EMPLOYMENT LAW OVERVIEW 2017

Kingdom of Saudi Arabia
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I. GENERAL

1. Introductory Paragraph

The Kingdom of Saudi Arabia (KSA) is the largest Arab state by land area, constituting the bulk of the Arabian Peninsula. KSA has an estimated population of 30 million, of which approximately one third are foreign nationals.

The main piece of employment legislation in the Kingdom of Saudi Arabia (KSA) is Royal Decree No. M/51 dated 27/9/2005 (as amended) (KSA Labour Law) amended in 2015. This law is supplemented by Ministerial Resolutions issued by the Ministry of Labour. The Council of Ministers may also issue decrees, which are relevant to employment law issues.

A drive to promote the employment of nationals in the private sector has resulted in increased regulation of employment and recruitment. The introduction of the ‘Nitiqat’ system in 2011, is the main mechanism by which the Government has sought to increase the number of KSA nationals working in the private sector. Under the Nitiqat system employers are classified into categories based on the number of KSA nationals employed and allocated quotas for the employment of KSA nationals based on the size of the business and the sector within which they operate. Alongside the Nitiqat system, the Ministry of Interior launched a crackdown on illegal immigration practices during the course of 2013.

2015 saw the introduction of some amendments to the KSA Labour Law, which came into effect on 18 October 2015 and the introduction of new fines to support the enforcement of those amendments (2015 Amendments).
The workforce is comprised of both KSA nationals and non-KSA nationals. Non-KSA nationals may work in KSA provided they have prior approval from the Ministry of Labour. Similar to other GCC countries, KSA has a sponsorship system, which means that expatriate workers can enter, work, and leave the host country only with the permission or assistance of their sponsor. Before a non-KSA national arrives, the sponsor must apply for prior approval for their entry from the Ministry of Labour. As part of the application process, the employee is required to undergo a medical test (including a blood test for infectious diseases such as HIV) and submit a medical report in a prescribed form from their home country. The entry visa is therefore issued by the KSA embassy in the individual’s country of origin. Once an entry visa has been obtained, the employee may enter and work in KSA, as long as the work permit and Iqama (identity card and residency visa) are applied for and obtained within three months of entry. Upon entry into KSA, the individual must supply their fingerprint details and also undergo an eye cornea scan and registration.

Breach of the regulations relating to immigration and the employment of foreign nationals is taken very seriously in KSA and can have significant consequences for both the employer and its employees.
1. Minimum Requirements

An employer is under a duty to consider KSA nationals for all vacancies prior to engaging a foreign national. The majority of vacancies must now be posted with the Human Resource Development Fund and advertised for a minimum of two weeks to unemployed KSA nationals registered with the Fund before a non-KSA national can be offered the role. Certain roles, including HR managers, secretaries, security officers and up to 18 specified roles are reserved for KSA nationals. The KSA government is increasingly offering subsidies and funds to private sector employers to employ KSA nationals and subjecting public tendering and contracts to the company’s achievement of percentage targets for the employment of KSA nationals as a total part of the workforce. Conversely, there is a fee of SAR2,400 per employee levied on the employer, and payable yearly on the renewal of the work permit, where the ratio of KSA nationals to non-KSA nationals is not 1:1. Every employer is also classified according to how many KSA nationals it employs and allocated a target, calculated according to its size, industry sector and number of employees. Failure to achieve a target results in the employer being unable to renew sponsorship of existing employees or to obtain sponsorship for new employees. Employers in the lowest two classifications do not have to give consent to their employees moving jobs and joining employers in higher employer classifications. The sourcing and supply of labour is extremely regulated with the trade licence for such commercial activities being restricted to KSA nationals. The engagement of individuals from a manpower supplier without the required trade licence can render an employer liable to penalties and can also have personal repercussions for the individual.

2. Fixed-term/Open-ended Contracts

Contracts for KSA nationals may be for a limited or unlimited period. However, contracts for non-nationals must always be for a fixed term (usually linked to the period of the work permit).

3. Trial Period

It is common practice in KSA to employ persons on an initial trial period. The maximum initial probationary period is 90 days, exclusive of time off for public holidays (Saudi National Day, Eid al-Fitr and Eid al-Adha) and sick leave however this can be extended by a further 90 days by written agreement with the employee. A worker may only be required to serve an additional probationary period if they are being considered for an alternative job. The inclusion of a probationary period in an employment contract is not mandatory but if the worker is subject to a probationary period, it must be clearly stated in the contract.

Employees terminated during the trial period are not entitled to end of service benefits or compensation in lieu of notice.

