

## inBrief



### New UAE Labour Law: In More Detail

By Charles Laubach | 15 December 2021

As promised, this is a more detailed discussion of the new Labour Law, which takes effect on 2 February 2022. For an initial snapshot, see my [inBrief dated 21 November 2021](#).

In that earlier inBrief, I discussed what I thought were the most significant departures from previous law, including the new rules on termination of contracts with notice, on end-of-service gratuity, on overtime, and on non-compete clauses. Some of those earlier remarks are further developed below.

However, since the Federal Government has now announced a switch to a Monday-Friday work week, I would like to start this inBrief with a discussion of the provisions of the work week that appear in the new Labour Law.

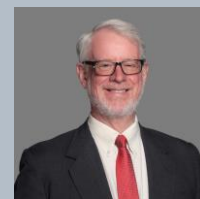
#### Work week

There has been much discussion in recent months about the UAE possibly moving to a Western work week, Monday to Friday, with eight working hours per day, and 40 working hours per week. Indeed, the public sector is moving in that direction, and it must be expected that the private sector will follow.

The new Labour Law opens the door but does not step through. The work week continues to be defined as eight hours per day, six days per week, and 48 hours per week. Friday is no longer designated as the official day of rest, and the Cabinet may add to the weekly day of rest -- or change work hours -- by Resolution. The new Law gives scope to employees who wish to work remotely, either within or outside the UAE, to reach mutual agreement with their employers on working hours.

An employee who works in excess of the daily or weekly threshold is entitled to compensation equal to Basic Salary plus 25%. The figure becomes Basic Salary plus 50% for overtime after 10 p.m. and before 4 a.m. For overtime on the weekly day(s) of rest or on an official holiday, the employee is entitled to a substitute rest day or compensation equal to Salary plus 50% of Basic Salary.

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An employee may not be required to work more than five consecutive hours without a break, to work overtime in excess of two hours daily, to work in excess of 144 hours during a single three-week period, or to work on the day of rest for more than two consecutive weeks.

A private-sector employer who switches to the public sector work week in January 2022, one month before the new Labour Law takes effect, will have to treat the four Fridays that fall during the month of January as weekly days of rest. An employee who is required to work on a Friday (but not more than two consecutively) will be subject to the rules on overtime, meaning that the employee will be entitled to either another day during the week as the day of rest in lieu of Friday, or to payment of overtime compensation (Salary plus 50% of Basic Salary).

### **Coverage**

Transition issues are presented not only by the work week but also by the coverage of the new Labour Law.

The Labour Law applies to employment in the private sector. This was the case under the 1980 statute and remains the case under the new statute. It continues to be the case that government employees; armed forces, police and security personnel; and domestic servants are outside the scope of the Labour Law. The earlier exemption for agricultural labourers has been discontinued. Moreover, as discussed below, it appears that the government service exemption has been narrowed.

The Labour Law continues to impose the requirement that any employer in the private sector must obtain a labour permit for each of its employees. Applying for a labour permit involves filing an original employment contract with the Ministry of Human Resources and Emiratisation. The two financial free zones of the UAE, the Abu Dhabi Global Market and the Dubai International Financial Centre, have their own stand-alone regulations that apply in lieu of the provisions of the Labour Law. The new Labour Law contains no specific exemptions for the ADGM and DIFC; however, the Federal statute that enabled the creation of these financial free zones contains a general exemption in respect of civil and commercial laws.

In contrast, the other free zones of the UAE are generally subject to the Labour Law, although many of them supplement the Labour Law with their own internal employment regulations. Employees in the free zones do not receive labour permits issued by the MOHRE, but instead are issued permits to work by the relevant free zone authorities.

The definition of the private sector has been expanded. It now includes companies, firms, establishments and any other entities owned by individuals in full or jointly with the Federal Government or the Government of one of the Emirates. It also includes a company or an establishment that is wholly owned by the Federal Government or by an Emirate Government, unless the law establishing the same makes it subject to the provisions of another law. This might cause a number of employers with government ownership to make adjustments. In practice, employees of many such employers are currently subject to Federal and Emirate-level Civil Service regulations. Such individuals are accordingly not required to obtain labour permits issued by the MOHRE. It appears that this will continue only for an employer existing under a special statute that also makes it subject to a law other than the Labour Law.

