

A number of changes were introduced across the GCC during the course of 2022 (several of these key changes have now been implemented, while some are due to take effect later in 2023). In this article, we provide a brief summary of the key employment and immigration developments that are expected to have an impact in 2023 on employers across the GCC in 2023 and, in particular, the UAE and the KSA.

## UAE

### Discrimination / Bullying and Harassment

- On 2 February 2022, the Federal Decree-Law No. 33 of 2021 on the Regulation of Labor Relations (the UAE Labor Law) came into force in the UAE, which prohibits discrimination against an individual on the basis of race, color, sex, religion, national origin, social origin, or disability, that would impair equal opportunities for an employee or prejudice an employee from gaining employment and continuing such employment. In a significant change, the UAE Labor Law also now prohibits sexual harassment and/or any verbal, physical or psychological form of bullying against an employee, by the employer (i.e., the company) or the employee's supervisor/colleagues. As the various forms of discrimination, bullying and harassment are now explicitly prohibited, employers may be found liable for fines (for both individual acts and cumulative fines for multiple acts) for breaches of the law, starting from AED5,000 to AED1 million. It is, therefore, very important to ensure that all employees and management are aware of the changes. In particular, this may be a good time to review policies and provide training on equality, diversity and dignity within the workplace.

### Fixed Term Contracts

- The UAE Labor Law set a deadline of February 1, 2023, for private sector businesses (registered outside of the DIFC and ADGM) to convert all unlimited-term employment contracts of their workforce to fixed-term contracts. The UAE Labor Law included provision for the Ministry of Human Resources and Emiratisation (the MoHRE) to exercise its discretion and extend this deadline for an additional period as may be required pursuant to "public interest." The MoHRE has now issued Ministerial Resolution No. 27 of 2023, which provides for an extension until December 31, 2023, for companies to convert any unlimited-term employment contracts to fixed term contracts. The extension of the UAE Labor Law's deadline is welcomed insofar as employers have been afforded additional time to ensure their respective employees' contracts are compliant with the UAE Labor Law.

- While the MoHRE's announcement allows employers additional time to implement the conversion of any corresponding employees' unlimited-term contracts to fixed-term contracts, companies should be mindful of the potential exposure to fines or penalties if these changes are not effected by December 31, 2023. Employers that have not yet taken the requisite action, should work towards reviewing and revising their existing contracts and engaging with affected employees in good time ahead of the extended deadline. It may also be prudent for employers to align the issuance of new fixed term contracts with any of their employees' forthcoming visa renewal due dates that are scheduled during the course of this year.

### Enhanced Protection Against Work Injuries and Occupational Diseases

- As of January 3, 2023, employers with 50 or more employees must implement a system that monitors work injuries and occupational diseases and must establish preventative tools and periodic health examinations for their employees. In addition to this, the UAE Labor Law clearly sets out that employees shall be compensated for work related injuries, permanent disabilities, and confirms that their families would be entitled to receive compensation if the work-related injury results in the death of the employee.



## Unemployment Insurance Scheme

- First announced in October 2022, the UAE unemployment insurance is designed to provide financial support to employees in the event that the employee loses their job.
- Enrolment into the scheme is mandatory for all onshore employed employees (both in the federal government and private sector) with the exception of investors, domestic helpers, part-time employees, retirees who have a retirement pension and those under the age of 18.
- The scheme pays employees a cash sum for a maximum of three months if they lose their job. Compensation shall be paid for a maximum of three months from the date of an employee's job loss and will be calculated at 60 per cent of their previous basic salary with a maximum payment entitlement of AED20,000 (US\$5,445) per month.
- The UAE insurance scheme can be used by employees under two categories – those with a basic salary of AED16,000 or less and those with a basic salary above AED16,000. Those who fall under the first category will have a monthly insurance cost of AED5, which is AED60 annually. Those who fall under the second category will have a monthly insurance cost of AED10, which is AED120 annually.
- Employees are eligible for the unemployment payment if they have worked and subscribed for at least 12 months to the insurance program, as long as their previous employment was not terminated for disciplinary reasons or because they resigned. Employees who work on a commission basis may also subscribe to the scheme. However, insured employees are not eligible for the payment if they have left the country or have started a new job.
- According to the MoHRE, the scheme will be offered by the Dubai Insurance Company, which is the representative of the insurance pool consisting of nine companies:
  - Dubai Insurance Company
  - Abu Dhabi National Insurance Company
  - Al Ain Ahlia Insurance Company
  - Emirates Insurance Company
  - National General Insurance Company
  - Orient Insurance
  - Abu Dhabi National Takaful Company
  - Oman Insurance Company
  - Orient UNB Takaful Company
- Employees who have a labor card issued before January 1, 2023, have until June 30, 2023, (e.g., as a grace period) to subscribe, otherwise they will be subject to a AED400 fine
- Employees who have a labor card issued after January 1, 2023, have a grace period of four months from the date of the labor card, following which they would be subject to a AED400 fine

