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UAE and KSA introduce workplace anti-discrimination legislation

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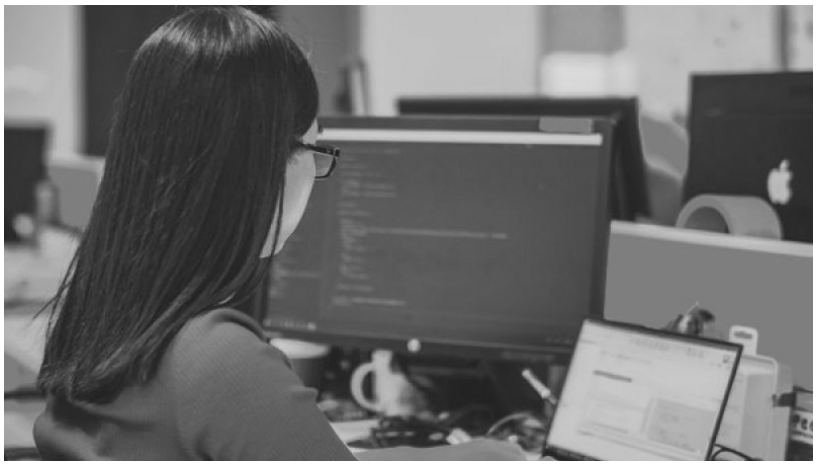
Towards the end of 2019, KSA and UAE introduced various amendments to their legislation, in particular the labour legislation to provide for, amongst other changes, anti-discrimination provisions in the workplace. These amendments, in common with anti-discrimination laws in other jurisdictions, aim to promote certain social policies and prevent exclusion of specific groups from the workplace and general opportunities. These developments supplement developments elsewhere in the GCC region.



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UAE – amendments

Much of the focus of the amendments is the prevention of gender discrimination. As many will be aware the UAE established a Gender Balance Council in 2016, with one of their mandate to publish a comprehensive guidance book for employers on the implementation of anti- sex and gender discrimination in the workplace, which was published in September 2017. The legislative amendments recently introduced puts such guidance on a firmer legal footing, failing compliance with which could mean regulatory sanctions and individual employment claims being raised successfully against the employer.

Companies operating in the UAE and KSA should ensure they review and update their internal policies and procedures in line with these regulatory changes

Federal Decree Law No. 6 of 2019 amending Federal Decree Law No. 8 of 1980 Regulating Labour Relations (Labour Law)

Law Number 6 of 2019 came into effect on 29 September 2019 and introduces the following key amendments to the Labour Law:

- Anti-discrimination: a new article has been introduced, prohibiting discrimination which prejudices equal opportunity employment, equal access to jobs, continuity of employment, and enjoyment of rights. Discrimination is also prohibited between those with the same employment duties
- Gender segregation: a new article has been introduced, making way for the Ministry of Human Resources and Emiratisation to regulate circumstances in which male and female employees may not be employed to work together. It remains to be seen what further legislation on this will be introduced and whether it will be sector sepcfic
- Female working restrictions repealed: the previous restrictions pertaining to female night time work and employment of female employees in dangerous, arduous or detrimental to health or morals roles have been repealed
- Pregnancy and maternity protection: a new article has been introduced prohibiting employers from terminating or serving a notice of termination to pregnant female employees. Such terminations are classed as arbitrary dismissal under the law
- Criminal liability: the scope of criminal liability provisions under the Labour Law have been limited, such that their application only extends to employers or their representatives and a minor's guardian or trustee where such individuals have consented to the minor's employment contrary to the provisions of chapter two of the Labour Law pertaining to employment of minors
- Emiratisation: the amendments to the Labour Law grant wider powers to the Cabinet to issue further resolutions pertaining to the promotion of Emirati nationals in the labour market and general resolutions regulating the employment of workers in establishments, continuing the trend of encouraging UAE nationals to enter the private sector workforce

Federal Decree Law No. 4 of 2019 amending certain provisions of the Penal Code promulgated by Federal Law No. 3 of 1987 (Penal Code)

Law Number 4 of 2019 introduces the following key amendments to the Penal Code:

- Assault on female modesty: the indecent acts provisions have been extended to incorporate "assault on a female's modesty by words, actions or electronic means or any other means". The revised provision also prohibits men from disguising themselves in women clothing and using such disguise to enter a place reserved for women or a place where only women are permitted to enter
- Sexual harassment: a new article has been added prohibiting sexual harassment and providing for a punishment of a prison sentence of not less than one year and/or a fine of not less than AED 10,000. Where the harassment is committed by several perpetrators or where the perpetrator carries a weapon or has functional, family or educational authority over the victim, the minimum prison sentence is doubled to be not less than two years and the fine is increased to a minimum of AED 50,000
- Defamation: the law increases the monetary penalties for defamation. The offense of defamation committed against an individual may now result in a prison sentence of not more than one year or a fine of not more than AED 20,000. However, pursuant to Public Prosecutor Resolution Number 119 of 2019, the public prosecutor has the authority to issue a reduced penalty, of up to AED 3,000, without having to refer the matter to be dealt with by the courts.

  Where the offense is committed against a public servant, the prison sentence is doubled to not more than two years and/or a fine of between AED 20,000-50,000.

It is also worth noting that on 30 August 2019, Federal Decree by Law No. 11 of 2019 came into effect extending the definition of 'discrimination', under Federal Decree by Law No. 2 of 2015 combating discrimination and hatred, to also include 'doctrine and gender' in its

definition

KSA – amendments

We have previously written about the policy push to encourage female participation in the workforce [Saudi Arabia Promoting Women in the Workforce: 2020 Each for Equal – the decade ahead to Vision 2030 and Saudi Arabia Introduces Workplace Anti-Harassment Regulations] and these are supplemented by two key amendments to the KSA Labour Law (Royal Decree No. M/51 dated 23-8-1426 AH), as follows:

General Prohibition on Discrimination

The amendments to the KSA Labour Law introduce a general prohibition on discrimination during employment as well as in the terms of recruitment and appointment or engagement of employees. This change is far reaching in its implications and requires employers to review their policies and procedures for the advertisements of roles, recruitment generally and also the management of employees during employment, including the terms and conditions they offer employees.

Article 3 of the Labour Law has been amended as follow*:

Work shall be the right of the citizen, which shall not be exercised by any other person unless the conditions provided for in this Law are met. 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 would imply that the discrimination provisions are for Saudi nationals only (or other individuals who in practice are treated in the same way such as GCC nationals or the male spouse and children of a Saudi woman). It therefore remains to be seen how widely this provision will be interpreted and how it will be applied. The Ministry of Labour and Social Development has in recent months focused on promoting employment for women and the disabled (for example the recent 'priority to them' campaign) and we would therefore assume that these two areas will be a focal point for implementation of this new article. There is also a new regulatory fine for breach of this provision of SAR 20,000 imposed on an employer breaching this provision, which would also indicate that the remedy or sanction is regulatory in nature and the emphasis is not on individual rights enforceable through individual employment claims. However, this area will be an interesting area for development over the coming years.

The amendment also does not specifically reference termination of employment but one would assume that a successful allegation that employment was terminated due to a discriminatory reason would then attract compensation in line with the formula for unjustified dismissal compensation set out in article 77 of the KSA Labour Law.

Prohibition on Termination of Pregnant Women

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