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# **The Legal 500 Country Comparative Guides**

## **Saudi Arabia**

# **EMPLOYMENT & LABOUR LAW**

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This country-specific Q&A provides an overview of employment & labour law laws and regulations applicable in Saudi Arabia.

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## SAUDI ARABIA

# EMPLOYMENT & LABOUR LAW



### 1. What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

Following the outbreak of the COVID-19 pandemic, Ministerial Resolution No. 70273/1440 (the **COVID Resolution**) was passed to help protect jobs by:

1. essentially defining the pandemic as a “force majeure” event for the purposes of the KSA Labour Law; and
2. requiring employers to adopt other measures (e.g. salary reductions, annual leave and/or unpaid leave) for a period of six months before dismissing an employee for a “force majeure” reason; and
3. prohibiting employers who have received KSA Government COVID-19 subsidies from dismissing an employee for a “force majeure” reason.

Any breach of the COVID Resolution would have resulted in a fine of SAR 10,000 per affected employee, and significantly increased the risk of dismissals (by reason of the employer seeking to address the economic impact of the pandemic) being deemed unlawful.

**The KSA authorities confirmed that the COVID Resolution would be lifted with effect from 13 January 2021 and therefore, at the time of writing, the COVID Resolution no longer applies.**

### 2. Does an employer need a reason in order to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

Royal Decree No. M/51 23 Sha'ban 1426/27 September 2005, as amended (the **KSA Labour Law**), permits the termination of an employee's employment for a “valid” reason.

The KSA Labour Law specifies the following potentially valid reasons for dismissal:

1. termination by mutual agreement;
2. expiry of the employee's fixed-term employment contract;
3. notice being given by either party to terminate the employee's unlimited term employment contract in accordance with Article 75 of the KSA Labour Law;
4. the employee reaching the statutory retirement age, unless the parties agree otherwise;
5. a “force majeure” event occurs;
6. the employer's business closes down (i.e. redundancy);
7. the project on which the employee works is complete; or
8. any other reason permitted by law.

### 3. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

#### Collective Dismissal of Saudi Nationals

Resolution No. 50945 of 2017 (the **Collective Dismissal Regulations**) restricts large or medium size employers' ability to collectively dismiss Saudi nationals for reasons related to the employer (i.e. redundancies or reorganisations).

A collective dismissal of Saudi nationals means dismissals of:

1. Saudi nationals constituting 1% or more of the total workforce within one year; or
2. 10 or more Saudi nationals within one year,

whichever is greater.

An employer must notify the Ministry of Human

Resources and Social Development (the **MHRSD**) of any collective dismissals at least 60 days before notice of termination is issued to the employees, specifying:

1. the employer's financial position;
2. the financial rationale for the collective dismissals;
3. the number of proposed dismissals;
4. the names and job descriptions of each employee;
5. the rationale for each individual proposed dismissal; and
6. the steps taken to avoid the dismissals.

The MHRSD then has scope to determine whether the employer can proceed with the collective dismissals or follow an alternative course of action.

Any failure by an employer to comply with its collective dismissal obligations may result in a block being imposed on the employer by the MHRSD, and/or the employer being liable to pay invalid termination compensation mentioned above.

#### **4. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?**

Companies should consider the effect any reduction in headcount would have on their Saudisation rating.

#### **5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?**

Foreign nationals may only be employed on fixed-term employment contracts. If the parties either agree to an unlimited term employment contract or fail to specify the expiry date in a foreign national's employment contract, the employment contract will be considered a fixed-term contract due to expire on the expiry of the foreign national's work permit.

Saudi nationals may be employed under either a fixed term contract or an unlimited term employment contract.

If a Saudi national is employed under an unlimited term employment contract, the employment contract must contain a minimum notice period of 60 calendar days. It is open to the parties to agree longer notice periods.

#### **6. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

Yes, it is possible to pay an employee in lieu of their notice period.

#### **7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?**

Yes, an employer may require an employee to stay at home and not undertake their duties during all or part of their notice period, although the right to place an employee on garden leave should be contained in the employee's employment contract.

#### **8. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.**

##### Fixed-Term Employment Contracts

There is no mechanism for giving notice of termination prior to the expiry of a fixed-term employment contract. The KSA Labour Law envisages an employee's employment continuing until the end of the fixed-term employment contract.

Therefore any termination prior to the expiry of a fixed-term employment contract would likely be considered "invalid", unless it is for a reason under Article 80 of the KSA Labour Law - i.e. a reason akin to gross misconduct. (See *question 9 and question 16 below regarding the liabilities which may arise in an invalid termination scenario*).

