THE EMPLOYMENT LAW REVIEW

Ninth Edition

Editor
Erika C Collins

THE LAWREVIEWS

THE EMPLOYMENT LAW REVIEW

NINTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in March 2018
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Erika C Collins

THE LAWREVIEWS

PUBLISHER
Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGERS
Thomas Lee, Joel Woods

ACCOUNT MANAGERS
Pere Aspinall, Sophie Emberson,
Laura Lynas, Jack Bagnall

PRODUCT MARKETING EXECUTIVE
Rebecca Mogridge

RESEARCHER
Arthur Hunter

EDITORIAL COORDINATOR
Gavin Jordan

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Tessa Brummitt

SUBEDITOR
Caroline Fewkes

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-912228-17-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

© 2018 Law Business Research Ltd

THE LAW REVIEWS

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE ASSET MANAGEMENT REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE AVIATION LAW REVIEW

THE BANKING LITIGATION LAW REVIEW

THE BANKING REGULATION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE CLASS ACTIONS LAW REVIEW

THE CONSUMER FINANCE LAW REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE DISPUTE RESOLUTION REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE EMPLOYMENT LAW REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE ENVIRONMENT AND CLIMATE CHANGE LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE FRANCHISE LAW REVIEW

THE GAMBLING LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE HEALTHCARE LAW REVIEW

THE INITIAL PUBLIC OFFERINGS REVIEW

THE INSOLVENCY REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE INTELLECTUAL PROPERTY AND ANTITRUST REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE INTERNATIONAL TRADE LAW REVIEW

THE INVESTMENT TREATY ARBITRATION REVIEW

THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW

THE ISLAMIC FINANCE AND MARKETS LAW REVIEW

THE LENDING AND SECURED FINANCE REVIEW

THE LIFE SCIENCES LAW REVIEW

THE MERGER CONTROL REVIEW

THE MERGERS AND ACQUISITIONS REVIEW

THE MINING LAW REVIEW

THE OIL AND GAS LAW REVIEW

THE PATENT LITIGATION LAW REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE PRIVATE EQUITY REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE PUBLIC–PRIVATE PARTNERSHIP LAW REVIEW

THE REAL ESTATE LAW REVIEW

THE REAL ESTATE M&A AND PRIVATE EQUITY REVIEW

THE RESTRUCTURING REVIEW

THE SECURITIES LITIGATION REVIEW

THE SHAREHOLDER RIGHTS AND ACTIVISM REVIEW

THE SHIPPING LAW REVIEW

THE SPORTS LAW REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

THE THIRD PARTY LITIGATION FUNDING LAW REVIEW

THE TRADEMARKS LAW REVIEW

THE TRANSFER PRICING LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ALRUD LAW FIRM

ARIAS, FÁBREGA & FÁBREGA

ATHERSTONE & COOK LEGAL PRACTITIONERS

BAYKANIDEA LAW OFFICES

BORDEN LADNER GERVAIS LLP

CANTERBURY LAW LIMITED

CLEMENS

DAI-ICHI FUYO LAW OFFICE

DAWNING LAW OFFICE

DELOITTE ADVOKATFIRMA AS

DENTONS

ENSAFRICA

FERRAIUOLI LLC

GEORGE Z GEORGIOU & ASSOCIATES LLC

GIANNI, ORIGONI, GRIPPO, CAPPELLI & PARTNERS

GLEISS LUTZ

GLOBETROTTERS LEGAL

GONZALEZ CALVILLO, SC

HERZOG FOX & NEEMAN

JIMÉNEZ CRUZ PEŃA

KOCHHAR & CO

KROGERUS

LAW FIRM ŠAFAR & PARTNERS, LTD

LOYENS & LOEFF LUXEMBOURG S.À R.L.

MARVAL, O'FARRELL & MAIRAL

MATHESON

MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS

OSTERMANN & PARTNERS LLP

PROSKAUER ROSE LLP

SAGARDOY ABOGADOS

SAYENKO KHARENKO

SBM LEGAL

SIGUION REYNA, MONTECILLO & ONGSIAKO LAW OFFICE

SOŁTYSIŃSKI KAWECKI & SZLĘZAK

URENDA, RENCORET, ORREGO Y DÖRR

VAN DOORNE NV

VAN OLMEN & WYNANT

VIEIRA DE ALMEIDA

WALDER WYSS LTD

WESSLAU SÖDERQVIST ADVOKATBYRÅ

CONTENTS

PREFACE

Every winter we survey milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. At that time, I read the Preface that I wrote for the first edition back 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. This continues to hold true today, and this ninth 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 *The Employment Law Review* grow and develop over the past eight years to satisfy the initial purpose of this text: 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.

