

LEXIS MIDDLE EAST HR ALERT

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TRENDSETTER BAKER MCKENZIE

AI and workforce decisions

PROFILE INVESTMENT

Rachael Sands of Abdul Latif Jameel

POLICY POINTER

Death in service payments

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

THE NEW ORDER

Employment law reform in Oman





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HARD WORK AHEAD

In each issue of this magazine we include an interview with an individual who either has HR responsibilities for staff in the Gulf and/or MENA region or who supports those who do.

A common theme those with HR responsibilities for staff in the UAE have been keen to talk about recently has been just how much work they and their teams have had, following the introduction of the new UAE Labour Law, Federal Decree-Law No. 33/2021 and its Implementing Regulations, Cabinet Decision No. 1/2022. This has included redrafting and reissuing employment contracts, reviewing HR policies in a whole host of areas and arranging briefing sessions for employees in order to explain the changes to them. Those initial UAE labour laws are now being built on as legislators identify areas within them which need further explanation, as was the case with death in service benefits, where an additional law has been recently issued. Changes such as these will also bring further work. For those with HR responsibilities for staff in Oman, a similar process is starting, as employment legislation which has been in place there for 20 years has been replaced by a brand new labour law (Oman Sultani Decree No. 53/2023), which we cover in this issue. In addition, around the same time a new Social Protection Law (Oman Sultani Decree No. 52/2023) and regulations on the social protection fund (Oman Sultani Decree No. 50/2023) have also brought in changes to employee entitlements in areas including pensions, sick pay and maternity pay.

At present the Implementing Regulations for this new Labour Law have not been issued, so how the reforms which have been brought in by it will work in practice is not yet totally clear. However, Oman Sultani Decree No. 53/2023 is in force now and the grace period employers have been given to make necessary changes is a brief six months. Given the experience of employers in the UAE, it is clear there is a lot of work ahead for Omani employers and they will need to start that work now if they are to be ready in time for the enforcement deadline.

Claire Melvin - Editor

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THE NEW ORDER

New legislation has come into force in Oman, which will impact everything from employment contracts and pensions to policies and termination, as Thomas Wigley and Elisha Wilson of Trowers & Hamlins explain.

A new Labour Law, Oman Sultani Decree No. 53/2023 has been issued in Oman, which replaces the previous Labour Law Oman Sultani Decree No. 35/2003," states Thomas Wigley of Trowers & Hamlins.

"Not only is this the most significant change to Omani Labour legislation in over 20 years, but it is also not the only recent important piece of employment legislation to be issued there, as new legislation on what is called 'Social Protection' has also been issued in the form of Oman Sultani Decree No. 52/2023 and Oman Sultani Decree No. 50/2023."

"Oman Sultani Decree No. 52/2023 covers areas such as pensions, sick pay, unemployment insurance and paternity or maternity pay."

"It is worth noting that Oman Sultani Decree No. 35/2003 was terminated with immediate effect on 25 July 2023. Employers have six months from 25 July 2023 to put the necessary changes in place although they will not be able to do this until the Implementing Regulations to this Law are issued."

OMANISATION

"Perhaps not surprisingly given this issue is currently high on the agenda on most GCC states, Oman Sultani Decree No. 53/2023 includes provisions designed to support Omanisation," Elisha Wilson adds.

"Most notably the law states 'employment is a right for Omanis' while Oman Sultani Decree No. 35/2003 previously only stated that employers in Oman were to employ Omani nationals to 'the utmost possible limit'. Employers must now put in place an Omanisation plan which must be approved by the Ministry of Labour (MoL). There will be certain professions based on Ministerial Decisions where Omanis will replace non-nationals. Omanisation percentages will be issued by the Ministry of Labour and different rules will apply to employers with 25 or more employees, while those with 40 or more employees will also be required to employ specified percentages of Omanis with disabilities."

"In addition, specific provisions will now apply when an Omani employee's contract is terminated because of poor performance or redundancy," Wigley continues. "Where an Omani worker has been terminated for poor performance,



Thomas Wigley
Partner, Trowers & Hamlins



Elisha Wilson
Partner, Trowers & Hamlins

their employer will have to appoint another Omani worker to replace them. While if redundancies are taking place it will not be possible to select an Omani worker for redundancy over a non-Omani worker with the same competencies and experience.”

“There are also plans to increase the numbers of Omani nationals in leadership positions and a new national training programme is to be introduced by the MoL which employers will potentially be required to contribute financially.”

TERMINATION

“The legal position on redundancy and termination more generally has also been clarified,” Wilson states. “This is the most significant change in the law. Previously, redundancy was an unrecognised concept under Omani law. However, under Article 44 of Oman Sultani Decree No. 53/2023 employers can make employees redundant as a result of an ‘economic cause’.”

“A special committee will be established by a Ministerial Decision to examine applications by private sector employers to reduce their numbers of workers because of economic cause,” states Wigley. “The employer has to provide details of the reason and numbers of employees who need to be made

RELEVANT LEGISLATION

Article 34 of Oman Sultani Decree No. 53/2023

An Employment Contract may be concluded for a fixed term or for an indefinite duration. If the term is fixed, it shall not exceed five years, renewable by agreement of the two parties. If the contract is renewed, the term or the new term shall be considered an extension of the original term and shall be added thereto in calculating the total period of service of the Worker.

(Source: Lexis Middle East Lawi)

redundant and the committee can accept or reject this application,” Wilson continues. “It can also suggest alternative arrangements including reducing the number of employees’ working hours or days in return for a reduction in wages for a specified period, granting unpaid leave to all workers for a specified period but in equal proportions, and reducing the wages of all workers by certain percentages for a specified period.”

“However, these are not the only circumstances in which an employee’s employment can be terminated,” Wigley states. “An employee can also have their employment terminated for poor performance, provided they have been notified of areas for improvement and have failed to improve within six

RELEVANT NEWS

Working Pensioner Provisions Explained

Oman's Social Protection Fund has explained how provisions in the new Social Protection Law (Oman Sultani Decree No. 52/2023) will apply to working pensioners. Previously working pensioners were not entitled to a reward for the service they had undertaken after they retired in the same way as now. A new legislative provision gives working pensioners the right to choose either a reward for their term of the service after retirement or they can add their new service term to the previous one, stop receiving the pension while they are working and have their pension recalculated based on their new total period of service.

months of the notification. It is also possible to terminate an employee's service because an Establishment has closed totally or in part, it is bankrupt, it is downsizing its activity or replacing a production system with one that affects the numbers or skill levels of employees required. Although where the whole Establishment is not closing down, preference is given to retaining Omani employees over equivalent non-Omani colleagues."

"In the past this was a grey area in Oman and when businesses had to close down or become bankrupt, compromise agreements often had to be sought with employees, so the approach in this area makes things a lot clearer."

DOCUMENTATION

"Employers are also now required to ensure that all their internal regulations, policies and employee contracts are in Arabic," Wilson states. "In addition, if any of these are in dual text, say Arabic and English, the Arabic will be relied on."

"Where an employer has 50 or more employees they are also required to draw up employment policies governing the worker, and their relationship with colleagues and superiors which must be sent to the Ministry for approval."

"While employers with 25 or more employees must draw up a list of penalties and the conditions for them, which must also be approved by the Ministry."

LEAVE CHANGES

"Oman Sultani Decree No. 53/2023 has also brought in a number of changes to leave entitlements," Wigley continues.

"Sick leave has increased from 70 days to 182 days per year, at 100% pay from day 1-21, 75% pay from day 22-35, 57% from day 36-70, and 35% pay from day 71-182. Initially employers will have to pay these entitlements but when the new Social Protection Fund is fully implemented sick pay will be paid from there."

"Other leave changes include an increase to 98 days' (from 50 days') entitlement on paid maternity leave, and no maximum number of times this can be claimed," states Wilson.

"Previously, paid maternity leave could only be claimed three times from a single employer," Wigley explains.

"There is also now an entitlement to seven days of paternity leave as long as the child is born alive, and the leave does not go beyond the 98th day from the child's birth."

PENSIONS

"Oman Sultani Decree No. 52/2023 On the Social Protection Law has also brought in a number of significant law changes," Wilson adds.

"The most notable of these involves pensions. There is now a universal old-age pension in Oman and all Omanis older than 60 will now receive a flat amount equal to OMR 115 per month, on top of their pension."

