THE EMPLOYMENT LAW REVIEW

Eleventh Edition

Editor
Erika C Collins

THE LAWREVIEWS

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PREFACE

For the past decade, we have surveyed milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. When updating the book each of the past 10 years, I reread the Preface that I wrote for the first edition in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. I have been practising international employment law for more than 20 years, and I can say this holds especially true today, as the past 11 years have witnessed progressive shifts in the legal landscape in many jurisdictions. This 11th edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see this publication grow and develop to satisfy its initial purpose: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

This 11th edition also holds a special place in my heart because it is the first that I have prepared as a shareholder of Epstein Becker & Green, PC (EBG). I joined EBG at this time in part because, in 2019, EBG established an alliance with Deloitte Legal to provide clients with comprehensive and global services relating to employment law and workforce management. The alliance brings together Deloitte Legal's global reach and the strength of its multidisciplinary business approach with EBG's United States labour and employment attorneys and workforce management experience to form a global delivery model. Through this alliance, EBG and Deloitte Legal offer comprehensive employment law and workforce management services to clients. I firmly believe that this alliance is the 'wave of the future', to be able to offer clients integrated professional services, and this notion parallels the mission and purpose of this text.

In 2020 and looking into the future, global employers face growing market complexities, from legislative changes and compliance, to technological and societal forces that are transforming the future of work. Whether solving global mobility issues, designing employee equity incentives, negotiating collective bargaining arrangements or responding to increasing public attention around harassment or equal pay issues, workforce issues can affect a company's ability to attract and retain talent, or damage its reputation and market value in an instant. These issues have created a confluence of legal and business challenges that no longer can be separated or dealt with in isolation. As a result, every company requires business advisers who can address the combined business and legal issues relating to its multinational workforce. It is my hope that this text provides legal practitioners and human resources

professionals with some guidance, best practices and comprehensive solutions to significant workforce issues that affect a company's market position, strategy, innovation and culture.

Our most recent general interest chapter still focuses on the global implications of the #MeToo movement. The movement took a strong hold in the United States at the end of 2017, as it sought to empower victims of sexual harassment and assault to share their stories on social media so as to bring awareness to the prevalence of this behaviour in the workplace. In this chapter, we look at the movement's success in other countries and analyse how different cultures and legal landscapes affect the success of the movement (or lack thereof) in a particular jurisdiction. To that end, this chapter analyses the responses to and effects of the #MeToo movement in several nations and concludes with advice to multinational employers.

Our chapter on cross-border mergers and acquisitions continues to track the variety of employment-related issues that arise during these transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, and the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2019 in nations across the globe, and one of our general interest chapters discusses this. Many countries in Asia, Europe and South America have continued to develop their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation, and regulations on gender quotas and pay equity, to ensure that all employees, regardless of gender, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals in the workforce remain underprotected and under-represented, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

We continue to include a chapter that focuses on social media and mobile device management policies. Mobile devices and social media have a prominent role in, and impact on, both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement bring-your-own-device programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. Bring-your-own-device issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work, and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Our final general interest chapter discusses the interplay between religion and employment law. Religion has a significant status in societies throughout the world, and the chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to them. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to these five general interest chapters, this edition of *The Employment Law Review* includes country-specific chapters that detail the legal environment and developments of 44 jurisdictions around the world. A special thank you to the legal practitioners across the

globe who have contributed to this volume for the first time, including Sedrak Asatryan, Janna Simonyan and Mary Serobyan (Armenia), Stefan Kühteubl and Martin Brandauer (Austria), Ignacio García, Fernando Villalobos and Soledad Cuevas (Chile), Tingting He (China), Jan Procházka and Iva Bilinská (Czech Republic), Véronique Child and Eric Guillemet (France), Guy Castegnaro, Ariane Claverie and Christophe Domingos (Luxembourg), Jack Yow (Malyasia), Charlotte Parkhill and James Warren (New Zealand), Petra Smolnikar, Romana Ulčar and Tjaša Marinček (Slovenia), Fernando Bazán López, Antonio Morales Veríssimo de Mira, Paloma Gómez López-Pintor and Andrea Sánchez Rojas (Spain) and Caron Gosling (United Kingdom). This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all our contributors and my associates, Ryan H Hutzler and Anastasia Regne, for their invaluable efforts in bringing this 11th edition to fruition.

