



The Novel Coronavirus (COVID-19)

Guidance Document

UAE

16 April 2020

CONTENTS

I.	INTRODUCTION	3
II.	How UAE Employers Can Support their Business	3
III.	UPDATE Re: How UAE Employers Can Support their Business	6
IV.	Remote Services Provided by Dubai Notary & Dubai Economy	8
V.	COVID-19 Effect on the Education Business: Know Your Rights	9
VI.	Immigration Alert: Expired Residency and Visitors' Visas Extended Until End of December 2020	12

I. INTRODUCTION

Amid a crisis like the COVID-19 pandemic, corporations are dramatically confronting the adverse implications of this outbreak. A team of MBI lawyers produced this document to support corporations in tolerating these challenging impacts whilst providing a healthy, sustainable and productive work environment.

The purpose of this document is to provide some legal guidance and insights to corporations, including:

- How UAE Employers Can Support their Business (Section II);
- Update re: How UAE Employers Can Support their Business (Section III)
- Remote Services Provided by Dubai Notary & Dubai Economy (Section IV);
- COVID-19 Effect on the Education Business: Know Your Rights (Section V); and
- Immigration Alert: Expired Residency and Visitors' Visas Extended Until End of December (Section VI).

II. How UAE Employers Can Support their Business

The novel coronavirus (“**COVID-19**”) has been declared pandemic by the World Health Organization in March 2020 and with person-to-person transmission, reported cases have continued to grow exponentially. As COVID-19 continues to unfold, employers are facing avalanche uncertainty over what they must do and what they can do. As governments and public health authorities adjust their policies to respond to the challenge, companies need guidance on how best to address the situation with regard to their employees. Accordingly, we have listed key points on employers’ rights under UAE Federal Law No. 8 of 1980 (“**UAE Labour Law**”) and recommended safety measures followed by global businesses.

Employers Rights under UAE Labour Law

Sick Leave: The UAE Labour Law entitles all employees, who are actually sick, a maximum sick leave of 90 calendar days in any 12-month period. The salary of the sick employees during this period will be paid as follows:

- the first 15 days are payable at full pay;
- the next 30 at half pay; and
- the remaining 45 days are unpaid.

In light of the recent situation of COVID-19, where most of the countries around the globe have announced closure of their air-space and governments has been taking precautionary measures to apply social distancing, employees have to abide by these precautionary measures in order to reduce any chances of contamination.

In case the employee recklessly did not respect (i) the country travel restrictions and/or (ii) the employer's internal policy in relation to the current situation, and consequently got infected, it is in our views that sick leave as organized under the UAE Labour Law would not apply. This is because the sickness of the employee in question has occurred as a result of his/her recklessness behavior. However, employers **may choose to class the absence as sickness and apply normal sick pay rules** as a precautionary measure to protect their business.

Annual Leave: in the UAE, employees are entitled to a minimum annual leave of 30 calendar days. An employer has the right to determine the time and periods of annual leave and therefore, employees could be required to take paid annual leave provided, of course, that they have sufficient leave balance available. In a situation where the annual leave entitlement is exhausted and the employee cannot return to work due to COVID-19, employers may place them on unpaid leave. However, employees cannot be forced to accept unpaid leave. This has to be mutually agreed in writing between both parties.

Salary Reduction: as a general rule under the UAE Labour law, employers cannot compel employees to accept salary reduction. However, they can discuss salary reduction plan and terms with employees and an employee might want to accept the cut for the greater good of the company. Any agreement to reduce salaries must be accepted by both parties (employer and employee) and noted in writing (please consider the amendment of the employee's contract with the Ministry or free-zone authority as the case may be).

Although cost-cutting reflex is understandable, employers are obligated to make responsible decisions to keep your business afloat. Accordingly, employers should consider calculating pay cut percentage based on a hierarchy system. We believe that cost cutting should be top down approach, i.e. senior leaders/officers as these cuts will cover for the salaries of employees that are the bottom of the pyramid (operational day-to-day).

Another tip in relation to cost cutting- it is more favorable to the employee if the reduction apply to the allowances and not to the basic salary, which will have no effect on his EOSB later on.

