

New Executive Regulations of the KSA Labour Law

June - July 2016

Introduction

The Regulations codify a number of the ministerial resolutions that followed in the wake of the Labour Law in 2005, and augment the recent amendments of October 2015. They also update the Ministry of Labour's template employer's policy handbook – the Work Organisation Regulation – and, for the first time, introduce a standard form employment contract.

Key Points

The key points to note in the Regulations are as follows:

1. Temporary/Casual Contracts

Temporary or casual employment contracts that continue beyond 90 days will become full employment contracts to which all of the provisions of the Labour Law will apply.

2. Employment Handbook

The Employment Handbook will be in the standard form at Annex 1 to the Regulations and will be approved if adopted without modification, or if modified to include additional terms and conditions it will be approved following review by the Ministry of Labour provided that the modifications do not contradict the Labour Law, the Regulations and any applicable Ministerial Resolutions.

Employers that have an existing Employment Handbook that has been approved by the Ministry of Labour are exempted from submitting it in the new standard form if it conforms to the Labour Law as amended and the Regulations. If it does not conform then employers must submit an amended version for approval by the Ministry within six months of the Regulations coming into effect.

3. Disabled Workers

Employers with 25 or more employees who can provide work that can be performed by a disabled person are already obligated by Article 28 of the Labour Law to ensure that 4 per cent of their workforce is comprised of disabled employees. The Regulations now define a disabled person as being any person who is proven through a medical report issued by the Ministry of Health or a government hospital or who holds an ID card issued by the Ministry of Social Affairs as suffering from one or more of the following permanent disabilities:

vision/hearing/mental/physical/motion disability, learning difficulties, speech difficulties, behavioural disorders, emotional disorders, autism or any other disability requiring any form of facilitating arrangements and services.

Annex 3 to the Executive Regulations sets out a table of the facilitating arrangements and services that employers are required to make to modify and adapt the work conditions and physical environment to enable the disabled person to perform work.

All employees can avail themselves of facilitating arrangements and services to enable them to perform the duties of their role if they can prove by a medical report issued by the Ministry of Health or government hospital that they are affected by a disease or disability which does not cause them to be absent from work for more than 120 days from the date of injury.

The Regulations make it clear that disabled workers have the same rights and privileges as other workers. Further, discrimination because of disability is made unlawful and disability may not itself be a reason for the refusal to employ or promote workers with a disability or to not allow them to benefit from vocational training programs if they have the ability to work.

4. Holidays

Where public holidays fall on the weekly rest days then the worker will be entitled to the same number of days holiday in lieu to be taken before or after the holiday. Where public holidays fall on the days that the worker is on annual leave then this will be extended by the public holidays and where they coincide with days that the worker is on sick leave then the worker will be entitled to full pay for the holiday in addition to his entitlement to sick pay. Where the National Day holiday coincides with either of the Eid holidays then the worker will not receive a day in lieu for it.

Employees who take annual leave and fall sick will have their annual leave suspended until after the sick leave period expires at which point their annual leave shall resume. Employees will not be compensated for weekly rest days that fall within any period of sick leave

5. Expatriate Workers

The Regulations list the professions and job roles that expatriate workers cannot perform and which can only be occupied by Saudi nationals. They also set out the conditions, controls and procedures for recruiting expatriate workers including the circumstances in which the Ministry of Labour may refuse applications for visas, and the circumstances in which the sponsorship of an expatriate worker can transfer to another employer and the conditions and procedures for transferring sponsorship. Further, they clarify the circumstances in which a transfer of sponsorship will not occur and the conditions and procedures for changing the profession of an expatriate worker.

The conditions under which the passports of non-Saudi national workers can be held by employers is also dealt with so that they cannot be acquired without their written consent; which must be given in the form approved by the Regulations.

6. Training

The Regulations set out the conditions and rules that employers must follow to comply with Article 42 of the Labour Law to prepare their Saudi national workers to gradually replace their expatriate workforce, and the rules and standards for training of workers which are required by Article 44 of the Labour Law.

7. Codification of Ministerial Resolutions

The secondary legislation containing the rules and regulations regarding part-time workers further to Article 140 of the Labour Law, the procedures for notification of work injuries in accordance with Articles 141, and the employment of minors further to Article 161 set out in numerous ministerial resolutions is brought together for the first time under the Regulations.

8. Standard Form Contract

A standard form employment contract is introduced by the Regulations with obligatory clauses which must be included in all contracts.

9. Miscellaneous

The Regulations also deal with a number of other matters including:

- Setting out the procedure for agreeing an extension of the probationary period from 90 days to 180 days;
- Increasing the maximum annual overtime hours that an employee can be required to work without his consent;
- Defining the “preparatory or supplemental works” and “work that is intermittent by necessity” under Article 108 of the Labour Law and the roles of guard and janitor, and setting the limit on the working hours for preparatory or supplemental works, and intermittent work;
- Describing the rules regarding the entitlement of female employees to breastfeed a child of up to 24 months of age during working hours;
- Setting out the rules and procedures for the establishment of committees for applying penalties for breaches of the Labour Law and committees to hear objections or appeals against the application of penalties; and
- Detailing the time periods for rectifying a breach of the Labour Law which is one month from the date a penalty is applied and time limit for payment of a penalty fine which is 15 business days from the date of the notification of the administrative resolution or final judgment imposing the fine.

Recommended Steps for Employers

Employers will rightly want to focus on reviewing their employment contracts and the Work Organisation Regulation to ensure they are compliant with the standard form documents. Where contracts have not been reviewed in recent times then employers will want to take this opportunity to bring them up to date with the Labour Law amendments. Sickness and annual leave policies should also be reviewed to deal with weekly rest days and sickness absences that coincide with public holidays and annual leave. Finally, employers with disabled staff or those who qualify for facilitating arrangements and services will have to ensure that they have in place the workplace adaptations required by Annex 3 of the Regulations.