Erika C Collins
Epstein Becker & Green
New York
February 2020

Chapter 46

UNITED ARAB EMIRATES

Iain Black, Catherine Beckett, Craig Hughson and Anna Terrizzi[1]

I INTRODUCTION

The United Arab Emirates is a federal state with seven emirates. Legislative and executive jurisdiction is divided between the various emirates and the Union. The federal government is entrusted with promulgating legislation concerning the principal and central aspects of the Union, and each emirate has the authority to enact its own laws and regulations in other matters. According to Article 121 of the UAE Constitution (as amended by Constitutional Amendment No. 1 of 2003), employment matters are restricted to the exclusive legislative powers of the Union.

An exception to the exclusive power to legislate in employment matters, which is also contemplated in Article 121 of the UAE Constitution, is the financial free zones, which are independent jurisdictions and have therefore been granted powers to self-legislate on civil and commercial matters, including employment matters. That is the case for the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), which have both previously enacted their own employment laws and published new employment laws in 2019: DIFC Law No. 2 of 2019 (as further amended by DIFC Law No. 4 of 2020 and supplemented by new Employment Regulations that came into force on 1 February 2020) and the ADGM Employment Regulations 2019. This chapter does not cover these laws in any detail and focuses on the federal regime only.

The main law governing employment relations in the UAE is Federal Labour Law No. 8 of 1980 (as amended) (the Labour Law). There are also several ministerial decrees and orders regulating particular aspects of employment relations, for instance inspections of workplaces, employment of women and young persons, and health and safety issues.

The Labour Law is protective of employees and any contractual provisions that are less beneficial to the employees than those provided for in the Labour Law will be null and void. The Labour Law fixes the minimum employment benefits and it is not possible to contract out of these.

The Ministry of Human Resources and Emiratisation (formerly known as the Ministry of Labour) is the main body responsible for the regulation of employment in the UAE. The role of this Ministry includes approving employment contracts and issuing work permits, and it is also responsible for the health and safety of employees by undertaking workplace inspections. Any employment-related disputes must be heard by the Labour Disputes

1 Iain Black and Catherine Beckett are partners, Craig Hughson is a senior associate and Anna Terrizzi is an associate at Dentons & Co.

Committee at the Ministry of Human Resources and Emiratisation before being taken to the courts. The Labour Disputes Committee does not issue judgments or binding decisions; rather, it offers settlement for acceptance by the parties in dispute.

The courts in each emirate have jurisdiction to hear employment disputes not settled by the Labour Disputes Committee. In principle, cases brought by employees under the Labour Law are exempt from court fees at all stages of litigation, unless the claim is not accepted or is dismissed, in which case the court may order the employee to pay all or part of the court fees.

II YEAR IN REVIEW

The employment market remained relatively stable in 2019. The regulations issued during the past few years by the Minister of Human Resources and Emiratisation (see Section XIII) have focused on the employment of Emiratis in the UAE.

His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the United Arab Emirates and Ruler of Dubai, enacted Employment Law, DIFC Law No. 2 of 2019, which came into effect on 28 August 2019 and replaced Employment Law, DIFC Law No. 4 of 2005 (as amended). This was welcome news to DIFC businesses and employees, and provided clarity to the DIFC employment legislative regime following the consultation, which began in early 2018, and the draft law published as part of that consultation. The key changes include the following:

a The scope of the non-discrimination provisions is expanded to include discrimination in respect of age, pregnancy and maternity, and clarity is provided on what constitutes discriminatory behaviour.

b A gratuity payment is paid out even in circumstances where the employee is dismissed for cause.

c The basic wage must not be less than 50 per cent of the annual wage.

d The right for expectant fathers to limited paternity leave and the statutory right to time off to attend antenatal appointments; this right is also extended to fathers of adopted children who are under five years old.

e The level of sick pay is reduced.

f Clarification is provided of the status of financial penalties for late payment of employee remuneration, whereby a penalty is only due if the amount not paid is held by the court to be in excess of a week's wages.

