

The New UAE Labour Law: An Evolution Rather Than a Revolution

Article

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February 2, 2022, saw the introduction of the new UAE Labour Law (Federal Law No. 33 of 2021) ("New Law"), replacing the previous 1980 legislation. The New Law was supplemented by a corresponding set of Executive Regulations dated February 3, 2022.

The New Law brings with it several significant changes, albeit the law itself is more of an evolution rather than a revolution. Whilst the New Law is now in full force and effect, employers are provided with a 12-month grace period to ensure that their contractual arrangements are in full compliance.

The New Law applies to all private sector employers who are based onshore and to all free zones except for the Dubai International Financial Centre and Abu Dhabi Global Markets, both of which have their own standalone laws.

Key changes for all employers and employees including those in the Islamic finance sector, to be aware of include:

1. The recognition of working arrangements outside of full time working, to include part-time, temporary and flexible working;
2. The concept of unlimited term contracts has been abolished. All contracts will be fixed terms, of up to three years. Our understanding is that onshore contracts (in Dubai at least) will be restricted to 2 years corresponding to the duration in which a Dubai onshore visa is currently issued. Whilst contracts are fixed, the same can still be terminated for a "legitimate reason" (which is undefined);
3. Notice periods are now capped at 3 months. The minimum (outside of the probationary period or termination without notice scenarios, i.e. summary dismissal) notice period remaining 30 days. This will give rise

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to considerations for how C-Suite contracts are dealt with that have typically provided for notice periods well in excess of 3 months;

4. Where an employee remains employed on an unlimited term contract, the New Law provides that either party can terminate such an arrangement for a legitimate reason subject to the following minimum notice periods: 30 days where service is under 5 years; 60 days where service is more than 5 years but less than 10 years; and 90 days where service is more than 10 years. Employers and employees should be mindful of this ahead of new fixed term contracts being finalised;
5. An employee's entitlement to end of service gratuity is no longer subject to discount where the employee terminates their employment inside the first 5 years of service. End of service gratuity must be paid within 14 days of the employment termination date;
6. The concept of "arbitrary dismissal" has been removed from the New Law. Instead an employee's termination will be unlawful where the termination relates to: a) the employee having filed a serious complaint against the employer; or b) a complaint against the employer is upheld. Compensation in such circumstances (which will be subject to the decision of a court) is capped at three months' total remuneration. This is far narrower than "arbitrary dismissal" which allowed for compensatory claims where the dismissal was "unrelated to work";
7. The New Law provides protection for employees from discrimination in the workplace based on the ground of race, colour, sex, religion, nationality, social origin and disability. Neither pregnancy nor maternity leave are protected characteristics – albeit employers are prohibited from terminating or threatening to terminate an employee who is pregnant or on maternity leave. Furthermore, there now specific protections against bullying and sexual harassment.
8. The New Law enshrines the concept of equal pay for men and women undertaking the same work, a principal first introduced by Federal Decree By-Law No. 6 of 2020;
9. Maternity leave has been increased to 60 days (45 days full pay and 15 days half pay). There is no longer a qualifying service requirement;
10. Parental leave of up to 5 days in the 6 months following the birth of their child is permitted. Additional leave entitlements relating to compassionate leave and study leave are also permitted;
11. Unless agreed with an employer, an employee's leave entitlement is on a "use it or lose it basis". Where it is agreed that an employee is entitled to carry over up this is capped to half of their leave entitlement; and

12. Non-compete provisions are recognised if they are limited in time and geographical scope and to the extent necessary to protect an employer's legitimate interests. The New Law now puts a cap of 2 years on such non-competes. Where an employer terminates otherwise than in accordance with the provisions of the New Law such covenants are non-enforceable.

All employers subject to the New Law should be reviewing their employment contracts, employee handbooks and all other policies and procedures to ensure full compliance with the New Law well in advance of February 2, 2023, the date by which employer's must ensure that their contracts are fully compliant.

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