

K&L GATES



United Arab Emirates Employer Guide

2024

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INTRODUCTION

The United Arab Emirates (UAE) government has been working toward boosting the number of UAE citizens in the private sector workforce over the past few years with the Emiratization drive. This year, more rules and regulations were being issued, which further boosted the number of UAE citizens in the private sector.

Previously, the rules only applied to private onshore companies employing more than 50 employees; however, the new rules now apply to smaller companies across 14 economic sectors with 20–49 employees. This significant development forms part of the UAE's NAFIS program and its goal to empower UAE nationals to occupy jobs in the country's private sector.

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EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure that their employees are lawfully allowed to work and reside within the UAE.

Foreign workers must have residency or work permits to work and reside in the UAE.

Residency/work permits are issued to foreign workers who are sponsored by their spouse, a family member, or by their employer.

Recent reforms to the residency system in the UAE have made it possible for foreign workers to potentially apply for residency by sponsoring themselves under the “freelancer visa,” the “golden visa,” or the “green visa.”

Reference/Background Checks

An employer may request a reference from an employee’s previous or current employer directly. There are no statutory obligations for the employer to provide a reference.

An employee has the right to request and obtain a certificate from his or her employer setting out the period of employment, the nature of the work performed by the employee during the employment, and details of the employee’s last pay package.

Police and Other Checks

Foreign workers from certain countries may be required to provide a police clearance certificate from their home country in order to qualify for a residency/work permit within the UAE. An employer may request that a UAE national, or a foreign worker residing in the UAE for a long period, obtain a police clearance certificate from the UAE authorities.

Medical Examinations

Foreign workers are required to undergo a medical exam in order to qualify for a residency/work permit within the UAE, for screening of certain statutory-prescribed diseases.

Minimum Qualifications

In relation to certain professions or management positions, employees must verify their education qualifications as part of the sponsorship process in order to qualify for a residency/work permit within the UAE.

II. TYPES OF RELATIONSHIPS

Employee

In 2021, the UAE published the New Labor Law No. 33 of 2021 (New Labor Law), which repeals Federal Labor Law No. 8 of 1980 (Previous Law). The New Labor Law came into effect on 2 February 2022 and provides the requirement to have employment contracts with fixed terms only, removing the possibility to have unlimited-term contracts. Any existing unlimited employment contracts must be updated by 31 December 2023.

The New Labor Law states that the term of fixed employment contracts must not exceed three years. The term may be extended or renewed, any number of times, for similar or shorter terms. Any extension or renewal of the term will be added when calculating an employee’s period of continuous

service (i.e., with respect to calculating any applicable end-of-service gratuity). Where parties do not expressly renew or extend the term but continue performing the contract, the term is deemed automatically extended on the same terms and conditions.

The New Labor Law sets out different work models including full-time, part-time, temporary, and flexible working. Employees attract different entitlements depending on the basis of their employment.

Independent Contractor

Previously, foreign workers were not permitted to work as independent contractors, as they needed to be under the sponsorship of their employers in order to live and work legally within the UAE.

Following recent reforms to the UAE residency system, foreign workers may now apply for a freelancer visa, golden visa, or green visa, all of which may allow them to sponsor themselves and their families to live and work in the UAE without the need for an employer.

Labor Hire

Not applicable.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Terms and conditions of employment must be written (in at least Arabic), executed by the employee and employer, and filed with the relevant government agency.

Codes or Rules

The New Labor Law applies within the UAE except within the Dubai International Financial Centre and the Abu Dhabi Global Market, which have their own employment laws and regulations.

Registered Agreements

The employment contract must be registered with the relevant government agency in order to obtain a work permit for the employee.

Policies

The New Labor Law and its executive regulations (Executive Regulations) provide that employers must put in place a health and safety policy. Additionally, employers with more than 50 employees must implement internal policies and procedures addressing issues such as regulations of the work, disciplinary measures and penalties, complaints and grievances procedures, incentives and promotions.

Minimum Employment Rights

The New Labor Law sets out the minimum employment rights of foreign and domestic employees.

