

UAE Healthcare Sector: Employee Transfers

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This is not entirely surprising, given that the sector itself is a very much consumption-led industry and is thriving elsewhere with Sanofi's agreement to a 22.8 billion-euro (\$25.1 billion) asset swap with Germany's Boehringer Ingelheim GmbH being an obvious example.

Notable UAE activity in the sector includes Mediclinic International combining with Al Noor Hospitals Group, to create an enlarged Mediclinic group – the third largest international hospital provider outside the United States; American Hospital Dubai's collaboration with the Mayo Clinic Care Network; and the NMC and Dr. Michael Fakhri IVF merger.

This recent spate of activity lends further credence to the rising buoyancy of the overall healthcare sector in the UAE. Against this backdrop, key employment considerations can arise in the context of employee transfers between healthcare providers which this article considers in further detail.

For illustrative purposes, we use the example of Company A being in the process of reorganising its business with the result that its healthcare divisional arm will be acquired by another pharma company, Company B. As a result of the reorganisation, it is proposed that Company A's employees will be transferred to Company B, who has agreed as part of the sale to offer employment to Company A's employees. In the context of this business asset sale arrangement between the two UAE companies, we consider the framework relating to the transfer of employees, their benefits and overall status.

Legal framework

By way of background, unlike other foreign jurisdictions there are no transfer (automatic or otherwise) regulations in the UAE by which employees can seamlessly migrate from one entity to another.

Accordingly, on any business asset transfer, the employment with the first employer (in this case, Company A) is treated as having been terminated and the transferring employees will require to enter into new employment contracts with the second employer (in this case, Company B). There will also need to be a cancellation of the residency visa and employment permit with Company A and an application for new visas and permits with Company B. This may be done by way of a transfer of sponsorship and payment of a fee, depending upon where the two entities are based.

On termination of employment, an employee is entitled to an end of service gratuity payment, provided that they have worked for their employer for at least one year. This is calculated with reference to length of service, and an employee receives 21 calendar days' basic pay (based on the last basic salary payment an employee receives prior to termination of employment) for each year of service, for the first five years of service, and 30 calendar days' basic pay for each year of service thereafter. Any incomplete year is calculated on a pro-rated basis. The maximum payment an employee can receive is a payment equivalent to two years' salary.

Therefore, from a legal perspective, on the transfer of employment from one entity to another, the employees will be entitled to be paid for their gratuity accrued to date. However, as noted above, gratuity

is based on length of service and therefore there are various disadvantages to an employee who is paid their gratuity on leaving Company A rather than rolling that service over to Company B.

In the light of this, some companies agree with their employees that they will not receive their gratuity at the point of transfer, but instead the liability will be rolled over into their new contract, so that although the employee does not receive an immediate payment, their continuity of service is intact. This can only be done with the co-operation of the employee. In practice, though, as the arrangement is advantageous to the employee, consent is usually readily obtained.

Where gratuity is to be rolled over, a tri-party agreement is entered into, between the two employing entities and the employee, confirming the agreed arrangements.

Under the UAE Labour Law, an employee is entitled to notice, which is at least 30 days in the case of an unlimited term contract, or such longer period as may be stated in the employment contract. As notice cannot be waived or reduced, appropriate notice should be given to an employee of the termination of their employment (with an explanation of the transfer to the second entity) in plenty of time prior to the transfer, so that notice is correctly given. Alternatively a waiver of notice could be agreed with the employee, although strictly in the event that an employee is unhappy with the agreement and complained to the UAE Courts, the agreement to waive notice would be void. However, in practice, as with gratuity, the transferring employees are unlikely to complain about the notice if they know that they are being offered employment with the new employer on the same or similar terms.

Finally, in addition to notice, an employee is also entitled to be paid for accrued but untaken benefits as at the termination date with Company A, such as accrued annual leave. The two entities could consider allowing the annual leave to roll into the new employment (although again, the entities may want to come to an agreement on cost), or alternatively, the employees should be paid in lieu for the accrued benefits upon termination of employment with Company A. Furthermore, the issue of any loans or advances that are owed by any transferring employees to Company A and how these will be dealt with would need to be considered.

Other considerations include the possibility of labour bans being applied on employees (although this has been increasingly liberalised), and the extent to which the transferring employee is a national of a country facing difficulties in securing UAE residency visas.

Concluding remarks

It is important for both the purchaser and the seller to be aware of the specific issues and matters which arise in respect of the transfer of employees in the context of a business asset sale, ensuring that, prior to the transfer, all relevant documentation is prepared and ready to issue to the transferring employees (for example, tri-party agreements), visa cancellation/transfer arrangements have been made and appropriate internal discussions have been undertaken with the “transferring” employees in order that expectations are managed effectively and the process has been transparently communicated.