"There have also been changes to the structure of pensions, entitlements, and age, but the key change is the consolidation of various pension schemes in one universal fund and greater access to compensation for death and injury at work. There are also now a range of allowances paid as a result of disability, being an orphan or a widow."

DISPUTES

"Historically, employment related disputes in Oman were resolved by the Oman Courts," Wigley states. "However Oman Sultani Decree No. 53/2023 now requires that collective employment disputes are resolved by arbitration. If collective labour dispute negotiations fail and a dispute cannot be settled amicably, either party can apply for the dispute to be resolved by arbitration before the Collective Labour Disputes Arbitration Committee."

"The decision can then be challenged further by either party before the Omani Supreme Court."

WHAT SHOULD EMPLOYERS BE DOING NOW?

"Oman Sultani Decree No. 53/2023 came into force on 26 July 2023, although employers have been given a six month grace period from then to rectify their status," Wigley continues.

"However, this grace period does not pause the application of Oman Sultani Decree No. 53/2023's provisions which are still in effect as of 26 July 2023."

"This is complicated by the fact that the law's implementing regulations have not yet been issued."

"Although the full picture on what is required will not be clear until the Implementing Regulations are issued, employers should be starting to take action on this now. In particular, they should start having conversations with their employees on the new regulations and any potential impacts they may have on them. They should also be amending and replacing existing employment contracts which have references to and terms which related to the position under the old law, e.g. if the contract states employees should be working nine hours a day. They will also need to ensure these employment contracts are put into Arabic."

"Sickness, maternity and paternity leave policies will also have to be altered to reflect the law, and new management and appraisal procedures should also be put in place. In addition, employers with either over 50 or 25 employees should begin thinking about the internal policies and documentation they will have to draw up and arrange for approval from the MoL."

AI and workforce decisions

Joanna Matthews Taylor, Partner, Baker McKenzie looks at reducing legal risks of using Artificial Intelligence (AI) across the full cycle of the employment relationship.

Artificial Intelligence (AI) is being increasingly used by employers across the full cycle of the employment relationship, not just to regulate the more mechanical aspects of day to day work, such as shift scheduling, or attendance tracking but in other more critical areas. For example AI tools are used in multiple stages of the recruitment process to screen CVs, carry out interviews and conduct psychometric testing, and analyse responses. AI tools can also be used in the creation of auto generated checklists for onboarding processes, to change the style of organisational communication to better suit specific groups of employees or to gather data for important decisions, e.g. on employees' continued employment, compensation or promotion prospects. AI has the potential to provide positive benefits to employers including increased levels of efficiency, productivity, and cost savings. However, as well as these potential benefits there are also added risks when using AI within the employment cycle. Poor deployment of AI can lead to biased and discriminatory decisions, misinformation being presented in a believable manner, as well as greater data privacy and cybersecurity risks.

DISCRIMINATION

One such risk includes the potential for discrimination where AI is used in employment decisions. Although, AI tools can potentially mitigate against the risk of bias as machines make decisions based on data, if they are not properly used they can also inadvertently amplify and duplicate historical prejudice.

An AI tool is only as objective as the data it is provided and trained on. If the initial information is tainted with conscious or unconscious bias this will be duplicated in any results generated by the tool. Amazon, for example, ultimately abandoned their CV screening recruitment tool after it was discovered the tool tended to favour male applicants. This anomaly arose as historically the company had employed more males than females. By feeding historical recruitment data into the machine, the tool 'learnt' that male candidates were preferable and gave male candidates' CVs a higher ranking than those of female applicants. Therefore, wherever AI is used in connection with key employment decisions such as those around managing performance, terminations, salary increases or promotions, care must be taken and the training data upon which the

algorithm is built must be selected carefully to mitigate the risk of any results or outcomes being considered discriminatory. For example, if an AI tool is used as part of a redundancy selection programme there is a risk the tool will not properly take into account protected characteristics such as disability or pregnancy and might unfairly penalise a pregnant or disabled employee with a lower attendance record. A neurodiverse employee or candidate who presents in a non typical way could also be analysed less favourably by a tool of this type.

REDUCING RISK

Most of the GCC countries have anti-discrimination provisions built into their employment laws. Falling foul of these provisions can result in having to pay compensation, reputational damage and a negative impact on workforce morale. In some countries, such as the UAE, discriminating against an individual based on a protected ground could also potentially amount to a criminal offence.

Where AI tools are relied on to make important decisions without any human involvement they can be hard to defend if challenged as decisions made by these tools are often not transparent.

This would make it difficult, for example for an employer to prove to a court that it had legitimate grounds for a termination.

Employers using AI tools for making decisions or managing employment relationships should ensure human supervision and involvement is maintained. The employee's manager should have the final say in any decision affecting members of their team. Managers should also be trained on using the tools and interpreting the data. Extra care should be taken when selecting the data which is to be used to train these tools, to reduce the risk of bias.

In addition, it is also recommended to carry out a risk assessment to identify any possible risks before any AI tool is rolled out.

Employers should ensure they are able to explain the grounds for any decision made using AI.

This could mean discussing with a potential supplier what the criteria are, how they are set and whether it would be possible to obtain information on why a particular decision has been made in the case of litigation.

NEWS ROUND-UP

COVERING RECENT KEY DEVELOPMENTS – REGION-WIDE

UAE

CHANGE ON LABOUR DISPUTES



The UAE Labour Law (Federal Decree-Law No. 33/2021) has been amended following the issue of Federal Decree-Law No. 20/2023. The amendments will come into force on 1 January 2024. The most significant changes will be to the way in which labour disputes are conducted in the UAE. As a result, the Human Resources and Emiratisation Ministry (MOHRE) will be able to adjudicate simple labour claims (that do not exceed 50,000 AED) for the first time and issue binding decisions. This authority will also extend to labour disputes involving non-compliance of either party, with a previous amicable settlement decision issued by the Ministry, irrespective of the claim's value. Under Article 54(3) of Federal Decree-Law No. 33/2021 these Decisions by MOHRE will have the force of an execution instrument and be executed in the customary way. Either party will be able within 15 days of the date of their notification of the Ministry's decision, to file a lawsuit before the competent Court of Appeal for a review of the substance of their dispute. The judgments issued by the Court of Appeal will be final and not subject to appeal. In addition, filing a lawsuit of this type will result in the suspension of the execution of the Ministry's decision.

PENSIONS AND NAIFIS



The General Pension and Social Security Authority (GPSSA) has issued a pension contribution clarification. The UAE government will pay 2.5% of pension contributions for Emirati employees working in the private sector as part of the Nafis programme for the first five years of their employment. However, this will only be done if the employing entity information and data provided is continuously updated. The government will cover the contribution account salary difference for these insured Emiratis' employment. The contribution rate due for insured Emiratis employed in both the

government and private sectors is 20%. An insured individual pays 5% and the employing entity then has to pay 12.5%.

DIFC

EMPLOYMENT LAW



The DIFC have completed a consultation on amendments to their employment law DIFC Law No. 2/2019 which ended on 29 September 2023. The proposed amendments would make changes to Part 10 of DIFC Law No. 2/2019 which would oblige DIFC employers of eligible GCC nationals to make top-up payments into a Qualifying Scheme, in addition to General Pension and Social Security Authority (GPSSA) contributions. In practice this would mean DIFC employers would have to pay the positive difference into a Qualifying Scheme if there was a shortfall between what would have been payable into a scheme if the individual had not been a GCC national, and what is paid under the GPSSA scheme. Monthly payments are subject to a de minimis threshold of 1000 AED. Other proposed changes to DIFC Law No. 2/2019 involved situations where a Qualifying Scheme would be prohibited from accepting contributions from an Employer, or in respect of an Employee, as a result of sanctions prohibitions.

BAHRAIN

VISAS AND RESIDENCE



Employers can now digitally renew work visas and residence permits of foreign employees and their dependents who are currently outside Bahrain with immediate effect. Renewal was only previously permitted in-country. However, the foreign employees must still have the same passport they used for their original work visa and residence permit applications to use the new system. The employer can start the renewal process on the Expatriate Management System, up to six months before the expiration date of the foreign employee's visa or permit. Employers select the visa duration and make the payment on-site.

