

Employment Law Considerations for Education Providers in the UAE

Ivor McGettigan - Partner, Head of Education - Employment and Incentives
i.mcgettigan@tamimi.com - Abu Dhabi

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In this article, we will take a high level view of the key employment considerations for both schools and higher education institutions in the UAE.

Private sector employers, including education providers, are subject to the Federal Law No. 8 of 1980 ("Labour Law"). Publicly owned education providers may be subject to other laws, which would need to be considered prior to formulating an HR response. For the purpose of this article, we will consider some of the recurring HR issues for private providers but the topics covered are of general interest to the entire education sector.

Schools

Some schools are required to issue a standard form Ministry of Education ("MOE") employment contract ("MOE Contract") which contains a number of provisions that are at variance with the Labour Law. In addition, a decree issued by the Minister of Labour, Decree 765 of 2015, which came into effect on 1st January 2016 ("Decree"), imposes further constraints on employers under the remit of the Ministry of Human Resources and Emiratisation (formerly the Ministry of Labour) (which may include some education providers). The overall position can be ambiguous, which is why it is important for schools to be aware of the key issues as well as have clear contracts and HR policies in place to help navigate a sensible course through it.

Contractual fundamentals

The default position for private schools is to issue a limited term contract. The [Labour Law](#) provides that there is no requirement for a notice period prior to termination in a limited term contract, however, the MOE Contract contains a two month notice period, whilst, the Decree stipulates that notice should be no less than one month in respect of a renewed fixed term contract (i.e. after the first term has expired). In the school sector, this disparity is not such an issue as schools want a notice period to avoid staff leaving suddenly, midway through the academic year.

The following table illustrates the disparity in relation to notice, compensation and annual leave.

Heading	Labour Law	MOE Contract	Decree ¹
Probation (maximum)	6 months	1 month	N/A
Minimum notice (fixed term contract)	0	2 months	1 month
Maximum notice	No maximum	2 months	3 months
Compensation payable by employer to employee terminated before expiry of fixed term contract	3 months ²	1 month	1-3 months
Compensation payable by employee to employer where he resigns with effect before expiry of fixed term contract	1.5 months ³	1 month	1-3 months
Annual leave	30 calendar days	74 calendar days	N/A

Table 1: Employment law comparison

- As applicable to renewed contracts.
- 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.
- The employer is liable to pay half the compensation, as per footnote 2.

Termination

As can be seen from Table 1 above, a school which terminates a teacher during the school year could face a claim of two months notice, one month compensation (both as per MOE Contract), plus three months early termination compensation (Labour Law). If there is no MOE Contract, then it would be notice as per the school contract plus three months early termination compensation (Labour Law).

Given the room for confusion, it is important that the employer formulates a view, ideally in conjunction with an employment lawyer, on how to address these conflicting provisions (before they crystallise into an actual legal case) and manage risk whilst observing best practice and being appropriately benchmarked with other schools. Ultimately, risk can be managed but not eliminated.

Annual Leave

The area surrounding annual leave allows for some creativity on behalf of the school. The vacation, as per the school calendar, is greater than the statutory and contractual amount, meaning that an employer can treat the differential in a way that limits its liability for pay in lieu of leave and serves as an added disincentive for a teacher to leave before expiry of the term. This brings us to the topic of retention, another key consideration for schools.

Retention

The Middle East has the second most acute teacher shortage in the world. Retention of talent is probably the number one HR issue within education, recognising the cost (financial and non-financial) of replacing a good teacher and the importance of retaining institutional memory and continuity.

Accordingly, some schools have decided to pay elevated end of service gratuity payments depending on length of service. There are other tools available for the resourceful employer including specific retention plans, which can even be cost neutral if they absolutely need to be.

Housing

It is quite common for schools to provide accommodation to teachers. Problems can emerge with such a benefit on two fronts:

- **Termination.** When a teacher is terminated, the usual issues surrounding vacating the accommodation arise. A well drafted accommodation policy and employment contract will be effective in this situation.
- **Hire.** It is common in the education space to assign a status to new employees, be it single, married, not sponsored by school, etc. There are a number of pragmatic reasons for this. The housing arrangements for the teacher are generally linked to this status. Substantive HR issues can arise in relation to pay in lieu of leave or overtime where two teachers doing the same job get paid different amounts, one teacher gets paid on basic plus housing allowance; whilst the other gets paid on basic only (as housing is provided).

Again, if HR can pre-empt these issues it will lead to a smoother outcome.

Additional contractual terms

There are a number of important areas which the school's own contract/HR policy should address:

- In service training/professional development;
- Child protection;
- Working outside the school (tutorials, etc.);
- Data protection and monitoring of emails; and
- Social media usage.

Universities and Colleges

Many of the HR issues within the higher education space are similar to those that schools face.

Notice

Higher educational institutions typically have lengthy notice periods, often six months or more, in order to discourage staff turnover during the academic year. The Decree presents a real issue for those employers subject to it in that the maximum notice period is purported to be only three months.

Accordingly, there is an incentive for higher educational institutions to develop imaginative HR solutions, including staff retention policies, in order to discourage midyear disruptive resignations.

Ownership of intellectual property

Elsewhere in this issue of Law Update my colleague Ahmad Saleh (Intellectual Property department) discusses the monetisation of research in the education sector and the issues surrounding faculty/employee inventors.

Suffice to say, very careful consideration is required in relation to the drafting of an employment contract for academic staff who are involved in research and development so as to ensure that the scope of employment is adequately defined; otherwise, the institution may not benefit financially from the fruits of the research.

Academic Freedom

The concept of academic freedom – defined as the right of a teacher or student to discuss or investigate any issue, or to express opinions on any topic without interference from the college or government – is enshrined in many international university charters (and frequently in the case-law and legislation of those countries). It is not an absolute right and, for example, the freedom to “investigate any issue” faces practical obstacles as regards availability of funding.

Academic freedom is not an expressly recognised concept in the UAE thus, whilst a university’s policies may refer to it, guidance should be provided to staff (particularly at the on-boarding stage) in relation to the practical limits of it.

Tenure

Tenure has been defined as the right to remain permanently in a job. Tenure and academic freedom are seen as two pillars of the western university system.

Tenure, however, is not expressly recognised in the UAE. This can present a major challenge in trying to attract tenured faculty from international colleges. In some cases, the candidate will ask for a pre-agreed compensation payment (perhaps one or more year’s salary) to be included in the contract in the event that he/she is terminated for reasons other than stated misconduct.

Where faculty are seconded to the UAE, they generally retain tenure in their home country. A secondment agreement would be recommended in cases like this to deal with issues like dual employment rights

arising in the home country and UAE.

Conclusion

Internationally, the education space has its fair share of HR complexity. Many of the same issues arise in the UAE. With some forward planning, the prudent education provider is well placed to address most of these issues. Consideration as to the legal landscape (including internal policies) and the reasonably predictable issues likely to arise, can help equip HR with the tools to deal with them in an effective, consistent, and efficient manner.