



كلايد اند كو
CLYDE & CO

New Federal Labour Law Issued in the UAE

An overhaul to a decades' old regime

Last week, the UAE Cabinet approved a new Labour Law, Federal Law Number 33 of 2021 (the **New Labour Law**) which will come into force on 2 February 2022 and repeals Law Number 8 of 1980 (the **Old Law**); replacing it entirely. The New Labour Law consolidates many of the changes which have been introduced by the Ministry of Human Resources and Emiratisation (**MHRE**) through various regulations over the past five years and also introduces significant new changes, thus amounting to a radical overhaul of labour relations in the UAE. It will apply across the UAE, in each of the seven emirates and its free zones (with the exception of the DIFC and ADGM).

The New Labour Law refers in several parts to Implementing Regulations to be issued by the MHRE, which will contain further explanatory provisions to the law and also set out further frameworks. It has not yet been announced when these Regulations will be available. However, this structure gives the MHRE much welcome flexibility to regulate employment matters in the years to come.

Flexible Work Patterns

The New Labour Law recognises non-traditional forms of employment, which have been increasingly popular in other developed jurisdictions. The new forms of employment relationship include part-time, temporary and flexible (or freelance) employment relationships. The forms of employment recognized by the New Labour Law are:

- Full-time employment: working a single job during all working hours on all working days.
- Part-time employment: working for an employer or employers for a specified number of working hours or specified number of working days.
- Temporary employment: work which requires a specified amount of time to complete, or task-based work.
- Flexible (or Freelance) employment: working for a variable number of working hours or working days depending on the work requirements or economic conditions of the employer.
- Any other form of employment introduced by the Implementing Regulations.

This provision consolidates the recent recognition by MHRE of part-time working and provides for greater recognition of other work patterns. However, the detail of how employers can engage employees in each type of work (e.g. authorisations required), as well as the form of employment contract required will only be set out in the Implementing Regulations.

Employment Contracts

Fixed Term Contracts

Unlimited term contracts will be obsolete under the New Labour Law, with all employees (regardless of nationality) being required to be engaged on fixed term contracts not exceeding three years, which may be renewed by mutual agreement any number of times for similar or shorter periods. Employers will have one year from the date the New Labour Law comes into effect to transfer their employees from unlimited term contracts to fixed term contracts. However, notwithstanding the fixed term nature of the contracts, employment may be terminated on notice (discussed below).

Extensions or renewals of fixed term contracts will be considered continuous service for the purposes of the end of service gratuity calculation.

Probation

The maximum probation period set out in the New Labour Law is unchanged and remains six months. However, employers will now need to give employees on probation 14 days' notice to terminate their employment. Similarly, an employee will also have to serve a 14 days' termination notice. Should that employee secure alternative employment in the UAE within three months, their new employer must pay the old employer's recruitment costs.

If an employee decides to resign during the probationary period to pursue alternative employment in the UAE, they must serve a one-month notice and their new employer must pay the old employer's recruitment costs. It is presently unclear what mechanism will be implemented to effect payment to the first employer or how this requirement will be enforced.

Employer and Employee Obligations

The New Labour Law contains a number of new provisions permitting the assignment of different work to an employee in specific circumstances and sets out specific employee and employer obligations, including an obligation to have written by laws or policies. In our view, employer policies or handbooks will increasingly take centre stage in the new employment paradigm.

Work Hours and Overtime

The New Labour Law provides for work hours to be 8 hours a day or 48 hours a week.

The regulation of overtime hours is radically overhauled with a cap of 144 hours of working time in a three week period, with the new law making it clear that all overtime rates are based on basic salary only.

An employee is entitled to one weekly rest day to be agreed with the employer (which does not have to be Friday).

Deductions

The New Labour Law lists an expanded set of circumstances where deductions may be made from an employee's wage, and permits total deductions of up to 50% of the wage.

Disciplinary Procedures and Sanctions

Disciplinary sanctions are slightly amended under the New Labour Law, with the following being permitted: a) non-disciplinary written notice; b) written warning; c) five days wages being deducted; d) suspension for 14 days without pay (the old law provided for 10 days); e) denying a salary increase for one year; and e) denial of promotion for up to two years; or f) termination of employment.

