



GUIDE TO GOING GLOBAL EMPLOYMENT

United Arab Emirates

INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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UNITED ARAB EMIRATES



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LEGAL SYSTEM, CURRENCY, LANGUAGE

Federal and civil legal system; employment matters are governed by Federal Law No. 33 of 2021 (the Labor Law), as amended. There are additionally relevant provisions in the Penal Code and Civil Code. The official currency is the Dirham (AED). The official language is Arabic.

In addition to the Federal system, the United Arab Emirates contains around 44 economic free zone areas where goods and services can be traded. The majority of the economic free zones are subject to the Labor Law, with some of the free zones, such as the Dubai Development Authority, subject to additional labor law provisions. The DIFC and ADGM free zones are governed by 2 separate labor laws which are specific to the DIFC and ADGM entities and which differ from the Labor Law.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in the UAE. It must have at least a branch or representative office to engage any employees, including local nationals. This is because all employees require work permits – or employment ID cards in the free zones – in order to work in the UAE, which requires a local sponsor. Alternatively, a foreign individual may have a secondment arrangement, whereby a local entity sponsors the employee for their work permit, but the individual is then seconded out to the foreign entity or provides services under a services agreement. Secondments are expressly provided for in the DIFC, although not formally recognized in the Labor Law.

Individuals who are employed outside of the UAE are permitted to live in the UAE legitimately with a remote work visa. This 1-year visa (which is renewable) allows expatriates to enter the UAE under self-sponsorship and work remotely from the UAE. To apply, an employee must provide proof that they work remotely for an organization outside of the UAE and that they receive a monthly income of at least USD3,500.

PRE-HIRE CHECKS

Required

Foreign employees must receive prior approval from the Ministry of Human Resources and Emiratization (MOHRE – formerly, the Ministry of Labor) or relevant free zone authority and the immigration authorities before they may be hired on local employment contracts. The level of background checking and screening carried out by the UAE authorities varies according to the nationality of an individual. As part of this approval process, employers registered with MOHRE are required to submit a completed offer letter, signed by both parties, using MOHRE's standard form offer letter, as well as a bilingual MOHRE standard form employment contract. The terms of the employee's employment contract cannot differ from the terms of the offer letter.

Employers operating in most free zones may be required to enter into a bilingual standard form free zone employment contract with the employee which will then need to be filed with the relevant free zone authority. Some of the free zones allow employers to submit their own employment contract rather than the form prescribed by the free zone authority.

Permissible

Generally, employers in the UAE are not able to obtain the same level of information from background checks as they can in other jurisdictions, and in most cases, the employees themselves will be required to provide this information.

IMMIGRATION

In order to legally work and reside in a particular emirate, all employees except GCC and UAE nationals – who require work permits only – are required to have residence visas and work permits under the sponsorship of their employers, which must have an entity established in the UAE. Alternatively, married women may work under the sponsorship of their husbands or vice versa. In free zones, employee ID cards are issued in place of work permits. Additionally, the free zone authority, rather than the employing company, acts as the employee's sponsor.

When an employee is only required to visit or work in the UAE for a short period of time, alternative permits and visas that may be applied for, including business visit visas and mission visas.

Golden visa holders are not required to have a residence visa provided by their employer as the golden visa itself is evidence of residency; however, golden visa holders must have a work permit from their employer.

HIRING OPTIONS

Employee

All employees (apart from those regulated by the DIFC or ADGM) must be employed on fixed-term contracts. Those who are currently on unlimited term contracts must convert to fixed term by no later than December 31, 2023.

Part-time workers are recognized under the Labor Law as those who work for one or more employers for a specified number of working hours or days designated for work. In the DIFC, part-time workers are those who work less than 8 hours per work day, or less than 5 work days per week, or their terms of employment do not stipulate full-time employment.

In the Labor Law, DIFC and ADGM, part-time workers are entitled to employment rights on a pro-rated basis.

Independent contractor

There is a limited concept of a consultant, unless individuals have established their own professional license and business. This is due to the requirement for employees to have sponsorship, which is generally obtained by the employer. An independent contractor would need to ensure that all necessary immigration and visa permissions are in place entitling them to work in the UAE.

