



Workplace discrimination and sexual harassment are developing areas of law in the Middle East region. The laws across the GCC regulating these issues are currently much more limited than those that exist in other, more developed jurisdictions.

However, recent developments in the UAE and KSA signal a shift towards more importance being placed on these workplace issues and we expect to see further regulation in the coming years. In this article, we outline the changes and consider what they mean for employers in the region.

UAE – Discrimination Developments

New Disability Discrimination Resolution

In August 2018, the UAE government published Cabinet Resolution No. (43) of 2018 Regarding Supporting Special Needs (People of Determination) Work (Resolution). The Resolution imposes obligations on UAE employers to support the rights of individuals with disabilities, referred to in the UAE as “People of Determination,” by enabling them to access job opportunities on an equal basis with others. The Resolution follows the introduction of the Card of People of Determination, which provides People of Determination with access to dedicated services and facilities in the country.

The Resolution governs both public sector employers and private sector employers. The definition of Special Needs (People of Determination) is broad and includes physical disabilities, as well as mental disabilities and illnesses such as anxiety or depression.

The Resolution governs all aspects of the employment relationship from recruitment to the termination of employment and imposes a number of obligations on employers, including the following:

- **Recruitment** – Employers must not discriminate against People of Determination during the recruitment process. The Resolution includes a number of procedures that employers should implement to ensure People of Determination are able to participate in the recruitment process. For example, using more than one medium to advertise a position.
- **Reasonable accommodations** – Employers must provide a suitable working environment and provide reasonable and suitable accommodations to ensure that People of Determination can carry out their work safely and securely.
- **Time off** – Employers must grant People of Determination the right to take time off work to deal with any health conditions or treatment. The Resolution is not entirely clear on this point, however, it would appear that an employer can still lawfully terminate an employee if they have taken more than 90 calendar days sick leave in a 12 month period, in accordance with Article 85 of the Labour Law.
- **Termination of employment** – Employers must not terminate the employment of a person with special needs due to their disability, provided the employee is able to perform the requirements of their role with reasonable accommodations (this prohibition extends to an employee who develops a disability during the employment or whose disability is exacerbated during the period of employment).

Employers need to familiarise themselves with the requirements of the Resolution and should take the following steps:

- Conduct a review of their recruitment practices to ensure they are consistent with the requirements of the Resolution
- Train employees and managers on disability discrimination issues and ensure their policies and procedures promote equal employment opportunities for People of Determination in the workplace

Proposal to Introduce Specific Compensation for Discrimination Claims in the DIFC

The DIFC Employment Law already prohibits discrimination on the grounds of sex, marital status, race, nationality, religion and mental or physical disability. However, in practice these provisions have scarcely been used by employees due to an absence of any specific remedies for discrimination claims in the DIFC Employment Law.

In March 2018, the DIFC Authority released a draft new employment law for consultation. The draft law includes two new grounds of discrimination, age and pregnancy, and introduces remedies for discrimination. Under the draft law, if the court finds that unlawful discrimination has occurred it may:

- Make a declaration as to the rights of the complainant and the respondent
- Make a recommendation that the respondent takes specified steps to remove or reduce the adverse effect of the discriminatory conduct on the complainant
- Order the respondent to pay compensation of up to one year's salary to the complainant or up to two year's pay if the employer fails to implement a recommendation of the court to rectify the discrimination without reasonable excuse
- Order a combination of the above remedies

The employee will also have the option of seeking a court order to require an employer to disclose information regarding any alleged discrimination. There is no date set for the implementation of the new law and it may be amended to incorporate comments received during the consultation process. However, once the new law is in force we expect to see employees using these provisions to challenge dismissals, particularly given there is no arbitrary dismissal claim available in the DIFC.

Discriminatory Job Advertisements

The issue of discriminatory job advertisements, which have been commonplace in GCC countries, has recently come under scrutiny in the UAE. In September 2018, the UAE Ministry of Human Resources and Emiratisation publicly condemned the use of job advertisements that specify a candidate's gender, race or ethnicity.

Job advertisements that specify a person's race or ethnicity are already captured by Federal Law No 2 of 2015 (Anti-Discrimination Law). The focus of the Anti-Discrimination Law is largely to combat religious extremism and prevent hate crimes.

However, it does include a broad discrimination provision, which prohibits discrimination based on religion, belief, sect, faith, creed, race, colour or ethnic origin. As a matter of practice, we have not yet seen this provision enforced or relied upon in an employment context. However, this may change following the Ministry's recent statement.