To be clear, this will not apply to employees of government authorities. However, this will be relevant to employers that have partial government ownership and to wholly government-owned companies and establishments that lack a statutory exemption.

### **Specified-term contracts**

Yet further transition issues are presented by the requirement that all employment contracts be for specified terms.

Under the new Labour Law, an employment contract must be for a specified period of time not in excess of three years. Such a contract may be renewed. Employers are directed to replace existing unspecified term employment contracts with specified term employment contracts during a transition period of one year from the effective date of the new statute; such period may be extended by the Minister of Human Resources and Emiratisation. Even though unspecified term contracts are no longer acknowledged, there is no effective distinction between specified and unspecified term contracts as regards termination of services or end-of-service gratuity. This is a significant change from previous law.

Unspecified term contracts concluded under the old law may be terminated with at least 30 days' written notice by either party, if the employee has served less than five years; 60 days' written notice if the period of service is more than five years; and 90 days' written notice if the period of service is more than ten years.

Employers are required to adjust their positions within one year of the 2 February 2022 effective date of the new Labour Law, including the replacement of unspecified term employment contracts with specified term employment contracts.

### **Labour permit is obligatory**

In order to hire an employee, an employer must obtain a labour permit for the employee. Hiring an employee without a labour permit is an offense on the part of the employer. Working without a labour permit is an offense on the part of the employee. An employer who obtains a labour permit for a person who does not work for the employer is likewise guilty of committing an offense.

These are not new features of the landscape. However, these must be borne in mind given that the penalties imposed under the new Labour Law (discussed below) are significant. It must also be borne in mind that the labour permit requirement applies notwithstanding the abundance of new visa categories that have been made available, effectively decoupling employment from residency. A person holding one of these new visas must still also hold a labour permit in order to permissibly work in the UAE. Employers must bear this in mind when hiring persons whose visas they do not sponsor.

### **Discrimination**

The new Labour Law contains a number of provisions prohibiting discrimination. There is a general prohibition on discrimination on the grounds of race, colour, sex, religion, ethnic origin or disability. The new Law also maintains a requirement that was introduced in 2019 that women shall receive the same salary as men for the same work or for work of equal value.

As before, it is still prohibited for an employer to charge an employee, directly or indirectly, any costs related to the employee's recruitment or employment.

### **Full-time and part-time**

The Labour Law contains an express recognition that employees may be hired on a full-time basis, on a part-time basis, or on the basis of temporary or flexible working hours. There are provisions on the assignment of jobs between employers and on the assignment of additional duties to employees, with detail to appear in Executive Regulations. These provisions appear to acknowledge developments in the field since the 1980 statute was enacted.

### **Probationary period**

It is still the case that the parties may agree to a probationary period of up to six months. Either the employer or the employee may terminate the contract during the probationary period without providing a reason for such termination. In a departure from previous law, it is now a requirement that 14 days' prior written notice of termination be given, and an employee who wishes to change employers during the probationary period must give one month's prior written notice.

Under the previous Labour Law, a probationary period was never implied in a contract. Instead, it existed only when the underlying contract specifically stated the same. This appears to continue to be the case.

### **Forms of contract**

As before, the Labour Law contemplates that the Executive Regulations under the Law will mandate a specified form of contract. It is expected that employers will continue to use multiple documents to set out the employment obligations of an employee. As before, care must be taken to ensure that the multiple items of documentation are all mutually consistent.

### **Employer obligations**

The new Labour Law imposes a number of specific obligations on the employer. Of particular note, the employer may not retain the employee's official documents or compel the employee to depart the UAE if services are terminated. The first part of this prohibition appears to be directed at the widespread practice of retention of employee passports. An employer is also required to provide training to its employees, in accordance with obligations that will be detailed in Executive Regulations. An employer is also required to bear the costs of its employees' health care in accordance with laws in effect in the UAE; this currently means obtaining medical insurance coverage. An employer is required to put in place workplace rules, including rules on sanctions for employee misconduct. Further obligations may be imposed by Executive Regulations, by Cabinet Resolution, or by other laws in effect in the UAE.

