

New Year's Resolutions

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The beginning of 2011 has seen a number of new Cabinet and Ministerial Resolutions hitting the headlines as they have wide-ranging effects on labour relations in the UAE. This article provides an overview of the key changes which have been introduced.

Work Permits

There are now five internal work permits which may be provided by the Ministry of Labour to individuals working in the UAE. These were introduced in Cabinet Resolution No. 25 of 2010 concerning Internal Work Permits Applicable in the Ministry of Labour and are considered below.

- Worker Transfer Permit – applicable where a non-national worker is already working in the UAE and is transferred from one organisation to another. For this permit to apply, both organisations should be registered with the Ministry of Labour.
- Temporary Work Permit – issued to a national or non-national who is to be employed on a project or in a role which is not for more than six months in duration.
- Part Time Work Permit – issued to a national or non-national who is recruited for a role where they are to be working less than the normal working hours of full time employees within an organisation, undertaking the same job. Normal working hours for a full time employee are generally 8 hours per day (which is the stated maximum under the UAE Labour Law (UAE Federal Law No. 8 of 1980, as amended)), excluding lunch. A senior Ministry of Labour official has been reported in the press as stating that this new permit shall enable employees to take up a second part-time job, in addition to any full time position they may already undertake. Although the Resolution itself does not expressly make this point, clearly the Ministry of Labour may choose to issue part-time work permits in order to enable them to be used in this way. At present, how part time workers may be treated in respect of the minimum rights under the UAE Labour Law (which currently makes no provision for part time working) is not clear. However, this is an exciting development that will no doubt become clearer in the coming months, as issues arise and are taken to the Ministry of Labour or the Labour Court.
- Work Permit for Personnel Sponsored by their kinship – issued where dependents are recruited by an organisation. This means that expatriates will be able to act as official work sponsors for their dependents. Whilst this is no doubt a welcome development for some, we believe that this does not necessarily enable a spouse to work from home on their own account (in the absence of the necessary approvals and trade licence). In addition, this may lead to employers shifting the cost of the permit fees onto the dependant's spouse, and thus ultimately encourage more women to be directly sponsored by their employer, rather than their spouse.
- Juvenile Persons Work Permit – issued to nationals or non-nationals between the ages of 15 and 18.

Waiver of six-month ban in certain cases

In addition to the introduction of the five internal work permits, Cabinet Resolution No. 25 of 2010 also provides that the Minister of Labour will issue a decision defining worker categories, cases, conditions, controls and standards by which a work permit may be issued for non-nationals without being bound by the standard six-month post employment work ban, which is usually imposed by the Ministry of Labour. In this regard, the Resolution identifies three factors which the Minister of Labour should take into account when providing the decision on the waiver of the six-month ban as follows:

- Cases where an employer has breached their obligations to the employee, or where the employee is not the cause of the termination of the employment. We believe that this factor may have been introduced to address the situation where employees are made redundant, for no fault of their own, due to economic difficulties of the employer. Subject to the decision of the Minister of Labour, this may mean that such employees would be able to easily transfer to another role, without waiting for the requisite 6-month period.
- The UAE labour market need for employees with higher qualifications, distinguished expertise, and technical specialities. This factor will be helpful in ensuring that those workers with particular skills which are useful to the UAE are not lost by reason of the fact they are unable to work in the UAE for the six-month period and move to another country as a result.
- Setting the time period that the employee must spend with the ex-employer and the categories which may be excluded from this condition.

Classification of Organisations

Prior to the changes implemented by Ministerial Resolution No. 1187 of 2010 on Regulations and Criteria of Classifications of Establishments, employers fell within one of three categories, which were identified with regard to their compliance with Emiratisation and cultural diversity requirements. These categories determined the level of fees payable by employers, as well as the bank guarantees payable on recruitment.

Employers will now be determined as falling within three new classes, with the second class being divided further into three sub-classes. The second class (and its sub-classes) is similar to the three categories previously imposed.

The new “first class” category may be achieved by an organisation, provided that it has complied with certain legal regulations and standards, such as adherence to cultural diversity requirements, commitment to pay wages correctly, provide appropriate labour accommodation, as well as a new Emiratisation requirement. In order to achieve the first class category status, at least 20% of an employer’s workforce must be made up of professionals earning a certain level of remuneration, and UAE nationals must make up at least 15% of the professional levels. UAE nationals must be eligible for a government pension (or pension and social security provided by the relevant Emirate) to form part of the Emiratisation quota under this class.