Hours of Work

The maximum working hours are eight hours per day or 48 hours per week. An employer may require an employee to work additional hours over the maximum working hours provided they do not exceed two hours a day, unless the work is necessary to prevent the occurrence of a serious loss or accident or to eliminate or mitigate its effects. In any event, the total working hours must not exceed 144 hours every three weeks.

The Executive Regulations provide that working hours will be reduced by two hours during the holy month of Ramadan.

The maximum working hours for youth employees (employees aged between 15 and 18) are six hours per day, with a minimum of one hour at least as a break time. Youth employees may not work for more than four hours consecutively.

The following categories of work and employees will be excluded from the provisions relating to the maximum number of working hours set by the New Labor Law and the Executive Regulations:

- Chairpersons and members of the board of directors.
- Individuals holding supervisory positions if such positions give their holders powers of the employer.
- Naval vessel employees and employees working at sea who are subject to special conditions of service due to the nature of their work.
- Technical work that requires continuous work through consecutive shifts, provided that the average working hours per week do not exceed 56 hours.
- Preparatory or complementary work that must be performed outside of the working hours established for work at the establishment.

Annual Leave

Every full-time employee is entitled to 30 calendar days' annual leave per annum once their period of service is at least one year, and they are entitled to two days per month where their period of service is more than six months but less than one year.

Part-time employees shall be entitled to an annual leave according to the actual working hours spent by the employee with the employer, the duration of which shall be determined in the employment contract in accordance with the Executive Regulations.

An employee can only carry over up to half of his or her unused annual leave to the next year or agree with their employer to be paid in lieu thereof based on the basic pay received at the time the leave entitlement was accrued.

Maternity Leave

Under the New Labor Law, female employees are entitled to maternity leave of 45 days with full pay and 15 days with half pay.

The New Labor Law also states that a female employee will be entitled to her maternity leave as stipulated if delivery takes place six months or more after pregnancy, even if the child is stillborn or is born alive but dies.

A female employee shall be entitled, in the event where she gives birth to a sick or disabled child (known as "people of determination") and whose health condition requires a constant companion according to a medical report issued by the medical entity, to a leave of 30 days with full pay starting after the end of the period of maternity leave. She shall have the right to extend the leave for 30 days without pay.

Paternity Leave

Parental leave is also offered for both parents for five days for child care to be taken within six months from the date of birth.

Sick Leave

Employees are entitled to 90 days of sick leave (three months after completion of the probationary period) as follows:

- First 15 days with full pay.
- Next 30 days with half pay.
- Any subsequent period with no pay.

Study Leave

Employees who have more than two years' service are entitled to 10 days' leave per year in order to take exams. The employee is required to be studying at an accredited educational institution in the UAE.

Public Holidays

Employees are entitled to leave with full pay on public holidays as announced by the Ministry of Human Resources and Emiratization (Ministry) for the private sector.

Special Leave

The New Labor Law introduces five days of paid bereavement leave for the death of a spouse and three days for the death of a parent, child, sibling, grandchild, or grandparent, commencing from the date of death.

The New Labor Law does not make provisions for Hajj leave.

Repatriation

An employer must repatriate the employee if the employee does not secure alternative employment within 30 days of termination. Unless something more was agreed, the employer shall pay for the employee's flight back to his or her home country. If the employee, upon the termination of the employment relationship, is employed by another employer in the UAE, the new employer would be liable for the repatriation expenses of the employee.

Health Insurance

The New Labor Law requires employers to bear health care costs in accordance with the applicable legislation. It also requires employers to bear the costs of insurances, contributions, and securities specified by any applicable legislation in force.

In Dubai (Dubai Health Insurance Law No. 11 of 2013), employers are required to put in place health insurance coverage for all of their employees that meet the minimum requirements of the Health Insurance Law.

The Dubai Health Authority has specified a minimum level of benefits that must be provided in any health insurance plan.

The same is required in Abu Dhabi, where employers or sponsors are required to provide health insurance for their employees.

Discretionary Benefits

Bonuses

Employers may choose to incentivize employees by including bonus provisions in employment contracts or in internal policies. Bonuses are usually dependent on individual, departmental, or business performance and are usually paid at the employer's discretion.