Un-paid Leave: similar to the salary reductions, employer cannot force the employee to go on an un-paid leave. This principle is not organized under the UAE Labour Law and has never been tested in practice. Therefore, whilst this is an option for employers to reduce the running cost of salaries, this has to be done by way of written agreement with the employee. Unpaid paid leave may take the form of:

- specific period of, for example, one, two or three months; or
- un-paid leave of a week per month, with the understanding that the employee would work three weeks only each month.

Layoffs: employers are not allowed to terminate employees' contracts with no cause and, in such event, employers will likely face claims for arbitrary dismissal as per the UAE Labour Law. Further, as per recent publications, the Ministry of Human Resources and Emiratizations (“**MOHRE**”) confirmed that their stance thus far is that the COVID-19 outbreak has not been declared a force majeure event and in the absence of special provisions relating to the exceptional measures taken as a result of the COVID-19 outbreak, the status quo remains and both employers and employees will be bound by their rights and obligations as outlined under the UAE Labour Law and their relevant agreements. Thus, we believe that forced terminations will be treated as a breach of contract, and applicable precedents as to unlawful termination shall apply.

Hiring and Termination of employment contracts before commencement: Unfortunately, due to the COVID-19 outbreak, many employers have to withdraw employment offers given to potential employees (offers given before the outbreak started), as this became a financial burden to the business. However, this situation may be considered as a breach of contract causing the potential employee material damages, having resigned from his/her current position.

Furthermore, the MOHRE did not declare COVID-19 as a force majeure event. Should your company be in a similar situation where it needs to withdraw an offer which has already been accepted by the employee, we strongly encourage employers to review all relevant employment agreements/offers and consult with their legal counsels to further understand their rights.

How to Protect your Business

Employers should review and update the business continuity plan to ensure sustainability of their business, cash flow and capital. Setting people up to work from home is certainly the most logical, safer and popular, route for an employer. Ensuring therefore that you have the proper infrastructure in place is critical which

will include making sure there are sufficient laptops, mobile phones, printers and any job specific technology or facilities available for all employees who may need them. But that's not the only thing to consider: the duty to protect the health and safety of workers extends to home working. Employers should be carrying out risk assessments which will vary depending on the type of work and how long the employee is expected to work at home.

How to protect your employees

Employers owe their staff a duty to protect their health and safety. As part of this employers should communicate with employees to assure them that the employer is aware of the issues, monitoring the situation and taking steps to plan for disruption. The communication should also relay the current government advice in relation to infection prevention, including in relation to hygiene. As well as communicating advice, employers should make sure there are adequate hand-washing facilities available at the workplace. The advice from government and health professionals is that regular proper hand washing is the best way to protect ourselves against infection. Providing alcohol-based hand gel and tissues, is also sensible, for staff but also for members of the public who may use facilities, such as in hotels, shops and cafes.

III. UPDATE Re: How UAE Employers Can Support their Business

On 26 March 2020, and in view of the declared nationwide state of emergency due to COVID-19, the UAE Ministry of Human Resources and Emiratization (“**MOHRE**”) issued Ministerial Resolution No. (279) of 2020 on Employment Stability in Private Sector during the Period of Application of Precautionary Measures to curb the Spread of Novel Coronavirus (“**New Decree**”). The New Decree primary purpose is to help business owners in the UAE to protect their business and develop a contingency plan to prepare for a range of eventualities regarding the business impact of COVID-19, through providing further guidance to the private sector on certain topics already regulated under UAE Federal Law No. 8 of 1980 (“**UAE Labour Law**”). The New Decree would only be valid during the period of the precautionary measures to overcome this pandemic disease and protect the future of the country.

