

Managing annual leave in the COVID-19 era: UAE employment law considerations

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Introduction

Employees working across various sectors in the UAE have historically utilised much or all of their annual leave during the scorching summer months or whilst the academic term paused for the much anticipated school holidays. However, in 2020, standard practice on annual leave has been upended by the COVID-19 pandemic. When normal business operations were provisionally suspended (due to various UAE Government mandated lockdown and/or curfew measures), some employers required employees to utilise their annual leave (either in whole or in part). Others were able to continue working remotely or were deemed key or critical personnel, thereby inhibiting their ability to utilise their accrued untaken leave balances. As we approach the end of 2020, many companies are (or will be) struggling with their annual leave policies as a result of COVID-19. According to the “COVID-19 Middle East Survey” from global insurance brokerage firm Willis Towers Watson, almost two-fifths of the UAE employers surveyed intended to allow staff to carry forward unused leave days as a result of COVID-19 into 2021. However, 36 per cent surveyed were unsure how to handle the excess leave days and 22 per cent said any unused days would be forfeited. This article briefly explores the leave framework in the UAE and some recommended solutions for employers to effectively and appropriately manage annual leave in the COVID-19 era.

Legal framework

The dilemma for most employers is ensuring that their employees do not accumulate high leave balances at year-end (or at termination) as this will invariably create an ongoing liability on their balance sheets. From a planning perspective, employers will want employees to take leave progressively in order to avoid employees building up significant leave balances and then wanting to take extended holidays as this will prove disruptive to business continuity. But what does the law in the UAE say? The UAE’s employment law regime operates under a dual legislative framework: for those employees working in the Dubai International Financial Centre (‘DIFC’) or Abu Dhabi Global Marketplace (‘ADGM’) free zones, the DIFC Law No. 2 of 2019 as amended (the ‘DIFC Employment Law’) and ADGM Employment Regulations 2019 as amended (the ‘ADGM Employment Regulations’), apply wholesale. For all other employees working in the UAE’s private sector (including the other UAE free zones), they are subject to the scope and remit of Federal Law No. 8 of 1980 as amended (the ‘UAE Labour Law’). Each employment regime offers differing provisions regarding annual leave utilisation and carry-over obligations and requirements.

DIFC Employment Law and ADGM Employment Regulations

In the DIFC, points to note regarding the minimum framework on annual leave include:

- employees are entitled to a minimum of 20 working days’ paid annual leave (after 90 days of employment);
- employees are entitled to carry forward up to five working days of accrued but untaken annual leave into the next annual leave year for a maximum period of 12 months, after which any unused annual leave automatically expires;
- unless otherwise agreed in writing by the employee (and/or on termination of the employment), an

- employee cannot receive a payment in lieu of annual leave; and
- employers may require an employee to take annual leave on specified days in the current annual leave year by giving at least seven days' prior written notice to the employee

In the ADGM, the same framework as in the DIFC is adopted and applied in the ADGM Employment Regulations

UAE Labour Law

- Comparably, the UAE Labour Law provides for an altogether different regime: after the first year of service, employees are entitled to 30 calendar days of paid leave per annum (approximately 22 working days);
- employers have the right to dictate when leave should be taken in any given holiday year;
- the concept of "use it or lose it" is not expressly provided for – where leave is unutilised by holiday year-end, employees have the right for such accruals to either be encashed (before the next holiday year) or carried forward to the next holiday year; and
- there is no cap on the number of days of carried-over leave; however, on termination, the Labour Court has historically permitted an employee to claim for accrued untaken leave for the two years preceding their termination only.

Options and recommendations for employers

From a practical planning perspective, employers will need to manage excess leave carefully to ensure that they are appropriately balancing statutory obligations against the need to maintain sufficient employee coverage and business continuity through to year-end:

- Annual leave policy:** employers should communicate the terms of their annual leave policy and reach a considered consensus on carry-over provisions (statutory or otherwise) with respect to those employees holding high leave balances. The key is putting into place appropriate systems to ensure that between now and the end of the relevant leave year period, employees utilise their leave or where unable to carry forward arrangements are agreed.
- Communication:** employers should engage in open and transparent dialogue with employees and make clear that employees must utilise any untaken annual leave within this limited window of time and ensure that prior approval is granted before any bookings are made. It will be fundamental for employers to maintain appropriate business continuity which will not be possible if employees are on leave concurrently. It is possible for employers to dictate when leave can be taken and any such arrangements should, so far as possible, suit both the business and the employees.
- Follow-up/reminders:** most employers will have an online system through which leave can be ascertained and tracked. Employees should be periodically reminded where they still have annual leave remaining (or in excess of carry-over arrangements) periodically and in advance of year-end. Finally, employers should encourage employees to utilise their leave not just from a business perspective but from a general health and safety perspective.

Conclusion

The employment regimes in the UAE, DIFC and ADGM contain various provisions governing and regulating annual leave and it is important that employers take steps now to appropriately manage any excess leave accruals and carry-over issues. Measures introduced by the UAE Government to date have focused primarily on various employment-specific cost-cutting measures including the implementation of forced

leave initiatives at times determined by the employer. However, as the effects and impact of the pandemic continue to unravel, the issue of unused leave and the rules on carry-over are likely to become a pressing agenda item for many businesses and HR managers across the UAE.

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