Allowances

Employers may choose to provide certain allowances to their employees, including housing, transportation, travel, and education.

Accommodations

Employers employing employees in areas remote from towns and not connected with them by means of normal transportation must provide the employees with adequate means of transport and a suitable living accommodation.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Unlimited-Term Contract

Unlimited-term contracts are no longer permissible under the New Labor Law.

Fixed-Term Contract

The New Labor Law provides a list of events that would terminate an employment contract. These include (without limitation):

- The mutual written agreement of the parties.
- Expiration of the term of the contract (unless it is renewed or extended).
- Upon the decision of either party subject to the requirements relating to termination and notice periods.
- If the employee is convicted by a final order to a custodial penalty for a term of not less than three months.
- The permanent closure of the establishment or if the employer becomes bankrupt, insolvent, or unable to continue the business for any economic or exceptional reason. These reasons are to be considered in accordance with the conditions, controls, and procedures set by the Executive Regulations and applicable legislation in force at the time.

Either party may terminate the employment contract for a legitimate reason by giving the other a prior written notice, provided that such notice is not less than 30 days and not more than 90 days.

The New Labor Law also provides that parties to an unlimited-term employment contract that was entered into before the New Labor Law came into effect may terminate such contract for a legitimate reason by giving the other:

- Thirty days' written notice if the period of services is less than five years.
- Sixty days' written notice if the period of service exceeds five years.
- Ninety days' written notice if the period of service exceeds 10 years.

Dismissal for Cause

The New Labor Law provides the following list of events that would terminate an employment contract:

- By mutual written agreement of the parties.
- The expiration of the term of the contract, unless it is extended or renewed pursuant to the provisions hereof.
- Upon the will of either party, subject to the provisions of the New Labor Law in relation to termination of employment contract and notice period agreed upon in the contract.
- Upon employer's death if the subject of the contract is connected with their person.
- Upon employee's death or permanent total disability, as evidenced by a certificate from a licensed medical institution.
- If the employee is convicted by a final order to a custodial penalty for a term of not less than three months.
- The permanent closure of the establishment, pursuant to the legislation in force in the UAE.
- If the employer becomes bankrupt, insolvent, or unable to continue in business for any economical or exceptional reasons, in accordance with the conditions, controls, and procedures set by the Executive Regulations and the legislation in force in the UAE.

- If the employee does not meet the conditions for renewal of the work permit for any reason outside the control of the employer.

An employer may terminate the employment without providing notice in certain serious circumstances. The New Labor Law provides a similar list of termination-without-notice events that were present in the Previous Law with some variations. These are as follows:

- If the employee assumes a false identity or submits false certificates or documents.
- If the employee commits an error resulting in gross material losses to the employer, or deliberately causes harm to the property of the employer, and admits the same, provided that the employer notifies the Ministry of the incident within seven working days of being aware of the occurrence thereof.
- If the employee violates the policies in relation to work and employees' safety in the workplace, provided that such instructions are in writing and posted in a visible place and the employee has been advised thereof.
- If the employee fails to perform his or her main duties in accordance with the employment contract, and he or she fails to remedy such failure despite a written investigation with him or her on the matter and two warnings that he or she will be dismissed in case of recidivism.
- If the employee divulges the business secrets in relation to industrial or intellectual property and it results in losses to the employer or loss of opportunity or a personal benefit for the employee.
- If the employee is found during working hours in a state of drunkenness or under the influence of a narcotic or psychotic substance or commits any act against morals at the workplace.
- If the employee commits a verbal, physical, or other form of assault punishable by legislation in force in the UAE against the employer, the responsible manager, his or her supervisor, or co-employee.
- If the employee is absent from work without legal cause or justification acceptable to the employer for more than 20 interrupted days in a year or more than seven consecutive days.
- If the employee abuses his or her position with the aim to obtain personal gains and profits.
- If the employee joins another employer without complying with the controls and procedures prescribed in this regard.