The penalties for breaching the Anti-Discrimination Law are significant, with fines of between AED 500,000 and AED 1 million and imprisonment for a minimum period of five years. There are also vicarious liability provisions that may make an employer vicariously liable for any breaches of the Anti-Discrimination Law by its employees.

In light of the Ministry's recent statement, all employers should remind themselves of their obligations under the Anti-Discrimination Law and ensure that their recruitment processes, particularly their job advertisements, do not discriminate on the grounds of religion, belief, sect, faith, creed, race, colour or ethnic origin.

As a matter of good practice, employers should avoid discriminating on the basis of gender. The Ministry has condemned the practice of specifying gender in job advertisements. However, the current laws on gender discrimination are very limited and would not capture such advertisements. The only protection that currently exists outside of the DIFC and ADGM is a requirement under the Labour Law that a female's remuneration shall be equal to that of a male if she performs the same work.

Although the protections on gender discrimination are currently limited, we expect this to change in coming years. In both the UAE and KSA there has been a focus on promoting women in the workforce and creating job opportunities for them. For example, in KSA the employment of Saudi women previously counted as additional credit under the Nitaqat program (although this is no longer the case) and, in April 2018, the UAE authorities announced that a draft law on gender equal pay had been adopted, although this law is not yet in force.

What Does This Mean for UAE Employers?

Overall, the changes outlined above are positive and are a step towards bringing the UAE's employment laws in line with those that exist in more developed jurisdictions. UAE employers should ensure that their policies and practices are in line with the new requirements. Given the move towards equal opportunity employment in this region, employers may also wish to use this opportunity to introduce an equal opportunity employment policy, if they do not already have one in place, and to train employees on these important workplace issues.

KSA – New Anti-Harassment Law

In June 2018, the authorities in KSA introduced a new Anti-Harassment Law (Decision 488 dated 14/9/1439H) (Anti-Harassment Law), which criminalises harassment and requires employers to put in place measures to combat workplace harassment. Harassment was already unlawful in KSA under Sharia law. However, the introduction of the Anti-Harassment Law reinforces this position and introduces clear penalties for contraventions of the law.

Harassment is broadly defined as “any words, act or sign of sexual implication made by a person towards any other person, in a way that affects the other person’s body or honor or taints the modesty, by any means whatsoever, including modern technology means.”

Application to the Workplace

The application of the Anti-Harassment Law is not limited to workplace harassment – it applies to harassment both inside and outside the workplace, and to all individuals regardless of gender. However, the law does include specific obligations in the workplace, which require employers to:

- Put in place a mechanism/procedure for receiving harassment complaints
- Put in place measures to ensure the “validity and seriousness of complaints” and to preserve confidentiality
- Publish the above procedures and make sure employees are familiar with them

In addition to having mechanisms in place for investigating and receiving complaints, employers are also under an obligation to discipline employees for any breaches of the Anti-Harassment Law. However, such disciplinary action cannot replace or prejudice the rights of the victim to make a complaint to the applicable authorities regarding the harassment.

The Anti-Harassment Law also places an express obligation on any person who is a victim of or witness to harassment to report the harassment to the authorities. Employers, therefore, appear to be under an obligation to report allegations of harassment to the applicable authorities in addition to conducting their own internal investigation.

Penalties for Breach

Breach of the Anti-Harassment Law is punishable by up to five years imprisonment and/or a fine of SAR 300,000 if the crime is committed in certain aggravating circumstances, which includes where the perpetrator was in a position of power or influence over the victim and where the harassment happens at a place of work. These penalties outlined are without prejudice to any more severe penalties that may apply under Sharia law.

Any person who incites, agrees or otherwise assists a person to commit a harassment crime may also be subject to the above penalties as an accessory to the crime. It is not clear exactly how this will work in practice, but it is likely that this accessorial liability provision would capture an employer who fails to take reasonable steps to prevent harassment or who fails to investigate a harassment complaint. Therefore, it is important that employers treat all harassment complaints seriously.

Any person who makes a malicious or false harassment complaint will be subject to the same penalties as if they had committed a harassment crime.

What Should Employers in KSA Do?

Employers in KSA need to take immediate steps to ensure that they comply with the Anti-Harassment Law, including:

- Ensuring the employer has a complaints process in place which allows employees to raise a harassment concern
- Providing training to employees on appropriate workplace behavior, including the requirements of the Anti-Harassment Law and the process to follow if they wish to raise a harassment complaint
- Providing training to managers and supervisors on how to respond to harassment complaints and their obligations to prevent harassment in the workplace
- Reviewing any existing policies and procedures under their internal regulations to ensure they are consistent with the Anti-Harassment Law

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