

# Saudi Arabia

## Introduction

### The Governing Law

Saudi labor legislation, not unlike the economic development of the Kingdom of Saudi Arabia, is a relatively recent phenomenon. The *Shari'ah*, the basic body of Islamic law set forth in the Holy Quran, and the Sunna (the words and deeds of the Prophet Mohammed) prevail in Saudi Arabia. The Saudi authorities are, however, permitted to supplement the *Shari'ah* and do so through the issuance of regulations, decrees and circulars.

During the major part of the first half of the twentieth century, the economic development of Saudi Arabia was, to a large extent, in a pre-industrial stage and the role of labor relations was limited. When they existed, labor relations were regulated by the *Ijara* contract, which in the *Shari'ah* applies to things as well as to persons. However, with rapid industrialization and economic advancement of Saudi Arabia, attempts to regulate labor relations were made by the government. The current statutory regime governing labor relations is provided in the Saudi Labor and Workmen Law, which was issued pursuant to Royal Decree N° M/51 dated 23/08/1426H (corresponding to September 27, 2005).

The Labor Law is generally a well conceived piece of legislation that is significantly more comprehensive in scope than previous regulations on the subject. The Labor Law organizes, in a fairly detailed manner, the rights and obligations of employers and employees, and provides certain protection to male and female employees. The Labor Law is statutory legislation that is *not* supplemented by case law since the Saudi Courts (including Labor Commissions) do not report their decisions and are not bound by any system of precedent. That fact leaves Saudi Courts with considerable discretion when adjudicating disputes between parties since matters are reviewed on a case-by-case basis.

### The Courts

The Labor Law established Primary and Supreme Commissions for the Settlement of Disputes, which have jurisdiction over labor disputes. A Primary Commission for the Settlement of Disputes is constituted in each labor office by a decision of the

Minister of Labor. Each Primary Commission is comprised of one or more circuits with one member who must be a holder of “*degrees in Shari’ah and law*,” named by the Minister of Labor and subject to the approval of the Council of Ministers. If the Primary Commission covers more than one circuit, the Minister will nominate a chairman from among the members who will organize and administrate the disputes among the circuits.

The Primary Commissions have exclusive and final jurisdiction over labor disputes relating to (i) claims not exceeding ten thousand Saudi Riyals (SR10,000, i.e., approximately US\$2,667 ); (ii) objections to the penalties applied by the employer to the workman; (iii) the imposition of penalties provided for in the Labor Law to violations whose penalty does not exceed SR 5,000. The Primary Commissions also have jurisdiction relating to (i) labor disputes exceeding ten thousand Saudi Riyals (SR10,000); (ii) termination of the employment contact; (iii) labor injuries regardless of the amount involved; (iv) the imposition of penalties provided for in the Labor Law to violations whose penalty exceeds SR 5,000; and (v) imposition of penalties on the violations that have consequential penalties.

The Supreme Commission for the Settlement of Disputes is located in Riyadh. It is composed of no less than three members who are appointed by a decision of the Council of Ministers, based on nomination by the Minister of Labor. The members of the Supreme Commission must be “holders of degrees in Shari’ah and law with experience in labor disputes.”

The Supreme Commission has exclusive jurisdiction to render final decisions on appeal of decisions rendered by the Primary Commissions in the first instance, which need to be made within thirty days from the date of utterance by the Primary Circuit. The Supreme Commission has also jurisdiction to sanction violations of the Labor Law.

## **Procedure**

The Council of Ministers has issued Resolution N°1 dated 4/1/1390H (May 11, 1970), which sets out the Rules of Procedure and Conciliation and Arbitration before the Primary Commissions and the Supreme Commission (the “Rules of Procedure”).

Article 2 of the Rules of Procedure provides that no claim or defense shall be entertained unless the party submitting or raising it has an existing interest. A party may name a third party provided such third party could have been a party to the action when it was originally filed.

