

UAE Labour Market Reform: A new platform for 2016

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The thrust of the changes, which come into effect on 1st January 2016, is to provide for a more flexible work environment for employees. In addition greater protection is provided to new employees to ensure that what they are promised by way of a pay offer is actually delivered when they commence work.

This article examines the main aspects of the new regulations and the likely impact they will have on employers.

Employment contract consistent with offer letter

Ministerial Decree 764 of 2015 provides that MOL approval to admit a non-national employee (i.e. the first step in obtaining an entry permit to enter the UAE and obtain a residency visa) will not be granted until an 'employment offer that conforms with the Standard Employment Contract' is signed by the employee and lodged with the MOL prior to arrival/commencement.

It is our understanding that the MOL will issue a template offer letter ("**Offer Letter**") to be used for these purposes and that the existing MOL labour contract- the short two page contract ("**MOL Contract**")- will not be modified.

The decree goes on to state that the terms as per the Offer Letter may not be altered when completing the MOL Contract unless the terms are more beneficial to the employee. It also states that no additional terms can be included in the MOL Contract unless they are consistent with the MOL's requirements and do not conflict with other clauses in the MOL Contract.

The clear aim of this decree is to ensure that employees recruited abroad are not enticed to the UAE on false promises- the entry visa will not be issued until the Offer Letter is signed by the employee and submitted to the MOL and thereafter the MOL Contract will have to match the Offer Letter. Due to the operation of the Wage Protection System (which is managed by the MOL) the employer is obliged to pay the salary as per the MOL Contract (or a greater amount) to the employee's bank account each month. So the MOL can now effectively ensure that the salary terms offered to an employee will be delivered when he gets to the UAE.

It is envisaged that the Offer Letter will be quite minimalist and contain just the key terms- salary, notice, annual leave and termination provisions. Many employers will probably wish to issue their own offer letter setting out further details (e.g. references, other working conditions, Company ethos) which is acceptable save that any provision that conflicts with the Offer Letter will have no effect.

An interesting question arises in relation to terms not included in the Offer Letter which place an added obligation on the employee but which are not conflicting with the key Offer Letter terms- e.g. post termination restrictions on the employee, intellectual property and confidentiality provisions. Currently it is normal to include such terms in the employer's own contract ("**Company Contract**") and in some cases to insert a non-compete clause in the MOL Contract.

On the basis that the MOL decree appears to be focused on salary and benefits and the fact that the Labour Court will consider both the MOL Contract and the Company Contract together, it is our view that an employer can continue to place these additional obligations on an employee by use of a Company Contract.

Termination

The second decree (765 of 2015) deals with termination of employment.

The main points to note are as follows with the existing position in brackets for comparison purposes:

Item	Fixed term contract	Unlimited term contract
Maximum duration	2 years (4 years)	N/A
Notice period	1-3 months (none required)	1-3 months (1 month minimum, no maximum)
Compensation for early termination of fixed term contract	As agreed between the parties but not more than 3 months' salary where employer terminates, 1.5 months where employee terminates*. (The employer is liable to pay compensation to the employee equal to three months salary or for the remaining period of contract whichever is shorter; the employee is liable to pay half the amount that the employer would have to pay)	N/A

**Article 1.4(c) of the decree states that the parties shall agree the compensation for early termination at the outset of the employment relationship (by means of the Offer Letter and MOL Contract), up to a maximum of 3 months' salary. Under the Labour Law (article 116) the maximum compensation that an employee would pay for early termination of a fixed term contract is 45 days salary. As there is a potential conflict between the Labour Law and the decree on this point the Labour Law will prevail.*

In all cases termination is allowed by mutual consent, where the contract period expires or where one party fundamentally breaches the contract (e.g. gross misconduct by employee or failure to pay salary by employer).

Long Notice

It is interesting that the longest notice period allowed is 3 months which may cause concern for some companies in respect of their senior management who may ordinarily have 6 month notice periods. Educational institutions typically have long notice periods (in order to discourage staff turnover during the academic term) and again this will be of practical concern to them.

Due Process

The decree goes on to state that a termination not in accordance with due process occurs when either the employer or employee terminates the employment relationship without complying with 'legally mandated procedures'.

Currently the due process requirements under the Labour Law (articles 110 and 111) are as follows:

- the employee must be notified of the charge against him, within 30 days of the disclosure of the alleged offence
- he must be provided with an opportunity to state his defence
- his defence must be investigated
- all the above should be recorded in his personal file
- the employee should be notified in writing of the penalty, the reason for same and the action taken against him in case of repetition of the offence. The penalty may not be imposed after the lapse of sixty days from the date of the disciplinary finding.

It is our understanding that the MOL will issue guidance on the 'legally mandated procedures' but given the primacy of the Labour Law it is unlikely in our view that they will differ in any material way.

Work Permits/Labour bans

Ministerial Decree 766 of 2015 sets out new rules on work permits with resultant easing of labour bans.

A new work permit will be issued (and hence no labour ban arises) in the following circumstances (applicability to each type of contract illustrated in the relevant columns):

No.	Circumstance	Fixed term contract	Unlimited term contract
1	The term of the contract has expired and not renewed.	x	
2	Either party unilaterally terminates the employment relationship after the expiry of the first fixed term contract provided that: a) The terminating party gives notice to the other party as per the MOL Contract; b) The terminating party continues to honour the contractual obligations for the duration of the notice period; and c) The terminating party indemnifies the other party in the amount that was agreed to in the MOL Contract. <i>This provision appears to have been written purely with intention of addressing where an employee resigns during the term of the contract (as otherwise an employee would not be entitled to a new work permit if the employer was in breach of (b) which does not appear to be the intention of the legislation).</i>	x	
3	Either party unilaterally terminates the employment relationship provided that: a) The terminating party gives notice to the other party as per the MOL Contract; b) The terminating party continues to honour the contractual obligations for the duration of the notice period; and c) The employee has completed a period of no less than six months (if the employee has a high school diploma or higher the 6 month period is waived).		x

No.	Circumstance	Fixed term contract	Unlimited term contract
4	The parties mutually agree to terminate the contract during the course of its term, provided the employee has completed a period of no less than six months (if the employee has a high school diploma or higher the 6 month period is waived).	x	x
5	Where the employment is terminated by the employer through no fault of the employee; provided the employee has completed a period of no less than six months (again if the employee has a high school diploma or higher the 6 month period is waived).	x	x
6	Where the employer has failed to meet his legal or contractual obligations, including but not limited to when the employer fails to pay the employee's wages for more than 60 days.	x	x
7	Where the employer is shutting down	x	x
8	Where the labour court provides a final ruling in favour of the employee that attests that is entitled to: <ul style="list-style-type: none"> • accrued wages for no less than two months of work • arbitrary or early termination compensation, or • any other entitlements that the employer has abstained from granting including end-of-service gratuity. 	x	x

Clearly the changes provide for a more fluid labour market and greater employee mobility. The circumstances in which labour bans can be issued are so radically.

The Minister has publically stated that healthy employment relations are predicated on voluntary engagement, trust and the right of either party to opt out of the relationship.

Conclusion

The new changes certainly add transparency and clarity on issues such as offer letters and termination provisions. The greater workplace mobility provisions are likely to have an immediate impact on the labour market.

The main beneficiaries of the changes will be blue collar workers and those recruited from abroad by unscrupulous companies offering terms and conditions that are not then honoured in the UAE.

Al Tamimi will monitor the implementation of the new regulations and provide further updates on the Offer Letter and the MOL 'legally mandated procedures' as soon as they are published.