtain any of the aforementioned leaves, evidence of the same should be submitted to the employer.

## **§ 7 BENEFITS**

### **§ 7.1 What benefits must employers furnish to employees?**

The Labor Law provides for a severance pay benefit for employees at the termination of their employment (discussed in § 12.5).

Regarding health benefits, the Labor Law states that every employer shall bear the employees medical costs in accordance with legislation in force in the UAE.<sup>54</sup>

In Abu Dhabi, in accordance with Abu Dhabi Decision No. 25 of 2006, employers are obligated to provide health insurance coverage to employees and their dependents.<sup>55</sup>

In Dubai, Dubai Law No. 11 of 2013 on Health Insurance in the Emirate of Dubai requires employers to provide health insurance coverage to employees.<sup>56</sup> This was phased in over two years, and as of June 30, 2016, all employees in Dubai must be covered. Failing this, the employer will be subject to a penalty of AED 500 (approx. USD 136) to AED 150,000 (approx. USD 40,839). This insurance, however, does not cover the employee's dependents, unlike that of Abu Dhabi.

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

Regarding pension contributions, pursuant to UAE Federal Law No. 7 of 1999 for Pension and Social Security, UAE nationals are entitled to contribute to, and collect from, the federally administered pension plan. The monthly pension contribution is equivalent to a total of 20% of the employee's total salary, of which 5% is deducted directly from the employee's salary and 15% is payable by the employer (of which 2.5% is subsidized by the government). The contribution is payable to the UAE General Pension and Social Security Authority.

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<sup>54</sup> Labor Law, art. 13.

<sup>55</sup> Abu Dhabi Decision No. 25 of 2006, art. 11.

<sup>56</sup> Dubai Law No. 11 of 2013, art. 10.

## § 8 CODES OF CONDUCT/WHISTLEBLOWING

### § 8.1 Are codes of conduct governing employees required (*e.g.*, internal work rules)?

The Labor Law details that part of the employer's obligations including setting work regulations, such as a list of work instructions, penalties, promotions, bonuses, and other bylaws and regulations. Detailed rules appear in the Implementing Regulations.<sup>57</sup>

### § 8.2 What whistleblowing protections exist?

The Labor Law makes no provision for such protection. However, if the employer dismisses an employee due to the employee's filing a serious complaint with the Ministry or filing a lawsuit against the employer that is proven to be valid, that termination would be deemed illegal.<sup>58</sup> Accordingly, an employee who is fired for whistleblowing might possibly be able to sue for illegal termination.

## § 9 PRIVACY & PROTECTION OF EMPLOYEE PERSONAL INFORMATION

### § 9.1 What rules regulate an employer's obligation to protect the privacy of personal data about employees, and what is the scope of the employees' protection(s)?

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

Given the recent COVID-19 pandemic, employers should keep in mind that a person's health data is considered sensitive information and protected under the privacy laws. Unlawful infringement of the right to privacy—such as obtaining health data without consent or unlawfully disclosing it to third parties—constitutes a tortious act, which can form the basis for damages. Accordingly, employers implementing policies or practices to collect employees' health data (*e.g.*, screening for temperature and symptoms of an infectious disease) should consider working with local counsel to help ensure such policies and practices comply with local law.

### § 9.2 What information must the employer provide to employees before processing (*e.g.*, collecting, storing, using, disclosing, etc.) their personal data, and what are the potential consequences for failure to comply?

The Labor Law provides an obligation on the part of the employer to disclose information related to industrial and workplace safety (discussed in § 11.1).

The Labor Law does not specify any information that employers must provide to employees before processing their personal data.

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<sup>57</sup> Labor Law, art. 13(3).

<sup>58</sup> Labor Law, art. 47.

### **§ 9.3 What restrictions apply to the employer’s export of its employees personal data to related companies in the United States?**

The Labor Law does not contain provisions regarding an employer’s export of employee personal data to related companies in the United States. The UAE recently announced the publication of Federal Decree Law 45 of 2021 on the Protection of Personal Data (“UAE DP Law”). Data protection is a developing area of law in the UAE. At present, personal data may be transferred outside the UAE if the country or territory to which the personal data is being transferred has special legislation on personal data protection, including the most important provisions, measures, controls, requirements and rules for protecting the privacy and confidentiality of the personal data of the data subject and the data subjects’ ability to exercise their rights and provisions relating to imposing appropriate measures on the controller or processor through a supervisory or judicial authority. In light of the above, the export of data to the United States is not prohibited per se, although a data processor in the UAE—particularly in the aforesaid free zones—might be required to take additional measures to ensure that the data will be given adequate protection in the United States.

