

DIFC AND UAE LABOUR LAW: COVID-19 UPDATE

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The Ministry of Human Resources and Emiratization ("**MOHRE**") and the Dubai International Financial Centre ("**DIFC**") have each announced measures to deal with the management of employee headcount and costs during this period of economic uncertainty arising from the COVID-19 Pandemic.

The principal measures announced were Ministerial Resolution No. (279) of 2020 regulating employment in the private sector (on-shore) (the "**MOHRE Regulations**") and the DIFC Presidential Directive No.4 of 2020 (the "**DIFC Regulations**") together (the "**Regulations**").

The Regulations allow employers and HR professionals' flexibility to manage head count during this period and covers:

- granting paid and unpaid leave;
- temporary and permanent salary reductions;
- health and safety while working from home; and
- remote working conditions and reducing access to the work place (working from home policy).

In this article we deal with the most frequently asked questions dealing with the application of these measures.

1. **Does the employer have any health and safety obligations while employees are working from home?**

It is a general obligation on the part of the employer to ensure the employee is able to fulfil his or her duties when working from home. Essentially this means making available to

each employee IT and telecommunications equipment which is in a proper working order. Certain employees may also have particular requirements based on their job description or, say, any special needs. HR teams should be aware of these requirements and address these. Company HR manuals and health and safety policies may also contain particular requirements and whilst an employee is working from home, these work place policies may continue to apply.

As it remains mandatory for employees to work from home (subject the exception announced recently that 30% of employees may re-enter the work place provided Government guidelines are observed), it is important for employers to continue ensuring the employee has adequate access to resources so that he or she is able to work from home. The MOHRE Resolution does not contain a waiver of any duty of the employer in relation to maintaining a safe working environment.

In contrast, the DIFC Resolution specifically dis-applies Articles 43 to 53 of the DIFC Employment Law relating to health and safety at workplace whilst an employee is working from home. This makes it clear the employer is not responsible for the health and safety of the employee whilst working from home. The DIFC Resolution is therefore very clear insofar that whilst an employee is engaged working from home, the employer does not assume any liabilities for ensuring health and safety at home. This is a welcome clarification for DIFC based employers.

2. What are the tips on working from home?

- Ensure that your IT is fit for purpose and will facilitate home/agile working.
- Consider updating working from home policies if necessary and revising any restrictions on working from home while also child minding.
- Issue staff with laptops so they can work remotely.
- Limit the amount of face-to-face contact, for example use video conferencing to facilitate remote meetings.
- For customer-facing organisations, consider introducing or maximising the use of self-service options and online services.
- Check that all staff (including contractors) contact numbers and emergency contact details are up to date.
- Keep in touch with staff. Working from home does not suit all and some may live alone, or may have mental health issues that could be aggravated without social contact.

3. Are we able to ask staff to take paid or unpaid leave during the time of Covid-19 restrictions; what if a member of staff requests this?

Paid leave is typically dealt with in an employee's contract of employment and may also be determined in accordance with a company's HR policies. Paid leave (otherwise known as annual leave or holiday) is not effected by the Regulations.

Under federal labour law, the employer has the right to determine the time the employee takes their annual leave and hence employees outside of the DIFC (i.e. subject to federal labour law) can be asked to take annual leave at any time. Likewise, the DIFC has introduced measures that allow an employer on 5 days' notice to require the employee to take annual leave. In each case now, the employee's consent is not required and more specifically the DIFC Regulations dis-apply the requirement that any variation to an employment contract should be agreed in writing.

The Regulations also introduce unpaid leave - a short term measure to address cash flow.

The MOHRE Regulations require that both the employer and employee mutually agree in writing to the employee taking unpaid leave. Any attempt by an employer to enforce unpaid leave on an employee without his or her consent will constitute a breach of the employment contract.

In contrast, the DIFC Regulations allow an employer to oblige an employee to take unpaid leave during the defined Emergency Period which expires on 31 July 2020 (unless extended by the DIFC). However, we recommend in all instances employees are consulted about any proposal prior to implementation.

4. Are we able to ask staff to take, or force staff to take, salary reductions?

The MOHRE Resolution allows the employer and employee to agree a salary reduction on a temporary basis. A permanent salary reduction requires additional agreement from MOHRE. In order to be effective, the salary reduction must be set out in a supplementary agreement that is filed with the MOHRE.

