

New UAE Labour Law: Significant Changes for Termination without Notice and Suspension

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As of 2 February 2022, the new UAE Federal Decree Law No. 33 of 2021 on the Regulation of Labour Relations ("**New Labour Law**") will come into effect. The New Labour Law will replace the previous Federal Law No. 8 of 1980 (as amended) ("**Federal Law No 8 of 1980**").

The New Labour Law applies to all the private sector establishments in the UAE save for the free zone companies in Dubai International Financial Centre and Abu Dhabi Global Market. It implements several positive changes that fosters the work environment.

With this massive development, there is a demonstrated commitment of the UAE to bring its employment legislation in line with the recognised global standards and the emerging market practices.

This article provides a summary overview on some of the key provisions under the New Labour Law relating to the dismissal of employees without prior notice (Article 44) and the temporary suspension of an employee (Article 40). It conducts a comparative analysis of the above two articles with the provisions set out under the Federal Law No. 8 of 1980 and points out the changes introduced by the New Labour Law. We also shed some insights on the position followed by the UAE courts in the past which is anticipated to change following the implementation of the New Labour Law.

Termination without Prior Notice

Article 44 of the New Labour Law deals with immediate termination of employees without prior notice. It provides for ten (10) different events/circumstances under which an employer may terminate and dismiss an employee as follows:

- If the employee assumes false identity, submits forged certificates or documents;
- If the employee commits an error that cause material losses to the employer or deliberately cause harm to the property of the employer, which is admitted by the employee and the employer notifies the Ministry of Human Resources of the incident within seven (7) working days after being aware of its occurrence;
- If the employee violates the rules and regulations of the establishment relating to work or safety measures despite being aware of such rules;
- If the employee fails to perform his or her duties stipulated under the employment contract and the employee fails to remedy such failure despite two warning letters issued by the employer and written investigation against the relevant employee;
- If the employee disclose confidential information relating to industrial or intellectual property which causes loss to the employer or loss of opportunity or a personal benefit for the employee;
- If the employee commits any act against public morals at the workplace or is found to be under the

- influence of narcotic substance or in a state of drunkenness;
- If the employee commits a verbal, physical or other form of assault punishable by law in force against the employer, manager, supervisor or other co-workers;
- If the employee abstains from attending to work without any justification for more than twenty (20) interrupted days in a year or more than seven (7) consecutive days.
- If the employee abuses his position to obtain personal gains and profits;
- If the employee joins another establishment without complying with the procedures set out in this regard.

Under the previous Federal Law No 8 of 1980, the grounds for the similar immediate termination was covered under Article 120 thereof. On this topic, some of the notable points of differences between the provisions of summary dismissal stipulated under the New Labour Law and those under the Federal Law No 8 of 1980 are:

- The New Labour Law elaborates on the procedures to be followed on the dismissal of the employee without notice. In the event the employee fails to perform duties provided under the employment contract, the employer must conduct a written investigation and is obliged to issue two separate warning letters to the employee. Under the previous Federal Law No 8 of 1980, there was no requirement of two (2) warning letters.
- The Federal Law No 8 of 1980 provides that an employee may be dismissed during or at the end of the probation period under Article 120 (b). Since the New Labour Law deals with probationary period separately under Article 9 and explains the process of termination of the employment contract during the probation, this circumstance is no more included as an event for the immediate dismissal of the employee.
- A significant addition in the New Labour Law is that the employer cannot forfeit the end of service gratuity of a employee, if a worker is subject to immediate dismissal under any of the conditions set out under Article 44. Previously, the position was different if the employee was dismissed under Article 120 of the Federal Law No 8 of 1980. In such circumstances, the employee was not entitled to claim for the end of service gratuity. The UAE Courts also took this position in the past to rule in line with Article 120(e) and Article 139(1) of the Federal Law No 8 of 1980. The ruling was to affirm that the employer may terminate the employee without notice and deprive the employee of his end of service gratuity if it is proved that the employee has breached his basic duties under the employment contract, provided that the employee has been the subject of a written investigation and continued to act in breach of said duties despite a warning that a repeat breach would result in dismissal (Dubai Court of Cassation No. 163-2020 (Labor) 12.01.21. Now, the approach adopted by the New Labour Law supports the employee to receive his or her service benefits, notwithstanding if they are subject to immediate dismissal by the employer or not.
- Different from the Federal Law No 8 of 1980, the New Labour Law elaborates on disclosure of confidential information by an employee. To dismiss an employee without notice for disclosure of confidential information, such disclosure must have resulted in material loss or loss of opportunity to the employer or a personal benefit was obtained by the employee. Under the previous Federal Law No 8 of 1980, the employer may dismiss the employee without notice if the worker reveals any confidential information and there were no further elaborations. For example, it did not expressly state that the employer must have resulted in material loss owing to the disclosure of information by the employee. Now, the New Labour Law makes more specifics as it refers to industrial and intellectual property information which results in harm or loss of opportunity or a personal gain to the employee.
- The Federal Law No 8 of 1980 provides that the summary dismissal of the employee is permissible if the latter makes a mistake resulting in substantial material loss and the employer notifies the Ministry of the incident within 48 hours of his becoming aware of its occurrence. Failure by the employer to give notice of the incident within the timeline is a waiver of his right to dismiss the employee on such grounds (Dubai Court of Cassation No. 148-2020 (Labor) 24.11.20). The New Labour Law under Article 44 (2) has increased the timeline for reporting to the Ministry from 48 hours to be within seven (7) working days after being aware of its occurrence.
- The New Labour Law added two additional grounds to dismiss the employee without notice. Article 44 (9)

of the New Labour Law provides for the events where the employee abuses his position to obtain personal gains and profits. Additionally and under Article 44 (10) of the New Labour Law, an employee can be dismissed if he or she joins another establishment without complying with the applicable procedures.

Temporary Suspension:

Article 40 of the New Labour Law deals with temporary suspension from work. Under the previous Federal Law No 8 of 1980, temporary suspension was covered under Article 112.

Different from the Federal Law No 8 of 1980, the New Labour Law explains the mechanism to be followed by the employer so as to suspend the employee temporarily from work.

The major differences between the two legislations on the issue of temporary suspension from work are as follows:

- The New Labour Law provides that the employer may suspend the employee temporarily for a maximum period of thirty (30) days to undertake disciplinary investigation. During this period, the employee shall be suspended but will be paid half salary. In the event the violation is not established against the employee, the employee shall be entitled to salaries for the suspension period. This is a notable difference as the Federal Law No 8 of 1980 did not provide a specific time duration for the employer to complete the investigation. It also states that the period of suspension starts from the date of reporting the incident to authorities until a decision on the matter is rendered by the authorities. Similarly, the Federal Law No 8 of 1980 did not expressly provide that the employee shall be paid half salaries during the investigation by the employer.

Article 40(2) of the New Labour Law provides that if the employee is acquitted by the competent judicial entity or the investigation is dismissed, the employee shall return to work and will be paid all the salaries that were pending during the suspension period. By contrast and under Article 112 of the Federal Law No 8 of 1980, the basis for an employee's entitlement to his salary in respect of a period of suspension from employment is dependent upon the employee to prove that his suspension was an arbitrarily act by his employer. In other words, the onus of proof is on the employee to evidence that the employer maliciously made up the accusation, even if the Public Prosecution decides that there are no grounds for bringing a criminal case against the employee. (Dubai Court of Cassation, Cassation No. 115-2012 (Labor) dated 05.03.13). Under the New Labour Law, the employee is no longer required to prove that any malicious act was done by his employer. A notable difference is that the New Labour Law allows for suspension from the date of accusing the employee of a criminal offence, whereas the suspension under the previous legislation was from the date of reporting to the authorities. Generally speaking, a formal accusation of a criminal matter occurs through the Public Prosecution.

Conclusion

The New Labour Law undoubtedly takes into account the requirements of the best standards in the employment practice. It aims to support the best industrial progress and efficiency in the labour market. The New Labour Law is a milestone to ensure the interests of employee as well as the employer in a balanced manner.