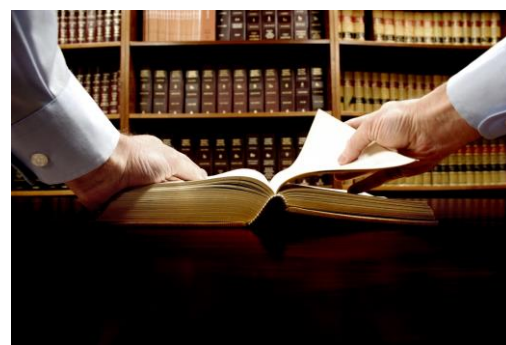


inBrief



Termination of employment in the UAE - can an employer terminate an employee's employment at will?

By Mevan Bandara and Ramesh Fernando | 31 October 2023

Under the employment law that was previously in force in the UAE, employers were not permitted to terminate an employee's employment (even with notice) absent a "legitimate reason" and if "the reason for such termination has no connection with work". In other words, the concept of termination "at will" was not recognised as an enforceable right in the context of an employer-employee relationship.

This inBrief will examine whether the new labour law (Federal Decree 33/2021) (the **New Law**) which replaced the 1980 Federal Law (the **Old Law**) has changed this position, and how the Abu Dhabi and Dubai Courts have interpreted the relevant provisions on termination of employment with notice.

What does the New Law say about termination with notice?

The relevant provision for termination with notice is contained in Article 43 (1) of the New Law, and provides that either party may terminate the employment contract, with notice, for any "legitimate reason". This position is no different to what was in place in Article 117 of the Old Law. Significantly, both the Old Law and the New Law require termination to be for a "legitimate reason" [لاي سبب مشروع]. Neither the Old Law nor the New Law provide a definition for what constitutes a "legitimate reason". Some guidance was available in Article 122 of the Old Law which provided that a termination of employment of an employee would be deemed "arbitrary" if the reason for termination had no connection with the work of the employee. However, there was no definite interpretation of what a "legitimate reason" could entail, which was a point of concern for both employers and legal practitioners.

What about arbitrary termination of employment?

There appears to have been a significant departure as to what constitutes arbitrary termination of an employee's employment under the New Law. A comparison of the relevant provisions is set out below:

Article 122 of the Old Law	Article 47 (1) of the New Law
<i>The termination of service of a worker by an employer shall be considered to be arbitrary if the reason for such termination has no connection with work. In particular, the termination shall be considered arbitrary if it is caused by the worker submitting a serious complaint to the competent authorities or making a claim against the employer which is proved to be correct.</i>	<i>The termination of the worker's service by the employer shall be illegal if such termination is due to his filing a serious complaint with the ministry or filing a lawsuit against the employer that has been proven to be valid.</i>

The Authors



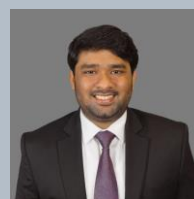
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Under the Old Law, termination of employment was considered arbitrary if “*the reason for such termination has no connection with work*”. What might have been deemed as arbitrary termination therefore was potentially broad in scope, and could conceivably be for any reason that was not work-related. This was reinforced by the wording of the Old Law providing: “***[i]n particular, the termination shall be considered arbitrary if it is caused by the worker submitting a serious complaint to the competent authorities or making a claim against the employer which is proved to be correct***” (emphasis added).

In contrast, the mirroring provision in the New Law appears to indicate a departure from the position under the Old Law. The most notable departure is the absence of the language that the termination of employment would be considered arbitrary if “*the reason for such termination has no connection with work*”. Instead, the New Law restricts circumstances where termination of employment would be considered arbitrary to only “*if such termination is due to his filing a serious complaint with the ministry or filing a lawsuit against the employer that has proven to be valid.*” Importantly, the New Law has done away with the concept that any termination that is unrelated to the employee’s work will be deemed arbitrary.

Therefore, any discretion available to a judge under the Old Law in assessing whether or not the termination was work-related or arbitrary appears to have been removed by the New Law. It would seem that the drafters might have made a conscious attempt to limit the circumstances that would be deemed arbitrary dismissal by confining its application only to instances where an employee is terminated for filing a complaint with the Ministry of Human Resources and Emiratisation (MoHRE), or for filing a lawsuit against the employer.

However, this change alone might not be enough for employers to conclude that they are free to terminate an employee at will, given that Article 43 (1) of the New Law still requires that a termination of a contract of employment be founded on a “*legitimate reason*”.

How have the courts interpreted this?

