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HR ALERT
ليكسيس الشرق الأوسط لشؤون الموظفين

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March 2023

TRENDSETTER CROWE
Off the record employees

PROFILE HOSPITALITY
Harpreet Singh of Radisson Hotel Group

POLICY POINTER
Notice and handover

ROUND-UP OF LEGAL AND BUSINESS DEVELOPMENTS IMPACTING HR IN THE MIDDLE EAST

PAY THE PRICE

Changes to the UAE Wage Protection Scheme

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ON TIME AS PROMISED

As part of the work we do on the Lexis Middle East Law and Lexis Middle East - HR websites, we review a large number of cases from courts across the GCC. What quickly becomes clear when doing this is just how frequently disputes between employers and employees involve wages - whether they are about wages not being paid on time, being paid accurately or even in some cases not being paid at all.

When you are looking to build a reputation for being a good place to work and live, as many of the jurisdictions in the GCC are currently doing, it is important to make sure when it comes to pay, employees are treated fairly.

As a result, we have seen legislators and regulators across the region taking steps to make sure this happens. For some the issue has been ensuring potential employees who come to their country for work, find the terms and conditions advertised in their home country, match those they find on arrival.

In other cases, as we have recently seen with authorities in Sri Lanka it is about ensuring those in this region who employ their nationals put minimum insurance in place to protect those employees.

We have also seen regulators including those in freezones demanding guarantees from prospective employers to help ensure employees dues will be paid.

Back in 2009, the UAE onshore authorities put a wage protection system in place which requires employers who are registered with MOHRE to make wage payments in a supervised manner and can lead to penalties where payments are made late, or amounts paid to employees fail to match the agreed amounts in those employee's employment contract.

Last year a number of changes were made to this scheme, the most recent of which happened at the end of 2022. With that in mind we have decided in this issue to explain how the WPS scheme operates, and the impact of these recent changes will have on employers.

Claire Melvin - Editor

CONTENTS

PAY THE PRICE

Changes to the UAE Wage Protection Scheme (WPS) were brought in at the end of 2022. Shiraz Sethi and Ali Al Assaad explain how the scheme operates now.

"At the end of last year, the UAE strengthened its Wage Protection Scheme (WPS) with the implementation of Ministerial Decision No. 598/2022 Concerning the Wage Protection Scheme," states Shiraz Sethi.

"The WPS is an electronic salary transfer scheme created by the Ministry of Human Resource & Emiratization (MOHRE) and the UAE Central Bank," Ali Al Assaad explains. "Its aim is to provide a safe, secure, efficient and robust mechanism which streamlines the timely payment of wages by employers to their employees."

Shiraz Sethi
Partner & Regional Head of Employment
Dentons & Co

BASIC REQUIREMENTS OF THE WPS SCHEME

"The UAE legislation on wage protection dates back to 2009 when Ministerial Resolution No. 788/2009 was issued," Sethi further explains.

"This law requires all businesses and companies who have registered with the MOHRE to pay their

employees all their wages via the banks and financial institutions working in the UAE via the WPS."

"This means in practice the employers must pay employee wages via a bank, bureau de change, or other financial institution which is approved by the UAE Central Bank," Al Assaad adds.

"Ministerial Resolution No. 788/2009 requires these employers to either pay their employees at least once a month or on the dates as specified in the worker's employment contract, for example, if it has been agreed to pay wages more frequently," Sethi continues.

RELEVANT LEGISLATION

Article 1(1) of Ministerial Decision No. 598/2022 Concerning the Wages Protection System

In application of the provisions of Article 16 of the Implementing Regulation of Federal Decree-Law No. 33/2021 referred to above, all Establishments registered with the Ministry shall pay their Workers' Wages on their due date through the Wages Protection System approved by the Ministry, or any other systems prescribed in this regard. ....

(Source: Lexis Middle East Law)

RELEVANT NEWS

WPS Implemented for companies registered with Dubai Multi Commodities Centre

With immediate effect companies registered with the Dubai Multi Commodities Centre (DMCC) are required to pay the salaries of their employees who hold an active or expired employment visa or Personal Identity card through the Wages Protection System (WPS). Companies which fail to pay salaries through the WPS will be subject to DMCC portal sanctions and fines which will begin on an unspecified date in January 2024.

"The MOHRE will send notifications to the employer if wages have not been paid within three days from the due date."

"A similar notification will be sent within 10 days from the due date."

"If wages are not paid within 17 days from the due date, the MOHRE will suspend issuing new work permits to the defaulting entity."

"Furthermore, an entity with 50 employees or more, may be subject to inspection and warnings."

"In the event the wages are delayed for a period of one and a half months from the due date, an entity with 50 employees or more, will be referred to the Public Prosecution," Sethi adds.

WHEN HAVE WAGES NOT BEEN PAID?

"There were a number of decisions issued on the WPS in 2022," states Sethi. "However, Ministerial Decision No. 598/2022 has now repealed and replaced Ministerial Decision No. 43/2022 which was previously amended by Ministerial Decision No. 346/2022."

"Ministerial Decision No. 598/2022 confirms that employers who fail to pay their employees' wages within 15 days from the date they are due are considered to have been in violation of the WPS regulations." Al Assaad adds.

"Employers are also expected to provide evidence that wages have been paid to their employees."

"However, it should be noted that under Article 3 of Ministerial Decision No. 598/2022 an employer would still be considered to be complying with the WPS regulations if 80% or more of their eligible workers have received their wages." Al Assaad continues.

"In addition, a worker is considered to have received their wages if they have received 80% or more of the value of the wage which has been registered as due to them in their employment contract."

"If there have been legal deductions made to an employee's wage, the employer would need to prove these on request."

OTHERS WHO ARE COVERED BY THE WPS SCHEME

"In the last year there have also been changes to those who are covered by the WPS," states Sethi.

"At the start of 2022 the option was given for salaries of foreign domestic workers to be optionally paid via the WPS. "

Ali Al Assaad
Legal Manager, Employment
Dentons & Co

"These include individuals who work for private households. for example, cooks, drivers, gardeners, housekeepers, nurses, and teachers."

"Starting from 1 April 2023, this will become mandatory for those in the private agronomist, special agent, home caregiver, private tutor and personal trainer professions."

"In addition, the Jebel Ali Freezone (JAFZA) and Dubai Multi Commodities Centre (DMCC) have also adopted the WPS," states Al Assaad.

"However, it should be noted that not all of the UAE freezone employers are covered by the WPS scheme."

"Other schemes may apply in these cases such as having to pay a guarantee or make declarations and/ or a requirement for employers to show that they have paid their employees."

EMPLOYEES NOT COVERED BY THE WPS SCHEME

"Article 5 of Ministerial Decision No. 598/2022 also explains that there are some types of employees who are excluded from the WPS," Sethi states.

"These include employees who have a wage related labour complaint that has been referred to the court and any employee who has had an absconding claim filed against them."

"In addition, the scheme does not apply to new employees for a period 30 days from their wage due date."

"The WPS also does not apply to any employee who is on unpaid leave during that leave period," Al Assaad notes.

"Although in these cases, the Employer also has to notify the Ministry of this and provide information on the length of the unpaid leave."

"The Employer shall also provide the Ministry with evidence on the same."

"Seafarers aboard ships and foreign workers who work in a UAE branch of a foreign establishment and receive their wages outside the country having agreed to do so, can also potentially be excluded from the scheme if requests have been made to the Ministry," Sethi adds.

"In addition, those working at banks, places of worship or on fishing boats or in taxis operated by individual citizens are also exempt from the scheme."

MOHRE ACTION

"If an employer, regardless of their headcount repeats the violation within six months of doing so, fines can be levied and the employer's categorisation at the MOHRE can be downgraded."

"It should also be separately noted that the sanctions which apply to employers for violating the WPS rules may differ if the employer is based in a specific freezone."