## **§ 10 REPRESENTATION OF WORKERS, TRADE UNIONS & WORKS COUNCILS**

### **§ 10.1 Do workers have a freedom of association and representation?**

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

### **§ 10.2 Does the law require workers to be a member of a trade union, and/or require the employer to establish a works council?**

Not applicable.

### **§ 10.3 How do workers obtain trade union representation?**

Not applicable.

### **§ 10.4 Does the law permit picketing, strikes, lockouts, and/or secondary action?**

Not applicable.

## **§ 11 WORKPLACE SAFETY**

### **§ 11.1 What general health and safety rules apply in the workplace?**

The employer must provide necessary means of prevention to protect workers from the dangers of occupational injuries and diseases that may occur during work, ensure the provisions of guidance and awareness regulations, provide appropriate workplace training to workers to avoid such risks, and conduct periodic evaluation to ensure that all parties to the work comply with the requirements of health and

occupational security and safety.<sup>59</sup> Employers must also ensure the work environment is safe and appropriate.<sup>60</sup>

Establishments must also abide by the provisions contained in Federal Law 13 of 2020 on Public Health and all decisions issued in implementation thereof, and any other legislation issued in this regard.<sup>61</sup>

Employees are required to implement occupational safety and health instructions prescribed in the workplace in accordance with the legislation in force or work systems and instructions.<sup>62</sup>

Certain measures were put in place on both a temporary and long-term basis to address the COVID-19 crisis for employers in the UAE. Ministerial Resolution No. 281 of 2020 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. While this Resolution has not been formally repealed, the Dubai Economic Department announced on December 30, 2020 that, effective from January 1, 2021, thermal scanners and manual temperature checks would no longer be required for businesses; the measure continues to be observed elsewhere in the UAE.

Moreover, Ministerial Resolution No. 279 of 2020 is still in place for employers currently managing the COVID-19 crisis. Ministerial Resolution No. 279 of 2020 allows, but does not require, employees to work from home and also provides for measures such as leaves from work. The Resolution details a number of measures that employers in the private sector may progressively implement as it regards their non-UAE national employees.

The specific measures that are permitted by the Resolution are:

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

An employer that wishes to place an employee on unpaid leave or to temporarily reduce the salary of an employee 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

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<sup>59</sup> Labor Law, art. 13(6).

<sup>60</sup> Labor Law, art. 13(13).

<sup>61</sup> Labor Law, art. 36.

<sup>62</sup> Labor Law, art. 16.

will remain in effect only as long as the coronavirus crisis continues, the duration of which remains uncertain.

## **§ 12 TERMINATION OF EMPLOYMENT**

### **§ 12.1 What grounds for dismissal/termination of contract are permitted?**

Pursuant to the Labor Law, a contract of employment may terminate in any of the following ways:<sup>63</sup>

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. at the request of either party, provided that the provisions regarding termination and proper notice are adequately followed;
4. upon the death of the employer if the subject of the contract is related to the employer in person;
5. death or permanent total disability of the employee, as evidenced by a certificate issued by the "Medical Entity" (Medical Entity is a UAE government entity responsible for health affairs);
6. permanent closure of the workplace establishment, in accordance with the legislation in force in the UAE;
7. bankruptcy or insolvency of the employer or any economic or exceptional reasons that prevent the continuation of the project, in accordance with the conditions, rules, and procedures which will be specified in Implementing Regulations; or
8. failure of the employee to meet the conditions for renewing the work permit for any reason beyond the control of the employer.<sup>64</sup>

Either party to the employment contract may terminate the contract for any legitimate reason, provided that the other party is notified in writing and commits to work within the notice period agreed in the contract and provided that the period is not less than 30 days and not more than 90 days.<sup>65</sup>

An employer may terminate a contract of employment without notice after conducting a written investigation with the employee, and the dismissal shall be in writing and justified. The employer or its representative shall deliver the decision to the employee in any of the following circumstances:

1. the employee assumed a false identity or nationality, or otherwise submits false certificates or documents;

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<sup>63</sup> Labor Law, art. 42.

