



GUIDE TO GOING GLOBAL EMPLOYMENT

Saudi Arabia



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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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SAUDI ARABIA



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LEGAL SYSTEM, CURRENCY, LANGUAGE

Shariah law is the applicable law in the Kingdom of Saudi Arabia (Saudi Arabia or KSA). Despite being a member of the Gulf Cooperation Council (GCC), Saudi Arabia is generally not required to implement the relevant GCC laws except where it enacts them into law through domestic legislation. Saudi Arabian Riyal (SAR) is the national currency. Arabic is the official language, though English is increasing in recognition.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Only Saudi registered entities may hire employees, locals or expatriates in the KSA. Non-GCC employees must have a sponsor for immigration purposes.

An employer must set up local payroll in Saudi Arabia.

PRE-HIRE CHECKS

Required

Immigration compliance for all non-GCC employees.

Permissible

Criminal and credit reference checks are only permissible for specific roles (eg, certain finance positions) and are subject to proportionality requirements. Reference and education checks are common and permissible.

IMMIGRATION

GCC nationals can work in all the GCC states freely without the need for work visas. Employing non-GCC nationals requires a special type of visa issued by the employer who will become the sponsor of the non-GCC employee for all immigration purposes. Employers should be aware of the strict rules relating to the proportion of Saudi and non-GCC employees that may be employed under the naturalization (*Nitiqat*) rules depending on the size of the business and sector.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time.

Incidental work – that is, work that is not considered by its nature to be part of the usual activities of an employer and whose execution does not require more than 90 days – is also a valid arrangement and accrues the same rights and incurs the same responsibilities as any of the arrangements above.

Seasonal work is work that is only confined to specific, local occasions (eg, Ramadan, Eid Al-Fitr or National Day). It accrues the same rights and incurs the same responsibilities as the arrangements above.

It is important to note that, with respect to non-Saudis, all employment contracts are deemed to be for a fixed term. If the employment contract itself does not specify a definite term, the term will be the length of the employee's work visa or work permit. Saudi employees automatically become engaged on indefinite-term contracts after 3 consecutive renewals of the employment contract or when the initial and the renewed term of employment reach 4 years. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

Independent contractor

KSA Labor Law recognizes the validity of an independent contractor status so long that it is genuine and does not bear the indicia of an employment relationship (ie, no control from a party is exerted over the other with respect to performance in furtherance of the former's interests in exchange for recurring – especially fixed – payments). Hence, engagement may be subject to misclassification exposure.

Agency worker

Subject to following the legal immigration rules for non-Saudis, agency workers are permissible and have the right to equal treatment to employees in relation to pay and other benefits terms.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

The Labor Law clearly states that the employment contract must be in writing.

From a procedural perspective, employment contracts are required for all non-GCC national employees to obtain their visas. Two copies of the employment contract should be made – 1 copy to be held by each party.

The contract must follow a template issued by the Ministry of Human Resource and Social Development (HRSD or the Ministry) which contains a minimum of the name of the employer and registered address; the name, nationality and address of the employee; identification of the employee (ie, national identity card numbers for nationals or foreign passport numbers for non-nationals); the employee's salary and any allowances; a description of the employee's duties; identification of the place where the work will be performed; the date of appointment and commencement of contract; length of the contract, if applicable; annual leaves and general leaves policy (eg,

maternity and compassionate leaves); benefits and resignation rules; termination events (ie, summary and constructive dismissal); governing law and forum (which must be the KSA); and rules pertaining to employee's conduct, among others.

Both parties may incorporate additional conditions and terms that do not contradict the provisions of the Labor Law.

Probationary periods

A probationary period of up to 90 days may be agreed upon for any new employee. The probationary period may be extended, subject to the employee's written consent, but cannot exceed 180 days. During this probationary period, both parties – unless such option is restricted to 1 of them – may terminate the contract for any or no reason, and the employee has no right to contest the termination or to require the employer to re-instate them, nor any right to end-of-service gratuity (EOSG). The probationary period and its term must be included in the contract. An employee may be made to serve only 1 probationary period for the same job position, unless the parties agree otherwise, where the second probationary period is for a different position or 6 months minimum have passed since the end of the previous employment relationship.

Policies

Under the Labor Law, employers must have in place a set of work regulations, which must be prominently displayed in the workplace. Such regulations must be in Arabic and should generally follow HRSD's standard form template. The Ministry regulations are extensive and include provisions with respect to various aspects of work, including health and safety as well as disciplinary and grievance procedures.

Employers may include additional provisions in the regulations, provided they are in line with the Labor Law. Any additional provisions must be approved by the Ministry, which can take up to 60 days to approve and must be issued through a licensed attorney.

Third-party approval

No requirement to lodge employment contracts or policies with, or get approval from, any third party other than HRSD.