The new Labor Law (effective February 2, 2022) introduced a new freelance work permit. The freelance permit “is issued to individuals wishing to undertake independent self-employment (without being sponsored by a specific organization or employer in the State and without the condition of having a valid employment contract, whereby the natural person earns money by providing his services for a specific period or performing a task or providing a specific service, whether to individuals or establishments, whereas this natural person is in no way a worker for those individuals or establishments.” This means that freelancers will not be subject to the minimum employment requirements set out in the Labour Law as they are self-employed.

Under Article 8 of the Executive Regulations to the Labor Law, “Freelance is an independent and flexible work arrangement, whereby the natural person generates income by providing his services for a specified period of time or performing a task or providing a specific service, whether for individuals or establishments, whereas this natural person is in no way a worker for those individuals or establishments.”

While the new law came into effect in 2022, it is not yet possible to apply for a green visa for freelance work. We expect this situation to change shortly.

Agency worker

The Labor Law states that engaging in the activity of temporary employment and outsourcing is considered engaging in the activity of employment agencies. Temporary employment and outsourcing are defined as employing an individual with the intention of making them available to a third party, and the employment relationship becomes a direct one with the agency that outsourced the individual's services to the third party.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Employers (other than those situated in a free zone) are required to issue a MOHRE standard form offer letter containing the key terms and conditions of employment to employees.

Employees are then required to sign an MOHRE government employment contract to obtain their work permits or employee ID cards and – in the case of non-UAE/GCC nationals only – residence visas. The MOHRE employment contract must be in English and Arabic. The employment contract must reflect exactly the terms of the offer letter previously provided to the employee. Any changes must be approved by the MOHRE and the employee and must be to the employee's benefit; otherwise, it is unlikely they will be approved.

Similarly, employers in the free zones may be required to issue a bilingual free zone standard form employment contract to employees for the same reasons as above.

The standard form contracts normally contain limited information, and it is common practice for employers to issue supplemental employment terms to employees based on an employer's standard terms.

Probationary periods

Probation periods are permissible. Under the Labor Law, the maximum duration is 6 months, during which time employment may be terminated on 14 calendar days' notice, increasing to 30 calendar days' notice on the part of the employee where the individual is leaving to join another UAE employer. If an employee leaves during probation, the employer may be able to recoup some of the recruitment costs from the new employer in certain circumstances.

In the DIFC, any applicable probation period can be for a maximum of 6 months except in circumstances where the employee is employed for a fixed term of 6 months or less, in which case the applicable probation period may not exceed more than half the period of the fixed term. The minimum notice period for employees who have a period of continuous service of less than 3 months is 7 days.

Finally, in the ADGM, probation periods must not exceed 6 months, and either the employer or the employee may terminate the employment contract without cause with 1 week's notice during the probation period.

Policies

If an employer wants to rely on a disciplinary policy and procedure document onshore, it is technically required to first lodge this with the MOHRE. In practice, however, many employers do not lodge their disciplinary procedures. Employees should be provided with any relevant staff handbook and the employer's policies, if applicable, on commencement of employment.

The Labor Law prescribes obligations on employers to ensure that certain health and safety standards in the workplace are met. Establishments that employ 50 or more workers are required to set rules regarding the organization of work, such as the regulation of work instructions (including working hours, rest days, official holidays and the necessary measures to avoid work injuries or fire hazards, penalties, promotions and rewards, and the procedures for terminating employment relationships.

In addition, in mainland Dubai, the DIFC and ADGM, employers are required to obtain and maintain health insurance cover for its employees. For employers in mainland Abu Dhabi, this obligation is extended to the employee's immediate family (1 spouse and up to 3 dependent children under the age of 18).

Third-party approval

For employers registered with MOHRE, the government employment contract must be lodged with MOHRE to obtain the employee's work permit and residence visa. Most free zone authorities additionally have a standard form of contract used to obtain the employee's work permit and residence visa, although some free zones allow employers to submit their own employment contract. In practice, both onshore and in the free zones, employers still use their own supplemental contracts in addition to the standard MOHRE and free zone standard forms. Employers in a free zone must obtain the approval of the free zone authority to hire new employees.