The System allows both work visas and associated residence permits to be renewed. Once the authorities renew a work visa, the residence permit is processed and is valid for the same period as the work visa. Employers and employees can then obtain a digital work visa and residence permit via the National Portal.

SAUDI ARABIA

PREMIUM RESIDENCY



Saudi Arabia's Investment Ministry has announced premium residency can be granted to regional HQ executives. The Investment Ministry has developed a mechanism for granting this which has been approved by the Premium Residency Centre. They are currently working with the Human Resources and Social Development Ministry to implement incentives for employees at regional headquarters. These incentives will include the granting of visas based on the company's requirements and enabling spouses of regional headquarter staff who come under family residency to work. They are also looking at extending the age limit so dependents of regional headquarters' employees can stay in Saudi until they are 25 years old.

NEW PENALTIES



The Saudi Human Resources and Social Development Ministry has announced changes to penalties under the Labour Law (Saudi Arabia Cabinet Decision No. 219/1426). The fines will be imposed based on the establishment's category. Categories are determined by the total number of employees. Category A includes entities with more than 50 employees, Category B those with 21 to 49 employees and Category C covers establishments with one to 20 employees.

DISABILITY




Saudi Arabia Cabinet Decision No. 110/1445 On the Approval of

the Law on the Rights of Persons with Disabilities has been issued. This law includes definitions of who is a person with a disability. Article 10 of Saudi Arabia Cabinet Decision No. 110/1445 deals with their right to work and employment without discrimination. Fines of 500,000 Riyals, which double if there is a repeat offence, can be levied.


QATAR

DIRECTORS' BONUSES

 The Qatari Ministry of Commerce and Industry (MOCI) has urged auditors who audit listed public joint-stock companies and boards of directors of listed public joint-stock companies to follow provisions detailed in a Circular issued by the Qatar Financial Markets Authority (QFMA) on 22 June 2023. This specified the method for determining listed company board directors' remuneration. Directors' remuneration can only be paid if two conditions are met. The first is the deduction of legal reserves and deductions stipulated in the provisions of the Commercial Companies Law (Qatar Law No. 11/2015). The second is that profit of no less than 5% of the company's paid-up capital must be distributed to shareholders. The payment must also not exceed 5% of the company's net profit.

KUWAIT

EXPAT JOB CHANGES


 A Senior official at the Public Authority of Manpower has announced they are considering allowing expatriate employees to transfer to a new employer without the prior consent of their existing employer if the employer has violated their employment contract. These employees would not be allowed to change jobs until the employer's contractual or Labour Law (Kuwait Law No. 6/2010) breach had been confirmed. Currently, expatriate employees in Kuwait cannot change job before their employment contract expires unless their employer allows them to. It was added that the Authority currently has no plans to seek amendments to Kuwait Law No. 6/2010 but is studying whether amendments are required.

OMAN

TRAINING BREACHES

 Oman's State Audit Institution has discovered cases where employers have failed to employ trainees who have completed their training, despite a clause in the training contracts which requires companies to employ trainees once their training is finished. Companies who have failed to comply with this requirement could be banned and have financial payments frozen if recruitment procedures have not been completed. They could also find themselves on a blacklist.

WAGE PROTECTION

 Oman's Labour Ministry has issued a Circular on the implementation of the wage protection system brought in by Oman Ministerial Resolution No. 299/2023. This has clarified that private sector companies depending on their establishment grades, will have between six and eight months to implement this new regime which requires employers to transfer employees' wages to an authorised local bank within a maximum seven days from the due date.

IRAQ

PUBLIC SECTOR STAFF

 Five officials in Iraq have been dismissed for grave negligence following a recent fatal fire in a wedding hall. Those dismissed included the fire chief and the city major. The mayor was accused of negligently failing to get the approval of other public agencies for the event hall, which was built illegally, to start operating. The fire chief will face a disciplinary committee. The municipal director, the tourism and recreation division head and an electricity official have also been dismissed for a failure to exercise their duties.

Although fireworks were to blame for the fire, the ceiling was found to be highly flammable and made of low-cost materials. Civil Defence officials had inspected the site earlier this year and the owner was ordered to remove the ceiling by October. Venue capacity had also been exceeded.

IN BRIEF

Qatar: The Qatari Cabinet has reviewed proposals on amendments to the Labour Law Qatar Law No. 14/2004...

Oman: The Omani State Audit Institution has discovered public sector doctors working in private medical centres during their public sector working hours and the Health Ministry has issued a circular on this...

UAE: Private sector federal government department and free zone employees had until 1 October 2023 to join the Involuntary Loss of Employment (ILOE) scheme. Those who have not or fail to pay premiums for more than three months will now be fined...

Saudi Arabia: The National Centre for Meteorology has announced it will licence weather forecasters individually...

Oman: The second phase of Omanisation of turmeric production workers across 25 villages has been launched...

Saudi Arabia: The Saudisation ratio for private sector dental healthcare roles will increase to 35% from 10 March 2024...

Saudi Arabia: Those convicted of harassment will be fined up to 300,000 Riyals and imprisoned for up to five years...

UAE: The UAE Government has announced its intention to introduce an alternative to the End of Service gratuity scheme as a result of past problems when employers became insolvent or failed to accrue necessary amounts...

Abu Dhabi: New rules governing social care professionals are now in force in Abu Dhabi...

Bahrain: The Speaker of the House of Representatives has called for two ministers to be questioned by MPs over alleged, repeated sackings and dismissals of Bahraini employees at Gulf Air...

Sharjah: The Sharjah Human Resources Department has issued a Circular to all departments, authorities and establishments there to provide female members of staff with flexible hours...

Morocco: Authorities in Morocco have approved an increase in the minimum wage for private sector employees in the industrial, trade and service sectors there of 5% to 3,111 Dirhams from September 2023...

Qatar: The Qatari Civil Service and Government Development Bureau has established a new Iskan portal which will help government employees in Qatar to find accommodation more easily...



THE LATEST ON LOCALISATION

As governments across the GCC develop new localisation policies to support their growing economies, Rekha Simpson, Ali Ibrahim and Ren Jongerius of Vialto Partners provide an overview of the current policies in the UAE, Saudi, Qatar and Oman, and their impact on expatriate employees and their employers.



In recent years, economies in the GCC have been growing rapidly. This is visible with the return of mass tourism in the UAE and Oman post-COVID, the start of major infrastructure projects like NEOM in Saudi-Arabia, the FIFA World Cup in Qatar, and an overall increase in worldwide demand for energy supplies. However, while GCC countries continue to develop and diversify their economies, with the UAE, Qatar and Saudi Arabia in particular attracting overseas companies to invest and hire talent from across the globe, there have been localisation policies implemented by governments there to also ensure their citizens are considered or prioritised for positions and there are various drives to encourage local talent to work in the private sector. Localisation policies in GCC countries work towards the professional development of the local workforce by stimulating and empowering local talent's participation in the job market. There are initiatives in the UAE, for example, to attract skilled locals to work in the private sector and boost Emirati numbers in the workplace.

THE UAE

Emiratisation was initially introduced by the UAE Government as an initiative to drive the employment of Emirati nationals in the public sector. However, over the last two decades, the focus has shifted to the private sector and specific targets have been introduced for a percentage of Emiratis in the workforce. The expansion of Emiratisation has formed part of the UAE's 'Vision 2021 strategy' to train, recruit, and retain Emirati nationals in the workforce. Companies in the mainland UAE, are required to comply with Emiratisation targets which have evolved since then.

It is worth noting Emiratisation requirements do not apply to companies in Freezones, unless the company undertakes specific regulated activities, such as banking or oil and gas work. Therefore, currently most companies in UAE Freezone jurisdictions are not subject to local hiring targets.

Emiratisation has remained a priority in the government's long-term vision to be able to increase the number of Emiratis in the workforce, in a country where expatriates make up almost 90% of the population.

At the end of 2022, it was also announced by the Ministry of Human Resources and Emiratisation (MoHRE) that there would be a mandatory increase in the percentage of Emiratis in the workforce for companies with 50 or more staff. Private sector companies are now subject to a 2% Emiratisation target year on year until 2026 (with a 10% target by 2026).

In Summer 2023, these targets were also expanded to cover smaller organisations in 14 sectors, with a workforce of between 20 and 49 employees. The Emiratisation target for these small companies is to hire at least one Emirati national in 2024 and a further Emirati national in 2025.