##### Unlimited Term Employment Contracts

Unlimited term employment contracts may be terminated for a "valid reason" by the employer giving no less than 60 calendar days' notice in writing. A "valid" reason is generally considered to be poor performance or misconduct.

Prior to terminating an unlimited term employment contract for performance or conduct reasons, an employer must undertake the following disciplinary process as a minimum:

1. notify the employee in writing of the allegations against them within 30 days of the alleged offence being discovered;
2. hold a disciplinary hearing at which the employee should be given the opportunity to respond to the allegations against them;
3. take written notes of the disciplinary hearing; and
4. notify the employee in writing of the disciplinary sanction within 30 days of establishing the employee's guilt.

**9. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?**

If the above disciplinary process is not followed prior to terminating an unlimited term employment contract, there is a significant risk that a KSA labour court (in the event of a dispute), would conclude that the employee's employment had been invalidly terminated. In these circumstances, the KSA labour court may award the employee invalid termination compensation, which would be payable in addition to the employee's statutory and contractual entitlements. (See our responses to question 16 for more information regarding invalid termination compensation).

**10. How, if at all, are collective agreements relevant to the termination of employment?**

Trade unions and labour associations are not permitted in KSA. However, Saudi nationals may form works councils and employees may also form welfare committees for workplace social welfare purposes.

**11. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?**

There are no third party notification requirements which must be satisfied prior to terminating employment (unless the Collective Dismissal Regulations apply, in which case the employer would be required to notify the MHRSD at least 60 days prior to issuing written notice of termination of employment to the impacted Saudi

national employees).

**12. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?**

The KSA Labour Law also provides that "citizens are equal in the right to work without any discrimination on the basis of sex, disability, age or any other form of discrimination, whether during the performance of the work or when hiring or advertising it". The reference to citizens suggests that this anti-discrimination provision applies to Saudi nationals only and it therefore remains to be seen how widely this provision will be interpreted and applied in practice.

The KSA Labour Law also provides that employees cannot be dismissed whilst pregnant or on maternity leave (including during any period of sickness resulting from the pregnancy provided a medical certificate is provided).

Resolution No. 488 dated 14/9/1439H and Resolution No. 20912 dated Safar 1441 (the **Anti-Harassment Laws**) aim to protect an individual's dignity, privacy and personal freedom in accordance with Sharia law by specifically prohibiting words, acts, implicit behaviour or innuendo of a sexual nature by one individual against another targeting that individual's body, modesty or personal life by any means, including by modern technology and communications.

Broadly, the Anti-Harassment Laws require employers to:

1. put in place, and publish to their workforce, an internal complaints procedure;
2. implement controls safeguarding the confidentiality of any complaints; and
3. take remedial action in respect of any breach of the Anti-Harassment Laws.

The Anti-Harassment Laws require any person who becomes aware of an act (or acts) of harassment to report the matter to the authorities.

The Work Regulations (prescribed form work regulations published in 2015) set out a basic complaints procedure which employers should follow in the event of harassment complaints.

More recently, Resolution 39860 of 1440H makes it unlawful to treat women differently to men in terms of paying for work of equal value.

**13. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?**

A breach of the Anti-Harassment Laws may result in penalties of up to five years’ imprisonment and/or a fine of up to SAR 300,000. Any person aiding or assisting harassment will be liable to the same punishment as if he or she had been the perpetrator of the harassment.

Any person making a false or malicious complaint of harassment may result in penalties being imposed under the Anti-Harassment Laws of up to two and a half years’ imprisonment and/or a fine of up to SAR 150,000.

If an employee is dismissed whilst pregnant or on maternity leave, the employee will be able to claim invalid termination compensation, in addition to their statutory and contractual entitlements due on termination of their employment.

**14. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

Save as set out above, there are no additional protections for specific categories of employee.

**15. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

The KSA Labour Law provides for a financial reward of up to 25% of any fines imposed on a company for a breach of the KSA Labour Law, or any other law or decree, to be paid to any person who helps the detection of the breach giving rise to the fine.

In the past two or three years, there have also been various announcements and circulars issued by the Saudi authorities directing that employees who submit complaints about financial and administrative corruption should be protected.