LANGUAGE REQUIREMENTS

Pursuant to the Labor Law, all employment contracts and records must be in Arabic. In practice, however, English documentation is used in many businesses. The MOHRE standard contract is now issued in dual English and Arabic and dual with other popular largely South Asian languages. Where a foreign language is used in addition to Arabic, the Arabic version will prevail.

In free zones, the Arabic language requirement is not always enforced, although employment documentation must be in a language that the employee can understand.

In the event of a dispute, any document used in the courts must be translated into Arabic and, again, the official translation in Arabic will prevail.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All. Additional rights are also available to young workers (ie, those aged 15 to 18) and women.

Working hours

Eight hours per day or 6 hours during Ramadan. This equates to a 48-hour maximum working week, Monday to Friday (inclusive), or 36 hours during Ramadan. An employee may not work for more than 5 consecutive hours without a break or breaks of not less than an hour in total.

For employees in the DIFC or ADGM, their working time shall not exceed an average of 48 hours for each 7-day period. During Ramadan, in the DIFC a Muslim employee shall not be required to work in excess of 6 hours a day, and, in the ADGM, a Muslim employee who observes the fast shall have their normal working hours reduced by 2 hours each day.

Overtime

An employer may instruct an employee to work overtime over the normal working hours provided it does not exceed 2 hours per day, unless the work is essential for preventing a substantial loss or serious accident or for eliminating or relieving the impact of a serious accident. In any case, the total working hours must not exceed 144 every 3 weeks. Different increments apply depending on when the overtime occurs.

The overtime and maximum working time provisions in the Labor Law do not apply to employees holding senior executive managerial or supervisory positions.

In the DIFC and ADGM, an employee's working time shall not exceed an average of 48 hours for each 7-day period, unless the employer has obtained the employee's consent in writing. In the ADGM, employees are entitled to overtime payments so long as the extra hours worked are not excessive.

Wages

At present, there is no minimum wage for employees in the UAE save in respect of Emirati employees, where a low minimum threshold of AED5,000 per month applies for employees (ie, degree holders) to count for Emiratization purposes. Presently, employees must earn at least AED4,000 per month or AED3,000 per month plus accommodation in order to sponsor dependents on their visas.

Vacation

Under the Labor Law, the minimum is 2 calendar days per month where the employee's period of service is more than 6 months but less than 1 year; 30 calendar days per year where the employee's period of service is more than 1 year. This equates to 22 working days.

In the DIFC and ADGM, an employer shall give an employee a minimum paid leave of 20 business days per year to be accrued pro rata for employees who have been employed for at least 90 days.

Sick leave & pay

Under the Labor Law, an employee is not entitled to statutory sick leave during the probationary period; however, employers often provide leave. Employees are entitled to 90 calendar days' sick leave per year of service thereafter (15 days at full pay, 30 days at half pay and the remaining days without pay).

In the DIFC and ADGM, an employee is entitled to 60 consecutive or intermittent days of sick leave in a 12-month period (10 days at full pay, 20 days at half pay and the remaining days without pay).

Maternity/parental leave & pay

Under the Labor Law, a female employee is entitled to 60 calendar days' maternity, with the first 45 days at full pay and the remaining 15 at half pay, irrespective of length of service. A pregnant employee may take a further 45 consecutive or non-consecutive days of unpaid leave if the employee falls ill as a result of her pregnancy or the delivery of her baby.

Male and female employees are entitled to a further 5 working days of paid leave to be taken within 6 months of the birth of the child.

In the DIFC and ADGM, a female employee is entitled to up to 65 calendar days' maternity leave, with the first 33 days at full pay and the remaining 32 days at half pay, provided she has been continuously employed for at least 12 months.

Other leave/time off work

Under the Labor Law, employees may be entitled to leave for other purposes such as bereavement leave, study leave and/or a sabbatical.

In the DIFC and ADGM, employees may be entitled to Hajj leave, paternity leave and time off for ante-natal care and adoption proceedings.