The New Decree does not apply to UAE nationals, but rather to foreign employees only. The New Decree primarily allows private sector employers and business units that are affected by the precautionary measures to curb the spread of COVID-19 to apply gradual and progressive measures in conjunction with their

employees to address and tackle the negative economic impact on their businesses. These measures are as follows:

1. Implementing a remote work system
2. Granting employees paid leave
3. Granting employees unpaid leave
4. Temporarily reducing salaries during the aforementioned period
5. Permanently reducing salaries

Further, as the business owners in the UAE are facing unprecedented challenges amidst the ongoing COVID-19 crisis and with no certainty as to when this crisis will end, the New Decree provides some relief by enforcing the above actions while taking into consideration the following:

Temporary Salary Reduction: under article 5 of the New Decree, businesses seeking to temporarily reduce the salary of an employee during the said period shall sign an additional annexure provided by the MOHRE. The validity of this temporary annexure is limited to the agreed upon term, or as long as this New Decree remains valid, whichever is earlier.

Permeant Salary Reduction: under article 6 of the New Decree, businesses seeking to permanently reduce the salary of an employee should first obtain the MOHRE's approval by applying for "employment contract details amendment" service.

Redundant Employees: The New Decree does not openly address the redundancy option, or introduce new regulations or obligations on the employers' side who wishes to make employee(s) redundant. Though, the New Decree directs employers who have more staff than needed (impliedly means who wants to make employees redundant), they must register the additional staff on the virtual job market, so that they can be recruited by other businesses. Meanwhile, these employers will remain obliged to provide employees with accommodation, healthcare insurance and other employment commitment, **except for salary**, as long as they are in the country or until they are hired by other employers.

While some businesses may think that this is a reliable/economic option to their operation during this critical period (which will allow them to make partial redundancy), we believe that the regulator's view of this provision is in favour of the employee for the following reasons:

- the employer will let go of the employee and continue to pay for his accommodation and other living allowances, which will be sufficient for the employee to survive during this critical period;

- the employer does not know for sure when the Application of Precautionary Measures period would last -during which it keeps paying the allowances-, in order to calculate its continuing loss; and
- it is in the best interest of the employer not to make the employee redundant and seek one of the options under article 2 of the New Decree.

New Hires: under article 4 of the New Decree, business seeking to recruit during the suspension of overseas hiring shall find reasonably suitable replacement locally and apply for internal work permits through the MOHRE online system.

The main purpose behind this recommendation is to allow sectors that have high demand for hiring now to be able to secure its needs from other sectors, which have been affected by the COVID-19 financial distress.

Job Seekers: under article 7 of the New Decree, job seekers in the UAE shall register with the virtual job market and apply for available opportunities based on their qualifications and experience.

In conclusion, UAE employer strategies to address the crisis may implicate a variety of employment laws and regulations. This could lead to flooding the UAE courts with employment cases. Accordingly, business owners need to consider reasonable measures to protect their businesses and minimise losses.

Unlike the wider community interpretation of the legal effect of this New Decree on the employees in the UAE, we believe that it aims to provide several creative solutions to the employers that may reduce the redundancy decisions as a first option, rather than facilitating or allowing employers to take extreme measures against their employees.

Please note that the above is only a summary of the New Decree and not a legal advice, as we expect further guidance to be issued by the MOHRE in relation to the application of this New Decree and the obstacles that will rise once applied.

IV. Remote Services Provided by Dubai Notary & Dubai Economy

As a result of the declared nationwide state of emergency due to COVID-19, the Dubai courts have initiated the following remote services for Dubai Notary and Dubai Economy.

Dubai Notary Services: The Notary Public offices in the UAE are now closed as a result of the COVID-19 pandemic. The government has introduced remote notarial services until 9 April 2020 to be able to

continue to provide companies and individuals with minimum services necessary for their continued operation. The following are the limited notarial services currently being provided remotely for:

- all types of powers of attorney;
- acknowledgments;
- legal notices;
- agreements related to civil companies for the purpose of their incorporation and introducing any amendments to their memoranda of association; and
- local agency service agreement.

The remote Notary Public services will be conducted via video call during the hours between 8am and 4pm Sunday to Thursday. The requirements for translated documents, supporting documents and such are still required for remote notarization. ***We will continue to provide our usual services to assist with the remote notarization process for the limited notarizations listed above (including translation services).***

Dubai Economy Services: Dubai Economy has requested the avoidance of the Happiness Centers for a period of two weeks but they are still available to answer any queries by phone or e-mail. ***We will continue to provide our usual services in connection with Dubai Economy.***

In conclusion, in response to the COVID-19 situation, Dubai has put in place remote notarial and corporate services for certain transactions in order to assist companies in continuing the operations.