- If the employee does not subscribe at all, the fine of AED400 would be enforced on the employee during their labor contract renewal or from their end of service gratuity (at the discretion of the authority). There are no obligations on the employer from a WPS perspective (or indeed any obligation with respect to ensuring its employees are subscribed).
- While employers are not required to register their employees in an insurance scheme, and employers are not required to pay any contributions to a scheme, from an employee relations perspective, employers are advised to remind their employees of their obligation to register.



## New Visa Types

- At the start of the COVID-19 pandemic, a number of employers in the UAE had employees who had returned to their home country or simply relocated to a different country to continue working remotely during periods of lockdown. Some of these individuals asked for these arrangements to continue on a more permanent basis beyond COVID-19 related lockdown measures and travel restrictions. In light of the ease with which many employees in the UAE were able to work during lockdown measures without being in their usual workplace, we have seen an increasing number of requests from those wanting to live and work in one country for the benefit of a company in a different country. Regardless of the COVID-19 pandemic, many employers in the UAE have agreed to, or are considering, overseas remote working arrangements, primarily as a means of being able to hire or retain the talent they need to run their businesses, and this has been recognized by the immigration authorities in the UAE with the availability of a number of new visas, including:
  - **Green visa** – This visa allows holders to sponsor themselves for five years, thus eliminating the need of a UAE national or employer to sponsor their visa. Under the provision of this visa, individuals may also sponsor family members, including spouses, children and first-degree relatives. The residency given to family members will be the same as that of the original visa holder. There is also now a longer grace period of six months for individuals under this visa, to stay in the UAE after the residence permit is cancelled or expired.

- **Freelancer visa** – This is a new federal visa for self-employed workers that was announced along with the green visa. It is the first federal scheme of its kind, and enables self-employers to sponsor themselves. Self-employed workers based in the UAE and overseas in specialized fields, such as artificial intelligence, blockchain and digital currencies, will be eligible to apply.
- **Temporary work visa** – Those who have a temporary work assignment, such as project-based work or probation testing, can apply for this visa. Applicants will need to submit a temporary work contract or a letter from their employer as well as proof of fitness.
- **Job exploration entry visa** – This visa does not require a sponsor or a host. It is granted to those classified in the first or second or third skill level by the MoHRE, or a graduate from one of the best 500 universities in the world according to a classification standard approved by the Ministry of Education and must have graduated within the last 2 years. The minimum educational level is a Bachelor's degree or its equivalent. The individual must also satisfy a prescribed financial guarantee.

## New Emiratization rules

- The UAE introduced a new federal rule that imposes significant fines on onshore companies within the private sector that fail to employ a sufficient number of UAE nationals. The aim of this reform is to increase the number of Emiratis working in the private sector. The UAE government has previously introduced an "Emiratization" policy for the private sector (onshore UAE only), which put in place certain obligations for employers to recruit UAE nationals (up to certain quotas) for most business sectors and certain job categories. In addition, as part of the Emiratization policy, the UAE government provided incentives for those employers onshore that strictly observe their applicable Emiratization requirements by allowing them more streamlined immigration processing, lower government fees (including an exemption from depositing bank guarantees), as well as other incentives. However, as of January 1, 2023, employers are now required to employ one skilled UAE national if their workforce consists of 49-50 expatriate employees, and two skilled UAE nationals if the entity employs 51-100 expatriates. In addition, Ministerial Resolution No. 279 of 2022 requires onshore companies to increase the number of employed Emirati nationals by 2% per year with the aim of reaching 10% by 2026.
- The main underlying risk for employers is that, if they have not achieved the Emiratization thresholds, they will receive an electronic communication from the Ministry of Human Resources and Emiratization and will be required to pay a monthly fine of AED6,000 for every UAE national it has failed to employ prior to the deadline. The employer (for as long it remains in default of the law) would not be able to issue or renew work permits until the minimum threshold is achieved.

## New UAE Data Protection Law

- The UAE has issued Federal Decree Law No. 45 of 2021 (the UAE Data Protection Law) to regulate the collection and processing of personal data in the country. While the law was enacted on January 2, 2022, it has yet to be implemented fully, as further executive regulations that will clarify various aspects (including the scope and level of sanctions) are due to be published in 2023. Following the implementation of these regulations, controllers and processors will then have a period of six months to adjust their status and comply with the UAE Data Protection Law.