4. Notice Periods

During any period of probation, either the employer or employee has the right to terminate the employment contract, unless the contract includes provisions reserving the right of termination to only one of the parties.

Indefinite term contracts may be terminated by either party providing at least 60 days’ written notice if the employee is paid monthly (15 days’ notice otherwise) to the other party. A fixed-term contract will terminate upon expiration of its term, unless it is terminated in accordance with the new Article 74 of the KSA Labour Law (which was introduced by the 2015 Amendments).
IV. WORKING CONDITIONS

1. Minimum Working Conditions

There are no set working conditions in the KSA. However, employers are required to provide offices and restroom facilities for females that are separated from those of their male counterparts, in order for female employees to work in a segregated environment.

2. Salary

A minimum wage of SAR 3,000 a month applies in KSA but only to KSA-nationals and for the purposes of meeting the quotas under Nitiqat. An employer can therefore still elect to pay an employee less than the minimum wage.

3. Maximum Working Week

Maximum working hours (except for senior employees or managers, who are exempt from the relevant provisions) are 8 hours per day or 48 hours per six-day week. However, the Government has recently announced plans to implement a two-day weekend for the private sector, which would see the working week reduced to 40 hours. When this will come into force and how it will be implemented is not yet clear. The KSA Labour Law stipulates that an employee’s total working hours (including overtime) should not normally exceed ten hours per day or 60 hours per week under any circumstances. Furthermore, workers should not work for more than five consecutive hours without a break of at least thirty minutes in any working day and should not remain at the workplace for more than twelve hours a day in total (of which one hour must be for rest, food and prayer). However, the new implementing regulations for the amended KSA Labour Law stipulate a yearly maximum of overtime of 720 hours and state that an employee can consent to work in excess of this limit.

Certain sectors are permitted to operate a 9 hour day and some are required to operate a 7 hour day (if necessary for health and safety reasons). These sectors are determined by ministerial decree. The Ministry of Labour currently restricts overtime hours to a maximum of 720 hours per annum.

Friday is the official day of rest with Thursday generally being the other weekend day in KSA. Working hours are reduced to 6 hours a day or 36 hours per week during Ramadan for Muslim employees only.

4. Overtime

Total working hours should not exceed ten hours per day or 60 hours per week. Work in excess of the statutory working week is compensated at 100% of hourly wages plus 50% of basic wages. Overtime in a year should normally be no more than 720 hours.

5. Holiday

The minimum entitlement to paid annual leave is 21 calendar days a year, rising to 30 calendar days a year after 5 years’ service.

6. Employer’s Obligation to Provide a Healthy and Safe Workplace

Employers are under a general duty to safeguard the health and safety of employees at work and specific duties include the following:

- Registration of all employees (both KSA nationals and non KSA nationals) with GOSI, and the payment of 2% of basic salary and housing allowance to cover compensation resulting from workplace accidents;
- Provision of adequate drinking water and ventilation in the workplace;
- Ban on working in exposed conditions during the summer months between 12.30 and 3 pm;
- An obligation to have first aid kits and access to medical care in the workplace;
- An obligation to provide adequate transport to and from work depending on the location of the workplace;
• A requirement to post in a conspicuous place within the workplace, the employer’s rules regarding health and safety and for these to be in a language the employees can understand; and
• A duty to maintain an accident logbook to record any incidents in the workplace and to report these incidents to the Ministry of Labour and potentially the police depending on the nature of the accident.
V. ANTI-DISCRIMINATION LAWS

There is at present no specific discrimination legislation applicable to the workplace in KSA. The KSA Labour Law forbids a gender pay gap and provides for equal pay when a man and a woman perform the same job. With the exception of termination for just cause, the employment contract of a pregnant female employee may not be terminated while she is on maternity leave. A legal quota requires that, where the nature of the work permits it, a certain percentage of staff be disabled individuals. However, in practice, employers rarely fill this quota due to the shortage of skilled disabled workers. Under the Nitaqat system, an employer obtains points in line with various regulations, including the employment of disabled Saudi nationals. Employing a disabled Saudi national attracts four times the number of points awarded for a Saudi national working full time. In order to be recognised as disabled, the individual must hold a certificate recognising him or her as officially disabled issued by the General Organisation for Social Insurance. With respect to whistleblowing, the 2015 Amendments provide that a whistleblower, who assists Ministry of Labour inspectors to detect a violation of the KSA Labour Law, can receive up to 25% of the value of the fine imposed on the employer.
VI. SOCIAL MEDIA AND DATA PRIVACY

1. Can the employer restrict the employee’s use of Internet and social media during working hours?

The Saudi cybercrime legislation imposes criminal penalties on those who invade privacy by using recording equipment or intercepting electronically transmitted data without authorisation. The courts may also apply the principles of Sharia law. As a general principle of Sharia law, an employer is liable for any damage directly suffered by an employee as a consequence of the employer’s actions.