Article 222 of the Labor Law and Article 6 of the Rules of Procedure provide that claims involving any violation of the Labor Law are time-barred after the lapse of twelve months from the date of the violation. Those articles also provide that claims relating to any right provided in the Labor Law are time-barred after the lapse of twelve months from the date of termination of employment. However, the right of the employee to seek a “stay of execution” (reinstatement) in case of termination lapses if the employee fails to submit an application to this effect to the Labor Office within fifteen days of being notified of his or her termination, without prejudice to his or her right to claim for damages within twelve months from that date.

As a matter of practice, labor complaints must first be submitted to the Labor Office located in the area where the employee works. If the dispute is not settled amicably by the Labor Office, it is referred to the Primary Commission located in that region. The parties may appear either in person or through a representative holding a notarized power of attorney. If the defendant does not appear at the first hearing, another hearing will be scheduled. If the defendant fails to appear a second time without an acceptable excuse, the Primary Commission may issue a default judgment against the defendant.

Article 224 of the Labor Law provides that in all cases the parties to a dispute may by mutual agreement submit it to arbitration rather than to the Commission. Article 224 further states that the provisions of the Saudi Arbitration Regulations and the Implementary Regulations must be applied in all cases; this includes specifying the timeframe and the rules of procedure of the arbitration. The arbitrators’ award can be appealed before the Supreme Commission, unless the arbitration agreement expressly provides that the arbitrators’ decision is final.

An arbitral award must be registered with the competent Primary Commission within one week from the date of its issuance. Following its registration, the Chairman of the relevant Primary Commission issues an execution order after which the award can be executed.

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## Terminations

### Restrictions On Employers

The Labor Law imposes some restrictions on an employer's right to dismiss an employee; however, governmental approval is not required. In general, certain changes made by the employer to essential elements of the relationship (such as responsibilities, place of performance and compensation) without the consent of the employee may be treated by the Labor Commission as a constructive termination of the employment relationship, thereby entitling the employee to indemnification.

The Labor Law recognizes two basic types of employment contract: fixed term contracts (for a specified period of time) and indefinite term contracts (for an unspecified period of time). Generally speaking, a fixed term contract is terminable only for one or more of the causes mentioned in Article 80 ("cause") prior to the expiration of the defined term. Indefinite term contracts may be terminated for "cause" or for a "valid reason" at any time during the employment relationship. A definite term contract becomes indefinite if the parties continue to observe it after the completion of the term (the prevailing view among Labor Commissions is that this should also apply even if the labor contract expressly provides for a renewal of the employment term for a further specified period).

### Termination By Employer For Cause

Pursuant to Article 80 of the Labor Law, an employer may terminate a fixed term or indefinite term employment contract without notice or liability for an end-of-service award or termination indemnity if the employee commits an egregious for "cause" act. Article 80 lists the "cause" bases for termination, as follows:

- (i) The employee has assaulted his or her employer or supervisor;
- (ii) The employee has failed to perform his or her main contractual obligations, obey orders or obey posted safety rules after written warning;
- (iii) It is proved that the employee adopted a bad conduct or is guilty of a dishonest or dishonorable act;
- (iv) The employee has willfully caused material loss to the employer;
- (v) The employee has misrepresented himself or herself, or forged papers to obtain employment;

- (vi) The employee has been hired on probation and is found to be unsatisfactory during his or her probationary period;
- (vii) The employee has absented himself or herself inordinately;
- (viii) The employee has illegally taken advantage of his or her position for personal gains; and
- (ix) The employee has divulged trade secrets concerning his or her work to third parties.

Any termination under Article 80 requires the employer to give the employee a “show cause notice” permitting the latter to present a defense. The employer has to prove that any discharge was for cause and the employee has the right to appeal the dismissal to the local Labor Office within 15 days.