### **Salary and Basic Salary**

Under the previous Labour Law, there were three different concepts of Salary. One was Basic Salary, which was used for calculation of overtime and annual leave. Another concept was Salary, which was the total of all salary and other allowances and benefits provided by the employer to the employee in exchange for the employee's performance of the employment obligations. These two concepts have been retained. Salary (also translated as Wage) is the all-inclusive term that covers everything received by the employee in respect of employment. The Basic Salary is only the cash component of this overall compensation package, to the exclusion of any benefits in kind or allowances in cash or in kind.

Under the previous Labour Law, a third type of salary also existed, which was the salary used for the calculation of the employee's end-of-service gratuity. This figure was based upon the employee's Salary minus any allowances and in-kind payments. This is not, and never was, the same as Basic Salary, inasmuch as some components of compensation were not excluded from this calculation. The most important non-excluded elements under the old Law were bonuses and commissions.

This has now been ended, inasmuch as the calculation of the employee's end-of-service gratuity is now based only on the Basic Salary. However, as discussed below, it is based on the Basic Salary for a "Work Day," a term to be defined by Executive Regulations.

### **Deductions from Salary**

There are additional types of deductions that an employer may make from an employee's Salary, and the overall limits have been increased. Deductions from Salary have been maintained but modified for:

- recovery of advance payments, with the cap increased from 10% of each Salary payment to 20%;
- savings and pension plans and insurance, provided they be pursuant to the laws in effect in the UAE;
- provident funds, provided that the same is approved by the MOHRE;
- social projects and services, provided that the employee consents in writing and that the same is approved by the MOHRE;

- fines imposed under the employer's workplace rules, provided that the MOHRE has approved such workplace rules and provided that the deduction not exceed 5% of each Salary payment;
- payment of a debt pursuant to a court order up to one quarter of Salary (but now this one-quarter threshold may be exceeded for alimony payments).

The following are new provisions on deductions:

- for recovery of loans to the employee with the employee's written consent, not including interest;
- for payment of sums needed to repair harm caused by the employee's error or disregard of employer instructions that resulted in damage to tools, equipment, products or materials belonging to the employer, subject to a cap of five days' Salary per month, with any higher deductions requiring a court order.

In all cases, the total deductions may not exceed 50% of the employee's Salary.

### **Annual leave**

The provisions requiring 30 days of paid annual leave are largely unchanged. However, the new Labour Law does state that the employer and the employee may stipulate in the employment contract that annual leave will begin to accrue during the probationary period. An employee with unused annual leave at the end of service will cash it in *pro rata* based on the employee's Basic Salary (in lieu of Salary, the figure used previously). The formula for cashing in unused annual leave while remaining employed will be addressed by Executive Regulations.

### **Other leaves**

The rules on maternity leave and sick leave are retained with minor changes. Maternity leave entitlement of 45 days at full Salary is continued, but in a new provision this may be extended by 15 days at half Salary. An employee who exhausts her maternity leave may remain absent from work for a further period of 45 days (reduced from 100 days) without Salary if such absence is due to an illness suffered by her or the child as a result of pregnancy or delivery. Previously, a female employee who had not completed one year of service was entitled to maternity leave at half Salary; the new Labour Law does not reduce entitlement to the full benefit of maternity leave during the first year of employment.

In a new provision, it is specified that a female employee is entitled to maternity leave if the delivery takes place after at least six months of pregnancy, even if the child is still-born. Yet another new provision states that, if the child has special needs and requires continuous attention, then the female employee may be entitled to a further period of 30 days paid leave, renewable once, following the expiration of the maternity leave. The right of a female employee to take two breaks from work for 18 months following delivery for the purpose of nursing the infant has been reduced to six months.

