Amendments to the Saudi Arabian Labor and Workmen’s Law – Summary of Key Changes

Under Saudi Arabian law, the employment relationship between employer and employee is governed comprehensively by the Labor and Workmen’s Law (the Labor Law).

In early 2015, the Saudi Arabian Ministry of Labor announced an overhaul of the Labor Law that would include 38 amendments (the Amendments) to its statutory provisions. The Amendments were approved by HRH King Salman by Royal Decree no. D/46 dated 5/6/1436H., corresponding to 25/3/2015G. and comes into force on 18 October 2015 when they will be published in the Umm Al-Qura, the Saudi Arabian Official Gazette.

As a whole, the Amendments purport to boost Saudization and increase workers’ rights in general, while a small number of provisions fall in favor of employers. The below description summarizes 10 noteworthy changes to the Labor Law out of the 38 total Amendments.

Notice Period and Judicial Remedies (Articles 75, 78, and 77)

Originally, Article 75 forbade the termination of an indefinite term (i.e., open-ended) contract without 30 days' notice and a “valid reason.”

Further, Article 78 originally gave an employee who was found to have been terminated for an “invalid reason” in violation of Article 75 the express right to petition for reinstatement in the position from which he was dismissed.

In this regard, Article 77 originally gave the Commission for the Settlement of Labor Disputes (the Labor Commission) wide discretion to award “indemnity” to the prejudiced party where a breach of Article 75 was determined, which in some cases included the reinstatement of a disgruntled and/or litigious employee.

a. Article 75
   As amended, Article 75 now requires no less than 60 days notice and a “valid reason” to terminate an indefinite term contract.

b. Article 78
   As amended, Article 78 now explicitly repeals a former employee’s express statutory right to seek reinstatement from the Labor Commission if it is determined that he was terminated for an “invalid reason.”

c. Article 77
   As amended, Article 77 now allows the parties to specify liquidated damages in their employment contract in the
case that either terminates the relationship without a “valid reason.” However, in the event that liquidated damages are not specified, the harmed party shall be entitled to an amount equivalent to:

i. in the case of indefinite term contracts, 15 days’ wages for each year of employment; or

ii. in the case of fixed term contracts, the wages due for the remaining period of the contract, which, in either case, is capped at an amount equivalent to two months of the employee’s wages.

Thus, taken together, Articles 75, 78, and 77 as amended discontinue the possibility for former employees to seek reinstatement upon a finding that termination was without a valid reason and also allows the parties to specify liquidated damages in the case that such a finding is determined. However, liquidated damages provisions are not always upheld in Saudi Arabian law and are subject to the Shari’a principle that a harmed party should be compensated for his actual losses only, no more and no less.

It will be interesting to see how the labor courts will interpret liquidated damages provisions under Article 77. However, for current purposes, it may be worthwhile to include in all employment contracts a clause stating basically; “the Employee hereby agrees that the Company’s liability to the Employee shall be limited to an amount equal to two (2) months of his wages.”

**Probationary Periods (Articles 53 and 54)**

The Labor Law provides that the employment contract may designate the first 90 days of employment as a probationary period wherein either party may terminate the contract without any liability.

Originally, Articles 53 and 54 taken together limited an employee’s probation period to 90 days, with the exception that an employer who assigns an employee to different job responsibilities could place the employee on an additional 90-day probation period as long as both parties agreed in writing to such additional period.

a. Article 53

   Article 53 as amended states that the 90-day probation period may be extended by an additional 90 days simply with the written agreement of both parties. The language of the amendment is poorly drafted, but it seems to require the employer and employee to come together at the end of the initial 90-day probation period and execute a separate, subsequent, additional written agreement to extend the probation period by an additional 90 days. That is, this amendment does not appear to allow the parties to simply set the probation period at 180 days in the contract.

b. Article 54

   In addition to an alteration of the employee’s job responsibilities, the amended Article 54 states that the employee can be placed on an additional probation period if the “relationship between the parties has expired for a period of not less than six months,” which means that the employee can be placed on an additional probation period if/when he returns from a leave of absence of six months or more provided that both parties agree.

**Non-Compete and Confidentiality Clauses (Article 83)**

Originally, Article 83 stated that a former employee’s covenant not to compete and to protect the employer’s trade secrets upon termination must be in writing and specific in terms of the venue and type of work. It also required the covenants to be specific in terms of the duration, with the exception that the duration of the covenants could not exceed two years.

Article 83.1 as amended retains the rules with regard to covenants not to compete upon the employee’s termination.

Article 83.2 as amended severs the rule with regard to covenants to protect the employer’s trade secrets upon the
employee’s termination from the two-year limitations period, but requires the covenant to be specific in terms of time. Thus, the employment contract may specify a fixed duration wherein the former employee is forbidden from disclosing the employer’s trade secrets that is in excess of the former two-year limitation period. In general, a 10-year confidentiality requirement is generally reasonable.

Article 83.3 as amended provides that the employer may sue a former employee for a violation of amended Article 83.1 and/or 83.2 within a period of one year of his discovery of the violation, even if the lawsuit is brought after the expiration of the fixed duration of the covenant. However, the violation must have been discovered within the fixed duration.