Off the Record Employees

Many multinational companies use Employer of the Record (EOR) arrangements for employees who may be temporarily based in GCC countries. Markus Susilo, Alessandro Valente and Deepika Chandak of Crowe look at recent developments which could make this less attractive.

Employer of the Record (EOR) arrangements have historically been used by many multinational companies (MNCs) to explore new markets or carry out temporary projects in the GCC. An EOR is a third-party organisation which is contracted to take responsibility for paying employees. This may include being responsible for dealing with payroll, taxes, visa and sponsorship arrangements, benefits and insurance.

Usually, the purpose is to avoid or minimise the market entry and exit compliance burdens of having a legal presence in a country and make labour law or immigration compliance for short-term hires less complicated. However, in the last 12 months there have been changes, especially in the UAE and Saudi, which could make multinational companies take a different view regarding the suitability of using EOR arrangement going forward.

There are a number of reasons these attitudes are changing. For example, GCC countries have been issuing laws and regulations on the minimum number of nationals within the work force, e.g. UAE rules have increased Emiratization quotas from 2% to 10% by 2026 for private sector companies which employ more than 50 employees. National employees may be less likely to take on temporary assignments or require visa or sponsorship arrangements to be in place which may make having an EOR less useful. In Saudi Arabia, Saudi Arabia Cabinet Decision No. 377/1444 On the Approval of the Controls of Contracting between Government Agencies and Companies that Do Not Have a Regional Headquarters in the Kingdom and Related Parties is encouraging multinationals who wish to do business with the government or government related entities to set up regional headquarters in the country, which would further reduce the need for an EOR. In the UAE the requirements for multinational companies to have a Local Service Agent (LSA) for their branch offices have been abolished and they can now wholly own their own subsidiary. This may lead to more multinationals establishing their own legal presences in the UAE rather than opting for an EOR.

MARKET EXPLORATION

Some of the countries in the region have also made it simpler for companies that wish to explore the market, by providing various other ways they can enter a territory and be there for a longer period of time, while investigating market potential.

For example, Saudi is now allowing foreign nationals from a number of countries to enter the Kingdom through a visa on arrival approach. In the past for most nationalities having a pre-approved visa would have been the only available option for doing this. They would also have to demonstrate that they had a pre-existing business relationship within Saudi Arabia, so it was not uncommon for multinational companies who had employees who travelled to Saudi Arabia frequently to have an EOR provider for them. The UAE has also introduced several new types of visas in the last year which make it easier for Multinational employees who are exploring the market there. However, despite these relaxations, multinationals should note that if they wish to conduct certain types of activities they will need specific business licenses, and to have an established legal presence in the country.

TAX CONSIDERATIONS

Another point often overlooked is the tax impact of using an EOR. An increasing number of GCC countries are now aligning themselves to the best practices in international tax and looking to diversify their revenue sources, through the collection of revenue from a broader range of sources, including greater taxation. This means that multinationals can end up incurring substantial tax liabilities in the countries in which they operate. For example, from a corporate tax perspective, employees of multinational companies, employed via an EOR could create a permanent establishment risk in the country they are in on behalf of their multinational employer.

From June 2023, five of the six GCC countries, will have a corporate tax regime in place, with the latest in the UAE. VAT has also now been introduced in four of the six GCC countries. An employee employed with an EOR could also create a VAT Fixed Establishment (FE) risk for the multinational company, which means they could incur additional VAT liability in the countries in which they operate.

NEWS ROUND-UP

COVERING RECENT KEY DEVELOPMENTS – REGION-WIDE

GCC

VOLUNTEER WORK

The UAE Federal National Council who has been discussing national regulation of volutneering, including recommendations on documenting volunteer work and hours at a Federal level. The possibility of the establishing of a federal database has been included in the discussions. The importance of volunteering within the educational curriculum has been noted as has the importance of including online volunteering within the remit of the new system.

GCC EMPLOYEE INSURANCE

Those who employ GCC nationals in the UAE will have to register with the General Pension and Social Security Authority and subscribe for them so that they have suitable insurance protection.

The General Pension and Social Security Authority has now made this mandatory and registrations will be checked by their inspectors in order to ensure compliance with Cabinet Decision No. 18/2007 On the Implementing Rules for the Application of the Provisions of the Regulation of the Insurance Protection System to the GCC Citizens Working outside their States in any other GCC State.

It should be noted this decision only impacts those who are outside the scope of the civil pension. At present this area is covered by Federal Law No. 13/2018 On Volunteer Work.

DIFFFERENT CONTRACT TYPES

The Human Resources and Emiratisation Ministry (MOHRE) has outlined six other types of employment contracts which can be agreed between employers and employees, following the introduction of job-share contracts where responsibilities are shared between two employees. The contract types are full-time, part-time and temporary work contracts. There are also flexible work contracts where the hours and days worked can vary and remote work contracts where electronic media is used plus seasonal work contracts.

QATAR

PERMANENT RESIDENCE APPLICANTS

Under Qatar Law No. 10/2018 those applying for permanent residence in Qatar must have a lawful source of income. In the case of public sector employees the minimum basic salary is 20,000 Riyals but private sector employees must have a full salary of at least 30,000 Riyals.

In addition, those born inside Qatar must have been residing in the country for no less than 10 years. While those born outside the country must have been residing there for at least 20 years.

CPD FOR HEALTH PROFESSIONALS

The Qatar Ministry of Health has released a circular, Circular No. 1/2023 DHP-AS Revocation of CPD Activity Accreditation on the its website which covers situations where the Qatari Department Health Accreditation Section for Health Professionals may revoke the accreditation of a CPD activity. The new rules in the circular came into effect on 20 February 2023.

The circular covers areas including the roles and responsibilities of CPD organisations, details of major violations, procedures and guidelines. CPD organisations have been encouraged to review the policy to ensure they are complying with the standards, policies and procedures.

Qatar has also recently rolled out new rules which cover medical professionals from overseas who wish to practice there. These include passing a practical exam and having a minimum three years of experience. The new rules only apply to medical professionals from countries outside the GCC.

SAUDI ARABIA

WORKING WEEK

In response to a tweet the Saudi Ministry of Human Resources and Social Development has clarified that they are looking into the possibility of a three day weekend. According to reports in local newspapers, the response appeared on the Ministry's Twitter account which is used to answer questions from beneficiaries. The tweet said that the ministry is studying the current work system through a periodic review which is designed to increase job creation and the attractiveness of the Saudi market to local and international investors. It was also stated that a draft of the work system had been put forward in a survey platform for public consultation. The move follows changes to the UAE working week in 2022 which saw all government entities and most private sector firms switching to a Saturday and Sunday weekend, with Friday working till noon, and a Friday, Saturday and Sunday weekend being introduced in Sharjah.

GRADUATE TRAINING

The Saudi Human Resources Development Fund and University of Hail have entered into a partnership to support future graduates. The programme partnership aims to provide training, employment, and qualifications to university students, job seekers, and graduates of both sexes, and improve individual skills and experience. The fund will offer financial and training support under the agreement, through various programmes, including the vocational development platform 'Subol', the national e-training platform 'Doroob', the on-the-job training programme 'Tamheer', and the national labour portal 'Taqat'.

MARITIME TRAINING

The Public Transport Authority has approved an executive charter for authorising maritime training and educational establishments. Those wishing to provide maritime training will need a licence which is valid for three years. but can be renewed. In addition, penalties for offering to provide maritime training in Saudi Arabia without the relevant licence have also been increased, and now include a fine of up to 10,000 Riyals.