In respect of sick leave, the entitlement now arises upon successful completion of the probationary period. Previously, the employee had to serve three months after the end of the probationary period.

The Labour Law now also includes provisions on bereavement leave, parental leave, leaves for education and military service, and unpaid leave. The provision for Hajj leave has been discontinued.

### **Workplace injuries**

An employer continues to be responsible to provide medical care to an employee who suffers a workplace injury or an occupational disease. The employee must be kept on the payroll while the treatment proceeds, at full Salary for up to six months, and half Salary thereafter for up to another six months, until the employee recovers, dies, or becomes permanently disabled. An employer continues to be responsible to pay the surviving family members of an employee who dies as a result of a workplace injury or occupational disease a sum of money equal to 24 months' Basic Salary, subject to a minimum of AED 18,000 and a

maximum of AED 200,000. The maximum was AED 35,000 under the previous Law. An earlier provision for payment of a fraction of the foregoing in the event of a partial permanent disability has been discontinued.

An employee may lose the foregoing entitlement if the condition resulted from deliberate self-injury; occurred while the employee was under the influence of alcohol or drugs; resulted from the deliberate violation of workplace safety rules; resulted from the employee's misconduct; or occurred while the employee unjustifiably refused medical treatment.

The employer is obliged to transport the remains of the deceased employee to the employee's home country or place of residence if requested by the family of the deceased.

### **Disciplinary measures**

Like the previous Law, the new Labour Law allows employers to develop workplace rules, including rules and procedures on disciplinary sanctions. Under the previous Law, it was required that an employer obtain the approval of the MOHRE to its disciplinary rules, and a sample disciplinary code was set out in a Ministerial Resolution. There was an ever-widening gap between that regulatory framework and the very detailed codes of conduct that are used in most workplaces.

With the new Labour Law, specifics on how an employer may deploy an enforceable set of rules will be provided in Executive Regulations. But the general contours of the earlier statute remain. Sanctions may range from warnings to dismissal from service. Specific measures set out in the Law are:

- a written admonition;
- a written warning;
- salary deduction, capped at five days' Salary per month (previously, uncapped fines);
- suspension without Salary capped at 14 days (previously, suspension at reduced Salary capped at ten days);
- denial of Salary increment for a maximum of one year, if the employer implements periodic increments and the employee is otherwise entitled to the same;
- denial of promotion for a maximum of two years, if the employer implements a system of promotions;
- dismissal from service with payment of severance.

It continues to be true that an employee cannot be sanctioned for an act committed outside of the workplace and unrelated to the employee's work, nor may multiple sanctions be imposed for a single infraction. An employee may be suspended in additional circumstances, including in connection with a disciplinary investigation or a criminal investigation.

### **Notice**

The new Labour Law defines the notice period as the notice period that is specified in an employment contract for termination of the contract. However, it appears to be the case that a contract may be terminated with notice even if it lacks a clause to this effect. Notice must be no less than 30 days and no more than 90 days.

Accordingly, the previous distinction between contracts of specified term and unspecified term will no longer be material as regards terminability. A contract for a specified term that still contains a clause permitting termination with notice may be terminated with notice, with no penalty attaching to the terminating party.

Under the previous Labour Law, it was not permissible to terminate a contract for a specified term with notice prior to the end of its term. Breach of this could require the breaching party to be liable for damages equal to three months' Salary. It is no doubt a welcome development that this somewhat arbitrary distinction between specified term and unspecified term contracts has now been eliminated. Termination of a contract without the required notice or for other than a "legitimate reason" – and particularly arbitrary dismissal of an employee – may still result in exposure to three months' Salary as damages.

An employee remains employed during the notice period. If the employer initiates termination, then the employee may have at least one day of absence from work each week during the notice period to search for another job.

Executive Regulations will address how an employee who is not a UAE national may transfer to the sponsorship of a new employer. A non-UAE national employee who is absent from work without excuse may, in some circumstances, be barred from obtaining a labour permit for a period of one year, subject to rules determined by Executive Regulation.