Failure to meet the prescribed Emiratisation rates leads to a 'financial contribution' of 6,000 AED per month being payable for each Emirati that is not hired. This then increases by 1,000 AED each year until 2026. Therefore, financial consequences of a failure to comply can be significant for many companies in the UAE mainland, and a number of them are now finding ways of attracting and retaining local talent. According to publicly available information, there has

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RELEVANT LEGISLATION

Article 18 of Oman Sultani Decree No. 53/2023

Employment is a right of Omanis. Non-Omanis may only work within the Sultanate of Oman pursuant to the terms and conditions set out in this Law and the decisions issued in implementation hereof

(Source: Lexis Middle East Law)

been an increase in Emiratis hired in the private sector since the end of 2022, marking a success in the Emiratisation programme. The Government recently introduced the NAFIS programme to encourage UAE nationals to apply for jobs in the private sector, and companies can now source candidates via the NAFIS portal. Under the NAFIS programme, there are also a series of incentives to encourage Emiratis to remain in longer term

employment. In addition, companies that fail to meet Emiratisation requirements could eventually find themselves facing the suspension of the portals to be able to sponsor expatriate workers in the future, as is the case in Saudi Arabia. Therefore, UAE employers in the Mainland are encouraged to review their hiring strategies, to avoid further penalties and disruption to sponsoring expatriates in the future.

SAUDI ARABIA

In line with the clearly defined policy of Vision 2030, Saudi Arabia (KSA) has embarked on an agenda of comprehensive reform targeting all aspects of life, including the economy, cultural, social, and regulatory areas. Vision 2030 is a strategic shift away from the traditional practices of the past four decades, and aims to propel the country into a vibrant future beyond its reliance on oil. At the core of Vision 2030 are two fundamental pillars: economic diversification away from oil and the creation of employment opportunities for Saudi nationals, which is particularly crucial, given the substantial challenge of providing jobs, healthcare, and a promising future for the country's 25 million Saudi nationals. Therefore, the aim of empowering young Saudis through meaningful employment has become a key driver behind many government policies associated with Vision 2030. To achieve this aim, a formal system of mandatory employment known as 'Saudisation' has been established. Companies which intend to establish a physical and legal presence in Saudi must prioritise the implementation of Saudisation quotas. Saudisation is divided into two distinct categories - General Saudisation which is the general Saudisation of the business and is calculated based on the company's activities and total number of employees and Enhanced Saudisation which is the Saudisation of specific professions, allowing Saudi national graduates to develop their skills and gain experience in particular targeted areas of the job market. Companies can only retain expatriate professionals if they meet the requirements of the new Saudisation percentages for different job titles, such as project management specialists or financial advisory specialists. In addition, the Ministry has established minimum monthly salary ranges for each job title within the Enhanced

Saudisation category. Businesses to comply with these salary guidelines, as failing to do so may impact the company's Saudisation percentage. By keeping to the specified salary ranges, companies can fully benefit from the potential of Saudisation, and have a balanced and inclusive employment environment that supports Vision 2030's broader goals.

The MHRSD has also allocated a number of titles for Saudi nationals which can never be given to expats, for example, positions in HR. Businesses that fail to meet these Saudisation requirements may face significant consequences, including the potential suspension of various services on the Ministry portals. These disruptions can create operational problems until the necessary Saudisation targets have been achieved. These blocked services may impact a range of critical activities, including issuing new working visas for foreign national employees and visa transfers of employees within the country. The business may also face problems with other services, such as the issuing of new quotas that enable new expatriates to be recruited. Suspension of these services can severely impact business operations and potentially affect productivity and growth. Therefore, businesses must prioritise and actively work towards fulfilling these Saudisation requirements.



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QATAR

Qatar also has a high number of expatriates who make up over 85% of the population, and lower participation of Qatari nationals in the workforce. In 2000, Qatar introduced a target to have 50% of the national workforce in the energy sector by 2005. Unfortunately this was not met but as a result the energy sector became one of the largest employers of Qataris and strong partnerships developed with the education sector to help train and educate Qatari youth. As part of Qatar National Vision 2030, the Government has continued efforts to increase its citizens' employment rate. The Ministry of Labour plays an important role in regulating the local employment policies. In 2020 'Kawader' the national e-recruitment platform was launched. Qatari job seekers are able to register on this platform, on which all available jobs in Qatar, in the government and private sector, are listed. The aim is to increase the rate of Qatarisation in the private sector to at least 50%. In recent years, the Labour Ministry has also implemented restrictions on the employment of expats in certain positions, ensuring meaningful permanent employment is available to locals. A number of international companies have also committed to develop and train Qatari nationals, and some have clear strategies, policies and statements on this listed on their websites, outlining their commitment to Qatarisation.

Foreign investors should consider National Vision 2030 and ensure the Qatarisation rate is met in order to avoid suspension of various services on Ministry portals, which would impact business activities, particularly when setting

up in the Mainland, as Qatarisation is not a requirement in the Qatari Freezones.

OMAN

On 31 July 2023, Oman issued a new Labour Law (Oman Sultani Decree No. 53/2023) which impacts the position of Omani and expatriate workers. The implementation of this new law is part of the Omani government's chosen direction which is set out in the 'Vision 2040 National Agenda'. Oman Sultani Decree No. 53/2023 aims to actively support and encourage Omani workers in the national labour market. It emphasises that employment is an intrinsic right for Omanis. Young Omanis are encouraged to take up employment, stay in higher education and undertake vocational training so they are able to take on leadership roles.

While exact numbers have not been announced yet, it has been made clear the Omani government will actively encourage companies to have plans in place which must be published on the company's website to make sure Omanis are aware of new localisation policies. Having this information and developing leadership skills will help Omanis gain more senior roles.

Companies will also need to publish detailed numbers on their website mentioning numbers of Omani workers, their salaries, gender, and information on potential internal job opportunities.

Companies with 25 employees or more must also now provide training to Omani nationals to enable them to be better equipped to take on roles currently held by expats. While companies with 40 employees or more must also appoint Omani nationals with disabilities. The law also allows termination of employment of non-Omani employees, in order to facilitate Omanisation.

For companies, specifically those who have with a large expat workforce it will be crucial to stay up-to-date on any new legal requirements which need to be implemented in order to avoid a failure to comply with the rules and regulations as set by the Omani government.

THE COMMON THEME

The common theme in all four of these countries is the Governments' commitment to implementing localisation policies and ensuring their nationals are developed, trained and have the same opportunities in the private sector as expatriate workers. It is becoming increasingly important for businesses, especially expat driven businesses, to be aware of any changes these governments are announcing on their localisation policies. Now more than ever, these businesses need to act pre-emptively to avoid penalties.

Non-compliance could create long term legal consequences and financial risks, so local expertise is crucial.

However, these governments, particularly the UAE, Saudi and Qatar will continue to try to strike a balance between attracting foreign investment and talent, and assisting their citizens to take up private sector roles. These policies are still evolving and in some cases, relaxations may be put in place to ease the visa application process and ensure the country remains an attractive and competitive destination.

IMMIGRATION FOCUS

RECENT GCC IMMIGRATION AND VISA CHANGES

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QATAR

HEALTH INSURANCE



The Qatari government has announced all foreign employees must now have a healthcare insurance policy which is in line with the Ministry of Public Health (MoPH) requirements in order to be issued a multiple-entry work visa.

Foreign nationals can either buy this policy before the visa has been issued or at the time of approval. The policy should have a validity which matches the expiration date on their work visa. Where a holder of a multiple-entry work visa is already in the country but does not have one of the mandatory healthcare insurance policies yet, it is advisable they obtain one, at least before they pass one of the main ports to avoid issues or delays in leaving or entering the country.

Employers must purchase a health insurance policy for their employees who are traveling to Qatar on a multiple-entry work visa.

Fines will be imposed on employers who fail to provide health insurance to their employees. The MoPH-website has published a list of pre-approved healthcare insurance providers.

It is possible that visa issuing could be delayed by the purchase of these now mandatory healthcare insurance policies, as they must be communicated by MoPH to the Ministry of Interior first, and only after their receipt and the completion of a further process, can the Ministry of Interior issue the work visa. Employers should be aware of this extra step which is now part of the process when multiple-entry work visas are issued in Qatar. Non-compliance may be costly both in terms of time as well as financially.