In addition to these changes to the DIFC Employment Law, the DIFC has implemented a new workplace savings scheme to replace end-of-service gratuity (which was a lump sum payable to employees upon termination of employment). The related consultation period closed on 18 November 2019 and DIFC Law No. 4 of 2020 (which amends DIFC Law No. 2 of 2019) and the related new Employment Regulations both came into force on 1 February 2020.

The ADGM issued the new Compensation Awards and Limits Rules 2019 (the ADGM Compensation Rules) and the new Employment Regulations 2019 (the ADGM Regulations), replacing its previous legislative framework regarding employment matters. The ADGM Compensation Rules came into force on 28 October 2019 and the ADGM Regulations came into force on 1 January 2020. The key changes under the ADGM Regulations include:

a new overtime provisions for employees;

b aligning certain employees' entitlements with those on shore (including repatriation flight tickets and sick leave);

c changes allowing employers and employees more flexibility in negotiating notice periods; and
d introducing a discretionary power for the ADGM courts to impose penalties on employers for failing to pay the employees' entitlements due on termination.

The ADGM also issued Employment Regulations 2019 (Engaging Non-Employees) Rules 2019, which are to supplement the new Employment Regulations 2019 and set out the conditions for the issuance of temporary work permits in ADGM, and applicable fees and fines for non-compliance with these Rules. The Rules are scheduled to come into force on 13 May 2020.

Federal Decree by Law No. 6 of 2019 was enacted to amend certain provisions of the Labour Law. The key amendments are that:

a pregnant women cannot be dismissed simply because they are pregnant. The termination of a pregnant woman's employment contract amounts to arbitrary dismissal pursuant to the provisions of Article 122 of the Labour Law;
b discrimination that would prejudice equal opportunity of employment is prohibited;
c the UAE Cabinet may, based on proposals by the UAE Minister of Human Resources and Emiratisation, issue resolutions to promote the participation of Emirati nationals in the labour market and regulating the employment of workers in establishments; and
d Articles 27, 28 and 29 of the Labour Law, which previously set out restrictions for women regarding late-night working and dangerous conditions, have been repealed in their entirety.

III BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

i Employment relationship

The Labour Law requires that employers and employees enter into a written contract. If the parties fail to do so, the existence, validity and terms and conditions of the employment relationship may be proved by any means. It is common practice in the UAE for businesses to issue two employment contracts. A short-form standardised employment contract in Arabic and English bearing minimal details as required by the Labour Law is filed with the Ministry of Human Resources and Emiratisation for processing the employee's employment visa and work permit. A long-form contract is also signed between the employer and the employee to provide for the terms and conditions of the employment in further detail, but is not submitted to any government authorities. In situations where there are discrepancies between the short-form contract and the long-form contract, the UAE courts, whose decisions are binding, have in the past upheld the terms of the long-form contract to the detriment of the terms in the short-form contract, where these terms were more advantageous for the employee than the terms in the short-form contract. The Labour Law provides that a contract, if written, needs to specify at least the following:

a date of its conclusion;
b commencement date;
c type of work to be conducted;
d place where the work is to be conducted;
e duration of the contract (if for a specific term); and
f remuneration.

Once a contract is executed, it cannot be amended unilaterally, that is, without seeking the prior consent of the employee. Any amendment to the contract must be agreed between the parties.

Article 38 of the Labour Law provides for a distinction between contracts for a limited period and contracts for an unlimited period. A contract is for a limited period when the parties provide for a term of the contract (maximum two years). At the end of the term, the parties may agree to renew the contract for similar or shorter periods.