### **Termination**

The new Labour Law contains a list of circumstances in which an employment contract may terminate. These are:

- mutual written agreement;
- expiration of the term of the contract without extension;
- termination pursuant to written notice, subject to the provisions of the new Labour Law and the provisions of the employment contract concerning the same (discussed above);
- death or permanent total disability of the employee;
- employee's conviction by final order and sentencing to detention or imprisonment of not less than three months;
- permanent closure of the employer in accordance with applicable law;
- the employee's failure to meet the conditions for labour permit renewal for a reason outside of the control of the employer.

The new Labour Law continues the ten narrowly-defined grounds on which the employer may terminate an employment contract without notice. However, termination without payment of end-of-service gratuity is no longer available. Perhaps the elimination of this onerous consequence will facilitate termination for serious misconduct.

As before, an employee may leave work without one month's notice in some circumstances. These are:

- breach by the employer of its obligations, but now provided that the employee must notify the MOHRE 14 days in advance and provided that the breach remains uncured during that period;
- the employee is subject to assault, violence or harassment at the workplace by the employer or the employer's representative, but now provided that the employee must report the same to the concerned authorities and to the MOHRE within five working days of when the employee is able to make such report;
- if the workplace presents a serious threat to the safety or health of the employee (to be detailed in Executive Regulations), provided that the employer is aware of and has failed to address the same;

- the employer unilaterally imposes job obligations on the employee other than those stated in the employment contract, unless done as a temporary measure to avoid an accident or to remedy the consequences thereof and done in accordance with the Executive Regulations.

The employer is required to settle all dues of a departing employee within 14 days of the last day of service.

#### **End-of-service gratuity**

The formula remains the same, but the baseline figures are different. At the end of service, an employee who has served up to five years receives 21 Working Days of Basic Salary for each year of service. An employee who has served in excess of five years receives this plus 30 Working Days of Basic Salary for each year in excess of five years. Partial years are pro-rated. Calculation is based upon “Working Days,” a concept that was used previously in connection with calculation of overtime and leaves. Under the old Labour Law, the end-of-service gratuity was a function of “days.” Perhaps the exact method of calculation will be determined by Executive Regulations.

In a change from the previous rules, no end-of-service gratuity is lost if an employee resigns or if an employee’s services are terminated without notice. The provisions of the previous Labour Law for replacement of the end-of-service gratuity obligation with pension and savings plans have been discontinued, although the new Labour Law states that the Cabinet has authority to promulgate rules on replacement systems.

In the event of death of an employee, the employer is required within ten days of death or of learning of the employee’s death to pay the accrued end-of-service gratuity to the employee’s family.

#### **Non-competition obligations**

Under the previous Labour Law, it was permissible to include a non-competition clause in an employment contract when the work in question gives the employee access to an employer’s customers or business secrets. Such non-compete clause may stipulate that the employee may not compete with or be engaged with any business that competes with the employer in the same business sector following expiration of the contract. Such non-compete clause must also specify the time, place and type of work to the extent necessary to protect the legitimate business interests of the employer.

This provision has been continued with two changes. First, there is now an express stipulation that such non-compete clause may not exceed two years in duration. Second, an action by an employer for breach of a non-compete clause must be brought no later than one year from the date on which the employer discovers the breach on the part of the employee. There is scope for elaboration in Executive Regulations. Employers will be particularly interested in whether enforcement of such obligations – problematic under the previous statute – will be facilitated.

Related but separate confidentiality obligations are also imposed on employees. An employee is required to keep confidential all information and data that the employee accesses during the course of employment, to refrain from disclosing any business secrets, and to return all items in the employee’s possession to the employer at the end of employment. An employee is also obliged not to retain any hard or soft papers or documents relevant to business secrets without the employer’s permission. These obligations of confidentiality are imposed by the statute, and (in contrast with non-compete clauses and probationary clauses) do not require restatement in the employment contract.

#### **Disputes**

It continues to be the case that an employee must file a grievance with the MOHRE in lieu of proceeding directly to court. If the MOHRE cannot achieve a settlement by mutual agreement of the parties, then the employee may obtain a certificate from the MOHRE that the dispute remains unresolved and proceed to court on that basis. The courts are directed to dismiss any claim where this process is not followed.



