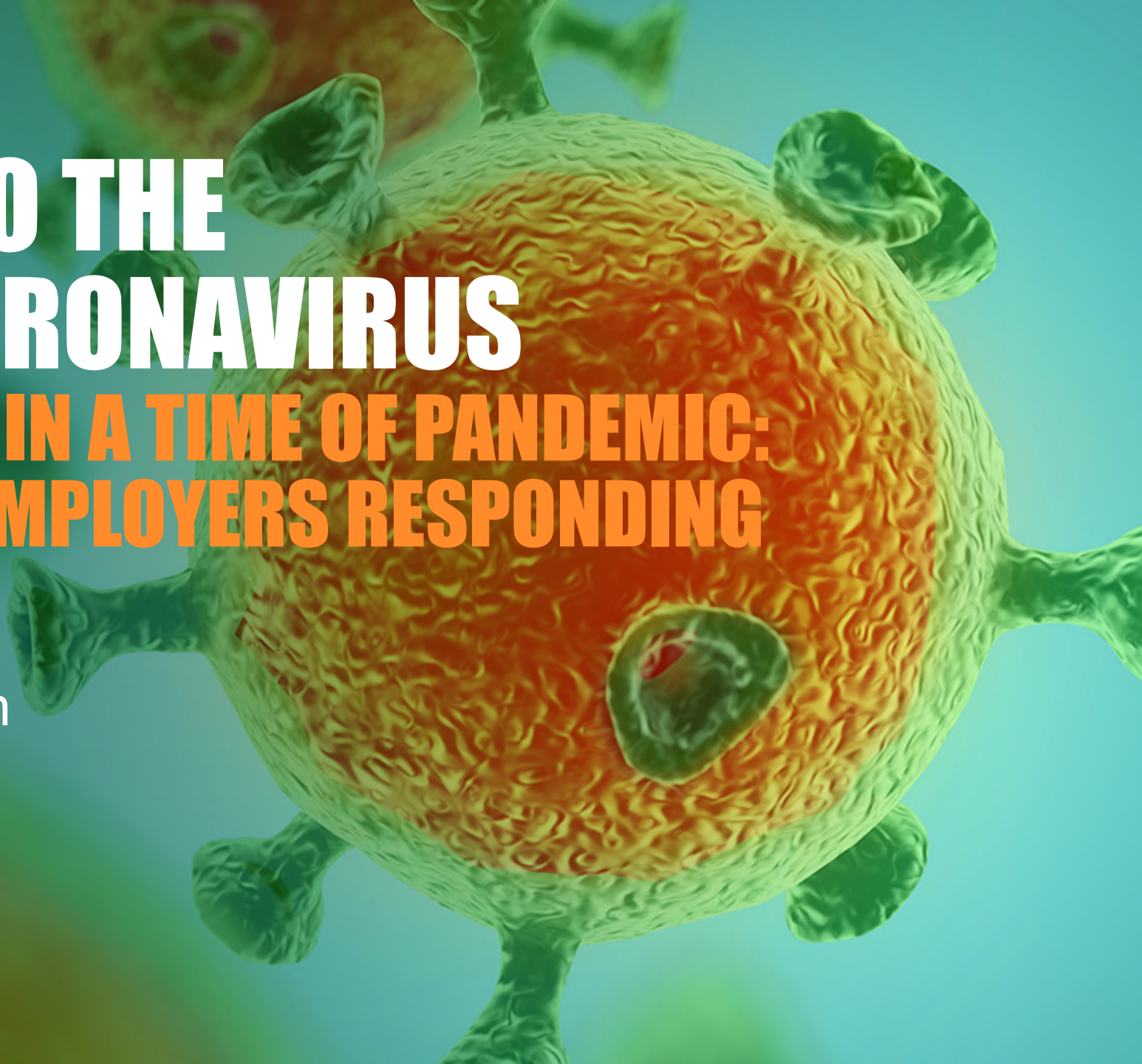


Morgan Lewis

RESPONDING TO THE 2019 NOVEL CORONAVIRUS

WORKFORCE ISSUES IN A TIME OF PANDEMIC: GUIDANCE FOR UAE EMPLOYERS RESPONDING TO COVID-19

Rebecca Kelly & Mark Gilligan
March 31, 2020



AGENDA

BUSINESS CONTINUITY IN A TIME OF CRISIS

EMPLOYMENT ISSUES

- 1 Legal Framework - UAE
- 2 COVID 19 Impact on Legislative developments
- 3 Top 10 Questions
- 4 Immigration Issues

DATA PROTECTION CONSIDERATIONS

PRACTICAL GUIDANCE

Q&A

Overview of the UAE Legislative Environment

- Sources of law
 - Various
 - Napoleonic code
 - Egyptian law (since early 1900's)
 - Other civil law jurisdictions
 - British protectorate period (1853-1971)
 - Shari'a principles
- Codified law
- Courts not bound by precedent
- Overview of court system (Federal and Emirate level)

