The Impact of the recent ministerial resolutions on UAE Employment relations

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The employment team hosted a breakfast seminar on Tuesday 22 March 2011, discussing the impact of the Cabinet Resolution (No. 25 of 2010), and its supporting Ministerial Resolutions, on UAE employment relations.

The Cabinet Resolution and one of the Ministerial Resolutions (No. 1187 of 2010) was discussed by Rebecca Ford in the February 2011 Law Update. Since then, a number of additional Ministerial Resolutions have become available which have clarified the Cabinet Resolution. This article is therefore an update on Rebecca's article, and confirms some of the topics discussed in the breakfast seminar.

As previously reported, the Cabinet Resolution introduced five new internal work permits (comprising: work transfer, temporary work, part-time work, personnel sponsored by family and juvenile) for individuals already based in the UAE. The Cabinet Resolution also suggested that in some instances, the Minister of Labour may approve the waiver of the automatic six-month ban which is ordinarily imposed upon employees leaving an employer.

The supporting Ministerial Resolutions which have been published regarding these issues have provided additional detail on the application of the work permits and the waiver of the six-month ban. It is clear to us that some of the aims of the Ministerial Resolutions are to promote stability in the workforce of the UAE, as well as to allow some flexibility of movement, in order to address the issues which arose from the economic events of the past few years. However, the Ministerial Resolutions do not lose sight of the fact that, as provided for in the UAE Labour Law (UAE Federal Law No. 8 of 1980, as amended), work is a right of UAE nationals, and the Resolutions provide that an expatriate will not be granted an internal work permit, if there is a UAE national available who could fulfil the role.

The Ministerial Resolutions also remind employers that the costs of the work permits may not be recouped from the employee, whether by direct payment or deduction from wages.

Work Permits
We reported in the February article that the temporary work permit will be issued to nationals or non-nationals employed for a period of not more than six months in duration. It is clear from the Ministerial Resolution that one of the aims of the temporary work permit is to enable an individual to work where a labour claim is pending in the Labour Court.

We also reported in the February article that the part time work permit was announced as enabling employees to take up more than one role. However, there has been some concern (reported in the press) that these permits would allow expatriates to take roles away from UAE nationals. Although the part time work permits are open to UAE nationals and expatriates alike, the permits will only be granted at the discretion of the Ministry of Labour and therefore the use of these permits may be carefully controlled. In actual fact, we believe that one of the aims of the part-time permits is to encourage UAE national females into the workplace.

The Cabinet Resolution introduced a work permit for personnel sponsored by their kinship. We speculated

in the February article that this would mean that expatriates would be able to act as official work sponsors of their dependents. The applicable Ministerial Resolution (No. 1188 of 2010) has clarified that the kinship permit will be granted to the following categories:

(a) females from the age of 18;

(b) the husband of a UAE national female;

(c) the children of a UAE national female.

Accordingly, the use of this permit will be limited.

One of the new Ministerial Resolutions (No. 1189 of 2010) provides more detail with respect to the juvenile work permits (for UAE nationals and expatriates between the ages of 15 – 18). In particular, this provides that the maximum number of working hours per day is limited to six hours, and the juvenile must have rest breaks of a minimum of one hour in total. The juvenile should be able to take the break(s) so that they do not work consecutively for more than four hours. In addition, the juveniles must not work overtime, stay on the employment premises beyond the hours of work, or be asked to work holidays. Finally, the Ministerial Resolution identifies 31 prohibited work activities.

Labour bans

To date, the Ministry of Labour has imposed an automatic 6-month ban on all individuals leaving their onshore employer. The ban could only be lifted for individuals with more than one year's service upon provision of a no-objection certificate from the former employer and/or payment of a fee (depending on length of service). The February article identified the factors which the Cabinet Resolution identified that the Minister of Labour should take into account when deciding whether to waive the ban.

The Ministerial Resolution has now clarified that the automatic 6-month ban will not be imposed where:

(1) Employment is terminated by mutual consent; and

(2) The employee has at least two years of service.

However, there are exceptions to this rule, which expand the scope of this waiver still further.

"Mutual consent" may not be required if:

- The employer acts in breach of its legal obligations (the example provided by the Ministerial Resolution is where an employer fails to pay salary for a period of 60 days or more); or
  Where the employee is "not the cause" of the termination. The Ministerial Resolution lists three examples of this, where the employer has shut down and has not been undertaking commercial activity for at least two months, provided that the employee has raised a complaint to the Ministry of Labour during this period; where the employer is ordered by the Labour Court to pay at least two months' salary, or is found to have arbitrarily dismissed the employee, terminated a fixed term contract early, or failed to pay end of service benefits; or where the employer terminates the contract or fails to renew a fixed term contract of its own accord.

The requirement of two years' service will not be required where:

- The employee is in a qualifying professional category (which to date have been based on academic achievement, i.e. Level One: Degree level and above, Level Two: Diploma, Level Three: High School qualification) and will receive from the new employer the required minimum salaries for those skill levels, being AED 12,000, AED 7,000 and AED 5,000 respectively; or
- The employer acts in breach of its legal obligations, or is "not the cause" of the termination (as set out above); or
- The employee is transferred to a group company. This latter exception is particularly helpful, in our view,

given that many companies have chosen to reorganise their businesses in recent years, which has resulted in employees being moved from one group company to another. Although in the event of an intra-group transfer, the employment with the first company is terminated, nevertheless employment within the group is maintained. We therefore consider that it is sensible that the 6-month ban is no longer imposed in such circumstances.

More Resolutions to follow?

As has been reported in the press recently, the work permit and residence visa for onshore employment has been reduced from a three-year period to two years. However, no applicable Resolution has been made available regarding this to date and concerns have been voiced by business representatives regarding the reduction in the period of the visa (as this may lead to higher fees where staff within an organisation remain in employment for a long period of time).

Further, it has been reported in the press that the Ministry of Labour will no longer require employers to obtain one-year consent for the continued employment of an employee who has reached the age of 60, and instead, consent will now be required once an employee turns 65 years of age. However, no Resolution regarding this is publicly available at present.