Please note that the above is only a summary of the new measures that have been in place and not legal advice.

V. COVID-19 Effect on the Education Business: Know Your Rights

The COVID-19 pandemic has had unprecedented effects on individuals and corporations all around the world, causing major societal shifts and has resulted in unforeseeable changes to many businesses worldwide. This article focuses on the effect of COVID-19 on a very sensitive industry that, in one way or another, is relevant to all of society. No matter where you are, what sector of business you are in or even how old are you, you may somehow be connected to the education sector. Whether you are a parent, student or even a school owner/manager, this article will help you understand your rights and obligations as a result of the COVID-19 outbreak.

Since the beginning of March 2020, after the WHO announced that the COVID-19 virus is a global pandemic, schools, colleges and universities have been scrambling to deliver their curriculums as smoothly as possible through 21st century technology under the concept of “**Distance Learning/Online Education**”.

Whilst the decision of schools to shift their service from “Live Education” to “Online Education” was due to the UAE’s government direction to close schools as a measure of fighting the spread of the COVID-19, this is legally considered as a unilateral change of the schools’ obligation, whilst expecting the parents’ obligations (mainly payment of fess) to remain the same. There are no explicit provisions in the UAE’s education laws that account for this type of situation, therefore we must turn to the principles of contract law. To examine this situation further, the concepts of *force majeure*, *good faith* and *hardship* must be considered.

In short, *force majeure* is a mechanism by which parties to a contract, each of whom are under a different set of obligations, are either fully or partially released from their obligations in response to a *force majeure* event. Namely these events would cover acts of God, such as hurricanes or tsunamis, and they may be extended to pandemics such as COVID-19. Article 273 of the UAE Civil Transactions Law No.5 of 1985 (“**Civil Transactions Law**”) describes two situations of *force majeure*;

- either the performance of the contract by a party is impossible and so that party is discharged, in which case the corresponding obligation of the other party is also discharged and the contract is automatically canceled; or
- if the performance of the contract by a party is partially impossible, that impossible part is discharged and the corresponding part for the other party is also discharged. This may also be for a temporary, not necessarily permanent, period. The parties would then have the option to cancel the contract.

Returning to the contractual obligations of both the school and the parents, we notice that schools have essentially invoked this concept of partial impossibility under *force majeure* to modify their obligations to provide Online Education, instead of what they have offered the parents at the beginning of the relation, which is Live Education. Whether Online Education is a sufficient replacement to Live Education is a heavily debated argument.

In other countries, the concept of Online Education has been known for decades and is subject to its own set of regulations, rules, overseeing bodies and systems. However, this is not the case we are all

encountering at the time being. While Online Education provides flexibility, availability and self-direction, and it is clearly the only way that education may continue during these trying times, it comes with many pitfalls, for example:

- There is not much accountability to or supervision by teachers;
- Limited interaction with other students and teachers;
- Technological hurdles; and
- Parents are not trained professionals to oversee this process (especially with higher grades).

In summary, this is not what Online Education has ever promoted.

As the nature of the schools' and education providers' obligations have changed, this may trigger the corresponding change in the parents' obligations to pay reduced fees, on the basis that students are no longer using the institutions' utilities, transportation, meal options, social activities etc.

Online Education must be supervised by parents who are facing potential pay cuts or redundancies and are juggling their family life with their work and professional commitments at a completely new level. The benefits that schools are gaining from the reduction in their costs should ideally be reflected back to the parents by way of a discount or refund on tuition. As of the date of this article, within the UAE, there has only been one school group, which announced a 20% reduction in school fees. Other schools may follow suit, but thus far this has not been the case. Although the invocation of force majeure should be enforced on both sides, education providers are changing their obligations without allowing the other side - the parents who are paying the full fees - to benefit from the *force majeure* mechanism too.