A contract is for an unlimited period when the contract is not in writing, does not provide for a term, or the parties continue to perform a limited-term contract after the expiry of its term without a written renewal or after the tasks for which the employee has been hired are complete and the employee continues to work. An unlimited-term contract is in effect until terminated by any of the mechanisms provided for in the Labour Law. The major difference between limited-term and unlimited-term contracts relates to the end of service gratuity (see Section XI).

ii Probationary periods

Under Article 37 of the Labour Law, employers may determine a probationary period, which shall not exceed six months. During the probationary period, the employment may be terminated by the employer without notice and without end-of-service gratuity and there will be no recourse to compensation for arbitrary dismissal if termination is during or at the end of the probationary period. The Labour Law does not provide for different probationary periods based on the type of work, the seniority of the employee or whether the contract is for an unlimited or limited term.

iii Establishing a presence, secondment agreements and independent contractors

Any foreign company wishing to hire employees to conduct business in the UAE must be established and licensed in the UAE. The general principle is that no foreign entity can conduct business in the UAE unless it has a valid licence to do so. Hiring employees is considered a business activity undertaken in the UAE and, as such, a licence issued by the local authorities is required. In addition, strict immigration requirements make it impossible for companies not established and registered in the UAE to hire foreign employees, as employees must be sponsored by companies registered in the UAE to obtain work permits and residence visas.

It follows from the foregoing that employees working in the UAE must be working for companies registered in the UAE. However, the Labour Law does not prevent employees working for companies registered in the UAE from being seconded by foreign companies. This is a common practice between subsidiaries of international companies where an employee is required to work with subsidiaries in various jurisdictions and continue to be employed by the foreign parent company. There are no legal provisions in this regard, but many companies employ seconded employees, in particular when the employment is required for a short time or it requires particular expertise. Seconded employees to subsidiaries in the UAE will have their employment contracts with the foreign entity but provide their work to the subsidiary in the UAE. The foreign entity will bear all employment costs and the subsidiary in the UAE will handle the formalities for issuing the work permit and residence visa. These formalities will require a short-form employment contract between the employee and the subsidiary in the UAE for submission to the labour and immigration authorities in

the UAE. The short-form contract is a formality and the foreign company will be responsible for all employment costs. The secondment arrangements should be documented and agreed in a secondment agreement between the foreign company and the subsidiary in the UAE.

Foreign companies not registered in the UAE may hire an independent contractor to undertake particular work for their benefit, provided the independent contractor is established and licensed to perform such work in the UAE. However, the independent contractor should not present itself as an employee of the foreign company. Setting up a presence in the UAE is a well-established procedure that requires the foreign company itself to register with the local authorities.

IV RESTRICTIVE COVENANTS

Theoretically, non-compete agreements between employers and employees are enforceable in the UAE both through the courts and through administrative channels at the Ministry of Human Resources and Emiratisation. In practice, however, only the administrative route is effective, although its ambit is limited to restrictions applicable only in the UAE and to the short-form employment contracts lodged with the Ministry of Human Resources and Emiratisation.

The Labour Law allows employers to seek a restraint of trade agreement that would apply after the termination of the employment contract. Article 127 of the Labour Law provides for certain conditions for the validity of a non-compete clause. The employee must be 21 years of age or older and the non-compete clause must be limited in relation to the time, place and nature of the work to the extent required to safeguard the reasonable interests of the employer. Therefore, to enforce a non-compete agreement the employer must demonstrate that the non-compete restraint is reasonable and necessary to protect its legitimate interests. The corporate and geographical scope of the restraint must also comply with this test to be enforceable. There is no statutory limit to the non-compete period clause signed between an employer and its employees, but the Ministry of Human Resources and Emiratisation has indicated that it considers 12 months to be a reasonable period to limit competition.

To enforce a non-compete covenant, it is crucial that the employer includes the non-compete provision in the short-form employment contract deposited with the Ministry of Human Resources and Emiratisation. As to judicial enforcement, local courts rarely order specific performance under contracts. There have been no recent cases in which the Dubai Court of Cassation or the Federal Supreme Court ordered an employee to abide by a non-compete covenant. Although the local courts recognise the right of an employer to bind its employees by non-compete obligations, they would usually only award damages for losses sustained by the breach. These types of losses can be very difficult to establish.

