



DISPUTE THE CHANGES

A raft of new legislation has come into force bringing with it changes to UAE dispute resolution practices, in areas including labour and cheque disputes, and has altered the rules on remote hearings as **Chatura Randeniya** and **Mevan Bandara** of **Afridi & Angell** explain.

“2 022 has brought with it significant changes to UAE law, including the new Labour Law (Federal Decree-Law No. 33/2021) and its Implementing Regulations found in Cabinet Decision No. 1/2022. This and Federal Decree-Law No. 14/2020 which has decriminalised the issuing of bounced cheques, both came into force this year” states Chatura Randeniya.

DISPUTES WITH INDIVIDUAL EMPLOYEES

“Among the changes brought in by Cabinet Decision No. 1/2022 is a new procedure for resolving labour disputes,” states Randeniya. “In particular, different procedures now apply depending on whether the dispute is with an individual employee or a group of employees.”

“When a dispute involves an individual employee, it must first be referred to the Ministry of Human Resources and Emiratization (MOHRE),” states

Randeniya. “This can be done by an employer, employee or an eligible beneficiary such as the heirs of a deceased employee. MOHRE then attempts to amicably settle the dispute.”

“However, if a settlement is not reached within 14 days of the dispute being referred to the Ministry, they must then refer the matter to the Court of First Instance along with a memorandum setting out a summary of the dispute, the arguments made by both parties and the Ministry’s recommendation in the case,” Randeniya continues. “Once the matter is referred to court, it then proceeds in the ordinary way and appeals can also be potentially filed to the Court of Appeal and then the Court of Cassation, if the dispute satisfies the general threshold requirements for appeals.”

GROUP DISPUTES

“However, if the dispute involves a group of employees, a different approach applies and the employer or

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employees have to file a complaint to the Ministry within two weeks of the dispute arising,” states Randeniya. “In this case if the Ministry is unable to settle the dispute between the employer and the employees, or if a settlement reached under the auspices of the Ministry is subsequently breached, the dispute is then referred to the Collective Labour Disputes Committee or CLDC.”

COLLECTIVE LABOUR DISPUTES COMMITTEE

“The CLDC is a new body which has been given specific responsibility for settling group labour disputes but it should be noted it has not yet been established,” states Randeniya. “Their decisions will be final and sealed with the executory formula seal by the competent court.”

“Disputes with groups of employees will therefore not be heard by the UAE Courts any more until execution or enforcement is required.”

PROVISIONAL STEPS AGAINST EMPLOYERS

“In addition, after receiving a complaint on a dispute involving a group of employees, Cabinet Decision No. 1/2022 also empowers MOHRE to take a number of provisional measures in order to protect the interest of employees,” Randeniya states.

“For example, the Ministry might request the relevant authorities to impose a provisional seizure on the employer’s assets to protect the employees’ rights.”

“They could also call on the bank guarantee or insurance provided by the employer to MOHRE allocated to the employees or take any other action or measures to ensure the employees’ entitlements are paid,” Randeniya explains.

RETALIATORY TERMINATION

“Termination is another area where there are changes which will lead to disputes,” states Randeniya.

“Federal Decree-Law No. 33/2021 specifically recognises termination of an employment contract because the employee has filed a serious complaint or instituted litigation which is found to be valid as constituting illegal termination. This suggests the complaint or litigation must be upheld in order for termination to be deemed illegal. An employee whose contract was unlawfully terminated may obtain up to



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three months’ compensation where there is a retaliatory element to the termination.”

“The old labour law stated that termination by the employer will be treated as being arbitrary if the cause of termination was not related to work. This term ‘not related to work’ was often disputed,” Randeniya adds.

“However, Federal Decree-Law No. 33/2021 has amended the definition of what is considered arbitrary or illegal termination. The new law no longer contains a requirement for the reasons for termination to be ‘not related to work’ in order to be illegal.”

“If there is no retaliation, the employee must instead argue termination was done without notice or was done for other than a legitimate reason,” Randeniya adds. “This arguably provides less scope than before for recovery by a disgruntled employee.”