OMAN

DATA PROTECTION LAW COMES INTO FORCE

On 13 February 2023, the Oman Personal Data Protection Law, Oman Sultani Decree No. 6/2022 came into force. This law has repealed Chapter 7 of Oman Sultani Decree No. 69/2008 (the Electronic Transaction Law) which provided the legal framework for this area in the past. Personal Data is now more widely defined to include any data which makes a natural person identifiable, directly or indirectly, by reference to one or more identifiers, such as a name, civil number, electronic identifiers' data, or spatial data, or by reference to one or more factors related to genetic or physical identity, mental, psychological, social, cultural or economic. The Ministry of Transport, Communications, and Information Technology (MTCIT) will be responsible for regulating data protection in Oman and for issuing the Oman Personal Data Protection Law Executive Regulations. Until these regulations have been issued and there is currently no indication of when that will be, it will not be possible to actually implement this law but employers are advised to start looking at it now to get a better idea of potential implications.

OVERSEAS SICK LEAVE

The Omani Health Ministry has issued a circular which explains the process for approving sick leave certificates issued to civil service employees working abroad. It is possible to fully or partially approve a certificate based on recommendations from the competent health authority. Certificates can be rejected if they do not comply with Article 103 of Oman Decision No. 9/2010, which includes that the certificate must have been certified by the approved health authority in the issuing country.

GCC

COMPULSORY INSURANCE

Sri Lanka's Foreign Employment Office, has circulated a letter to all licensed intermediary recruitment offices on their decision to implement an insurance plan which will be paid by the employers of Sri Lankan domestic workers in the Middle East. Domestic workers in the UAE, Qatar, Oman, Jordan, Saudi, Kuwait and Bahrain will be subject to this compulsory plan and will have to be registered with the office. The change came into effect on 15 January 2023 and is now a mandatory condition for registration with the office. Licensed foreign recruitment agencies will need insurance certificates issued by an insurance company, verified by the office after obtaining final approval. In Kuwait, the insurance will cost 47 Dinars for each worker recruited there. No employment contract for a Sri Lankan domestic worker will be approved unless the insurance has been paid for by their employer

EGYPT

MINIMUM WAGE

Ministry of Planning and Economic Development (MPED) has increased the monthly minimum salary for employees in the private sector in Egypt to 2,700 Egyptian Pounds. The previous rate was 2,400 Egyptian Pounds. MPED has also fixed the minimum annual salary increase at 3% of the social insurance subscription salary.

JORDAN

SEXUAL HARASSMENT

Jordan's Lower House has approved a draft law which will amend the 2023 Labour Law and set new penalties for sexual harassment. A fine of up to 5,000 Dinars wil apply to anyone who commits sexual harassment at work. It will also punish employers or directors of establishment who assault workers, including physical assaults or any form of sexual harassment.

IN BRIEF

UAE: The Human Resources and Emiratization Ministry (MOHRE) has stressed unemployment insurance cannot be assigned or transferred to any other individual or company at any time...

UAE: UAE Employers now have until 31 December 2023 to switch employees onto fixed-term employment rather than the previous deadline of 1 February 2023...

Abu Dhabi: The Health Department has launched a flexible health insurance scheme which is available for freelance workers with permits and resident foreigners in the private sector earning over 5,000 AED...

UAE: Private sector employed Emirati citizens must be registered in the state pension system to obtain Nafis Programme support..

Qatar: Foreign nationals can now apply again for short-term work visas, family visas, and visitor visas to enter Qatar, following the World Cup suspension of these applications...

Qatar: The Council of Ministers has lifted all COVID 19 restrictions except for wearing masks in health establishments...

GCC: Salaries in the GCC are set to increase by a 5% average in 2023 according to a report by Hays Middle East...

Saudi Arabia: Employers with the middle or higher green Saudisation rates can use temporary work visas to recruit workers on a temporary basis and renew their visa for up to three months without impacting their Nitaq level...

Saudi Arabia: Seven individuals have been imprisoned and a 20,000 Million Riyal fine has been issued against the company whose health and safety failings led to the Grand Mosque crane accident

Saudi Arabia: All establishments must document their workers' contracts electronically via the Qiwa platform....

Oman: A draft labour law with amendments and additions to articles on worker's rights have been passed to the Oman State Council...

Jordan: Women in the private sector covered by the Care Programme, linked to maternity insurance, must have begun their maternity leave after 20 October 2020 and given birth after 11 August 2020...

Bahrain: The Cabinet has approved a decision to localise certain medical positions and has also discussed plans to recruit more Bahraini doctors in the private sector which would see minimum salaries set for these new recruits..

IMMIGRATION FOCUS

RECENT GCC IMMIGRATION AND VISA CHANGES

QATAR

HAYYA CARD EXTENSION

The Qatari Ministry of Interior (MOI) has announced Hayya Cards, which were issued during the 2022 World Cup will remain valid until 24 January 2024. This means that those who currently hold a Hayya card will be able to continue to visit Qatar without needing to obtain a visa prior to entering the country. However, they will still need to have proof of a confirmed hotel reservation or accommodation with family or friends which has been approved through the Hayya portal. Their passport will also need to be valid for a minimum period of three months upon arrival in Qatar. They should also have health insurance which covers their entire stay in Qatar and have a return ticket. In addition, the Hayya with Me feature allows those who hold a Hayya card to invite up to three family members or friends to come with them to Qatar. In addition, those with this card can use the e-Gate system to enter and leave the country.

OBLIGATORY HEALTH INSURANCE

The first phase of the new Qatari health insurance system began on 1 February 2023, as part of the implementation of Qatar Law No. 22/2021 on the organisation of health care services in the State of Qatar. This law requires visitors to Qatar to have health insurance. cover. The Ministry of Public Health (MOPH) has explained that those who apply for new visitor visas or who wish to extend their existing one, will also need a health insurance policy that covers basic health care services, emergency services and accidents.

The premium for this mandatory insurance policy for a single 30-day visa is 50 Riyals when the visa is initially issued and each time the visit visa is extended. Visitors are free to obtain insurance policies which cover more services, and premiums will vary depending on each provider's policy.

UAE

NEW APPROACH TO EMIRATISATION TARGETS

The UAE Cabinet has announced further guidelines to companies with over 50 employees in mainland UAE with regard to how they will be required to meet their Emiratisation targets. Federal Decree Law No. 33/2021 requires companies based in mainland UAE which have more than 50 employees to increase their current Emiratisation rates by 2% every year and fines are issued to those who fail to achieve this. Although the fines and required Emiratisation targets have not changed, the way this is achieved has been further specified. Private companies are now required to increase the number of Emiratis in skilled job levels by 1% every six months, while still remaining on track to achieve an overall 2% percent target increase by the end of 2023. This means that by the end of 2023, they will need to achieve an overall Emiratisation rate of 4% since the implementation of the new rates in 2022. In addition, fines paid by companies that fail to meet these rates, will need to be paid bi-annually and not by the end of the year as was previously the case. Fines for companies violating the Emiratisation scheme will be calculated and imposed from 1 July 2023, and contribution amounts for companies which failed to comply with the scheme from 2022 will continue to be collected.

RE-ENTRY PERMITS

UAE Immigration Authorities have announced that all mainstream UAE residence permit holders including investors, employees and their dependents who have been outside of the country for more than six months can now obtain a re-entry permit by applying through a designated online immigration portal. As a general rule, in the UAE an individual's residency status is

and funds owned by the Saudi government as of 1 January 2024.

[illegible] have been [illegible]uous period of more than 180 days (there are a number of exceptions, e.g. students, patients, domestic helpers of diplomats, and self-sponsored Golden Visa holders). It is now possible to re-enter the UAE if an application is submitted via the ICP portal. It should be noted that the applicant will need to specify a reason for exceeding the normal 180-day rule and approval will be granted at the discretion of the Immigration Authorities. At present, ICP officials have not given further details about the types of reasons which might be considered adequate for spending a longer period outside the UAE.

Before making such an application the Residence Permit holder should check that their visa status is active, and that their residency status is still active and their residency has not been cancelled or expired. Re-entry permits can either be applied for through accredited travel agents, online through the ICP website or through approved government service centres in the UAE. Applicants must provide a number of personal documents and pay a fee of approximately 950 AED. Once the application is approved and the re-entry permit has been issued, the individual must re-enter the UAE within 30 days. If they fail to re-enter the UAE within the stipulated time frame a penalty of 100 AED is payable for every additional 30 days, they spend outside of the country.