The DIFC Regulations allow an employer on 5 days' notice, without the employee's consent, to reduce an employee's salary on a temporary basis. This temporary period will expire on 31 July 2020 (unless extended by the DIFC). The employee must agree in writing to any reductions made to their salary on permanent basis to be binding.

5. What is the impact on End of Service Gratuities for salary reductions / unpaid leave?

The MOHRE Regulations do not specifically address End of Service Gratuity ("**ESG**"). The ESG payment is calculated by reference to "basic pay" of each employee. Any permanent

reduction to basic pay will consequently mean that the employee's ESG (accrued and payable on termination of employment) will also be reduced. A temporary reduction to salary will not adversely effect ESG payments as it is anticipated the employee's basic salary will be reinstated once the temporary phase is over.

In the DIFC, if there is a reduction in an employee's salary, any ESG (as it was known before the implementation of the DIFC Employee Workplace Savings Plan ("**DEWS**")) accrued and transferred into the DEWS scheme will be based on the employee's salary prior to 1 March. Hence, there is a protection for employees that a reduction in salary will not adversely affect accrued ESG and such amount can be transferred into the DEWS Scheme or remain due to the employee on termination of their employment. The same principle applies to contributions into the DEWS Scheme during the Emergency Period - the payment is based on basic salary prior to 1 March 2020.

6. We may need to look at redundancies - is this possible in the UAE?

The decision to make an employee redundant is never an easy one and should be taken carefully. Termination of an employment contract under federal labour law is possible for "valid grounds". Although what constitutes a valid ground is not defined in the federal labour law, courts in the United Arab Emirates generally accept that a business re-organisation or even closure of a business due to economic circumstances is a valid ground. An employee is entitled to be informed of this being the cause of his or her dismissal.

Termination payments apply if a contract of employment is terminated due to restructuring and/or closure of a business. The aggregate termination payments would include ESG and accrued and untaken annual leave and salary in lieu of notice. There is also generally accepted precedent in the United Arab Emirates that, as the termination is not due to the employee's performance or misconduct, the employee may seek compensation for arbitrary dismissal. The employee could be entitled to compensation not exceeding three months' salary. It is therefore important that an employer undertake a thorough procedure, keeping clear and specific documentary evidence, to support the grounds for redundancy dismissal.

Alternatively, the employer may seek to implement a voluntary redundancy with an enhanced termination payment (being a maximum three months' salary) could be offered and recorded in a settlement agreement.

Limited term contracts are distinctly different from unlimited employment contracts. Termination of a limited term contract should only be for the reasons given in Article 120

of the UAE Labour Law or at the expiry of the contract term. Termination of the employment contract for any other reason, the employee will be entitled to compensation not exceeding three months' salary.

When carrying out redundancies in the DIFC, the employer can terminate an employment contract without cause, as long as the notice period prescribed in the law is followed.

As a temporary alternative, both MOHRE and DIFC have introduced the concept of the "Virtual Labour Market". The purpose of this is to allow employers to register the details of employees who are under their employment/sponsorship but who may otherwise be at risk of losing their jobs. Such employees are able to work for other employers on the condition that, despite the deployment to a third party, their housing allowance and other benefits (excluding salary) continues to be paid by the original employer. Almost akin to a secondment, where an employee can provide his/her services to a third party without terminating their employment with their sponsor.

Any vacancies available in the UAE shall be satisfied from the Virtual Labour Market, an electronic database where employers can search for available candidates and subsequently apply for work permits, which may be full transfers, temporary or part time.

7. We have terminated employment contracts but the employee cannot leave the UAE due to flight restrictions. How does this effect their visa cancellation?

Ordinarily the employer (referred to as a sponsor) will cancel an employee's visa within 30 days of termination of employment. The employer is also obliged to repatriate the employee by providing a flight home. Given the restrictions on travel, there is a strong likelihood a former employee will not be able to travel. As a practical measure, the employer may agree not to cancel a visa provided that health insurance continues to be maintained.

In addition, the DIFC Regulations allow the employer to defer the cancellation of the visa beyond the 30 day period. Employers in the retail, service or hospitality industry who provide employees with accommodation under their employment contract are also obliged to continue making accommodation available to those employees until the cancellation of their visa.

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