# THE EMPLOYMENT LAW REVIEW

Thirteenth Edition

**Editor**
Erika C Collins

THE LAWREVIEWS

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**Editor**
Erika C Collins

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# PREFACE

For each of the past 12 years, we have surveyed milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. Every year when I update this book, 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 25 years, and I can say this holds especially true today, as the past 13 years have witnessed progressive shifts in the legal landscape in many jurisdictions. This 13th 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.

Speaking of changes, we have now been living with the covid-19 pandemic for more than two years. In 2020, we entered a new world controlled and dictated by a novel coronavirus, one that spread at a rapid pace and required immense government intervention. The ways in which governments responded (or failed to respond) shed light on how different cultures and societies view, balance and respect government regulation, protection of workers and employee privacy. Employment practitioners around the globe have been thinking about and anticipating the future of work for a decade. But with the onslaught of covid-19, the future of work was foisted upon us. Covid-19 has expedited the next decade of technological advancement and employer–employee relations, causing entire industries and workplaces to change in real time and not over the course of years.

Unsurprisingly, this year's text would not be complete without another global survey of covid-19 that summarises some of the significant legislative and legal issues that the pandemic has presented to employers and employees. The updated chapter highlights how international governments and employers continued to respond to the pandemic during the course of 2021, from shutdowns and closures to remote working and workplaces reopening. Employers around the globe have needed to be nimble to deal with the constantly changing environment.

The other general interest, cross-border chapters have all been updated. The #MeToo movement continues to affect global workforces. 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.

The chapter on cross-border mergers and acquisitions continues to track the variety of employment-related issues that arise during these transactions. The covid-19 pandemic initially caused significant challenges to mergers and acquisitions (M&A). Deal activity slowed substantially in 2020, negotiations crumbled and closings were delayed. Although uncertainty remains about when merger and acquisition activity will return to pre-pandemic levels, it appears that businesses and financial sponsors once again have begun to pursue transactions. Parties already have begun to re-engage on transactions previously put on hold and potential sellers appear willing to consider offers that provide a full valuation. The content of due diligence may change because the security of supply chains, possible crisis-related special termination rights in key contracts and other issues that were considered low-risk in times of economic growth now may become more important. 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 2021 for multinational employers across the globe. 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. Particularly in the time of covid-19 and remote working, 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 the six general interest chapters, this edition of *The Employment Law Review* includes country-specific chapters that detail the legal environment and developments of 38 jurisdictions around the world.

Covid-19 aside, in 2022, and looking into the future, global employers continue to face growing market complexities, from legislative changes and compliance challenges, to technological and societal forces that are transforming the future of work. Whether solving global mobility issues, designing employee equity incentives, addressing social media issues, negotiating collective bargaining agreements or responding to increasing public attention on 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.

A special thank you to the legal practitioners across the globe who have contributed to this volume for the first time, as well as those who have been contributing from the first year. 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 Faegre Drinker associates, Katherine Gordon, Caroline Guensberg, Charlotte Marshall and Kerry Zaroogian, and my law partners, Alex Denny, Nicole Truso and Jill Zender, for their invaluable efforts in bringing this 13th edition to fruition.

**Erika C Collins**
Faegre Drinker Biddle & Reath LLP
New York
February 2022

Chapter 41

# UNITED ARAB EMIRATES

*Shiraz Sethi, Catherine Beckett, Craig Hughson, Anna Terrizzi and Ali Al Assaad*[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 both have their own employment laws: DIFC Law No. 2 of 2019 (as further amended by DIFC Laws No. 4 of 2020 and No. 4 of 2021, 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 Shiraz Sethi is the regional head of employment in the Middle East, Catherine Beckett is a senior legal consultant, Craig Hughson and Anna Terrizzi are senior associates, and Ali Al Assaad is a legal manager 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. In Dubai, an employee's claim with a value exceeding 100,000 dirhams will be subject to a 5 per cent filing fee, capped at 20,000 dirhams.

## II YEAR IN REVIEW

### i New labour law

The UAE has issued a new labour law (Federal Decree Law No. 33 of 2021), which replaces Federal Law No. 8/1980. The new law came into effect on 2 February 2022. The issuance of the new law will be followed by a by-law outlining further details regarding parties' rights and obligations.

