

Sweeping changes to employment relations in the Kingdom: An overview of the amendments to the KSA Labour Law

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...was published in the official gazette on 24th April 2015 and heralds the most significant change in the regulation of employment relations in the Kingdom of Saudi Arabia ("KSA") since the advent of the Labour Law itself.

The amendments are wide ranging and taken together with the reforms to the judicial system that will see the establishment of new labour courts (to be opened in 2017) and the MOL's joint undertaking with the Ministry of Justice to consolidate the decisions of the labour commissions into 'judicial codes', these changes represent the beginnings of a paradigm shift in the management of employment relations in the Kingdom.

The Key Amendments

The amendments, conceived in part with the intention of bridging the gap between employment in the public and private sectors and in part to align the statutory regime with current work practices, are a mixed bag for employers and employees.

The key amendments are considered below.

1. Work organisation regulations

Articles 12, 13 and 14 of the Labour Law have been amended so that all employers are required to prepare and make available in a conspicuous place internal regulations that conform with the MOL's model work regulations. Previously, this was only required of employers with 10 or more employees. Employers will be permitted to include additional provisions and conditions to those in the model work regulations provided that they do not contradict the Labour Law.

2. Employee training

Article 46 is amended so that the obligation on employers with 50 or more employees to annually train Saudi nationals is increased from 6 per cent to 12 per cent of the workforce. Employers will be able to include in this figure Saudi employees who have completed studies funded by them.

Currently under Article 48, employers are entitled to require trainees to work for them for a period of time on completion of their training. The amendments go further and require workers to commit to repaying the costs of their training to the employer where they refuse or fail to work for the employer following the end of the training period.

3. Probationary period

Under Article 53, at present employees cannot be subject to a probation period greater than 90 days. This

can be increased if they commence a new role for which they can be required to serve an additional probation period of up to 90 days in accordance with Article 54. The amendments permit the probationary period to be increased to potentially 180 days and also enable employers to require a returning employee to serve another probationary period where there has been a break in service of at least six months. These will be welcome changes for employers as it will enable them to assess a new employee's suitability over a more reasonable period of time and to re-assess a returning employee who may have been out of employment or the country or region for a long period.

4. Fixed term contracts

The period over which a fixed term contract is renewed and the number of times it is renewed before it will be deemed an indefinite term contract is increased. At present, if a contract is renewed for two consecutive terms or if the original contract term and the renewal period amount to three years then the contract is deemed to be for an indefinite term under Article 55(2). This is amended so that an indefinite term contract will come into being where the fixed term contract is renewed for three consecutive terms or the original term and the renewal period together amount to four years. This will give employers more flexibility when employing Saudi nationals but will not affect expatriate employees who will continue to be subject to employment for fixed terms in accordance with Article 37.

5. Change of work location

Article 58 is amended to allow an employer to temporarily transfer an employee to a different work location without the employee's prior written consent for no more than 30 days per year in an emergency. It is difficult to see how this might work in practice given that there is no definition for what would constitute an 'emergency'. However, it is arguable that it will include circumstances where there is an urgent need to fill a role due to the loss of an employee through illness or to deal with an unexpected demand in work.

6. Employee service certificate

Employees are entitled under Article 64, on request, to receive a certificate confirming their employment service (including start and end dates of employment, salary details and profession). Where these are provided, employers may make comments on the employee even if they are harmful to the employee's reputation or reduce his prospects of finding future employment but must include reasons for the same. The amendments prohibit the inclusion of any statement by the employer which may have this effect. Employers will be better placed to adopt a policy of providing anodyne references only for all employees.

7. Termination of employment: redundancy

The amendments introduce new grounds for termination under Article 74 and allow the employer to validly terminate the employment contract where the establishment is permanently closed or if there is a cessation of the business activity where the employee works. Although the concept of redundancy is recognised for the first time in the Labour Law, the amendments do not go so far as to include circumstances where there is a diminution in the requirements of a particular role or the numbers employed to perform that role.

8. Termination of employment: notice period

Article 75 is amended to increase the notice period for terminating indefinite term contracts from 30 to 60 days for employees paid on a monthly basis and from 15 to 30 days for all other employees. As the change only affects indefinite term contracts, it will not increase the notice period for expatriate employees who must be employed under a contract for a specified term or, by default, the period of the work permit. The purpose of the amendment therefore seems to be an attempt to make private sector employment more attractive to Saudi nationals.

Where the employer issues notice to terminate employment, both Saudi national and expatriate employees will have the right by way of an amendment to Article 78 to paid leave each week for one day or eight hours to search for alternative employment provided that the employer is notified. Article 78 is also amended to allow an employer to release the employee from the requirement to work the notice period by making a payment in lieu of notice.

9. Termination of employment: remedies

Where notice has not been observed by either party to an indefinite term contract, Article 76 is amended to allow the parties to waive the requirement on the defaulting party to pay compensation equal to the employee's wages for the notice period to the other party.