### Termination By Employer For Valid Reason

Indefinite term employment contracts may also be terminated for a “valid reason,” without liability for the payment of a termination indemnity; however, the employee would be entitled to notice and the payment of an end-of-service award. Article 75 of the Labor Law provides that:

“If the [labor] contract is for an indefinite term, either party may terminate it for a valid reason, subject to giving the other party a thirty day prior notice in respect of employees employed at a monthly rate, and a fifteen days prior notice in respect of other employees.”

Therefore, a thirty day notice period is required (at least for employees employed at a monthly rate) to dismiss an employee with an indefinite term contract. Alternatively, an indemnity corresponding to the employee’s last monthly pay must be paid to the dismissed employee.

The Labor Law does not expressly contain any provision defining a “valid reason” for termination, although the standard is clearly less stringent than “cause.” The determination of whether a termination was made for a “valid reason” is made by the Labor Commission on a case-by-case basis. Arguably, the employer’s contractual obligations, impossibility or frustration of purpose, business considerations (thus, business/economic considerations such as a loss of contracts or economic downturn

requiring the scaling down or closure of the employer's office would likely provide valid reasons for termination of an employee's contract), or the employee's incompetence, all constitute a "valid reason." Employment contracts sometimes cite specific examples of "valid reasons" for termination but these will not necessarily be considered binding by a Labor Commission.

## **Termination Indemnities / Reinstatement**

### **Termination Indemnity**

If a fixed term contract is terminated prior to the expiration of its term in a manner that does not comply with the Labor Law, the employee may be able to successfully argue for payment of the remainder of the contract period.

If an indefinite term employment contract is terminated by the employer without "cause" or a "valid reason," the dismissed employee could be entitled to a termination indemnity as provided for under Article 77 of the Labor Law (this termination indemnity is separate from the end-of-service award, which is explained below.) The traditional practice of the Labor Commissions has been to award (in average cases) the aggrieved employee an indemnity of three month's pay, but this can vary a good deal.

### **Reinstatement**

The Labor Law also provides that a Labor Commission may decide that the employer must reinstate a wrongfully dismissed employee, pay his or her wages in arrears and consider the employee's service as "uninterrupted." Reinstatement, however, is rarely granted in practice, particularly with respect to non-Saudi employees. As mentioned above, the Labor Law provides that "[n]o case or claim relating to any of the rights provided for in these regulations shall be heard after the lapse of twelve months from the date of termination of the contract," and an aggrieved employee's claim for a termination indemnity could, in principle, be time barred.

### **End-Of-Service Award**

Upon termination otherwise than for cause, an employee is ordinarily entitled to an end-of-service award equal to half a month's "wage" for each year of employment for the first five years, and a full month's "wage" for each subsequent year. "Wage" is broadly defined to include not just base salary but also the value of every cash or in-kind allowance or benefit payable to the employee on a regular basis pursuant to

his or her contract or as an “acquired right,” resulting from the conduct of the parties. The calculation is based on the last wage being paid at the time of termination and is pro-rated for fractions of a year. The only elements of the “wage” that can be excluded by contract from the end-of-service award calculation are commissions “and similar elements of the wage that by their nature are subject to increase and decrease.” Housing allowances that are paid in cash or in-kind are ordinarily included as part of the wage. Air travel tickets granted to an employee would also be considered part of the employee’s wage as well as the payment of bonuses that are made on a regular basis. Certain officials at the Ministry of Labor have taken the view that a transportation allowance is considered in the nature of expense reimbursement rather than compensation and therefore should not be included in the wage, but Labor Commission decisions on this issue have been inconsistent.

If the employment relationship ends due to the employee’s resignation, the end-of-service award is generally reduced or eliminated. If an employee resigns for “cause” (“cause” in this case is defined by Article 81 of the Labor Law as the employer’s breach of the labor contract, assault against the employee, unfair treatment of the employee, the employer’s misrepresentation of the contract’s terms at the time of employment and jeopardizing the employee’s health or safety) under either a fixed term or indefinite term employment contract, he or she is entitled to full severance benefits. An employee who resigns prior to completing a fixed term contract or within the first two years of an indefinite term contract would not ordinarily be entitled to an end-of-service award. If an employee under an indefinite term contract resigns having served at least two years but less than five, he or she is entitled to one third of the normal end-of-service award. If he or she has served at least five years but less than 10, he or she is entitled to two thirds of the normal award. If he or she resigns after at least 10 years of service, he or she is entitled to the full end-of-service award.