Under Federal Decree Law No. 33 of 2021, new employment arrangements will be introduced, including but not limited to part-time employment and flexible employment. Furthermore, the new law will eliminate the unlimited-term employment contract. All employment contracts will be for a fixed term of maximum of three years, renewable with the parties' mutual consent.

Among other changes, the new law provides for more flexibility in terms of terminating employment relationships by either party.

### ii Visas

To increase the UAE's competitiveness in attracting and retaining talented individuals, the options available to expatriates working and residing in the UAE have been extended. Individuals working in specific fields or holding certain qualifications will be eligible for a new type of residency visa (known as the green visa), which allows them to work and reside in the UAE without their visas being linked to their employers. Until recently, employers wishing to recruit expatriate individuals had to sponsor their visas, adding to recruitment costs and obligations. Companies now have a greater chance of recruiting individuals who have their own visas.

In addition, the eligibility criteria for a freelance visa will be expanded to cater for the increasing need for independent professionals.

### iii Recruitment of Emiratis

Private sector companies are expected to focus on recruiting employees who are Emiratis. To assist with this to some extent, the government has launched an initiative to subsidise the salaries of Emiratis working in specified sectors. The targeted sectors include programming, medical services (nurses), accounting and auditing. The subsidisation will include part of an Emirati employee's monthly salary and contributions towards the employee's pension.

### iv Coronavirus measures

As part of the novel coronavirus precautionary measures, and the consequent effects on the employment market (with redundancies and wage deferrals and reductions being widespread), the Ministry of Human Resources and Emiratisation issued two new Ministerial Resolutions:

*a* Ministerial Resolution No. (279) of 2020 on Employment Stability in the Private Sector During the Period of Application of Precautionary Measures to Curb the Spread of Novel Coronavirus (the Employment Stability Resolution), issued on 26 March 2020; and

*b* Ministerial Resolution No. (281) of 2020 Regulating Remote Work in Private Establishments During the Period of Application of Precautionary Measures to Curb the Spread of Novel Coronavirus, issued on 29 March 2020.

The Employment Stability Resolution provides that affected employers shall progressively follow these five steps with the relevant employee (the latter three requiring employee consent):

*a* implement remote working;

*b* grant paid leave;

*c* grant unpaid leave;

*d* reduce salary temporarily; and

*e* reduce salary permanently.

Although the Ministerial Resolutions have not been repealed officially, in practice they are not being applied any longer.

### v New weekend

As per recent announcements made by the UAE authorities, the federal government has changed the weekend to Saturday and Sunday instead of the current Friday and Saturday. Although for the time being there is no obligation on the private sector to adopt the new weekend, in practice we the majority of employers has adopted the new weekend days. With Friday becoming a working day, and taking into consideration the Friday prayer, some employers are offering a two-hour break on Friday to enable employees to attend the prayer, whereas others are adopting a work-from-home arrangement on Fridays, which gives employees sufficient flexibility to attend the prayer during the working day.

## III SIGNIFICANT CASES

Precedent is not binding in the UAE. Judgments are not fully published and are not readily available, and then only in Arabic.

## IV 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 by 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. If 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 four 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. A contract for an unlimited term 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 XII).

### 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

In general, a 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 usually required. In addition, strict immigration requirements may mean it is not possible for companies not established and registered in the UAE to hire foreign

employees, as employees generally must be sponsored by companies registered in the UAE to obtain work permits and residence visas. However, recent changes to the law allow remote working and certain freelancers to carry on business and obtain a residence visa to live and work in the UAE (as summarised in Section II, above), which means there are now different routes to market within certain professions.

It follows from the foregoing that people working in the UAE must be employed by companies registered in the UAE. However, the Labour Law does not prevent employees of companies registered in the UAE from being seconded by foreign companies. This is a common practice between subsidiaries of international companies when 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 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.

## V RESTRICTIVE COVENANTS

Theoretically, non-compete agreements between employers and employees are enforceable in the UAE through both the courts and the 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.

Article 909(3) of the Civil Code provides that an employer cannot rely on a post-termination restriction 'if he terminates the contract without any cause attributable to the employee; nor can he avail himself of such agreement if he himself has given the employee adequate grounds to resiliate [annul] the contract'. As such, non-compete and non-solicitation clauses cannot be enforced by an employer against an employee who has been arbitrarily dismissed or who has been given grounds to resign by the employer.

