

**A comparative study between United Arab Emirates –  
and South African Labour Law.**

by

**DCJ Bloem**

N Dipl Explosive Engineering

**Mini-dissertation submitted in partial fulfilment of the requirements for  
the degree Masters in Business Administration at the Potchefstroom  
Business School, Potchefstroom Campus of the North-West University**

**Supervisor: Dr C.J. Botha**

**November 2009**

## ABSTRACT

When working in a foreign country a tough and sometimes most difficult obstacle that is faced by the so-called "ex-patriots" are the local laws practiced in the country of choice. The South African Arms Industry has various agreements with foreign countries with respect to co-operation and working relations on knowledge sharing. One such a country is the United Arab Emirates that act as a springboard for the marketing and distribution of military equipment in the Middle East. This includes placement of personnel in the Emirates by an employment agency.

Labour law in the UAE is interwoven with religious principles found in the Qur'ān and the Shari'ah. The labour laws, as practiced, have a long and enduring history in the UAE which must first be understood in order for a full understanding of the ensuing UAE labour law, as found in Federal Law, no 8 of 1980, Regulation of Labour Relations, as amended by Federal Laws, no 24 of 1981, no 15 of 1985 and no 12 of 1986.

Employees are however still not able to form unions or go on strike as these are strictly forbidden in the UAE. The ministry however does guarantee swift action against employers misusing their workers. If a worker should feel disgruntled against the employer, it is his or her free choice to report such a claim at the Ministry of Labour in Abu Dhabi or any of the other regional offices found in and around the UAE.

Labour laws in SA are interwoven. Therefore with all the different acts interacting upon each other it is not possible to look at all the acts. The author has therefore only selected the following acts to contemplate what is meant by the complexity of the SA labour acts.

Labour law in SA is comprehensive and full of intrigue when compared to that of the UAE. The labour law in the UAE is not very complex in nature when viewed offhand, but when viewed in conjunction with the Shari'ah and other laws pertaining to the region it aims to serve.

SA labour law is written with a specific view of protection of both the rights of the employee and that of the employer. It has an immense historical background, that when viewed in totality, gives rise to the feeling of over regulation on the part of the Government compared to its predecessors.

The research clearly indicate that the expatriates in the UAE does have a working knowledge of the labour law that is prevailing in the UAE. The fact that the laws are intertwined with that of religious laws of the Shari'ah and Qur'an is of little consequence to them, as they are selling their labour. The lack of understanding of these laws has clearly paved the way for another research to be conducted into these aspects. In so far as the SA labour legislation is concerned it is far more controlled, regulated and directed from a formal basis as that of the UAE.

When a company decides to engage in commerce in the UAE it is vitally important that the culture be studied first, as well as all statutes that regulate business within such a country. It is further important to note that the exploitation of workers in general is not tolerated anymore. Does it occur? Yes it does but be warned, in the GCC countries it will in future not be tolerated as the global pressure is mounting for reform.

## ACKNOWLEDGEMENTS

Saying thank you is a hollow phrase if it is said without meaning. This comes from within me:

- To God almighty who has given me the courage and believe in myself to undertake such an enormous task and for giving me the perseverance to fulfil the dreams we, as a family, have.
- Christa and my children for enduring the past few years, encouraging me when the tide was out and working with me to achieve this goal for us as a family. Christa for just being there as well as being my friend, wife and inspiration.
- Anneke Coetzee for looking after the correct use of the Harvard bibliographical style and always helping to find literature and sources that is not readily available.
- Fanie and Elmarie Postma for doing the language corrections and helping where my knowledge of the written word failed.
- Dr Christoff Botha for patience and encouragement in completing the dissertation.

May you all be blessed with the best that God, our Father, has in store for you.

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## **CHAPTER 1: INTRODUCTION AND PROBLEM STATEMENT**

### **1.1 INTRODUCTION**

When working in a foreign country the hardest and sometimes most difficult obstacle that is faced by the so-called expatriates are the local laws practiced in the country of choice. The South African arms industry has various agreements with foreign countries with respect to co-operation and working relations on knowledge sharing. One such a country is the United Arab Emirates that act as a springboard for the marketing and distribution of military equipment in the Middle East. This includes placement of personnel in the Emirates. When visiting the Emirates and speaking to fellow South Africans that is working there, it is evident that a clear understanding of the labour laws and related issues were not understood when they decided to work abroad. Labour laws in South Africa are very complex and strict with respect to the rights of the employee and that of the employer. In contrast to this the labour laws in the United Arab Emirates are not complex in the written word but rather in the generally understood and practiced employment domain. The Shari'ah Religious Laws are more widely used than the written laws.

### **1.2 PROBLEM STATEMENT**

In interviewing fellow South Africans that are working or have worked in the United Arab Emirates, it is clear that they were not at all prepared for the non-complex labour laws that exist in the United Arab Emirates and expected to have the same rights as that of every South African citizen in South Africa.

The published labour law in the United Arab Emirates is not complex in nature. It is written in Arabic, with a translated version available on request. The broad focus of the law is to communicate to the residents, being local or expatriate, the general manner in which labour issues are to be handled. This is offered as rules and subdivided into sections that are related to the Shari'ah Laws.

The Shari'ah laws are religious in nature. The general perception exists amongst employers that the whole population, inclusive of ex-patriots, understand these laws and will abide by them. The main problem arises in the misinterpretation of these religious laws. This leads to general mistakes in the day to day work that can be attributed to ignorance of the laws, a culture shock and poor communication.

### **1.3 RESEARCH OBJECTIVES**

The objective of this research is to do a comparative study between the UAE labour laws and those of South Africa. The outcomes of this study will inevitably show the pitfalls prospective emigrant workers can steer clear of and prepare prospective workers for the real live situation when faced with the Emirates labour laws. Coupled to the non complex labour laws are the intertwined Shari'ah laws.

The research objectives are divided into primary and secondary objectives.

#### **1.3.1 Primary objective**

The primary objective of this research is to give prospective emigrant workers an understanding of the Labour Laws of the United Arab Emirates.

#### **1.3.2 Secondary objectives**

The secondary objectives of this research are:

- Understanding the difference between labour laws of both countries.
- Have a working knowledge of the Shari'ah Laws
- Get a better understanding of the unwritten but widely practiced labour laws in UAE.

### **1.4 RESEARCH METHODOLOGY**

This research, pertaining to the specific objectives, consists of two phases, namely a literature review and an empirical study.

### **1.4.1 Phase 1: Literature review**

The sources that will be consulted include:

- Published labour laws of both countries.
- Published newsletters by leading law firms.
- Other publication deemed relevant.

Sources of published laws in English in the UAE are not very common to find. With the vast quantity of expatriates working in the UAE the rules have change and laws are published in English. The literal meaning behind most of the laws however have been lost in the translation process. Therefore other publications like that of Hamilton, dated to the 1890's and reprinted in 1982, will be used.

### **1.4.2 Phase 2: Discussion and comparison of applicable laws**

The literature study will culminate in the direct comparison of the stated laws literature under review in the form of a report. Discussion of similarities as well as differences will be conducted. Formal recommendations and need-to-know information will be provided to prospective employees in the United Arab Emirates.

## **1.5 LIMITATIONS/ANTICIPATED PROBLEMS**

The author anticipates that problems with translations of the laws and common use of Shari'ah Laws in the different dialects as used in the seven Emirate States, will be encountered. An understanding and having a working knowledge of Arabic culture is necessary for a full understanding of the practiced labour law. It is also expected that the written commentary on Shari'ah Law that is applied daily would be difficult to find in English.

A comprehensive study was done by the staff of the Ferdinand Postma Library to determine if this kind of study was ever done, none was found. This study is therefore the first of its kind and therefore it is expected that obstacles will be faced. Generally English publications/translations of Arabic scholastic publications on

labour issues and laws are not easy to become. Historic publications will have to be consulted as they are generally more outdated but a valuable source of information where the modern day laws and practices evolved from.

The UAE and surrounding Arabic countries are generally not known for completing questionnaires. This is due to the suspicious nature of the Arabic tribes and the constant rivalry that is found even between families and subsequent businesses.

All over the Middle East scepticism regarding questionnaires and foreigners can be found. It is therefore expected that the completion of questionnaires, even by expatriates, would be problematic.

## **1.6 CHAPTER DIVISION**

The chapters in this mini-dissertation are presented as follows:

Chapter 1: Introduction and problem statement

Chapter 2: Culture as a measurement for labour relations

Chapter 3: Labour law orientation

Chapter 4: Research methodology

Chapter 5: Summation/Recommendations

Chapter 6: Bibliography

## 1.7 ABBREVIATIONS USED

BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
COIDA	Compensation for Occupational Injuries and Diseases Act
EEA	Employment Equity Act
GCC	Gulf Co-operation Council
HR	Human Resource
ILO	International Labour Organisation
IPEC	International Programme on the Elimination of Child Labour
LRA	Labour Relations Act
MoL	Ministry of Labour (UAE)
MOSA	Machinery and Occupational Safety Act
NEDLAC	National Economic Development and Labour Council
OHSA	Occupational Health and Safety Act
RSA/SA	Republic of South Africa
SDA	Skills Development Act
UA	Unemployment Insurance Act
UAE	United Arab Emirates
UAR	United Arab Region

## 1.8 DEFINITION OF CONCEPTS

- Shari'ah - Shari'ah is defined in the Britannica Concise Encyclopedia as the legal and moral code of Islam, systematized in the early centuries of the Muslim era (8th – 9th century AD). Shari'ah rests on four bases: the Qur'an; the Sunna, as recorded in the Hadith; ijma or agreement among scholars and qiya or analogical reasoning. Shari'ah differs fundamentally from Western law in that it purports to be grounded in divine revelation. Among modern Muslim countries, Saudi Arabia and Iran retained Shari'ah as the law of the land, in both civil and criminal proceedings but the legal codes of most other Muslim countries combined elements of Islamic and Western law where necessary. Most Islamic fundamentalist groups insist that Muslim countries should be governed by Shari'ah.
- The Hedyā - A basic guide or commentary on the Musulman Laws translated by Charles Hamilton in the late eighteen hundreds re-published in 1982.
- Culture - Culture is defined in Answers.com as:
- a. The totality of socially transmitted behaviour patterns, arts, beliefs, institutions and all other products of human work and thought.
  - b. These patterns, traits and products considered as the expression of a particular period, class, community or population: Edwardian culture; Japanese culture; the culture of poverty.
  - c. These patterns, traits and products considered with respect to a particular category, such as a field, subject or mode of expression: religious culture in the Middle Ages; musical culture; oral culture.
  - d. The predominating attitudes and behaviour that characterize the functioning of a group or organization.
- Expatriates - All people working in the United Arab Emirates that is not UAE citizens or of Arabic descent. The term is mainly conferred upon

	people from Western birth, mainly South Africans, English, Europeans or Americans.
Common Law	Du Plessis, Fouche, Jordaan, Van Wyk (1996:3) describes the common law, inter alia as all legal rules not found in legislation. The sources of the common law are: Roman-Dutch law, English law, decisions of the Supreme Court and custom and practice.
Conflict	Lewicki, Litterer, (1985:4) Conflict occurs when people have separate but conflicting interests.
Coach	Cass, Zimmerman (1974:240) defines coach as providing direct performance feedback to subordinates and showing them how to improve performance where necessary.
Job enrichment	Nel (1998:271) defines job enrichment as that the employee assumes more responsibility for tasks.
Strike	Levy (1984:134) defines a strike as a temporary stoppage of work undertaken by a group of employees in order to underline a grievance or to enforce a demand.
Wildcat strike	Levy (1984:135) defines it as a strike that takes place in breach of a procedure for the resolution of disputes or before such a procedure has been exhausted.
Groups/teams	Bennet (1997:209) describes a group or team as a working group that exhibits a high degree of cohesion, common attitudes and perspectives among members, who stand ready and willing to help each other out and have a genuine commitment to attaining group objectives.
Worker/employee	Anderson, van Wyk (1997:162) describes a worker/employee as: <ul style="list-style-type: none"> <li>• Any person, excluding an independent contractor, who works for another person or for the state and who receives or is entitled to receive, any remuneration; and</li> <li>• Any other person who in any manner assists in carrying on or conducting the business of an employer and where employed and employment have meanings corresponding to that of 'employee'.</li> </ul>

Menial servant

Hamilton (1982) describes any household worker, whether it be a housemaid, porter, general hand or driver as a menial servant.

## CHAPTER 2 - CULTURE AS A MEASUREMENT FOR LABOUR RELATIONS

### 2.1 INTRODUCTION

According to the Zayed University (2009:1) the United Arab Region (UAR), as the UAE and surrounding areas were previously known, were officially formed in 1971, when certain emirates were combined into a country and the constitution was adopted. The government has the form of a federal state and is ruled by the Supreme Council of Rulers.

Hashem (1964:3-6) states that labour laws in the United Arab Emirates emanated from the region's previous colonial rulers. The author comments as such that:

Labour law in the UAR is Latin inspired. The inspiration in the main is French. This can be deduced from the comparison of the legislative provisions in the two countries and the frequent reference in the UAR to the French jurisprudence. The preparatory work for the Civil Code of 1948, contains abundant evidence of the Latin inspiration.

In this capacity, the UAR can, as a subject of study, represents those Arab countries which are either well known to administer legal systems of law very akin to the French legal system and have labour legislation similar to that of France, like Tunisia, Algeria and Morocco or those whose civil laws are similar to that of the UAR, like Iraq, Syria and Lebanon or those whose labour laws bear various degrees of resemblance to that of the UAR, like Iraq, Kuwait, Qatar, Saudi Arabia, Lebanon, Jordan and Libya. The 1958 Labour Codes of Iraq and Kuwait have a lot in common with the UAR Decree Law, no 317 of 1952, which was superseded by the UAR Labour Code. The 1962 Labour Code of Qatar bears a great resemblance to the Kuwaiti Labour Code. The 1963 Labour Code of Libya drew closer in its provisions to the UAR Labour Code.

The law in Sudan is inspired by the English Common Law. This mainly resulted from the early recruitment of British judges, whose pronouncements bear witness to the inspiration.

Section 4 of the Civil Justice Ordinance of 1900, re-enacted in section 5 of the Civil Justice Ordinance of 1 May 1929, provides for the administration of “justice, equity and good conscience,” in personal law matters, where there is no Sudanese enactment. Section 9 of the same Ordinance provides that, “in cases not provided for by this or any other enactment for the time being in force, the court shall act according to justice, equity and good conscience.”

Acting in accordance with “justice, equity and good conscience”, was and still is a good sanction for the judicial resort to the principles of foreign law without limitation. However, resort to the UAR or French law, was there under rejected, by judicial pronouncement as early as 1920. “I have considerable hesitation”, said Dun, CJ of the Sudan, “in applying the principles of French or Egyptian law, partly because it is much more difficult for an English lawyer to discover how to apply the French law to any particular set of facts than it is to discover how to apply the English law and therefore, I should not a rule apply the principles of the French Law, Egyptian or any other law except English law, in cases in which I am directed by Section 4 of the Civil Justice Ordinance “to act according to justice, equity and good conscience,” unless the result of applying English law was repugnant to my ideas of justice, equity and good conscience”.

Hashem (1964:3-6) in the same case added, “I quite agree with what the learned Chief Justice has said as to the difficulty which the members of a bench, recruited in the manner set out in Section 6 of the Courts Ordinance, must always have in applying consistently the principles of Egyptian law... I therefore think that in the absence of Sudan legislation or a previous decision of this Court, we should, especially in purely commercial matters, be guided mainly by the legal principles with which we are familiar and make use of other systems of law merely to assist us in exceptional cases in arriving at the principles of justice, equity and good conscience”. That these

pronouncements were carried further so as to establish a consistent practice for the Sudan based on the English Common Law, is clear from the words of the same Judge: "It is difficult to see how a consistent practice can be arrived at unless, in cases not governed by Sudan legislation or the previous decisions and practice of the Court, we apply, with such modifications as justice may require, the legal principles in which we have been educated". Williamson, J in the same case put a stamp, as it were, on the whole matter by saying: "I do not say that there may not be cases in which it may be equitable to apply the principles of Egyptian law or even any other law if the principles of English Law are not in accordance with the principles of justice, equity and good conscience when applied to a particular case in this country, but as a general rule I am of opinion that the application of English Law is more likely to confer justice than the application of any other law".

Therefore the resort was mainly left to the English Common Law, as administered in England and India. That explains the frequent legislative and judicial reference to these two countries in the Sudan. Comparison of the Sudan labour legislation with the British and Indian legislation affords good examples of this reference. In this process, the Sudan seems to have followed in the footsteps of India, where the term "justice, equity and good conscience" was coined and the reception of the English Common Law seems to have gone through the same process. The reception of the English Common Law in Sudan was further widened in scope by the adoption of the principles of the English Statute Law, whenever they were in consonance with "justice, equity and good conscience".

Evidence of the justification thereof was afforded by Bell, CJ of the Sudan, who said: "English Common Law has been modified by Statute Law from time to time, because it has been found to be unsuited to changed conditions. The law to be administered in this country is laid in Chapter II (ie section 9) of the Civil Justice Ordinance and in my opinion the Sudan courts are fully entitled to consider English Statute Law and to adopt or reject it according to whether or not it is in consonance with the provisions of Chapter II, having due regard to conditions in the Sudan." A cautionary remark applicable both to Sudan and

India was afforded in the same case, by Owen, J when he said: “We are guided but not governed by English Common Law and Statute Law”. This case is an early case in which the Sudan rejected the English Law, for not being in consonance with “justice, equity and good conscience”.

In line with these judicial pronouncements, the laws were enacted in English; and this continued even after independence in 1956, though side by side with enactment in Arabic. In this capacity, the Sudan can, as a subject of study, represent the Arab countries which are well known to administer similar legal systems and are possessed of labour laws resembling that of the Sudan, like Bahrain and Aden.

Hashem has therefore set the stage for the study of labour legislation in the UAE.

The current legislation cannot be understood in its full context if the above portion is not taken into account when interpreting and comparing the current labour legislation. If the legislation and its prime objectives are to be fully understood, the nature of the workforce and the work in general must be understood. It is therefore necessary to look at certain publications from a wider source than the UAE. Many migrant workers are from India and Pakistan and thus have a set manner in which they operate from in terms of labour law understanding.

## **2.2 CONCEPTUALIZATION OF HEDAYA, SHARI’AH AND KORAN**

Hamilton (1982: 489) translated the Hedaya in the later part of the 1800’s and states in his explanation of labour that” If a person hire another, let him inform him of the wages he is to receive. The hirer or the lessee is termed Ajir or Mawjir; and the lessor or the person who receive the wages or rent, is dominated the Moostajir.”

According to Anon (2006) of the Khaleej Times (2006), labour in the UAE comprises mainly out of 50% Indian and 18% Pakistani labourers. Therefore the practice of hiring labourers as “slaves” are still encountered but not named in this fashion.

Hamilton (1982:507) states that:

It is common practice, in Arabia, Persia etc for slaves to go into service in the capacity of menial servants, being accountable to their master for the wages they receive. Besides, the difference between stationary service and travelling service is evident and consequently, upon stationary service being ascertained or specified, the other description (namely, travelling service) cannot be included.

Therefore it is not uncommon to be named Ajir or Mawjir in the daily work. The practice of naming an employer in this manner is however fading as a younger generation of workers are encountered. "Moonshahib", as a form of respectful greeting for an employer, is still encountered.

Gabru (2004:37) gives an Islamic perspective on the issue of labour and the understanding of Islamic way of justice when she states that:

Islamic law is divine law since it is based on the totality of the commands of *Allah* as embodied in the Holy *Qur'an*. The most fundamental meaning and concept of Islam and Islamic law is *Tawhid*, which means belief in the unity and oneness of Almighty God.

A further important aspect of the nature of Islamic law is that it is inextricably intertwined with the belief system and the moral values of Islam. The Islamic way of life advocates that the human being is the trustee of Allah on planet earth and that the primary duty of every human being is to fulfil God's trust. As *Allah's* trustee, the human being lives his or her life according to clearly established spiritual and moral values and principles. These values and principles are found in the sources of *Shari'ah*.

The *Qur'an* describes the objectives of the *Shari'ah* as follows:

O mankind, a direction has come to you from God; it is a healing for the ailments in your hearts and it is a guidance and a mercy for the believers.

The *Shari'ah* aims at safeguarding people's interest in this world and the next. In order to attain these objectives, the three primary objectives of the *Shari'ah* are to:

- (a) Educate the individual;
- (b) Establish justice (*Adl* or *qist*);
- (c) Consider the public interest (*maslahah*).

The second and the third objectives are of particular interest. *Adl* literally means placing things in the right place. The second objective is, therefore, to establish a balance by fulfilling rights and obligations and by eliminating excess and disparity in all spheres of life. This in essence is distributive justice and social justice. The concept of justice characterizes the *Qur'anic* message, for example, "When you judge between human beings, judge with justice" and again, "When you speak, speak with justice".