Geographic Relocation of Employee (Article 58)

Originally, Article 58 required a valid reason to transfer an employee to another geographic place of work in Saudi Arabia, provided that the transfer did not cause “serious damage” to the employee.

a. Article 58.1
   As amended, Article 58.1 allows the employer to transfer the employee to another geographic place of work in Saudi Arabia so long as the employee approves it in writing. Ostensibly, this approval can be obtained simply by including in the employment contract a provision whereby the employee pre-approves in writing the employer’s decision to transfer his geographic place of work, in case this ever becomes a necessity.

b. Article 58.2
   In addition, Article 58.2 as amended allows the employer to transfer the employee’s geographic place of work for any reason and without the employee’s approval for no more than 30 days per year so long as the employer bears the employee’s costs and expenses for doing so.

Leave for Female Employees (Articles 151, 152, and 160)

Maternity Leave (Articles 151 and 152)

Originally, Articles 151.1 and 151.2 required an employer to provide maternity leave to a female employee beginning four weeks before the expected date of birth, as determined by a “physician of the establishment” or a medical certificate authenticated by a health agency, and extending six weeks thereafter.

Originally, Article 152 required payment of no less than half pay for a female employee with one to three years of service and full pay for a female employee with three years or more of service during their maternity leave. Further, Article 152 originally stated that a female employee who received maternity leave at half pay during a given year is entitled to only half pay during her annual leave, and a female employee who took maternity leave at full pay during a given year shall not be entitled to full pay during her annual leave as well.

a. Article 151
   Articles 151.1 and 151.2 as amended require the employer to give the female employee at least 10 weeks of fully paid maternity leave, to be divided as the employee desires. However, she must take maternity leave for the six weeks immediately following delivery. Further, the employer must allow the female employee to begin her maternity leave at least four weeks prior to the date of birth, as determined by a medical certificate authenticated by a health agency. For example, a female employee can begin her maternity leave one week prior to the birth of her child, in which case she is entitled to nine weeks of paid maternity leave thereafter. In addition, a female employee on maternity leave has the right to extend the leave period one additional unpaid month.

   Article 151.3 as amended provides that a female employee who gave birth to a sick or special needs child who is in need of permanent care shall be entitled to an additional month of paid maternity leave, and may extend the leave by an additional unpaid month, for a potential maximum of 18 weeks of paid and unpaid maternity leave.
b. Article 152

Article 152 was repealed in its entirety, which means that female employees in all cases are entitled to fully paid maternity leave in addition to fully paid annual vacation leave.

Death of Husband (Article 160)

Traditional Islamic custom requires that a woman who has divorced or whose husband has passed away must observe an “Iddah” period, during which the woman is largely constrained to her home and her family, and is not supposed to leave these confines. This is observed in order to determine whether or not the woman is pregnant, in which case the child would be deemed to be a descendant of the deceased or ex-husband for custody and inheritance law purposes.

Originally, Article 160 provided that a female employee whose husband passed away was entitled to 15 days’ paid leave.

a. Article 160.1

Article 160.1 as amended provides that a Muslim female employee whose husband passes away shall be entitled to four months and 10 days of paid leave and, if she is pregnant during this period, may extend the leave on an unpaid basis until birth. Any period of leave remaining after birth may not be rolled over.

b. Article 160.2

Article 160.2 as amended provides that a non-Muslim female employee whose husband passes away shall be entitled to the original 15 days of paid leave, and further permits the employer to request supporting documentation of the death in all cases.

It is interesting to note that the Labor Law as amended does not also provide for a similar paid Iddah leave period for a Muslim female employee in the case of her divorce.

Statutory Grounds for Termination (Article 74)

Originally, Article 74 contained five specified events where termination of the employment contract is expressly permitted.

As amended, Article 74 adds three additional events where termination of the employment contract is expressly permitted, including:

74.6 final closure of the business;

74.7 termination of the activity in which the employee was engaged; and

74.8 any other reason provided by any other law.

In general, the addition of these three further events do not appear to be novel or drastic, as grounds for termination in Clauses 74.6 and 74.7 were in practice already covered by Clause 74.5 (providing for termination of the employment contract in the case of “Force Majeure”).

Compensation for Work Injuries (Article 137)

Originally, Article 137 provided that an employee who suffered a work injury was entitled to compensation in the amount of his full pay for 30 days, then 75 per cent of his pay thereafter for the duration of his treatment up until one year, whereupon he shall be classified as disabled and eligible for compensation.
Article 137 as amended provides that an employee who suffers a work injury is entitled to compensation in the amount of his full pay for 60 days, then 75 per cent of his pay thereafter for the duration of his treatment up until one year, whereupon he shall be classified as disabled and eligible for compensation.

Training of Saudi Employees (Article 43)

Originally, Article 43 stated that employers who employ 50 or more employees must train annually at least 6 per cent of their Saudi Arabian employees.

Article 43 as amended states that employers who employ 50 or more employees must train annually at least 12 per cent of their Saudi Arabian employees.

Wage Protection System (Article 90.2)

Saudi Arabia is currently implementing a Wage Protection System (WPS) whereby businesses are required to deposit salaries into an in-Kingdom bank account for each employee. The WPS has been implemented in phases, beginning with the largest firms with 3,000 employees or more. Currently, the WPS is in its eighth stage and applies to firms with 130 or more employees. Article 90.2 as amended encapsulates the WPS requirements.

Liability Related to Sale or Transfer of Business (Article 11)

Originally, Article 11 stated that, where all or part of a business is sold or otherwise transferred in Saudi Arabia, both the previous employer and the successor were jointly liable for the statutory and contractual entitlements of the affected employees of the business.

Article 11 as amended removes the joint liability for the statutory and contractual entitlements of the affected employees of a sold or otherwise transferred business and places it solely on the successor.

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