SAUDI ARABIA

TRAINING DATA



The Saudi Arabian Ministry of Human Resources and Social Development (MHRSD) now requires all private sector companies there with 50 or more employees to disclose their training data annually through the ministry's official platform (Qiwa). By the end of each year, relevant companies must submit the details of their planned training activities for the following year through their corporate Qiwa account. The required disclosures include training plans, reports on training conducted, numbers of employees receiving training, and the total allocated training budget. Data on completed training in the previous year must also be disclosed before the end of January. This should include the number and category of trainees who completed the training; average numbers of training hours; the total budget for completed training throughout the year; type of completed training and the equivalent percentage of the total salary of employees allocated to training. Guidance on these disclosures has been published on the MHRSD website.

LAW CHANGES

NEW AND PROPOSED MENA LAWS

DATA PROTECTION REGULATIONS

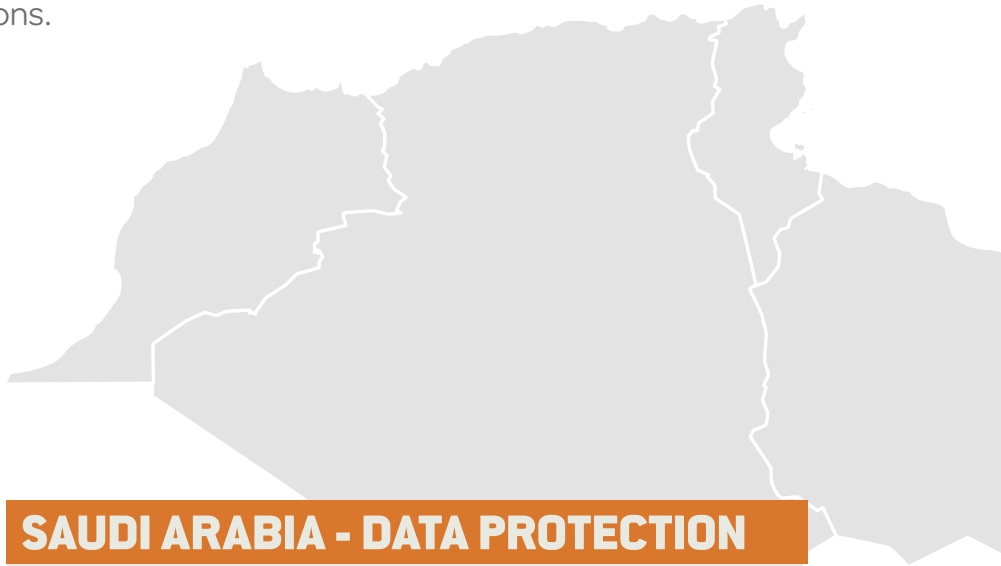
Joshua Decker, Senior Counsel of Vaishvik Law International Ltd explains the significance of recent amendments to the DIFC's Data Protection Regulations.

With growing amounts of employee data being collected, some employers have been using Artificial Intelligence (AI) systems for processing it. The DIFC has responded to this development by amending and expanding its Data Protection Regulations, in order to enhance the protection of personal data of data subjects, including employees.

The DIFC Data Protection Law, DIFC Law No. 5/2020 (which was amended in 2022), provides the requirements for handling personal data in the DIFC along with the DIFC's Data Protection Regulations. A second version of these Regulations was issued in September 2023.

A new section 10 has been added to these Regulations which covers specific requirements when personal data is processed through autonomous or semi-autonomous systems, which are defined as any machine based autonomous or semi-autonomous system which either processes personal data for a human defined process or machine defined process and generates a result on the basis of that processing. This could include, for example, situations where these types of systems are used to undertake recruitment screening. There are now new requirements for what are called Deployers which include those for whose benefit or on whose authority the system is used, as well as those who operate the system for the Deployer (the Operator) or who develop the system.

It is stressed that general data protection requirements found in Article 9 of DIFC Law No. 5/2020 which include ensuring the data subject can still exercise all their rights and that the data is processed in a fair and transparent manner still apply when these types of systems are used, including when Personal Data is used in the system as learning data (see Regulation 10.2).



SAUDI ARABIA - DATA PROTECTION



Saudi Arabia's Authority for Data and Artificial Intelligence has published the final version of the Implementing Regulations to the Data Protection Law (Saudi Arabia Cabinet Decision No. 98/1443). Saudi Arabia Administrative Decision No. 1516/1445 is very similar to the previously issued draft version of the regulations which was consulted on over the summer. In addition, the final of additional regulations which specifically deal with transfer and disclosure of personal data outside of Saudi Arabia have also been issued in Saudi Arabia Administrative Decision No. 1517/1445. Data Controllers have a one-year grace period in which to implement this new regime which ends on 14 September 2024.

In addition, it is stressed that clear privacy notices, which will also need additional information compared to that required in standard privacy notices (see Regulation 10.2.2) are needed where an autonomous or semi-autonomous system is used to process personal data, if the data is collected by a system or a website.

A system developed and used in products, services, or other use cases that may impact a Data Subject, negatively or positively (which could include a decision on whether they go through to the next recruitment round), must be designed in a specific way. Regulation 10.3.1 stresses these systems should be ethical, so algorithmic decisions and the system's associated data lineage should be unbiased and mitigated. They

should be designed to treat all individuals equally and fairly, regardless of race, gender, or other specifically subjective factors. They should avoid potential biases, including unjust bias, or where possible, mitigate bias that could lead to unfair outcomes.

The processing of Personal Data using these systems should also be explained to Data Subjects and other stakeholders in non-technical terms, with appropriate supporting evidence, and the data must be secure.

Under Regulation 10.3.3 these types of systems cannot be used for High risk Processing unless the Data Protection Commissioner has established audit and certification requirements applicable to Systems used in High Risk Processing Activities; the system applies these

QATAR - DANGEROUS MATERIALS



The Qatari Cabinet has approved a draft Ministerial Decision on the rules, conditions and requirements for the safe transportation of radioactive materials by vehicle. This Decision has been proposed by the Environment and Climate Change Minister.

OMAN - DISABILITY



Oman's Social Development Ministry has announced a Disabled Persons Law is being finalised there. The aim of the law will be to promote inclusivity and uphold the rights of the disabled. The legislation has been amended to align with the Convention on the Rights of Persons with Disabilities and to comply with the highest standards on international human rights. After the law has been finalised by the Legal Committee of the Council of Ministers it will then be submitted to the Council of Oman to be formally approved.

BAHRAIN - SECTORS



A Bahraini MP has submitted a proposal for stricter regulations to be imposed on home delivery drivers. The MP wants to see stricter controls on their conduct. The proposals include changes to health and hygiene standards and steps being taken to ensure these drivers comply with traffic rules.

DUBAI - OVERTIME



Dubai Administrative Decision No. 1/2023 On Approving the Regulation Concerning Overtime Work for Departments that are Subject to Dubai Government Human Resources Management Law has been issued. The law covers full-time and temporary workers but does not apply to those who work part-time. It regulates the mechanism for assigning overtime to employees and includes rules and controls for assigning overtime. It also includes details on how overtime pay is calculated. Disabled employees, those who are breastfeeding, or who are working reduced hours for health reasons cannot be assigned overtime. Overtime also cannot be assigned to employees working reduced hours in order to attend classes on the days they work reduced hours.

requirements, the System Processes Personal Data solely for human-defined or human-approved purposes; and the Deployer or Operator has appointed an Autonomous Systems Officer (ASO), who has the same or substantially similar competencies, status, role and tasks to a Data Protection Officer (DPO) (see Article 17 and 18 of DIFC Law No. 5/2020).

High Risk Processing includes processing that includes the adoption of new or different technologies or methods, which creates a materially increased risk to the security or rights of Data Subjects or makes it more difficult for Data Subjects to exercise their rights; or if a considerable amount of data will be

Processed and it is likely to result in a high risk to the Data subject including due to the sensitivity of the Personal Data or risks to security, integrity or privacy, or if the Processing will involve a systematic and extensive evaluation of personal aspects relating to natural persons, based on automated Processing, including Profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person; or a material amount of Special Categories of Personal Data is to be Processed.