Elsewhere the Qur'an demands justice alongside benevolence (*ihsan*), for example, "Surely Allah enjoins justice and doing good to others". The juxtaposition of justice and benevolence opens the scope to considerations of equity and fairness.

Muslim scholars are in agreement that the overriding objective of the *Shari'ah* is the public interest, which is wide enough to compromise all measures that are beneficial to society. The five essential benefits are life, faith, intellect, property and lineage.

The understanding of the above statement is imperative in order for the relationship of Hirer (Employer) and hireling (Employee) to be understood. The relationship is interwoven in all Arabic contracts of employment that the commandments of Allah be respected and adhered to. The Ministry of Labour in the UAE appointed special inspectors to ensure adherence hereto.

Zubair (1992:17-27) explains the interwoven concept of Islamic law further when he remarks:

Islamic economic system recognizes no distinct line of demarcation between politics, ethics, economics, etc. The questions that concern one or all of them were interwoven and discussed indiscriminately under the *Shari'ah* (Islamic Law).

The trace of historical trends, as mentioned above, shows that no social science can be rigidly marked off from the other social sciences since they all relate to man and his environment. The doctrine of *laissez-faire* which industrial revolution has imposed on other economic systems cannot be entertained under Islamic law.

Other things being equal, the economic system of Islam has been based on two factors. They are capital and labour.

### **General Concept of labour**

Labour is considered, under Islamic law, as the pivot of human life and its core. It is placed after faith in the Qur'ān where it is often stated:

“... but those who believe and do deeds of righteousness...”

It follows, therefore, that every act of man on this earth is labour, whether it is a physical or mental act, good or bad. The responsibilities and duties of this vicegerency go in line with special favours that Allah conferred on man. Allah made the earth amenable, manageable and serviceable to man.<sup>d</sup> He, then, gave man the talents that are needed to manage the earth, but these favours and talents are geared towards labour through which means they can be discovered and displayed.

For this reason man is enjoined to seek for his sustenance from earth. It is clear, therefore, that labour for earning one's livelihood, travelling, building, etc is the responsibility of vicegerency and is in turn a submission to the

injunctions and ordinances of Allah which is actually an *'ibādah*, worship of *Allāh*.

### **Urgent Solicitation and Legality of Labour**

The *Sharī'ah* does not merely depict every act of human beings as labour. It solicits for lawful labour from every man. *Allāh* says in the *Qur'ān*:

“It is He who has made the earth manageable for you, so traverse ye through its tracts and enjoy the sustenance which He furnishes...” *Allāh* also urges the worshippers after the *Jumu'ah salah* (Friday Prayers) to return to their labour and take up the means of sustenance, saying:

“O ye who believe! When the Call is proclaimed to prayer on Friday hasten earnestly to the Remembrance of *Allāh*, and leave of business (and traffic). That is best for you if ye but knew! And when the prayer is finished, then may ye disperse through the land, and seek the Bounty of *Allāh*.” It has, also been established that the *Qur'ān* allows the pilgrims to engage themselves in labour that can fetch them sustenance during the ritual acts of Hajj and at its sanctuary. The *Sunnah* follows suit. It encourages Muslims to work for their livelihood. It was reported that the Prophet (saws) said: “None of you would eat anything better than from the sweat of your labour”<sup>i</sup>

### **Protection of labour under Shari'ah**

The protection of labour is inspired by the general consideration of security for the existence of human beings under the *Sharī'ah*. In addition to this general tendency, the historical trends show us how Islamic Authority uplifted labour from theoretical, legal or ethical value to its practical aspect.

The institution of *Hisbah* (Accountability) is an evidence of this. The right of a labourer has been made sacred in Islamic Law, anybody who jeopardises this right invites the wrath of *Allāh*.

..”and a man who employed a labourer and received the labour from him but refused to pay him (the labourer) his due..”

### **Protection of labour according to the prophet**

The Prophet (saws) on his own, instructed the Muslims: “Pay the labourer his due before his sweat dries.” Nevertheless, labour organisations had fared well with Islamic Law. They were based on the principles of solidarity, co-operation, improvement of production and sincerity. Their officers were known as *al-harīf* (patron) and *al-mu’āmil* (workers). Ibn Batūtah reported that there were *al-aqāf*, that is endowments, at Damascus that belonged to some labour organizations for the purpose of replacement of any precious plate broken at the hand of trainees. Similar endowments were extant in Morocco until recently.

From the above it is thus quite evident that the Islamic laws as depicted in the *Shari’ah* is quite explicit in the way labourers, workers or employees should be treated in Arabic entities.

### **2.3 CONCLUSION**

Labour law in the UAE is interwoven with religious principles found in the *Qur’ān* and the *Shari’ah*. The labour laws, as practiced, have a long and enduring history in the UAE which must first be understood in order for a full understanding of the ensuing UAE labour law, as found in Federal Law, no 8 of 1980, Regulation of Labour Relations, as amended by Federal Laws, no 24 of 1981, no 15 of 1985 and no 12 of 1986.

## **CHAPTER 3 – THE RESPECTIVE LABOUR LAW ORIENTATIONS**

### **3.1 INTRODUCTION**

The understanding of the Arabian culture and Shari'ah law as described in Chapter 2 is imperative before any study or orientation with respect to the two labour laws can be considered. The preceding chapter acts as an introduction for the orientation of the laws that will be discussed. Labour law as defined and practiced by the UAE and RSA, as well as the International perspective from the ILO and other writers will be discussed in detail as required to bring the major concepts to light. UAE labour law and practices as found will be discussed with interpretations given. Historical interpretations and practices will be discussed.

### **3.2 LABOUR LAW IN THE UAE**

Al Tamimi & Company (2009:2) states that labour matters in the UAE are governed by Federal Law, no 8 of 1980, Regulations of Labour Relations as amended by Federal Laws, no 24 of 1981, no 15 of 1985 and no 12 of 1986. The law is divided into twelve chapters and one hundred and ninety three articles. There are special labour related regulations applicable in some of the free zones in the UAE, such as Jebel Ali Free Zone. The practice of compensation for work done as described by Hamilton in the Hedaya is still practiced in the UAE today.

Hamilton (1982:491) states that:

“A workman is not entitled to anything until his work be finished - A workman is not at liberty to demand his hire until his work be finished, unless an advance of payment were stipulated; because some of the work still remains unattained, hence he is not entitled to his hire. The same rule also holds if the workmen perform his business in the house of his employer; for in this instance he is not entitled to his hire before his work is finished, since some of his work still remains unattained, as has been mentioned above. This is what occurs in the Hedaya upon this subject and the same is also to be found in the Tijreed. The compiler of the Maheet and Kadooree likewise mention the same

- It is, however, contrary to the Mabsoot, for there it is mentioned that “hire is due in proportion to labour” and Timoor Tashee and others, have thus expounded the Law in this particular.”

During an informal interview, it became clear that the practice of payment in kind by means of contractual obligations is also found, according Rossouw (2009). In the Hotel and Military Support sectors it is common practice to give a worker or employer a partial payment in the form of a return air ticket home, after a period of service. The circumstances however dictate the obligations. This is however negotiated before signing of work contracts.

Hamilton (1982:503) further states, on the responsibility of a hireling, that it is therefore lawful for him to work for the public at large, since no particular person has any exclusive claim to his service and accordingly, he is termed Ajeer Mooshtarik, that is, a general or common hireling. The rules with respect to particular hirelings shall be discussed in their proper place. The article committed to a common hireling is deposit. An article delivered to common hireling is a deposit in his hands. If, therefore, it perishes whilst in his possession, he is not in any degree responsible for it, according to Haneefa and such is also the opinion of Ziffer.

From personnel experience and informal discussions, Breytenbach (2009), with people engaged in different levels of an organisational structure, this section in the Hedaya in particular is not true in the UAE, as any labourer, whether it be a manual labourer or executive manager from foreign birth, must be in possession of the following documentation:

- Work permit
- Employment visa
- Medical service grant
- Labour card

The practice of sponsoring of workers is found in the UAE and in the absence of a sponsor, it is not possible or lawful for any labourer or hireling to provide his or her

service to anybody. In the event that such practices are found, the individual faces expulsion/expatriation from the UAE. This is confirmed by Hilal & Associates (2007:9-10) when they recently stated in their firm newsletter that:

Further, the Minister also assured that all workers coming to the UAE would be covered under medical insurance and that the companies hiring these workers would bear the expenses for same.

Hamilton (1982:505) further explains the concept of work contracts when he states that:

“The hire of a tradesman is valid, under an alternative with respect to work - If the owner of cloth says to the tailor whom he has engaged, “If you make up this cloth in the Persian fashion, you shall have one dirm and if in the Turkish fashion, you shall have two,” - it is valid and the tailor is entitled to a recompense according to whichever of the two fashions he makes up the cloth in. In the same manner, also, if he says to a dyer, “If you dye this cloth purple, you shall have one dirm and is yellow, you shall have two”, the dyer is entitled to a recompense accordingly as he dyes the cloth purple or yellow.”

In the UAE the abovementioned is true for defined work such as a hireling in the clothing industry where specific functions are required from a tradesman in the clothing manufacturing sector. This must however be formalized in the work contract that is signed by both parties.

Hashem, (1964:7) concurs that the contract of employment under the Moslem and Roman laws, used to be considered as a lease contract. Leases used thereunder, to be divided into leases of things and leases of persons. The new ideas of the French Revolution failed to change this classification of the contract of employment. So Code Napoleon preserved the lease characteristic of the contract.

The first Civil Code in the UAR dated 1883, which was inspired mainly by the French law, contained only five sections (401-405), regulating the contract of employment. These sections, which were the first piece of legislation on the contract, bore a great

similarity to the provisions of Code Napoleon. They thus preserved the lease characteristic of the contract.

To be sure, not much notice was taken of these provisions, because the employment market was then still limited to handicrafts, some of which were very ancient, dating back to the days of the *Pharaohs*. The employment relationship was still controlled either by the rules of the guilds, which were still prevailing, not only in the UAR but in the area as a whole or by the family ties which prevailed and still, in some cases, do prevail over any legal employment relationship between the members of the same family.

The modern day UAE labour law, according to Al Tamimi & Company (2009:4) however states that two types of employment contracts are allowed in the UAE – limited employment contracts or fixed term contracts, which are contracts for a specific duration with specific commencement dates and unlimited contracts where the employee continues to work for the employer from a specific date until such time as the employment contract is terminated by either party after giving prior notice. The latter is most commonly found in senior to executive positions in most companies and the former in the case of workers or labourers.

Hashem, (1964:7) further states that there is no definition of the contract of employment in the UAR Labour Code. A definition of the contract may, however, be inferred from section 42 thereof, re application of the Code. So, the express definition of the contract in section 674 of the Civil Code is left as the only reference. This section defines the contract as “a contract whereby one of the parties undertakes to work in the service of the other and under his direction and control, in return for remuneration which the other party undertakes to pay”.

From this definition, three basic elements of the contract can be discerned: (a) an undertaking by the worker to work for the employer, (b) under the employer’s control and (c) in return for the employer’s undertaking to pay remuneration to the worker. As shall be seen later, control is the only one of the said three elements, which distinguishes the contract of employment from similar contracts.

In Sudan the contract of employment was expressly defined in section 2 of the Sudan Ordinance, as “any contract whether written or oral, express or implied, whereunder any person is employed, either for any period of time or for the execution of any work for remuneration in money or money’s worth.” The elements of the contract in this definition are only two: (a) employment and (b) remuneration. The first element is ambiguous and is not an exact counterpart of the elements of ‘work’ and ‘control’ in the UAR definition. More important is that these two elements in Sudan do not distinguish the contract of employment from similar contracts. The decisive factor of distinction, which is the element of ‘control’, is not clear in the definition and this deprives the definition of its importance. Under the English Common Law, which was the only reference before the enactment of the Sudan Ordinance, ‘control’ was and still is the decisive element of the contract. So the filling-in of the gap in the Sudan definition, by reference to the English Common Law is mandatory, for otherwise, the Sudan Ordinance would be, contrary to expectations and the legislator’s intention, an incomplete statement of the previous Common Law’s position in Sudan. Furthermore, the Sudan definition contains matters related to the formation and form of the contract, which should properly have been kept in separate provisions in the Ordinance.

On comparison of the definitions of the contract in the two countries, it is easy to see that the UAR definition is legally more comprehensive than the Sudan definition. The former is self-sufficient, whereas the latter is valueless without reference to the English Common Law.

The UAE labour ministry rectified this problem of no definition of a contract of employment that was perceived by many Emirati businessmen in the UAE by rectifying the exclusion previously in the issuing of the “new” labour act under Federal Law, no 8 of 1980 on Regulation of Labour Relations. In this law the contract of employment is clearly defined as:

“Any agreement, for a definite or indefinite period, concluded between an employer and an employee, whereby the latter undertakes to work in the employer’s service and under his management and control, in return for a certain wage the employer undertakes to pay.”

With respect to disputes between the “hirer and the hireling or labourer”, Hamilton (1982:508) explains that according to the Hedaya in the event that a case of dispute with a tradesman concerning the orders he has received, the assertion of the employer must be credited. If a dispute arise between the tailor and the owner of cloth, the owner asserting that, “he had directed the tailor to make the cloth into a vest” and the tailor that “the owner had directed him to make it into drawers” or if a similar dispute happens with a dyer, the owner of the cloth affirming that he had directed him (the dyer) “to colour the cloth yellow” and the dyer that he (the owner) “had directed him to dye it red.” In either case, the declaration of the owner of the cloth must be credited, since it is from him that the orders proceed.

There are some exclusion to whom the labour does apply in the UAE. These exclusions are formulated in the introduction and preface of the law. Al Tamimi & Company (2009:2) illustrated this by publishing the law in its entirety, stating:

According to Article 3 of the Law, the Law applies to all staff and employees working in the UAE, whether UAE nationals or expatriates. However there are certain categories of individuals who are exempted from the Law as listed below:

- Staff and workers employed by the federal government, government departments of the member emirates, the municipalities, public bodies, federal and local public institutions and those staff and workers employed in federal and local governmental projects.
- Members of the armed forces, police and security units.
- Domestic servants.
- Agricultural workers and persons engaged in grazing (this exemption does not include persons who are employed in corporations which process agricultural products and/or those who are permanently engaged in the operation or repair of machines required for agriculture).

There is however always change and renewal of the labour law as promulgated under the federal council's auspices. This is the case of misuse of domestic workers where the Federal Government had to step in and review the current legislation. It is not uncommon to hear someone speak of their "slave" when referring to the domestic worker or additional worker that helps to tend to the buildings and surrounding areas. The reason can be found in the non inclusion of domestic workers by the labour law. Domestic workers in some instances work their allotted hours but in general work for longer hours than that of their peers employed somewhere else.

Hilal & Associates (2007:9-10) recently stated in their firm newsletter that domestic workers to be covered by Labour Law soon.

The Minister of Labour, Dr Ali bin Abdullah Al Kaabi, recently assured the Indian authorities that all domestic workers in the UAE will soon be covered under the Labour Law. The domestic workers in the UAE are currently covered under the Immigration Law.

However promising the above looks from the outside, the wheels of labour justice are turning slowly. To date the Labour Law still does not cover domestic workers. Some steps of remedy were however taken in that the working conditions and hours were better controlled by the ministry. In promulgating some federal decrees these working conditions were regulated. This was only done after some pressure from embassies were felt and are still not taken up in the Labour Law as legislation.

Workers are however still not able to form unions or go on strike as these are strictly forbidden in the UAE. The ministry however does guarantee swift action against employers misusing their workers. If a worker should feel disgruntled against the employer, it is his or her free choice to report such a claim at the Ministry of Labour in Abu Dhabi or any of the other regional offices found in and around the UAE.

The ministry has however a tight control over what happens in the labour field. Upon a recent visit to the UAE the author again found that the working hours for the summer was regulated by the Ministry of Labour.

During a public news broadcast on radio 2 (Dubai Radio) in late July 2009 the forced stoppages of work in midsummer time were announced. This is necessary due to the heat in the summer time; temperatures of up to 55°C were being measured. This measure only applied to people working in the outside, for example agricultural and construction workers. These stipulations do not apply to military workers and their aids. There seemed to be some discontent from listeners due to the late announcement of the forced stoppage. Upon discussions with some expatriates the comment was made that the announcement was overdue by a month.

Hilal & Associates (2007:9) reports that this will also be highly regulated, MoL to impose penalties on employers violating overtime limit in summer months.

According to reports quoting Mr Qaseem Jameel, Deputy Director in the Ministry of Labour's Inspection Department, companies which force labourers to work more than two hours of overtime in the summer, will face penalties.

If labourers are forced to work overtime for more than two hours a day, they have the right to seek transfer of sponsorship after referring to the MoL.

The interesting portion of the labour law that was not fully exploited and investigated is that of labour camps. When travelling through various parts of the UAE large labour camps can be seen. What seems to be a large squatter camp was found, upon inquiry, to be a labour camp. Due to time limits imposed on schedules these were not investigated. Upon conversations with various workers in hotels and some Abu Dhabi firms, it does seem that workers are indeed happy to have a work and earn an income despite some of the company's living conditions.

The Federal Law, no 8 of 1980, Regulation of Labour Relations, of the UAE is written in a very easy to read language. However the reader must be understand that the law in itself is not simple. Many interpretations can be made of the law as published. This however is the common practice; many an employer interprets the law in a very broad manner and according to their own needs. The decrees that are also coming

forth are also testimony of the evolution taking place with respect to the treatment of workers/employees by the employers.

### **3.3 INTERNATIONAL LABOUR LAW**

Labour law is generally country specific orientated. In the vast growing economic climate of globalization of the modern day era it has however become necessary for world or global or multinational enterprises to have a working knowledge of the international labour law.

The international labour law in itself is expressed in the form of 187 conventions adopted by the organization. These conventions are all listed and available online at <http://www.ilo.org/ilolex.htm> through the ILOLEX database. The ILO was founded in 1919 as a labour arm of the United Nations. The ILO has however no legality of enforcement upon nations. The ILO is merely seen as an advisory and pressure group as part of the United Nations. With the aforesaid in mind one must not be hasty in writing the organization off as just another political grouping striving for world unification. Through its members labour, many good international guidelines have come forth; some of which will be discussed here to show the effect of it in the global economic power of labour.

In the UAE and South Africa specific there is no exclusion to this phenomena. The UAE is more prone to having to deal with the international laws than South Africa, due to the world economic centres being created there on the trade routes between East and West. South Africa on the other hand has already accepted many of the ILO conventions and intertwined it into its complex labour regulating laws.

Blanpain, R (2007:8-29) states the following in his commentary on the effect of globalisation:

**a. Globalisation and Legal Regulation**

That globalisation produces economic effects is beyond dispute. What about globalisation's impact on labour and employment law? One of the most common observations on this subject is that globalisation makes it harder for nation-states to regulate their labour markets through protective laws. Professor Katherine Van Wezel Stone describes the phenomenon this way:

Globalisation encourages regulatory competition. Regulatory competition occurs when nations compete for business by using lower labour standards. Regulatory competition leads non-labour groups to oppose labour regulation on the ground that business flight hurts them. Thus, regulatory competition could trigger a downward spiral: nations compete with each other for lower labour standards, while labour loses its historic allies at the domestic level, rendering labour powerless to resist.

Although conditions vary by country and region, most commentators believe globalisation has weakened unions' influence, especially in industrialised nations. Capital mobility places traditionally unionised blue collar industries in competition with lower cost producers abroad and has resulted in the loss of unionised jobs.

**b. Globalisation and Migrant Workers**

Although there are several international conventions designed to protect migrant workers, there is no multilateral framework that structures the movement of people across national borders. Rather, immigration law and in particular workplace law that can be invoked and enforced by *immigrant* workers, is by and large national law. This regulatory scheme does little to

discourage migration, which continues to accelerate. In 2000, an estimated 175 million people were living outside the country in which they were born.

### **c. Globalisation and Child Labour**

A key challenge, both for measurement and regulatory activity, is determining how to draw the line between permissible work and child labour. The latter is being targeted for elimination under the ILO's Fundamental Principles and Rights at Work, its Minimum Age Convention (No 138), the Worst Forms of Child Labour Convention (No 182) and the conventions' supplementary but nonbinding recommendations.

Some forms of economic activity engaged in by children are regarded by many as positive, while child labour, it is hoped, will someday cease to exist. Additionally, all child labour is not equal in its detrimental effect, creating the necessity of identifying the worst forms of child labour, "which require urgent action for elimination". Every Child Counts at 25.

While work is ongoing to establish an internationally recognised definition of child labour, the ILO's International Programme on the Elimination of Child Labour (IPEC) has produced startling estimates on the extent of the global child labour problem and much more recently, in a new ILO report, very heartening news about its decline. For the purpose of its seminal 2002 report, IPEC defined child labour through a process of exclusion and then addition. More specifically and based in part on the Minimum Age Convention (No 138), child labour consists of all economic activity engaged in by children under the age of fifteen, excluding those under five years old and excluding those between twelve and fourteen of age who spend fewer than fourteen hours a week working, unless their activities are hazardous.