DISCRIMINATION & HARASSMENT

Since August 2015, legislation has been in force that was primarily designed to combat religious contempt and intolerance. Under the new Labor Law, discrimination is defined as any distinction, restriction, exclusion or preference on the basis of one of the protected characteristics (religion, creed, doctrine, sect, caste, race, color or ethnic origin). This new discrimination law does not remove discriminatory provisions in existing law, such as positive discrimination in favor of national employees, or any advantage, preference or benefit upon women, children, disabled persons, the elderly or others prescribed by any other legislation. Where an employee successfully proves that they have been discriminated against, the employee is not entitled to any compensation personally, but instead their employer may be subject to financial penalties which could range from AED5,000 to AED1 million.

Under the new discrimination legislation, it is important to note that the representative, director or agent of a legal entity may be held vicariously liable for offenses under that law committed by employees of that entity. In order for vicarious liability to arise, the offense must have been committed with the knowledge of the representative/director/agent, and the employee must have been acting in the entity's name or to its interest.

There are also specific anti-discrimination provisions in the DIFC and ADGM.

Under the Labor Law, a woman must be paid the same as a man if she performs the same work.

WHISTLEBLOWING

Whistleblowers are not specifically recognized under the Labor Law.

However, under the DIFC Operating Law No.7 of 2018, those who make good-faith disclosures in accordance with the law shall not be subject to any legal or contractual liability; subject to any contractual, civil or other remedy; dismissed from employment; or otherwise subject to any discrimination as a result of their disclosure.

Similarly, the ADGM has “Guiding Principles on Whistleblowing” which sets out its policy on non-retaliation and discrimination against those who blow the whistle.

BENEFITS & PENSIONS

Under the Labor Law and in the ADGM, the employer is required to enroll and make contributions and employee deductions for the state pension funds for UAE national and GCC national employees. All other employees are entitled to receive an end of service gratuity on termination based on their full earnings, calculated by reference to age and length of service, unless the employer contracts out of these arrangements with its employees by providing a savings scheme or pension scheme.

Employers in the DIFC are required to register employees with a mandatory savings scheme. Employers may either register with a plan established by DIFC or establish their own plan, subject to the requirements of the DIFC.

Dubai and Abu Dhabi each have their own health insurance laws that apply across the respective emirates, including in the free zones, and which require all employers to provide compulsory health insurance to every employee. In Abu Dhabi, mandatory cover for employees extends to each employee's dependents (ie, a spouse and up to 3 children under the age of 18). In Dubai, coverage for dependants is not compulsory; however, it is common practice to extend cover to include family members.

DATA PRIVACY

2021 saw a new data privacy law issued in mainland UAE, which borrows certain concepts from the GDPR. Both DIFC and ADGM have their own data laws.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No automatic transfer principles and no laws covering business transfers. Employees transfer through termination and rehire in an asset deal. Contracts of employment, residence visas and work permits must be addressed.

EMPLOYEE REPRESENTATION

No employee representation exists. Membership in an unauthorized trade union and industrial action are both criminal offenses for which an individual could be fined and imprisoned, and, in the case of expatriate workers, deported.

TERMINATION

Grounds

Termination is possible on these grounds: by agreement, on the expiry of a fixed-term contract, through resignation, through incapacity or death, through dismissal with notice provided it is for a legitimate reason or through summary dismissal by reason of any of the grounds listed at Article 44 of the Labor Law.

In the DIFC and ADGM, an employer may terminate an employee with immediate effect for cause in circumstances where the conduct of one party warrants termination and where a reasonable employer or employee would have terminated the employment as a consequence thereof.

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

Employees who have not exhausted the statutory sick-leave entitlement are protected from dismissal on grounds of health, until the full sick-leave entitlement has been taken.

In addition, under the Labor Law, employees may not be provided with a termination notice while on any of the leaves prescribed under the Labor Law (sick leave, annual leave, maternity leave, parental leave, study leave and bereavement leave). Notice will begin on the first day following the day prescribed for the employee's return from leave, unless both parties agree otherwise.

Third-party approval for termination/termination documents

UAE nationals are entitled to higher protection from dismissal. As part of such additional protection, approval from MOHRE is recommended before the employment of a UAE national can be terminated.