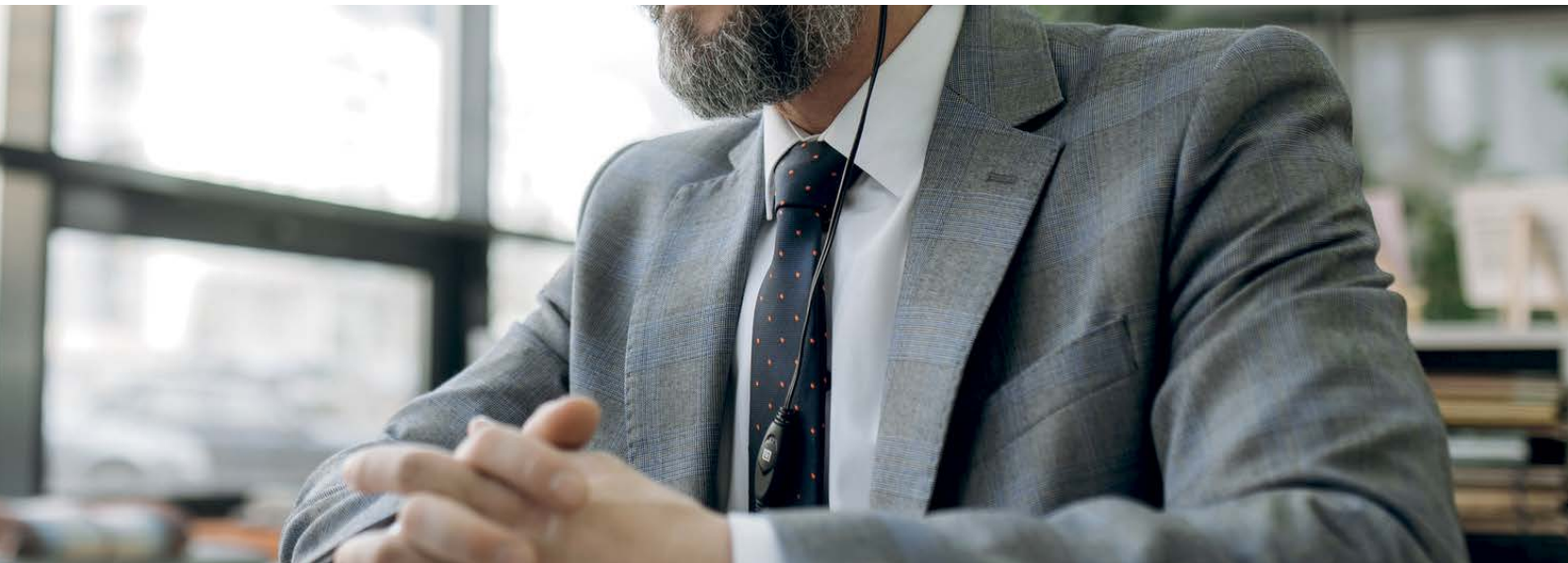
“Another area where the new labour legislation has made changes has been that it has clarified the test and the process for enforcing non-compete clauses. Article 10 of Federal Decree-Law No. 33/2021 and Article 12 of Cabinet Decision No. 1/2022 state for a non-compete clause to be valid, they should specify the geographical scope of application and the non-competition period should not be more than two years. In addition, the nature of the work must cause significant harm to the legitimate interests of the employer, and the non-compete clause will be void if the employment contract is terminated by the employer in violation of any contractual or legal provision. In addition, under Cabinet Decision No. 1/2022, employees may be exempt from non-compete clauses if the contract is terminated during the probation period, or they or their new employer have paid compensation of no more than three months’ salary to the previous employer and the previous employer has agreed in writing to accept it. When it comes to disputes in this area Article 12 of Cabinet

RELATED LEGISLATION

Article 32(1) of Cabinet Decision No. 1/2022

If a dispute arises between an employer and all the workers or a group of workers and the parties fail to settle it amicably, the claimant will file a complaint with specific controls and procedures.

(Source: Lexis Middle East Law)



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Decision No. 1/2022 also states if a dispute arises over the non-compete clause and it is not settled amicably, then the dispute should be referred to the Court and the burden of proof will lie with the employer.”

“However, it is unclear at the moment whether a dispute involving a non-compete clause should first be referred to MOHRE in line with Article 31 of Cabinet Decision No. 1/2022, so a prudent approach would be to make the referral to the Ministry until further guidance is issued.”

BOUNCED CHEQUE DISPUTES

“On 2 January 2022, when Federal Decree-Law No. 14/2020 came into force, issuing a cheque which bounced due to insufficient funds ceased to be a criminal offence, which has had an impact on dispute resolution in this area too,” states Mevan Bandara. “Although it is important to note Federal Decree-Law No. 14/2020 does not decriminalise all cheque-related offences.”

“For example, deliberately writing a cheque in a way which renders it unpayable, e.g. deliberately placing the wrong signature on it, closing an account or withdrawing all the funds from it before a cheque is presented or ordering a bank not to make payment of a cheque, except in the limited circumstances such as the loss of a cheque, are still punishable offences.”

“In these cases, offenders will be fined at least 10% of the cheque’s value, with a minimum of 5,000 AED up to double the value of the cheque, and may also be jailed for at least six months,” Bandara adds.

“Federal Decree-Law No. 14/2020 has also facilitated new civil remedies in this area by considering a cheque which is confirmed by the bank as having been dishonoured because of insufficient funds to be an executive instrument.”

“This means, a party holding a bounced cheque of this type can now initiate proceedings directly before the execution division of the courts in order to obtain payment, seize the drawer’s assets and obtain a travel ban against the drawer.”

“This is much faster and cheaper than using ordinary proceedings so it should be helpful,” Bandara adds.

REMOTE HEARINGS

“With remote hearings becoming more common, new rules regulating these types of hearings in the UAE Federal Courts have also been brought in by Ministerial Decision No. 90/2022, which came into force on 15 February 2022,” states Bandara.

“Ministerial Decision No. 90/2022 requires lawyers to maintain professional conduct and decorum in order to uphold the integrity of the UAE Courts during remote attendance.”

“This means they must respect the applicable rules and regulations, including timely submission of memoranda and evidence on the Courts’ portals and they must also refrain from disrupting ongoing proceedings,” Bandara adds.

“In addition, before attending a remote hearing, lawyers must also ensure the equipment and utilities being used are operational and meet the required standards.”

“It has also been stated that if a lawyer is unable to attend a remote hearing because of a technical problem, they will be required to submit an application to the judge with the details of the problem they faced and supporting evidence,” Bandara continues.

“It should also be noted that if a Court finds a lawyer is responsible for disrupting a remote hearing, the Court will have the discretion to take administrative or criminal action as set out in Federal Law No. 23/1991.”

RELATED STORY

UAE: Labour Disputes and Complaints Decision Issued 2022-03-11_41

The UAE’s Human Resources and Emiratisation Ministry has issued a Decision to regulate the procedures for labour disputes and complaints in line with the Federal Labour Decree-Law and its Implementing Regulations. It specifies the controls for cancelling work permits once the complaint is referred to the judiciary, filing complaints for work absences, cancelling complaints and collective labour dispute settlement procedures. It also enables employers and employees to file a labour complaint to the Ministry within 30 days from the day on which a violation of the legal obligations is committed. The aim is to make the procedures for submitting complaints easier and to guarantee the rights of the parties to the disputes.