SAUDI ARABIA

TOURIST VISAS FOR GCC RESIDENTS

The Saudi Tourism Minister has announced GCC residents can now apply for a Saudi tourist visa regardless of their occupation.

The eVisa allows permits holders to travel to Saudi Arabia for tourism purposes or to conduct Umrah. Both multiple and single-entry visas can be obtained. The process has been simplified and GCC residents who want to visit Saudi should go to the eVisa portal, complete the necessary details and upload required documents. The visa fee is 300 Riyals.

To be eligible for this visa, the applicant's residency permit must be valid for at least three months, and their passport must be valid for at least six months.

In addition, there is now a new transit visa in Saudi Arabia which allows stopover travellers to stay in the Kingdom for up to four days.

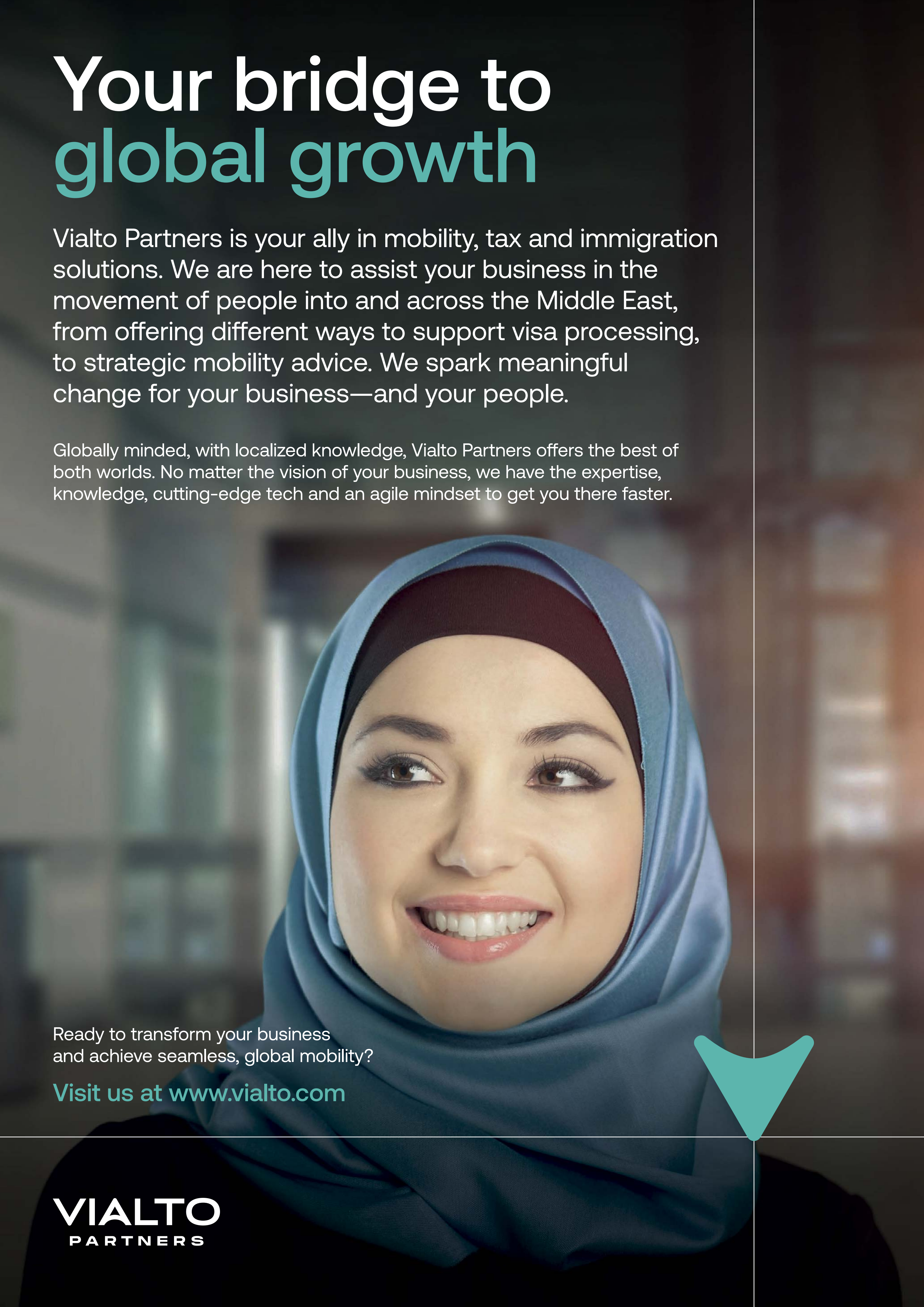
REGIONAL HEADQUARTERS

If a company is operating in more than one jurisdiction and wants to establish a presence in Saudi Arabia for the purpose of supporting, managing, and giving guidance to branches, subsidiaries, and affiliates operating in the Middle East and North Africa they may do so under the new Regional Headquarters initiative. Applicable countries, include Algeria, Bahrain, Egypt, Iraq, Jordan, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Saudi Arabia, Syria, Tunisia, the UAE, and Yemen. A business license will be awarded for one to five years and is renewable.

To be eligible for a Regional Headquarters business license the investor must be present in at least two countries other than Saudi Arabia and the country in which its headquarters was incorporated, either through subsidiaries or branches. In addition, within six months of obtaining the license, the Regional Headquarters is required to carry out strategic direction and management tasks, including developing and monitoring their regional strategy, assisting mergers and acquisitions, and evaluating financial performance. A Regional Headquarters can also undertake a limited number of other activities, such as sales and marketing, training, and consulting services, but it may not engage in any commercial activity.

Companies which have obtained a Regional Headquarters business license may be exempt from certain Saudisation regulations and could also be eligible for government fee waivers, although no specific details or methods for obtaining these exemptions have been made public yet.

On the other hand, although there are exemptions international companies without regional offices in Saudi Arabia may not be permitted to enter into contracts with organisations, institutions,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IMMIGRATION PROFILE

DIRECTOR OF THE SAUDI OFFICE – VIALTO PARTNERS

Differences and similarities

Ali Ibrahim, Director in Vialto Partners' Saudi Office who also acts as their Immigration Lead for Saudi Arabia and Bahrain explains some of the differences between the two jurisdictions.

YOUR BACKGROUND

I began my career in the hospitality sector, which deepened my understanding of delivering excellent customer service, skills which are also important in my work in corporate immigration, where I am faced with unexpected challenges that require creative solutions. I studied for an MBA, then moved into a role that focused on business set-up and commercial Immigration in Saudi Arabia, becoming the Head of Business Services in 2018. In 2021 I moved to PwC Middle East as a Senior Manager. Then after PwC's Immigration and Global Mobility business was acquired by the private equity firm, CD&R in 2022 I moved to Vialto Partners towards the end of 2022. I have recently become the Director in Vialto's Riyadh office.

IMMIGRATION EXPERIENCE

I am also the Vialto Immigration lead for Saudi and have assisted over 1,000 businesses with their end-to-end Immigration needs and helped clients ensure compliance with government rules and requirements. Saudi Arabia is the biggest market in the region and my role involves helping to grow businesses here and helping them navigate the complexities of Saudi immigration. I have also worked closely with our teams in other parts of the Middle East, which has broadened my knowledge and understanding of immigration processes and regulations across the region. In addition to my work in Saudi Arabia and the Middle East, I am also the main immigration lead for our practice in Bahrain. While Bahrain and Saudi Arabia have some similarities in their immigration processes, there are also key differences. For example, Bahrain tends to have a more streamlined and efficient process for obtaining visas and work permits, and a relatively straightforward online application system. In contrast, the immigration process in Saudi Arabia can be more complex and time-consuming, and various steps and requirements must be met before a visa or work permit can be issued. The requirements for obtaining a visa or work permit can also vary between the two jurisdictions. For example, in Bahrain, an education qualification (except for some visa titles) is not typically required for visa applicants, while in Saudi Arabia, an educational qualification matching the visa title is mandatory for all visa applicants.