Employers should include provisions in employment contracts concerning monitoring and privacy in the workplace. The implementing regulations of the 2015 Amendments issued by Ministerial Resolution No. 1982 on 28/06/1437H (corresponding to 6 April 2016) contain a model internal labour policy. On the proviso that any amendments to such policy are approved by the Ministry of Labour, the employer can seek to restrict use of Internet and social media during working hours by incorporating such restrictions in the internal labour policy and the employee’s contract of employment.

2. Employee’s use of social media to disparage the employer or divulge confidential information

The main body of law in the KSA is the Islamic Shariah. Shariah principles protect individuals’ right to privacy and prohibit disclosure of secrets, save where the owner’s consent has been obtained or where such disclosure is required due to public interest. There may also be potential infringement and penalties pursuant to the KSA Anti-Cyber Crime Law and the KSA Telecommunications Law.
VII. AUTHORIZATIONS FOR FOREIGN EMPLOYEES

Every employee must be registered with the Ministry of Labour and the General Organisation for Social Insurance (GOSI). If the employee is not a national of a Gulf Cooperation Council member state then they must also be registered with the Passport Office. These employees will need to be sponsored by the employer for work permit and residency visa purposes, with such sponsorship being employer-specific. In order to obtain sponsorship, employees must submit attested educational and professional qualifications and undergo medical examinations for contagious diseases. There are restrictions on an employee’s ability to move from one sponsor to another (i.e. to effectively move jobs) and various factors come into play including length of service and both the existing and new employer’s record with the Ministry of Labor, as well as the current employer’s consent to the move.
VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. Grounds for Termination

Under the 2015 Amendments employers are permitted to terminate a contract of employment only for specified reasons. These are:

- If both parties thereto agree to terminate it, provided that the worker’s consent is in writing
- If the term specified in the contract expires, unless the contract has been explicitly renewed in accordance with the provisions of this Law in which case it shall remain in force until the expiry of its term
- At the discretion of either party to the indefinite term contracts in pursuance of the provisions of Article (75) of this law
- The worker attains the age of retirement, which is sixty years for males and fifty-five years for females, unless the two parties agree upon continuing work after this age. The retirement age may be reduced in cases of early retirement as provided for in the work-organizing bylaws. If it is a fixed-term employment contract, which extends beyond the retirement age, it shall terminate at the end of its term
- Force majeure
- The firm is closed down
- The completion of the business, in which the employee has engaged in unless agreed otherwise
- Any other case to be provided for by any other law.

Employers may terminate employees without notice, compensation in lieu of notice, or end of service gratuity, in the following circumstances:

- During the probationary period (each party has the right to terminate employment during the probationary period unless the employment contract reserves the right to only one party)
- As a result of assaults on the employer, the employer’s managers, or any superiors
- Due to failure to perform essential work duties or obey orders
- Due to misconduct or acts of dishonesty or lacking integrity
- As a result of intentional acts causing material loss for the employer
- For forgery in support of obtaining employment
- On the basis of absence from work without valid reason for more than 30 days in a year or fifteen consecutive days, provided the employee receives written warning prior to termination ten or five days beforehand, respectively
- For disclosure of work-related industrial or commercial secrets
- For taking unlawful advantage of his or her employment position for financial gain.

However, employees must be given the opportunity to object to the reasons for termination. It is also important to note that any disciplinary investigation must commence within 30 days of the discovery of the offence and any disciplinary sanction must be issued within 30 days of the conclusion of the investigation. With the exception of termination for just cause, the employment of pregnant female employees may not be terminated during the 180-day period preceding the date of delivery. Equally, employees on sick leave cannot be terminated due to illness until the full entitlement to sick leave has been exhausted.

