



The change that everyone hoped for?

An insight into the UAE's new labour law, coming into force in February 2022, by Ben Brown and David True.

2021 was a busy year in the employment sector in the UAE; updates to the DIFC Employment Law in September were followed by a new UAE labour law being announced in November and a change to the UAE working week announced in December.

Now that the dust has settled a little, we're revisiting the new UAE labour law to consider just how much it will change employers (and employees) lives in practice.

WHAT HAS HAPPENED?

In November 2021, the UAE issued Federal Law No.33 of 2021 (the "New Law"), an updated labour law that will be coming into force on February 2, 2022 and which will repeal the current UAE Federal Law No.8 of 1980, as amended (the "Current Law").

The key objectives of the New Law include:

- » Ensuring the efficiency of the labour market in the UAE by attracting and retaining talent;
- » Regulating labour relations in a balanced way; and
- » Enhancing the productivity, flexibility and sustainability of the UAE's labour market.

The Ministry of Human Resources and Emiratisation ("MHRE") has confirmed that executive regulations will be issued in due course to supplement the New Law. These will hopefully fill in some of the gaps in the primary legislation.

WHAT HAS CHANGED?

Discrimination and Equal Pay

The most talked about developments

relate to the perceived introduction of discrimination and equal pay provisions, and in particular that the New Law will now provide employees with protection against discrimination on the grounds of their race, colour, sex, religion, national origin, ethnic origin or disability. The New Law also expressly prohibits harassment, bullying, or any verbal, physical or mental violence against employees.

While the clarification of the characteristics protected under the law is welcome, as is the express prohibition of harassment, it remains to be seen how these protections will be enforced in practice or what the remedy would be for individuals who are victims of discriminatory conduct or who are subjected to harassment. It should also be noted that discrimination against "persons" that may "weaken equal opportunities" was already expressly prohibited under the Current Law. In other words, the anti-discrimination provisions in the New Law are not "new". as many commentators have suggested.

In a similar vein, the concept of equal pay in the UAE was introduced in 2020, when the Current Law was amended to include provisions requiring women to be paid the same as men undertaking work of equal value.

Changes to Employment Contracts

The New Law will impact the drafting of both current and future contracts of employment.

The most significant development is



the requirement for all employees to be employed on fixed-term employment contracts of no more than 3 years. At the end of this fixed term the employee's contract can then be extended on a rolling basis, although no subsequent contracts can individually exceed three years. Employers will have twelve months from the implementation of the New Law (i.e. until 1 February 2023) to ensure all employees are on fixed term contracts. The rationale for this change is not entirely clear and we anticipate that many employees will be unnerved by the prospect of moving from a "permanent" contract to a "limited" employment contract. It will be important for employers to explain clearly to employees the reason for the change and that it is not anticipated to have a noticeable effect on employees' ongoing employment.

The New Law has, rather unusually, imposed minimum notice periods for the termination of the employees who are currently employed under an unlimited contract; depending on the employee's length of service, the imposed notice period is (i) 30 days if the employee's period of service is less than 5 years; (ii) 60 days if the employee's period of service is more than 5 years; or (iii) 90 days if the period of service is more than 10 years. These increased minimum notice periods will apply to unlimited employment contracts until February 2, 2023, when all employees will be required to be moved onto fixed-term employment contracts.

Changes have been made to the rules around the probationary period as well; employers will now have to give two weeks' notice if they want to terminate an employee's employment during this period. Employees who want to move

to another employer in the UAE during their probationary period may terminate their employment by giving at least one month's written notice. The New Law states that, in this case, the employee's new employer should compensate the old employer for recruitment costs.

Conversely, employees who want to leave to join another employer outside the UAE during their probationary period may terminate their employment by giving at least 14 days' written notice. The New Law states that if the employee returns to the UAE and obtains a work permit issued by the MHRE with another employer within 3 months of their departure, the individual's new employer should compensate their old employer for recruitment costs.

Although the intent behind the changes is no doubt to compensate those employers who lose an employee during the probation period, it is difficult to envisage how these compensatory elements will work in practice, not least because there is unlikely to be any legal relationship between the old employer and the new employer. For example, it remains to be seen how the old employer will claim compensation or how the compensation will be calculated.

Another major change, is the introduction of a cap of 90 days for employee's notice periods. While this may not impact the average employee, it is likely to be unhelpful for employers dealing with the departure and replacement of senior executives given that they typically have notice periods of 6 to 12 months. Employers, particularly multinational corporations, implement longer notice periods for senior executives for a variety of reasons, including (i) to give them time to find a suitable replacement for the outgoing executive (who will often



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have their own lengthy notice period); and (ii) to prepare the business for the transition to new leadership; and (iii) to protect their confidential information by potentially keeping their outgoing executive out of the market for all or part of their notice period. The cap on notice periods will undermine an employer's ability to achieve any of these objectives.

The New Law now limits non-compete clauses to a duration of 2 years, although it is still likely to be difficult for an employer to justify such a lengthy restriction for most employees. Other types of restrictive covenants, such as non-poaching of employees or non-solicitation of clients and customers have not been expressly recognised. The New Law states that further executive regulations will be issued which will exempt certain positions from non-compete obligations.

The New Law has suggested that the overtime exemption which applies under the Current Law for those employees in a supervisory or managerial position will no longer apply, and that further executive regulations will determine any new exemptions.