In our experience, we have found that HR is often the area of the business that tends to process the most sensitive data, which is employee data. This can, of course, include health information, equal opportunities data, financial information and bank account details. With the introduction and enforcement of the UAE Data Protection Law, HR teams have a key role to play when it comes to data protection compliance and must ensure they are fully aware of the rights held by their respective employees when assessing the data being retained. Employers will need to understand the types of personal data held about their respective employees, how and why it is collected and stored, how long it should ideally be retained for, any third parties to whom it is transferred and the safeguards that are in place to protect it. Consideration will, therefore, need to be given as to what changes may be necessary to employment documentation. Consent and justification for processing employee data are at the forefront of the key issues for consideration.



## The Kingdom of Saudi Arabia

### New Policy To Foster Equal Opportunities and Prevent Discrimination

- In January 2023, the Ministry of Human Resources and Social Development (MHRSD) announced a new national policy to promote equality of opportunities and treatment in employment in the Kingdom. The announcement forms part of the Kingdom's increased efforts to work towards eliminating any discrimination in the labor market.
- The newly approved policy contains a number of designated targets, including upgrading systems and policies that explicitly define and prevent discrimination, initiatives to promote equal treatment in employment and occupation, and the implementation of procedures, programs, and initiatives to enable groups with fewer opportunities to enter and remain in the labor market.
- Based on this recent announcement, it is possible we could see potential changes to the corresponding Labor Law in the Kingdom that will encompass broader protection in relation to equality and prevention of discrimination in the workplace.

### Temporary Work Visa/Increased Flexibility for the Engagement of Foreign Nationals

- A new short-term work visa for certain foreign nationals is now available to apply for on an online platform called Qiwa. This new visa enables qualified employees to work in Saudi Arabia for a visa-sponsoring entity for up to 90 days per visa issuance in one year. During the course of the one-year period (i.e., from the date of first entry into KSA), it will be possible to re-apply for new temporary work visas at the end of each 90-day period. To apply, employers will need to be classified as at least "Medium Green" in the Saudization scheme, comply with obligations in the Wage Protection System, and ensure foreign workers have valid work authorization. The visa quota will be limited to 50 visas per employer and visas will be nontransferrable to other entities.
- It is expected that many employers will take advantage of the new temporary work visa as businesses in the KSA have been seeking a legally compliant solution for short-term work assignments. More foreign national-friendly programs are expected in Saudi Arabia in the future, as additional foreign labor will be needed to fill positions in the NEOM – a cross-border city in northwest Saudi Arabia that is planned to be built by 2025.

## Saudization

- As part of ongoing reforms, a three-year Saudization plan has been introduced to increase the Saudization rates gradually on an annual basis. As part of this, the MHRSD has consolidated the categories in which all economic activities (based on the business sector in which the employer operates) will be combined to create one larger economic activity.
- The new changes form part of the existing Saudization program in the Kingdom (Nitiqat), which imposes a quota system for the hiring of Saudi nationals for all companies in the private sector. Nitiqat classifies companies into three categories according to their Saudization levels:
  - Premium
  - Green (with subcategories of High, Medium and Low)
  - Red
- Companies in the Platinum and High Green categories are able to apply for new block visas. However, companies in the remaining categories (Medium and Low Green and Red) can only obtain visas for expatriate employees through a transfer of sponsorship (i.e., they are limited to hiring expatriate employees who are already in KSA and who have the requisite work authorisations from their existing employer). Companies have the option of paying monthly fees in lieu of hiring Saudi employees to maintain or change their Nitiqat classification under the Parallel Nationalization program, which was introduced in 2017. The amount of the fee varies according to the number of employees employed by the company and the number of Saudi employees required to reach the next Nitiqat classification. Small companies with fewer than five employees are not subject to Nitiqat provided they have at least one Saudi employee.
- The Ministry of Human Resources and Social Development has announced that further professions will be localized from March 2023, in an aim to provide 33,000 job opportunities to Saudi nationals. Affected professions include aviation and customer service professionals. The MHRSD have also confirmed that seven business activities' sales outlets will be 70% Saudized, including security and safety equipment sales outlets, elevators, escalators, and conveyors. Branch manager, supervisor, treasurer, customer accountant, and customer services agent jobs will all be subject to the decision.
- Employers will need to plan their workforces going forward and consider the required number of roles that must be occupied by Saudi nationals (and in turn, which of their foreign workers will be required to remain within the workforce to ensure business continuity).