Significantly, the New Labour Law provides for the temporary suspension of an employee on half pay for up to thirty days whilst an investigation is being conducted.

Termination of Employment

Notice Period

Notice periods have also been revised; with the minimum notice period (following completion of probation) remaining thirty days but with a new maximum cap on notice of 90 days. Where notice is served by the employer, an employee is entitled to one day (unpaid) per week during the notice period to search for new work.

Reasons for Termination of Employment

The following circumstances have been added as reasons for termination of the employment contract: a) permanent closure of the employing establishment, b) the employer's bankruptcy, insolvency or inability to continue the business for any economical or extraordinary reasons, or c) the worker being unable to renew his or her work permit for reasons beyond the employer's control.

Termination Without Notice

'Article 120 terminations' as these were commonly referred to under the Old Law are slightly modified in the New Labour Law. The relevant article is now Article 44 and has the following changes: a) notification to the MHRE where the employee has caused material loss must be made within 7 working days and not 48 hours of the incident; b) the worker must receive two written warnings prior to dismissal if he is failing to perform his main duties; and c) disclosure of trade secrets must result in loss to the employer, loss of opportunity or personal gain by the employee. In addition, two completely new reasons for dismissal without notice have been added, where: a) the worker misuses his position for private gain; and b) the worker joins another establishment without complying with the regulations for such transfer.

A new provision also gives greater clarity as to when an employee can resign without notice, including where the contract is breached, provided that the employee gives remedial notice of at least 14 working days to the employer.

End of Service Gratuity

End of Service Gratuity (Gratuity) remains a feature of the New Labour Law with a number of significant changes:

- The entitlement is clearly stated to apply to foreign nationals only.
- Gratuity is now based on working days and not calendar days.
- There is no reduction of Gratuity due to employee resignation.
- Termination without notice does not impact an employee's entitlement to Gratuity which remains intact regardless of the reason for termination.

The provisions in the Old Law regarding the possible replacement of Gratuity with a pension scheme or savings scheme have not been carried into the New Labour Law, although it provides that the Cabinet may approve schemes as alternatives to Gratuity.

Compensation for Unlawful Termination

The New Labour Law no longer contains specific compensation entitlements for arbitrary dismissal (of an unlimited term contract) or early termination compensation (of a limited term contract).

However, under the New Labour Law, an employee is entitled to compensation where the termination of employment by the employer is considered to be "unlawful", where a serious complaint is submitted to the MHRE or a claim is filed and the lawsuit is proven to be valid. In such circumstances, the competent court will determine the compensation due, which remains capped at three months' remuneration (as is the case for the compensation payments under the Old Law), to be determined with reference to the type of work, volume of damage sustained, and the term of service of the employee. This compensation is in addition to any notice and Gratuity payments due to the employee.

Timing of Payments

The New Labour Law imposes an obligation on the employer to pay the employee their wages and any other dues within 14 days of the termination date.

Restrictive Covenants

The New Labour Law provides some further clarity on the validity of restrictive covenants. Previously, restrictive covenants needed to be 'reasonable' in scope and were thus a "reasonable" period of the restriction was generally quite short. Under the New Labour Law, non-compete clauses may apply for up to two years but will still need to specify the duration of the restriction, the restricted type of work and the geographical limits. In addition, these are stated to be applicable either where the employee seeks to compete with the employer or seeks to join a competing project in the same sector. Notably, an employer who violates the New Labour Law on terminating employment will not be able to enforce its non-compete covenants, for example by not giving proper notice.

Employee Polices

Non-discrimination

The New Labour Law prohibits discrimination based on race, colour, sex, religion, national or ethnic origin or disability; however, this does not apply to emiratization policies.

Pregnant women and those on maternity leave maintain the same rights and employers may not discriminate against them or threaten to terminate their employment for reason of being pregnant or on maternity leave.

Harassment

The Old Law did not address the issue of harassment or abuse; however, the New Labour Law prohibits sexual, oral, physical and psychological harassment. Employees subject to these forms of harassment may terminate their employment without notice. Employers may also be liable to fines.

Maternity

The New Labour Law increases maternity leave to 60 days of paid leave. Of those 60 days, 45 days will be fully paid, and 15 days will be half paid. Employees are also entitled to a further 45 days of unpaid maternity leave. Further, the New Labour Law carves out additional maternity leave entitlements for still births and children born with disabilities.