Data Subjects can submit a complaint challenging the outcome of Personal Data Processing by these Systems in line with Part 9 and 10 of DIFC Law No. 5/2020.

CASE FOCUS

Case No Khadija Al-Marhoon v Ooredoo Group Company, QFC Case No. 0011/2022, [2023] QIC (F) 5 issued on 13 July 2023

Jurisdiction QFC

Court QICDRC, Court of Appeal

Recommended by K&L Gates LLP

WHAT IS IT ABOUT?

This appeal involved the application of employment standards in the Qatar Financial Centre (QFC), and continued a pattern which has been seen in recent employment judgments, for example, in *Prime Financial Solutions LLC (Formerly International Financial Services (Qatar) LLC) v Qatar Financial Centre Employment Standards Office*, QFC Case No. 0005/2021 [2022] QIC (A) 1 on whistleblowing, and on the right to transfer employment in *Arwa Zakaria Ahmed Abu Hamdieh v Lesha Bank LLC* QFC Case No. 0007/2022 [2023] QIC (A) 1.

The appeal considered the circumstances in which an Employer could, under an employment agreement that was subject to the QFC Employment Regulations 2020, dismiss an Employee without notice, and the procedures that an employer must observe for such a termination.

The Employer, Ooredoo, appealed a First Instance decision which had awarded the Employee 509,679 QAR for breach of the Employee's contract of employment with them.

The Employee had joined Ooredoo, which was a QFC entity, in June 2012 and by 2017 had reached a senior position. However, the Employee's relationship with some of her line managers and colleagues had

deteriorated.

In April 2021 the Employee had formally lodged grievances under her Employer's policies including claims of unfair and discriminatory treatment and bullying by her line manager.

On 6 October 2021, the Human Resources Manager telephoned her and suggested she might consider leaving their employment voluntarily.

Ooredoo offered Ms Al-Marhoon an exit package in writing.

However, on 11 October 2021, before the agreed termination date the Employee stopped coming to work.

She provided a sick note with a medical explanation for her absences on 11 and 12 October 2021 but did not provide any further explanation to her Employer about her later absences.

Ooredoo's Human Resources Manager messaged the Employee on WhatsApp on 18 and 27 October 2021 about her continued absence.

The second of these messages warned the Employee that her absence from work without legitimate cause could be subject to disciplinary action and asked her for an urgent response. However, the Employee did not reply.

On 8 December 2021, the Employer's Group Chief Human Resources Officer notified the Employee in writing that she had been terminated because of her absence from work without 'legitimate cause' for more than seven consecutive days since 17 October 2021.

COURT OF FIRST INSTANCE DECISION

The Court of First Instance dismissed the Employee's

claims for discriminatory treatment and bullying on the basis that these claims were too broad, and the Employee had presented no evidence to support its claims.

The Court of Appeal later upheld this decision.

The Court of First Instance also found the Employer had grounds for dismissing the Employee who had failed to come to work without lawful excuse for more than seven consecutive days.

However, the Court of First Instance also held that the Employer had unfairly dismissed the Employee because there had been no attempt to offer her a disciplinary hearing as required by the terms of her employment contract, an implied contractual duty of fair procedure, and by Article 8, 14, 17 and 38 of the QFC Employment Regulations 2020.

The Court of First Instance had ordered the Employer to pay the Employee 494,679.00 QAR in compensatory damages for loss of pay and other compensation to which the Employee was entitled under the contract of employment, and interest at a rate of 5% per annum from 14 December 2021 until payment.

The Employee was also awarded 15,000.00 QAR in moral damages for the Employer's failures to give proper consideration to her grievances and for their failure to comply with the requirements of the contract of employment.

COURT OF APPEAL DECISION

The Employer then appealed the decision and the Court of Appeal considered whether the Employer was entitled to dismiss the Employee in circumstances in which she had been absent from her employment without legitimate cause for seven days unless a disciplinary interview or disciplinary hearing was held.

The Court of Appeal upheld the judgment at first instance that seven days' consecutive absence from work without legitimate cause would be grounds for the Employee's dismissal in accordance with the terms of her employment contract.

However, it also found the Employer was in breach of their employment contract by failing to follow their own HR policy.

The Employer had failed to carry out a proper internal disciplinary exercise to determine if this conduct justified her Employer to summarily to dismiss her, and they had also failed to keep proper records of their actions.

The dismissal was therefore unlawful.

The finding of the Court of Appeal that the Employer would have been entitled to terminate the Employer for cause, given her seven days' consecutive illegitimate absence from work, had three consequences.

Firstly, the Court of Appeal reduced the judgment sum which had been ruled at first instance by the amount of the Employer's salary in lieu of notice (which was 230,000 QAR).

It also ruled the Employee would not be entitled to moral damages for injured feelings of QAR15,000. Then finally, and for the same reason, they ruled end of service gratuity payments were not due, pursuant to Article 61 of Qatar Law No. 14/ 2004.

Therefore, the judgment amount awarded to the Employee was reduced from 509,679 QAR to 264,342 QAR.

THE DECISION'S IMPORTANCE - THE RACIAL DISCRIMINATION ISSUE

At the Court of First Instance this was the first time the issue of a race discrimination claim was heard by the QICDRC courts, under Article 15 of QFC Employment Regulations.

The court looked at both whether there were specific facts amounting to adverse treatment and whether there were burdens, obligations or disadvantages imposed on the Employee - or opportunities, benefits and advantages withheld from her - because of her race.

For example, it looked at whether there had been other reasons for her failure to be promoted.

It was important for the Employer to maintain, and to act on, policies which were fair. If they did not, the court might infer discrimination of a person from a minority group had taken place.

It was also necessary for the Employee to have specific evidence of discrimination detailing specific events and witness evidence of incidents of bullying would have been helpful to prove this.

THE DECISION'S IMPORTANCE - DISCIPLINARY AND GRIEVANCE PROCEDURES

However, most significantly this case shows how important it is for Employers to have a documented disciplinary and grievance procedure in place.

This should take into account requirements in both the legislation and employment contracts governing termination.

These procedures should also include clear processes governing the termination of employment contracts.

The procedures should always be followed exactly in all cases, even in a situation such as was the case here where the Employee had already voluntarily agreed to leave the company and their employment was due to end shortly.

In addition, Employers should also be aware of the importance of strictly complying with the procedure they have in place, even in circumstances, as was also the case here where the dismissal of an employee for cause is justifiable.

THE DECISION'S IMPORTANCE - MORAL DAMAGES AWARDS

This case is also a useful analysis on what kinds of circumstances might attract an award of moral damages.

HR PROFILE

INHOUSE LEGAL COUNSEL – INVESTMENT



Labour Risk

Rachael Sands Senior Legal Counsel - Labour and Employment from Abdul Latif Jameel (ALJ) who specialises in employment law and global mobility explains her approach to addressing labour risk.

ABOUT YOU

I am a Senior Legal Counsel who specialises in employment law and global mobility. I am currently studying for a Masters of Law at Kings College, University of London, which has helped me to gain skills in new technologies and methods. I am originally from Cambridge in the UK but after working in private practice in the UK and Ireland, I relocated to the UAE in 2017 and have worked in this jurisdiction for over six years. My first in-house role in Dubai was with a global staffing and manpower provider with clients in the oil and gas and renewable energy industry. I then joined a subsidiary of the International SOS Group, which provides medical capability in complex operating environments like Afghanistan, Ukraine and Somalia and enables government, military, and humanitarian clients to deliver on critical missions. I am currently employed at ALJ where I work closely with the HR function, the legal solutions centre and the compliance team to manage employment and labour risks globally.

YOUR ROLE

ALJ is a family-owned diversified business which was founded in Saudi Arabia in 1945 and represents some of the world's leading brands. We have the largest vehicle distribution network in Saudi Arabia and comprehensive experience of the automotive sector across the region. ALJ is an exclusive distributor for Toyota and operates across seven core business sectors and has a presence in over 30 countries. It has deep roots in the Middle East, North Africa and Turkey, and over 11,000 employees globally. It is dual headquartered in Dubai and Saudi Arabia. Working as a Senior Legal Counsel requires commercial awareness and the ability to balance risk and operational success. You are expected to really add value outside the day to day requirements of your role. What I enjoy most is delivering compliant workforce solutions. For me, identifying and addressing an organisation's labour risks starts with understanding the company's goals, objectives and their HR operations. One of the biggest challenges in the Middle East is that employment laws are continually evolving and changing. Organisations have to keep up with the latest employment law developments and make sure they have updated any



relevant policies and procedures. Those who fail to do this risk employment disputes and litigation. I take a proactive approach to risk management by staying up to date on relevant laws, regulations, and industry standards which could potentially affect our business operations. This allows me to identify potential risk areas before they become an issue.