An employee may resign without notice in the event that the employer breaches its obligations towards the employee, as set out in the contract or the law. The New Labor Law provides the following list of events where an employee can resign without providing notice:

- If the employer commits a breach of its obligations to the employee stated in the employment contract or in the New Labor Law or its Executive Regulations, provided that the Ministry is notified by the employee not less than 14 working days before the date of leaving work, and the employer fails to remedy the breach even though being notified by the Ministry.
- If the employee is subject to assault, violence, or harassment at the workplace by the employer, or its legal representative, provided that the employee reports such acts to the concerned authorities and the Ministry within five working days from the date on which he or she is able to report.
- If the workplace poses a serious threat to the safety or health of the employee, provided that the employer is aware thereof and has not taken the actions necessary to eliminate such threat. The Executive Regulations determine the requirements for serious threats.
- If the employer entrusts the employee with work that is substantially different from the work agreed upon in the employment contract without the written consent of the employee, except in cases stated in Article 12 of the law.

Arbitrary Termination

Following the termination of employment, employees in the UAE may pursue claims for arbitrary dismissal under the UAE Labor Law. Whether an employee will be successful with any such claim will depend on the reason for the termination and the process the employer undertook prior to terminating the employment.

An employee's employment will be deemed to have been arbitrarily terminated if the reason for the termination was "irrelevant to the work."

The maximum compensation that can be awarded to an employee pursuant to an arbitrary dismissal claim is three months' pay, calculated based on the last pay received by the employee prior to dismissal.

II. MINIMUM ENTITLEMENTS

Payments/Notice

The New Labor Law allows employees to be paid in currencies other than UAE dirhams (AED) by agreement between the employer and the employee.

The New Labor Law provides that the employer or employee may terminate the contract for any legitimate reason, provided that the other party is notified in writing and commits to work within the notice period agreed upon in the contract, and provided that the notice period is not less than (30) thirty days and not more than (90) ninety days or payment in lieu .

The New Labor Law provides that parties to an unlimited-term employment contract that was entered into before the New Labor Law comes into effect may terminate such contract for a legitimate reason by giving the other:

- 30 days' written notice if the period of services is less than five years.
- 60 days' written notice if the period of service exceeds five years.
- 90 days' written notice if the period of service exceeds 10 years.

Under the Previous Law, an employer was able to terminate an employee during the probation period without giving any notice. The New Labor Law introduces a notice period of 14 days' prior written notice for terminating an employment contract by the employer during the probation period (which is capped at six months).

In addition, the New Labor Law provides that an employee who wants to move on to another employer in the UAE during the probationary period shall notify his or her current employer in writing at least one month before the date on which he or she intends to terminate the contract, and unless agreed otherwise, the new employer shall compensate the first employer for recruitment or contract costs.

The New Labor Law also states that a foreign worker wishing to terminate the employment contract during the probationary period in order to leave the UAE shall notify his or her employer in writing at least 14 days prior to the date determined for termination of the contract. If the employee wants to return to the UAE and obtains a new work permit within three months from the date of his or her departure, the new employer shall pay the compensation mentioned above, unless agreed otherwise by the employee and the original employer.

Statutory Entitlements

An employee shall be entitled to be paid for his or her days of leave if he or she leaves work before the use, irrespective of the length, of such leave. The employee shall be entitled to the leave pay for

the fractions of the year in proportion to the period of service, and the same is calculated on the basis of the basic pay.

Gratuity Payment

The New Labor Law clarifies that a foreign worker who completes at least one year of continuous service will be entitled to gratuity pay, which is calculated on the basis of his or her basic pay. The New Labor Law expressly provides that the basic pay excludes any other allowances or benefits.

Upon termination of employment, for every year of service, the employee is entitled to 21 working days' basic pay for the first five years of service and 30 working days' pay for each additional year of service. The total severance pay must not exceed two years' pay (which includes the basic pay plus any allowances or benefits).

Employees summarily dismissed now retain their entitlement to their gratuity pay, and no reductions apply where an employee resigns.

The gratuity pay together with all other termination payments must be made within 14 days of the termination date.

