

The majority of the workforce in the UAE consists of expatriates who are mostly working in the private sector. In order to increase the Emirati workforce in the private sector various Emiratization initiatives, most recently Ministerial Decision No. 212 of 2018, have been launched. Recent application of this Ministerial Decision in the Emirate of Dubai will make it necessary for Employers to take a closer look at Emiratization requirements.

1. Legislative Background until 2018

Until 2018 various Emiratization regulations have been enacted, regulating a minimum quota of Emirati employees in the private sector. However, these quotas have either been limited to certain sectors (between 2% and 5% in the banking, insurance and trade sector) or to certain job positions (secretary, PRO).

2. New Regulation in 2018

In April 2018 MOHRE passed a new decision (Ministerial Decision No. 212 of 2018, “MD”) which abrogated the old regulations and provides new conditions for the employment of Emirati nationals in the private sector. The MD came into force in June 2018.

Emirati nationals can be hired in accordance with the general conditions set forth in UAE Federal Law no. 8 of 1980 (the “Labor Law”). However, Art. 3 of the MD regulates that employment contracts for Emiratis shall be concluded for a period of 2 years with the option to renew for further similar periods.

After the Emirati national has been hired by the company, MOHRE will provide him/her with a service manual that outlines the rights and obligations of employees in the private sector. MOHRE will also forward all employment details to the General Pensions and Social Security Authority on behalf of the employee for registration. On the other hand, the employer will have to register itself with the General Pensions and Social Security Authority within 6 months after having hired the Emirati national. MOHRE will not support the employer in this regard.

The provisions of the MD also include certain additional requirements regarding the termination of Emirati employees: The employer must conduct an “exit interview” with the Emirati national which must be submitted to MOHRE¹.

Art. 6 of the MD specifies the conditions under which a termination will be deemed invalid. A termination of an Emirati’s employment will be classified as unjustified and hence arbitrary, when

- the reason for termination was not in accordance with Art. 120 UAE Labor Law; or

¹ It remains unclear what will happen to the interview once submitted to MOHRE as the MD is silent about the further procedure.

- the employer keeps an expatriate employee for the same job position or replaces the Emirati national with an expatriate employee; or
- the termination is not work related; or
- the employer did not observe the conditions of Art. 5 of MD (exit interview and observance of UAE Labor Law conditions).

If the Emirati employee files a complaint with MOHRE, MOHRE can re-instate the Emirati employee into his/her previous employment².

Lastly, the MD sets out certain penalties for cases of non-compliance with the provisions of the MD.

3. Practical Application of the MD

The MD has been implemented in the Northern Emirates in 2018. Until June 2019 no implementing steps have been taken in Dubai and Abu Dhabi.

Since mid-June 2019, reports are increasing that Dubai is implementing the MD by linking it to the online application system for new work permits. If a company applies for a new quota

for a new employee, the system will automatically cross-check the job seekers' register for any Emirati that has registered himself/herself for the same position as the company applying the quota for. If the system finds an Emirati national for that specific position, the quota will be rejected and blocked until the company has conducted a job interview with the Emirati candidate. The job interviews can either be conducted by phone or during a so called "Open Day" regularly organized by the MOHRE.

Only if such an interview was not successful, will the system be unblocked, and the quota approved. However, it remains unclear under which conditions and for which reasons the Emirati candidate can be rejected by the company.

It should be noted that the new application system and Emiratization process is applicable to all companies with a minimum of 10 employees who wish to employ someone for a position with certain skill levels³.

As the application system is new, it remains to be seen how the authorities will deal with the number of interviews to be conducted and the outcome of those interviews. Further developments in this regard should be closely monitored.

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² This is not possible for expatriate employees. Their rights in case of wrongful termination are limited to compensation / damages.

³ As per information received from MOHRE, the MD shall apply to higher skill level-positions (levels 1, 2 and 3), which will generally require university, technical or secondary school qualifications, respectively.