The international labour law is not binding any specific country but rather indicative of what is right and what is wrong in terms of regulating the relationship between the employer on the one side and the employee on the other side from a global

perspective. Formulation of international standards has become a necessity due to frequent misuse of the labour force around the world.

Harrod, J (2008:8-14) eludes on the effect of globalization when commenting on the history of the ILO and labour in general:

### **Corporatism and “trade unionists” (ILO 1950-1980)**

The period after World War II through to the 1970's was a time of conceptual peace during which social, state and enterprise corporatism were established and institutionalised. The concepts of tripartism remained unchallenged - “worker” and “workers” delegates were understood to be the union representatives in the tripartite arrangement. Corporatism - the national or enterprise institutionalised relationship between management and production workers and state regulation - had in these period two important origins.

In the 1970's and thereafter the exclusory concepts associated with corporatism began to falter. The corporatist system, the legitimisation of the trade unions and the Keynesian policies resulted in redistribution against the higher incomes. The reaction to this long-term process ushered in supply-side economics and the “deregulation” of the pre-existing labour laws in the rich and industrialised countries which spilled over to the inherent weaknesses in state corporatism in some third world countries (as they were then known).

Since the middle of the 20<sup>th</sup> century political change has been sourced precisely outside the traditional concepts of worker and unionists. It was the women, forced from the countryside into the slums of Argentina, who socially determined Eva Peron as the first woman in power ever to suggest wages for women's housework (Hollander, 1974). According to Thaxton (1982) the revolutionary Red Army in China in 1949 was not an army of peasants as is popularly believed but an army of “urban marginal”. The self-employed truck drivers in Chile spear-headed the social turmoil which precipitated the military coup which brought down the democratically elected government of Allende in 1974.

The self-employed taxi drivers were involved in unseating Haile Selassie in Ethiopia. The millenarian appeal of the Islamic religion to urban-living traumatised peasants in Iran which upheld the Iran Revolution in 1979 and now it is urban marginal who support the popularity of Chavez, the movement of the untouchables in India which is, according to a long-time social commentator, restoring to the Indian rich the “fear of the mass” and it is partially employed marginal, homeless, criminals and deserters of Marx’s lump proletariat who disproportionately make up the Mahadi Army in Iraq in 2007.

Blanpain & Casale (2005:47) states that workers have the following rights:

Industrial Relations Based on Freedom of Association and the Right to Collective Bargaining. To guarantee freedom of association Art 4 declare that “workers’ and employers’ organizations shall not be liable to be dissolved or suspended by administrative authority”, while Art 5 attributes to workers’ and employers’ organisations the right to establish federations and confederations, which must in turn have the right to affiliate with international organisations.

The purpose of Convention 87 is therefore to guarantee the possibility of the existence of a plurality of unions and employers’ associations, a fundamental requirement for the effective exercise of freedom of association. An “intrinsic corollary” of freedom of association and the right to organize is the right to strike which, although not recognized expressly mentioned in any ILO Standards, has been defined by the Committee on Freedom of Association and considered by the Committee of Experts on the Application of Conventions as being protected by Convention 87.

Complementary to Convention No 87 is Convention No 98 of 1949, on the right to organise and collective bargaining. This Convention wants to guarantee that all “workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment”. This protection must apply “to all acts calculated to: a) make the employment of a worker subject to

the condition that he shall not join a union or shall relinquish trade union membership”, thus underlining that this protection applies to all acts that, as a result of union membership, might “cause the dismissal of or otherwise prejudice a worker.” (Art 1)

Article 4 of Convention No 98 establishes that “measures appropriate to national conditions shall be taken, where necessary, to encourage and promote” voluntary negotiation between employers or employers’ and workers’ organisations, with a view to reaching agreements regulating terms and conditions of employment and defining the relations between the associations. The key principles of collective bargaining are the free and voluntary nature of the bargaining, the choice of level of same and the principle of good faith. Other conventions and recommendations on collective bargaining referred to in the present glossary were adopted subsequently.

Blanpain and Colucci, (2004:2) states that in terms of knowledge and outsourcing:

The knowledge economy favours the tertiarisation of the economy and consequently of outsourcing. Enterprises outsource research facilities and services to providers in countries, where market conditions are the most attractive.

In the information society a fundamental shift takes place as far as the source of added economic value is concerned, namely from the material (raw materials and industrial products) to the immaterial (knowledge).

Indeed, economic added value today and tomorrow relates more and more to:

- the gathering and storing of information;
- the manipulation of knowledge and to
- the transfer and spreading of information worldwide.

This development - from an industrial to an information society - has an enormous impact on the nature of work and on the way enterprises are organised and functioning.

The information society leads, as said, to the tertiarisation of the economy, to the explosion of the large companies, to large-scale outsourcing. Enterprises become networks, federations of bits and pieces of activity, crossing the boundaries of industrial sectors and even of nations.

The employments relations are affected as well, as they become less hierarchical and more translatable. Social, communicative skills (emotional intelligence), are mandatory. *Savoir faire* (technical knowledge) as well as *savoir être* (relate to others in team) are a must.

The manager becomes less a 'boss', but more of a coach, seeing to it that collaborators are on the right place in the undertaking, that they have access to information and the possibility to make a contribution and to grow in their jobs.

From the above statement made by Blanpain and Colucci it is clear that the internationalisation of businesses across the globe has had its impact on the labour relations within business as well. The historical "I tell you to" type of work environment has been superseded by "let us work together" towards a common goal and purpose, thereby enhancing the productivity and cost effectiveness of business. Here more rights are clearly given to the worker than before.

## 3.4 LABOUR LAW IN SA

### 3.4.1 Background to SA labour law

Grogan (2005:1) comments that:

“Few areas of the law have undergone more frequent and dynamic change in recent years than the law relating to employment. Originally based primarily common law, which emphasised freedom of contract within only the broad limits of legality and the *boni mores*, the ability of the parties to the employment relationship to regulate their respective rights and duties *vis-à-vis* each other by independent agreement, has been progressively whittled down by statutory intervention.

By limiting the capacity of employers and employees to regulate the nature of their relationship, South Africa has followed developments in most Western industrialised nations. The process, which began in South Africa in the early years of this century with the original Industrial Conciliation Act, 11 of 1924, was vastly accelerated with its metamorphosis into the Labour Relations Act, 28 of 1956, as amended, after the recommendations of the Wiehahn Commission. In addition, a new Basic Conditions of Employment Act (BCEA) was promulgated in 1983. This Act set general minimum conditions for virtually all employees in the private sector, with the exception only of agricultural and domestic workers. The BCEA was amended to include farm and domestic workers in 1994/5 and was replaced with a new similarly named Act in 1998.

The amendments to the 1956 Labour Relations Act in the late 1970s and early 1980s provided the basis for most subsequent developments. They introduced the concept of the “unfair labour practice”, into South African law and armed a new labour tribunal (the industrial court) with power to identify and undo the effects of unfair, as opposed to merely unlawful, conduct in the workplace. The industrial court and other tribunals later added to the statutory

judicial hierarchy, developed new principles in the exercise of their unfair labour practice jurisdiction. The result was a rich but confusing (and sometimes even contradictory) body of precedent from which the rights of employers and employees had to be deduced.

It was against this background that the Cheadle Commission began its work in 1994. The Commission's main criticisms of the state of the labour law as it was charged with reviewing and reforming, were that the law did not necessarily conform to the requirements of the new Constitution or international instruments to which the government had committed itself; that it was too complicated for ordinary employers and workers; that it operated too slowly; that it was regulated by too many disparate statutes and regulations; that it failed to deal with significant categories of employees and that it did not effectively promote collective bargaining or dispute-resolution.

The Labour Relations Act, 66 of 1995, was signed into law after the Cheadle Commission's proposals were debated by the National Economic Development and Labour Council (NEDLAC), a body consisting of representatives of government, labour and business. When it was implemented on 11 November 1996, the existing LRA (hereafter "the 1956 LRA") was repealed and the various institutions created by it were replaced by new structures. Disputes that arose before the implementation of the current LRA are dealt with as if the 1956 Act had not been repealed, except that the new Labour Appeal Court now deals with appeals from the industrial court lodged after 11 November 1996. Provisions have now been made for the Commission for Conciliation, Mediation and Arbitration (CCMA) to take over cases still pending in the industrial court. The current LRA has been supplemented by the Employment Equity Act, 55 of 1998 (EEA)."

### 3.4.2 Origins of SA labour law

According to Grogan (2005:3) that:

In spite of legislative intervention in the employment relationship, the common law of employment remains relevant. Generally, labour legislation applies only to parties to contracts of employment. That relationship remains regulated by the common law to the extent that legislation is inapplicable.

The origins of the South African common-law contract of employment can be traced back to the species *locatio conductio* (letting and hiring) of Roman law.

There are three types of *locatio conductio*:

- *locatio conductio rei*: the letting and hiring of a specified thing for a money payment;
- *locatio conductio operis*: the forerunner of the independent contractor;
- *locatio conductio operarum*: the letting and hiring of personal services in return for remuneration.

The modern contract of employment developed from the *locatio conductio operarum* which, in Roman law, applied only to so-called *operae illiberales* or menial workers. In Roman times, “menial” work included painting and sculpture. Professional people could not enter into contracts of service and they were limited in the late Empire to claiming an honorarium for their services. Slavery explains why the contract of service was not utilised much in Roman times. They could therefore only be the object of the *locatio conductio rei* - ie they were rented out like any property.

The Roman-Dutch writers paid little attention to the *locatio conductio operarum*. Voet and Grotius, two leading Roman-Dutch authorities, both held the view that the legal principles applicable to the *locatio conductio rei* applied fully to the *locatio conductio operarum*. In Roman-Dutch law the contract of service was not restricted to unskilled employees as in Roman law, although

services provided by professional men, such as lawyers and doctors, continued to fall outside the *locatio conductio operarum*. The legal relationship between menial and professional employment is no longer determinative for the form of contract. The contract of employment became widely used only with the advent of capitalism and large-scale employment in factories. Before that, the English jurist Blackstone assigned the contract of employment to the law of domestic and family relations. Most employees in Europe during the late eighteenth and early nineteenth centuries were domestic workers.

As in many other areas of the law for which the English and Roman-Dutch legal systems provided inadequate authority or relied upon antiquated principles, the colonial courts had to turn elsewhere for guidance. Faced with an increase in litigation between employees and employers, the colonial courts tended, by inclination and training, to turn to English law and the writings of English authorities. The result was that South African employment law reflects both Roman-Dutch and English law principles. Further principles have been added from other areas of the law of contract. Many of the general principles of the law of contract now apply to the contract of employment. Examples are the principles relating to contractual capacity, duress and undue influence, legality and unjust enrichment.

Statutory intrusion into the common law of employment was inspired by a general realization that the common law had lagged behind conditions in modern commerce and industry and more recently, by recognition of fundamental human rights and their entrenchment in national constitutions. It was recognised that the common law contract of employment, based as it is on freedom of contract, paid no heed to the collective relationship between employees and employers, which became increasingly important with the growth in the Western world of trade union movement.

The common law does not cater for the inherent inequality in bargaining power between the employer as the owner of the means of production and employees, who are entirely dependent on supply and demand for their

welfare and job security. The common law also ignores the enduring nature of the employment relationship. It gives employees no legal right to demand better conditions of employment as time passes. By emphasising freedom of contract, the common law can encourage or at least does not discourage exploitation of labour. Neither does the common law promote participative management, in which workers have a meaningful say in at least those management decisions which directly affect their working conditions and legitimate interests. Most significantly, the common law provides no effective protection for the job security of employees.

Although market forces and competition, may to some extent, help ensure that employees receive a fair return for their labour, in most cases employees need work more than the employer needs the services of particular individuals. This is especially true of those who enter the labour market without special skills and particularly in times of high unemployment. The inequality of the pre-contractual bargaining relationship between aspirant employees and employers may tempt unscrupulous employers to take people into service under onerous conditions and at exploitative wages.

### **3.4.3 Statutory modification of the common law**

Grogan (2005:5) further states that:

“Legislatures have favoured three methods of redressing the inherent inequality between employers and employees. The first is to impose minimum conditions of employment for employees generally or on particular classes of employees; the second is to promote the concept of collective bargaining; the third is to develop specialist tribunals to create equitable principles for the workplace, with the power to enforce those principles.

The process has been slow. The earliest English statutes that accorded employees some protection in England were so-called “Master and Servant laws”, the first of which was enacted in 1349. Early Dutch law contained a series of similar “placaaten”, which regulated the working conditions of

domestic workers. The Industrial Revolution prompted more legislation and there has been a steady flow in the industrialised world ever since.

South African legislation followed a similar pattern. The abolition of slavery at the Cape by the British Parliament led to the enactment of the first Masters and Servants Act in 1841. By the time of Union in 1910 there were similar laws in all four colonies. These laws introduced criminal sanctions for breaches of employment contracts and imposed certain legal duties on both employers and employees. In practice, however, they weighed more heavily against employees. The Black Labour Relations Act, 67 of 1964, contained similar penal provisions. The South African Master and Servant Act were repealed in 1974 after international controversy.

In 1981, following a comprehensive investigation by the Wiehahn Commission, it was decided to bring all workers in the private sector (with the exception of farm and domestic workers) under the umbrella of one statute, the Labour Relations Act, 28 of 1956, as amended. A separate Basic Conditions of Employment Act, 3 of 1983, laid down minimum conditions of service with which all employers and employees in the private sector (again with the exception of the agricultural and domestic sectors) were bound to comply on pain of criminal sanction.

The Machinery and Occupational Safety Act, 6 of 1983, (MOSA) laid down broad principles for the maintenance of occupational health and safety. In 1993, the BCEA was extended to farm and domestic workers and a special Agricultural Labour Act, 147 of 1993, brought the agricultural sector under the jurisdiction of the Agricultural Labour Court and in certain circumstances, the industrial court and the Labour Appeal Courts.

The Public Service Labour Relations Act, 105 of 1994 and the Education Labour Relations Act, 146 of 1993, gave public servants and teacher's access to the industrial court and created special machinery for collective bargaining for the public service and educational sectors. MOSA and the Workmen's

Compensation Act were replaced by the Occupational Health and Safety Act, 85 of 1993 (OHSA) and the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA), respectively. Virtually the entire South African working community was covered by this maze of legislation by the mid-1990s.

In 1996, most of this overlapping industrial relations and labour legislation was replaced with a single comprehensive statute, the Labour Relations Act, 66 of 1995, which governed all employees and employers in the country, except for members of the National Defence Force, the National Intelligence Agency and the Secret Service. All other employees have access to the labour courts, the right to join trade unions and the right to strike unless they have been declared essential or maintenance service workers. The current BCEA also covers all employees, including public servants and like the LRA except only soldiers and spies.”

Grogan gave an historical overview of the whole process of evolution of the labour laws as found in South Africa today. This has led to very complex labour laws. Timm (2009:8) enforces this when he writes that SA lags behind in flexible labour laws.

Labour laws in SA are interwoven. Therefore with all the different acts interacting upon each other it is not possible to look at all the acts. The author has therefore only selected the following acts to contemplate what is meant by the complexity of the SA labour acts. The acts that will be discussed are:

- Labour Relations Act
- Basic Conditions of Employment Act
- Compensation for Occupational Injuries and Disease Act
- Unemployment Insurance Act
- Occupational Health and Safety Act
- Skills Development Act
- Employment Equity Act

### **3.4.4 The Labour Relations Act, 66 of 1995**

The LRA, apart from the BCEA, is the most important part of the labour legislation found in SA. This is because all the structures and statutory bodies regulating and controlling the labour field as well as work place in SA today, is described in this act. Gone are the days of confusion where the level of representation, finding statutory body to act on behalf of either employee or employer as well as the regulating rights for both parties, with the inclusion of the state as was the case with the previous law. Anderson & Van Wyk (1997:3) further shows that the act is divided into ten (10) chapters and ten (10) schedules.

Grogan (2005:6) states that the current LRA, like its predecessor, aims to:

“Encourage collective bargaining and the settlement of disputes but does so by enhancing the powers of the forums designed to facilitate those objectives. The general definition of “unfair labour practice” has been removed and replaced with specific rules and rights, contravention or infringement of which are justifiable by either the Commission for Conciliation, Mediation and Arbitration (CCMA), which effectively replaces the Industrial Court and conciliation boards run by the Department of Labour, accredited bargaining councils or a specialised Labour Court. The CCMA is charged with both mediatory and arbitral functions and all disputes must be processed through it, unless the parties are bound by a collective agreement which provides for private mediation and arbitration or the parties fall within the scope of accredited bargaining councils. Disputes not settled by conciliation are referred either to arbitration by a commissioner or a bargaining council or to the Labour Court, depending on the classification of the dispute. Arbitration proceedings before the CCMA are meant to be expeditious and cheap and are not appealable but merely reviewable.

Like its predecessor, the current LRA also affords freedom to strike but offers express statutory protection against dismissal to strikers who comply with the simplified procedures laid down by the Act.

A significant change is that workers may not strike over matters which either party can refer to arbitration or for judicial resolution. Trade unions are given defined access and other rights. The old industrial councils have not become “bargaining councils” but have much the same functions as the former. In addition, a new institution, the “workplace forum” consisting of elected employee representatives, can be established at larger concerns. Employers are obliged to meet regularly with these forums to disclose to them information relating to various matters on a regular basis and to consult them over a range of issues. Certain issues cannot be implemented unilaterally by an employer; consensus must first be reached with the workplace forum.

In essence, the current LRA is an attempt to give statutory expression to innovations which have been developed by more enlightened employers and trade unions by private arrangement to codify some of the guidelines and principles evolved by the labour courts under the previous regime and to settle matters which have been left moot.”

### **3.4.5 The Basic Conditions of Employment Act, 75 of 1997**

Nel et al (1998:260) defines the term Labour relations as:

“Human relations in the workplace.”

The BCEA is a piece of legislation that embraces this concept of human relations in the workplace in a formal manner. Where the LRA is more concerned with regulating and formation of statutory bodies, the BCEA is more focused on the employee’s needs and rights as well as his obligations to the employer. This is the second most important legislation in the hierarchy of labour legislation.

Grogan (2005:7) describes the act as:

“The BCEA lays down conditions of employment regarded by the legislature as fundamental. Although the act is silent on wage levels, it ensures that working hours do not exceed certain maxima, that employees are granted adequate breaks during the working day, that they are given prescribed

annual and paid sick leave, that they are paid a premium for overtime and work on Sundays and public holidays and that they are accorded other basic rights. The BCEA also requires employers to maintain records and to provide the means by which rates of pay and working hours are to be calculated. The act also regulates the minimum notice that must be given on termination of the contract.

The BCEA creates an Employment Conditions Commission charged with advising the Minister and a labour inspectorate to mediate disputes arising under the act. It also empowers the Minister to make "sectoral determinations", which may prescribe minimum wages and which replace determinations under the Wage Act, 5 of 1957. The BCEA also gives the Labour Court exclusive jurisdiction over all disputes arising under the act, save for the trial of its criminal offences."

#### **3.4.6 The Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA)**

Apart from the BCEA, which governs the employee's rights and obligations, the COIDA is another important piece of legislation that was created to ensure that the employee or worker as it may be referred to be generally ensured of an income in the case of an industrial accident at the workplace.

Grogan (2005:8) writes that this statute ensures:

"That employee or his/her dependants who have suffered injury, illness or death arising from the performance of work are compensated from a fund specially created for that purpose. The COIDA is wider in scope than the Workmen's Compensation Act, which it replaced in 1993. It excludes only soldiers, policemen, domestic workers and contract workers. Compensation is payable only if the accident which caused the injury, illness or death occurred within the scope of the employee's employment and was not predictable. No payments are made in respect of temporary disabilities of

three days or less or those resulting from wilful misconduct by employees or for non-physical damages like pain and suffering.”

### **3.4.7 The Unemployment Insurance Act, 30 of 1966**

Grogan (2005:8) gives a brief description of the act:

“The aim of this act is to provide for payment of benefits to employees who have lost their employment through pregnancy or other circumstances beyond their control. Only employees who earn below an amount determined by regulation can claim benefits under the act and benefits are payable only if the claimant has previously been in employment and is seeking and willing to accept work or is unable to work as a result of a scheduled illness or is pregnant and has been employed for at least 13 weeks during the year preceding confinement (in which case benefits will be payable during the period of compulsory unemployment laid down by the BCEA, provided the employee is not paid more than two-thirds of her normal salary during this period).”

### **3.4.8 The Occupational Health and Safety Act, 85 of 1993**

The OHSA is a very prescriptive piece of legislation that regulates the safety in the workplace. According to Grogan (2005:8) the act applies:

“To all employers, with the exception of mines; owners of certain shipping vessels, those exempted by the Minister and labour brokers (now styled “temporary employment services”). It establishes a council to advise the Minister on occupational health and safety and imposes a general duty on employers to provide a reasonably safe and healthy working environment, to provide protective equipment and such information, training and supervision as is necessary to ensure health and safety and to report any incident to an inspector in which a person dies or is injured or when dangerous situations arise.