Article 246 of the UAE Civil Transaction Law imposes a degree of *good faith* on contracts and places them in the wider context of observed customs and the nature of the transaction. What this means for our purposes is that the interpretation of the schools' and the parents' obligations should be re-examined in light of the current events. Both parties need to exercise a degree of *good faith* in how they perform their obligations and in what they accept from the other side. Education providers should take into account the circumstances of the parents if they expect the parents to accept the alternative ways in which they are performing their obligations so as to not destroy the mutual benefits that were originally agreed upon.

Under Article 249 of the UAE Civil Transaction Law, a party to a contract who is facing partial impossibility to perform its obligation may ask the court to amend the parties' obligation to reset the

contract economic balance. To put it simply, the court may find that the only legally reasonable response to the effect of the pandemic for the purposes of continuing education was to switch to Online Education rather than Live Education, and correspondingly, reduce the financial burden on the parents. This is the *hardship* approach in which a judge, at his discretion, may alter obligations to re-balance them in the interests of justice.

Conclusion

The education providers have amended their obligations of delivering Live Education system as a result of the partial impossibility due to the COVID-19 outbreak. Well, this is entirely legal on the basis of *force majeure* and partial impossibility of delivering their original services, however the takeaway from all of this is clear: the decrease in the use of the education providers' resources should be reflected in what the parents pay in annual fees. Some examples on which the education providers can make a compromise is through:

1. a carried-over discount on transportation, uniforms or tuition fees for next year;
2. refund on pre-paid transportation, tuition or activities fees; providing payment and instalment schemes for the various fees;
3. applying specific discounts on fees to parents who confirm they have been affected financially due to COVID-19 too; or
4. exchange the value of the fees already paid for other/future school services and activities.

Lastly, the best way in which education providers and parents can reach an understanding is for the education providers to open up a line of communication to hear the parents' reasonable suggestions, complaints and worries, and education providers to be creative and flexible. This approach would go a long way to show *good faith* on both sides.

VI. Immigration Alert: Expired Residency and Visitors' Visas Extended Until End of December 2020

As there is tremendous uncertainty on when the "normal life" will resume i.e. when will the novel coronavirus ("COVID-19") end, the UAE government has been working continuously to support its residents and mitigate the impact of COVID-19. The outbreak of the COVID-19 has been declared pandemic by the World Health Organization a few months back. As has happened with other recent global health emergencies, governments in many jurisdictions have implemented a range of temporary

immigration-related measures in order to contain the spread of COVID-19. Accordingly, the UAE continued its protective measures by implementing travel restrictions, however, it provided some relief for its residents as follows:

- ❖ Extension of UAE residence visas until 31 December 2020, applicable on visas expired from 1 March 2020. This extension applies to residents both inside and outside the country.
- ❖ Extension of visitor visas until 31 December 2020, applicable to visitors inside the UAE with visas expired from 1 March 2020 onwards.
- ❖ Extension of UAE Nationals' Identification Cards until 31 December 2020, applicable to ID Cards expired from 1 March 2020. This extension applies to nationals both inside and outside the country;
- ❖ Extension of government services expiring on 1 March 2020 onwards, for a renewable period of three months starting from 1 April 2020. This applies to all federal government services, including documents, permits, licenses and commercial registers.
- ❖ Although the new governmental updates did not explicitly mention canceled visas, we expect canceled visa holders to be given a grace period, without incurring any penalties for overstaying. This would be in line with the overall policy and approach implemented by the UAE government during the COVID-19.

With the safety of our dedicated lawyers and clients as top priority, we stand ready to help clients through the unprecedented times ahead of us.

For further support or query, please contact us.

Stay safe and healthy.

Sincerely yours,

Matouk Bassiouny & Ibrahim

DUBAI OFFICE

Office 601, Maze Tower
Sheik Zayed Roud, Dubai, UAE
T +(971) 4289 2195
F +(971) 4330 1091

ABU DHABI OFFICE

24th Floor, Al Sila Tower
ADGM Square, Abu Dhabi, UAE
T +(971) 2694 8668

dubaiinfo@matoukbassiouny.com

www.matoukbassiouny.com