III. REDUNDANCY

Genuine Redundancy

In the event that the employment is terminated for reasons not related to the work, the employee is entitled to compensation of up to three months' wages, depending on seniority and length of service, as compensation for arbitrary termination. However, the courts may find that a genuine redundancy (whereby the duties are not undertaken by another employee) is a valid reason for the termination and the employer is not required to pay compensation.

IV. REMEDIES

Dismissal Actions

All disputes must first be referred to the Ministry of Human Resources and Emiratisation (MoHRE). If the dispute is not settled, the matter may be transferred to the UAE labor courts.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Not applicable in the UAE.

II. RESTRUCTURING

Notification

The employment contract will remain valid.

Consultation

Not applicable in the UAE.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Employees are barred from divulging confidential information (i.e., trade secrets and information not in the public domain) relating to their employer, either for their personal benefit or the benefit of a third party. Disclosure of confidential information attracts both civil and criminal liability.

II. CONTRACTUAL RESTRAINTS AND NON-COMPETES

As with the Previous Law, the New Labor Law allows employers to agree on non-compete clauses with their employees. However, the New Labor Law provides clarity as to the conditions for such clauses to be enforceable. For instance, non-compete clauses are only enforceable for a maximum of two years after the expiry or termination of an employment contract. Non-compete clauses must also specify the place and type of work, to the extent necessary, to protect the legitimate business' interests of the employer.

The statute of limitation to file a claim for breach of a non-compete clause in an employment contract is one year from the date on which the breach is discovered.

The Executive Regulations provide additional clarity on the application of a non-compete clause in an employment contract, including situations where the non-compete clause will not apply due to an employer's breach and in situations where both parties agree in writing to disapply the clause after the employment contract ends.

III. PRIVACY OBLIGATIONS

Unless the employee has provided a written waiver, employers have a duty to not disclose confidential information relating to their employees, even if such information was obtained through a third party. The employee's personal data is subject to the provisions of the Personal Data Protection Law.

IV. WORKPLACE SURVEILLANCE

The New Labor Law is silent as to workplace surveillance. However, it is against the Penal Code and Cybercrimes Law to tape-record, videotape, or photograph individuals without their consent.

V. WORKPLACE INVESTIGATIONS

Investigations are permitted.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts and internal policies may provide for management of employee performance and conduct.

II. BULLYING AND HARASSMENT

Bullying

The New Labor Law expressly prohibits sexual harassment, bullying, or any verbal, physical, or mental abuse against employees by their employer, manager, or colleagues.

Harassment

The New Labor Law expressly prohibits sexual harassment, bullying, or any verbal, physical, or mental abuse against employees by their employer, manager, or colleagues.

III. DISCRIMINATION

The New Labor Law expressly prohibits discriminating against a person on the grounds of race, color, sex, religion, national origin, ethnic origin, or disability. However, rules and procedures that would enhance the participation of UAE nationals in the labor market shall not be considered as discrimination.

IV. UNIONS

Representation

Not applicable in the UAE.

Right of Entry

Not applicable in the UAE.

Industrial Disputation

Not applicable in the UAE.

V. REMOTE/HYBRID WORK

Return to the Workplace

The UAE government and the Dubai Health Authority have issued several circulars and guidance concerning COVID-19 guidelines for employers.

As companies in the UAE are now able to operate at 100% capacity, employers are required to follow the issued guidance to maintain the health of their employees and prevent the spread of the virus.

The guidelines cover risk assessment, minimizing the risk of COVID-19, taking care of employees/visitors who may be suspected cases, and emergency response procedures.

Remote/Hybrid Work

Work Model

The New Labor Law made provisions for several different types of work models available to employees in the private sector in the UAE; these include:

- Full time – working for a single employer full time.
- Part time – working for a single employer part time.
- Temporary work – work carried out for a specified time and for a specific task.
- Flexible work – work that allows changing work hours to take into account operational needs of an employer.

In addition to the above, the Executive Regulations allow for employees to work remotely (work that is performed outside of the workplace and that may be either full time or part time) on a job-share basis (work is divided between one or more employees on a part-time basis) and on a freelance basis.

The Executive Regulations further provide that additional employment arrangements can be introduced based on labor market demands.