Employees are also obliged to obey health and safety rules and to report unsafe or unhealthy situations or incidents to their employers or health and safety representatives. Employers with more than 20 employees must, after consultation with employees and their representatives, appoint one or more full-time employees as health and safety representatives. The employer is obliged to provide these representatives with facilities, assistance and training during working hours to enable them to fulfil their functions. Employers with more than one safety representative must establish health and safety committees, with which they are obliged to consult on measures to ensure health and safety for all employees. Inspectors are empowered to enter the premises of employers and examine documents in order to ensure that they are complying with the provisions of the act.”

#### **3.4.9 Skills Development Act, 56 of 1997**

Grogan (2005:9) gives a summary of the act as well as the background to the act when he states that:

“The Manpower Training Act, 56 of 1981, was repealed by the Skills Development Act, 97 of 1998. The former National Training Board has been replaced by a National Skills Authority and Sector Education and Training Authorities (SETAs) and Skills Development Planning Units of the Department of Labour. The National Training Board advises the Minister of Labour on a national skills development policy. SETAs are established by the Minister for sectors defined in terms of similarity of materials used, processes and technology, products or services rendered and the organisational structures of trade unions and employers’ organisations. Their membership consists of representatives of organised labour, organised employers, including small businesses, relevant government departments and, with the approval of the Minister, any interested professional body or bargaining council with jurisdiction in the sector. The main tasks of SETAs are to establish “learner ships”, to approve workplace skills plans, to allocate grants and monitor education and training in the sector and to collect and disburse skills development levies. Training is financed by a levy equivalent to one per cent

of each employer's payroll, for which all employers are required to budget. "Learner ships" consist of structured courses, including practical work. Employers are obliged to conclude agreements with learners, in terms of which they must undertake to employ the learner for the time specified in the agreement, to provide the learner with specified practical work experience, and to release the learner to attend education and training courses specified in the agreement. The act prohibits employers from terminating learner ship agreements before the learner has successfully completed the programme, unless termination is approved by a SETA or the learner is fairly dismissed for reasons relating to his or her conduct or capacity. However, if a learner has already entered into a contract of service with the employer, the terms of the contract are not affected by that agreement. Earlier contracts may not be terminated except in accordance with the provisions of the act. Disputes about learner ship agreements must be referred to the CCMA for conciliation and, should this prove necessary, arbitration. The Labour Court deals with disputes concerning the application of funds for skills programmes. The Act contains special provisions relating to temporary employment services."

#### **3.4.10 The Employment Equity Act, 55 of 1998**

The most disputed piece of labour legislation in SA today is the Employment Equity Act and it forms the third major legislative piece in labour law armoury to date. Its objective is to eliminate discrimination in the workplace and to promote affirmative action. The detail of the act will not be dealt with due to the intrigues and mazes that one could be entrapped in. From a political viewpoint as well as the promotion of equality in the workplace it is a very important piece of legislation, however one of the most contested laws in the modern day labour arena.

#### **3.4.11 Sources of labour law**

Grogan (2005:10) gives insight into the working of the status:

"Under the common law, the sole source of the rights and obligations of employees and their employers was the individual contract into which they

had entered. Subject only to the requirements of the law and good morals, the parties were free to agree to any terms and conditions they wished. If a dispute arose while the contract was in force, the rules according to which it was resolved were derived from the agreement and the common law. Once the terms of the agreement were fixed by consensus, neither party could change them unilaterally. To do so constituted a repudiation of contract, which the wronged party was entitled either to accept or sue for damages or reject and sue for specific performance.

This situation changed with the advent of the various labour acts. Firstly, collective agreements promulgated in terms of the Industrial Conciliation Act (subsequently the 1956 LRA) were given the force of law and employers and employees who were not exempted from these agreements were bound by them and were prohibited from entering into individual contracts of service, the terms of which were less favourable to the employee than those of the applicable collective agreement. Wage determinations promulgated under the Wage Act had the same effect.

The passage of the BCEA in 1983 further limited the parties' contractual freedom. That act covered all employers and employees save those specifically excluded or exempted, without requiring them to agree to minimum conditions stipulated in the act. It was a criminal offence for any employer and employee to agree to terms less favourable than those laid down by the act, although both were free to agree to more favourable conditions. Thus, for example, an employer committed an offence if it paid an employee less than "time-and-a-third" for overtime work but nothing prevented employers from paying more.

The 1956 LRA, like its predecessor, gave statutory force to collective agreements reached by industrial councils. These took precedence over the minimum conditions prescribed by the BCEA. In addition, the industrial court enforced non-statutory collective agreements between employers and trade unions under its unfair labour practice jurisdiction.

The current LRA gives statutory force to all collective agreements, which are written agreements entered into between registered trade unions and employers or employers' organisations. In addition, the LRA confers a number of collective and individual employment rights, irrespective of whether the parties have agreed to them.

The current BCEA allows registered trade unions and employers to vary certain minimum conditions and standards by collective agreement and individual employees are permitted to vary a still more limited list of employment rights (eg working hours, meal intervals, scheduling of annual leave and Sunday work). To this limited extent, collective agreements and individual contracts of employment may supersede the statutory minima.

Various labour statutes empower the Minister of Labour to issue "codes of good practice", which employers are enjoined to heed when formulating and implementing labour policies and practices. Although these codes are meant to provide "guidelines", they actually have quasi-statutory force because the courts and the CCMA are required to have regard to them when resolving particular disputes. The first such code was Schedule 8 to the LRA, which sets out guidelines for dismissals for misconduct, poor work performance and incapacity. Codes have subsequently been published on dismissal for operational requirements and harassment in the workplace, employment equity, and regulation of working time, picketing and other matters.

It will be apparent from the above resume of the principal labour acts that it is sometimes no easy matter to find the rules applicable to particular disputes. To complicate matters further, the Minister may issue regulations in terms of the various acts which may supplement or in some cases override the provisions. In addition, employers and trade unions may conclude collective agreements which, again, may override some statutory provisions.

The following are the main sources of labour law: the provisions of the individual contract of service, legislation, sectoral determinations, collective agreements, the guidelines laid down by the labour courts, international labour

standards (ie conventions and recommendations of the International Labour Organisation) the jurisprudence of foreign labour courts and tribunals (to which courts are obliged to have regard in terms of the Constitution), custom and practice, constitutional provisions which confer *inter alia* the right to bargain and to resort to industrial action for the purposes of collective bargaining and lastly the common law. Care must be taken to establish which of these sources are applicable to a particular dispute.”

### **3.4.12           Applicable law**

In the maze of the labour law and related legislation it is vital to determine which rules apply to the parties in particular disputes. Grogan (2005:12) gives the aspiring labour lawyer the following guidelines:

“The starting point is the individual contract of service. If the contract contains terms or conditions that are more favourable to the employee than a sectoral determination under the BCEA, if any, or the provisions of the Act itself, they must be applied. If the employee is a member of a union that is party to a binding collective agreement, that agreement takes precedence over the individual contract in so far as it regulates any term or condition not dealt with in the contract.

Where there is no applicable collective agreement, sectoral determinations promulgated by the Minister under the BCEA takes precedence over individual agreements, to the extent that they contain provisions less favourable to employees. Beyond that, the rights conferred by the BCEA and the LRA come into play. Certain rights conferred by these acts cannot be waived by individual or collective agreement. If the individual contract, collective agreement, a sectoral determination or statute does not regulate the issue, custom and practice in the industry or trade concerned and the common law, interpreted in the light of the Constitution, may apply.”

### 3.4.13 The effect of the Constitution

The Constitution of South Africa has a noticeable effect on how labour relations are conducted in SA as it gives the employee certain rights. Grogan (2005:13) peeks into those rights when he states:

“The advent of the Constitution, which entrenches fundamental rights, has had a profound effect on all branches of the law, because it provides a mechanism for citizens to challenge legislation and actions by the State which infringe those rights. Chapter 2 of the Constitution contains several provisions of relevance to employment and labour law. These include protection against servitude, forced labour and discrimination, the right to pursue a livelihood and protection for children against exploitative labour practices and work that is hazardous to their work and wellbeing.

Section 23 of the Constitution specifically deals with labour relations.

It provides:

- (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right –
  - a) to form and join a trade union;
  - b) to participate in the activities and programmes of a trade union;  
and
  - c) to strike.
- (3) Every employer has the right –
  - a) to form and join an employers' organisation and
  - b) to participate in the activities and programmes of an employers' organisation.

- (4) Every trade union and every employers' organisation has the right –
- a) to determine its own administration, programmes and activities;
  - b) to organise and
  - c) to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

Several other entrenched rights, such as freedom of association and expression and rights to property, may impact indirectly on the employment arena.

The LRA was promulgated as the “national legislation” referred to in subsections (5) and (6) of section 23. The current BCEA is also designed to give effect to the right to fair labour practices referred to in subsection (1) and both acts are bolstered by the EEA, which deals specifically with discrimination in the workplace and employment equity.

The general guarantee of fair labour practices has far-reaching effects on the civil courts' approach to the interpretation of the rights of parties to employment contracts. All courts are enjoined when applying and developing the common law to have “due regard to the spirit, purport and objects of the Bill of Rights”. Since these are expressed as embodying “the values which underlie an open and democratic society based on human dignity, equality

and freedom”, the development of the common law in the light of the spirit of Chapter 2, calls for reconsideration of some of the assumptions underlying the common-law contract of employment, in particular the employer’s power of command and unfettered rights in respect of promotion and dismissal. Furthermore, the labour courts’ judgements on such contentious issues as the dismissal of striking workers are subject to review by the Constitutional Court. Appeal from the Labour Appeal Court to the Constitutional Court is permitted, provided that the former court authorises such a process. The Constitutional Court will not lightly entertain applications that flow from labour disputes before the applicants have exhausted the procedures available to them under the labour acts, even if they seek to rely on independent constitutional rights.

However, in two landmark judgements the Constitutional Court has made it clear that it will entertain appeals from the labour courts where interpretation of labour legislation is at issue which affects the constitutional right to fair labour practices.

The entrenchment of labour rights in general terms raises the prospect of a constitutional jurisprudence being developed by the civil courts and the Constitutional Court that may have a far-reaching effect on the way the contract of employment and the employment relationship are approached in future. This could lead to a cross-fertilisation of the principles of labour law, the common law and public law.”

### **3.5 CONCLUSION**

Labour law in SA is comprehensive and full of intrigue when compared to that of the UAE. The labour law in the UAE is governed by Federal Law, no 8 of 1980, Regulation of Labour Relations, as amended by Federal Laws no 24 of 1981, no 15 of 1985 and no 12 of 1986, which is not very complex in nature by itself when viewed as a standalone law. However when viewed in conjunction with the Shari’ah and other laws pertaining to the region it aims to serve the labour force of the UAE.

On the other hand SA labour law is written with a specific view of protection of both the rights of the employee and that of the employer. SA labour law has an immense historical background, that when viewed in totality, gives rise to the feeling of over regulation on the part of the Government compared to its predecessors.

When combining the preceding SA labour and UAE laws with that of the ILO it is clear that both countries have a long way to go before an even playground could be established for labourers across continents. The UAE labour law lack legislative protection for the labourer in general, that protection is however afforded by the Qur'an and Shari'ah independently and collectively. The SA labour market is over protected by legislation in general but is evened by the common man principle that is practiced by labour law enforcers and practitioners.

## **CHAPTER 4 – REPROTING OF MAJOR FINDINGS**

### **4.1 INTRODUCTION**

This study was intended to be a comparative study between the UAE and SA labour laws. After careful consideration it was decided that the theoretical study would not be enough as it would lack substance and body.

The Arabic countries are however known for its scepticism against questionnaires. This reluctance to complete questionnaires can be traced to the culture of the people. It is even found in the expatriates' working in the GCC reluctance to complete questionnaires.

### **4.2 RESEARCH DESIGN**

Creswell (2007:53-75) describes five qualitative types of approaches to inquiry as a form of research. These five types are:

- Narrative research
- Phenomenological research
- Grounded theory research
- Ethnographic research
- Case study research

The nature of the study clearly indicates that the case study research approach was followed. The reasons being:

- The case for the study was clearly identified, expatriates working in the UAE as middle and senior management.
- The case was bounded by who-expatriates and place-UAE
- Extensive, multiple sources of information in data collection to provide an in-depth understanding of the labour law and practices used in the UAE.

- Considerable space and time was used to explain the background of culture, labour laws and labour practices in the UAE and South Africa.

#### **4.2.1 Research instruments**

The following research instruments were used.

- Unstructured interviews
- Questionnaires
- Newspaper commentary
- Human rights watch commentary

#### **4.2.2 Sample distribution**

The expatriate population of middle to senior management in the UAE is vast. The middle to senior management can be summarised into the following main sectors:

- Hotel and service industry
- Military support sector
- Commerce and industry (mainly oil related)
- Construction and building sector

No individual sector was selected for this study. Managers in all sectors were targeted. Fifteen questionnaires were distributed to SA managers per sector selected.

#### **4.2.3 Target population description**

The original aim was to involve several executives from the above mentioned sectors. The construction, engineering, hotel and service and military sectors were targeted in particular. Several attempts were made to involve only South African middle to executive management in the completion of questionnaires as well as the conduction of informal but structured interviews within the hotel and service industry.

These efforts were channelled through a South African human resource manager in this business sector known to the researcher. Sixty questionnaires in total were distributed to expatriates in these sectors. Requests by the researcher for completion of the questionnaires were negated by expatriates. Reasons given were time, but fear of being repatriated by the employers was the underlying factor. This fear was related to the suspicious nature of the employers. The attempts of obtaining completed questionnaires were proven futile to the resident human resource manager as well as to the researcher even upon several visits to the UAE.

The attempts were stopped and a more direct approach was followed but in a different business sector. The military support sector was approached and interviews were conducted as well as questionnaires distributed. Two companies in particular were targeted. These companies cannot be named due to the confidentiality of their work and nature of their operations within the UAE. South Africans were targeted again. The single response from the hotel and service industry is also discussed as it is related to the practices of labour treatment and practices in general in the UAE.

The sample for the research was originally aimed at including at least ten executives or senior managers of major role player corporations per sector. The only sector to respond was the military sector and a single response from the hotel and service industry.

#### **4.2.4 Statistical analysis of data**

This section will only deal with the analysis of the questionnaires received from willing partakers in the research into the understanding of the general knowledge and grasp of the labour laws in the UAE.

The questionnaires were send out to sixty pre-selected expat recipients. The recipients were all in the senior and executive management in various business sectors and companies as described above. The response was zero returns for 5 months. This situation changed when the author revisited Abu Dhabi in the UAE

during August 2009. After appointments were made with the recipients only six agreed to complete the questionnaire. This was not surprising due to the economic crises and fear of persecution/branding by locals in a land known for scepticism against questionnaire research.

The results shown below is thus not conclusive but only indicative of the understanding of the labour issues facing all expatriates as answered in the questionnaire attached as Appendix 1.

Table 1: Response of participants

Question	Male participant 1					Male participant 2					Male participant 3					Male participant 4					Female participant 1					Male participant 5					Frequencies				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
1		1					1						1						1			1							0	2	1	2	1		
2					1			1				1						1				1					1		1	2	1	1	1		
3					1				1					1													1		0	0	0	0	6		
4		1					1					1				1					1							1	4	1	0	0	1		
5		1					1					1				1					1						1		1	3	2	0	0		
6					1				1				1				1					1						1	0	2	2	1	1		
7					1				1					1			1					1						1	0	1	0	1	4		
8					1				1				1				1					1					1	1	0	1	1	3			
9					1		1						1				1					1					1	1	2	0	0	3			
10					1				1						1							1					1	0	0	0	1	5			
11					1				1			1					1					1				1	1	0	0	2	3				
12					1				1			1					1					1				1	1	0	0	1	4				
13				1					1					1								1				1	1	0	0	0	3	3			
14					1				1				1				1					1				1	1	0	0	0	0	6			
15					1				1			1					1					1				1	1	0	0	0	0	5			
16					1				1				1				1					1				1	1	0	0	1	1	4			
17					1				1			1					1					1				1	1	0	0	0	0	5			
18		1							1						1							1				1	0	2	0	2	2				
19					1				1					1								1				1	0	0	0	2	4				
20					1				1				1				1					1				1	0	0	0	2	4				
21					1				1					1								1				1	0	1	3	1	1				
22					1				1					1								1				1	1	0	3	1	1				
23		1					1							1								1				1	2	1	1	2	0				
24					1				1					1								1				1	2	0	2	1	1				
25		1					1						1									1				1	2	3	0	0					

All participants were of the age 40 to 55. One female participated, the rest were male. This is not surprising in a country where woman in senior positions are not common.

The results as tabled in Table 1 above were divided into 3 categories:

- Employer perspective - Questions 1 to 9
- Employee perspective - Questions 10 to 17
- Government and international perspective - Questions 18 to 25

When viewing the results for category 1, it is observed that the answers were as diverse as the population in the country. The only clear deduction that can be made from category 1 of table 1 is that most of the personnel embrace the basic principles of good labour practices as adequacy in remuneration for normal work and overtime worked.

The employer seems to expect more from employees, purely because they are paid for work conducted. This is also a typical Arabic response found among businessmen in the region.

When viewing the results from category 2 on the other hand a different picture emerges. As employees the participants clearly showed that they know their respective rights and enforces them when entering into formal employment contracts for themselves. This is also indicative of an good understanding of labour principles, among senior and executive management, as preached by the ILO.

Results from category 3 were not surprisingly strange. Understanding of other diverse religious laws and international labour laws, not impacting on oneself, are simply ignored and not taken into account.

The fact that the government does control most of the working hours and conditions are reflected in the frequencies of the answers given for first three questions.

In conclusion to the analysis of the data it must be noted that overwhelming figures are not reported due to lack of information due to non-participation in this preliminary research into the understanding, practicing and knowledge of the labour laws in the UAE.

Therefore it is important to widen the research into a more qualitative research than to rely solely on the quantitative format alone.

### **4.3 THE MAJOR FINDINGS OF THE RESEARCH**

The major drive in finding comparative issues pertaining to the two labour law applications was initially halted by the low response in the completion of the questionnaires. This was overcome by the observance of commentary by individuals in newspapers and organisational reports such as that of the Human Rights Watch.

However it must be noted that the main focus of the questionnaires was to get a perspective of the manager or executive of the labour legislation in the UAE and not that of the SA legislation as it is known to the author.

#### **4.3.1 Human Rights Watch's Comments and Recommendations on UAE Labour law**

Extracts from the Human Rights Watch's (2007:1-8), comments and recommendations on UAE Labour Law were taken into account. The following comments are made:

"According to figures from 2005, 95% of the UAE's labour pool, some 2.7 million workers is migrants, many of whom work in the construction and domestic service industries.

Areas in urgent need of further reform include the exclusion of provisions on workers' rights to organise and bargain collectively; the prohibition of strikes; the exclusion of certain categories of workers, such as domestic and farming and grazing workers, from the protections of the labour law; ambiguity regarding the minimum age of employment; the prohibition of women from certain categories of work; the absence of provisions banning the confiscation of passports and other identity documents; the absence of requiring employment contracts to be made available in workers' native languages and inadequate and unenforced penalties for violations of the law.

The above mentioned author also notes that the real test of a country's respect for workers' rights and compliance with international human rights law

does not rest solely in the language contained in the country's laws. It rather rests equally in the government's serious enforcement of its laws regulating the conduct of employers, its creation of institutions that fairly resolve disputes between workers and employers and its aggressive investigation and prosecution of employers who violate its laws. We hope that the UAE will match its commitment to reforming its labour laws with a commitment to enforcing them."

#### **a. Rights to Freedom of Association and Collective Bargaining.**

According to the last mentioned author the UAE labour law be amended to comply with international standards and explicitly protect workers' right to organise. The law should provide for the formation of independent unions free from employer and government interference. The unions should be empowered to represent workers effectively and efficiently and allowed to draw up their rules, elect their representatives and operate in full freedom. All workers, regardless of their citizenship, should have the right to join trade unions and be allowed to participate fully and have active representation and voting rights."

#### **Recommendation**

That the UAE labour law be amended to uphold international norms on the right to bargain collectively by explicitly requiring that upon request of a workers' organisation, an employer and the representative labour organisation bargain in good faith over terms and conditions of employment, including wages and hours, to reach a collective agreement. The law should extend the right to bargain collectively to labour federations and confederations and should not restrict the scope of negotiable issues.

In violation of international standards, however, UAE labour law presently contains no provisions on workers' rights to organise or bargain collectively. In March 2006, the Ministry of Labour announced that it would institute a new law permitting trade union activities by the end of the year. However, no such

law was issued. The new proposed law continues the failure of the UAE's existing law to recognise workers' rights to organise and bargain collectively by remaining silent on these basic workers' rights.

Without the rights to organise and bargain collectively, workers are largely unable to join forces to raise workplace concerns with their employers and government bodies and are significantly impeded from collectively seeking structural reforms. Because the law does not permit workers to organise or form unions, it deprives them of institutions that can represent their interests. The right to form unions stems from the widespread recognition that they are the most important vehicle for workers to communicate grievances with relevant government bodies, to negotiate with employers and to seek structural reforms.