V WAGES

Salaries, which under the Labour Law must be paid in the national currency irrespective of the nationality of the employee, are commonly structured by breaking down the monthly figure into the basic salary and other separate allowances (such as housing and car allowances). The Labour Law does not impose any particular allowances apart from a salary; however, employers opt to divide this amount to minimise the amount of the end-of-service gratuity, which is calculated on the basis of the basic salary only. To prevent employers circumventing

the proper payment of the end-of-service gratuity, even though the Labour Law is silent on the proportions granted by the employer, the Ministry of Human Resources and Emiratisation requires that the basic component is at least half the gross salary.

i Working time

Under Articles 65 to 73 of the Labour Law, the maximum working hours are eight hours each day and 48 hours a week, and no more than five consecutive work hours may be worked without a rest period. The maximum number of daily hours may be increased to nine hours per day in commercial establishments, hotels and cafés, security services and any other operations where the increase is authorised by order of the Ministry of Human Resources and Emiratisation. The maximum number of working hours may also be reduced by order of the Ministry of Human Resources and Emiratisation in relation to operations that create health risks to the employee. During the month of Ramadan, daily working hours are reduced by two hours. The working hours may be organised in shifts and there is no limit as to the amount of night work that may be performed.

ii Overtime

Work performed by an employee in excess of the maximum daily working hours will be treated as overtime. The Labour Law provides for a maximum of two hours of overtime daily. In principle, overtime will be paid at a rate 25 per cent higher than the normal hourly rate. However, if the overtime is worked between 9pm and 4am or on Fridays (Fridays are not working days in the UAE), the overtime will be paid at a rate 50 per cent higher than the normal hourly rate. Some special classes of employees are excluded from overtime pay, for instance senior employees in managerial and supervisory positions.

iii Protection of wages

Under Ministerial Resolution No. 739 of 2016 concerning the Protection of Wages, all companies registered with the Ministry of Human Resources and Emiratisation must now pay wages in full within a period not exceeding 10 days from the due date as registered in the wage protection system (WPS). The Ministry of Human Resources and Emiratisation will only continue to deal with establishments registered with the WPS. As a result, employers are urged to subscribe to the WPS immediately and comply with its requirements to prevent being subjected to the penalties outlined in that resolution. Penalties include suspension of activities of the establishment, banning the registration of new establishments by the employer, and fines. It is clear that the focus is on ensuring that wages are paid on time, protecting employees from manipulation of their financial entitlements, reducing the number of labour disputes and assisting the judicial system in labour entitlement disputes by providing evidence in relation to the same.

VI FOREIGN WORKERS

The UAE relies heavily on its foreign workforce. The pace of economic growth in the UAE during the past few years has demanded a workforce that the national population growth was not able to match. For this reason, the vast majority of workers in all business sectors is comprised of foreign nationals and in some emirates foreign nationals make up as much as 80 per cent of the population.

The Labour Law applies to all employees working in the UAE irrespective of nationality. Foreign workers enjoy the minimum benefits provided for in the Labour Law. This notwithstanding, the Labour Law establishes a preference for the employment of nationals, and foreign nationals may only be employed after fulfilling the conditions set out in the Labour Law. In theory, under the Labour Law, foreign nationals should only be employed if there are no national employees available. If this occurs, preference should be given first to Arab nationals and then to other nationalities. Nevertheless, demand is such that these requirements often are not implemented.

The preference for UAE nationals has been reconfirmed in some Emiratisation policies that have been approved through ministerial resolutions and circulars, which basically set a certain quota of Emiratis who must be employed in a particular sector. The banking sector is one of the areas in which Emiratisation is a focus. Generally, however, these Emiratisation policies have not been fully implemented or enforced and there is no limit currently on the number of foreign workers a company may hire. Generally, employers in the UAE are not required to pay any taxes or social benefits to the employees. Employers may create a savings fund for employees or may put in place a retirement or insurance scheme for the benefit of employees. As an exception to this rule, Federal Law No. 7 of 1999 regulating pensions and social insurance requires employers to pay in respect of UAE nationals (subsequently extended to cover the nationals of Gulf Cooperation Council (GCC) countries) a contributory pension to the General Authority for Pensions and Social Security. This could be seen as an extra cost of hiring UAE nationals or nationals of another GCC country.