One recent helpful change for Saudi Arabia is that it became a signatory and 122nd Member of the Apostille Convention (or Convention Abolishing the Requirements of Legalisation for Foreign Public Documents) on 7 December 2022. The new procedure shortens processing timelines and avoids challenging legalisation processes at consulates, streamlines recruitment and immigration processing for Saudi Arabian employers and foreign citizens. It also simplifies the immigration procedures for Saudi Arabian citizens in the other 121 member states.

KEY RESPONSIBILITIES

When working in corporate immigration in the region generally, and in Saudi Arabia in particular, one of the biggest challenges is keeping abreast of the constantly changing regulations and requirements. As a result, I spend a significant amount of time doing research and analysis, attending industry events, and staying in close contact with clients and key stakeholders to ensure that I am aware of any changes as soon as they happen.

Another challenge is managing the competing demands of clients from a range of industries and backgrounds, who each have their own unique needs and requirements. It is important my team and I take the time to understand each client's specific needs and goals, which allows us to tailor our services to best meet those needs.

Managing the growth and expansion of our business in the Saudi market, while maintaining a high level of service and expertise can also be a challenge, so we focus on building strong relationships with clients and key stakeholders, collaborate with internal teams to streamline processes and ensure the smooth delivery of services, and stay up-to-date with the latest market trends and changes. I am particularly proud of the work I did to help a large multinational company navigate the complex immigration process in Saudi Arabia, mainly Saudisation requirements which were proving challenging for their business. Being able to help clients achieve their goals is one of the most rewarding aspects of my career, and I take great pride in the positive impact that my work has had on helping clients with their business operations.

LAW CHANGES
NEW AND PROPOSED MENA LAWS

PRIVATISATION

Majed Bamarouf explains how a recent Decision has changed the rules on the treatment of Saudi nationals in sectors where there are plans to privatise.

Saudi Arabia Decision No. 231/1444 On Setting a General Rule on How to Treat Employees and Workers in the Sectors Targeted for Transformation and Privatisation came into effect on 4 November 2022 and has established a new general rule on how to treat Saudi national employees and workers in sectors which have been targeted for transformation and privatisation. It has repealed Saudi Arabia Cabinet Decision No. 610/1442 and will also serve as a procedural basis alongside the Rules and Arrangements found in Saudi Cabinet Decision No. 616/1442 On the approval of the rules and arrangements for how to treat employees and workers in sectors targeted for transformation and privatisation.

All the Rules and Arrangements covered in Saudi Arabia Decision No. 231/1444 are focused on the process and mechanism for transferring employees and workers from a public administrative agency to a commercial organisation or the other way around. The topics covered include Saudi employees' and workers' wages and end-of-service benefits when they are relocating, whether they are connected to the Administrative or Labour Law, and taking advantage of Pension and Retirement Law schemes in these cases.

In addition, the new Rules and Arrangements include some important definitions such as 'transformation' which is defined as the transference of a government agency's employees from the Civil Service Law (Saudi Arabia Cabinet Decision No. 951/1397) or any other functional legislation to the Labour Law (Saudi Arabia Cabinet Decision No. 219/1426 On the Approval of The Labour Law), or the transfer of their employees' submission from one set of job regulations to another.

Privatisation is defined in Saudi Arabia Decision No. 231/1444 as the transfer of the affiliation of employees and workers of a government agency from the public to the private sector.

However, it should be noted that Saudi Arabia Decision No. 231/1444 clearly states that any agency which has begun their transformation or privatisation processes under the previous, now-cancelled Rules and Arrangements or special Rules and Arrangements which have been issued by a Council of Ministers' Resolution should continue to follow those Rules and Arrangements and with the respective processes for their transformation or privatisation unchanged.

Conversely, it has also been stated that any agency that has already started a transformation or privatisation process without having their own special Rules and Arrangements in place, or which was not covered by the previous Rules and Arrangements, should complete the processes under the new Rules and Arrangements, after obtaining the necessary approval from the Ministry of Finance. In this case the Council of Ministers' approval requirement under Article 26, Paragraph 5 of the new Rules and Arrangements can be deferred, so long as the agency will implement the

SAUDI ARABIA - TAXATION

Saudi Arabia's Zakat, Tax and Customs Authority is in the process of finalising amendments to the executive regulations on Zakat Collection. The amendments introduce a new paragraph which includes employee-owned housing and housing loans granted through the employee housing support programmes. The benefit to the employer will only apply if the relevant contract states the funding was provided through a good loan or forward sale without there being any financial gain to the employer.

provisions in Article 26, Paragraph 5 of the new Rules and Arrangements after they complete the transformation or privatisation processes. Agencies, that have not started their transformation or privatisation before Saudi Arabia Decision No. 231/1444 was issued should proceed in accordance with any special Rules and Arrangements established for them as long as those Rules and Arrangements have previously been issued by the Council of Ministers Resolutions, and those agencies are not permitted to follow on the previous or the new Rules and Arrangements.

Agencies that have yet to begin their transformation or privatisation and have no Special Rules and Arrangements issued by a Council of Ministers' Resolution, are governed by the new Rules and Arrangements without any exception or a new Resolution will be needed for their application. Agencies targeted for transformation and privatisation should be aware of these New Rule and the Administrative Jurisdiction responsible for adjudicating any conflicts arising from them. However, if a dispute arises based on an employment relationship, the Labour Courts would be the ones who would resolve that dispute.

BAHRAIN - PENSIONS

A Bahraini MP has requested the government exempt married women from the upcoming Bahrain Pension Law. The MP's proposal aims to ensure that the new law, which aims to safeguard employees' rights, does not adversely affect the cohesion of Bahraini families. It is currently expected the request will be submitted, two months before the law's implementation.

KUWAIT - NATIONALITY

Several Kuwaiti MPs have submitted a bill to the Parliament which aims to grant additional civil rights to the children of Kuwaiti women who are married to non-Kuwaitis. The bill would see these individuals being granted permanent residency and priority in public sector recruitment after full Kuwaiti citizens. They would also be eligible for the national labour subsidy for those working in the private sector, and registration at the Public Institution for Social Security (PIFSS). In addition, they would not be required to transfer residency whether they worked in the public or private sector, and would be able to establish their own companies or businesses without needing a Kuwaiti partner.

QATAR - QATARISATION

The Qatari Cabinet has approved a draft law in principle on the nationalisation of private sector jobs and has endorsed a Cabinet Decision on incentives, facilities and privileges granted where nationalisation of jobs occurs in the private sector. Based on the Labour MInistry proposal, there will be a Cabinet Decision on nationalised jobs and rates in specific work sectors.

OMAN - PERFORMANCE

Oman Ministerial Decision No. 36/2023 On the Issuance of the Regulation for Measuring the Efficiency of the Job Performance has been issued. The Regulation applies to all employees working at the Civil Units of the State Administrative Apparatus and other public juristic persons for a period of more than six months. The Ministerial Decision explains how objectives are set, details performance ranking and how they are set. It is possible for employees to file a grievance against the level they have been given.

CASE FOCUS

Case No .... Lucile V Loki Ltd, DIFC Case No. 364/2022
Jurisdiction .... DIFC
Court ....DIFC Small Claims Tribunal
Recommended by ....Gateley

WHAT IS IT ABOUT?