### **b. Right to Strike**

Workers' right to strike is guaranteed under international law. The ICESCR recognises "the right to strike" and in its second meeting in 1952, the ILO Committee on Freedom of Association recognised the right to strike as an "essential element of trade union rights". In 1994, the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO Committee of Experts) similarly stated that the "right to strike is an intrinsic corollary of the right to organise protected by Convention No 87".

Article 162 of the proposed UAE labour law effectively bans strikes.

### **c. Repeal of Worker Exclusions Recommendation**

That the proposed UAE labour law be amended to repeal Article 4's exclusions of security workers; domestic workers employed in private households; farming and grazing workers and public workers. Limited exclusions may be permitted for certain officials engaged in the administration of the state.

#### **d. Child Labour Recommendation**

That the proposed UAE labour law be amended to ensure that there is no confusion in respect of the minimum age of employment and that all articles regulating child labour, clearly relate only to children from 15 to 18 years of age.

#### **e. Sex Discrimination**

That Articles 25-35 of the proposed UAE labour law be amended to repeal all limitations on the employment of women and guarantee women access to the same employment and vocational training opportunities as men.

#### **Recommendation**

Article 35 of the proposed UAE labour law be amended to eliminate the requirement that a woman's husband or guardian be held punitively responsible for observance of provisions outlined in the chapter on women and children workers. Recognise adult women's full legal capacity and treat them equally with adult men.

International law clearly prohibits employment discrimination.”

#### **4.3.2 Unstructured informal interviews**

Unstructured interviews were held with two individuals in the senior to executive management. One is an HR manager in the hotel and services industry and the other is a technical manager in the military industry, this however is not conclusive.

The interview with Rossouw (2009) however clearly showed a good understanding of the labour laws and related issues. She commented that in their group of companies the following information has relevance:

“Workers have the right to work and live in accommodation supplied by the company. This includes clean rooms, no drinking in accommodation or on street, transport to and from the accommodation if not on site and no female companions allowed in living quarters. This is due to the accommodation being mainly men or ladies separate accommodation. The workers have also the right to medical care under the Federal Law; the company is responsible for all expenses in this regard. The employees are also given adequate leave on a yearly basis, with a return airplane ticket home once every two years depending on the level the employee is working on. If the employee terminates the agreement of employment before the normal contract period of two years, the employee must repay all the recruitment fees.”

“The company has weekly or monthly recognition award ceremonies where outstanding employees are rewarded. The company distributes a newsletter monthly to all employees. They also employ an internal training program with the aim of enhancing service to the client. The company has a wellness program where all employees are contractually bound to participate in.”

With respect to the labour law the following issues were discussed:

All employees have a service agreement signed by both parties. The employee has the right to sever the agreement provided adequate notice is given. In the event of desertion the employee may be banned from working in the UAE at the labour council. This ban can also be affected, at the employer’s discretion, when the employee requests a Visa transfer to another employer. Employees have the right to sick leave with the boundaries as set out in the contract of employment.

No worker has the right to strike in the UAE. Rossouw was aware of only one instance where fifty workers in the construction industry in Dubai decided to strike due to wages being lower than contractually agreed with the recruiting agency. The workers employment was immediately terminated and they were repatriated.

Where the interview with the HR manager was mainly in relation to employee-employer relationship the interview with the technical manager were centred around the right to strike.

Breytenbach (2009) was aware of only two instances where a strike was called. In the one instance the strike related by Rossouw was similar.

In this event the workers were employed by an SA company to do construction work in the UAE. The contracts were signed in SA with mainly SA workers. After fourteen days in the UAE the employees decided to engage in a wage strike. The reason being the employees have decided that they have changed their mind with respect to the remuneration agreed upon due to the difficulty in working conditions and they demanded more pay. The employer started to negotiate but somebody called the police to intervene. The police gave the employees three minutes to stop their action and return to their work stations. The ones that refused were immediately taken to the airport and deported from the UAE at the company's expense due to the sponsorship agreement. The company were told to get their act together or face expulsion themselves. Upon further investigation it was found the fourteen employees of those that were deported were involved in theft cases that were unresolved.

In a second instance, a group of Pakistani workers had an strike in Al Ain. The labour camp was made unruly and no order could be re-established by the relevant authorities. The defence force was summoned. The camp was surrounded with no entry or exit rights to anyone. This included the cut-off of all supplies, including food. After several days the unruly strikers were calm and renegotiation could commence. New agreements were concluded with the workers as it seems that the actions taken were somewhat justified.

### 4.3.3 Newspaper commentary

Rahimi (2007:1) reports that the UAE Ministry of Labour responded to the Human Rights Watch report concerning the proposed new labour law in the following manner:

“The Ministry of Labour and the UAE Government welcome constructive inputs and discussions from international bodies and organisations, with regard to the area of guest worker welfare in the country and have invited public feedback on the draft of the new labour law.”

An official UAE source stated that the Human Rights Watch report does not accurately reflect the reality of conditions on the ground and ignores the progress that has been made in addressing the issues.

Arnold (2009:1) states that:

The UAE’s labour law is in need of an overhaul and is confusing employers, according to associates with law firm Clyde & Co. New legislation in the emirates would need to recognise redundancy as a valid reason for dismissal as well as outline procedures for termination of staff contracts and disciplinary procedures, said Sara Khoja, associate with the firm in Dubai. The current law, which dated from 1980, had only been updated by decrees by the government but was expected to be overhauled, she said.

Issa (2009:1) states in a report in the Gulf news that:

“Dubai: The first draft of the amended federal labour law will be ready by the end of August, the Ministry of Labour said yesterday.”

“A new law needs to be developed to meet the pace of progress in the country, as the existing law has been in place for 20 years,” Dr Ali Bin Abdullah Al Ka’abi told a press conference, stressing that rules and regulations included in the proposed document would be flexible.

The minister said that the UAE valued the expatriate labour force that has helped in building the country but he also warned that workers who protest without one of three valid reasons, may face deportation.

According to Dr Al Ka'abi, workers can legally protest over unpaid wages, poor living conditions and the lack of safety procedures."

#### **4.4 CONCLUSION**

The evidence from the empirical research from the questionnaires, interviews and newspaper articles clearly indicate that the expatriates in the UAE does have a working knowledge of the labour law that is prevailing in the UAE. The fact that the laws are intertwined with that of religious laws of the Shari'ah and Qur'an is of little consequence to them, as they are selling their labour. The lack of understanding of these laws has clearly path the way for another research to be conducted into these aspects.

From published comments made by the Ministry of Labour in the UAE, new horizons are being faced as frontiers previously not ventured into, are being explored with the expected new legislation being anxiously awaited by the vast labour force as stated by Issa (2009:1).

In so far as the SA labour legislation is concerned it is far more controlled, regulated and directed from a formal basis as to that of the UAE.

#### **5 SUMMARY**

Anyone concerned with the workings of labour legislation will come to realize that the comparison of labour laws is not merely done on published legislation. The interested party should first study the historical background and culture of both countries being compared before commencing with a theoretical exercise of comparing laws.

## 6. RECOMMENDATIONS

Making recommendations with respect to the labour laws in another country, when such a vast different culture is being observed from one's own, is not easy. In the global era that we are living in today it is however necessary to make certain recommendations.

If a SA citizen is interested in taking up the opportunity as an employee of any level in the UAE the person must ensure that he/she is in possession of the following documentation:

- Work permit
- Employment visa
- Medical service grant
- Labour card

The importance of obtaining a valid work agreement that must be reached before leaving the RSA to take up work in the UAE is emphasised.

When a company decides to engage in commerce in the UAE it is vitally important that the culture be studied first as well as all statutes that regulate business within such a country. A further note of importance to note is that the exploitation of workers in general is not tolerated anymore. Exploitation in the western sense does occur, however in the GCC countries it will in future not be tolerated as the global pressure is mounting for reform.

## 7 BIBLIOGRAPHY

### LITERATURE

AL TAMIMI & COMPANY. 2009. Labour law in the UAE. <http://www.Zu.ac.ae/library/html/UAEInfo/documents/UAELabourLaw.pdf> Date of access: 7 Jun. 2009.

ANDERSON, F. & VAN WYK, J. 1997. Labour law in action: a hands-on guide to the LRA. Cape Town: Maskew Miller. 218 p.

ANON. 2006. 202 nationalities in labour market. *Khaleej Times online*, 25 Aug. [http://khaleejtimes.ae/DisplayArticleNew.asp?xfile=data/theuae/2006/August/theuae\\_August735.xml&section=theuae&col=](http://khaleejtimes.ae/DisplayArticleNew.asp?xfile=data/theuae/2006/August/theuae_August735.xml&section=theuae&col=) Date of access: 7 Jun. 2009.

ARNOLD, T. 2009. UAE labour law confusing, needs overhaul – lawyers. *Arabian Business.com*, 16 Jun. <http://www.arabianbusiness.com/558945?tmpl=print&page> Date of access: 22 Jul. 2009.

BELL, C.R. 1974. Men at work. London: Allen & Unwin. 119 p.

BENNETT, R. 1997. Employee relations 2<sup>nd</sup> ed. London: Pitman. 297 p.

BLANPAIN, R & COLUCCI, M. 2004. The globalization of labour standards: the soft law track. The Hague: Kluwer Law International. 165p. (Bulletin of comparative labour relations, 52)

BLANPAIN, R., BISOM-RAPP, S., CORBETT, W.R., JOSEPHS, H.K. & ZIMMER, M.J. 2007. The global workplace: international and comparative employment law - cases and materials. Cambridge: Cambridge University Press. 619 p.

BREYTENBACH, F.J. 2009. Informal interview with author. Abu Dhabi (Notes in possession of author)

BRITANNICA CONCISE ENCYCLOPEDIA. 2009.

<http://www.answers.com/topic/shari-ah> Date of access: 18 Aug. 2009.

CASALE, G. 2005. Globalization, labour law and industrial relations: some reflections. (*In* Blanpain, R., *ed.* Confronting globalisation: the quest for a social agenda: Geneva lectures. The Hague: Kluwer Law International. p. 37-54.)

CASS, E.L. & ZIMMERMAN, F.G., *eds.* 1975. Man and work in society. New York: Van Nostrand Reinhold. 313 p.

CRESWELL, J.W. 2007. Qualitative inquiry & research design: choosing among five approaches. Thousand Oaks, CA: Sage. 393 p.

DU PLESSIS, J.V., FOUCHÉ, M.A, JORDAAN, B. & VAN WYK, M.W. 1996. A practical guide to labour law. Durban: Butterworths, 359 p.

GABRU, N. 2004. The effect that section 21 of the Insolvency Act has on persons married in terms of the Islamic Law. Potchefstroom: North-West University. (Dissertation – LL.M.) 67 p.

GROGAN, J. 2005. Workplace law. Lansdowne: Juta. 475 p.

HAMILTON, C. 1982. The Hedaya, or Guide: a commentary on the Musulman laws. Lahore: Premier Book House. 513 p.

HARROD, J. 2008. The International Labour Organisation and the World Labour Force: from “Peoples of the World” to “Informal Sector”. <http://www.jeffreyharrod.eu> Date of access: 7 Jun. 2009..

HASHEM, H.R. 1964. Arab contract of employment: conflict and concord. The Hague: Marthinus Nijhoff (Thesis – Doctoral in Law (Free University, Amsterdam)) 297 p.

- HILAL & ASSOCIATES. 2007. Domestic workers to be covered by labor law soon. *Law Firm Newsletter*, Issue 46:9-10, May.
- HUMAN RIGHTS WATCH. 2007. The UAE's draft labor law: Human Rights Watch's comments and recommendations. 14 p. <http://www.hrw.org/en/reports/2007/03/25/uaes-draft-labour-law-human-rights-watch-s-comments-and-recommendations> Date of access: 22 Jul. 2009.
- ISSA, W. 2009. Revised labour law ready in August. *Gulfnews.com*, 5 Apr. <http://archive.gulfnews.com/articles/06/07/09/10052327.html> Date of access: 7 Jul. 2009.
- LEWICKI, R.J. & LITTERER, J.A. 1985. Negotiation. Homewood, ILL: Irwin. 268 p.
- LEVY, A. 1984. Unfair dismissal: a guide for South African management. Johannesburg: Divaris Stein. 139 p.
- NEL, P.S., EHLERS, L.I., ERASMUS, B.J., SCHOLTZ, G.J., SWANEPOEL, B.J., TSABADI, M.J. & VAN ROOYEN, P.H. 1998. South African industrial relations: theory & practice. Goodwood: Van Schaik. 292 p.
- RAHIMI, S. 2007. UAE defends new labour law. *Arabian Business.com*, 26 Mar. <http://www.arabianbusiness.com/10045?tmpl=print&page> Date of access: 7 Jul. 2009.
- ROSSOUW, E. 2009. Informal interview with author. Abu Dhabi. (Notes in possession of author.)
- THAXTON, R. 1982. Mao zedong, Red miserables and the Moral economy of peasant rebellion in modern China: power and protest in the countryside: studies of rural unrest in Asia, Europe and Latin America. Durham, NC: Duke University Press. 156 p.
- TIMM, S. 2009. SA lags behind in flexible labour laws. *Business day*: 8, 22 Sept.

QURAN. 1977. The Holy Qur'an: text, translation and commentary by Abkullah Yusuf Ali. State of Qatar: Publications of Presidency of Islamic Courts & Affairs. 1862 p.

ZAYED UNIVERSITY. 2006 UAE Law and legislation. <http://www.zu.ac.ae/library/html/UAEInfo/UAELaw.htm> Date of access: 22 Jul. 2009.

ZUBAIR, A. 1992. Concept and protection of labour under Islamic law. *Al-Ilm: journal of the Centre for Research in Islamic Studies*, 26(12):17-27. Jan.

## LEGISLATION

SOUTH AFRICA. 1966. Unemployment Insurance Act 30 of 1966. Pretoria: Government Printer.

SOUTH AFRICA. 1993. Compensation for Occupational Injuries and Diseases Act 130 of 1993. Pretoria: Government Printer.

SOUTH AFRICA. 1993. Occupational Health and Safety Act 85 of 1993. Pretoria: Government Printer.

SOUTH AFRICA. 1995. Labour Relations Act 66 of 1995. Pretoria: Government Printer.

SOUTH AFRICA. 1996. Constitution of the Republic of South Africa 108 of 1996. Pretoria: Government Printer.

SOUTH AFRICA. 1997. Basic Conditions of Employment Act 75 of 1997. Pretoria: Government Printer.

SOUTH AFRICA. 1997. Skills Development Act 56 of 1997. Pretoria: Government Printer.

SOUTH AFRICA. 1998. Employment Equity Act 55 of 1998. Pretoria: Government Printer.

Appendix 1 – Questionnaire

Appendix 2 – UAE Labour Law

Appendix 3 – Certificate of language evaluation

Appendix 4 – Certificate of bibliography evaluation

**APPENDIX 1**  
**LABOUR COMPARISON QUESTIONNAIRE**

## LABOUR COMPARISON QUESTIONNAIRE

Name: \_\_\_\_\_ Work Sector: \_\_\_\_\_

Position: \_\_\_\_\_ Department: \_\_\_\_\_

Gender: Male / Female

Age Group:

26-30	31-35	36-40
41-45	46-50	51-55
55-60	61-65	Older

You are required to choose only one of the possibilities per statement or write a short sentence when required.

For each statement, indicate the extent to which you feel that the statement is descriptive of your viewpoint on the following scale:

- |  |  |
|--|--|
| 1 You strongly disagree with the statement | 2 You slightly disagree with the statement |
| 3 You have no viewpoint                    | 4 You slightly agree with the statement    |
| 5 You strongly agree with the statement    |  |

NO	STATEMENT	1	2	3	4	5
<b>EMPLOYER PERSPECTIVES</b>						
1	Remuneration is appropriate to the work conducted by employees					
2	Senior/Middle management should have the same working hours as employees.					
3	Employees should be adequately remunerated for overtime.					
4	Workers are entitled to a right to strike.					
5	Employers are entitled to "Lock-out" employees in all circumstances.					
6	Employers are entitled to "Lock-out" employees only in certain predefined circumstances.					
7	A code of practice is enforced.					
8	Disciplinary hearings are held for misconduct.					
9	The principles of the International Labour Law are being observed in employment contracts.					
<b>EMPLOYEE PERSPECTIVES</b>						
10	Workers are entitled to sick leave and remunerated for that period.					
11	Workers are entitled to family responsible leave.					
12	Workers are entitled to double pay for working on a public or Sunday.					
13	Remuneration is appropriate to the work conducted by employees.					
14	Workers are entitled to a certificate of service at termination of contract.					
15	Workers are entitled to payout of overtime and annual leave at termination of service.					
16	Workers are entitled to legal aid in a disciplinary hearing.					
17	Employees have been issued with a written contract of employment.					
<b>GOVERNMENT AND INTERNATIONAL PERSPECTIVES</b>						
18	Labour Laws in the UAE are strict and very prescriptive.					
19	Working hours for employees should be controlled and regulated by government.					
20	Working hours should be regulated by government.					
21	Musulman (labour) laws affect your workforce contracting model.					
22	Sharia'h laws affect worker compensation.					
23	Employers show understanding for Sharia'h laws when hiring personnel.					
24	Employers take care to incorporate Musulman laws into personnel relations.					
25	International labour laws are always adhered to and observed.					

**APPENDIX 2**  
**UAE LABOUR LAW**

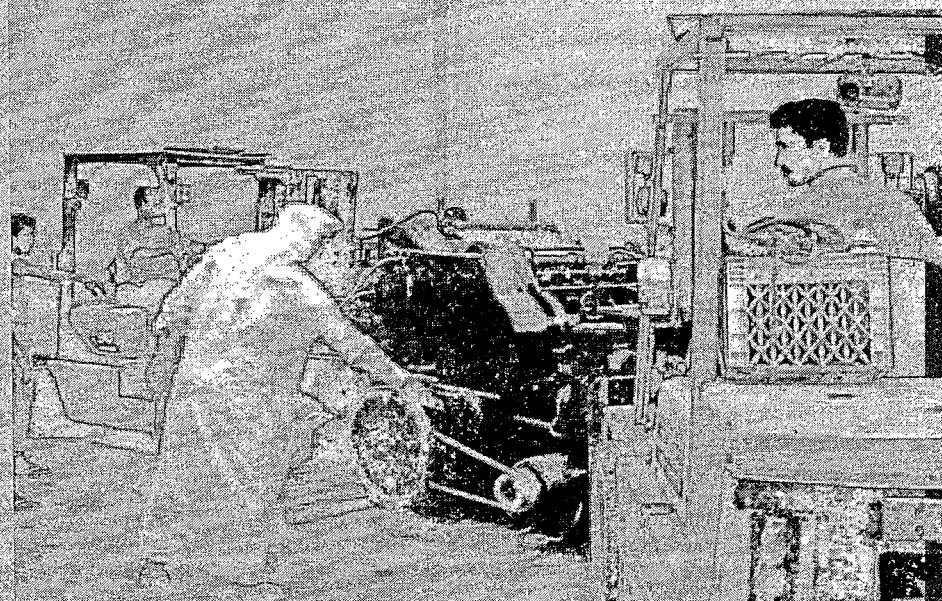
AL TAMIMI  
& COMPANY

*Advocates & Legal Consultants*

التميمي  
و شركاه

للمحاماة والاستشارات القانونية

## Labour Law in the UAE



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# 1. INTRODUCTION

Labour matters in the UAE are governed by Federal Law No. 8 of 1980 Regulating Labour Relations as amended by Federal Laws No. 24 of 1981, No.15 of 1985 and No.12 of 1986 (the "Law"). There are special labour related regulations applicable in some of the free zones in the UAE, such as the Jebel Ali Free Zone.

## **To whom does the Law apply?**

According to Article 3 of the Law, the Law applies to all staff and employees working in the UAE, whether UAE nationals or expatriates. However, there are certain categories of individuals who are exempted from the Law as listed below:

1. Staff and workers employed by the federal government, government departments of the member emirates, the municipalities, public bodies, federal and local public institutions and those staff and workers employed in federal and local governmental projects.
2. Members of the armed forces, police and security units.
3. Domestic servants.
4. Agricultural workers and persons engaged in grazing (this exemption does not include persons who are employed in corporations which process agricultural products and/or those who are permanently engaged in the operation or repair of machines required for agriculture).

## **Are partners in a business considered as employees?**

A partner in a business is not considered an employee and is therefore not required to obtain a labour card from the UAE Ministry of Labour and Social Affairs (the "Ministry"), as outlined below. For immigration purposes therefore, a foreign partner will be sponsored by the entity he is a partner in, as an investor rather than as an employee and will deal with the immigration authorities directly rather than through the Labour Office, provided that his name is on the business entity's licence and subject to a minimum investment requirement in the entity. However, if the partner holds an employee position additional to his partner status, he will be considered as an employee for the work he is doing in the company.