LANGUAGE REQUIREMENTS

Arabic is the prevailing language in KSA, though a contract may be established using another language. It is common practice in the KSA to produce a bilingual contract with the Arabic and English texts written in 1 document. In case of a labor dispute, all proceedings will be conducted in Arabic, and all documents, including the employment contract, must be submitted in Arabic. Even if the parties specify otherwise, the Arabic text will always prevail. English may be used for interpretation purposes where ambiguity in Arabic exists, though an administrative official or judge is not obligated to do so.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All.

Working hours

Employees may be required to work a maximum of 8 hours per day or 48 hours per week. There are exceptions for those employed in trade, hotels, catering, security and similar jobs where the working hours may be increased to a maximum of 9 hours per day. For Muslims, the workday during Ramadan cannot exceed 6 hours per day, or the work week cannot exceed 36 hours. There are particular requirements in relation to the hours that women can work and the industries they can work in. For example, women cannot work at night for a period exceeding 11 hours or be made to undertake dangerous work roles.

Overtime

Overtime is to be paid at the rate of the employee's wage plus 50 percent of their basic wage for an hour. Employees who hold a senior, supervisory or managerial position are not entitled to paid overtime.

Wages

There is generally no minimum wage for Saudi employees; however, in order to fulfill the Saudization requirements, a Saudi employee will be fully counted if their wage is SAR4,000 per month or above; otherwise, the employee will be counted as less than 1. Further, there are specific Saudized jobs and professions for which HRSD has set a minimum wage for Saudi nationals, such as engineering and accounting roles.

Vacation

An employee is entitled to 21 days of annual leave. Salaries must be paid prior to the employee taking their vacation. After 5 years of employment, the employee is entitled to 30 days of annual leave per year.

Sick leave & pay

An employee with a proven illness which requires the submission of satisfactory medical evidence shall be paid in full for sick leave for the first 30 days, then 75 percent of wages for the next 60 days. The employer is not required to pay the employee after 90 days of absence.

Where sickness is due to work conditions, an employee cannot be terminated within a year from the diagnosis and is to be paid fully for the first 60 days and then 75 percent for the remainder of the year, in addition to having all medical expenses funded by the employer.

Maternity/parental leave & pay

Women are entitled to fully paid maternity leave of 10 weeks commencing a maximum of 4 weeks before giving birth and 6 weeks thereafter. Paternal leave is 3 days, fully paid.

Other leave/time off work

Employees may be entitled to paid or unpaid leave for other purposes, including marriage, bereavement, paternity, exams and to perform Hajj.

DISCRIMINATION & HARASSMENT

Generally, there may be no discrimination in terms and conditions of employment (eg, as to leaves or EOSG). However, aside from the new rules below, there are few specific anti-discrimination or harassment laws. Some of the terms of the Labor Law are specific to expatriates. Provisions concerning foreign recruitment, repatriation and related matters do not apply to Saudi nationals. There are also some specific rules for female employees.

In June 2018, new anti-harassment laws took effect and provide that each private or public sector employer is required to take appropriate measures to prevent harassment in the workplace. This requires employers to follow certain procedures as stated in the law (ie, to have clear guidance and processes related to harassment complaints, and to have disciplinary procedures for harassment complaints, to confirm their validity and ensure their confidentiality).

Further, employers are required to investigate any breaches of their anti-harassment policies and the anti-harassment law, and they must not interfere with the affected employee's right to raise a complaint to the authorities regarding harassment. While the law is silent on how to publish these procedures and policies, employers must ensure their employees are aware of the relevant information.

WHISTLEBLOWING

There is no standalone whistleblowing law; however, individuals are encouraged to report non-compliant behavior or Labor Law violations to the HRSD and bribery or corruption to the National Anti-Corruption Commission.

BENEFITS & PENSIONS

Medical insurance is required for all employees, their male dependents under the age of 25 and their female dependents until they marry or until their sponsorship is transferred.

Pension is only payable for Saudi and GCC nationals. Pension is paid to the General Organisation for Social Insurance (GOSI). The total cost of GOSI insurance for Saudi nationals is 22 percent, of which 10 percent is paid by the employee and the remaining 12 percent is borne by the employer. All employees additionally receive an EOSG on termination. However, where a GCC national is working in the KSA, the applicable contribution is the rate which would have been imposed by the GCC State where the individual holds nationality.

DATA PRIVACY

The Personal Data Protection Law applies to any processing of personal data related to individuals that takes place in Saudi Arabia. General Shariah principles provide for personal data protection rules which imply that employers should include provisions in employment contracts where the employee's consent is required for the employer to use or disclose the employee's data to third parties, to the extent that such disclosures may be required.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

If the ownership of a company is transferred to a new owner, or a change takes place in its legal form through merger, partition or otherwise, the employment contracts shall remain in force, and service shall be deemed continuous. As for the employees' rights accrued for the period prior to the change, such as wages or unrealized EOSG on the date of transfer of ownership, the predecessor and the successor shall be jointly liable.

However, in the case of an asset sale, employees generally transfer through termination and rehire, but the predecessor and the successor may agree to transfer all the previous rights of the employee to the new owner with the written consent of the employee. If the employee disapproves, they may request the termination of their contract and collect their dues from the predecessor.