Key Legislation

- Overview of relevant UAE legislation:
 - ***On shore:***
 - Federal Law No. 8 of 1980 (as amended) (UAE Labor Law)
 - Federal Law No. (14) of 2014 (as amended) on the Control of Communicable Disease
 - Ministerial Decision No. (233) of 2020
 - Attorney General Resolution No. (38) of 2020
 - Ministerial Decisions No. (279) / (280) / (281) of 2020
 - Federal Law No. 5 of 1985 (as amended) (Civil Code)
 - ***Off Shore:***
 - ADGM Employment Law No. 1 of 2014
 - DIFC Employment Law No. 2 of 2019
 - Free Zones – Relevant Directives (freedom of movement)

Sources of UAE Employment Law

- **Legal Framework – Employment Legislation**
 - UAE Labor Law
 - Overview of employment disputes process UAE vs free zone
- **Starting Point – Who is an Employee?**
 - Contractual Relationship UAE MOHR Contract
 - Possible to supplement by private contract
 - Employment is linked to residency status for employee and dependents
 - Distinguish between Limited and Unlimited Term Employment

Key Employee Entitlements under Labor Law

- Minimum entitlements are provided by statute and cannot be diminished by contract
- No “*at will*” employment status (save for during probation)
- Minimum 30 day notice period (save for termination for cause – Art. 120 of Labor Law)
- Termination must be for a reason related to the “employees work”
- Minimum annual leave entitlement (30 calendar days)
- Minimum Annual Sick Leave Entitlements (90 calendar days)
- Minimum salary and benefits are as per MOHRE employment contract
- End of service gratuity payments

Key Employee Entitlements under ADGM & DIFC

- **ADGM Employment Law No. 1 of 2014**

- No standard employment contract is prescribed but it must be *in writing*
- An employee can be placed on a probation period of up to six months
- Sick leave period is generous, with 60 working days for a 12-month period
- An employee is entitled to 20 working days as annual leave
- Part-time working arrangements are available, a novelty in the UAE, and leave entitlements are calculated on a pro-rata basis
- A minimum of 65 days for maternity leave (33 days fully paid, remaining days paid at 50% of salary), while paternity leave is for 5 working days
- While no express provision covers overtime compensation, the maximum working week is 48 hours
- Personal data, processing and transfer of such data is heavily regulated, obligations are imposed on employer to undertake appropriate measures to prevent unauthorized or unlawful use and processing of personal data
- End of service gratuity is calculated in the same manner across the UAE, including in the ADGM, the only difference being that gratuity is not reduced for an employee that has resigned
- Notice periods vary: for employees with 3 months to 5 years of service, the notice period is 30 days, while for those with more than 5 years of service, notice period is 90 days

Key Employee Entitlements under ADGM & DIFC

- **DIFC Employment Law No. 2 of 2019**

- No standard employment contract is prescribed but it must be *in writing*
- No distinction between limited and unlimited period contract
- Employee-favorable overtime of 150% of normal hourly salary
- An employee is entitled to 20 working days as annual leave
- Public holidays can be replaced by a day, or payment, in lieu
- Annual leave of 20 days, accrued pro rata after only 3 months, rather than 6 months
- 60 days sick leave, paid in full for the first 10 days, half for the next 20 days
- Part-time employees entitled to leave on a pro-rated basis
- Minimum basic salary of not less than 50% of yearly wage
- 5 working days of paid paternity leave
- Waiver of minimum rights if for settlement
- References whistle-blower protections

COVID 19 IMPACT

- March 18** • Closure of airspace for passenger flights for 14 days. UAE-wide closure of malls and markets. Public ordered to stay home except in cases of necessity. Lifting of fines for tourists in the UAE.
- March 23** • No visas on arrival for certain nationalities. No issuance of any type of labor permits.
 - Entry to valid residence visa holders suspended for 2 weeks.
- March 26** • The Ministry of Interior establishes the National Disinfection Program from March 26, 2020 to March 29, 2020.
 - Dubai's Crisis and Disaster Management Team introduces website to issue move permits during the hours of the National Disinfection Program.
 - Implement remote working for a minimum of 80% of employees for entities outside Dubai Critical Sectors until April 9.
 - Dubai Critical Sector companies to take necessary precautionary measures with due regard to the guidelines on sanitation and social distancing.
 - All UAE residents required to stay home unless absolutely necessary to get essential supplies such as food and medicine, or if working in Vital Sectors.