An employee was hired as a consultant by a DIFC registered entity with a monthly salary of 100,000 AED in line with an employment contract dated 15 August 2019. On 1 March 2020, the employee signed a new employment contract with them which reduced their pay to 60,000 AED. The employee's employment was continuous from 15 August 2019 until their employer terminated their employment by serving written notice on 19 October 2020. The employee's termination date fell on 18 November 2020. In accordance with DIFC Employment Law, DIFC Law No. No. 2/2019 (as amended) an employee's statutory and contractual dues must be paid within 14 days of the termination date, including but not limited to notice pay, annual leave, their accrued end of service gratuity and monthly contributions to the DIFC Employee Workplace Savings Scheme (DEWS). The employee claimed that she was denied her final settlement payment by her employer who had cited the COVID 19 outbreak as the reason they were unable to pay the employee the amounts due but assured her that she would be paid her dues. As it had been stated that financial difficulties caused by COVID 19 were the reason the employer had not yet paid her and because there were negotiations going on between the two parties on the payment of the amounts due, which the employee expected would lead to a settlement the employee had not taken court action when she was not paid within the 14 day deadline.

However, on 9 September 2022, the employee's residence visa under the Defendant's sponsorship expired and she was subsequently informed by her former employer that they were not going to pay her final dues, so she took court action then.

WHAT WAS DECIDED?

On 12 October 2022, the Claimant filed a claim with the DIFC Small Claims Tribunal (SCT) for the unpaid final dues in the sum of AED 135,000. This case was heard in the DIFC SCT before H.E Justice Maha Al Mheiri on 21 December 2022.

Her employment was governed by the DIFC Employment Law, DIFC Law No. 2/2019 which sets out a limitation period for filing any employment claims. Under Article 10 of DIFC Law No. 2/2019, a Claimant in an employment case was required to file a claim with the DIFC Courts by no later than six months after the date on which their employment had terminated (which in this case was 18 November 2020, so the last day for filing a claim was 18 May 2021). The DIFC Courts will not consider any claims which have been filed after the expiry of the limitation period.

In this case the Employee had filed her claim 17 months after the lapse of the limitation period. The Court also decided that she had failed to submit any evidence which might have supported the argument that her employment had been extended beyond 18 November 2020.

The employee had claimed the delay was justified because both parties were in settlement negotiations at the time and this had led to the delay in her issuing proceedings.

However, the employee's claims were dismissed by the DIFC Small Claims Tribunal.

WHY WAS THIS IMPORTANT?

This case highlights the importance of both employers and employees being aware of the strict time limits set under DIFC Law No. 2/2019 for taking legal action on an employment claim.

This case shows that even in a case where there are claims with a reasonable prospect of success and there are also extenuating circumstances for the delay and missing the time limit, cases can be time barred. This case illustrates it is important that employees and employers in the DIFC are aware of the provisions in the DIFC Employment Law, including those of deadlines and timebars. Even in situations where settlement negotiations are going on it is important to seek legal advice and have sufficient time to issue proceedings before any deadlines. It should also be noted that if a settlement is reached, claims can always be withdrawn where parties reach a settlement.

Case No .... Lufti v Literi, DIFC Case No. 294/2022, [2022] DIFC SCT 294
Jurisdiction .... DIFC
Court .... DIFC Small Claims Tribunal
Recommended by .... Fotis International

WHAT IS IT ABOUT?

An individual filed a claim regarding her employment at a company which specialised in restaurant and bar catering services, and operated under a trading name in the DIFC, Dubai.

The dispute arose over the employee's employment by the company under an employment contract dated 5 July 2021.

The Claimant was hired as a Chef de Rang with a monthly salary of 7,000 AED, in addition to tips paid as per the company's policy.

The employee's employment had commenced on 15 August 2021 and she continued working until 10 May 2022, when she resigned by letter. Her last working day was 18 June 2022 and she had received her final settlement on 15 June 2022. The Final Settlement included payment of her salary for the days she had worked in June and payment in lieu of accrued but untaken vacation leave.

On 1 August 2022, the employee filed a claim in the DIFC Courts' Small Claims Tribunal claiming the amount of 3,822 AED for alleged unpaid tips owed to her by the company.

At the Hearing, the company argued that under their company policy that was updated in January 2022 (before she had resigned) there were procedures to be followed in relation to staff receiving tips.

Their policy on those not entitled to tips included that, 'Any employee leaving (whatsoever the reason and the initiating party) before completing 12 months of employment (applies to the last working month's tips only)'.

The company stated that monthly tips were not a contractual obligation and were instead discretionary. They said as an employer, they had the discretion to decide how tips ought to be distributed between their employees.

They argued that payment of the tips was only withheld from employees where an employee had committed a disciplinary offence or the employment relationship had ended before 12 months service, and this was clearly stated in writing in both the staff handbook and the Updated Company Policy.

The employee rejected this stating she was not aware of the Updated Company Policy. She argued that the previous policy stated that if an employee left the company before six not 12 months of service they were not eligible to receive any payment of tips from company.

In addition, she argued she had been given no notice of the change nor had she read or signed the Updated Company Policy so it should not apply to her. She stated she was entitled to them under text in her job description. The Employee stated monthly tips formed part of her employment rights and that she was entitled to receive payment of them. She claimed tips for May and June while she was working at the company.

WHAT WAS DECIDED?

The employee's claims were dismissed and both parties were ordered to pay their own costs.

Nowhere in the DIFC Employment Law, DIFC Law No. 2/2019 amended by DIFC Law No. 4/2021, was it explicitly stated the employer was obliged to pay the amount because of tips. The employee claimed she was due to receive the tips from her service as per her job description.

The Employer had not included a right to the tips under the employment contract. In addition, the Claimant had not completed 12 months of service, as stipulated in the policy.

The Claimant had signed the employment contract, which bound her to its terms and conditions.

WHY WAS IT IMPORTANT?

Following amendments brought in by DIFC Law No. 4/2021 to DIFC Law No. 2/2019 additional payments are defined in the DIFC as 'subject to the provisions of Article 66(13) of DIFC Law No. 2/2019, any bonus, incentive, grant, commission, drawing, distribution or any other payment made by an Employer to an Employee that is discretionary; non-recurring; or is calculated by reference to the profits of the Employer or an Affiliate'. This definition includes discretionary tips.

Additional payments are not included within the definition of an employee's basic wage which impacts rights to waiver.

As a result, the judge in this case viewed the terms which had been stated in the updated company policy as being particularly important. As the employee did not meet the service requirements in this policy they were not entitled to the tips.

HR PROFILE

AREA SENIOR DIRECTOR HR – HOSPITALITY

Talent Management

Harpreet Singh, Area Senior Director HR for the Middle East and Africa at the Radisson Hotel Group explains how despite his company's ambitious growth plans and labour market restrictions it is possible to manage all areas of talent.

ABOUT YOU?

I am a graduate in Hotel Management who has also studied at a Post Graduate level in Human Resources. I began my career in Food and Beverage Operations, before moving into Learning and Development. I have spent time working in India, Singapore and am now based in the UAE, where I am the Area Senior Director HR for the Middle East and Africa for the Radisson Hotel Group.

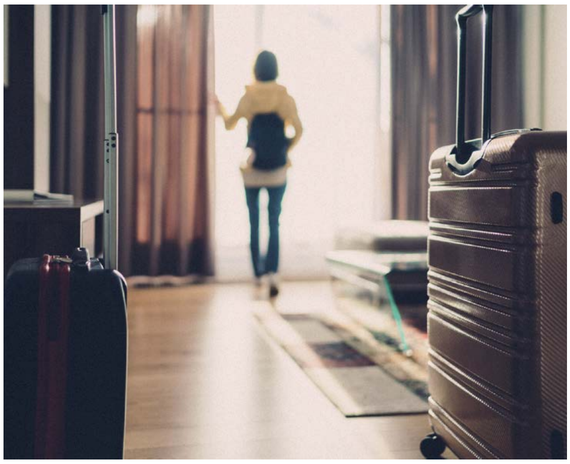
YOUR CURRENT ROLE

Radisson Hotel Group, is an international group with nine distinctive brands. Those brands include Radisson Collection, Radisson Blu, Radisson, Radisson RED, Radisson Individuals, Park Plaza, Park Inn by Radisson, Country Inn & Suites by Radisson, and prizeotel which come together under one commercial umbrella brand Radisson Hotels. We operate in more than 120 countries. We currently have over 1,700 hotels in operation and under development worldwide. The international hotel group is growing rapidly and plans to double the portfolio by 2025. The Group's overarching brand promise is Every Moment Matters with a signature Yes I Can! service ethos. We have been recognised as 4th Best Employer in the Travel and Leisure industry by Forbes.