The courts seem to have addressed the question of what can amount to arbitrary termination. In a recent decision of the Dubai Court of First Instance, the court referred to a “settled” position in law, as follows:

It is also settled in the precedents of the Dubai Court of Cassation that as per the provisions of Article 47 of Federal Decree-Law 33 of 2021 termination of an employee’s service by an employer is unlawful if the termination of the employee’s service is due to filing of a serious complaint to the Ministry or filing of a valid claim (lawsuit) against the employer. This means that the termination of the employment contract by an employer is considered termination without lawful reason if it aims at harming the employee due to submission of a serious complaint to the Ministry of Human Resources and Emiratisation or filing of a valid claim (lawsuit) against the employer. (Emphasis added)

The Court also cited with approval a judgement given by the Abu Dhabi Court of Cassation in late 2022 where the Abu Dhabi Court determined that the effect of the new provisions was to restrict what is deemed arbitrary dismissal or unlawful termination only to the two instances specified in Article 47 (1). The Court also found in that case that if arbitrary termination had been established by an employee, an employee would be entitled to compensation regardless of whether or not notice of termination was given.

In this case, the court cited an extract of a judgment of the Abu Dhabi Court of Cassation delivered in late 2022. The judgment of the Abu Dhabi Court of Cassation is important for two reasons. One, it recognised the intention of the drafters of the labour law to restrict arbitrary dismissal or unlawful termination to two instances specified in Article 47 (1). Second, it held that where either of the two circumstances are concerned, employees will be entitled to compensation even where the employer had given notice of termination. The relevant extract of this judgment referred to by the Dubai Court of First Instance is as follows:

The legislators, in the new law on regulating labour relations, restricted employees’ entitlement to fair compensation for arbitrary termination to two cases only, first, where the employer’s termination of the employee’s employment was due to the employee filing a serious complaint and termination was a result of the complaint. The court of first instance shall assess the seriousness of the complaint and whether a settlement took place or whether it was referred to court. The second is where termination was a result of the employee filing a case against the employer, of any type, provided its validity is proved from a procedural aspect without waiting for the outcome thereof. The employee shall be entitled to compensation in both cases even if the employer abides by the obligation to give notice.

Significantly, the Dubai Court of First Instance, in this case, also opined that “[i]t is also settled that whoever claims that unlawful termination has occurred shall bear the **burden of proving his claim**, considering that he is claiming contrary to the general rule which provides that each use of a right is a legitimate use unless evidence to the contrary is established.”

Based on the above, it would appear that a claim for unlawful termination has now been restricted to a great extent as the courts have taken the position that termination can only be considered arbitrary where either of the two circumstances stipulated in Article 47 of the labour law are applicable. Furthermore, the burden of proof will be on the employee claiming unlawful termination.

What about the requirement for a “legitimate reason” under Article 43 (1)?

Unfortunately, the Dubai Court of First Instance did not provide any guidance on what constitutes a “*legitimate reason*” for termination with notice. However, the Dubai Court of First Instance made the following observation:

In relation to the prayer for notice pay, the labour law has stipulated provisions on termination of employment contracts in order to achieve a balance between the interests of the parties, by granting both the employee and the employer the right to terminate the contract subject to certain controls. Article 43 (1) of the labour law provides that either party to an employment contract may terminate the contract for any legitimate reason, provided the other party is notified in writing and provided the notice period is not less than 30 days and not more than 90 days. Article 43 (3) provides that the party that does not abide by the notice period shall pay to the other party the notice pay as compensation, even if the absence of notice does not cause damage to the other party. The compensation shall be equal to the employee’s salary for the full notice period or the remaining period thereof. (Emphasis added)

The reference to “certain controls” in the judgment could allude to the requirement that a termination should have a “*legitimate reason*” or, alternatively, the duty to give notice (or both). However, where Article 43 (3) specifically stipulates a sanction for failing to comply with the notice requirement, there is nothing in the New Law that mandates any penalty where a termination is not for a “*legitimate reason*”. This indicates that the legislature has placed more emphasis on the notice obligation, and less emphasis on the requirement for a “*legitimate reason*”.

What does this mean for employers and employees?

It would still be unsafe to conclude that the UAE has adopted the concept of “employment-at-will”. In certain jurisdictions, employers are able to terminate employees without cause, but that is not the case under the New Law. Employers are still required to base any termination on a “*legitimate reason*” and to give due notice in terms of the law and the contract of employment. However, it is clear that the New Law has brought about a greater balance to the employer-employee relationship as far as termination of employment is concerned. The labour law places a high burden on employers as far as termination without notice is concerned. But, when it comes to termination with notice, the position appears to be far less onerous for employers now. ■

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