There are no separate rules for the dismissal of individuals in managerial, executive, or board member roles. Common practice on termination of employment is the same as that for lower level employees where it is common to make a payment on account of statutory entitlements plus a compensatory payment for termination that covers any other entitlements. Without prejudice to their statutory rights, employees may terminate their employment contract without notice in the following circumstances:

- If the employer fails to fulfill his/her contractual or statutory obligations to the employee
- If the employer assigns the worker to tasks which are essentially different from those agreed to in the employment contract without the employee’s
consent (excluding periods of under 30 days where the change is driven by necessity under transient circumstances)

• For fraud on the date of contracting on the part of the employer or his/her representatives with regard to working conditions and circumstances
• For violent or immoral acts against the employee or the employee’s family by the employer, a manager in charge, or a family member of the employer
• Treatment by the employer or manager in charge which is characterized as cruel, unjust, or insulting
• Failure on the part of the employer to address workplace hazards to the safety and health of the workers of which the employer is aware
• For actions, unjust treatment, or violations of the employment contract which have the effect of causing the employee to appear to be the party responsible for terminating the contract (constructive dismissal).

2. Collective Dismissals

The 2015 Amendments allow the employer to terminate the employment contract validly if the business is closed permanently or the business unit or operation in which the employee is employed is closed. This recognition of a redundancy does not go as far as to extend to situations where there is a reduction in work requirements that requires a reduction in the workforce or a reduction in a particular role. The KSA courts have recognized an employer’s right to reorganize its business and restructure resulting in the elimination of roles. However, a high burden of proof is applied and the employer’s business decision is scrutinized very closely. In any case, as a matter of best practice and to reduce the risk of successful unjustified dismissal claims, an employer should meet with its employees and follow a consultation process.

3. Severance Payment

On termination of employment for any reason other than gross misconduct, an employee is entitled to an end of service gratuity, a form of severance pay calculated by reference to final salary and linked to length of service. In addition, an employee whose employment is terminated may make a claim to a Labour Committee claiming that the termination has been unfair (i.e. not for a valid reason) entitling him to compensation in line with a statutory formula. There are no anti-discrimination provisions in the KSA Labour Law; however, the Labour Committee will scrutinise the reason for termination where this is challenged by an employee, and it is possible that a discriminatory reason could be held to be invalid.

4. Separation Agreements

The KSA Labour Law does not oblige parties to enter into separation agreements or execute final release undertakings. That said, in practice the employee is required to sign a final release letter 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 the 2015 Amendments 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 undertaking.

5. Remedies for employees seeking to challenge wrongful termination

Where an employee considers that they have not been terminated for a “valid reason”, the employee may bring a claim in KSA through the Commission for the Settlement of Labour Disputes (Labour Commission) for unjustified dismissal.

If successful, the employee may be awarded compensation. This compensation is in addition to the payments referred to above. In the case of an unlimited contract, compensation will be 15 days’ pay for each year of service. As set out above, where the contract is for a fixed duration, the compensation could be equivalent to the salary that the employee would have received for the remaining duration of the fixed term. In both cases, the minimum amount that will be awarded will be two months’ wages.

Prior to the introduction of the 2015 Amendments, it was relatively rare in practice for awards to be made for the full remaining duration of the fixed term contract. The 2015 Amendments significantly changed the compensation due on termination for an invalid reason.
Parties may expressly state in the employment contract the level of compensation which may be payable where either party terminates the contract without reason, provided that it must not be less than two months’ wages. It is now possible that more plaintiffs may be awarded compensation for the full remainder of their contract.
IX. RESTRICTIVE COVENANTS

1. Applicability and enforcement

Non-compete and confidentiality obligations are specifically recognised under the KSA Labour Law. The employment contract may include a non-disclosure provision valid for a maximum of two years from the date of termination. This provision is valid only if it is limited in regard to the time, place and nature of the business to the extent reasonably necessary to protect the employer’s lawful interests. The KSA Labour Law does not preclude employers from imposing other post-termination restrictions (e.g., non-solicitation and non-dealing provisions). Any such restrictions must be reasonable and appropriately limited in scope in order to be enforceable.

An employer may include a non-compete clause in an employment contract or ask an employee to sign a non-compete agreement when he or she starts. According to Article 83 of the KSA Labour Law, this provision is valid only if it is limited in regard to the time, place and nature of the business to the extent reasonably necessary to protect the employer’s lawful interests. The maximum duration of such provision is two years.

An employer may issue legal proceedings against the employee within one year of establishing a breach. However, in practical terms, employers can ensure that non-Saudi national employees uphold non-compete obligations through the restriction imposed on foreign workers regarding the transfer of sponsorship to a new employer. All foreign workers must be sponsored in order to reside and work in Saudi Arabia. They cannot transfer their sponsorship to another employer if they have not completed at least two years’ continuous service with the existing employer and obtained a letter from their existing employer stating that it does not object to the employee taking an alternative job.