Upon dismissal of a non-Saudi employee, the employer is generally required to repatriate such employee to his or her home country at the employer’s expense. Employees are also entitled upon termination to compensation for accrued vacation.

## **Law On Separation Agreements, Waivers And Releases**

Technically speaking, nothing under Saudi law obliges an employer and an employee to enter into separation agreements or execute final release undertakings. That said, any employer should not pay a dismissed employee his or her final entitlements

(i.e., end-of-service award, accrued vacation, etc.) before the employee signs a final release stating that he or she has received his or her final entitlements in full and that he or she releases the employer from any further obligations to him or her.

Upon termination of employment, the employee is also entitled under Article 64 of the Labor Law to a “service certificate,” which sets out the period of his or her employment, the salary and benefits he or she was receiving. This would be a separate document from the final release, however.

Upon termination of employment, the employer is required to settle any of the employee’s entitlements within a maximum period of one week from the date of the contract termination if the employer terminated the contract. If the employee terminated the contract, the employer is required to do so within a period of two weeks. Article 88 also states that the employer has the right to deduct any receivables due on account of the work from monies due to the employee.

## **Discrimination**

### **Laws On Employment Discrimination**

Any discussion of discrimination at the workplace in the Saudi context must necessarily take into account the general principles of Islamic Law as they are applied in Saudi Arabia. While various provisions of the Saudi Labor Law provide specific protection to the disabled or mandate the universal application of the social benefits provided under the Social Insurance Regulations, some aspects of Saudi law necessarily differ from the Western “norm.” For instance, the Labor Law expressly prohibits the co-mingling of men and women in the workplace. Furthermore, women (as well as adolescents and juveniles) may not be employed in hazardous operations or harmful industries, nor may they be employed to perform night shifts (with the exception, in the case of women, of certain professions, such as nursing).

Female employees are entitled to maternity leave for the four week period preceding the expected date of delivery and a for a six week period thereafter. During this maternity leave, the female employee is entitled to half pay if she has been employed for at least one year and to full pay if she has been employed for at least three years as of the commencement date of the leave. However, if a female employee takes her annual vacation during the same year she took her maternity leave, she will then only be entitled during such vacation to half pay or to no pay, depending upon whether she received half pay or full pay during her maternity leave. Medical expenses related

to pregnancy and delivery must be paid by the employer. The Labor Law prohibits an employer from terminating the employment of a female employee while she is on maternity leave or during an illness resulting from work or delivery, provided she is not absent from work for longer than six months. A female employee cannot be dismissed during the six months preceding the expected date of delivery, except for a “valid reason” under the Labor Law.

In addition to the protection granted to pregnant female employees, the Labor Law provides some protection to the physically or mentally disabled. The Labor Law provides for the rehabilitation of a disabled person whose capacity to perform and maintain a suitable job is diminished as a result of a physical or mental infirmity. The Labor Law states in that regard that an employer that employs 25 or more employees and the nature of whose activities allow for the employment of disabled and vocationally rehabilitated employees must employ such employees. Up to 4% of such an employer’s work force should be composed of rehabilitated employees, and their employment may be effected by nomination from the Labor Offices or otherwise. The Labor Law also provides that if an employee becomes unable to perform his or her job as a result of a work injury but is able to perform a different job with the same employer, that employer must employ him or her in that other capacity.