First class category status can only be awarded by resolution of the Minister of Labour, and banks and insurance companies can only be eligible if they have previously met all Emiratisation quotas prior to 1 January 2011.

The new “third class” category has now been introduced for employers who accumulate certain “black points” (as set out below).

Violations of Labour Relations Regulations

In Ministerial Resolution No. 1187 of 2010 on Regulations and Criteria of Classifications of Establishments, the Ministry of Labour has sought to address certain bad practices and violations which have become prevalent in the recent economic downturn.

The Resolution introduces three categories of violation and depending on their seriousness, imposes “black points”, and fines. For serious violations, the imposition of black points may immediately cause an organisation to be downgraded to the third class category, which will affect the requirements imposed upon the organisation, for example, in respect of bank guarantees. Alternatively for less serious violations, black points imposed have a cumulative effect and are maintained for one year on the file of the organisation. If an organisation exceeds 100 black points, within any given year, it may be downgraded to the third class category.

There are 13 violations in the first level and these are where an organisation:

1. Is convicted of recruiting individuals not legally present in the country;
2. Is convicted of trafficking people;
3. Falsifies their Emiratisation compliance;
4. Deliberately provides incorrect information in respect of the wages protection system (WPS), for the purposes of evading or manipulating the regulations relating to the WPS;
5. Recruits juveniles or women in hazardous conditions or which may be harmful to health, in breach of applicable regulations;
6. Closes, suspends or fails to practice its commercial activities without settling the dues of its employees;
7. Fails to pay an employee for 60 days or more;
8. Has employees who sign documents which falsely indicate that they have received their labour entitlements;
9. Provides accommodation to workers which fail to comply with standards contained in applicable regulations;
10. Recruits or allows an individual to work for a third party, without obtaining a work permit from the Ministry of Labour
11. Undertakes recruitment, supply or hire of workers, without an appropriate licence from the Ministry of Labour;
12. Does not use, employ, or recruit employees to practice work for a period exceeding two months; and
13. Compels an employee to pay for the expenses of recruitment and employment.

Violations in this first level attract an immediate 100 black point penalty, so that an organisation is automatically downgraded to the third class category and is also fined. The fine in most cases is AED20,000 for each violation or worker in respect of which the organisation is in breach. However, in three instances, the Ministry of Labour has discretion to impose a fine within a range, so that where the violation is as set out in (6) above in the first level, the fine is not less than AED10,000 and not more than AED50,000, and where the violation is as set out in (7) or (8) above in the first level, the fine is not less than AED5,000 and not less than AED50,000.

There are 6 violations in the second category and these are where an organisation:

1. Fails to comply with applicable procedures for the employment of nationals;
2. Fails to comply with any Ministry of Labour summons and related labour affairs, on the dates required by the Ministry of Labour;
3. Fails to take necessary action to register absconded employees;
4. Vexatiously or falsely reports an employee as having absconded;
5. Fails to ensure that applicable employees do not work during any prohibited work period in the summer; and
6. Provides incorrect documents or data to the Ministry of Labour.

There are 4 violations in the third category which are where an organisation:

1. Fails to participate in the WPS;
2. Fails to comply with applicable standards of occupational health and safety, or fails to comply with prescribed procedures, to prevent health and safety risks;
3. Fails to notify the Ministry of Labour regarding work injuries, occupational disease, or death of the worker, resulting from working conditions, within 48 hours of the occurrence of the injury, disease, or death; and
4. Fails to rectify any violation of standards of workers' accommodation within any timeframes set by the Ministry of Labour.

Violations in the second level attract 70 black points, as well as a fine of AED20,000 for each violation or worker in respect of which the organisation is in breach. Violations in the third level attract 50 black points, as well as a fine of AED10,000 for each violation in respect of which the organisation is in breach.

The simultaneous issuance of such wide ranging Resolutions that affect labour relations in the UAE is certainly unprecedented, and with the Ministry of Labour promising that further changes are due to be implemented very soon, the actual effect of all these changes will certainly take time to assess. What is abundantly clear however is that the UAE government seems to be determined to implement changes to the existing systems in place. Whether or not these changes are a precursor to the long-awaited change to, or merely designed to be effected in place of, the UAE Labour Law remains to be seen.