

# DISPUTING THE CHANGES

Significant changes to dispute resolution in labour and employment came into force earlier this year. **Chatura Randeniya** and **Mevan Bandara** of Afridi & Angell explain what this means for employers and employees.



**“2**022 has brought with it significant changes to UAE Labour Law, through the new Labour Law (Federal Decree-Law No. 33/2021) and its Implementing Regulations which are found in Cabinet Decision No. 1/2022,” states Chatura Randeniya.

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

employees.”

## **DISPUTES WITH INDIVIDUAL EMPLOYEES**

“A dispute which involves an individual employee, must now first be referred to the Ministry of Human Resources and Emiratization (MOHRE),” states Randeniya. “This can be done by either the employer, employee or an eligible beneficiary such as the heirs of a deceased employee. MOHRE will then attempt 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 which sets out a summary of the dispute, the arguments



which have been made by both parties and the Ministry's recommendation in the case," Randeniya continues.

"Once the dispute has been referred to the court, it will then proceed 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."

"There are no requirements on how employees should be notified about their rights to raise disputes with their employers."

"However, inspectors conducting labour inspections are empowered to provide employers and workers with information and guidelines on

## RELATED LEGISLATION

### Article 2 of Ministerial Decision No. 45/2022

The grievance request shall be submitted within 30 days from the date of being informed of the decision issued by the Ministry, provided that the request is justified and all substantiating documents are attached thereto.

(Source: Lexis Middle East HR)

the best methods to implement the new Law and Regulations."

"At the moment it is too early to tell if there could be an impact for employers or employees on the cost and time to resolve an employment or labour dispute as a result of these changes but

## RELATED STORY

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

The UAE's Human Resources and Emiratization Ministry has issued a Decision to regulate the procedures for labour disputes and complaints in line with the Federal Decree-Law on Regulating Labour Relations and its Implementing Regulations. The Decision specifies the controls for cancelling work permits once a 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 guarantee the rights of the parties to the disputes.

there probably won't be."

### GROUP DISPUTES

"However, where an employment dispute involves a group of employees rather than a single employee, a different approach applies," Randeniya adds.

"In this case the employer or the employees must now file a complaint to the Ministry within two weeks of the dispute arising."

"Then in this case if the Ministry is unable to settle the dispute between the employer and employees, or if a settlement which was reached under the auspices of the Ministry is subsequently breached, the dispute will be referred on 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 although it should be noted that it has not yet been established," states Bandara.

"The CLDC's decisions will be final and will be sealed with the executory formula seal by the competent court."

"This means disputes with groups of employees will not be heard by the UAE Courts until execution or enforcement is required."

### PROVISIONAL STEPS

"One other change is that after receiving a complaint on a dispute involving a group of employees, Cabinet Decision No. 1/2022 has also empowered MOHRE to take a number of provisional measures in order to protect the interest of employees," Randeniya states. "For example, MOHRE might ask 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 measure to ensure employees' entitlements are paid," Randeniya explains.

### RETALIATORY TERMINATION

"Termination is another area where there are changes



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which will lead to disputes," states Bandara. "Federal Decree-Law No. 33/2021 specifically recognises termination of an employment contract because an employee has filed a serious complaint or instituted litigation which is found to be valid as constituting illegal termination. It 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 three months' compensation where there is a retaliatory element to the termination."

"The old labour law, Federal Law No. 8/1980 stated termination by an employer would be treated as being arbitrary if the cause was not related to work and this term 'not related to work' was often disputed," Bandara adds.

"Federal Decree-Law No. 33/2021 has amended the definition of arbitrary or illegal termination and 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.

"The new labour legislation has also 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, it should specify the geographical scope of application and the non-competition period should not be more than two years.

"The nature of the work must also cause significant harm to the employer's legitimate interests, 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," states Randeniya.

"Under Cabinet Decision No. 1/2022, employees may also be exempt from non-compete clauses if the contract is terminated during their probation, or they or their new employer have paid compensation of no more than three months' salary to the previous employer who has agreed in writing to accept it."

"In addition, when it comes to disputes in this area, Article 12 of Cabinet 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, what is unclear at the moment is 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 in such cases a prudent approach would be to make the referral to the Ministry, when disputes in this area arise until further guidance is issued."