Work Permits

In addition to the above, MoHRE also introduced the following 12 new work permits that can now be issued:

- A work permit to recruit a worker from outside the UAE.
- A work permit to transfer a foreign worker from one establishment to another.
- A work permit for a resident on a family sponsorship.
- A temporary work permit to hire a worker to complete a job within a specific period.
- A one-mission work permit to recruit a worker from abroad to complete a temporary job or a particular project for a specific period.
- A part-time work permit to recruit a worker under a part-time contract where his or her working hours or days are less than his or her full-time contract.
- A juvenile permit to recruit a juvenile between 15 and 18 years of age.
- A student training and employment permit to employ a 15-year-old student who is already in the UAE.
- UAE/Gulf Cooperation Council (GCC) national permit to employ a UAE or a GCC national.
- A golden visa holder permit to employ a worker holding the UAE's golden residence visa.
- A national trainee permit to train a UAE national.
- A freelance permit issued for self-sponsored foreigners in the UAE who provide services or perform tasks to individuals or companies (without being sponsored by a specific employer in the UAE and without having an employment contract).

Employment Contracts

Given the introduction of the new work models, MoHRE has introduced new template contracts to accommodate for the different types of working models.

The Executive Regulations provide the minimum requirements necessary for the purpose of a valid employment contract.

Employers are also now permitted to add additional provisions to employment contracts (with the consent of the employee), provided that they are not in contradiction with the provisions of the New Labor Law and the Executive Regulations.

VI. EMIRATISATION PROGRAM

The Cabinet of the UAE introduced measures to increase the rate of Emiratisation in the private sector to 2% annually. The new rules came into effect in January 2023.

The new measures provide that mainland-registered private sector businesses with more than 50 employees will be required to increase their percentage of UAE employees in high-skilled roles by a minimum of 2% annually. In addition, by 2026, there must be at least 10% of UAE nationals employed by the company.

In order to reach the rate of 10%, a quota system will be imposed on private sector employers, requiring them to recruit and retain a certain number of UAE nationals as a percentage of their overall staff. These thresholds are as follows:

- 2% for commercial entities (where the entity has more than 50 employees).
- 4% for banks.
- 5% for insurance companies (where the entity has more than 50 employees).

There will be a fine of AED6,000 for each UAE national that has not been employed if employers fail to meet this requirement.

In addition to the above, in July 2023, MoHRE introduced further measures that now require UAE mainland private companies across 14 sectors with 20 to 49 employees to employ UAE nationals. The current target set for these smaller companies is to employ at least one UAE national by 2024 and another UAE national by 2025.

The 14 sectors that these rules apply to are listed below:

- Information and communications
- Financial and insurance activities
- Real estate
- Professional and technical activities
- Administrative and support services
- Arts and entertainment
- Mining and quarrying
- Transformative industries
- Education
- Health care and social work
- Construction
- Wholesale and retail
- Transportation and warehousing
- Hospitality and residency services

NAFIS Program

NAFIS is a federal training program aimed at supporting UAE nationals in occupying jobs in the UAE's private sector.

The government is using the NAFIS program to help facilitate new goals to increase the percentage of UAE nationals in the private sector and is encouraging all private sector businesses to register with the NAFIS platform to advertise job vacancies for UAE nationals.

In addition, MoHRE has established a three-tier system that classifies companies according to their contribution to the Emiratisation program:

- Tier 1 – applies to companies that exceed their Emiratisation target rate by 3% and cooperate with the NAFIS training program.
- Tier 2 – applies to companies that meet their Emiratisation target and are compliant with all UAE policies on cultural and demographic diversity.
- Tier 3 – applies to companies that fail to meet their Emiratisation target or show commitment to UAE policies on cultural and demographic diversity.

AUTHORS AND CONTRIBUTORS



Nazanin Aleyaseen
Partner
Dubai
+971.4.427.2707
nazanin.aleyaseen@klgates.com



Kulsum Rehman
Senior Paralegal
Dubai
+971.4.427.2758
kulsum.rehman@klgates.com



Mohammad Rwashdeh
Special Counsel
Dubai
+971.4.427.2742
mohammad.rwashdeh@klgates.com

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