Annual Leave and Other Leave

Employees' annual leave entitlement remains the same and they will remain entitled to 30 calendar days of leave per year. However, the New Labour Law clarifies that employees must use their leave entitlement in the same leave year

Bereavement and study leave entitlements have also been introduced. Those grieving the loss of wife, husband, father, mother, sister, brother or son will be entitled to 3 to 5 days of leave. Both fathers and mothers will still be entitled to 5 days of parental leave on the birth of a child. Meanwhile, those who have completed two years of service may be entitled to 10 days of study leave.

Group Claims

Other notable additions include provisions for employee group claims. Employees working for one employer may submit a group claim to the Ministry of Human Resources and Emiratization, who will adjudicate the dispute. Group claims will follow a procedure set out in the Implementing Regulations.

	Old Law	New Law
Contract Type	Two types of contract recognised: fixed term and unlimited term.	Fixed term contracts not exceeding three years.
Work Patterns	Piecemeal work with some recognition of part time work.	Part time, flexible work and temporary work defined and recognised.
Notice Period	Minimum 30 days. MHRE recognised maximum 3 months.	Minimum 30 days and maximum of 90 days.
Non-discrimination	Prohibits pay discrimination. Employers may not discriminate against employees or threaten to terminate their employment for reason of being pregnant or on maternity leave.	Non-discrimination restrictions now extend to discrimination based on race, colour, sex, religion, national or ethnic origin or disability.
Harassment	No specific article on this point	Prohibits sexual, physical, oral or psychological harassment and allows employees subject to harassment to terminate their employment without notice.
Maternity Leave	45 days of paid leave and up to 100 days of unpaid leave.	45 days of fully paid leave, 15 days of half paid leave and 45 days unpaid leave.
Annual Leave	30 calendar days.	The same annual leave entitlement.
Bereavement Leave	Not addressed.	Between 3 to 5 days of leave for those grieving the loss of wife, husband, father, mother, sister, brother or son.
Parental Leave	Five days for mother or father.	The same parental leave entitlement.

	Old Law	New Law
End of Service Gratuity	a) Basic salary of twenty-one (21) calendar days against each of the first five years of service; and b) Basic salary of thirty (30) calendar days against each subsequent year of service.	a) Basic salary of twenty-one (21) working days against each of the first five years of service; and b) Basic salary of thirty (30) working days against each subsequent year of service.
Overtime	Employees may work a maximum of 2 overtime hours per day. Various rates of pay depending on when the overtime is worked.	The maximum daily overtime remains the same but total working hours will be restricted to 144 every three weeks. All overtime based on basic salary.
Salary Deductions	A maximum of 10% deduction to recover advances on employees entitlements.	A maximum of 20% deduction to recover advances on employees entitlements. Overall deductions of up to 50%.

What this means for existing employment relationships

Employers have until 2 February 2022 to comply with the New Labour Law. Employment terms in breach of the New Labour Law after that date will generally be void. Therefore, it is crucial for employers to review their existing policies and employment contracts and ensure compliance with the New Labour Law. In particular, the elimination of unlimited term contracts will likely have an impact on many employment contracts and all employees must move to fixed term contracts by 2 February 2023.

Besides the requirement to comply with the New Labour Law, employers may also consider moving their employees to new, more suitable employment contracts. With the introduction of temporary and flexible forms of employment, employers may find that a new working arrangement would be more suitable for their business needs.

440

Partners

1,800

Lawyers

4,000

Total staff

2,500

Legal professionals

50+

Offices worldwide*

www.clydeco.com

*includes associated offices

Clyde & Co* accepts no liability for loss occasioned to any person acting or refraining from acting as a result of material contained in this document. The content of this document does not constitute legal advice and should not be relied upon as such. Advice should be taken about your specific circumstances. No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co.

*Clyde & Co LLP, Clyde & Co Technical Services JSC and Clyde & Co LLP Lawyers & Legal Consultants
Clyde & Co LLP is a limited liability partnership registered in England and Wales. Authorised and regulated by the Solicitors Regulation Authority.
© Clyde & Co LLP 2021