

NEW UAE LABOUR LAW

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UAE Labor Employment and Workplace Safety Alert

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INTRODUCTION

The United Arab Emirates (UAE) recently published its new Federal Labour Law No. 33 of 2021 (New Law), which repeals Federal Labour Law No. 8 of 1980 (Previous Law). The New Law comes into effect on 2 February 2022 and introduces changes, some of which are likely to have a significant impact on existing employment arrangements. We set out below an overview of some of the key changes, their impact and next steps that employers should consider.

APPLICATION

The New Law applies to all existing and future employment relations in the private sector onshore in the UAE, and also in free zones that do not have their own labour laws. The New Law will not apply to employment relations in the Dubai International Financial Centre or the Abu Dhabi Global Market as they have their own labour law regimes.

Executive regulations (Executive Regulations) are expected to be issued by the Cabinet upon the proposal of the Minister of Human Resources and Emiratization, which will hopefully provide much needed clarity on the implementation of the various new provisions and changes introduced by the New Law.

WORK MODELS

The New Law sets out the different “models” that parties may agree to, which include:

- Full-time – Working for one employer on a full-time basis.
- Part-time – Working for one or more employers for a specific number of hours or days.
- Temporary work – Work that is carried out during a specific period of time and that involves a specific task and ends with its completion.
- Flexible working – Work that involves changing working hours or days depending on the workflow and operational and business needs of the employer. An employee may work for an employer on a flexible working arrangement depending on the circumstances and requirements of the work.

The application of certain aspects of the New Law to the different new work models (such as overtime and severance pay) remains to be seen. It is expected that the Executive Regulations will shed some light on the applicable conditions and requirements for each work model and the respective obligations of the employer and employee.

EMPLOYMENT CONTRACTS

A key change introduced by the New Law is the requirement to have employment contracts with fixed terms. This is a major shift from the position under the Previous Law, where it was possible for the parties to enter into unlimited term employment contracts, a structure that many companies adopted for their employees in the UAE.

The New Law further states that the term of fixed employment contracts must not exceed three years. The term may be extended or renewed, any number of times, for similar or shorter terms. Any extension or renewal of the term will be added when calculating an employee's period of continuous service (i.e., with respect to calculating any applicable end of service gratuity). Where parties do not expressly renew or extend the term but continue performing the contract, the term is deemed automatically extended on the same terms and conditions.

Employers will have until 1 February 2023 to make the necessary changes to their employment contracts and employment policies, including converting any unlimited term employment contracts to fixed term contracts with the relevant authority. The Minister of Human Resources and Emiratization may extend this period.

TERMINATION DURING PROBATION

Under the Previous Law, the employer was able to terminate an employee during the probation period without giving any notice. The New Law introduces a notice period of 14 days' prior written notice for terminating an employment contract by the employer during the probation period (which is capped at six months).

An employee, on the other hand, must provide at least one month's prior written notice to the employer if they intend to terminate the employment contract during the probation period to work for another employer in the UAE. In this case, the new employer must compensate the first employer for any incurred recruitment costs, unless agreed otherwise.

Where an employee wants to terminate the employment contract during probation with the intention of leaving the UAE, the employee must provide the employer with at least 14 days' prior written notice. If such an employee returns to the UAE and obtains a work permit from another employer within three months from the date of leaving the UAE, the new employer must compensate the original employer for the recruitment costs incurred when they hired the employee (unless agreed otherwise).

If either party terminates the employment contract without complying with the provisions of the New Law, the terminating party must pay the other party compensation equal to the employee's basic salary plus allowances due under the relevant notice period or the remainder thereof. An employee who leaves the UAE without complying with the provisions relating to terminating a contract during the probation period will not be granted a work permit to work in the UAE for a period of one year from the date they depart the country.

NON-COMPETE CLAUSES

As with the Previous Law, the New Law allows employers to agree on non-compete clauses with their employees. However, the New Law provides clarity as to the conditions for such clauses to be enforceable. For instance, non-compete clauses are only enforceable for a maximum of two years after the expiry or termination of an employment contract. Non-compete clauses must also specify the place and type of work, to the extent necessary, to protect the legitimate business' interests of the employer.

The statute of limitation to file a claim for breach of a non-compete clause in an employment contract is one year from the date on which the breach is discovered.

The Executive Regulations are expected to contain additional provisions relating to non-compete clauses and any skill levels or positions that may not be bound by non-compete restrictions.

CASES OF END OF EMPLOYMENT CONTRACTS

The New Law provides a list of events that would terminate an employment contract. These include (without limitation):

- The mutual written agreement of the parties.
- Expiration of the term of the contract (unless it is renewed or extended).
- Upon the decision of either party subject to the requirements relating to termination and notice periods.
- If the employee is convicted by a final order to a custodial penalty for a term of not less than three months.
- The permanent closure of the establishment or if the employer becomes bankrupt, insolvent or unable to continue the business for any economic or exceptional reasons. These reasons are to be considered in accordance with the conditions, controls and procedures to be set by the Executive Regulations and applicable legislation in force at the time.

TERMINATION WITH NOTICE

Either party may terminate the employment contract for a legitimate reason by giving the other a prior written notice, provided that such notice is not less than 30 days and not more than 90 days.

