

EXECUTIVE REGULATIONS OF THE NEW UAE LABOUR LAW

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UAE Labor, Employment, and Workplace Safety Alert

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INTRODUCTION

In our previous alert (which can be accessed [here](#)), we provided an overview of some of the key changes that were introduced by the new Federal Labour Law No. 33 of 2021 (New Law), which repeals Federal Labour Law No. 8 of 1980. The New Law came into effect on 2 February 2022.

The Executive Regulations of the New Law have now been issued on 3 February 2022, pursuant to Cabinet Resolution No. 1 of 2022 (Executive Regulations). The Executive Regulations came into effect on 2 February 2022.

As a reminder, the New Law and the Executive Regulations 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.

We set out below an overview of some of the key provisions of the Executive Regulations that employers should consider.

CLASSIFICATION OF ESTABLISHMENTS AND WORKERS

The Executive Regulations provide that employers and employees will be classified pursuant to certain criteria. On the proposal of the United Arab Emirates (UAE) Minister of Human Resources and Emiratization (Minister), the Cabinet will issue certain decisions that will categorize employers and employees and the privileges offered to each category in order to promote competition in the local labour market.

WORK MODELS; REMOTE AND JOB SHARING

In addition to the work models provided in the New Law, the Executive Regulations now allow an employee to be employed under the following work models:

- Remote Work – All or part of the work is performed outside of the workplace and the employee and employer will communicate electronically without the need for in-person attendance. The work model is available for full-time and part-time employment arrangements.
- Job Sharing – The pre-agreed tasks and duties are divided amongst several employees. The basic salary and allowances due to each employee are paid in proportion to the work carried out by each employee under this arrangement. Employees under this work model will be treated as part-time employees for the purposes of the New Law and the Executive Regulations.

Unless provided otherwise in the New Law or the Executive Regulations, employers and employees must comply with the terms agreed in their employment contracts.

The UAE Ministry of Human Resources and Emiratization (Ministry) may introduce more work models as may be required by the demands of the local labour market.

WORK PERMITS

The Executive Regulations now set out the types of available work permits as well as the conditions and process for obtaining, renewing and cancelling them.

Some of the key work permits include:

- Work permits for recruiting an employee from outside of the UAE.
- Work permits for transferring a non-UAE employee from and to an employer registered with the Ministry.
- Work permits allowing individuals sponsored by family members to be employed by companies registered with the Ministry.
- A temporary work permit for an employee whose nature of work is for a specific period of time.
- A mission work permit allowing an employer to bring an employee from outside of the UAE to complete temporary work or a specific project with a fixed term.
- A part-time work permit allowing an employer to hire an employee under a part-time employment contract (such employee may work for more than one employer after obtaining the relevant permit from the Ministry).
- Student training and employment permits to train and employ a student in the UAE who is at least 15 years of age.
- Work permit for golden visa holders.

FREELANCE WORK

Freelance work is now expressly allowed under the Executive Regulations. Freelance work is defined as “an independent and flexible working system through which an individual generates direct income by providing services for a specific period of time or by performing a particular task whether to other individuals or entities, provided that this individual is not in any way an employee of these individuals or entities.”

An individual may apply for a freelancer permit in order to carry out freelance work independently without requiring the sponsorship of an employer in the UAE and without the requirement of having an employment contract in place.

The Cabinet, on the proposal of the Minister, will issue decisions specifying procedures, controls and the mechanism for registering freelancers with the Ministry.

RECRUITMENT AND OUTSOURCING AGENCIES

The activities of intermediation, temporary recruitment and employment outsourcing activities are now regulated by the Executive Regulations, and are defined as follows:

- Intermediation – Acting as intermediary between the parties to an employment contract including negotiating the terms of the contract with a view of establishing an employment relationship without the intermediation agency becoming a party.
- Temporary recruitment and outsourcing – Making employees of the temporary recruitment and outsourcing agency available to third parties. The employment relationship remains with the agency and not the third party (i.e. the beneficiary).
- Agency – Any individual or entity engaged in the activities above.
- Beneficiary – An individual or entity to whom an employee is assigned and under whose supervision the employee works pursuant to a temporary recruitment and outsourcing contract. This arrangement can either be for a specific period of time or for a specific task or service.

The Executive Regulations set out the conditions that must be met by a company or individual wishing to obtain a license (renewed annually) to carry out any of the activities above. These conditions include:

- Providing the Ministry a bank guarantee of not less than AED 300,000 (c. USD 81,677) in respect of an intermediation agency license.
- Providing the Ministry a bank guarantee of not less than AED 1,000,000 (c. USD 272,257) in respect of a temporary recruitment and outsourcing license or where an applicant applies for both activities.
- Submitting a credit report to the Ministry.

A company licensed to carry out any of the activities listed above is responsible for complying with the provisions of the New Law and the Executive Regulations in respect of their employees who are outsourced to a beneficiary.

EMPLOYMENT CONTRACT

The Executive Regulations set out the basic terms that must be included in an employment contract, which include details of the employer and the employee, position, date of joining, work place, working hours, days of rest, probation period, duration of the contract, agreed salary (which must be paid through the Wage Protection System) and any allowances, annual leave, notice periods and procedures for termination.

The Executive Regulations also allow both parties to convert an employment contract from one work model to another if both parties consent, all entitlements under the original contract are paid and any applicable procedures set by the Ministry are met.

The Ministry will provide standard form employment contracts for the various work models, i.e. full-time, part-time, temporary, flexible, remote, job sharing and any other work model determined by the Ministry.

