



## Recruitment Obligations

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## Overview

- Recruitment in the UAE is regulated by Federal Law No. 8/1980 Concerning the Regulation of Labour Relations, which governs the employee–employer relationship in the UAE.
- Prior to beginning recruitment, there are certain formalities employers need to complete, the principal one being that of obtaining a Labour Establishment Card.
- There are further legal requirements to be fulfilled by employers when hiring new employees, such as the offer letter and employment contract.
- A work permit is required in order to bring a foreign employee in and to apply for residency in the country. Recruitment formalities are different for hiring foreign worker compared with hiring national workers, as Emiratisation requirements must be met (see PN: "Rules on Employing Foreign Workers"-UAE).
- While recruitment checks are a standard practice, there are particular concerns to consider when conducting these checks in the UAE, notably regarding the handling of employee information.

## Definitions

- *MoHRE* : Ministry of Human Resources and Emiratisation (formerly the Ministry of Labour), the federal authority that regulates the labour market in the UAE.
- *Emiratisation* : An initiative by the Government of the UAE to employ citizens in a meaningful and efficient manner in the public and private sectors.
- *GDFRA* : General Directory of Residency and Foreign Affairs.
- *GRO* : Government Relation Officer.

## Practical Guidance

In the private sector, the recruitment process involves a formal job offer followed by the signing of an employment contract in order to receive a work permit and visa. Before recruitment can commence, businesses looking to employ must obtain a Labour Establishment Card per the instructions of the GDFRA in the relevant emirate. An application for a Labour Establishment Card can be made online or at the MoHRE, the federal authority governing employment in the UAE, and is necessary for recruitment to be legal.

## Legal framework

Federal Law No. 8/1980, governs the employment relationships and recruitment process in the UAE and applies to all employed personnel within the emirate apart from a select category that consists of public officials, civil servants, members of armed forces, police and security officers and domestic servants and agricultural workers. The only other governing law is DIFC Law No. 3/2012; however, this applies to the DIFC freezone only.

Expat employers are mandated to have a signed job offer and a signed standard employment contract in a form specified by the MoHRE. The contract is then registered with the federal authority and will govern the employment relationship along with any supplementary contract the employer has with the same employee.

## Job offer

As per Ministerial Decision No. 764/2015 on the Application of the Standard Contracts Approved by the Ministry of Labour, no initial approval for employment will be granted until after an employment offer is issued by the employer. The offer letter should contain all relevant details of the position in question with an annex that includes a summary of the important aspects of UAE Labour Law. Under article 1 and 2 of Ministerial Decision No. 764/2015, an offer letter made to foreign workers becomes legally binding only after it is signed by both parties and is considered to be a legal contract. Hence, changes to any provisions of the letter require consent of both parties without compromising rights of employee in question.

The law obliges the employer to ensure that the employee has read and understood the offer letter, and if the employee has not read the annexes before signing the employment contract, the employee can be fined AED 20,000 if he or she is found to have submitted incorrect information to the MoHRE (article 3 of Cabinet Decision No. 40/2014 on the Fees of the Services Offered by the Ministry of Labour).

## Employment contract

Employment contracts in the UAE are of two specific types:

1. limited fixed term of not more than two years; or
2. unlimited.

Employers will need to determine which applies to their recruitment of the particular employer as this distinction is a requirement in the MOHRE employment contract.

Under Ministerial Decision No. 31/2018 Developing a New Employment System Under Part-Time Contracts, a third type, the part-time contract was introduced allowing companies to recruit skilled workers from inside the country or from abroad under part-time contracts system. Under this system, part-time contract employees can take several part-time jobs without the approval of the original or other secondary employers so long as they obtain a permit from the MoHRE. Significantly, these types of contracts are limited only to skilled workers, namely holders of university degrees or higher or those who completed two or three years' diploma in any technical or scientific field.

Employment contracts should be based on offer letter to be signed by employer and prospective employee and should be submitted to the MoHRE within 14 days of the employee's arrival in the country. As of January 2016, the MoHRE permits the addition of a third language, apart from Arabic and English, in the job offer, labour contract and in the annexes.

While standard employments contracts govern many of the conditions of employment, it is recommended that employers enter into additional supplementary contracts regarding company-specific or industry-relevant practices such as confidentiality, intellectual property and other required restrictive covenants in order to clarify roles and duties of the employee from the outset.

Once the offer letter and employment contract has been signed by the employee, the employer will present both along with other required documents to the MoHRE to apply for entry permit for the employment visa in order to sponsor their employee. It is important to note that the employers bear the cost of visa sponsorship and they are not allowed to withhold any amount from an employee's salary or deduct visa fees or any other charges.

## Work permit

Article 13 of Federal Law No. 8/1980 prohibits companies from employing foreign workers without taking prior consent of the Department of Labour and obtaining a work permit. There is a quota on the number of employees a specific establishment can hire based on the details of the establishment and requires approval from MoHRE. In order to obtain a work permit, there are certain conditions that must be met by the employee such as the employee:

- Must not have any existing valid work permit/labour card from another company.
- Must not be below the age of 18 years.
- The profession assigned to employee must fit with the establishment's activity.
- The trade licence must be valid and free from any violations.
- Bank guarantee amounting to AED 3,000 for each sponsored employee.

The work permit is valid for 60 days, the time required for an employee to apply for an Emirates ID and obtain a labour card number from MoHRE. After obtaining all required documentation, a resident permit will be issued for the employee under the sponsorship of the employer.