**16. What financial compensation is**

**required under law or custom to terminate the employment relationship? How is such compensation calculated?**

The minimum statutory entitlements due to all employees on termination of employment consists of the following:

1. payment in respect of accrued untaken holiday;
2. end of service gratuity;
3. repatriation air ticket (this amounts to a single economy air fare ticket to the employee’s home country, unless more beneficial repatriation benefits have been agreed); and
4. any other contractual entitlements.

Invalid Termination Compensation

If an employee is dismissed for an “invalid” reason they will be entitled to receive either:

1. an amount of compensation agreed in the employment contract; or
2. if no compensation is agreed in the employment contract,
  - their wages for the remaining period of their employment contract (subject to a minimum of two months’ wages) if they are employed on a fixed term employment contract; or
  - 15 days’ wages for each year of service (subject to a minimum of two months’ wages) if they are employed on an unlimited term contract.

This invalid termination compensation would be payable in addition to the employee’s minimum statutory and contractual entitlements referred to above.

**17. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.**

Employers and employees may, and frequently do, enter into settlement agreements although entering into a settlement agreement does not necessarily preclude an employee from filing a labour complaint or commencing legal proceedings. Nevertheless, settlement arrangements would typically be structured in such a way which deters the employee from bringing a claim.

**18. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.**

The KSA Labour Law permits employers to include non-compete provisions in an employment contract. The KSA Labour Law provides that the maximum duration of non-compete provisions is 2 years. Nevertheless, in order for the non-compete restrictions to be enforceable, the non-compete provision should be limited in terms of:

1. duration;
2. geographical scope; and
3. the type of business being restricted,

to the extent required to protect the legitimate interests of the employer.

In practice, it is currently possible for employers to limit the ability of foreign nationals to join a competitor by refusing to provide a consent letter approving the foreign national taking up a new role with their new employer (a requirement of the Saudi authorities as part of the foreign national’s application for a new visa with their new employer). The foreign national would therefore be required to exit KSA under a final exit permit issued by their old employer and then re-enter the country under a new visa application process to be able to take up new employment. This approach may be significantly impacted by the introduction of the Labour Reform Initiative (see *question 22*).

**19. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

The KSA Labour Law requires employees to maintain confidentiality in respect of any technical, commercial and industrial secrets obtained by the employee during their employment.

In addition, the KSA Labour Law expressly permits employers to require the employee not to disclose any confidential information following the termination of their employment.

**20. Are employers obliged to provide references to new employers if these are requested? If so, what information must**

**the reference include?**

If an employee requests a reference on termination of employment, the employer is required to provide a reference which contains the following information:

1. period of service;
2. job title; and
3. salary received.

The reference must not contain any comments which could damage the employee’s reputation or limit their opportunity to obtain a new role.

**21. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?**

Fixed Term Employment Contracts

Difficulties tend to arise where an employer is seeking to terminate a fixed term employment contract prior to its expiry, potentially leaving the employer significantly exposed to material invalid termination compensation.

To avoid significant payouts, employers should include a provision in every employee’s employment contract which specifies an amount of compensation payable in the event that the dismissal is held to be invalid. In the author’s view, the level of the compensation agreed in the employment contract should be no less than 2 months’ wages.

Unlimited Term Employment Contracts

In practice, justifying the dismissal of employees employed on unlimited term employment contract can be challenging.

We therefore recommend that employers adopt the same approach as outlined above for fixed-term employment contracts – employers should include a provision in every employee’s employment contract which specifies an amount of compensation payable in the event that the dismissal is held to be invalid. In the author’s view, the level of the compensation agreed in the employment contract should be no less than 2 months’ wages.

**22. Are any legal changes planned that are likely to impact on the way employers in**

**your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?**

Significant changes have been proposed:

Labour Reform Initiative

On 4 November 2020, the MHRSD launched a Labour Reform Initiative (**LRI**) which proposes to significantly amend the current immigration/labour system, thereby increasing employee mobility in the private sector.

Broadly, the proposals include: (a) allowing employees to transfer to new employers without requiring the consent of their current employer; and (b) allowing employees to exit (and re-enter) KSA without first having to obtain their employer's consent.

Saudisation

KSA's investment minister has announced proposals which will result in Saudisation quotas not being applied to companies which establish their headquarters in KSA. It has also been suggested that international businesses which do not have their regional headquarters in KSA will not be permitted to contract with KSA government entities.

Termination of Employment

The MHRSD has announced its intention to amend the KSA Labour Law. Full details of the proposed amendments (or timeframe) have yet to be released but it is anticipated that they will include changes to the provisions governing the level of compensation payable when an employee is dismissed for an invalid reason.

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