On the other hand, employees working on a commission basis are considered as employees even if they are partners in the entity they are working for.

## **Are employees in the free zones subject to the Law?**

Although the Law stipulates that all employees other than the ones listed above are subject to it, in practice employees in the free zones, such as the Jebel Ali Free Zone and the Dubai Airport Free Zone, are subject to the rules and regulations of the free zone concerned and maintain their own employment contracts. However, as mentioned above, the Law will still apply and the provisions in the employment contract must be in accordance with the Law. Moreover, it should be noted that free zone employees are sponsored by the relevant free zones and not by their employers.

Such employees are seconded by the free zones to companies established in the free zones in return for, amongst other things, a bank guarantee which is required to secure the employees' dues and any end of service benefits which may be payable on termination of their employment contracts. However, although the free zones are technically the employees sponsor, the employees do maintain their right of action against their employers before the courts.

In addition, as will be discussed in section 19 below, when a new business is established it has to be registered with the Ministry prior to the employment of staff.. The free zones authority sponsoring the employees, refer directly to the immigration authorities and not to the Ministry. This is not to say that disputes between employees and their employers in the free zones will not first be heard at the Ministry. The Ministry may entertain such claims and there is nothing as yet under UAE law precluding that unless the Free Zone Authority has a special ordinance governing the relationship between employee and employer.

#### **What aspects of the employer/ employee relationship does the Law deal with?**

The Law covers all aspects of the employer-employee relationship (Chapter 12), including matters related to employment contracts, restrictions on the employment of juveniles and women, maintenance of records and files, wages, working hours, leave, safety and protection of employees, medical and social care, codes of discipline, termination of employment contracts, end of service benefits, compensation for occupational diseases, labour inspections, penalties and employment related accidents, injuries and death.

The UAE does not allow the formation of trade unions.

## **2. ENFORCEABILITY OF THE LAW**

By whom is the Law enforced?

The Law is federal and is therefore applicable to all the emirates of the federation. It is enforced by the Ministry. Labour related litigation is adjudicated by the federal and local courts of the UAE, however, all disputes relating to labour matters must first be referred to the Ministry. If either of the parties involved (employer or employee) is unhappy with the Ministry's decision and the matter cannot be settled amicably, the dispute may then be referred by the Ministry to court, within two weeks from the date in which the complaint was filed, after which either party may revert to the court directly.

## **3. THE CONDITIONS FOR EMPLOYMENT**

What are the primary pre-requisites for employment?

In order to employ any expatriate employee in the UAE, an application must be made to the Ministry. The application has to be approved by the Ministry prior to the employee entering the UAE. It should be noted that new businesses are required to register or open a file with the Ministry before they can employ staff (as will be discussed in section 19). In addition to obtaining the Ministry's approval to employ non-UAE nationals, certain immigration procedures need to be followed as explained below.

There is also a requirement for certain employers to submit to the Ministry a bank guarantee as security for end of services benefits and repatriation costs related to their employees. This procedure is also applicable to employers in most of the free zones in the UAE.

Where the intended employee is a UAE national, an employment contract may be entered into at any time. Employment contracts for non-nationals must be drawn in the format approved by the Ministry on an application made by the employer. Employment contracts for national employees need not, however, be in writing and the terms and conditions of employment may be proved by any means of proof admissible by law. A labour permit for an expatriate employee will not be issued by the Ministry unless a formal written labour contract is filed with the Ministry.

## 4. EMPLOYMENT CONTRACTS

### What are the permitted terms in employment contracts?

Two types of employment contracts are allowed in the UAE - limited employment contracts or fixed term contracts, which are contracts for a specified duration with specific commencement and completion dates, and unlimited contracts where the employee continues to work for the employer from a specific date until such time as the employment contract is terminated by either party after giving prior notice.

### What is the difference between a fixed term and an unlimited term employment contract?

A fixed term contract has the following characteristics:

1. It has a commencement and completion date.
2. Its term cannot be in excess of a period of 4 years. It can, however, be renewed through mutual consent, express or implied for a similar or lesser period.
3. The employment will terminate at the end of the contract period, unless renewed by mutual consent.
4. If the employer terminates the contract for reasons other than those specified in Article 120 of the Law (see p.25 below), he will be liable to pay compensation to the employee. This compensation is determined on the basis of the wages due for a period of three months or for the remaining period of the contract, whichever is less, unless an article in the contract states otherwise.
5. If the contract is terminated by the employee for reasons other than those stipulated under Article 121 of the Law, the employee will be liable to compensate the employer against any loss resulting from the termination. The amount of compensation payable is calculated on the basis of the employee's salary for one month and a half or the salary payable for the remaining period of the contract, whichever is less, unless the contract states otherwise.

The characteristics of an unlimited term contract on the other hand are as follows:

1. The contract provides a commencement date but no completion date.
2. A contract will be considered "unlimited" if: (i) it is an oral contract; (ii) it is not for a specified period; (iii) it was for a specified period but the parties continued to act on its terms and conditions after its expiry, without any written contract specifying the completion date; (iv) the purpose of the employment is to complete work not estimated within a specified time-frame; or (v) it is by its nature renewable and the contract continues after the work agreed upon is completed.
3. The contract may be terminated by mutual agreement or by either of the parties providing the other with a minimum of 30 days notice of termination.
4. The contract may be terminated for a justified cause at any time on giving at least 30 days notice of termination. The notice period may be less for employees working on a daily basis.
5. The notice period may be extended for a period exceeding 30 days. It would then not be acceptable for the parties to waive this notice period.???
6. The employee's wages during the notice period should be paid in full for the entire notice period served.
7. In the event that no notice has been given, the party who ought to have given the notice must compensate the other with

the payment of at least 30 days' wage in lieu of the notice period.

8. If the employee violates one of the provisions of Article 120 of the Law, the employer may terminate the employee's contract without notice.
9. The employee may terminate the employment contract without notice if the circumstances listed in Article 121 of the Law are applicable (see p. 25 below).
10. The employee will be entitled to compensation if the termination of the contract was for an unjustified cause. The court may award the employee damages against the employer, provided that the damages awarded do not exceed three months' wages, as calculated on the basis of the last wage paid to the employee.
11. Compensation for damages, if any, awarded to the employee for unreasonable dismissal are without prejudice to the employee's entitlement to end of service gratuity and payments in lieu of notice, if notice had not been properly given.

### **What information should be stated in an employment contract?**

The only information required by law to be specified in an employment contract is the following:

1. Wages/remuneration payable.
2. Date of the employment contract.
3. Date of commencement of the employment contract.
4. Nature of the contract (limited or unlimited).
5. Nature of the work.
6. Duration of the contract (for fixed term contracts).
7. The location of employment.

The labour office at the Ministry maintains standard employment contracts in Arabic and English, where the employer and the employee need only fill in the blanks. It is however not compulsory for the parties to use or file these contracts at the Ministry and may instead draft and lodge their own employment contracts at the Ministry providing they do not contain provisions which are contrary to the Law and are in the Arabic language.

## **5. PROBATION PERIODS**

What are the rules regarding employment for a probationary period?

It is common practice in the UAE to employ persons on an initial probationary period. During the probation period, both the employer and the employee may terminate the employment contract with immediate effect without providing a valid reason or notice. In such cases, the employer will not be liable to pay end of service benefits or compensation to the employee. According to Article 37 of the Law, the probation period can be for a maximum period of six months.

## **Is the probation period included for the purposes of calculating gratuity and other terminal benefits?**

Once completed, the probation period is considered as part of the overall employment term and is taken into account when calculating gratuity and other terminal benefits.

## **Are employers liable to pay repatriation and other benefits for termination of employment during the probation period?**

All wages and benefits accrued during the probation period must be paid along with repatriation costs. The employer is, however, not required to pay end of service gratuity or compensation in lieu of notice or damages should the employment contract be terminated without notice during the probationary period. If the employee, however, resigns during his probation period without a good cause he is liable to pay his own repatriation cost.

## **Can the probationary period be waived?**

The parties to the contract may agree to commence employment without probation as it is not compulsory under the Law. Further, it is left to the discretion of the parties to agree upon the actual term of the probationary period subject to a maximum of six months.

# **6. WAGES**

## **What constitutes wages under the Law?**

Wages according to the Law are defined as follows:

“All payments made to the worker on a yearly, monthly, weekly, daily, piece work, or production, or commission basis, in return for the work he performs under the contract of employment, whether such payments are made in cash or in kind. Remuneration shall include the cost of living allowance. It shall also include any grant given to the worker as a reward for his honesty or efficiency if such amounts are provided for in the contract of employment or in the internal regulations of the establishment or have been granted by custom or common practice to such an extent that the workers of the establishment regard them as part of their remuneration and not as donations.”

## **What is the difference between ‘total wage’ and ‘basic wage’?**

The term “basic wage” is an employee’s wage excluding all allowances of whatever nature and is specified in the labour contract as such. Total wage on the other hand, is an employee’s wage inclusive of all allowances provided such as accommodation and travel allowances.

Basic wage is significant when calculating end-of-service gratuity, which is determined on the basis of an employee’s last basic wage received as opposed to the employee’s total wage received.

The employer/ministry will calculate gratuity on the basis of the basic wage, which as mentioned above excludes housing, transportation and any allowance. However, recent case law has demonstrated that the Courts support the position that commission supplements an employee’s basic salary, if it is specified in the employee’s employment contract.

## **Does the Law prescribe a minimum wage?**

No minimum wage has been prescribed by law to date, however, an employee with a monthly salary of less than Dhs.4,000 (plus accommodation allowance), will not be able to sponsor his spouse or children for the purpose of residing in the country.

These are immigration regulations and do not form part of the Law.

In addition, in order to sponsor a house-maid or domestic help in the UAE there is a minimum basic wage requirement of Dhs.6,000 per month.

### **How are wages paid?**

Wages may be paid on a monthly, weekly, or daily basis. The parties may mutually agree on the manner in which wages are paid or remitted. Wages may be paid in the UAE or elsewhere.

### **In what currency are wages paid?**

Wages may be paid in any currency and the parties may agree on the actual currency paid. Although this is the situation in practice, the Law does however stipulate that wages should be paid in the national currency. Neither the Law nor any other law in the United Arab Emirates restricts repatriation or transfer of monies.

### **Does the Law require evidence of payment of wages?**

Where there is a dispute, an employer will be required to prove written evidence that the employee has been paid his wages along with any applicable allowances. However, the employee can prove the non-payment of wages by any means stated in the UAE Federal Law of Evidence. Therefore, it is necessary for the employer to maintain adequate records and books recording the payment of wages and allowances, failing which there may be an assumption that the wages were not paid.

## **7. EMPLOYMENT OF JUVENILES**

### **Does the Law restrict the employment of any category of persons?**

1. The employment of juveniles (of either sex) under the age of 15 is prohibited. Before employing a juvenile, employers must obtain copies of the following documents from him/her and retain them in the juvenile's personal file:
  - (a) A birth certificate or age estimation certificate issued by a specialised physician certified by the concerned health authorities.
  - (b) A certificate of physical fitness for the nature of the proposed work, issued by a specialised physician certified by the concerned authorities.
  - (c) Written consent from the juvenile's guardian.
2. Furthermore, the employment of juveniles is prohibited under the following circumstances:
  - (a) At night in an industrial undertaking.
  - (b) In hazardous jobs or in work which is harmful to health.
  - (c) Where working hours exceed six hours per day (one or more breaks must be provided within the stipulated six hours).
  - (d) Working overtime under any circumstances or to remain at the place of work after working hours.
  - (e) Working on holidays.

3. In addition to the above, the employment of women at night between the hours of 10.00pm and 7.00am is prohibited, except in the following situations:

- (a) Where work ceases due to a force majeure;
- (b) Employees in technical and administrative positions.
- (c) Health workers in health services and other jobs as determined by the Ministry, provided female employees do not usually perform manual labour.

It is also prohibited to employ women in hazardous or difficult work and other duties harmful to health or morals, or in other jobs as may be specified by the Ministry.

## **8. WORKING HOURS**

### **What are the prescribed working hours?**

The maximum prescribed working hours for an adult employee is eight hours per day or forty-eight hours per week. However, the working hours may be increased to nine hours per day in the case of persons employed in trades, hotels, cafeterias, and as guards. Persons who hold executive/administration positions however are expected to work long hours without overtime pay.

### **Would traveling to and from work be included in working hours?**

The time traveling to and from work is not included in the calculation of working hours.

### **Are breaks included during working hours?**

Employees may not work for more than five consecutive hours per day without breaks for rest, meals and prayer. However, the resting and the meal breaks are not included in calculating working hours. In factories, where people work day and night shifts or jobs where, for technical and economical reasons, continued attendance is required, the Ministry specifies the manner in which employees may take intervals for rest, prayer and meals.

### **In what situations does overtime exist and on what basis is overtime pay calculated?**

If the nature of the job requires an employee to work overtime, the employee is entitled to overtime pay which is equivalent to the wage paid during ordinary working hours plus an additional amount of not less than 25% of the wage for the over time period. However, if the employee's overtime falls between the hours of 9.00pm and 4.00am, he will be entitled to overtime pay which is equivalent to the salary payable during normal working hours plus an increase of not less than 50% of his wage for the overtime period worked.

If circumstances require the employee to work on a Friday, he is entitled to receive a rest day in lieu to be taken at a later date or be paid his basic wage plus an additional 50% (minimum) of that wage. However, employees cannot be asked to work two consecutive Fridays unless their wages are calculated on a daily basis.

In any case, overtime should not exceed two hours per day, unless it is necessary to prevent substantial loss, a serious accident

or to remove traces of such an accident or reduce its effect.

However, the above provisions are not applicable to the following persons:

- (1) Persons in senior positions, or in administrative supervisory roles, if such persons have similar authority over employees as the employer.
- (2) Crews of naval ships and marine employees who enjoy special privileges because of the nature of their work. This does not include port employees engaged in loading and unloading and other related work.

## **9. LEAVE ENTITLEMENTS**

### **9.1 Annual Leave**

#### **What are an employee's annual leave entitlements?**

For every year of service, an employee is entitled to annual leave of not less than the following:

1. Two days leave for every month if his service is more than six months and less than one year.
2. A minimum of thirty days annually, if his service exceeds one year. At the end of his service the employee is entitled to annual leave for the fraction of the last year he spent in service.

Annual leave is usually calculated on the basis of a calendar month rather than by working days. If an employee however fails to report back to work after the expiry of his leave period, his remuneration will automatically be forfeited for the days he is absent.

#### **What would be payable to the employee during his annual leave?**

An employee is paid his basic wage plus the housing allowance, if applicable, and any other allowances which he receives in the normal working month exclusive of any bonuses received.

#### **Who determines when the annual leave commences and its duration?**

The employer has the right to determine when an employee is allowed to take his annual leave and whether (if required) he is entitled to divide the leave into two parts.

If however, work circumstances require keeping the employee at work during the whole or part of his annual leave and the leave has not been carried over for the following year, the employer should pay the employee his wage in addition to a leave allowance for the days he worked equal to his basic wage.

In all cases, no employee should be required to work during his annual leave more than once during two consecutive years. In other words, the employer may only defer the annual leave once in two consecutive years and at the same time pay the employee the annual leave wages.

#### **When should annual leave wages be paid?**

The employee should be paid his full wage before taking his annual leave, plus the wage of the leave days he has accrued.

## Is the employee entitled to payment in lieu of leave if his services are terminated?

The employee is entitled to payment of his wages for the annual leave period not taken if his employment is terminated, or he resigns after serving the period of notice determined by law. Such payment is calculated on the basic wage received at the time the leave was due including any housing or accommodation allowance where applicable. Some employers also include transportation allowance in the calculation, although this is discretionary rather than compulsory.

Nevertheless, according to judgments delivered on the matter, an employee may only claim remuneration for the annual leave not taken for the last two years of employment at the rate of the wages paid during that time. Any leave days not taken prior to that period are therefore time barred and the employee is precluded from claiming remuneration against them (providing the employer relies on this time bar provision in the event of a claim).

## Is going to Haj for pilgrimage considered part of the annual leave?

The employer must give the employee once during his employment a special leave without pay to go for Haj (pilgrimage) which should not exceed 30 days. This period is not part of the employee's annual leave or any other leave which he is entitled to.

### 9.2 Official Holidays

Which official holidays are an employee entitled to take?

An employee is entitled to an official holiday with full wage on the following occasions:

	Occasion	Time Off
1.	Hijri New Year's Day	one day
2.	Gregorian New Year's Day	one day
3.	Eid Al Fitr (end of Ramadan)	two days
4.	Eid Al Adha and Waqf	three days
5.	Prophet Mohammed's Birthday	one day
6.	Isra and Al Miraj	one day
7.	National Day	one day

The holidays listed above are applicable to all employees whether they are working in the public or private sectors. However, public sector employees may be granted additional days off to those specified on the above occasions, which are announced from time to time.

It is therefore open to private sector employees to grant their employees a holiday on the above occasions or to pay them instead. The date(s) on which the above official holidays fall depend on the Ministry's announcements, which are published in the local newspapers shortly before they occur.

## Are official holidays excluded from the calculation of leave?

The calculation of the duration of annual leave includes holidays specified by law or by agreement, or any day taken for example due to sickness, if they fall within the leave period and are deemed to be part thereof.

### 9.3 Sick Leave

Is the employee entitled to sick leave?

The employee must report to the employer any injuries or illnesses preventing him from working within a maximum period of two days.

The employee is not entitled to any paid sick leave during the probation period. However, after a period of three months continuous service following the probation period, the employee is entitled to sick leave (continuous or intermittent) wages as follows:

- (1) Full wage for the first 15 days.
- (2) Half wage for the next 30 days.
- (3) Any following period will be without wage.

However, if the employee's illness is directly caused by his misconduct (for example by excessive drinking), he is not entitled to any wages during the sick leave.

It should be noted that the employee should provide evidence of his illness warranting sick leave by an official medical certificate.

Can the employee resign from employment during the sick leave period?

The employee may resign from employment during the sick leave period and before the completion of 45 days specified by law, provided the reason of resignation is approved by a physician. In this situation, the employer must pay the employee all the wages he is entitled to, until the end of the 45 days referred to above.

Can the employer dismiss an employee from service during his sick or annual leave?

The employer may not dismiss an employee from service during his sick leave or annual leave. During this period any notice for termination will be considered null and void.

However, the employer is entitled to terminate the employment contract if the employee has exhausted his full sick leave and is not fit to return to work. In such cases, the employee will be entitled to his full gratuity and end of service entitlement in accordance with the Law.

Furthermore, the employee will not be entitled to wages for the days that he has not reported to work after the end of his leave (whether sick leave or annual leave). This will not prejudice the rights of the employer to terminate the employee's contract if the employee fails to report back to work within seven consecutive days from the date he was due back.

#### **9.4 Maternity Leave**

What maternity leave is a female employee entitled to?

A working woman is entitled to 45 days maternity leave with full pay which includes the period before and after the delivery, provided she has served continuously for not less than one year. The maternity leave is granted with half pay if the woman has not completed one year of service.

At the end of the maternity leave, a working woman has the right to extend her maternity leave for a maximum period of 10 days without pay. This unpaid leave can be continuous or interrupted, if the interruption is caused by illness which prevents her from coming to work. The illness must be confirmed by a certified government physician licenced by the competent health authority.

Maternity leave in either of the above cases is not deducted from any other leave that a female employee is entitled to.

During the 18 months following delivery, a female employee who nurses her child has the right to have two daily intervals which do not exceed half an hour each for the purpose of nursing her child. These additional intervals are considered part of her working hours and no deduction in wages can be made.

Paternity leave is not provided for under the Law.

## 10. EMPLOYEE RECORDS

What types of records must be kept by the employer?

There are different conditions stipulated under the Law vis a vis the maintenance of records by employers. These primarily depend on the number of employees employed as outlined below.

An employer who employs five employees or more must adhere to the following:

- (1) Keep a file for every employee detailing his name, trade or profession, age, nationality, place of residence, marital status, date of commencement of service, wage and any change in it, vacation, illness and injuries, the date of termination of service and the reason for termination.
- (2) A "leave card" for every employee which should be kept on file and divided into three sections for annual leave, sick leave and other leave. The employee or anyone acting on his behalf should note on the card all leave taken by the employee for future reference.

In addition to the above, an employer who employs 15 employees or more must keep in every place of work or branch thereof the following records and documents:

- (1) A record of payroll listing the employees' names according to the date of their recruitment along with the daily, weekly or monthly wages, allowances or payments for piece work, commission payments as well as lengths of service and job termination dates.
- (2) A record for work injuries listing work injuries or occupational diseases established immediately after the employer is informed.
- (3) The basic rules and regulations for work should be displayed in a permanent, visible place, at the work site showing the basic regulations for work including working hours, weekly holidays, official holidays, and the necessary safety precautions to avoid work hazards and fire dangers. The implementation of these regulations and any amendments thereto must be sanctioned by the Ministry within 30 days from the date of submission.
- (4) The business' regulations relating to disciplinary measures must be permanently displayed in the place of work. This must outline measures which may be taken against those who violate the regulations.