Specific protection against discrimination is also granted to Saudi employees who are recognized under the Labor Law as “equal in their right to work in all areas of Saudi Arabia without discrimination.” Furthermore, foreign employees may not be paid more than Saudis having the same degree of competence, technical proficiency and academic qualifications, except within the limits of the need to attract qualified foreign personnel. The basic obligation for the employment of Saudis is imposed under Article 26 of the Labor Law, which requires companies operating in the Kingdom to have Saudi nationals comprise no less than 75% of their workforce. This requirement, although in the Labor Law from its inception, has seldom been enforced and as a result few employers took it seriously. Since 1996 the Saudi government began to become more focused on the issue and Council of Ministers Decision N° 50 dated 21/4/1415H (corresponding to September 27, 1994) (“CMD 50”) was issued requiring all employers with 20 or more employees to increase the percentage of Saudis among their workforce by 5% annually, and it restricts certain activities (e.g., personnel recruitment positions, receptionist, government relations officer, security guard) to Saudi employees only. The applicable minimum percentage reached 30% in 2001, which has been applied to the present day.

The Labor Law also recognizes the difficulty employers face to reach such a percentage, especially with the economical growth and the increasing need for expertise and professionals; therefore, Article 26 gives the Minister authority to temporarily reduce this percentage in the absence or unavailability of the “required technical competences or academic qualifications, or the impossibility of filling such posts with citizens.”

It is also worth mentioning that more generalized protection against discrimination is provided in the Social Insurance Regulations, which state in Chapter II Article 4 that the social benefits granted under it are mandatory with respect to “all employees, without discrimination as to nationality, sex or age.” The prevention of discrimination is therefore clearly of concern to the Saudi legislators, although the body of law regulating employment discrimination is rather sparse at present.

## **Employee Remedies For Employment Discrimination**

Generally speaking, an employee could be entitled to damages arising from a discriminatory act, if the employee is able to prove it before a Saudi court. However, Saudi Courts typically only award damages that are actual, direct and easily quantifiable in nature and tend not to award indirect, consequential or special damages, which typically constitute the bulk of a discrimination claim. The probability of an excessive damages award for a discrimination claim therefore appears unlikely.

## **Potential Employer Liability For Employment Discrimination**

An employer could be subject to certain penalties provided for violating the provisions of the Labor Law. Specifically, an employer that violates the provisions of Article 26 of the Labor Law, which relates to the “Saudization” requirements, could be subject to a fine of not less than three thousand Saudi Riyals (SR 3,000) and not more than ten thousand Saudi Riyals (SR 10,000). Furthermore, employers that are not able to demonstrate they are in compliance with Saudization requirements could also be blocked from obtaining work visas for their non-Saudi employees to enter and work in the Kingdom.

The Labor Law also provides that an employer could be subject to fines of not less than two thousand Saudi Riyals (SR 2,000) and not more than five thousand Saudi Riyals (SR 5,000) for violations of Chapter IX of the Labor Law, which applies to protections for female and juvenile employees. Furthermore, the employer could be ordered to pay compensation for damages resulting from violations of Chapter IX.

However, as mentioned above, such damages are not likely to be excessive since Saudi courts typically only award damages that are actual, direct and easily quantifiable in nature.

## **Sexual Harassment**

There are at present no specific statutory laws in Saudi Arabia that govern sexual harassment in the workplace, and such matters would likely be reviewed under the general principles of the *Shari'ah* mentioned above. Given the lack of precedent, it would be too speculative to advise on the possible causes of action and remedies that might be available.

Historically, the Labor Law in Saudi contained provisions that prohibit the co-mingling of males and females in the workplace. For instance, the major banks in Saudi Arabia typically have separate sections that service male and female patrons, and male and female employees of the bank are similarly segregated. Labor Office inspectors have the discretion to visit an employer's workplace in order to ensure that they are complying with such a requirement. Although the current version of the Labor Law does not contain any provision prohibiting co-mingling, it states that both employers and employees must comply with the principles of *Shari'ah* rules, which is widely interpreted to require segregation.