EMPLOYEE REPRESENTATION

Labor unions are illegal in Saudi Arabia. Workers' committees and similar organizations are also not permitted. Instead, HRSD and the Labor Courts have jurisdiction over safeguarding employment relations in the KSA. However, the Ministry is in the process of establishing the general union of Saudi workers, which will include all Saudi employees. In general, these Ministry labor unions are allowed for entities employing 100 or more Saudi employees.

TERMINATION

Grounds

If a fair process has been followed, termination is permissible on the grounds stated in the Labor Law – for example, misconduct, force majeure, constructive dismissal, winding up the business or parts of the entities activities, retirement and certain other substantial reasons, as well as the written consent of both parties.

Any termination that occurs outside of what is permissible by law and/or without following a fair process (ie, termination for redundancy without proper economic reasons) is considered unjustified termination, and the employer shall be required to compensate the employee accordingly.

Employees subject to termination laws

All.

Restricted or prohibited terminations

Termination may not be based on an employee's illness if the employee has not exhausted their sickness days, nor can the employee be provided with a termination notice during the statutory sick leave.

Further, no termination notice may be served upon an employee where the employee is on mutually agreed upon leave, compassionate leave or maternity leave, among others (ie, statutory/contractual leaves).

Third-party approval for termination/termination documents

Not required.

Mass layoff rules

According to the Labor Law, the concept of redundancy is recognized provided that business is either closing down entirely or is terminating a particular activity. Prior to this, Saudi law was silent on the issue. There are still risks, however, that termination may be deemed to be for an invalid reason in certain circumstances.

Collective redundancy of Saudi national employees is generally prohibited under the Saudi Labor Law in circumstances other than the permanent closure of the business or the declaration of bankruptcy. In all other cases, where a company has 50 or more employees, it must notify the pertinent labor office no later than 60 days before proceeding with the termination and provide a full list of the jobs being removed and all nationalities of those involved.

Notice

If the contract is for an indefinite term, either party may terminate it for a valid reason, to be specified in a written notice to be served to the other party at least 60 days prior to the termination date, if the employee is paid monthly, and not less than 30 days for others.

For fixed-term contracts, the employment terminates once the fixed term has expired. Both parties may agree on any notice period under a fixed-term contract, provided it is reasonable.

If termination is sought for an indefinite-term contract, but it did not follow the proper procedural and substantive guidelines and a specific amount of damages has not been agreed upon in the employment contract, then the party who has suffered an unjustified termination is entitled to compensation equal to 15 days of employee wages per year of service.

If termination is sought prior to the expiry of a fixed-term contract for an invalid reason and the parties did not agree on the compensation amount in the employment contract, compensation equals all wages for the duration of the remaining period of the contract. The last wage received by the employee shall serve as the basis for estimating the compensation.

In the cases of both indefinite and fixed-term contracts, the compensation amount shall not be less than 2 months' wages.

Statutory right to pay in lieu of notice or garden leave

Payment in lieu of notice and garden leave are both permissible.

Severance

EOSG is not payable before the end of the employment relationship. If the employer ends the employment, the benefit is calculated by adding ½ month's wage for each of the first 5 years and 1 month's wage for each of the subsequent years. For fractions of a year, the employee is entitled to proportionate EOSG. EOSG is calculated on the basis of the employee's last salary.

If the employee resigns, they are entitled to 1/3 of the award after service of not less than 2 consecutive years and not more than 5 years; to 2/3 if their service is in excess of 5 successive years, but less than 10 years; and to the full award if their service amounts to 10 or more years.

If an employee is called to military service or cannot work because of force majeure, they are entitled to EOSG. Female employees are entitled to EOSG if they resign within 6 months of marriage or within 3 months of childbirth.

POST-TERMINATION RESTRAINTS

Restraints that protect the employer's legitimate business interests may be enforced if reasonable.

Non-competes

Non-compete clauses are honored as long as they are in writing and specified in terms of place, duration (ie, no longer than 2 years) and type of work. If there is no written agreement, or an express non-compete clause is not included in an employment contract, the law will not impose any restrictions.

Customer non-solicits

Permissible in narrow circumstances.

Employee non-solicits

Permissible.

WAIVERS

Employees cannot waive statutory rights under the Saudi Labor Law. Waivers of contractual rights require written consent. Failure to assert a right does not constitute waiver by conduct under Shariah principles (ie, rights are not forfeited unless expressly waived).

REMEDIES

Discrimination

There is now a prohibition against discrimination on the basis of gender, age, disability, or any form of discrimination during recruitment or the employment period. The penalty for discrimination in the recruitment process – and during employment – is SAR20,000 per violation.

Unfair dismissal

If the contract is terminated for an invalid reason, the employee shall be entitled to indemnity as stated above. An employee may no longer ask to be re-instated.

Failure to inform & consult

Not applicable for this jurisdiction.

CRIMINAL SANCTIONS

Not generally a concern under Saudi Labor Law.

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