## New KSA Personal Data Protection Law (the “PDPL”)

- The Kingdom has issued legislation to regulate the collection and processing of personal data in the country. While the law was originally due to come into force on March 23, 2022, the enforcement date has been postponed until March 17, 2023. In addition, further executive regulations shall also be published that will clarify various aspects of the PDPL.
- Under the PDPL, employers shall be required to implement a privacy policy and make it available to data subjects prior to the collection of their personal data. The PDPL sets out the minimum information that should be included in the privacy policy, including when personal data is collected directly from the data subject.
- The PDPL recently underwent public consultation with a view to numerous changes being implemented to the legal text. Companies will have a grace period of one year from the new enforcement date to ensure compliance.
- Based on the amended draft legal provisions arising out of the consultation for the PDPL, we understand that, going forward, prior regulatory approval shall not be required with respect to personal data exported out of the KSA to another country (provided the country being exported to has at least the same standard of data protection as the KSA).
- In respect of the engagement of data processors, we understand that the executive regulations supplementing the PDPL (expected by March 2023) will clarify any contractual protections/provisions, which need to be included/accounted for as part of any arrangements with data controllers.
- As the PDPL carries penalties for breaches of the law reaching up to a maximum of SAR5,000,000 (US\$1,333,000) and, in certain cases, imprisonment, we recommend all companies operating in the Kingdom, or processing the data of individuals based in the Kingdom, should commence the review of any data processing related activities and seek to implement changes as needed to ensure compliance with the PDPL. We can provide practical support on:
  - Advising on the grounds/lawful basis on which employee data can be processed.
  - Updating the data protection wording in your template contracts of employment to reflect the new rules.
  - Reviewing and updating your data protection policies and privacy notices for staff. Both the UAE Data Protection Law and PDPL encompass a number of data privacy principles that must be adhered to for compliance with the law, particularly in cases where there are direct points of contact with data subjects. We would recommend that employees are provided with a privacy notice that explains the purpose and legal basis on which their data is processed, as well as containing information required by the law.
  - Providing training to your workforce that will be affected by the new obligations.
  - Assisting with putting in place processes to deal with enhanced data subject rights.
  - Putting record-keeping processing systems in place – companies will need record keeping systems to identify what employee data is processed, the purpose of that processing, to whom has the data been transferred and the legal basis on which the processing takes place. This may form part of a wider HR data processing review.
  - Ensuring your procedures for handling data subject access requests have been updated. We can support your company in dealing with these issues. We can tailor our approach, and the level of support we provide, adapting this, if required, to fit with your existing GDPR compliance.

## Bahrain

### Digitalization of the Residence Permit

- In April 2022, The Nationality, Passports and Residence Affairs (NPRA) launched a new e-service, which issues digital residence permits through the Kingdom of Bahrain's National Portal. The new e-service replaced the process of foreign nationals holding residence permits being issued through a printed residence permit sticker in their passport. This change has formed part of Bahrain's digital transformation of immigration processes, aligning with other GCC countries, such as the UAE, that have sought to digitize elements of the immigration process, such as the removal of passport stamping.

## Qatar

### New Social Insurance Law

- On January 3, 2023, the Qatar Law No. 1 of 2022 (the Social Insurance Law) came into effect, which governs pensions and retirement.
- Currently, social security provisions apply to Qatari citizens (and some GCC nationals) employed by ministries, public institutions, agencies, joint stock companies and others as determined by the Council of Ministers at the GRSIA. The Social Insurance Law, however, broadens the scope of application for social security application, which will extend to employers in the private sector that hire one or more Qatari citizens regularly in return for a wage. The new provisions will also apply to employers in the private sector, whether the employer is established through the jurisdiction of the State of Qatar or in one of the relevant non-state jurisdictions (e.g. the Qatar Financial Center).
- We are expecting implementing regulations for the Social Insurance Law that will clarify various aspects of the law; however, we understand the General Retirement and Social Insurance Authority (GRSIA) is accepting employer applications for registration (registration should be completed by 2 February 2023).

- We recommend employers undertake the following actions going forward:

- Seek confirmation regarding whether employees within their respective businesses are eligible for social security and, if so, register those employees via the GRSIA accordingly;
- Review and identify employment contracts and any corresponding policies that may apply to eligible employees, and assess whether changes need to be implemented accordingly to reflect any arrangements under the Social Insurance Law (any such changes should form part of an individual consultation process with employees to seek their respective consent); and
- Reviewing accounting and payroll functions to ensure there is a process in place and sufficient budget to facilitate employer contribution costs.

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For further information on any of the changes outlined in this article, please contact a member of our Labour & Employment team.



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