

Employing good sense

Maintaining comprehensive and up-to-date employee records is not only good business practice, but can also be vital should a dispute end up in court

WORDS **SANAM SINGH**



In the past year, most organisations in Dubai have seen a significant amount of restructuring. The economic climate has meant that many employers have reviewed their existing organisational structure and sought to reduce and, wherever possible, limit their outgoings. As a result, some employees may have modified employment contracts (where the hours of work per week are reduced and so is the remuneration). Other employers have made redundancies and looked at phasing out certain positions.

The endeavour of every human resource professional is to try to ensure that the terms and conditions in employment contracts are consistent and uniform in respect of all the employees in an organisation, at least for employees of each grade. However, as the UAE is a melting pot of expatriate employees from various jurisdictions, this may result in multiple contracts with different terms. More often than not there are exceptions to the norms adopted, and once the cast is broken, things start to spin out of control.

RECORD COLLECTION

The onus of maintaining accurate and updated employee records lies with the employer. The management of employee records is vital to the effective functioning of any organisation. More so at a time when changes are being sought to be made to the terms or redundancies are being considered.

In the UAE, the current market practice when a candidate is being recruited is to

agree to the extensive terms of their employment in an offer letter. If the employment is onshore, then a standard form Ministry of Labour employment contract is to be filed with the Ministry of Labour at the time a labour card is issued.

If the employment is in a free zone, then the free zone may have a similar standard form employment contract which may need to be completed. In the event that an employee has multiple contracts with differing and inconsistent terms, the view that the courts in the UAE have generally taken is to give credence to the contract that benefits the employee's position.

Federal Law No 8 of 1980 (the "Labour Law") sets out the basis for the terms and conditions of employment for employees working in the UAE (excluding those working in the Dubai International Financial Centre

pation, age, nationality, place of residence, marital status, date of employment, salary and benefits, and any adjustments to these, penalties imposed against the employee, including details of any disciplinary action, occupational injuries and diseases. If the employee's services are terminated, the file must retain a record of the reasons for termination.

In addition, the Labour Law requires employers to keep a leave card for each employee to be divided into three parts: the first part for annual leave, the second for sick, and the third for other leave such as compassionate.

For more than 15 employees, in addition to the above, the employer is required to maintain a wage register and an occupational injuries register. In addition, the Labour Law requires employers to draft basic work rules specifying the working hours and necessary

IN THE EVENT THAT AN EMPLOYEE HAS MULTIPLE CONTRACTS WITH DIFFERING AND INCONSISTENT TERMS, THE VIEW THAT THE COURTS IN THE UAE HAVE GENERALLY TAKEN IS TO GIVE CREDENCE TO THE CONTRACT THAT BENEFITS THE EMPLOYEE'S POSITION

("DIFC"), including, for example, the working conditions for employees, the hours of work, leave, end of service benefits and termination of employment.

The Labour Law stipulates that if an employer employs more than five people, they are required to keep a file for each employee, showing their name, job, occu-

measures and precautions to be taken to prevent work-related injuries, and disciplinary rules, displayed conspicuously in the workplace stating the disciplinary actions an employer may take against defaulting employees; these rules need to be endorsed by the Labour Department within 30 days of submission to it.



EMPLOYEE PROTECTION

In the UAE, the recent introduction of the Wage Protection System (WPS) is an important development that will require employers to keep employee records up to date.

If there are any changes in the employee's terms of employment these should be reflected by amendment to the standard form employment contract filed with the Ministry of Labour as the WPS officer can cross-check the amounts paid to the employee with the filed employment contract.

The DIFC, a free zone where the Labour Law is not applicable, has sought to ensure that minimum international standards and conditions of employment are afforded to employees working in the centre. To that end, the DIFC Employment Law No 4 of 2005 (the "DIFC Employment Law") outlines the terms and conditions which an employment contract must specify.

The DIFC requires employers to maintain detailed payroll records for each employee, with the employee's details, wages, hours of work, and deductions (if any, with reasons for such deductions) and a record of vacation taken by the employee. These records are to be maintained in English and must be kept at the employer's principal place of business in the DIFC, where they must be retained for a period of two years after the employment has been terminated.

An important facet to employee record

management is the individual protection that the DIFC Data Protection Law No 1 of 2007 (the "DIFC Data Protection Law") affords to employees and employers working in the DIFC.

The DIFC Data Protection Law regulates the storage and transfer of employee records outside of the DIFC to the employer's head office or group companies and the transfer of employment details to third parties, such as payroll providers and banks to effect payroll.

In its application, the DIFC Data Protection Law would have an impact on pre-employment checks that a prospective employer may wish

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to make within the DIFC and to references which an employer based in the DIFC may give a former employee.

The efficient maintenance of employee records is not just a mark of good business practice, but can prove to be vital evidence

The new Wages Protection System (WPS)

From September 2009 all companies registered under the UAE Labour Ministry had to start paying their employees' wages and salaries through WPS, which involves transfer of salaries through a few selected financial institutions, authorised and regulated by the Federal Government.

It's hoped that WPS will boost transparency and stability in the current fragile labour market and help to greater protect the rights of workers in the emirates.

Under the new system, the employer can choose any registered agent to participate in the WPS, and on receiving details about workers wages, the bank or institution will send the information electronically to WPS. The WPS will send the salary file to the agent for payment and the agent will then pay the employees.

The system will also feed the Labour Ministry with the necessary data base and information of all salary and wage payments in the private sector to enable the ministry to have credible information about wage and salary payment.

Government officials say that a dedicated WPS office in the Labour Ministry will ensure the process is functioning smoothly and that workers will not be subjected to any deductions or charges to get their salaries.

The decree also gives deadlines for the various categories of business institutions in the country to fully comply with the new system. According to the decree, institutions with 15 to 99 employees have until the end of February to comply fully with the new system, while institutions with 15 or less employees have until May 31.

Companies with 100 and more employees have already missed their deadline, which ended last November.

The new system could also save both employees and their employers the trouble of having to keep a huge amount of money at their work places.

which an employer may seek to rely on in a court of law in the event of an employee making a claim for arbitrary or unfair dismissal. ●

CONTRIBUTOR SANAM SINGH IS AN ASSOCIATE IN THE DUBAI OFFICE OF LAW FIRM TAYLOR WESSING