The parties can also expressly agree on the compensation that will be payable where either party terminates the contract for an invalid reason. This is an amendment to Article 77 which also stipulates that where compensation is not agreed in the contract then the sum will be the employee's wages equivalent to 15 days' for each year of service in the case of indefinite term contracts and the wages for the remainder of the contract period in the case of fixed term contracts. In either case, the default compensation sum must not be less than two months' wages. The right to claim reinstatement as a remedy is removed altogether by the amendments to Article 78.

These changes will bring much needed certainty to termination costs where these are agreed beforehand by the parties and expressly stated in employment contracts. Where it is not possible to agree on the compensation beforehand, employers will still be in a better position than they are now to assess termination on commercial grounds.

10. Termination of employment: summary termination for unauthorised absence

The amendments increase the number of days that the employee has to be absent from work without a valid reason before he can be dismissed summarily under Article 80(7). The employee will need to be absent for 30 aggregate days in a year or more than 15 consecutive days. Currently, the employee must be absent for more than 20 aggregate days in a year or more than 10 consecutive days. This change will make it more difficult for employers to manage workplace absences and can only be intended as a social measure to narrow the gap in employee rights in the public and private sector.

11. Payment of wages

Article 90 is amended to require employers to pay wages through approved banks in the Kingdom. This is to enable the government to monitor compliance with its Wage Protection System which is a cornerstone of its revised Nitaqat (Saudisation) policy.

12. Hours of work

Article 101 is amended to increase the total number of hours that an employee can be required to remain at the place of work from 11 to 12 hours per day. This may be subject to further amendment if the proposal to limit the weekly working hours to 40 hours per week over 5 days (which is to be considered again this year by the Shoura Council) is accepted by the Council of Ministers.

13. Increased leave entitlements

The amendments have increased paid leave entitlements in the following cases:-

- Marriage leave – this is increased from 3 to 5 days;
- Compassionate leave – this is increased from 3 to 5 days (in the case of a Muslim woman whose spouse dies her leave period is increased from 15 days to the full Iddah period of four months and 10 days and in the case of a non-Muslim woman her period of leave will remain unchanged at 15 days); and

- Paternity leave – this is increased from 1 to 3 days.

14. Changes to maternity leave

Article 151 is amended to give women more flexibility in taking their maternity leave entitlement. Female employees have the discretion to distribute as they see fit their entitlement to four weeks paid leave immediately preceding the expected date of delivery and six weeks following it. They also have the right to extend their maternity leave by one month on an unpaid basis. These changes give women the right to ten weeks' paid annual leave with the option to take a further four weeks unpaid leave. Additionally, if a woman gives birth to a disabled or ill baby whose condition requires a full time carer then she will be entitled to an additional month of paid maternity leave at the end of the ten weeks' paid delivery leave and will be able to avail herself of one month's unpaid leave too. Therefore, she will have fourteen weeks' paid leave with an optional four weeks unpaid leave available to her.

15. Labour violations and workplace inspections

The MOL's work inspection capability is improved by the amendments which allow it to utilise qualified non-Ministry staff to perform inspections and authorise inspectors to impose an immediate fine and to produce minutes and reports of an inspection and not merely provide advice and guidance, as is currently the case.

There are also changes to the penalties that can be imposed for labour violations so that these now include financial penalties of up to SAR 100,000 and closure of the business for a period of no more than 30 days (or permanently in some cases). Additionally, businesses need to remedy the violation within a specific period and if they fail to do so or reach agreement with the MOL to settle the penalty then it will be deemed to be a new violation and presumably subject to further penalty.

Finally, there is an incentive of a reward of up to 25 per cent of the collected fine imposed by the MOL to those who assist in the detection of labour law violations.

Conclusion

On balance, the amendments should be welcomed by employers as they provide greater flexibility in managing employees; particularly when terminating employment. The introduction of a new ground for dismissal on the permanent closure of an establishment or cessation of a work activity will give employers some clarity and certainty when dealing with redundancies. The doubling of the probationary period will provide for a more reasonable time frame for employers to assess the suitability of an employee and to do so without liability where employment is terminated in that period.

Far more exciting is the possibility of agreeing a compensation sum where contracts are terminated for an invalid reason; which has the potential for reducing significantly, if not altogether, the risk of unlawful termination claims being brought by employees. It will be interesting to see how the MOL intends for this to work in practice and whether the judiciary will accept the contractual terms entered into by the parties; notwithstanding the obvious imbalance that will exist in the bargaining power of the parties at the outset. Less welcome are the changes to the notice period for terminating indefinite contracts and the increased powers that will be available to the MOL to carry out workplace inspections and to address labour violations.

The amendments will come into force six months from their publication in the official gazette and therefore are expected to be implemented on 24th October 2015.