NON-COMPETE CLAUSES

The Executive Regulations provide additional clarity on the application of a non-compete clause in an employment contract. For instance, a non-compete clause will not apply if an employment contract is terminated due to the employer's breach of their legal or contractual obligations.

It is also possible for both parties to agree in writing on dis-applying a non-compete clause after an employment contract has ended.

Additionally, an employee will be exempt from complying with a non-compete clause in the following cases:

- If the employee or their new employer pay compensation not exceeding three months of the employee's last received salary (plus any allowances) and the former employer consents to this in writing.
- If the employment contract is terminated during the probationary period.

The Ministry may also exempt certain categories of professionals from their non-compete obligations under their employment contract.

INTERNAL REGULATIONS

Companies with 50 or more employees must prepare internal work policies in line with the requirements of the New Law and the Executive Regulations. The policies must include information on any disciplinary sanctions, the criteria for promotions and bonuses, termination procedures, health and safety procedures and so on.

WORKING HOURS

The Executive Regulations clarify that the period of time spent by an employee traveling from their residence to their work place will be counted towards their working hours in the following circumstances:

- Due to bad weather and responses to any warnings issued by the National Center of Meteorology regarding weather changes and conditions.
- Time spent by the employee in the means of transport provided by the employer in the event of a traffic accident or emergency.
- If the parties expressly agree on this in the employment contract.

The Executive Regulations also confirm that working hours will be reduced by two hours during the holy month of Ramadan.

The following categories of work and employees will be excluded from the provisions relating to the maximum number of working hours set by the New Law and the Executive Regulations:

- Chairpersons and members of the board of directors.
- Individuals holding supervisory positions if such positions give their holders powers of the employer.
- Naval vessel employees and employees working at sea who are subject to special conditions of service due to the nature of their work.

- Technical work that requires continuous work through consecutive shifts, provided that the average working hours per week do not exceed 56 hours.
- Preparatory or complementary work that must be performed outside of the working hours established for work at the establishment.

The maximum working hours are eight hours per day or 48 hours per week. An employer may require an employee to work additional hours over the maximum working hours provided they do not exceed two hours a day, unless the work is necessary to prevent the occurrence of a serious loss or accident or to eliminate or mitigate its effects. In any event, the total working hours must not exceed 144 hours every three weeks.

ANNUAL LEAVE FOR PART-TIME EMPLOYEES

The Executive Regulations clarify that a part-time employee will be entitled to annual leave in accordance with the actual number of working hours spent by the employee in service of the employer.

This period will be determined on the basis of the total working hours after being converted to working days, divided by the number of working days in a year, multiplied by the statutory annual leave entitlements, with a minimum of five working days per year for annual leave. In calculating the annual leave entitlement for a part-time employee, a fraction of the day will be regarded as a full day as follows:

- The percentage equals the ratio of work of a part-time employee to a full-time employee.
- The actual working hours at a maximum of eight hours a day.
- The number of working hours of a part-time employee equal the number of contracted hours.
- The calculation formula will be the number of working hours in the part-time employee's contract per year divided by the number of working hours in a full-time employment contract per year multiplied by 100%.

CARRYING OVER LEAVE AND PAYMENT IN LIEU

An employee can only carry over up to half of their unused annual leave to the next year or agree with their employer to be paid in lieu thereof based on the salary received at the time the leave entitlement was accrued.

At the end of their employment, a cash payment will be made to an employee for their statutory unused annual leave entitlement calculated on the basis of their basic salary.

DISCIPLINARY SANCTIONS

Disciplinary sanctions can be imposed against an employee provided that the appropriate sanction is imposed based on the seriousness and gravity of the violation that was committed. Such sanctions must be imposed in accordance with the standards set by the Executive Regulations, which include:

- Extent of breach of the employer's confidentiality of business data and information.
- Effect of the violation on the health and safety of the other employees.
- Financial impact of the violation.
- Effect of the violation on the reputation of the employer and other employees.

- An employee's abuse of powers conferred upon them.
- Repetition of any violation by the employee.
- The criminal and moral aspect of the violation that was committed.

Employers must put in place a sanctions policy indicating each of the disciplinary penalties stated in Article 39 of the New Law.

No penalty provided for under Article 39 of the New Law may be imposed on an employee unless they have been informed in writing of the alleged violation, their statements have been heard, their defence has been provided and a record is submitted to their personal file. The penalty must be indicated at the end of such record. The employee must also be informed in writing of the sanctions that are being imposed against them, along with their amounts, reasons and penalty inflicted in case of recidivism.

An employee may not be accused of a disciplinary violation that was detected more than 30 days prior. A disciplinary penalty may not be imposed more than 60 days after the end of the investigation into the violation and its establishment against the employee.

SEVERANCE PAY FOR EMPLOYEES UNDER OTHER WORK MODELS

Severance pay for an employee who works under a part-time or job sharing model will be calculated as follows:

- Number of working hours set out in the employment contract in a year divided by the number of working hours set out in a full-time employment contract in a year, multiplied by 100%, which is then multiplied by the amount of severance pay under a full-time employment contract.
- Severance pay will not apply for an employee under temporary recruitment if the term of their contract is less than one year.

EMERGENCY CIRCUMSTANCES

The Executive Regulations provide for certain measures that an employer may take in exceptional and emergency circumstances as determined by the Cabinet. These include:

- Applying a remote working system.
- Granting paid leave to employees.
- Granting unpaid leave to employees.
- Reducing the salaries of the employees.

The Minister will issue decisions relating to the application of the above measures in any exceptional or emergency cases.

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

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