Mass layoff rules

No mass layoff rules exist.

Notice

Under the Labor Law, there is a statutory minimum notice of 30 days and a maximum permitted notice of 3 months. There is a minimum notice period of 14 days during an employee's probation period.

In the DIFC, the minimum notice periods are:

- 7 days if the period of continuous employment is less than 3 months
- 30 days if the continuous employment is over 3 months but less than 5 years and
- 90 days if the continuous employment is in excess of 5 years.

In the ADGM, where the employee has been continuously employed for 1 month, the minimum notice periods are:

- 7 days if the period of continuous employment is less than 3 months and
- 30 days if the continuous employment is 3 months or more.

Statutory right to pay in lieu of notice or garden leave

Depends on contract terms. However, it should be noted that Article 62(4) of the DIFC law contains strict provisions in relation to payment in lieu of notice.

Severance

Unless terminated under Article 44 of the Labor Law, employees are entitled to salary and benefits to the termination date, notice (or payment in lieu), payment in lieu of accrued but untaken annual leave, the cost of a flight/air ticket to repatriate the employee to their home country (unless (i) dismissal is attributable to employee and the employee has the funds to pay their own costs; or (ii) the employee has obtained alternative sponsorship to remain in the UAE), an end-of-service gratuity payment and reimbursement of unpaid business expenses. In case of employer termination, the end-of-service-gratuity is computed at 21 days' pay per year of service for the first 5 years of employment, provided the employee has reached a year's service (pay to include basic pay only) and 30 days' pay for each subsequent year. Such payment cannot exceed 2 years' pay. The position is the same in the ADGM.

In the DIFC, with regards to end-of-service gratuity, the DIFC Worker Workplace Savings Scheme known as DEWS replaced the end-of-service gratuity on February 1, 2020. Therefore, workers in employment before February 1, 2020 and who have at least 1 year's continuous service with their employer on termination can either be paid the end-of-service gratuity accrued before the implementation of DEWS or on termination, or have their accrued gratuity transferred into DEWS.

POST-TERMINATION RESTRAINTS

It is permissible to include restrictive covenants in the employment contract. The principles which govern the enforceability of restrictive covenants in the UAE are similar to those in other jurisdictions in that they must not be unreasonable or go further than necessary to protect the legitimate interests of the employer.

In practice, restrictions run the risk of being held to be unenforceable if they are a) for a duration of longer than 6 months and/or b) applicable in a territory wider than the emirate in which the employee was working.

Restrictive covenants are generally difficult to enforce in the UAE and injunctive relief (ie, a mandatory order to stop doing certain action) is not available for a breach under the Labor Law. Any remedy is restricted to damages only.

Parties are permitted to include a liquidated damages clause in the employment contract as it is not possible to obtain an injunction onshore in the UAE, although there are rules against "exorbitant" penalties being applied in employment contracts under the Civil Code. It is possible to seek a ban on the employee's residence visa if they are in breach of a restrictive covenant which would prevent them from working in the territory of UAE although in practice this is seldom achieved.

Injunctive relief can be obtained in DIFC and ADGM.

Non-competes

Typically no longer than 6 to 12 months.

Customer non-solicits

Typically no longer than 6 to 12 months.

Employee non-solicits

Permissible.

WAIVERS

Waiver agreements are commonly used, but their enforceability has not been tested by the UAE courts. In theory, there is a principle of estoppel issue which can apply (ie, an employee should not be able to deal with a specific issue in a legal settlement or proceeding for a second time).

REMEDIES

Acts of discrimination

Potential penalties for breach of anti-discrimination provisions under the new law are imprisonment for a minimum of 5 years and/or a fine of a minimum of AED5,000 and a maximum of AED1 million.

Arbitrary dismissal

The maximum award is 3 months' pay (to include salary and benefits/allowances).

No concept of arbitrary dismissal in DIFC or ADGM.

Failure to inform & consult

Not applicable for this jurisdiction.

CRIMINAL SANCTIONS

Criminal sanctions can be imposed for a variety of reasons, including but not limited to the setting up of a trade union, breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.

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