VII GLOBAL POLICIES

The Labour Law includes a Section dedicated to disciplinary rules, under which it is not required that employers have their own disciplinary rules; in the absence of disciplinary rules, the provisions of the Labour Law apply. Any disciplinary rules put in place by employers must comply with the minimum procedural requirements set out in the Labour Law. The Ministry of Human Resources and Emiratisation has issued by Order No. 28/1 of 1981 a guide for employers issuing their own disciplinary rules. The Order serves only as a guide and is not mandatory. It provides that any new disciplinary rules must be approved by the Ministry of Human Resources and Emiratisation before they come into effect. The rules must be in Arabic (and, if necessary, in any other language) and must be filed in an appropriate place. The law does not specify what an appropriate place is but it is understood they must be made available to employees. Notification of the disciplinary rules to employees, or their incorporation in employment contracts, is not a legal requirement but is recommended as best practice.

VIII PARENTAL LEAVE

The Labour Law only provides maternity leave for female employees. There is no provision for paternal or adoption leave.

A female employee with one year of service is entitled to maternity leave with full pay for 45 calendar days, which can be taken either before or after the birth of her child. If the employee has not completed at least one year of service, she is entitled to 45 calendar days' leave at half pay. In addition, a female employee is entitled to unpaid leave of up to 100 consecutive or non-consecutive calendar days if the absence is due to an illness preventing her from resuming work and if the illness is confirmed by a medical certificate issued by

the medical service specified by the competent health authority, or if the latter authority confirms that the illness was caused by the employee's work or childbirth. Furthermore, a female employee returning from maternity leave is entitled, during the 18 months following her return, to two additional breaks per day to nurse her child; each break shall be for a maximum of half an hour. The breaks are counted as part of the hours of work and the employer is entitled to deduct any remuneration from the employee in respect of these breaks.

IX TRANSLATION

Employment contracts filed with the Ministry of Human Resources and Emiratisation are required to be in a standard bilingual English and Arabic form. Employers' guidelines and circulars to employees must also be in Arabic in addition to any other language the employer wishes to use; however, the Arabic text always prevails. Any other agreement between the employer and employee does not need to be translated into Arabic as long as it is not required to be filed with the Ministry of Human Resources and Emiratisation or any other local authority in the UAE.

The Labour Law does not make it a requirement to certify or notarise translations of any employment-related documents; however, if such documents are to be submitted to the courts or labour tribunal in relation to a dispute, it is expected that the translation will be duly certified by a legal translator.

X EMPLOYEE REPRESENTATION

The Labour Law does not contemplate any rules in relation to employee representation bodies, including works councils or trade unions. Although not strictly forbidden, there are no employee representation bodies or trade unions in the UAE. The Labour Law seems to assume that the interests of employees are protected by the Labour Law and the Ministry of Human Resources and Emiratisation in its capacity as the administrative body responsible for enforcing the Labour Law and other labour regulations.

The Labour Law provides for a procedure to settle collective disputes, which must be followed. If the dispute cannot be settled amicably, then a conciliation board including a representative of the Ministry of Human Resources and Emiratisation, a representative of the employees and a representative of the employer must hear the dispute. On certain occasions, the decision of the conciliation board may be subject to recourse to a supreme arbitration board, which includes a representative of the Ministry of Human Resources and Emiratisation, a judge from the Federal Supreme Court and an expert.