My role includes managing all aspects of Talent for the Middle East and Africa - Talent Acquisition, Talent Development, Talent Engagement and Talent Management in over 150 hotels. A team of four report to me. What I like most about my job is being able to give people meaningful employment opportunities and enabling them to reach their highest potential.

The rising demand for Hospitality Professionals across other industries is one of the biggest challenges we face. However, we can overcome this by creating and showcasing Role Models who have had Excellent Careers in Hospitality; and by flexing where possible so employees have multiple domain experience. It also helps to have a more tailored approach to different generations within the work force.

I see the localization of employment drive which is being seen in a number of the MEA countries as a challenge and an opportunity. Apart from the UAE other GCC countries like Saudi and Oman have



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already mandated localization of their workforce. Some countries have been more conceptual in their approach, but others are more granular and even specify which roles should only be filled by nationals. At Radisson Hotel Group we embrace Diversity, and we are putting in place processes and systems to upskill the workforce and provide fulfilling career options. Localization can be a challenge as it may lead to a smaller pool of potential recruits but there is also government support for training and development.

We focus on capability enhancement of the workforce through intensive Learning and Development Initiatives which are bespoke to the country and the workforce.

When it comes to upskilling and capability building of employees, we find diverse ethnic and cultural backgrounds can make it difficult to share blanket HR initiatives which can benefit all. So, we tend to adopt a more bespoke approach in local language where feasible and co-create HR initiatives together with the workforce.

YOUR INDUSTRY

Unlike other Industries hospitability operates around the clock. A hotel never shuts down. As employees work 24-seven shifts HR plays an important role in providing Physical and Mental Wellbeing tools to employees; ensuring they have a healthy diet in terms of duty meals and ample recreation opportunities to unwind so they are ready to Delight The Next Guest.

PRACTITIONER PERSPECTIVE

Waddah Abdulhaq
Associate
Mahmood Hussain Law Firm

Waddah Abdulhaq of Mahmood Hussain Law firm explains some of the specific labour law rights which apply under UAE Labour Law to shift workers, including those required to work shifts in the hospitality sector there.

The UAE has become famous for its thriving tourism sector, and the famous hotels and resorts found across the Emirates which are making a significant contribution to the national economy. There are also a number of specific legal requirements which apply in this sector. The UAE Labour Law Federal Decree-Law No. 33/2021 and its Executive Regulations which are found in Cabinet Decision No. 1/2022 recognise a range of working patterns including full-time, part-time, temporary, and freelance work. In the UAE hospitality sector full-time tends to be the most common approach taken. Under Article 17 of Federal Decree-Law No. 33/2021 where that is the case, normal working hours are usually eight hours per day or 48 hours per week.

However, in some industries, including in hotels it is more common for employees to be shift workers.

In such cases Article 15 of Cabinet Decision No. 1/2022, provides as an exception that employees' working hours may be increased to a maximum of 56 hours per week. Another difference for shift workers is that they are not entitled to overtime at a specific rate under Article 19 of Federal Decree-Law No. 33/2021, when they have to work the graveyard shift (10pm to 4am).

Despite these differences there are some specific provisions which apply regardless of the employee's sector or shifts. For example, all employees are entitled to a rest period of not less than an hour during their working day, and this period is not included in the calculation of their daily working hours.

Article 18 of Federal Decree-Law No. 33/2021 also states workers should not work more than five consecutive hours without a rest period.

Generally, employers must provide their employees a minimum one day off weekly.

However, as the hotel industry is dynamic and hotels can experience changes in demand throughout the year, and during high season employees may need to work during their rest day, Article 19 of Federal Decree-Law No. 33/2021 also takes this into account and states in such cases the employee should be compensated with another rest day, or be paid the remuneration for that day based on the remuneration for a normal working day, plus an increase of not less than 50% of the Basic Salary for that day.

Most hotels in the UAE provide their employees with accommodation and transportation to the hotel and there are also rules on that.

For example, Federal Decree-Law No. 33/2021 states that the time spent on the commute in such cases should not be treated as within the working hours.

However, Article 15 of Cabinet Decision No. 1/2022, states time spent by the worker moving between their residence and the place of work is counted as part of their working hours if the worker spends time on the means of transportation provided by the employer and there is a traffic accident, or the vehicle breaks down. Article 18 of Federal Decree-Law No. 33/2021, requires establishments which operate a shift system such as hotels, to regulate the employees working and rest hours.

Hotels in the UAE typically do this by providing their workers with weekly schedules which have taken into account the maximum working hours, rest periods, and rest days.

It should also be noted that all employees in the hospitality industry are entitled to have shifts reduced by two hours so that they can observe the holy month of Ramadan.

One of the initiatives I have been proudest of has been the launch of a Pre-Opening Hotel Training Module which was adopted by the wider business. A new Hotel requires extra love, care and affection and this module helps train employees on Radisson Brand standards and on enhancing their behavioural and soft skills.

The Module is made up of experiential activities, video role modelling, hands-on exercises and scenario development and implementation.

LABOUR REFORM

The latest UAE labour reforms have been a positive step towards further enhancing employability in the UAE and making it a destination of choice.

These reforms have to be carefully understood first, then simplified so they can be easily understood by employees. We also have to offer on-going support to employees to help with buy-in and implementation. Changes like the change from unlimited to limited employment contracts have had the biggest impact on us.

Many employees have also been impacted by the new UAE leave regulations which have made changes to areas including Bereavement, Maternity/Paternity and Study leave.

However, these changes have not had as big an impact on us as our company already had generous leave entitlements in these areas which exceed what is required legally. Once again, I view these changes as taking the Right Step Forward in making the UAE a more Employee Friendly Destination.

MOVES AND CHANGES

A ROUND-UP OF BUSINESS NEWS, APPOINTMENTS AND PROMOTIONS

IN THE BANK

Bushra Al-Shehhi has been appointed as the new Chief Human Resources Officer. at the Abu Dhabi Islamic Bank (ADIB). ADIB is a leading UAE bank with over AED 169 billion in assets, whose shares are traded on the Abu Dhabi Securities Exchange. Bushrai, is a seasoned professional with over 20 years of experience in human resources. In her new role she will oversee human resources operations, affairs and related strategies for the entire ADIB Group, including its branches and institutions outside the UAE. Around 45% of ADIB's workforce are Emirati nationals. In the past Al-Shehhi has contributed significantly to creating a positive and productive work environment for the bank's employees by various initiatives, and has helped advance the bank's Emiratisation efforts, by providing UAE nationals with the tools and skills necessary to suceed in the financial services industry. Her goal is to build on the work which has helped to make ADIB an exceptional workplace for all employees..

FROM CONSULTANT TO CONSULTING

PMKConsult, an award-winning project and commercial management consultancy, has appointed Melanie Buttle as its Human Resources Director. PMKConsult is one of the largest dedicated project and commercial management consultancies based in the UAE and Saudi Arabia. It has a project portfolio of over 5.25 billion USD and a delivery footprint which extends to over 30 countries in the region and further afield. Its services include Project, Commercial , Construction and Design Management, and it serves a range of sectors including media, healthcare, education, hospitality, retail and residential. Melanie has over 20 years of experience in generalist human resources roles in the UK and UAE. In the past she has also worked as a self employed human resources consultant and cooach. She has also been a Cluster Human Resources Director at the Jumeriah Group in Dubai.