Our first general interest chapter continues to track the variety of employment-related issues that arise during cross-border merger and acquisition transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, along with 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 2017 in nations across the globe, and this is the topic of the second general interest chapter. In 2017, many countries in Asia and Europe, as well as South America, enhanced their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation as well as gender quotas and pay equity regulation 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 remain under-protected and under-represented in the workforce, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

The third general interest chapter focuses on another ever-increasing employment law trend in which companies revise, or consider revising, 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.

In 2015, we introduced the fourth and newest general interest chapter, which discusses the interplay between religion and employment law. In 2017, we saw several new, interesting and impactful cases that further illustrate the widespread and constantly changing global norms and values concerning religion in the workplace. Religion has a significant status in societies throughout the world, and this chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to such beliefs. 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 four general interest chapters, this ninth edition of *The Employment Law Review* includes 46 country-specific chapters that detail the legal environment and developments of certain international jurisdictions. This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all of our contributors and my associate, Marissa Mastroianni, for her invaluable efforts to bring this edition to fruition.

Erika C Collins
Proskauer Rose LLP
New York
February 2018

ERIKA C COLLINS

Proskauer Rose LLP

Erika Collins is a partner in the labour and employment law department and co-head of the international labour and employment law group of Proskauer Rose, resident in the New York office. Ms Collins advises and counsels multinational public and private companies on a wide range of cross-border employment and human resources matters throughout the Americas, Europe, Africa and Asia.

Ms Collins represents US and non-US employers in all aspects of company growth and restructuring, from office openings, executive hires and workforce expansions to company downsizing, employment terminations, mass lay-offs and office closures. She advises clients on preparing competitive employment packages and agreements, such as separation, expatriate and consulting agreements, that are compliant with local laws, as well as on payroll, benefits and vacation issues. Ms Collins regularly conducts multi-country audits of employment laws and practices in order to provide advice to clients regarding compliance with data privacy, fixed term contracts, outsourcing, and working time and leave regulations among numerous other issues.

Additionally, Ms Collins advises employers on sexual harassment and other misconduct allegations, as well as cross-border investigations. She also is experienced in conducting due

diligence on international subsidiaries and advising on applicable business transfer laws and employee transition issues in cross-border M&A transactions.

Ms Collins is the editor of *The Employment Law Review*, which covers employment laws in 46 countries. In addition to authoring numerous articles on international employment topics, Ms Collins is a regular speaker at the International Bar Association and the American Bar Association. Topics on which she has written and spoken recently include: cross-border transfers of executives; global mobility issues for multinationals; employment issues in cross-border M&A transactions; the landscape of issues in international employment law; global diversity programmes; the intersection of EU privacy and anti-discrimination laws; and cross-border investigations.

PROSKAUER ROSE LLP

Eleven Times Square
New York, 10036-8299
United States
Tel: +1 212 969 3555
Fax: +1 212 969 2900
ecollins@proskauer.com
www.proskauer.com

Chapter 47

UNITED ARAB EMIRATES

Iain Black, Catherine Beckett 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), which has enacted its own employment law, DIFC Law No. (4) of 2005 as amended by Employment Law Amendment Law No. (3) of 2012. In our chapter we will not cover this law and will focus 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 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 cannot be contracted out of.

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 Ministry of Human Resources and Emiratisation's role 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 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 will have jurisdiction to hear employment disputes not settled by the Labour Disputes Committee. In principle, cases brought by employees under

1 Iain Black and Catherine Beckett are partners, and Anna Terrizzi is an associate, at Dentons.

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 2017. The regulations issued in 2016 and 2017 by the Minister of Human Resources and Emiratisation (see Section XIII) have focused on the employment of Emiratis in the UAE.

III BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP

i Employment relationship

The Labour Law requires that employers and employees enter into a written contract. If the parties fail to enter into a written contract, the existence, validity and terms and conditions of the employment relationship may be proved by any means of proof. 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, while 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 with detriment to 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 above 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 high 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. Such 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, as mentioned above. Such 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 such independent contractor is established and licensed to perform such work in the UAE. Such independent contractor should not, however, present itself as an employee of the foreign company. Establishing 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 some 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. As explained above, 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 where 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. Such 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 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 in practice the proper payment of the end-of-service gratuity, although 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 of 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 cafes, security services and any other operations where such 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 on 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. If, however, the overtime is worked between 9pm and 4am or on Fridays (which 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, companies employing 100 or more employees 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 of 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 the employees from manipulation in 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 past few years in the UAE 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 the number of foreign nationals amounts to 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. In this case, preference should be given to Arab nationals and then to other nationalities. Nevertheless, demand is such that these requirements often are not implemented in practice.