The implementation of these regulations and the amendments thereto must be sanctioned by the Ministry within 30 days from the date of submission.

## 11. SAFETY REGULATIONS

What are the safety regulations and measures required by the Law?

The Law specifies certain provisions regarding employee safety and health care, which are stipulated under Articles 91 to 101 (inclusive). The provisions of the Law require the following measures and procedures to be adhered to:

1. Every employer should provide his employees with suitable means of protection against: injuries, occupational diseases,

fire and hazards which may result from the use of machinery and other equipment in the workplace. The employer shall also apply all the other precautionary measures specified by the Ministry of Labour and Social Affairs. The employee, however, must use the safety equipment and clothes given to him for this purpose. He shall also follow his employer's instructions which aim to protect him from danger.

2. Every employer shall display in a permanent and prominent place at the work site detailed instructions regarding the means of preventing fire and the means of protection of employees from hazards to which they may be exposed to during work. These instructions shall be in Arabic and if necessary another language understood by the employees.
3. Every employer shall make available a first aid kit or kits containing medicines, bandages and other first aid material as directed by the Ministry.
4. Every employer must ensure the workplace is kept clean and well ventilated. Each employee should have adequate lighting and rest rooms, and be provided with suitable drinking water.
5. An employer shall assign one or more physicians to examine thoroughly those of his employees who are exposed to the possibility of contracting one of the occupational diseases listed in the schedule attached to the Law (see Schedule 1 below). At least once every six months "at risk" employees should be examined and results recorded on their files.
6. The employer shall provide its employees with the means of medical care to the standard determined by the Ministry in consultation with the Ministry of Health.
7. The employer or his deputy shall inform the employee of the dangers of his job and the means of protection that he must take. He shall also display detailed written safety instructions at the work premises.
8. No employer, deputy, or any person with authority over employees shall bring or allow others to bring any kind of alcoholic drinks for consumption on work premises. He shall also prohibit any person to enter or remain in the establishment while intoxicated.

Every employer employing persons in remote areas not served by public transportation shall provide them, at the cost of the employer the following services:

1. Suitable transportation;
2. Suitable accommodation;
3. Suitable drinking water;
4. Suitable food;
5. First aid services; and
6. Means for entertainment and sports activities.

There are also additional health and safety regulations employers must adhere to which are stipulated in various laws. For instance, those involved in the industrial sector or the free zones in the UAE will be subject to such regulation.

Contracting companies are subject to Municipality rules. The Public Safety Unit of the Environmental Protection and Safety Section in the Environment Department of Dubai Municipality provide the procedures for protection and Safety at building construction sites.

## 12. DISCIPLINARY CODE

What is the nature of the disciplinary code in the Law?

The Law, which provides for various disciplinary measures which an employer or his representative may impose on the employees of the business. These comprise the following:

1. Warnings.
2. Fines.
3. Suspension from work with a decrease in wages for not more than 10 days.
4. The prevention or postponement of periodic allowances in establishments where such allowances exist.
5. The deprivation of promotions in establishments where promotions exist.
6. Termination of service without prejudice to the payment of all end of service benefits.
7. Termination of service and the forfeiture of all or some of his gratuity. This punishment cannot be imposed for any reason other than those mentioned in Article 120 of the Law.

The Ministry should be advised with regard to any of the above-mentioned measures being imposed.

What is the maximum fine an employer can impose on his employee?

A fine may be a fixed sum of money or an amount equivalent to the employee's wage for a certain period. A fine for one violation can not exceed five day's wages, and in any one month total fines can not exceed an amount equivalent to five day's wages.

If a fine is imposed, who should keep the money deducted from the employee's wages?

A fine imposed on an employee should be entered into a special register which states the reason or the circumstances involved, the name of the employee concerned and his wage. A special account should be kept for these fines, the monthly total of which should be spent on the social welfare of all employees of the business.

How often and for what length of time can an employer deprive an employee of periodic allowances or promotions?

Any punishment depriving an employee of his periodic incentives may not be imposed more than once within one year. In addition, an employee's incentives should not be postponed for more than six months.

Furthermore, no employee should be deprived of more than one promotion. The punished employee should be promoted in the first succeeding opportunity if he satisfies the necessary conditions.

What are the limitations and the conditions required by the Law pertaining to the use of disciplinary codes?

An employer may not impose any disciplinary measures on an employee unless the following conditions are met:

1. No disciplinary action can be taken against an employee as a result of something he committed outside the place of work, unless it is related to work, the employer or the manager in charge of the work.

2. No more than one punishment can be imposed for one violation. A disciplinary punishment cannot be accompanied with a deduction of part of the employee's wages.
3. None of the punishments detailed above can be imposed on an employee unless he is informed of his violation in writing and given a chance to defend himself. His statement and defence should be noted and written in his file, and the punishment imposed should be detailed.
4. An employee must be informed in writing of the punishment imposed on him, stating its type and amount and the reason for the punishment.
5. No employee can be accused of an offence after the lapse of 30 days of its discovery. In addition, no disciplinary action can be imposed after the lapse of 60 days from the end of the investigation regarding the violation and the confirmation of its occurrence.
6. The Ministry should be informed of the violation in writing.

Under what conditions can an employer suspend an employee from work?

An employee may be temporarily suspended from work when he is accused of committing a deliberate crime such as physical assault, property damage, a financial crime, crimes of honour or going on strike.

The suspension should take effect from the date the concerned authority is informed of the incident until a decision is taken by them regarding the incident. Further, an employee is not entitled to his wages during the suspension period. If the verdict relieves the employee from standing trial or acquits him, he should be reinstated in his work and given his full wage for the whole of the suspension period.

Therefore, it is always advisable to take and record the minutes of meetings held with employees, which should be signed by both parties and submitted to the Ministry when necessary.

## 13. ACCIDENTS AT WORK

What is considered as a work accident?

A work accident is an accident which has been suffered by an employee at his place of work or while travelling to or from his place of work.

What is the procedure for reporting labour accidents and occupational diseases?

If the employee suffers a work related accident or an occupational disease, the employer or his representative must report the accident immediately to the police and the Ministry or one of its branches under whose jurisdiction the place of work falls. The information should include the employee's name, profession, address, nationality, a brief description of the incident and its circumstances, and the medical measures or treatment provided.

Would the employer be prosecuted for an accident or an injury to an employee?

Upon receiving the information from the employer, the police should perform the necessary investigations and state in their report the testimony taken from any witnesses, the employer or his representative, and the injured person if his condition allows him to testify. The report should specifically state whether or not the accident was work related, whether it took place intentionally, or as a result of misbehavior on the part of the employee.

If the report concludes that one of the employer's personnel or managers were at fault or negligent, they may be prosecuted in a criminal court for the act or omission if such an act or omission amounts to a crime.

Would the employer be liable for compensation?

In case of work accidents and occupational diseases, the employer should undertake to pay the cost of the employee's treatment in a government or private clinic until the employee recovers or his disability becomes certain. However, an employee cannot demand to be treated in a specific clinic or in a clinic outside the UAE.

The treatment includes hospital and sanitary fees and costs of surgical operations, small-rays and laboratories fees in addition to the cost of medication and rehabilitation equipment and artificial parts for those whose disability is proven. The employer must also pay the travel expenses needed for the employee's treatment.

What would the employer pay if the employee were not able to perform his work after the accident?

If the injury prevents the employee from performing his job duties, the employer should pay him a grant equivalent to his wage during the treatment period or for six months, whichever is less. If the treatment takes more than six months, then the grant can be reduced by half for an additional six months or until the employee recovers, his disability becomes certain or in the event of his death, whichever comes first.

How much would the employer pay the employee during his treatment?

The financial grant made by the employer is calculated on the basis of the last wage the employee was paid in respect of those who are paid monthly, weekly, daily or hourly, and on the basis of the average wage for those who are paid on a piece work basis.

Would the employee be entitled to compensation for permanent/partial disability other than his wages?

The employee will not be entitled to claim compensation from the employer other than for his wages and compensation for his permanent/partial disability according to the ratios stated in List No. 2 of the Law (Schedule 2 below), and multiplied by the value of death compensation described in the preceding paragraph. This is, of course, without prejudice to the employee's rights to claim compensation against any third parties who may have participated in causing the accident or the disability suffered by the employee.

Is the employee's family entitled to claim compensation?

The employee's family is not entitled to claim compensation unless the accident caused the death of the employee or his permanent disability. The compensation payable is equivalent to the basic wage of the employee for a period of two months. The compensation payable is subject to a minimum of Dhs. 18,000 and a maximum of Dhs.35,000. It is calculated on the basis of the last wage the employee was paid before his death and divided among the inheritors according to the rules contained in List No. 3 of the Law which is provided in Schedule 3 below.

Who will be considered as the heirs of the employee in terms of receiving compensation?

In applying the rules of the Law, the family of the deceased are those who are dependent on the deceased for their livelihood entirely or mainly vis a vis the deceased's income at the time of his death. They must qualify by being included in one of the following categories:

1. Widow.

2. Children who are: sons under 17, and those under 24 who are enrolled as regular students in an institution of learning, and sons who are physically or mentally unable to earn their living. The word "son" includes sons of the husband or the wife who were under the care of the deceased employee at the time of his death.
3. Unmarried girls, including unmarried daughters of the husband or the wife who were under the care of the deceased employee at the time of the death.
4. Parents.
5. Brothers and sisters according to the conditions set for sons and daughters.

It is also possible for the heirs of the deceased to file a civil action under tort against a person who has caused injury or death to the employee under the general provisions of tort, if the act was a tortious one.

Before commencing an action, the supporting documentation such as the statement from the police must be submitted with the Statement of Claim.

Would deliberate self-injury by the employee entitle him to receive compensation or sick leave?

If it were evidenced in a report provided by the Ministry or the police that the employee had intentionally caused the injury in order to receive compensation or medical leave, then the employee will not be entitled to either compensation or sick leave, and would be liable to face criminal charges.

## 14. TERMINATION OF CONTRACT

When can a contract of employment be terminated?

An employment contract can be terminated in any of the following circumstances:

1. If the two parties agree to cancel the contract, provided that the employee consents to this in writing.
2. If the contract term has come to an end, unless the contract has been explicitly or implicitly extended according to the rules of the Law.
3. By one of the parties where the contract has an unspecified term, provided that the parties observe the provisions of the Law referred to previously regarding notice and the acceptable reasons to cancel the contract without prejudice.

Would an employment contract be terminated by the death of the employer or the disability of the employee?

An employer's death does not constitute the termination of a labour contract, unless the subject of the contract is related to him personally. However, the contract will be terminated upon an employee's total disability (without prejudice to his end of service benefits).

However, if the employee's disability is partial and he is able to perform other work which suits his health, the employer should transfer the employee to such other work if the employee so requests, and should give him wages equal to those paid for similar work.

Under what circumstances can an employer terminate the employment contract without notice and with immediate effect?

An employer may dismiss an employee without notice in any of the following cases (as per Article 120 of the Law):

1. If the employee assumes a personality or a nationality other than his own, or has submitted fake documents or certificates.
2. If the employee was appointed under probation and the termination happened during that period or at its end.
3. If the employee commits a mistake causing the employer a substantial financial loss, provided the employer informs the Ministry of the incident within 48 hours.
4. If the employee violates instructions relating to safety in the place of work, provided those instructions were written and displayed in a permanent place, and the employee has been informed of these instructions orally if he is illiterate.
5. If the employee fails to carry out his basic duties as stated in the contract and continues to do so in spite of a written interrogation and a warning that his service will be terminated if he repeats his misconduct.
6. If he discloses a secret of the establishment for whom he is working.
7. If he is conclusively convicted by the concerned court of a crime involving honour, honesty and public morals.
8. If he is found drunk or intoxicated by drugs during working hours.
9. If he commits a physical assault on the employer or manager or one of his colleagues during work.
10. If he becomes absent without a legitimate reason for more than 20 intermittent days or more than seven continuous days within one year.

Can an employee terminate a contract without notice?

An employee may terminate his contract of employment without notice in either of the following cases (as per Article 121 of the Law):

1. If the employer has not fulfilled his obligation towards him as provided in the contract or in the Law, for instance where an employer does not pay his employee his wages on time.
2. If he is assaulted by the employer or his legal representative.

Would changes in the structure of a business or its ownership constitute a termination of an employment contract?

If there is a change in the structure of a business or its ownership, any contract valid during the time the change is made will remain valid and the service considered continuous. Both the previous and the new employer are jointly responsible for six months from the date of the alteration in executing the obligations relating to the contract of the employee in the period prior to the change.

After the end of this six-month period, the new employer is solely responsible for the employees of the business.

Can an employee, after the termination of his contract, be employed by another employer in the UAE?

If the nature of the position held by the employee allows him to know his employer's clients or the trade secrets of the employer, the employer may stipulate in the contract that after the end of his contract, the employee shall not compete with him or share in any competing project. The employee has to be 21 years old at the time of signing the contract for this agreement to be legal. The agreement shall be as far as time, place and nature of work are concerned limited to what is necessary to protect the legal interests of the employer. However, if there is no agreement to the contrary, an expatriate employee may work for a new employer provided that his profession is listed in one of the categories exempted from the automatic six month or one-year ban provisions outlined below.

According to the 1999 amendment to the Law, certain employers are required to submit to the Ministry a bank guarantee as security for end of service benefits and repatriation costs related to their employees. In the event of bankruptcy, the employer is required to encash the guarantee and provide to the employee.

What are the civil/criminal responsibilities of an employer if his employee is on somebody else's visa?

A fine of AED 10,000 will be imposed and the employer will be banned from employing additional employees or doing anything else in relation to immigration. The bar would be lifted once the Employer is no longer in violation of the Law.

What employment ban provisions apply upon the termination of an employment contract?

A one-year ban will be imposed (stamped) on an employee's passport by the Immigration Department upon termination of employment if the employee violates the employment contract, the Law, or the labour regulations. A six-month ban will be imposed (stamped) upon termination of employment on those who do not fall under one of the categories of professionals permitted to transfer their visas.

A six-month ban is typical and a person who wishes to be reemployed must wait until the period of six months has passed.

The following categories are exempted from the six-month ban and permitted to transfer their residence visas to a new sponsor:

- (a) Engineers.
- (b) Doctors, Pharmacists and Hospital Attendants.
- (c) Agricultural Instructors.
- (d) Teachers.
- (e) Qualified Accountants and Auditors.
- (f) Qualified Administration officials.
- (g) Technicians in scientific electronics and laboratories.
- (h) Drivers licensed to drive heavy transport vehicles and (buses). This is in case of transferring the sponsorship from a company or establishment to its counterpart or to any governmental body.
- (i) Employees of private oil companies are entitled to transfer their sponsorship from one company or establishment to its counterpart or to any governmental body.

Provided always (where the transfer is from a private sector position to another private sector position) that:

- (a) The employee maintains the same position (that is, in the same profession) with the new employer as he used to occupy with his previous employer;
- (b) The employee has a valid resident permit stamped on his passport;
- (c) The employee has completed at least one year of continuous employment with his previous employer; and
- (d) The employee has obtained the consent of the sponsor to transfer his sponsorship to the new employer.

However, the following circumstances are exceptions to the above rules:

- (a) Where the transfer of employment is from one branch to another branch of the same company, establishment or a branch owned by the same employer.
- (b) Where the transfer of employment was due to the transfer of the ownership of the company, establishment or branch thereof to the ownership of another company, establishment or person.
- (c) Where the sponsor has breached his liabilities which resulted in the closing of the establishment.
- (d) Where a court judgment is delivered for the bankruptcy or winding and termination of activities of the establishment.
- (e) Where the original sponsor has died and his heirs do not intend to continue running the establishment.

The above rules have been stipulated by Ministerial Decree No. 360 of 1997 To Issue the Executive Bylaw of the Federal Law No. (6) of 1973 Concerning the Entry and Residence of Expatriates. However, the Ministry of immigration, may, at their own discretion, grant exceptions.

Which acts would result in the termination of an employment contract, and result in the employee being banned from working in the UAE for one year?

The following acts by the employee would render the employee banned from working in the UAE for a year.

1. If the employee leaves his employment without a justified cause before the end of a specified term in the employment contract; or
2. In the case of an unlimited contract without giving one month's notice of termination; or
3. The employee leaves his employment before the lapse of one month's notice; or
4. The employee violates Article 120 of the Law; or
5. The employee works with another employer full/part time at the same time as working for his original employer.

These sanctions would only be applied if a complaint was filed by the employer requesting such.

Following the termination of his employment contract, when should an employee cancel his dependent's visas?

Upon termination of his employment contract, an employee has to apply for the cancellation of his dependent's visas (spouse, children & domestic help) before his employer submits an application for the cancellation of his visa. This is not necessary in the event of a transfer of sponsorship.

Is the employer obliged to give an end of service certificate at the end of the employee's service?

At the end of an employee's service, and subject to his request, an employer is obliged to provide him with a service certificate. This certificate is free of charge and should state the date the employee commenced service, the last day of service, the total service period, the nature of work carried out by the employee, his last wage and any allowances, if applicable.

The employer should also return to the employee all materials deposited with him, such as certificates, papers, instruments etc.

## 15. REPATRIATION OF EMPLOYEES

Who bears the repatriation expenses of employees?

At the end of the contract the employer is responsible for the repatriation expenses of the employee to the place of recruitment or to any other place which the two parties have agreed upon.. If the employee obtains employment with another employer in the UAE, then, the new employer is responsible for repatriation expenses at the end of his service. However, if the employee is responsible for terminating the contract, he is responsible for his repatriation costs, if he has sufficient means.

Does the repatriation of the employee mean that the employer has to also pay for furniture and family members?

If the employer has paid for the travelling expenses of the employee, his family and furniture or such provisions as stipulated in the contract, the employer will then have to pay for the family and the furniture and any expenses incurred therewith. However, if at the time the contract commenced there was no agreement on payment of family repatriation costs or furniture shipment costs, and the employer did not pay for these at the commencement of the contract, the employer will not be liable to pay the same, unless the rules within the establishment specify otherwise.

When does the employee have to vacate his accommodation if it is provided to him by the employer?

In cases where the employer provides accommodation to the employee, the employee is obliged to vacate the premises within a maximum period of 30 days from the date his services were terminated. The employee may not extend this period for any reason provided that the employer actually pays for the following:

- (a) The repatriation expenses as agreed; and
- (b) End of service benefits and other entitlements as provided in the terms of the employment contract or the regulations of the establishment.

Where there is a dispute between the employer and the employee, the Ministry must make a recommendation within 2 weeks from the date the complaint is filed, and inform the employee of the amount recommended as payable. In such cases, the 30 day period will commence from the date the employee deposits the said amount. In a situation where the premises are not vacated, the Ministry will order the eviction of the premises with the assistance of the local police in the emirate concerned. This is without prejudice to the employee's right to challenge the amount recommended by the Ministry in court. The Ministry's decisions can be appealed to the court by either party.

If a dispute is pending or is not resolved and there was no recommended amount for payment or deposit, the employee is entitled to stay in the premises until the dispute is resolved or a judgment delivered if the matter is being litigated.

## 16. PAYMENT OF GRATUITY

What is the employee entitled to on the termination of his employment contract?

On the termination of the employment contract, an employee is entitled to the following:

1. A notice period, or any amount due in lieu of the notice period in the case of an unlimited contract.
2. In the case of an unlimited contract, compensation for unreasonable dismissal if the contract was terminated by the employer for unreasonable cause.

3. In the case of a limited contract, compensation equivalent to the period until the end of the contract, or three month's wages, whichever is shorter.
4. Payments equivalent to the balance of unutilised leave or any part thereof.
5. Payments for overtime or any balance of wages due and not yet paid.
6. End of service gratuity calculated on the duration of the employment.
7. Repatriation expenses as per the Law or the employment contract, subject to the employee not being in violation or in breach of either the Law or the employment contract.

### **What does the term end of service gratuity mean in terms of compensation?**

In the case of an employment agreement for a unlimited term, an employee who completes one year or more in continuous service shall be entitled to gratuity at the end of their service. The gratuity shall be calculated as follows:

- (1) 21 days wages for each year of the first five years.
- (2) 30 days wages for each additional year on condition that the total of the gratuity does not exceed the wages of two years.

### **How is gratuity calculated?**

Gratuity is calculated on an annual basis or part thereof provided that the employee has actually completed one year of employment with the employer or more. Days of absence from work without pay are not included in calculating the length of service. However, he will be entitled to end of service gratuity for fractions of a year he spent in service provided that he has completed at least one year in continuous employment.

### **On what basis is gratuity calculated?**

Without prejudice to what is stipulated by the policies of some establishments in the granting of pensions or retirement benefits to employees, gratuity for those who are paid monthly, weekly or daily wages is calculated according to the employee's last received basic wage before the employment was terminated. This wage is the basis for calculating the gratuity for the whole period of an employee's employment.

### **Would a commission or payment by percentage be considered a basic wage?**

According to a court ruling delivered by the UAE court, except for allowances and bonuses, any amount payable to an employee as wages including wages paid by percentage basis, commissions, or for performance will be considered as wage and will be taken into consideration in calculating gratuity.