Moreover, the courts may not hear any employment claim that is filed more than one year after the claim arose.

An employee is exempt from payment of court fees for a claim not in excess of AED 100,000; this monetary cap is a new feature of the new Labour Law. In another new provision, the MOHRE may order an employer to continue paying an employee's Salary for up to two months while a grievance is pending.

### **Regulation by MOHRE**

The extensive powers of the MOHRE to conduct inspections of workplaces are maintained, to be elaborated in Executive Regulations.

Penalties for violations have been increased. A fine of AED 20,000 to AED 100,000 may be imposed for providing false information or documentation, for obstructing MOHRE officials, or for disclosure by a public official of confidential information obtained by the official in the course of discharge of official duties.

In addition, an employer may be punished with a fine from AED 50,000 to AED 200,000 for:

- hiring an employee without obtaining a labour permit;
- recruiting or hiring an employee and then leaving the employee without a job;
- using a work permit for a purpose other than the purpose for which it was issued;
- closing or ceasing its activity without taking the procedures for settlement of employees' entitlements, in violation of the provisions of applicable law;
- employing a juvenile in violation of the provisions of the new Labour Law;
- agreeing to the employment of a juvenile in violation of the provisions of the new Labour Law as regards the juvenile's parent or guardian.

A fine of AED 200,000 to AED 1,000,000 may be imposed on anyone who abuses or misuses, or permits a third party to abuse or misuse, the online credentials for MOHRE electronic transactions resulting in disruption of labour relations or procedures. A separate fine may be imposed for each employee in respect of whom the violation has occurred, subject to a maximum of AED 10,000,000 for each employer. A repeat violation within one year may result in a sentence of detention and/or a doubling of the otherwise applicable fine. There is a general provision imposing a fine of AED 5,000 to AED 1,000,000 on any other violation of the provisions of the new Labour Law and its Executive Regulations.

### **Powers of Cabinet**

The new Labour Law spells out the specific powers that are delegated to the Cabinet and to the MOHRE.

The Cabinet is given the following powers:

- to adopt rules on classification of employers;
- to adopt rules on classification of skill levels of manpower and the privileges provided to each skill level;
- to adopt rules on employment of students;
- to adopt rules on employment of persons with special needs;
- to adopt general rules on regulation of the labour market in the UAE and promotion of the contribution of UAE nationals to the labour market;
- to issue resolutions addressing the effects of general exceptional circumstances affecting the labour market;

- to change the terms, rates or values stated in new Labour Law, in accordance with the public interest and the needs of the labour market;
- to determine the fees necessary for the implementation of new Labour Law.

The Cabinet is also given the express power to promulgate Executive Regulations, and specifically to make determinations on the work week, official holidays, and the minimum wage.

The powers of the Ministry are stated as follows:

- to propose policies, strategies and legislation that encourage employers to invest in manpower, to adopt modern technology, and to train students;
- to put in place templates for unified workplace rules and to set procedures for adoption of the same.

## General

The new Labour Law makes it clear that its provisions are minimum requirements in terms of employee benefits. Employers are able to introduce contracts or workplace rules that provide more favourable benefits, but not less favourable benefits. The Law expressly states that any release, conciliation or waiver of any rights by an employee shall be null and void to the extent that it contradicts the provisions of the new Labour Law.

Payments to the employee or to the employee's family members shall take priority over all funds of the employer, save amounts payable to the Public Treasury and legal alimony awarded to the wife and children.

Arabic continues to be the official language of all documentation used under the Labour Law. All time periods shall be calculated using the Gregorian calendar, on the basis of a 365-day year and a 30-day month.

Although the old Labour Law stands repealed, any resolutions, regulations and rules previously in force shall continue in effect to the extent that they do not conflict with the provisions of the new Labour Law, until they are replaced by new Executive Regulations or Ministerial Resolutions. ■

## Afridi & Angell

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