



Restrictions on collective redundancies of Saudi nationals

Middle East Legal Update

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By: Neil Crossley | Patricia Wardrop

As part of the Kingdom of Saudi Arabia's wider Saudisation initiative, new legislation has been brought into force which prohibits employers from collectively dismissing its Saudi national employees without prior approval from the labour authorities.

On 29 January 2017, the Minister of Labour and Social Development issued Ministerial Resolution No. 50945 ("Resolution"), which restricts employers from collectively dismissing Saudi workers in 'no fault' dismissals. These restrictions became enforceable on the same date.

The changes will make it harder for employers to dismiss Saudi national employees in redundancy situations resulting from business reorganisation or restructure. Therefore, employers should be mindful of the new law when considering and planning such changes.

When will it apply?

The Resolution applies to medium, large and mega/huge companies, which – at the time of writing – means companies with at least 50 employees and restricts them from carrying out a collective dismissal of Saudi employees for any reason, without prior notification to the relevant labour office at least 60 days before the planned dismissal. The only exceptions to this prohibition are in circumstances of bankruptcy or final closure of the company.

For the purposes of the Resolution, 'collective dismissal' refers to:

- The termination of the services of a group of Saudi employees
- For reasons relating to the employer rather than to the employee – i.e. 'no fault' dismissals
- At a rate exceeding the greater of (i) an aggregate of 1% of the total number of workers at the company; or (ii) an aggregate of 10 workers within a year of the last dismissal process

Our understanding of how this would apply in practice is that if, for example, a company has 2,000 employees, the Resolution would not be triggered until at least 20 Saudi employees are dismissed for no-fault reasons over the course of a year.

Notification

Where there is a collective dismissal, the company must notify the relevant labour office with the following details:

- A financial study showing the reasons for the collective dismissal
- In respect of the Saudi employees to be dismissed: (i) the number of employees; (ii) their names; (iii) the description of the positions held; and (iv) the individual reasons for dismissal
- In respect of the non-Saudi employees whose position within the company is the same grade/level as the Saudi employees to be dismissed: (i) the number of employees; (ii) their names; and (iii) a description of the positions they hold
- Details of the measures taken by the company to avoid the dismissals

The labour office will review the notice and, within 45 days, give its opinion on the same, in light of the following considerations:

- The actual financial position of the company
- The possibility of avoiding dismissals of Saudi employees by replacing non-Saudi employees who are in similar positions in the company with the Saudi employees identified for dismissal
- The possibility of securing alternative positions in the company, or other companies with the same owner
- The possibility of finding settlement solutions with the Saudi employees identified for dismissal

The Resolution also provides for a committee to be established in each labour office in order to consider such notifications and respond to the company accordingly. The committee is granted various powers to deal with the notice, and it may:

- Require further information on the grounds and reasons for the collective dismissal
- Work together with the company to develop alternative solutions and proposals to enable the dismissals to be avoided
- Issue an opinion – or require an expert to do so – on the notice in light of the provisions of the Resolution, the Labour Law and its Executive Resolutions
- Reject the notice and the grounds and reasons given for the dismissals – it appears that this would therefore mean that the dismissals were unlawful
- Accept the notice and deem the grounds and reasons for dismissal to be satisfactory
- Where the committee is satisfied with the grounds and reasons for the dismissals, develop a plan for remedying the impact on the affected Saudi employees

Penalties for breach

In the event that an employer breaches the provisions of the Resolution, the Ministry's services will be suspended in respect of that company until the breach is remedied. Suspension may be from 30 days up to 720 days, depending on the severity of the breach. Suspension of services means that employers are restricted from obtaining new work visas and limited in their ability to influence the transfer of sponsorship of expat employees to and from the company.

What does this mean for employers?

Employers should give consideration to their termination procedures in light of the Resolution, particularly in respect of:

- Timing – in light of the notification period required under the Resolution, the timing of any redundancy procedures is a relevant consideration
- Reasons – employers may be less inclined to dismiss Saudi national employees on a no fault basis for concern that the Resolution may be triggered

It appears that in practice the provisions of the Resolution may be somewhat limited in scope for companies with only small numbers of Saudi employees.

Whilst individual redundancies are still likely to be unfair, the closure of a division may be permissible. In any case, where a collective redundancy is envisaged or planned, employers may still want to make a notification if dismissing a large number of Saudi national employees.

For more information regarding this new legislation, please contact the authors.

AUTHORS



Neil Crossley

Partner

Dubai | T: +971 4 438 6100

neil.crossley@dlapiper.com



Patricia Wardrop

Senior Associate

Dubai | T: +971 4 438 6100

patricia.wardrop@dlapiper.com