### **Would an employee who was employed prior to the Law coming into force be entitled to gratuity?**

According to the UAE law, employees who were working prior to the date the Law came into force will not be entitled to gratuity for the period preceding the Law. This is without prejudice to any entitlements or payments they were entitled to under other laws or regulations applicable. However, gratuity for those employees under the Law is calculated thereafter on the date

the Law came into force.

### **Can the employer deduct any payment from the gratuity payable to the employee?**

The employer may deduct any amount owed to him by the employee such as outstanding loans from the employees end of the service gratuity. If there is any dispute over the payment of gratuity or the amount of gratuity payable, the matter should be referred to the Ministry for mediation.

### **Is the amount calculated for gratuity affected if the employee resigns from employment?**

An employee employed under a contract for an unlimited period who resigns after a continuous service of not less than one year and not more than three years is entitled to one third of the end of service gratuity provided above. If the period of continuous service is more than three years and less than five years he is entitled to two thirds of the gratuity.

If his continuous service is more than five years, he is entitled to the full gratuity.

If an employee who is employed under a contract for a limited period on the other hand chooses to resign before the end of the contract, he is not entitled to end of service gratuity unless his continuous service exceeds five years.

### **Under what circumstances can an employee be deprived of his end of service gratuity?**

An employee may be deprived of his end of service gratuity if he has been dismissed for one of the reasons stated in Article 120 of the Law, or if he terminated his employment to avoid such dismissal.

Under what circumstances will an employee be entitled to gratuity if he terminates his employment contract without notice?

Under Article 121 of the Law, an employee will be entitled to gratuity on termination without notice in either of the following circumstances:

- (1) The employer has failed to comply with his obligations towards the employee, as provided for in the employment contract or in the Law.
- (2) The employee was assaulted by his employer or his legal representative.

The above applies to employees who have been continuously employed for a minimum period of one year, regardless of whether the contract of employment is for a fixed or unlimited term.

If the establishment or company has a pension scheme, which is beneficial to the employee, is this a substitution for the payment of gratuity?

If the employer has a pension scheme applicable to all the employees of the business, such a scheme must be published and known to all employees, and must specify that it will be a substitute to the gratuity rules outlined in the Law. It must also be more beneficial to the employees than the gratuity provision of the Law. Otherwise the employee may benefit from both unless the employee agreed or consented to the scheme in question.

### **Is there a pensions and social security scheme in the UAE?**

The Pensions & Social Securities Law, Federal Law No. (7) of 1999, concerns UAE nationals employed in both the public and private sectors. It provides, amongst other things, for certain contributions to be made by the employee and the employer to the Public Authority of Pensions and Social securities. For a person employed in the public sector these contributions are equivalent to 5% of the contributory pension salary to be paid by the employee and 15% of the contributory pension salary

payable by the employer. As for the private sector, the government shall bear 2.5% of the 15% share payable by the employer as contributions to the Authority.

The Pensions & Social Services Law also provides for the amount to be paid as a pension to eligible UAE nationals on reaching the retirement age of 60, or disability pension in the case of an employee becoming disabled and unable to work. It further covers the amount of pension payable to beneficiaries on the demise of a secured person.

### **Can the employee and the employer agree to pay gratuity for the termination of the employment contract for a preceding period?**

The employer and the employee may, upon mutual agreement, decide upon the payment of the employee's gratuity for the years that he has already served his employer. A new contract will then be entered into between the parties.

The employee's employment with the employer is still considered as a continuous period for the purpose of calculating interest, or, at the time when he resigns, calculating the employee's total years of service with the employer.

### **Where an employee has worked for an employer in two or more countries, will he be entitled to gratuity?**

This will depend on a number of factors such as the terms of the employment contract, the law of the country the employment is being conducted in and the general practice of the employer. For instance, many multinationals which transfer their employees to another country pay the end of service benefits applicable at the time of transfer. In such cases, the transfer is essentially considered as new employment for the purposes of gratuity payments.

The matter will however depend on the facts of each case as it is not covered by the Law but rather is addressed in certain judgments. Therefore, it should not be assumed that if an employee is transferred to another country that the UAE law will continue to apply or that his employment contract will continue to be enforced. The Law is considered as a matter of public policy and thus certain cases may be different in other jurisdictions. In addition, the country the employee is being transferred to may contain different regulations regarding the transfer of employees to and from other jurisdictions.

Therefore, the law of the country the employee is transferred to may prevail and give regard (or otherwise) to the employee's previous employment contract. In such cases therefore it is advisable to seek independent advice on the matter.

It is also not possible to apply a foreign law to a UAE employment contract. If the governing law in the employment contract is UAE law and filed with the Ministry, then gratuity will be calculated from the commencement date of that contract. This contract will take precedence over any other contract with a foreign governing law.

### **Can an employee mortgage or assign payment of his gratuity?**

It is possible to mortgage or assign payment of an employee's gratuity to the employer or to a third party by mutual agreement, provided that in the agreement with a third party, the employer and the employee agree to this in writing with an understanding of all parties that the employee may forfeit his right to gratuity which is not yet due if he violates a provision of the Law.

In any event, an employee's gratuity can only be assigned subject to the employee becoming entitled to it.

When does gratuity become due and payable?

Gratuity will only become due and payable on the termination of an employment contract.

## **Are the end of service gratuity and other dues payable to the employee considered priority debts?**

The employee's wages, overtime, and any other benefits, including end of service gratuity, are considered to be a preferential debt for which the employee shall have a lien over any movable or immovable property owned by the employer ranking second to government charges, judicial fees and family alimony payments.

## **17. DISPUTE SETTLEMENT**

### **In case of a dispute between the employee and the employer, how can either of them proceed with a case?**

Where there is a dispute between the employee and the employer, an application must be made to the Ministry in the emirate in which the employer's establishment is located. The complaint must be submitted in writing to the complaints department at the Ministry, setting out a summary of the facts, calculation of the amount due, and enclosing a copy of the labour contract. The application will be filed with the Ministry upon payment of AED.100 registration fee.

The employer or the employee will be summoned to state their respective cases before the labour office at the Ministry who must make a recommendation within two weeks from the date in which the application is filed. Should the party fail to settle the dispute as recommended by the Ministry, the matter will then have to be referred to court to be litigated in the normal manner. In such a case, the Ministry will issue a summary of the facts of the case, and a memorandum together with its recommendation, and the arguments put forward by both parties. Within three days from the date the application is received, the court will schedule a hearing and summon the other party to hear the matter.

### **How effective are foreign employment contracts in the UAE?**

Such contracts are enforceable and valid as contracts executed in the UAE. However, if there is an additional local contract and a dispute arises, the provisions in the contract which are more favourable to the employee will probably be upheld, providing there is evidence in support of the provision in question.

In terms of the gratuity payable, where there are two contracts, the employee may only benefit from one.

The enforceable contract will in most cases be the one filed with the Ministry and gratuity calculated according to the salary specified in the UAE employment contract.

### **Should the application to the labour office and the court be made within a specified time limit?**

A complaint by either the employer or the employee must be made to the labour office within one year from the date in which the amount or the entitlement becomes due otherwise it will be time bared. In other words, the one-year time period does not start running from the date of termination, but rather from the date the amount becomes due and unpaid.

In calculating time according to the Law, the Gregorian calendar is used. Years are calculated as 365 days and months as 30 days. However, filing an action before the Ministry will suspend the time from running. If the Ministry fails to transfer the case to court within two weeks, the employee may then proceed to court without referral from the Ministry.

### **Is the employer or the employee liable to pay court fees if the matter is referred to court?**

Employees are exempt from paying court fees. This exemption also applies if an appeal is filed at the court of appeal. However, should a matter fail to be settled at the Ministry, an employer who elects to proceed with court action must pay court fees, which are normally based on a percentage of the amount in dispute.

## **Is there a different rule for complaints filed by a group of employees against one employer?**

The Law provides slightly different provisions regarding claims made by a number of employees of the same establishment who file a complaint against their employer. It may take longer to be settled at the Ministry and the Ministry may form a committee to settle such disputes.

## **18. LABOUR INSPECTIONS**

### **Is the Ministry or any other competent authority entitled to inspect establishments or commercial entities established in the UAE?**

The Labour Inspection Department at the Ministry and the personnel employed therein may undertake labour inspections at any establishments or commercial entities, and have been given the power to do so by the Law. The inspector however should carry an identification card issued by the Ministry, and is entitled to enter premises for inspection. Employers and their agents should present the labour inspectors with all the necessary facilities and information to perform their duties and should consent to any summons to appear before them, or should send a delegate to appear on their behalf if they are required to do so.

### **What are the primary responsibilities of the labour inspectors?**

A labour inspector is responsible for the following:

- (1) Supervising the proper enforcement of the provisions of the Law, particularly terms of work, wages, on the job safety, health and the specific regulations concerning the employment of juveniles and women;
- (2) Providing employers and employees with the information and technical guidance that will enable them to adopt the best means for the enforcement of the provisions of the Law.
- (3) Informing the concerned authority of any loop-holes which the enforcement provisions fail to remedy and recommending any necessary steps.
- (4) Recording incidents where the provisions of the Law and the regulations have been violated.

### **Do the labour inspectors have the authority to enter commercial entities and premises?**

A labour inspector has the right to do the following:

- (1) Enter any establishment that is subject to the provisions of the Law at any time during the day or night without prior notice, provided that such entry is made during working hours.
- (2) Conduct any test or investigation that may be necessary to ascertain the proper enforcement of the Law.
- (3) Question employees or the employer, examine all records which have to be kept under the provision of the Law, take a sample or samples of materials used or handled in industrial activities, and ascertain that notices and pamphlets required to be displayed at the work site are in accordance with the provisions of the Law.

## APPENDIX 1 OCCUPATIONAL DISEASES

No.	Type of disease	Work causing disease
1.	Poisoning by lead and its compounds	Any work involving the use or handling of lead or compounds containing lead.
2.	Poisoning by mercury and its compounds	Any work involving the use or handling of mercury or its compounds or materials containing mercury, and any work involving exposure to the dust or gases of mercury or of its compounds or materials containing mercury.
3.	Poisoning by arsenic and its compounds	Any work involving the use or handling of arsenic or its compounds or materials containing arsenic, and any work involving exposure to the dust and gases of arsenic or of its compounds or materials containing arsenic.
4.	Poisoning by antimony and its compounds	Any work involving the use or handling of compounds antimony, its compounds or materials containing antimony and any work involving exposure to the dust and gases of antimony or of its compounds.
5.	Poisoning by phosphorous and its compounds	Any work involving the use or handling of compounds phosphorus, its compounds or materials containing phosphorous and any work involving exposure to the dust or gases of phosphorus or of its compounds or materials containing phosphorus.
6.	Poisoning by petroleum, its derivatives and compounds	Any work involving the handling or use of compounds and by-products petroleum, its derivatives and compounds and any work involving exposure to their dust or gases.
7.	Poisoning by manganese and its compounds	Any work involving the use or handling of compounds manganese, its compounds or materials containing manganese, and any work involving exposure to the gases or dust of manganese or of its compounds and any products containing manganese.
8	Poisoning by sulphur and its compounds	Any work involving the use or handling of sulphur, its compounds or materials containing sulphur, and any work involving exposure to gases or dust of sulphur or its compound alloys.
9.	Poisoning by petroleum, its compounds	Any work involving the handling or use of by-products and compounds. petroleum, its gases or by-products and any work involving exposure to such substances, whether in solid, liquid or gas state.
10	Poisoning by chloroform or carbon tetrachloride	Any work involving the use or handling of carbon tetrachloride chloroform or carbon tetrachloride and any work involving exposure to their gases, or to any gases containing such substance.

11	Diseases resulting from radium or other radio-active substances (X-ray)	Any work involving exposure to radium or to radio-active substances (X-ray) any radio-active materials or X-ray.
12	Chronic diseases of the skin and burns	Any work involving the use or handling of or of the skin and the eyes. Transfer of tar carbon, tar machines, mineral oil, kerosene or cement flour and similar materials such as dust and the components and by-products or deposits of such items.
13	Injuries of the eyes by heat and light	Any work involving frequent or continued and their complications. Exposure to light, heat or rays from molten glass or from heated or melted metals, or exposure to strong light and intense heat as would result in damage to the eye or impairment of sight.
14	Lung diseases resulting from silica dust, asbestos or other fines	Any work involving exposure to newly-asbestos and cotton dust. generated dust of silica or substances containing more than 5% of silica such as work in mining, quarrying, stone cutting or grinding, working in a stone cement factory, glassing metals with sand or any other activity involving such exposure to asbestos or cotton dust to an extent that such diseases are caused.
15	Anthrax	Any work involving contact with animals infected with this disease, or with their skins, horns and hair.
16	Glanders	All works involving contacts with animals infected with this disease.
17	Tuberculosis	Work at hospitals for the treatment of this disease.
18	Enteric fever	Work at hospitals specialised in the treatment of this fever.

## Appendix 2 Permanent Disability Rating

Nature of Disability	Degree of Disability Percentage
<b>Permanent</b>	
1. Loss of both arms from the shoulders and loss of any two or more limbs	100
2. Complete loss of sight in both eyes or loss of two eyes	100
3. Complete paralysis	100
4. Dementia or complete mental derangement	100
5. Wounds and injuries to the head or brain which cause continuous headache	100
6. Complete deformation of the face	100
7. Injuries and wounds to the chest and internal organs which cause a continuous and complete deficiency in the function of these organs	100
<b>Partial</b>	
8. Loss of both legs from the top	90
9. Loss of hands from the elbow or above	85
10. Severe deformation of the face	80
11. Loss of both hands from the elbow	70
12. Complete loss of the right arm from the joint of shoulder or from the elbow	70
13. Loss of both legs from the knees or above	70
14. Complete loss of the left arm from the joint of shoulder or from the elbow	60
15. Loss of one leg from the knee or above	60
16. Loss of the right arm from the elbow or below	60
17. Loss of one leg from above	60
18. Loss of both legs from below the knee	60
19. Loss of all the fingers of the right hand including the thumb	60
20. Loss of the left arm from above or below the elbow	50
21. Loss of the fingers of the left hand including the thumb	50
22. Loss of one leg below the knee	50
23. Complete and permanent deafness	50
24. Complete loss of the tongue or permanent dumbness	45
25. Loss of both feet from the heel or below the heel	45
26. Loss of the sexual organ	45
27. Loss of sight in one eye	45
28. Loss of the right hand from the wrist	38
29. Loss of the thumb or four fingers of the right hand	35
30. Loss of the left hand from the wrist	34
31. Loss of the thumb or four fingers from the left hand	25
32. Loss of the one foot from the heel or below the heel	20
33. Loss of all toes in one foot including the big toe	20
34. Loss of three fingers of the right hand excluding the thumb	15
35. Loss of the right index finger	15
36. Loss of the distal phalanx of the right thumb	10
37. Loss of the left index finger	10
38. Loss of three fingers of the left hand excluding the thumb	10
39. Loss of all toes in a foot excluding the left foot	10
40. Loss of the big toe	10

41.	Loss of the distal phalanx of the left big toe	6
42.	Loss of the middle finger in the right hand	6
43.	Loss of the middle finger in the left hand	6
44.	Loss of the ring finger in the right hand	6
45.	Loss of the ring finger in the left hand	6
46.	Loss of the little finger in the right hand	6
47.	Loss of any finger in the left hand	6
48.	Loss of the distal phalanx of any finger excluding the thumb	5
49.	Loss of the second phalanx of the index finger in the right hand	5
50.	Loss of toes of the foot excluding the big one	5
51.	Loss of one molar tooth	3
52.	Loss of a canine tooth	2

1. A permanent total disability in the functions of any organ or part of the body shall be considered as a complete loss to that part or organ.
2. If the injured person was left handed, all compensation for injuries of the left hand shall be considered as if they were for the right hand.
3. In the case of deformation or unnatural change to any organ or part of the body or any of the senses not mentioned in the list, the rate of disability shall be estimated by the Medical Board provided in Article (148) of this Law which shall take into consideration similar cases in the list.

### **Appendix 3 Term of Distribution of Death Compensation Among**

Members of the Deceased Employee's Family. If the widow (or widower) lives with the parents and offspring who were supported by the deceased, the compensation shall be divided as follows:

1. The widow (or widower) shall take one eighth and if there are more than one widow (or widower), the one eighth shall be divided equally among them, the parents shall take one third divided equally between them, but if either of the parents is dead then the mother shall take one sixth, and the father shall take one third and the rest for the offspring. If there are no children, the widow (or widower) shall take two thirds of the compensation (to be divided equally among them if there are more than one) and the father shall take the remainder. In cases where both parents are living they shall share that remainder equally. If both parents are dead, the widow (or widower) shall have one eighth of the compensation (to be divided equally among them if there is more than one widow) and the offspring shall get whatever remains. In cases where there are no children and no living parent, the widow (or widower) shall take the whole compensation. If there is more than one widow, the compensation shall be divided equally among them.
2. If there exists one or both of the parents and a child who were supported by a deceased employee who left behind no widow, the child shall take two thirds and the remaining third shall go to the parent or parents, who take equal shares.
3. In the absence of a widow (or widower), parents, brothers and sisters, the compensation shall be distributed equally among the children of the deceased. If there is only one child, he shall be paid the whole compensation.
4. If there are only parents, who were under his care, in the absence of a widow (or widower) and children, the compensation shall be divided equally between the parents. If there is only one, he or she shall take the whole compensation. Brothers and sisters who were supported by the employee at the time of his death shall be treated in the absence of parents, as parents.

# COMPANY PROFILE

Al Tamimi & Company, originally established in 1989, is today one of the leading law firms in the Arabian Gulf region. It is the largest local, non-affiliated law firm in the United Arab Emirates with offices in the Emirates of Dubai, Abu Dhabi and Sharjah and associate offices in Doha and Baghdad.

Al Tamimi & Company specialises in Company / Commercial law, Litigation, Banking, Insurance, Maritime Law, Intellectual Property, Alternative Dispute Resolution, Arbitration.

An international team of high calibre lawyers ably serves clients from the United Kingdom, North America, Europe, the United Arab Emirates and several other Arab countries. Each member of our team of professionals and qualified administrative staff is fully committed to providing our clients with accurate, creative and cost effective advice.

We pride ourselves on our complete knowledge of the laws and regulations applicable to our home jurisdiction and the commercial community abroad. Within the U.A.E. we regularly confer with government ministries during the introduction of new legislation and the ongoing amendment of internal regulations, relying on long established contacts in all government departments.

The firm can assist multinational companies to establish operations in the U.A.E. independently, or in association with local partners. Both our local clients, many of whom have business interests outside the United Arab Emirates, and international companies, rely on our global perspective. We subscribe to the belief that the world of opportunity does not recognise national boundaries.

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[www.tamimi.com](http://www.tamimi.com)

# MAKE CONTACT WITH AL TAMIMI & COMPANY

## **Dubai Office**

Dubai World Trade Centre 29th Floor P.O.Box 9275  
Dubai UAE  
Tel: +971 4 331 7090 Fax: +971 4 331 3177

## **Abu Dhabi Office**

Arab Tower 5th Floor Suite 504 P.O.Box 44046  
Abu Dhabi UAE  
Tel: +971 2 674 4535 Fax: +971 2 676 8762

## **Sharjah Office**

Al Reem Plaza Bldg 3rd Floor Suite 306 P.O.Box 5099 Sharjah UAE  
Tel: +971 6 572 7255 Fax: +971 6 572 7258

## **Dubai Internet City Office**

Bldg. 5 G 08 P.O.Box 500188 Dubai UAE  
Tel: +971 4 391 2444 Fax: +971 4 391 6864

## **Qatar Associate Office**

Adv. Mohammed Al-Marri in association with  
**Al Tamimi & Company**  
Ras Abou Aboud, 3rd floor  
Next to Abou Baker Al Siddik Mosque  
P.O. Box 23443, Doha, Qatar  
Tel: +974 444 1232 Fax: +974 436 0921

## **Iraq Associate Office**

Jason Majid  
Email: [j.majid@tamimi.com](mailto:j.majid@tamimi.com)

**APPENDIX 3**  
**CERTIFICATE OF LANGUAGE EVALUATION**

# ***FANIE POSTMA***

BA UOD

VERTALER / VERSORGER

BY SATI GEREGISTREER

(Nr 1001334)

Tel 018 4687680

Sel 083 4096252

VILLA HEIDE 24

FLIMIEDA

KLERKSDORP

2570

Posbus 6716

FLAMWOOD

2572

E-MAIL adres:

[elmariepostma@gmail.com](mailto:elmariepostma@gmail.com)

20 Oktober 2009

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Hiermee word gesertifiseer dat die skripsie: " A comparative study between United Arab Emirates and South African Labour Law " van Dirk Bloem deur Fanie Postma vir taalkorrektheid versorg is.

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FANIE POSTMA

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Me. AGS COETZEE

Posbus 5333

KOCKSPARK

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Sel: 073 157 0502

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