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, such 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 (recently 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 has a section dedicated to disciplinary rules. Under the Labour Law it is not required that employers have their own disciplinary rules, and 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. The Order provides that any new disciplinary rules must be approved by the Ministry of Human Resources and Emiratisation before they come into effect. The disciplinary rules must be in Arabic (and, if necessary, in any other language) and must be fixed in an appropriate place. The Labour Law does not specify what an appropriate place is but it is understood that the same must be made available to employees. Notification of the disciplinary rules to the employee, or their incorporation in the employment contract, is not a legal requirement but is recommended as best practice.

VIII 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 the 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.

In the case of collective disputes, the Labour Law provides for a procedure to settle such disputes that 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.

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 Emirates or any other local authority in the UAE.

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

X 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 in which employers create, keep and transfer data related to their employees; however, it requires employers to maintain records and files related to each employee. This is in line with the absence in the Labour Law of provisions on the protection of privacy and personal rights of employees, and in general with the absence of a law devoted to data protection in the UAE. Apart from a DIFC law on data protection (which only applies within the DIFC), a Dubai Healthcare City law on data protection (which only applies within Dubai Healthcare City) 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 and 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.

XI DISCONTINUING EMPLOYMENT

i Dismissal

In the UAE, an employer 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 was 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 Resolution No. (176) of 2009 provides for further situations that would make a termination arbitrary.

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 such reasons. In the case of foreign workers, employers must inform the immigration authorities of the termination, but not its 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 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 on an individual, rather than collective, basis.

XII 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, 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 the transfer of business is significant to employees' status, the Labour Law does not require the consent of employees to the transfer but 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 impact each would have on the employees' status.

i Transfer of business with acquisition of the commercial licence (no change in the name of employer)

Examples of this transfer are buying the shares of a limited liability company or acquiring the parent company of a branch. In this case, employment contracts of employees remain in force and no consent is required to be obtained from the employees on the transfer unless the new owner wishes to make changes to their contracts, in which case it is mandatory to obtain the employees' consent on an individual basis.

ii Transfer of business without acquisition of the commercial licence (name of employer is changed)

There are two possible options in this transfer: (1) 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 (2) the new employer hires the employees on continuous employment and accepts the transfer of the old 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 a period of six months. Furthermore, it is also mandatory to transfer, on an individual basis, the work permit and employment visa of each employee after making the necessary changes to their employment contracts, 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.

XIII OUTLOOK

Employers are regaining confidence in the local market and in their growth prospects and are therefore looking to hire new employees. 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 discussed above.

There have been ongoing discussions about a new labour law and there are great hopes that it will be enacted to replace the Labour Law and cover areas of employment relationships that have not been 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 over the past few years and face the challenges of the years to come. A new labour law must include, *inter alia*, provisions on: 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 of 2016 concerning the protection of wages (see Section V.iii).

Further protection for employees has come in the form of Ministerial Resolution No. 591 of 2016 concerning the commitment of establishments to provide accommodation to their workers, which requires employers with 50 or more employees earning less than 2,000 dirhams to provide those employees with free accommodation. The focus towards the end of 2016 and beginning of 2017 was on Emiratisation. Pursuant to Ministerial Resolution No. 930 of 2016, the UAE Ministry of Human Resources and Emiratisation shall provide professional guidance, training and employment opportunities to job-seeking Emirati nationals who are registered with the Ministry of Human Resources and Emiratisation. Furthermore, the Ministry of Human Resources revised the classification of entities based on their Emiratisation quotas pursuant to Ministerial Resolution No. 740 of 2016.

Appendix 1

ABOUT THE AUTHORS

IAIN BLACK

Dentons

Iain is a partner in the Dentons UAE corporate and commercial team, based in Dubai. He regularly advises on various corporate transactions, including domestic and international mergers and acquisitions, private equity, joint ventures, restructurings, company establishments and equity capital markets. Iain has particular expertise in advising on cross-border transactions across the Middle East and Africa.

CATHERINE BECKETT

Dentons

Catherine is a partner in the UAE corporate and commercial team. She 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*, who noted that she is an 'excellent lawyer – she approaches things in a practical and commercial fashion and understands where [clients] are coming from'.

ANNA TERRIZZI

Dentons

Anna is an 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

Dentons United Arab Emirates
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
iain.black@dentons.com
catherine.beckett@dentons.com
anna.terrizzi@dentons.com
www.dentons.com

ISBN 978-1-912228-17-1