XI DATA PROTECTION

Entering into an employment contract with an employer means sharing with the employer information that often relates to the privacy of the employee. The Labour Law does not regulate the way employers create, keep and transfer data relating to their employees, but it requires employers to maintain records and files relating to each employee. This is in line with the absence in the Labour Law of provisions on the protection of privacy and the personal rights of employees, and in general with the absence of a law devoted to data protection in the UAE. Apart from ADGM and DIFC laws on data protection (which only apply within the ADGM and DIFC, respectively), a Dubai Healthcare City (DHCC) law on data protection

(which only applies within the DHCC) and some generic provisions in the Constitution and Penal Code, there are no legal provisions in the UAE determining how and when data is collected, stored, transferred, used or otherwise processed. There is no regulation on sensitive data or on the possibility of background checks. As a matter of best practice, employers are encouraged to obtain the consent of employees for handling their data or conducting any background checks. The Constitution and the laws of the UAE are generally compliant with the principles of *shariah* law, which also encourages the protection of people's privacy.

XII DISCONTINUING EMPLOYMENT

i Dismissal

An employer in the UAE may dismiss employees without cause. However, the cause is relevant to the employee's right to receive an end-of-service gratuity, which is generally due upon termination of an employment contract. A gratuity is not due if the employee's contract is terminated with cause or if the minimum period for continuous work stipulated in the Labour Law was not fulfilled. An employment contract is terminated with cause in the situations provided for in Article 120 of the Labour Law. The gratuity is also due when the employee terminates the contract, provided certain requirements (such as length of employment) are fulfilled. For example, employees with limited-term contracts are not entitled to a gratuity if they terminate the contract before it expires unless they have completed five years of continuous service.

Any of the parties to an employment contract may terminate the contract provided that the notice period (which varies depending on how long the employee has been employed and which may be replaced with payment in lieu of notice) is observed and the termination is not arbitrary.

Employee termination is arbitrary when the reason for termination is not related to the work, if the worker has submitted a complaint to the Ministry of Human Resources and Emiratisation or other authorities, or if the worker has submitted other valid judicial claims. In relation to UAE nationals, Ministerial Decree No. 212 of 2018 provides for further requirements that must be satisfied so as to terminate the employment of a UAE national.

In practice, it may be difficult to prove that a termination is arbitrary, in particular because the Labour Law does not require the employer to disclose the reasons for termination or notify any authorities of those reasons. In the case of foreign workers, employers must inform the immigration authorities of the termination, but not the reason, for the purposes of cancelling the residence visa.

When employers have put in place a savings fund or a retirement or insurance scheme for the benefit of employees, the employee is entitled to choose between the end-of-service gratuity and such schemes, whichever is more advantageous.

Upon termination, in addition to the end-of-service gratuity, employers are also responsible for the repatriation costs of any foreign employees.

ii Redundancies

The concept of redundancy is not recognised under the Labour Law and, as such, each termination is looked at individually and has to observe the rules in relation to the termination of employment contracts, namely the notice requirements and payment of the end-of-service gratuity. Redundancy programmes implemented by international companies in the UAE are mostly based on best practices and are effected on an individual, rather than collective, basis.

XIII TRANSFER OF BUSINESS

There is no separate business transfer law in the UAE. The Labour Law provides protection for employees affected by mergers, acquisitions or outsourcing transactions under the provisions of Article 126, which provides that all valid employment contracts at the time of change of ownership of a business will remain in force between the new employer and the employees and their service will be deemed continuous. The new employer and the old employer will also be jointly liable for a period of six months for the discharge of any obligations resulting from employment contracts during the period preceding the change and the new employer will thereafter bear the liability solely.

As redundancy is not recognised under the Labour Law, a collective transfer of employees is not allowed under the Labour Law and each employee will be dealt with individually on the basis of the provisions of his or her employment contract.