In her new role, she will lead and implement PMKConsult's talent strategy and will work closely with the firm's Operations Director for the UAE and the Chief Operations Officer for the business. In addition, Melanie will be responsible for planning, directing, and developing the HR policies and guide and implementing the talent strategy for the business across all offices. The headcount at PMKConsult has grown by over 50 per cent in 2022 and has an employee retention rate above the industry average.

PUTTING EMIRATISATION FIRMLY ON THE AGENDA

Muneera Al Taher has been promoted to the role of Vice President Human Resources Operations and Emiratisation at the Dubai-based hotel company the Jumeirah Group, having previously, been the eSnior HR and Emiratisation director there. She has also worked as the director of human resources at Jumeirah Creekside Hotel where she oversaw the performance culture and team development in her new role, Muneera will be responsible for the implementation of the global HR strategy across all Jumeirah Hotels & Resorts and will also continue to overseeing the group's Emiratisation strategy. Her previous work has included by pioneering the group's agenda for attracting top talent, introducing new development programmes and supporting the growth of Emirati employees.

BEING INCLUSIVE IN ENERGY

Sarah Tablet has been appointed the new Head of Human Resources Middle East at Siemens Energy, a company with over 90,000 employees worldwide which operates in over 90 countries.

Sarah who has a degree in Human Resource Management is diversity, equity and inclusion (DEI) advocate and author, who previously led as a D&I leader at. Schneider Electric, Middle East.

In her new role, she will oversee the company's HR department and will be responsible for leading their development and implementation of their HR strategies.s

GETTING AHEAD IN HEALTHCARE

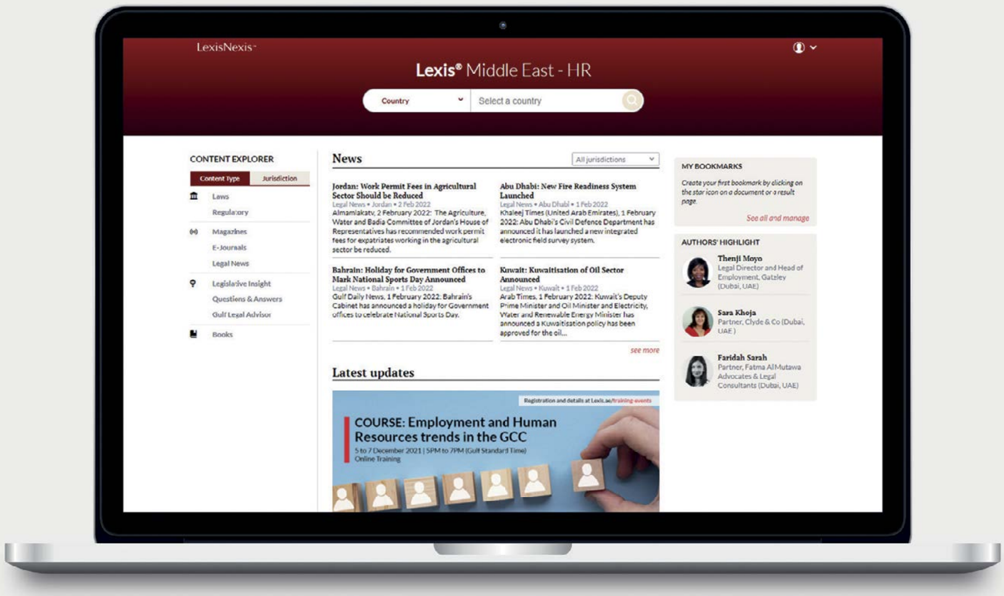
Global healthcare company Viatris has hired Vikas Joshi as their Head of Global People Solutions. In his new role, Joshi will lead the company's HR solutions initiatives around the world.. Viatris operates in a number of Middle East countries include the UAE, Saudi Arabia, Qatar, Kuwait, Bahrain, Oman, and Jordan. Previously, he worked as Vice President HR, Global Operations for Pepsco. He has also lived in both the UAE and Saudi. Josh has two decades of experience of work in HR leadership and transformation, including time spent working on global total rewards, and shared services. He has also previously been involved in business partnering in the Middle East..

OTHER CHANGES

Alchemy Search: Rutika Hardikar who spent eight years working as an indirect tax professional and is a fully qualified chartered account has joined the specialist financial and accounting recruiters, Alchemy Search in Dubai, where she will specialise in recruiting tax experts..

SEND US YOUR NEWS

If you have news of an appointment or promotion within the legal or financial professions you would like to see reported in Lexis Middle East Law, please send details to: *daniel.emmett-gulliver@lexisnexis.co.uk*



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  - TECOM Employment Contract
  - UAQ FTZ Employment Contract

For more information, visit www.lexis.ae/hr, or contact our team by email: contact.mena@lexisnexis.fr

Notice and handover

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Under Article 62 of DIFC Law No. 2/2019 (the DIFC Employment Law) an employer or an employee in the DIFC may terminate their employment at any time so long as the requisite notice has been provided to the other party. In the case of employees with less than three months' service, the required written notice is at least seven days, for those employed for less than five years, it should be at least 30 days, and for employees employed for over five years, the written notice shall not be for over 90 days, unless otherwise agreed in the employment contract.

WORK DURING NOTICE PERIODS

An employer may require an employee not to attend work or undertake their duties during all or part of the notice period. However, if this is the case it must be communicated to the employee from the outset. What happens if there is a change in an employer's notice period policy while an employee is currently serving their notice was recently considered in the DIFC Case, Laia v Laredo Ltd, DIFC Case No. 408/2022.
In this case the employer sent a Memo on the Notice Policy to their employees, after the employee had submitted their resignation. This stated all employees were legally bound to comply with a 30-day notice period from the date of their resignation, and sufficient handover of work was to be carried out by the resigning employee.

Even though the employee had already commenced their notice period the employee was subject to this memo as their employment continued. In this case it was also held that if an employee did not carry out their duties during the notice period, they would not be entitled to receive their wages for the notice period. This point was also confirmed in the matter of Lalit v Leya, DIFC Case No. 093/2021 wherein it was held that if an employee had not completed the tasks required of them by the employer during the notice period, the employee would not be entitled to receive pay in lieu of notice.
Our view is that when introducing changes to the current contractual terms employers are not permitted to unilaterally amend the terms of the contract. If they wish to make changes in the employment contract, these changes have to be presented with sufficient notice to the employees. Therefore, changing a notice policy before or after the employee has resigned can only be implemented if both parties agree upon it and this can be evidenced. Employees should read and understand their rights under the DIFC Law No. 2/2019.

SUITABLE HANDOVER

In the case of Laia v Laredo Ltd, DIFC Case No. 408/2022 the employee stated they had not received any specific work instructions from the employer while serving their notice and there was no registered office which the employee could attend. Therefore, what constituted suitable handover was particularly important. An employee is required to undertake a proper handover regardless of the circumstances in which they are leaving an employer. Handovers are a vital part of the onboarding and offboarding procedure in employment and required to ensure a smooth transition. It is advisable that the handover is detailed, structured and specific to the position. For example, a suitable handover should include a description of the employee's day-to-day activities, access to all the relevant documents and files, information on project status and deadlines, details of all logins and passwords and housekeeping. Although an employee does not need the employer's permission to leave the company, it is expected that a suitable handover is undertaken.

HANDOVER OF ASSETS

As well as information the handover should include a handover of the ownership and control of physical assets (for example computers or phones) information and systems from the departing employee to the employer in an organised and efficient manner to minimise disruption to the operations.

There should be suitable evidence that this has been undertaken. For example, all necessary documentation of the transfer of ownership should be completed and signed to confirm the transfer. In addition, all necessary relevant information, including passwords, access codes for equipment, systems and software and operating procedures, should be handed over to the new user. Any necessary training the new user might need should also be given by the departing employee to ensure the new user is able to effectively use and maintain the property. It is also advisable that equipment and systems being returned are tested to confirm they are in good working order.

Saher Khan also contributed to this article.

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