## Additional requirements

Employers have previously been mandated to a bank guarantee deposit of AED 3,000 per employee (approximately USD 816) when recruiting new employees in the private sector. However, this has been replaced with an annual insurance fee of AED 60 (approximately USD 16) per employee. The insurance fee is meant to cover the end-of-service benefits, vacation allowance, return air tickets, overtime allowance, unpaid wages, and even, in the event of injury, insurance coverage of up to AED 20,000 (approximately USD 5,446) per worker.

## Emiratisation

In order to encourage participation of nationals in the private sector, the UAE government has put in place several pieces of legislation and policies regarding Emiratisation. The rules for recruitment of nationals differ from those for foreign workers in that employers who recruit unemployed UAE nationals must notify the MoHRE in writing within 15 days from the date of employment as per the UAE Labour Law. As per the Administrative Circular No. 26/2005, all companies with more than 100 employees must appoint UAE nationals in the post of GRO, who coordinate between the company and MoHRE. In addition, employers must notify the Ministry 30 days in advance in case of terminating a UAE national.

Ministerial Decision No. 544/2011 established a new classification of companies based on the number of UAE nationals employed. The classification offers several incentives for companies that meet Emiratisation targets including lower labour card fees.

## Checks and certificates

### *Recruitment checks*

Background checks are a requisite in the recruitment process, and there are some legal considerations employers must keep in mind while performing these checks. When it comes to reference checks, while it is common practice for the prospective employee to provide references from previous and current employers, the latter are under no legal obligation to accommodate a reference request. However, under Federal Law No. 8/1980, an employee may request a certificate from its employer stating particular information regarding his or her position such as the nature of work, the compensation package, and the period of employment. It is prudent to include disclaimers in references to limit liability regarding breach of confidential information.

### *Qualification checks*

If the prospective employee is not a national or a GCC resident, the employer must apply to sponsor the individual for a work permit and residence visa to initiate the recruitment process. Due to this requirement, it is imperative that the educational and experiential qualification documents of the prospective employee be checked and validated through the attestation process.

#### *Medical check*

Medical examination screening is a mandated requirement in order to check for certain statutory prescribed diseases. If the employee is found to be a carrier of any such disease, their application will likely not be successful.

#### *Good conduct certificate*

If the prospective employee has been residing in the UAE for a certain period of time, a good conduct certificate may be requested confirming that the employee does not have a criminal record in the UAE. If the employee is based outside of the UAE, he or she may be asked to obtain one from the jurisdiction of nationality of residence.

Other types of checks, such as a drug and alcohol tests, may be requested by an employer; however, these are not legal mandated and are industry/position-based. Higher-level positions may come with specific considerations of their own.

When handling or requesting references or sensitive information on prospective employees, it is important for employers to understand the obligation placed on them to maintain confidentiality. Breaches in such matters carry serious penalties.

## **Related Content**

### **Legislation**

- Federal Law No. 8/1980 Concerning the Regulation of Labor Relations
- DIFC Employment Law Amendment Law, DIFC Law No. 3/2012
- Ministerial Decision No. 41/2005
- Administrative Circular No. 26/2005 Regarding Labour Relations
- Cabinet Decision No. 40/2014 on the Fees of the Services Offered by the Ministry of Labour
- Cabinet Decision No. 10/2012 on the Amendment of Certain Provisions of Cabinet Decision No 27/2010 on Fees and Fines Adopted for Services Provided by the Ministry of Labor
- Ministerial Decision No. 544/2011 Amending Ministerial Resolution No. 1187/2010 on Regulations and Criteria of Enterprise Classification
- Ministerial Decision No. 764/2015 on the Application of the Standard Contracts Approved by the Ministry of Labour
- Ministerial Decision No. 766/2015 on Granting the Worker a New Work Permit to Move from One Establishment to Another
- Ministerial Decision No. 31/2018 Developing a New Employment System Under Part-Time Contracts

## Author



**Suraya Turk**

*Managing Director, Germela Law LLP (Dubai, UAE)*

[suraya@germela.law](mailto:suraya@germela.law)

+971 4 554 1201

### ***Areas of expertise***

Corporate; Commercial; Employment; Real Estate; Company Formation, Corporate Restructuring; Litigation; Transactional Legal Work

### ***Education***

- Practising Legal Certificate, Supreme Court NSW, Sydney, Australia
- Bachelor's Degree, University of Western Sydney, Sydney, Australia

### ***Memberships***

Member of the NSW Law Society

### ***Biography***

- Suraya is the Managing Director at Germela Law LLP, a leading International German law firm in the UAE. Suraya began her legal career more than a decade ago in Australia and worked various levels of the government including the Local, State and Federal government in both litigious and non-litigious matters. After gaining extensive and solid experience in the public sector, she worked in private practice and worked alongside and was mentored by QC's in their relevant expertise including corporate and commercial law and taxation matters. Suraya moved to the UAE 7+ years ago where she gained experience in a variety of practice areas including, corporate and commercial laws, corporate formation and restructuring, employment law and real estate and has now developed a keen interest and developing her knowledge rapidly in the IP, Data Privacy, cyber security related practice areas which is becoming pertinent and very topical in the UAE with the advent of the technology, innovation and the smart city boom. Suraya currently manages the law firm and sets the strategic vision and direction of the firm with a focus on its clientele and ensuring quality service is delivered by everyone in the team.