<sup>64</sup> Labor Law, art. 42.

<sup>65</sup> Labor Law, art. 43.

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2. the employee has caused the employer to suffer a material loss (provided that the employer notified the Ministry within 48 hours of discovering such incident);
3. 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, the employee had been informed of them orally;
4. the employee fails to perform their basic duties under the employment contract despite knowledge that they will be dismissed if such failure continues, and with at least two written warnings of the same;
5. the employee reveals a “secret of the establishment;”
6. the employee is found guilty for an offense involving honor, honesty, or public morals;
7. the employee is found, during working hours, in a state of drunkenness or under the influence of narcotic drugs;
8. the employee, during working hours, assaults their employer, manager, or any colleagues;
9. the employee is absent from work, without valid reason, for more than 20 nonconsecutive days in one year or more than seven consecutive days;
10. the employee illegally exploits their job position to obtain results and personal gains; or
11. the employee joins another work or another establishment without complying with the rules and procedures prescribed in this regard.<sup>66</sup>

An employee may leave their employment without notice while retaining their rights upon termination of service in any of the following cases:

1. where the employer breaches any of its obligations to the employee under the employment contract or by law, provided that the employee has notified the Ministry 14 working days prior to the date of leaving, and without the employer removing the effects resulting from this breach despite being notified of the same by the Ministry -- if the employer has not fulfilled its obligations with respect to the employee as provided for in the employment contract or pursuant to the Labor Law;
2. where the employee can prove that the employer or a representative of the employer has assaulted the employee or subjected the employee to violence or harassment during the employment, provided that the employee informs the concerned authorities and the Ministry within five working days from the date of the employee’s ability to report -- if the employee is assaulted by the employer or the employer’s representative.
3. if there is a serious danger in the workplace that threatens the safety and or health of the employee, provided that the employer is aware of its existence and the employer has failed to take measures to remove the issue; or

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<sup>66</sup> Labor Law, art. 44.



4. where the employer assigns the employee to carry out work that is fundamentally different from the work agreed under the employment contract, without the employees written consent.<sup>67</sup>

### **§ 12.1(a) UAE Nationals**

It is important to note a decision, effective February 2009, regarding the termination of UAE national employees. Ministerial Resolution No. 176 of 2009 Restricting the Dismissal of UAE National Employees (“Resolution No. 176”) states that dismissal of a UAE national employee will be regarded as “illegal” (literally “without legal ground”) in any of the following four circumstances:<sup>68</sup>

1. where the UAE national is dismissed for reasons other than those mentioned in Article 44 of the Labor Law (*i.e.*, for reasons other than summary dismissal);<sup>69</sup>
2. if it is proven that the employer retains a non-UAE national who is performing work similar to that performed by the dismissed UAE national;<sup>70</sup>
3. where there was failure to inform the Ministry 30 days prior to the dismissal, or failure to comply with the Ministry’s instructions within the designated times;<sup>71</sup> and
4. if it is proved that the UAE national was not paid the full compensation and full retirement benefits as specified in the Labor Law, its implementing regulations, the contract of employment or any other contractually binding document.

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

### **§ 12.2 What grounds for dismissal/termination of contract are prohibited?**

There are, however, various instances where the employer is prohibited from dismissing an employee, for example: (1) during the employee’s annual leave; (2) based on health reasons if the employee is on sick leave and the dismissal occurs prior to the employee having exhausted the periods of sick leave to which they are entitled under the Labor Law;<sup>72</sup> and (3) terminating the services of a female employee due to her pregnancy.<sup>73</sup> Any agreement to the contrary is null and void.<sup>74</sup>

The termination of the employee’s services by the employer shall be considered illegal if such termination is due to the employee filing a serious complaint to the competent authorities or if the employee brought a

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<sup>67</sup> Labor Law, art. 45.

<sup>68</sup> Resolution No. 176, art. 1.

<sup>69</sup> Resolution No. 176, art. 1.1.

<sup>70</sup> Resolution No. 176, art. 1.2.

<sup>71</sup> Resolution No. 176, art. 1.3.

<sup>72</sup> Labor Law, art. 31.