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 has 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.

## VI 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 end-of-service gratuity, which is calculated on the basis of the basic salary only. The general expectation in the market, to prevent employers circumventing the proper payment of the end-of-service gratuity, is for basic salary to be at least half of gross salary. However, the Labour Law is silent on the proportions to be granted by the employer. The Ministry of Human Resources and Emiratisation does not provide guidance on this matter either.

### 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 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. Working hours may be organised in shifts and there is no limit 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 that is 25 per cent higher than the normal hourly rate. However, if the overtime is worked between 9pm and 4am or on the weekly rest days,

overtime will be paid at a rate that is 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 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 should subscribe to the WPS and comply with its requirements to prevent being subject to the penalties outlined in Ministerial Resolution No. 739, which 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.

## VII 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 has not been able to match. For this reason, the vast majority of workers in all business sectors is comprised of foreign nationals; 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 Law. In theory, under the Labour Law, foreign nationals should only be employed if there are no Emiratis available for recruitment. 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.

## VIII 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 that the rules 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.

## IX PARENTAL LEAVE

The Labour Law provides maternity leave for female employees and paternity leave for male employees. There is no provision for 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.

Male employees in the private sector are entitled to paid paternity leave of five working days. This entitlement applies for six months from the child's birth and means the UAE joins the Kingdom of Saudi Arabia as the only GCC countries to provide paid paternity leave to private sector employees, with the UAE having the most generous paternity leave policy. The changes brought about by the Decree are applicable to people employed by all onshore and free zone private companies, other than employers based in the DIFC and ADGM. The entitlement to five paid days of paternity leave, however, is generally aligned for private sector employees across the UAE, since both the ADGM and DIFC provide five days of paternity leave.

## X 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.

## XI EMPLOYEE REPRESENTATION

The Labour Law does not contemplate any rules in relation to employee representation bodies, including works councils or trade unions. Although not specifically 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 must hear the dispute. The board shall include a representative of the Ministry of Human Resources and Emiratisation, a representative of the employees and a representative of the employer. 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.

## XII DATA PROTECTION

Entering into an employment contract with an employer means sharing information with the employer that often concerns the privacy of an employee's details. Although the Labour Law requires employers to maintain records and files relating to each employee, it does not regulate the way employers create, keep and transfer data relating to their employees. However, pursuant to new Federal Law No. 45/2021 regarding Personal Data Protection (the Personal Data Protection Law), employers can be considered as data controller and must therefore abide by the corresponding obligations provided for under the Personal Data Protection Law when dealing with employees' data.

In compliance with the new Personal Data Protection Law, employers shall obtain the consent of employees for handling their data or conducting any background checks. This consent must meet the conditions provided for under Article 6 of the Law.

## XIII 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 (the duration of which varies depending on how long the person has been employed and which may be replaced with payment in lieu of notice) is observed and the termination is not arbitrary.

Employee dismissal is arbitrary when the reason for termination of the contract is not related to the work, if the employee has submitted a complaint to the Ministry of Human Resources and Emiratisation or other authorities, or if the employee 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, including notifying the Ministry of Human Resources and Emiratisation through one of its Tawteen[2] centres that it wishes to make a UAE national employee redundant. Before proceeding with a redundancy of a UAE national and following a referral from the Tawteen centre, approval must be obtained from a special committee, which was formed pursuant to Ministerial Resolution No. (279) of 2020.

In practice, it may be difficult to prove that a dismissal is arbitrary, in particular because the Labour Law does not require employers to disclose the reasons for termination of a contract or notify any authorities of those reasons. In the case of foreign workers, employers must inform the immigration authorities of the dismissal, 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 of employment contracts, in addition to the end-of-service gratuity, employers are also responsible for the repatriation costs of any foreign employees. However, this is limited to a one-way economy class air ticket to the employee's home jurisdiction and does not cover the repatriation of family members or belongings unless otherwise agreed in the contract of employment.

### ii Redundancies

The concept of redundancy is not recognised under the Labour Law and, as such, each dismissal is looked at individually and the rules in relation to the termination of employment contracts must be observed, 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 basis, rather than collectively.

2 The national programme for Emiratisation (Tawteen) is an initiative by the Ministry of Human Resources and Emiratisation to enable Emiratis to take up jobs in the private sector.

