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New UAE employment law and working week



New employment law, Federal Labour Law No. 33 of 2021 (the “**New Employment Law**”) will come into effect in the UAE on 2 February 2022. It will introduce a host of changes to the current regime under the Federal Labour Law No. 8 of 1980 which will be repealed. The main changes and important points are summarised below.

In parallel, the Authorities have announced that public sector employers (and schools) will shift to a Monday to Friday working week in 2022 and the implications of this shift are considered in the concluding paragraphs of this article.

1. Application

The New Employment Law applies to all private sector employment relationships, including those where an employment contract was entered into before 2 February 2022. The new law does not apply in the DIFC or the ADGM, being free zones with their own employment law.

Executive regulations will be issued by the Cabinet and provide further clarity and guidance on various aspect of the New Employment Law.



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2. Discrimination

Anti-discrimination provisions are introduced that prohibit discrimination on the basis of (1) race, (2) colour, (3) sex, (4) religion, (5) national origin, (6) social origin, and (7) disability. This does not apply, however, to UAE nationals in the case of positive discrimination aimed at enhancing their position in the job market.

Sexual harassment, bullying and any form of physical, psychological or verbal abuse are now also expressly prohibited.

3. Probation

The probation period cannot now exceed six months and cannot be renewed or extended. A 14-day notice needs to be provided by either party if they wish to terminate employment during this period. If an employee wishes to change its employer within the UAE during the probation period, they should provide one month notice, and the new employer will be required to cover the recruitment costs of the initial employer. The new employer would also be required to reimburse recruitment expenses if the employee leaves the UAE during a probation period and returns to the UAE within three months to commence new employment. If the employee leaves the UAE in breach of the notice requirements, they may not be granted a new work permit for one year from the date of departure. If either party terminates employment in breach of the probation provisions, that party shall provide compensation equivalent to the total wage due to the employee for the notice period (or any remaining period).

4. Fixed-term contracts

Employers can no longer offer unlimited-term employment contracts. All contracts must now be on a fixed-term basis of no longer than three years. Employers must replace existing unlimited-term employment contracts with fixed-term contracts within one year of the New Employment Law, by 1 February 2023. At the end of a term, a fixed-term contract can be renewed any number of times for another fixed term. If the contract is not expressly renewed but employment continues nevertheless, then the contract will be deemed to be renewed on the same terms.

5. Termination of employment

The New Employment Law also sets out the grounds for termination. Any party may terminate an employment contract based on “any legitimate reason” by serving a notice on



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the other party. “Any legitimate reason” remains undefined, whilst it may refer to the grounds for termination listed in the previous article of the law which includes the concept of “desire”. If so, a mere desire may be deemed a legitimate cause for termination. It remains to be seen whether the executive regulations will provide any further guidance on this.

Two new grounds are introduced allowing an employer to terminate employment without notice: (1) misuse by an employee of their position for personal gain, and (2) when an employee takes employment with a third party in breach of the prescribed procedures (and it is not specified whether apart from laws and regulations, this includes an employer’s internal procedures)

Unlimited-term contracts can be terminated by either party for “a legitimate reason” upon service of the requisite notice:

- a. 30 days in the case of service of up to five years;
- b. 60 days in the case of service between five and ten years; and
- c. 90 days in the case of service exceeding ten years.

It is not clear whether the above notice periods override contractual provisions or apply only if a contract does not provide for any notice period.

6. Non-compete clause

Clauses restricting the ability of employees to take employment with a competitor of their current employer remain enforceable in the UAE to the extent that they are necessary to protect the lawful interests of an employer. The old law did not specify a maximum period during which such restriction can be valid, however a common view among practitioners was that a period of up to one or two years could potentially be enforceable if reasonable in the circumstances, but many contracts in practice provided for a shorter period. The New Employment Law expressly provides that the restriction cannot exceed two years.

7. Disciplinary sanctions

An employer can suspend an employee from work for up to 30 days and pay them half of their salary during a disciplinary investigation. If the outcome of the investigation does not find any wrongdoing, then the other half of the salary must be paid.

The law also provides a revised lists sanctions available to employers in the case of breach of the provisions of the New Employment Law.



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8. End of service payment

On termination of employment, a full-time employee with at least one year of service is entitled to a payment equivalent to their basic salary for 21 working days for each of the first five years of employment, and 30 working days for each subsequent year. The total end of service payment is limited to two years' basic salary plus any allowances and benefits. No reductions are permitted, no matter whether an employee is dismissed or they resign.

9. Special leave

The following periods of paid leave are available:

- a. Parental leave of five days for both parents within six months of a child's birth.
- b. Maternity leave (in addition to parental leave) of 45 days with full pay and additional 15 days with half pay. The period of employment is irrelevant.
- c. Bereavement leave of five days in the case of death of a spouse and three days in the case of a parent, child, sibling, grandchild or grandparent.
- d. Study leave of 10 working days per year for the purpose of taking examinations, provided an employee has been employed for two years and is enrolled with an institution accredited in the UAE.
- e. Sabbatical leave for UAE nationals for the purpose of performing national or reserve service.

10. Non-working day

A minimum of one non-working day per week should be provided, and in the case of private employers (except schools) it can be any day of the week.

Since all public sector employers are moving to a Monday to Friday working week from the start of 2022, many private employers will do the same. The old employment law which will remain in force until 2 February 2022 however specifies that Friday must be a non-working day. An employer that shifts to Monday to Friday working week will therefore be violating the existing law until 2 February 2022. Whether this violation will lead to any consequences is questionable, given that this discrepancy between provisions of the old employment law and the shift of the public sector to the new working week is short and has been created by the government.

Starting from 2 February 2022, the law requiring Friday to be a non-working day will be repealed. Employers can therefore request their employees to work on Fridays once their



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employment contracts have been amended although we await further guidance for the private sector.

If an employee refuses to work on Fridays or wishes to have a short working day, then an employer may have grounds for termination whilst there is a risk that this may amount to discrimination on religious grounds with Friday being a holy day for Muslims when many attend Friday afternoon prayers. All public sector employees will be free to leave at noon on Fridays on this basis.

Private employers should consider arrangements for employees wishing to attend Friday prayer. For example, reduced working hours, remote work, an extended break for Friday prayer, potentially combined with a requirement to make up the working hours during other days of the week. Each employer is free to adopt flexible and hybrid working policies but must make these available to each employee irrespective of religious beliefs to avoid unlawful discrimination. The number of working hours however shall not exceed eight hours per day and 48 hours per week.

Next steps

Employers should:

- Review and update current policies and practices in compliance with the New Employment Law.
- Determine Friday working arrangements.
- Inform employees of all the changes.
- Execute (amended) employment agreements with current employees.
- Revise standard employment contract for future employees.

Concluding remarks

On one hand, many have called for more radical changes and deeper clarifications than the New Employment Law delivers. On the other hand, however, more clarity has been reached in some areas and it is hoped that the executive regulations will provide further guidance. Further, the new law provides a more modern legal landscape which may help to make the UAE a more attractive place to work and live.

The parallel shift to a Monday to Friday working week creates some inconvenience and challenges, given that Friday is a holy day for Muslims and remains a non-working day in most countries in the region. The UAE will, however, be aligned with global markets which will



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undoubtedly support business involved in international trade. Further, there is an impetus for all employers to consider flexible working policies and align with the expectations of employees who have enjoyed such practices since the onset of the global pandemic.

Please do not hesitate to contact Patrick Khoury (patrick.khoury@ekplegal.com) or Arthur Dedels (arthur.dedels@ekplegal.com) if you have any further queries or require assistance with making changes in your company's policies and employment contracts.

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