The New Law states that employees may undertake full-time, part-time, temporary or flexible work, although in practice this reflects the common working modes that are already implemented by many UAE employers and the New Law does not materially affect an employer's ability to do so. The New Law states that further executive regulations will be issued explaining how these types of models will operate.

Changes to Leave

The New Law has introduced compassionate leave, ensuring that employees are entitled to a minimum of 5 days' paid leave for the death of their spouse and 3 days' paid leave for the death of a parent, child, sibling, grandchild or grandparent.

Maternity pay has been increased to 60 days (45 days' full pay, 15 days' half pay), with no qualifying service requirement for the employee in question. Employees with babies who have disabilities may be entitled to an additional 60 days' leave on full pay, and they will also be entitled to additional unpaid leave of 45 days if they suffer a pregnancy-related illness (which will not be included when calculating the employee's

end of service gratuity). Employees will also now expressly be entitled to maternity leave and pay in the case of stillborn babies and new-born deaths.

Employees with more than 2 years' service may be entitled to 10 working days' study leave and we understand that this leave will be paid, although we expect the executive regulations will confirm this.

The New Law states that holiday pay on the termination of employment should be calculated on the basis of basic pay only.

Unlike the Current Law, the New Law does not contain any reference to Hajj leave, which suggests that employees will need to make use of annual leave or unpaid leave when undertaking the Hajj pilgrimage.

Employees will be entitled to 10 days' paid study leave to sit examinations provided (i) they are enrolled with an educational institution registered with the UAE Ministry of Education; and (ii) they have at least 2 years' service.

Other Changes

The permitted reasons for terminating the employment relationship have been expanded to include (i) the permanent closure of the employer; (ii) the bankruptcy or insolvency of the employer; and (iii) if the employee is unable to obtain the requisite work permit for reasons unrelated to the employer.

In a welcome development, employers are now expressly prohibited from retaining an employee's passport during employment. Further, in the sad event of an employee's death the New Law states that the employer should pay the deceased employee's spouse or children all outstanding wages and end of service benefits within 10 days of the date of the employee's death. It is, however, currently unclear how this requirement will interact with other UAE inheritance laws.

The New Law states that employees will only be able to resign without giving notice if (i) in the case of an employer's non-compliance with their obligations, the employee notifies the MHRE 14 days before leaving and the employer fails to rectify the matter; and (ii) in the case of harassment or violence, the employee notifies the MHRE within 5 working days of being able to do so.

The New Law states that an employee's end of service gratuity will be calculated on the basis of "working days", which would be a significant change. In our view, this is likely to be an oversight, not least because

the Federal Law No. 47 of 2021, which seeks to align some public and private sector benefits (and which also comes into force on February 2, 2022) does not contain any reference to “working days”. In our experience, most employers will continue to calculate an employee’s daily pay as normal until such time as the MHRE states they need to do otherwise.

Two changes that employers will, however, need to make to the way they approach end of service gratuity are (i) the reductions which potentially applied in the event of an employee’s resignation will no longer apply; and (ii) employees will be entitled to receive their end of service gratuity regardless of the reason for dismissal – in other words, employers can no longer withhold an employee’s end of service gratuity in the event of the employee’s summary dismissal.

Fines of up to AED1,000,000 may be imposed for breaches of the New Law, which may be multiplied in cases where numerous employees are affected.

WHAT ARE THE MOST SIGNIFICANT CHANGES LIKELY TO BE?

Conceptually, the most significant changes are the express prohibitions on behaviour which goes directly to the well-being of employees - bullying and harassment. These changes reflect the UAE’s desire for all employees to work in a safe and fair environment, although it remains to be seen how the relevant authorities will police these new statutory safeguards.

Operationally, the change which is most likely to impact employers is the mandatory imposition of fixed-term employment contracts for all employees. As stated above, the rationale for this change is unclear and we believe it is likely to cause uncertainty given that many companies may continue to mistakenly issue employment contracts which are stated to be for unlimited periods or which do not specify the length of the term. In these instances, it is likely to be difficult for all parties to determine when exactly the term of employment is due to expire, particularly where contracts have been extended through performance rather than express subsequent agreement.

WHAT NEXT?

When HR staff consider their next steps, priority should be given to communicating the relevant changes to their workforce, who

will likely want to understand how they will be personally affected by the New Law. This is particularly the case for those employees who are currently employed on unlimited term contracts who may be unnerved by the transition to a three-year fixed-term contract.

More practically, employers will need to update their template employment contracts to reflect the requirement that all employees are issued with fixed-term contracts not exceeding 3 years, ensure that all existing employees employed on indefinite employment contracts are moved onto fixed-term employment contracts (our advice is to do this before February 2, 2022, as opposed to waiting until February 2, 2023), and amend or replace existing employment policy documents which contain reference to specific statutory entitlements which are changing under the New Law (e.g. maternity leave).

Additionally, HR professionals will need to maintain accurate records of the expiry dates of all employees’ fixed-term contracts to ensure that they are in a position to renew or not renew them at the appropriate time.

CONCLUSION

There are some positive and welcome developments in the New Law, but it also poses some challenges. Regardless of whether or not you agree with New Law, employers will need to make changes and are advised to do so without delay. 🏃



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