Although a transfer of business has a significant effect on employees' status, the Labour Law does not require the consent of employees to the transfer, only to any changes affecting their employment contracts. As such, employers should distinguish between the following two options for transferring a business according to the effects each would have on the employees' status.

i Transfer of business with acquisition of commercial licence: no change to name of employer

Examples of this type of transfer are buying the shares of a limited liability company or acquiring the parent company of a branch. In these cases, employment contracts remain in force and there is no requirement to obtain consent from employees regarding the transfer unless the new owner wishes to make changes to their contracts, in which case it is mandatory to obtain the consent of each employee, individually.

ii Transfer of business without acquisition of commercial licence: name of employer changed

There are two possible options in this type of transfer:

a the new employer may opt to hire the employees under new contracts after having their employment contracts with the old employer terminated and they have received all their end-of-service benefits; or

b the new employer hires the employees on continuous employment and accepts the transfer of the former employer's obligations under the existing employment contracts. In this case, the new employer and the old employer will be jointly liable for the discharge of all obligations under the employees' employment contracts for six months.

Furthermore, it is also mandatory to transfer, individually, the work permit and employment visa of each employee after making the necessary changes to the employment contract, a process that employers find onerous and time-consuming. It is also important to distinguish in this type of transfer between the procedural requirements pertaining to foreign workers and those pertaining to UAE workers and workers of other GCC countries, since the transfer of the latter should be in compliance with the provisions of the UAE Federal Law No. 7 of 1999 regarding the pensions and social security regulations, and after obtaining the approval of the General Authority for Pensions and Social Security.

XIV OUTLOOK

This chapter has highlighted that the Labour Law is not sufficiently sophisticated, and indeed is silent in some areas, regarding certain employment issues. As such, employers and employees are encouraged to seek legal advice when entering into employment contracts or when dealing with the issues that have been discussed.

There have been ongoing discussions about a new Labour Law and there are great hopes that one will be enacted that will cover areas of employment relationships that are not currently addressed. It seems there is a general agreement in the marketplace that amendments to the Labour Law might not be enough to match the phenomenal growth in the economy of the UAE during the past few years and face the challenges of the years to come. A new Labour Law must include provisions on, *inter alia*, data protection, international and local secondment of employees, the appointment of employees' representatives, a minimum wage, discrimination and harassment, pensions and healthcare, and redundancy. These areas are either not covered properly or not covered at all by the current Labour Law.

In 2016, the UAE Minister of Human Resources and Emiratisation issued new regulations to protect employees, including the notable Ministerial Resolution No. 739 on the protection of wages (see Section V.iii). Further protection for employees came in the form of Ministerial Resolution No. 591 concerning the commitment of establishments to provide accommodation for their workers, which requires employers with 50 or more employees earning less than 2,000 dirhams to provide those employees with free accommodation.

As mentioned, the focus towards the end of 2016 and beginning of 2017 centred on Emiratisation. Pursuant to Ministerial Resolution No. 930 of 2016, the UAE Ministry of Human Resources and Emiratisation provides professional guidance, training and employment opportunities to job-seeking Emirati nationals who are registered with the Ministry. Further, the Ministry revised the classification of entities based on their Emiratisation quotas pursuant to Ministerial Resolution No. 740 of 2016. In 2018, this commitment to protecting the rights of Emiratis seeking to work in the private sector was further strengthened with the promulgation of Ministerial Decree No. 212 on Regulation of Employing Nationals in the Private Sector. This regulation annulled Ministerial Decree No. 293 of 2015 on the Rules and Regulations of Employing Nationals and Ministerial Decree No. 176 of 2009 concerning the Rules and Regulations of Terminating the Service of Nationals in the Private Sector, and set out new rules in respect of the employment of UAE nationals, including:

a setting out the process that employers in the private sector must follow to employ a UAE national;

b introducing inspections from the Ministry of Human Resources and Emiratisation to ensure that Emirati employees are employed in an appropriate work environment and that the company and the UAE national make payments into the statutory pension fund for GCC nationals; and

c the rules applicable to the dismissal of UAE nationals.

In practice, there has been a recent change to the way Emiratisation is implemented by the Ministry of Human Resources and Emiratisation. Employers are now compelled to seek an interview with a UAE national prior to obtaining clearance to employ a non-GCC national for the same role.

As noted in Section II, the DIFC has implemented a new workplace savings scheme to replace end-of-service gratuity, which came into force on 1 February 2020. The ADGM has issued new Employment Regulations, which came into force on 1 January 2020.

Appendix 1

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