The New Law also provides that parties to an unlimited term employment contract that was entered into before the New Law comes into effect may terminate such contract for a legitimate reason by giving the other:

- 30 days' written notice if the period of services is less than five years;
- 60 days' written notice if the period of service exceeds five years; and
- 90 days' written notice if the period of service exceeds 10 years.

TERMINATION WITHOUT NOTICE

The New Law provides a similar list of termination without notice events that were present in the Previous Law with some variations. For instance an employer may terminate an employee without notice:

- After the employer notifies the Ministry of Human Resources and Emiratization within seven working days from when the employer becomes aware that the employee caused a material loss to the employer. The notice period was 48 hours under the Previous Law.
- If the employee fails to perform their duties in accordance with their employment contract, and they fail to remedy this despite being informed of this by the employer and after receiving two written warnings.

The New Law also introduces two new cases that allow the employer to terminate an employee without notice. These include:

- If an employee abuses their position with the aim to obtain personal gain.
- If an employee becomes employed by another employer without complying with the relevant processes and regulations.

DISCIPLINARY SANCTIONS

The New Law also changes some of the disciplinary sanctions and procedures that an employer may take against an employee if they are found in breach of the New Law or the Executive Regulations. These include a written notice drawing their attention to any breach, a written warning, deducting up to five days' salary in one month, suspension from work for up to 14 days without pay, denying any salary increase for one year if the employer has a periodic salary increase policy in place and the employee is entitled to such increase under their contract or the company's bylaws, denying an employee a promotion for a maximum of two years, and finally dismissing the employee with payment of severance pay.

Furthermore, the New Law appears to have dispensed with the notice requirements relating to an internal investigation, which were in place under the Previous Law. It remains to be seen if this will be the case after the issuance of the Executive Regulations.

There are still areas of uncertainty on how some of these provisions will apply to the various work models and the Executive Regulations are expected to provide guidance on applying the sanctions listed in the New Law.

SEVERANCE PAY

The New Law clarifies that a foreign employee who completes at least one year of continuous service will be entitled to severance pay, which is calculated on the basis of their basic salary. The New Law expressly provides that the basic salary excludes any other allowances or benefits. Calculation of the severance pay is also slightly changed as the New Law refers to "working" days. That is, where an employer terminates the employment contract, for every year of service, the employee is entitled to 21 working days' basic salary for the first five years of service and 30 working days' pay for each additional year of service. The total severance pay must not exceed two years' salary (which includes the basic salary plus any allowances or benefits).

Another key change is that the New Law removes any reduction to severance pay where an employee terminates the employment contract. Under the Previous Law, where the employee terminated the contract, the employee was entitled to one-third of the severance pay for services between one to three years and two-thirds of the severance pay for service between three to five years, and the full amount of severance pay for more than five years of service.

The New Law provides that the Executive Regulations will determine the mechanism regulating severance pay for foreign employees who are employed under other work models (i.e., part-time or flexible working arrangements) as this is currently not provided for in the New Law.

Unlike the Previous Law, the New Law does not make provisions for cases under which an employee would be deprived of their severance pay.

SPECIAL LEAVE

The New Law introduces five days of paid bereavement leave for the death of a spouse and three days for the death of a parent, child, sibling, grandchild or grandparent, commencing from the date of death.

Parental leave is also offered for both parents for five days for child care. This is in addition to the mother's maternity leave, which has been slightly adjusted to include 45 days with full pay and 15 days with half pay. The New Law also states that a female employee will be entitled to her maternity leave as stipulated if delivery takes place six months or more after pregnancy, even if the child is stillborn or is born alive but dies.

The New Law does not make provisions for Hajj leave. This may, however, be provided for in the Executive Regulations, along with any set public holidays.

OTHER CHANGES

- Unless agreed otherwise, if an employer outsources one or more of its main activities, the entitlements of any outsourced employees will remain the responsibility of their main employer.
- The New Law expressly prohibits sexual harassment, bullying or any verbal, physical or mental abuse against employees by their employer, manager or colleagues.
- In respect of overtime, the New Law made some slight changes. For instance, the New Law expressly states that any overtime will be calculated based on the basic salary (which excludes any allowances or benefits), whereas under the Previous Law, overtime was calculated based on the salary including any allowances or benefits. The New Law also caps the number of overtime hours at 144 hours in any three-week period. The Executive Regulations will determine any categories of employees that will be exempt from provisions relating to working hours.
- The New Law will apply to all unlimited term contracts entered into under the Previous Law.

NEXT STEPS

The changes introduced by the New Law must be carefully considered and revisited once the Executive Regulations are published. A number of key matters remain subject to further guidance by the Ministry of Human Resources and Emiratization.

Existing employment structures will need to be amended to comply with the provisions of the New Law. Employers will have until 1 February 2023 to make the necessary changes to their employment contracts and employment policies, including converting any unlimited term employment contracts to fixed term contracts.

This client alert is not intended to provide a comprehensive summary of all of the changes introduced by the New Law. We recommend consulting with your lawyers to discuss the New Law and the Executive Regulations (when published), and their impact on current employment arrangements in order to collaborate on aligning such arrangements with the labour law regime in the UAE.

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