<sup>73</sup> Labor Law, art. 30 (6).

<sup>74</sup> Labor Law, art. 45.

claim to court against the employer and the employee's case proved to be genuine.<sup>75</sup> If the employer terminates an employee's services for an improper reason, and particularly if done in retaliation for the filing of a labor grievance by the employee, then the employer could be liable for damages for wrongful termination. The Labor Law provides for compensation to be paid to an employee who has been dismissed for unlawful reasons and such damages could equal up to three months of the employee's salary.<sup>76</sup>

Amid the COVID-19 pandemic, the government issued new rules restricting reductions in compensation, furloughs, and other measures related to the coronavirus. Employers should consider working with local counsel to help ensure that any such measures implemented during the pandemic are consistent with the applicable rules.

### **§ 12.3 What notice requirements are there for dismissal and may the employer provide pay in lieu of notice?**

If the contract of employment is for an unspecified term, with the exception of employees who are employed on a daily basis, either party may terminate it for a legitimate reason with a minimum of 30 days' prior written notice.<sup>77</sup> The validity of the contract of employment continues throughout the notice period. The employee is entitled to full salary calculated on the basis of the employee's last salary and is required to work throughout such period, unless the employer determines that the employee should not be required to work throughout the notice period. This latter circumstance is equivalent to pay in lieu of notice.

The Labor Law provides that the notice requirement cannot be reduced or dispensed with, but may only be increased.<sup>78</sup> 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.<sup>79</sup>

### **§ 12.4 How is termination pay calculated, including any commissions, and when must it be paid?**

Severance pay is discussed in § 12.5.

### **§ 12.5 Are there rights to severance pay and how is severance calculated?**

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

1. 21 Working Days' basic salary for each year of the first five years of employment; and
2. 30 Working Days' basic salary for each additional year of employment, provided that the aggregate amount thereof does not exceed two years' salary.<sup>80</sup>

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<sup>75</sup> Labor Law, art. 47.

<sup>76</sup> Labor Law, art. 47.

<sup>77</sup> Labor Law, art. 43.

<sup>78</sup> Labor Law, art. 43.

<sup>79</sup> Labor Law, art. 43.

<sup>80</sup> Labor Law, art. 51.

Severance pay is calculated on the basis of the employee's basic salary.<sup>81</sup>

Repatriation costs are also to be paid if the employee was hired outside of the UAE. The cost would be the equivalent of a price of a travel ticket, as well as any other travel expense as stipulated in the employment contract.<sup>82</sup>

## **§ 12.6 How can former employees bring claims on behalf of other workers (*i.e.*, a collective or class action)?**

A former employee may bring claims on behalf of other employees only pursuant to the collective labor dispute provisions discussed in § 1.3. This is encountered very rarely, if at all.

## **§ 12.7 May employers compel employees to arbitrate claims of wrongful dismissal?**

Grievances must be referred to the Ministry.<sup>83</sup> Arbitration cannot be compelled, and no resulting award would be enforceable.

## **§ 12.8 Can an employer obtain a release of claims from a former employee?**

The Labor Law does not address the release of claims of a former employee. An employee whose labor permit is cancelled is usually called upon by the Ministry, as part of the cancellation process, to recite that the employee has received all of their entitlements. Employees rarely bring claims after the termination of their labor permits. However, the only formal safe harbor for an employer is the one-year time bar on labor claims that is set forth in the Labor Law.<sup>84</sup>

## **§ 12.9 What procedures and terms are required to have an enforceable separation agreement with a former employee?**

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

# **§ 13 COLLECTIVE DISMISSALS (LAYOFFS) & BUSINESS CESSATION**

## **§ 13.1 What rules apply to collective dismissals?**

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

An employer may terminate a contract of employment for a “valid” reason with 30 days’ prior written notice to the employee or any other such notice period as may be specified in the employment contract.<sup>85</sup>

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<sup>81</sup> Labor Law, art. 51.

<sup>82</sup> Labor Law, art. 13.

<sup>83</sup> Labor Law, art. 54.

<sup>84</sup> Labor Law, art. 54.

<sup>85</sup> Labor Law, art. 43.

Plant closings, workforce reductions, and personnel redundancies are generally viewed by the Ministry and the courts as constituting “valid” reasons for this purpose.