RELEVANT LEGISLATION CHANGES

ALJ deploys staff globally but my work primarily covers the UK, EMEA, China and Singapore. The employment regulations which govern areas such as compensation, benefits, leave, working hours and other aspects of the employee-employer relationship can vary greatly between these jurisdictions so it is important to be continuously reviewing developments in these areas, to ensure we stay competitive in the market and retain key talent. In the UAE, there have been a number of significant changes to employment law in the last year on areas including the introduction of family leave entitlements, discrimination law changes, changes on termination of employment and to non-compete provisions. For example, a number of new categories of leave were introduced in the UAE last year; including parental leave. This has been a welcome move towards introducing family-friendly employment rights in the UAE and will be key to improved retention of talent in the region. However, it has also meant employers operating in the UAE have had to take steps to ensure

PRACTITIONER PERSPECTIVE



Lee Rogers
Senior Associate
Clyde & Co

Lee Rogers of Clyde & Co explains the legal position and best practice on conflicts of interest in the UAE, Qatar and KSA.

In an employment context, a conflict of interest is generally a situation in which an employee's personal, financial or other interests conflict with those of their employer. These conflicts can take various forms.

For example, they can involve having outside employment, starting

a business which competes with their employer's business or even situations where an employee has an interest in another business, e.g. because they are a shareholder in or have lent money to a competitor business. Commercial opportunities may also be relevant, such as taking personal advantage of an opportunity discovered through employment. Family and close personal relationships may also be relevant, e.g. if the employee has been involved in decisions on the appointment or promotion of a family member. The type of organisation the employee works for can also be relevant to a conflict of interest. For example, a government body, a multinational corporation and a family business will all have different definitions of what amounts to a conflict. The key concern is that a conflict of interest might result in an employee making poor decisions which are not in the employer's best interests and could negatively impact on the reputation, credibility and trustworthiness of the employee and employer. Even if there is no actual conflict of interest, the mere perception of one can be just as damaging for both the employee and employer.

Neither the UAE Labour law (Federal Decree-Law No. 33/2021), KSA Labour Law (Saudi Arabia Cabinet Decision No. 219/1426) or the Qatari Labour Law (Qatar Law No. 14/2004) impose any specific legal requirements for employers to include a provision on conflicts of interest in employment contracts. However, Article 44(9) of Federal Decree-Law No. 33/2021 does recognise the seriousness of this issue and states an employer may summarily dismiss an employee who has illegally exploited their position to obtain results and personal gain. Article 80(8) of Saudi Arabia Cabinet Decision No. 219/1426 also allows employers to summarily dismiss an employee if it is proven they have taken advantage of their position in an illegal manner in order to obtain personal gain. In addition, employees who hold

certain managerial positions such as those named on company registrations and in articles of association, board members and directors need to be aware of their specific duty to refrain from conflicts of interest, as a breach in these cases could potentially attract personal, civil and criminal liability.

Given the risks associated with an actual or even a perceived conflict of interest, it is important to try to prevent conflicts of this type from arising or, at very least, to be able to appropriately manage these conflicts when they arise. One way of achieving this is to include specific provisions in the employment contract, particularly for senior employees.

One way this can be done is by drafting an outside interest clause for inclusion in the employment contract. This type of clause seeks to manage the risks associated with an employee being engaged, concerned or interested in any other business outside of work by requiring the employer's express written permission before this can happen.

Another alternative way is for an employer to include a warranty in the contract of employment that the employee will not put themselves in a position which will create an actual or perceived conflict of interest. Some employers require their employees to disclose to them throughout their employment (and not just on initial appointment) any circumstances which could amount to an actual or perceived conflict of interest.

A breach of the above clauses by the employee would amount to a breach of contract of employment and could potentially lead to disciplinary and legal action. Even though there is no legal obligation in the UAE, Qatar or KSA to do so, many employers there also have a conflict of interest policy. These policies explain to employees what a conflict of interest is, what the employer's expectations are in relation to these conflicts and the process which is to be followed by an employee if there is an actual or perceived conflict. These policies will generally also make clear what the potential consequences are of a failure to comply with them, for example if a breach could result in potential disciplinary and legal action. Putting in place clear contractual terms and a conflict of interest policy can not only help to prevent conflicts of interest from arising in the first place but they also provide tangible evidence of an employer's commitment to good governance.

compliance with these new or amended provisions. This has generated a lot of activity for HR teams and considerable work was needed to convert entire workforce employment contracts to fixed term contracts and update all the relevant HR policies.

RELEVANT GLOBAL CHANGES

In my role, it is also important to keep with international and regional employment law changes. For example, there are a number of changes in UK employment

law expected in 2024 as the government is currently looking at potential changes to retained EU law, following Brexit. It remains to be seen exactly what these will be but it is likely they will have a significant impact in areas including working time, transfer of undertakings, employment of agency workers, part-time workers and fixed-term employees. As a result, global HR teams with UK operations will have to keep a close eye on these areas of legislation in the next year.

MOVES AND CHANGES

A ROUND-UP OF BUSINESS NEWS, APPOINTMENTS AND PROMOTIONS

THE POWER OF ENGAGEMENT

The outsourcing and technology services company, VFS Global has appointed Tariq Ahmad as its first Head of Empowerment and Inclusion for the UAE. His new role will include responsibility for the company's Emiratisation strategy, and policy as well as putting in place procedures to facilitate skilling and employment opportunities. In addition, Ahmad will be responsible for the selection, retention and career development of UAE nationals within the company, as well as facilitating their integration into the company's workforce both in the UAE and globally. His work will also focus on improving multi-cultural awareness within the company and developing its diversity, equality and inclusion efforts. Ahmad has extensive experience of human resources work and in the past has led Emiratisation programmes and undertaken recruitment, competence development, organisational design and labour relations work in a number of organisations including Emirates Airlines and Al Futtaim. VFS Global works across five continents and has headquarters in both Zurich in Switzerland and Dubai in the UAE.



EXPERIENCE PAYS

Nelly Boustany has been appointed Chief Human Resources Officer at Network International, a company which provides technology enabled payment services to merchants and financial institutions in the Middle East and Africa. Nelly will oversee the Group's human resources functions across both regions. She will also lead the development and implementation of its human resource strategy and programmes. Previously Nelly worked at SAP, where she led the HR Value Advisory team in EMEA South. She has over two decades' HR leadership experience with reputable global organisations in the MENA region and other past employers have included Siemens and Nokia Networks.

GOING DIGITAL

du, which is part of the Emirates Integrated Telecommunication Company (EITC) has appointed Fatema Al Afeefi as their new Head of Employee Experience and HR Digitalisation. Fatema will be responsible for leading strategic initiatives in order to create positive employee experiences and help drive the company's digital transformation. In the past she has worked

for companies including HSBC, Etihad Airways and Emirates Airlines where she developed and implemented various human resource strategies which were designed to drive employee engagement and encourage innovation. du has a dedicated learning and development team that prioritises the training and upskilling of UAE nationals. Through programmes such as the Leadership Academy, they provide Emirati employees with the necessary skills and knowledge to excel.

APPY DAYS

Monir Azzouzi has joined Careem Dubai as Senior Director of People Engagement. Careem describes itself as the Middle East region's 'everything app' and provides wide ranging delivery and taxi services. Previously Azzouzi worked at a firm he co-founded called GoToko, which was a joint venture between GoTo

Group and Unilever. He has more than two decades' experience of work in HR, sales and marketing in Europe and Asia and in the past has won a number of HR awards for his work.

CHECKING IN

Linda Jacob has joined Radisson Dubai DAMAC Hills' HR team as manager. She is originally from Bangalore and has an MBA in human resources. Throughout her career she has gained experience as a senior HR leader across a variety of types of hotels in both India and Dubai. In her new role she will oversee the human resources and learning and development functions for the hotel.