## XIV 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 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 the 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 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.

## XV 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.

A new labour law is due to come into effect on 2 February 2022. This new law will include, among other things, new provisions regarding part-time and flexible arrangements, contract term and termination, end-of-service gratuity, and discrimination and harassment.

**Appendix 1**

# ABOUT THE AUTHORS


**ALI AL ASSAAD**

*Dentons & Co*


Ali Al Assaad is a legal manager in Dentons' Dubai office. He is a member of the employment, and the litigation and dispute resolution practice groups.

Ali's focus is on litigation before the local courts, negotiations and amicable settlements. His practice includes real estate disputes, debts default and breach of contracts. He also advises corporates on employment contracts, policies and various employment disputes. He also participated in drafting the DIFC Presidential Directive No. 4 of 2020 in respect of covid-19 emergency employment measures, and the DMCC Employment Guidelines during the covid-19 precautionary measures period.

Ali is bilingual and is therefore able to provide advice to a wide range of clients, based on his first-hand experience of litigation before the local courts.


**CATHERINE BECKETT**

*Dentons & Co*


Catherine Beckett is a senior legal consultant in the UAE corporate and commercial team. She has extensive experience across a wide variety of employment matters, including drafting employment contracts and employee handbooks, advising on the application of both UAE federal and free zone employment regulations, and handling employee terminations. She also has experience in general corporate matters, including mergers and acquisitions, private equity, joint ventures, takeovers and corporate finance. Catherine has previously been recognised by *Chambers Global*, which noted that she is an 'excellent lawyer' who 'approaches things in a practical and commercial fashion and understands where [clients] are coming from'.


**CRAIG HUGHSON**

*Dentons & Co*


Craig Hughson is a senior associate in the UAE corporate and commercial team. Craig advises on matters ranging from company establishments and company administration to mergers and acquisitions and employment matters.

**SHIRAZ SETHI**

*Dentons & Co*

Shiraz Sethi is the regional head of employment in the Middle East. Ranked in *Chambers and Partners* and recognised for leading the firm into *The Legal 500* directory, Shiraz is highly rated for his contentious and non-contentious employment work, and advises multinationals and local companies on all aspects of UAE labour law and DIFC/ADGM employment law issues. From a non-contentious perspective, he regularly advises on offer letters, employment, consultancy and secondment contracts; provides advice on immigration and visa requirements, medicals and certification of documents; and frequently reviews employee handbooks and company policies to ensure they are updated and in accordance with local legislation. The majority of Shiraz's practice revolves around the contentious aspects of employment and consequently he regularly advises on terminations and the visa cancellation process, and specialises in running complex disciplinary procedures from commencement through to completion. He is also an expert when dealing with team moves and advice on restrictive covenants and their enforceability. Shiraz has been instrumental in the development of key legislation regarding UAE labour laws, including drafting the commentary of the DIFC Employment Law, amendments to the DIFC and ADGM employment laws, and drafting the DMCC covid-19 guidelines. He was also appointed to the working committee to draft the DIFC Presidential Directive.

Shiraz is one of the region's foremost thought leaders on employment law, appearing on various media platforms, including Dubai One, CNBC News and Dubai Eye radio, contributing to news outlets such as *Gulf News*, *The National* and *Khaleej Times*, and authoring articles for Lexis Nexis Middle East, The Oath and Thomson Reuters.

**ANNA TERRIZZI**

*Dentons & Co*

Anna Terrizzi is a senior associate in the UAE corporate and commercial team. Anna advises on commercial matters, ranging from company establishments and company administration to supply and distribution arrangements and employment matters.

**DENTONS & CO**

Level 4, Trade Centre – West Tower
Abu Dhabi Mall
PO Box 47656
Abu Dhabi
United Arab Emirates
Tel: +971 2 613 1500
Fax: +971 2 626 6175
craig.hughson@dentons.com

Level 18, Boulevard Plaza 2
Burj Khalifa District
PO Box 1756
Dubai
United Arab Emirates
Tel: +971 4 4020 800
Fax: +971 4 325 3350
shiraz.sethi@dentons.com
catherine.beckett@dentons.com
anna.terrizzi@dentons.com
ali.alassaad@dentons.com

www.dentons.com

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