

Common Pitfalls for Employers Operating in the GCC and How to Avoid Them

An awareness of local labour and employment laws and their nuances is critical to the success of any business operating in the Gulf Cooperation Council (GCC) countries, which include Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. In this article, we consider three of the most common employment pitfalls for employers operating in the GCC countries and how to avoid them.

Creating Dual Employment Rights

Multinational businesses commonly move their employees between countries, sometimes on a temporary international secondment and, in other cases, on a more permanent basis. These arrangements can have significant benefits for the business, including the sharing of skills, enabling employees to develop a broader understanding of the group's global operations and talent retention. However, before transferring or seconding an employee to a GCC country, careful consideration needs to be given to the structure of these arrangements, any rights the employee will acquire in the relevant GCC country, in addition to any employment rights or obligations that may continue to be in force in the employee's home country. A failure to do so can lead to unexpected costs, with the risk of the employee obtaining dual employment rights (i.e. a right to employment entitlements in both the host and home country) and conflict of laws issues.

To obtain working permissions and a residence visa in each of the GCC countries, expatriate employees will usually need to enter into an employment contract with a local entity. However, employers should be aware that this contract is not just a formality required for immigration purposes; rather, it is an enforceable contract that creates rights and imposes obligations on both parties.

When seconding an employee to a GCC country, employers need to be aware that the seconded employee will for all intents and purposes be considered an employee of the local GCC entity for the duration of the secondment and accordingly they will be entitled to local benefits such as annual leave, end of service gratuity and sick leave. It is not possible for the local entity to contract out of their obligations under the relevant labour law (the local authorities do not make any exceptions or allowances for the fact that, in practical terms, the employee's primary employment is in another country.) Therefore, measures need to be put in place to reduce the risk of employees being eligible to receive benefits in both countries.



Otherwise, employees may claim entitlements in both the host and the home country and seek to take advantage of more generous home country unfair dismissal regimes. Employees may also seek to rely on any entitlements or rights they have in their home country such as greater leave entitlements, even if it was intended by the parties that any such entitlements would be suspended during the secondment. Where employees have transferred from another jurisdiction, it is also common for the employee to seek to have their end of service gratuity payment calculated on their entire period of service with the group and not just their periods of service with the GCC employer. Such employees may have received a pension (or pension equivalent) during their service outside of the GCC. It is, therefore, important to consider whether such "home country" benefits should continue for the period of the international secondment, bearing in mind that end of service gratuity entitlements in GCC countries are there to compensate expatriate employees for their lack of access to a pension scheme.

While each case is different, we recommend taking the following steps to reduce the risk of dual employment rights:

- When transferring or seconding employees to a GCC entity, the assignment letter or new employment contract should make it clear that any end of service gratuity payment (if any) will be calculated based on the employee's service in the applicable GCC country only.
- If employees are relocating to the GCC for a significant period of time, consider terminating their employment in their home country. Similarly, if the secondment becomes indefinite (i.e. the employee is no longer going to return to their home country entity) be sure to terminate the employment in the home country in accordance with local laws.

- When seconding employees, ensure this arrangement is properly documented in a secondment/assignment agreement, which clearly sets out the terms and conditions that will apply for the duration of the secondment and the home country terms and conditions which will be suspended. The secondment agreement should also include a set off clause, which makes it clear that any entitlements in the employee's home country employment contract (e.g. benefits in respect of benefits such as annual leave, sick leave, notice periods etc.) will be offset against those that will be provided by the host company during the secondment.
- If the employment terminates during the secondment, be sure to validly terminate the employment in both the home country and the host country. Further, the settlement agreement (if any), should waive claims against the GCC entity and any other group entities.

Failure to Document Employment Issues

Unlike many other jurisdictions, litigation proceedings in the GCC countries are predominantly document based and witness evidence is not usually provided. To defend any employment claim successfully, it is critical that employers have clear written records of the matters at issue (for example, the reasons for dismissal, warnings provided, performance issues and any performance management process followed etc.)

Employers should carefully document all matters relating to the employment relationship, particularly performance management issues, disciplinary processes and any bonus or incentive schemes. All documents must be translated into Arabic for any court proceedings. Employers should therefore also be mindful to draft contracts and employment documentation in simple language and to keep reasons for termination clear and concise, to avoid translation issues in the event an employee brings a claim against the employer.

Failure to Consider Nationalisation Requirements

The GCC countries have all implemented nationalisation programs to some degree, the most notable being Saudi Arabia's Nitaqat program, the UAE's Tawteen program, Oman's Omanisation policy and Bahrain's Bahrainisation policy. These programs aim to enhance the employment opportunities of nationals, reduce high unemployment rates amongst nationals and ultimately reduce each country's reliance on expatriate labour. The requirements of the nationalisation programs differ between each of the GCC countries.

However, generally speaking, the programs set minimum quotas for the number of nationals that must be employed by an employer and/or restrict particular roles to national employees.

The consequences for failing to comply range from fines and increased fees for new work permits to not being able to obtain new work permits, or even having existing permits revoked. These nationalisation programs are constantly evolving and are expected to become more stringent going forward.

Complying with nationalisation requirements is key for businesses operating in the GCC. Despite this, nationalisation requirements are often an afterthought, which can lead to serious operational issues. For example, not being able to service a contract because an employer cannot obtain a sufficient number of work permits. Employers therefore need to familiarise themselves with the requirements of applicable nationalisation programs in the GCC countries in which they operate and put a clear plan in place to meet the nationalisation requirements, which should include ensuring recruitment policies and practices are consistent with nationalisation requirements and considering ways to attract and retain national employees in the long term.

GCC-based employers should have a clear understanding of applicable nationalisation requirements and put in place a plan to meet these requirements. In addition, employers should:

- Clearly document any issues that arise throughout the employment relationship
- Draft contracts and employment documentation in simple language and keep reasons for termination clear and concise to avoid translation issues in the event an employee brings a claim against the employer
- Put in place measures to reduce the risk of dual employment rights when transferring or seconding employees to the GCC

An awareness of these issues from the outset of the employment relationship will help to reduce the risk of costly employment issues arising in the future.

Contacts



Sarah Lawrence
Partner, Dubai
T +971 4 447 8700
E sarah.lawrence@squirepb.com



Amanda Coppen
Associate, Dubai
T +971 4 447 8700
E amanda.coppen@squirepb.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations, nor should they be considered a substitute for taking legal advice.