TAKING OFF

Gulf Air Group Holding (GFG) has appointing Sawsan AlMutawa as Acting Chief People Officer. She has a proven track record of working for over two decades in HR in companies of various types in Bahrain and other GCC countries. She will be responsible for nurturing leadership, improving productivity and optimising efficiency within the Group.

SHIFTING SANDS

Yasser Al-Dhaheeri has been promoted to director of HR at Six Senses Southern Dunes. Six Senses Southern Dunes will be the first resort to open as part of Saudi Arabia's Red Sea Project. To date Al-Dhaheeri has been an integral part of the property's team and has led the human resources department through the pre-opening phase. He has an educational background in engineering as well as significant finance experience. His past experience has included work in leading international five-star hotels in various locations which has given him an understanding of the labour market and how to succeed in human resources.

OTHER CHANGES

Ahram Security Group: The Egyptian-based company has promoted Marwan Ali as HR and Corporate Project Management Office Director.

Hilton: Marwan Fadel has been appointed as Regional Director of HR for Saudi Arabia and the Levant at Hilton.

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@lexis.ae



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Death in service



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Ministerial Decision No. 496/2023 on the payment of the entitlements to those nominated or appointed by a deceased employee has been recently issued.

Under Article 15(1) of Federal Decree-Law No. 33/2021 (the UAE Labour Law) if a worker dies while in service the employer must hand over to the worker's family any remuneration or financial entitlements due to the worker, and the worker's end-of-service gratuity entitlement, within not more than 10 days from the date of the Worker's death, or from the date the Employer became aware of their death.

Employers are also required to bear all costs incurred in preparing and transporting the deceased worker's body to their home country or place of residence if their family has requested this.

Article 15(2) of Federal Decree-Law No. 33/2021 also states the worker can specify in writing the relevant person in their family to receive these payment rights. This provision only mentions that a member of the employee's family can be nominated as a receiver. Article 2 of Ministerial Decision No. 496/2023 seems to confirm this.

Some employers may worry about what will happen, if the employee is a Muslim as the statutory inheritance regulations of Sharia law apply.

Unlike non-Muslim employees, Muslim employees cannot establish a will in which they can decide exactly how their assets are distributed if they die. Sharia law defines specific proportions of their estate which must be given to particular family members.

QUESTIONS

However, Ministerial Decision No. 496/2023 applies equally to Muslim and non-Muslim employees. If the employee has specified in writing to do so, the employer will transfer the amounts owed to the appointed family member when the employee dies.

A key point is that any subsequent dispute between the heirs would not affect the employer as the payment will have been done in line with the employee's instructions.

However, it could be possible when an employer pays these amounts to a designated family member that these same entitlements have also already been assigned to another third party, for example, a bank or financial institution because of a personal loan or mortgage. In these cases, the employer could find themselves in a lengthy and unwanted civil case, if the assigned amounts were transferred elsewhere.

Under Article 4 of Ministerial Decision No. 496/2023 if these payments are not made within the required deadline the Ministry can suspend the employer's file administratively until there is evidence of payment.

Therefore, employers need to be clear and have a policy on how they should act in these circumstances as not making transfers because you are unsure to who and how to hand the money over will not be seen as an acceptable excuse.

BEST PRACTICE

When an employer accepts instructions from an employee on the designated family member to receive these amounts on their death, under Article 15(2) of Federal Decree-Law No. 33/2021 they should ensure these are clear. The required information for this type of instruction should include the contact details and bank details of the designated person. They should also ensure the employee confirms in writing that no assignments of salaries and/or end of service benefits have been previously made to a third party. The employee should also be instructed to inform the employer of any later assignment after the instruction is issued. If the amounts are not claimed by the designated person or there is a difficulty in identifying and locating them or the family, the amounts should be paid into the court treasury within the deadline (see Article 3 of Ministerial Decision No. 496/2023) to avoid any negative consequences for the employer.

Although the law specifies what happens on the delivery of this money to family - it does not actually define who family is in this context. They could be a specific person such as a wife, brother, sister, parent or a group of heirs.

The employer may not be clear about who these people are, especially as is often the case in the UAE, the employee may be a single expatriate with no family living in the country, so it will make it more difficult to identify and track them down within the deadline. It can be a good idea, to make new joiners aware of the option to specify a designated family member to act as a receiver, and if this is not done to pay these amounts into the court treasury within the required time limit.

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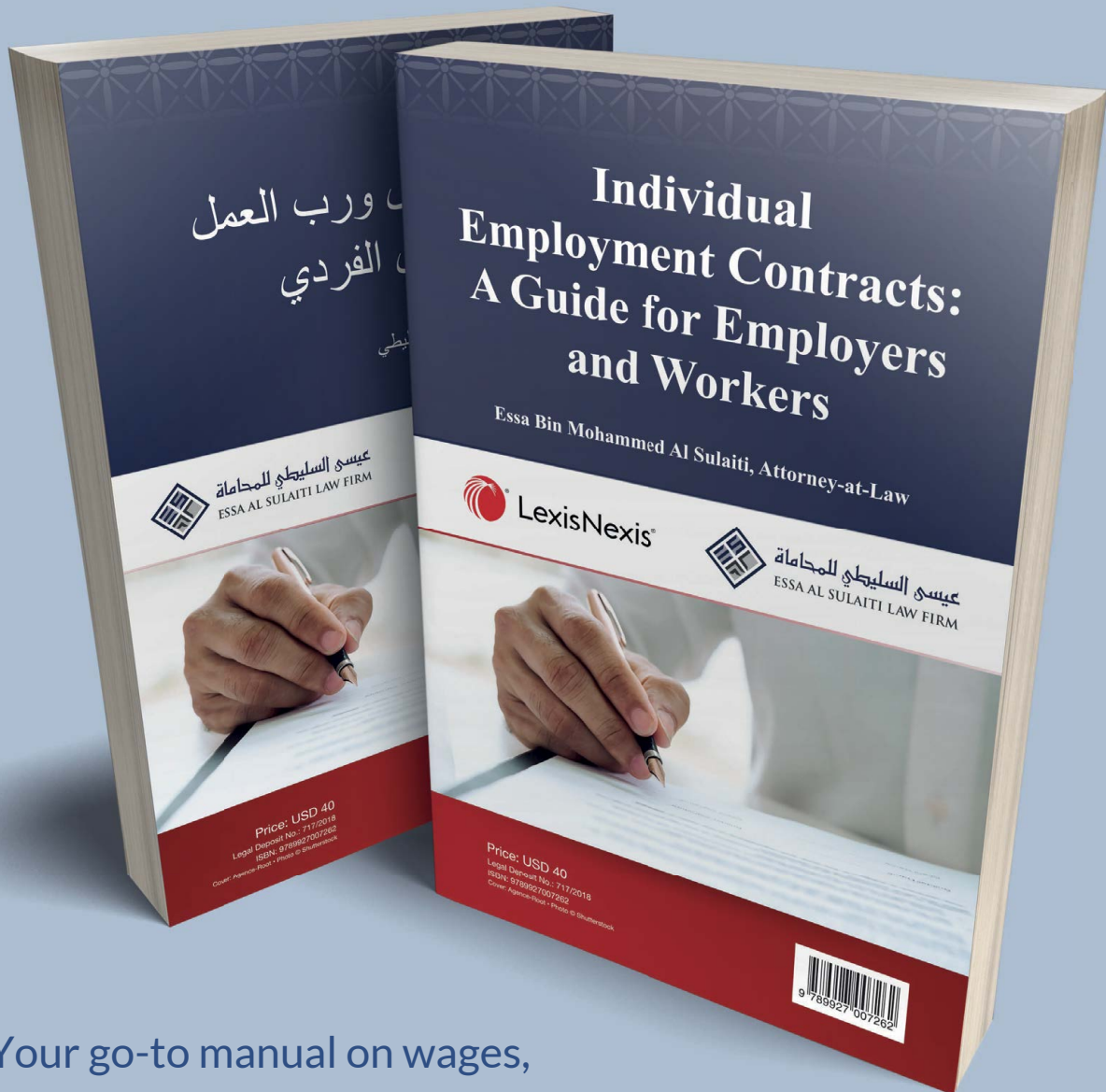
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