COVID 19 IMPACT

- March 28**
- The Ministry of Interior extends the National Disinfection Program until April 4, 2020.
 - Abu Dhabi Police launches website for issuance of move permits for Abu Dhabi residents.
 - UAE Attorney-General issues Resolution No. 38 of 2020.
- March 29**
- Maximum of 30% of the workforce of private entities is allowed to be physically present in the office while others work remotely - priority to be given to pregnant women, employees aged 60 and above, people of determination, employees with respiratory and chronic diseases and mothers of children in G-9 and below subject to the approval of their HR Department.
 - Reduce number of customers to maximum of 30% of an establishment's capacity at any time.
 - Compliance with preventive and precautionary measures required for all workers whose jobs require physical presence including provisions of temperature screening devices at entrances, putting in place a mechanism for transporting workers with vehicles not exceeding 25% of seating capacity, limitations on gatherings in workers' accommodations and reporting any worker with COVID-19 symptoms.
 - Maximum 30% of the workforce is allowed to be physically present in the office while others work remotely for all UAE ministries and federal authorities except for Vital Sectors, and any other activities excepted by a decision of the Cabinet of Ministers in accordance with public needs.
 - UAE Attorney-General issues update to Resolution No. 38 of 2020.

COVID 19 IMPACT

- March 30** • Ministry of Human Resources & Emiratization Officer of the Minister, issues:
 - Resolution No. 279 of 2020
 - Resolution No. 280 of 2020
 - Resolution No. 281 of 2020
- All issued to address the stabilisation of the private and public sector employees in the UAE workforce.

Top 10 Questions (1-5)

1. Employee obligations to attend workplace?
2. Continuing obligations to make salary payments?
3. Can reductions to employees pay be made without consent by the employees?
4. Can an employer demand that employees take annual leave?
5. Can an employer demand that an employee take sick leave?

Top 10 Questions (6-10)

6. Can an employer impose mandatory medical testing requirement on employees? Any reporting obligations if positive?
7. Can an employee be terminated without notice?
8. Can COVID-19 constitute a valid reason for redundancy or termination?
9. What payments are due to terminated employees?
10. What payments are due to employees being made redundant?

Working Remotely – Private Sector



العمل عن بُعد للقطاع الخاص Remote Work for Private Sector

في إطار التدابير الاحترازية والإجراءات الوقائية الرامية للحفاظ على الصحة العامة، وتحقيق أعلى مستويات السلامة لكافة أفراد المجتمع، وبناء على التعاميم والقرارات الصادرة عن الجهات المعنية، توجه اقتصاد دبي بصفتها الجهة المعنية بتنظيم قطاع الأعمال في الإمارة، جميع الشركات العاملة في القطاع الخاص والمنشآت التجارية باستثناء الجمعيات التعاونية والبقالة والسوبرماركت والصيدليات، بضرورة الالتزام بتبني منظومة العمل عن بُعد بنسبة 80% من إجمالي أعداد موظفيها، من اليوم وحتى يوم الخميس الموافق 9 أبريل 2020.

In view of the precautionary steps and preventive measures aimed to ensure public health and safety, and based on the circulars and decisions issued by the authorities concerned, Dubai Economy, as the authority regulating business in the emirate, directs all private sector companies and commercial establishments excluding pharmacies, cooperative societies, grocery stores, and supermarkets to adhere to implementing remote work system for 80% of their employees, from today to Thursday, 9th of April 2020.



Explanation of Remote Work for the Private Sector

Dubai Economy clarifies the decision to implement remote work for employees from today to the 9th of April 2020:

1. All companies should implement remote work for minimum 80% of the total number of employees
2. The following critical sectors are excluded and should take the necessary precautionary measures with due regard to the guidelines on sanitisation and social distancing:

- Health Sector
- Pharmaceutical Sector
- Food Retail Outlets (including animal feed)
- Industrial and Manufacturing
- Construction, Contracting & Building Materials
- Security services
- Logistics & Delivery services
- Supply Chain
- Workshops
- Cleaning services
- Cash transport
- Banking Sector

Dubai Economy is committed to protecting public health and safety and complying fully with the precautionary measures adopted by the government entities concerned.

Immigration Considerations

- Visa restrictions
- Medical test waiver
- Freedom to move between Free Zones
- Global travel restrictions

Data Protection Considerations

- Obligations to disclose health issues – UAE Federal Government
 - *"adequate protection means against hazards of occupational injuries and diseases that may occur during the work"*
 - Arguably, a need to collect data relating to exposure to COVID-19 to protect employees
- ADGM and DIFC
 - General duty to ensure health, safety and welfare
 - Processing of personal data in cases of emergency, provided data is processed fairly, lawfully and securely, adequate, relevant and proportionate to reason for collection
 - Ensure consent of the individual would likely be needed if health-related information is disclosed to third party

Immediate reporting of infected employee to the UAE Ministry of Health and Prevention (800 11111), or Dubai Health Authority (800 342), or Department of Health of Abu Dhabi (800 1717)

Practical Guidance

- Travel restrictions
- Social distancing
- National Sterilization Program
- Tourist visa extensions & penalties
- Mobile testing measures



Would you look at that, these carts provide just the right amount of social distancing!

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