



# REVOLUTION OR EVOLUTION?

The UAE Labour Law which dates back to the 1980s, is to be replaced by Federal Decree-Law No. 33/2021 in February 2022. **Ben Brown** and **David True** of Addleshaw Goddard look at how dramatic a change this will be.

**I**n the UAE it's all change in Labour Law, with the issue of Federal Decree-Law No. 33/2021, On The Regulation of Labour

Relations, which will come into force on 2 February 2022 and will repeal the current UAE Labour Law, Federal Law No. 8/1980," states Ben Brown. "This new Law will apply to all companies and employees in the private sector in the UAE, including the free zones, except for the DIFC and the ADGM which have their own employment laws. It also does not apply to UAE federal or local government entity employees, members of the UAE armed forces, police and security services, or domestic workers."

"While many have lauded this new law as being almost revolutionary, in our view it is simply an evolution of the current Labour Law, which has been necessitated by changes to working practices since that law was issued back in 1980."



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"It is also true to say that many of the apparent changes in the new law actually already exist in Federal Law No. 8/1980," David True adds. "For example, anti-discrimination and equal pay provisions can already be found in Article 7 bis and 32 of Federal Law No. 8/1980 respectively."

## WHAT'S CHANGED?

"That said, this new Law does contain many substantive changes," Brown continues. "For example, it expressly prohibits discrimination against 'persons' specifically on grounds of race, colour, sex, religion, national origin, ethnic origin or disability but it remains to be seen how this will be enforced in practice or what the remedy would be for victims of discriminatory conduct. This is also true of Federal Decree-Law No. 33/2021's express prohibition of harassment, bullying or any verbal, physical or mental violence against employees."

## TERMS OF EMPLOYMENT

"The Law allows employees to undertake



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full-time, part-time, temporary or flexible work, reflecting the common working modes already being implemented by many UAE employers," Brown explains. "However, it also states new Implementing Regulations will be issued to explain in more detail how these types of models will operate."

"It is stated all employees must now be employed on fixed-term employment contracts which do not exceed three years though they may be extended for the same period," True adds.

"Employees who want to move to another employer in the UAE during their probationary period will now also be able to terminate their employment by giving at least one month's written notice. Interestingly, the new Law states that, where this is the case, the employee's new employer should compensate the former employer for the employee's recruitment costs."

"In addition, if an employee wants to leave the UAE during their probationary period they will be able to terminate their employment by giving at least 14 days' written notice," Brown continues. "However, the new Law also states that if that employee returns to the UAE and obtains a work permit issued by the Human

## RELATED LEGISLATION

### Article 65 of Federal Decree-Law No. 33/2021

The rights in this Decree-Law represent the minimum rights of workers. The provisions of this Decree-Law will not prejudice any of the rights prescribed for workers under any other law, agreement, declaration, regulation or employment contract, which is more beneficial to workers than those in this Decree-Law.

(Source: Lexis Middle East Law)

Resources and Emiratization Ministry with another employer within three months of their departure, their new employer will also have to compensate their old employer for the recruitment costs. That said it is difficult to envisage how these new compensatory rights will work in practice."

## CONSIDERATIONS ON TERMINATION OF EMPLOYMENT

"When it comes to termination, Federal Decree-Law No. 33/2021 now caps notice periods at 90 days," Brown states. "This is likely to be unhelpful for

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The new Labour Regulations introduce the possibility of a minimum wage being introduced in the UAE for the first time. Under Article 27 of Federal Decree-Law No. 27/2021, the Cabinet have the power to issue a Decision specifying the amount of a minimum wage in the country. They may do so if they receive a recommendation from the Human Resources and Emiratisation Minister.

employers who are dealing with the departure and replacement of senior executives who will typically have notice periods of six to 12 months.”

“The new Law also limits non-compete clauses to two years though it is also likely to be difficult for an employer to justify such a lengthy restriction for most employees,” True adds. “Other types of restrictive covenants however, such as non-poaching of employees or non-solicitation of clients and customers, are not expressly recognised. In addition, it has been added that Implementing Regulations will be issued to exempt certain positions from these non-compete obligations.”

“Employers are expressly banned from retaining an employee’s passport and are required to pay a deceased employee’s spouse or

children all outstanding wages and end of service benefits within 10 days from the date of their death,” states True. “The new Law also suggests the overtime exemption, which applied under Federal Law No. 8/1980 to employees in a supervisory or managerial position, no longer applies and the Implementing Regulations will determine the new exemptions.”

“However, employees will only be able to resign without giving notice if an employer has not complied with their obligations, the employee notifies the Human Resources and Emiratisation Ministry 14 days before leaving and the employer still fails to rectify the matter, or where there is harassment or violence and the employee notifies the Ministry of this within five working days of being able to do so. An employee’s end of service gratuity will also be calculated on the basis of working days, which is a significant change but is likely to be an oversight that will hopefully be addressed by the Implementing Regulations. However, if this change was intentional, it will result in a significant increase in employers’ end of service gratuity liabilities.”

“Unlike the previous law, the new one is also silent on whether there is to be a reduction in end of service gratuity if an employee resigns and employers will have to pay their employees all their final entitlements within 14 days of the termination of their employment.”

“Another change is that maternity pay has been increased to 60 days and will consist of 45 days’ full pay and 15 days’ half pay,” Brown continues.

“However, the law is also silent on whether an employee must have been working at the employer for a set period before they are eligible for maternity pay.”

“Employees will also now be entitled to maternity leave and pay in cases of stillborn babies and new-born deaths, and employees with babies who have disabilities may also be entitled to an additional 30

days’ leave on full pay and 30 days leave on no pay.”

“The new Law also confirms employees will not be entitled to any paid sick leave during their probationary period but they will be entitled to five days’ paid leave for the death of their spouse and three days’ paid leave for the death of a parent, child, sibling, grandchild or grandparent.”

“In addition, employees with more than two years’ service may be entitled to ten working days’ study leave, although the Law is silent on whether this leave is paid or unpaid.”

**CONTRACT AND POLICY CHANGES**

“It should be noted that there will potentially be fines of up to one million AED imposed for breaches of the new Law,” states Brown. “In addition, these may be multiplied in cases where numerous employees are affected.”

“Conceptually, the most significant changes are the express prohibitions on behaviour which goes directly to the well-being of employees, specifically discrimination, bullying and harassment,” states True. “However, operationally, the change which is most likely to impact employers is the mandatory imposition of fixed-term employment contracts for all employees. The rationale for this change is currently unclear and is likely to cause uncertainty.”

“Affected employers should be currently reviewing all their existing employment contracts and policies to ensure they comply with this new Law,” Brown adds.

“In particular, employers should be updating their template employment contracts to reflect the requirement for all employees to be issued with fixed-term contracts not exceeding three years. They should also ensure all existing employees employed on indefinite employment contracts are moved to fixed-term employment contracts by 2 February 2023 and that existing employment contracts or policies with references to specific statutory entitlements like 45 days’ maternity leave are amended or replaced.”

“Sick leave policies will need to be amended to reflect that employees are not entitled to paid sick leave during probationary periods and maternity and paternity leave policies will need to reflect the increased entitlements,” Brown explains. “Disciplinary policies should also be updated to reflect discrimination, bullying and harassment and compassionate leave changes.”

“In addition, HR professionals should consider how to communicate these changes to their workforce, who will want to understand how they will be personally affected by the new Law, particularly workers currently employed on unlimited term contracts who may be worried by the transition to a three-year fixed-term contract,” True adds.

“They will also have to maintain accurate records of the expiry dates of all employees’ fixed-term contracts to ensure they are able to renew or not renew them at the appropriate time.”