The Labor Law does not cover collective dismissals per se, but it does provide a procedure for collective work disputes (briefly discussed in § 1.3). Accordingly, this procedure is available only when a collective dismissal is contested by the employees.

### **§ 13.2 Are there special rules that apply when an employer ceases operations?**

As referenced in § 12.1, a contract of employment may terminate upon the permanent closure of the workplace establishment, in accordance with the legislation in force in the UAE. It is notable however, that such circumstances do not negate the requirement to provide notice and make the relevant payments upon termination of the employment.

### **§ 13.3 Are certain employees protected from collective dismissal?**

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

### **§ 13.4 How long does the collective dismissal process usually take?**

In theory, this would be within the time frames set out in § 13.1. However, in practice, there is no track record, because the provisions in the Labor Law on collective disputes are never resorted to.

## **§ 14 EMPLOYMENT & SALE OF A BUSINESS**

### **§ 14.1 In the sale of a business’s *stocks* (shares), what (if anything) does corporate law or labor/employment law require of the seller as to pre-deal-closing notification to, or consultation with, the seller’s employees, employee representatives, or government labor agencies?**

There is no statutory obligation for the employer or the seller to consult with employees on a proposed sale of shares.

### **§ 14.2 Regarding seller’s employees, what (if any) mandates does the law impose on a seller contemplating a stock (shares) sale of its business?**

The law does not impose any mandates on a seller with respect to the seller’s employees where the seller is contemplating a stock sale of its business. Under a share sale, the employee’s contract remains in place and unchanged unless the parties agree otherwise. If the employer wishes to terminate the employment contract, the employer must follow the normal procedure, including serving the contractual notice period, and paying all contractual and statutory entitlements.

### **§ 14.3 In a sale of a business’s *assets*, do the seller’s employees transfer to the buyer by operation of law?**

Where a private acquisition takes place, employee contracts do not automatically transfer to the new buyer. Instead, the transfer of an employee to the buyer requires that all three parties—the previous employer, the new employer, and the employee—agree to and implement a transfer process.

### **§ 14.4 Where a seller of business *assets* does not intend to employ its staff after closing the asset sale, does the law allow the parties to the asset sale to structure an “employer substitution” or mandatory transfer—so as to avoid triggering severance pay obligations for the asset seller?**

There is no process of mandatory transfer of personnel associated with an asset sale. If the seller does not wish to retain the personnel, then the seller may terminate their services, settling all of the dues of the affected employees.

The buyer may choose to rehire the affected personnel on similar or different terms of employment. In some cases, the buyer may agree to assume the dues of the employees that accrued during their service with the seller, thereby giving the employees continuity of service. In this case, if accepted by the employees, the accrued entitlements will not be paid by the seller but instead will be assumed by the buyer.

### **§ 14.5 How do parties best structure those employer substitutions/transfers? Can they be structured without employee consent?**

No. Any change to the employment contract requires the employee’s consent and cannot be imposed unilaterally by the employer.

### **§ 14.6 In the sale of a business’s *assets*, what (if anything) does corporate law or labor/employment law require of the seller as to pre-deal-closing notification to, or consultation with, employees, employee representatives, or government labor agencies?**

There is no obligation under UAE law for the seller to consult with its employees before terminating an employee’s employment. However, there may be specific rights that arise from the terms of an employee’s employment contract.

### **§ 14.7 Employee transfer issues aside, what rules regarding a seller’s employees and labor agreements govern a “transfer of undertakings” in the sale of a business’s assets?**

Where the employer (seller) wishes to terminate the employment contract, the employer must pay all dues and entitlements afforded to the employee under the law and pursuant to the employment contract. Where the buyer intends to take on the employees, new employment contracts will need to be entered into and registered with the Ministry.

**§ 14.8 Before a *buyer* consummates either a stock (shares) or asset purchase of another business that has its own, separate workforce, what (if anything) does the law expressly require regarding notice to, or consultation with, the *buyer*'s own existing workforce, employee representatives, or with government labor agencies?**

There are no specific notice or consultation requirements placed on the buyer that are triggered by a stock or asset purchase of another business which has its own separate workforce. However, the buyer as an employer would have obligations to comply with and provide all notice periods as required by law and under the individual employment contracts for their employees.