2. Garden Leave

Garden leave, where an employee leaving a job, is instructed to stay away from work during the notice period, while still remaining on the payroll, is used in the KSA, often to prevent employees from taking with them the employer’s up-to-date data, especially when they are leaving to join a competitor. To this end, an employee in the KSA may be put on garden leave on full pay for the duration of the employee’s notice period.
X. RIGHTS OF EMPLOYEES IN CASE OF A TRANSFER OF UNDERTAKING

Article 18 of the KSA Labour Law provides for employees to transfer by operation of law from one employer to another, pursuant to a change in the corporate ownership of the employer or the part of the business in which they are employed (including the sale of a business or part of a business as a going concern, and the merger of two companies, or demerger). However, such transfer is only possible upon a special application to the Ministry of Labour whose approval is discretionary and it can take up to 2 years for the process to be completed. In the absence of Article 18 applying, transfer of employees is affected through a process of termination and re-hire.
XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

Trade unions and labour associations are unlawful in the KSA.

Despite the unlawful side of the Trade Unions, the KSA Labour Law contains a workforce disputes procedure under which employees may collectively submit a written complaint to the Ministry of Labour, which will appoint a labour committee to investigate the complaint and mediate between the employees and the employer.

Workers are permitted to form Welfare Committees for social welfare in the workplace. KSA national employees are also permitted to form Work Councils.
XII. SOCIAL SECURITY / HEALTHCARE / OTHER REQUIRED BENEFITS

1. Legal Framework

GOSI administers a social security system for KSA nationals including a number of benefits such as old age retirement pensions, disability allowance, survivor’s pensions, and incapacity benefit. The Human Resources Development Fund provides unemployment allowance for KSA nationals who are university graduates for a period of 1 year from graduation, providing SAR 2,000 a month. Unemployment benefit is also payable to KSA nationals. Non-KSA nationals are not entitled to social security – except compensation for workplace injury or disease under the GOSI workplace injury scheme.

2. Required Contributions

All KSA employees are entitled to an old-age social security pension. The scheme is applicable to all KSA nationals, including those employed abroad not covered by the local social security system. Maximum and minimum monthly earnings, for the purpose of social security contributions, apply, the minimum being SAR 1,500 and the maximum being SAR 45,000. Retirement, as well as survivors, unemployment and disability benefits are funded by employer and employee contributions as follows:

- Workplace injury contributions: 2% of basic salary and housing allowance by employer to cover workplace injuries on behalf of all employees;
- Pension Contributions for Saudi national employees:
  - 9% of basic salary and housing allowance by employer; and
  - 9% of basic salary and housing allowance by employee
- Unemployment insurance contributions for Saudi national employees:
  - 1% of basic salary and housing allowance by employer; and

Individuals with at least 120 months of paid or credited contributions are eligible for an old-age pension. Individuals must retire to receive the pension. Individuals who do not meet the minimum qualifying standards for an old-age pension are entitled to a lump sum settlement or may elect to pay the outstanding contributions in certain circumstances. In either normal or early retirement, the pension is calculated as follows: 2.5% of the employee’s average monthly salary over the last two years multiplied by the number of years of social security contributions paid, up to 100% of the pension calculation base.

If an individual, receiving a pension, restarts employment, the pension will be suspended until retirement resumes. Based on the more favourable outcome for the pensioner, the benefit will be adjusted to reflect either the prior and additional periods of contributions or only the final period of contributions. There are specific rules on survivor pensions, which are payable provided the deceased individual, at the time of death, has paid at least three consecutive or six non-consecutive months of contributions to the social security system.

3. Insurances

It is mandatory for an employer to provide private medical insurance for its employees. The Government also provides KSA employees with free medical care.

4. Required Maternity/Sickness/Disability/Annual leaves

MATERNITY LEAVE

A female worker is entitled to a minimum of 10 weeks’ paid maternity leave, four weeks to be taken immediately preceding the expected date of delivery and then six weeks following the birth of the child. Under the 2015 Amendments a female employee may now take an additional one-month unpaid maternity
leave if she chooses. If the baby is ill or disabled the mother is entitled to an additional one-month paid leave. The probable date of delivery will be determined by the physician of the firm or pursuant to a medical report certified by a health authority. A woman may not work during the six-week period immediately following delivery under any circumstances. There is no minimum length of service for this leave to be paid.

Following return to work, female employees are afforded, in addition to the rest periods granted to all workers, a rest period or periods not exceeding in aggregate one hour a day for nursing their infants (to be calculated as part of the actual working hours and not entail any reduction in wages).

Male employees are entitled to paternity leave of three days for the birth of their child.

**SICK LEAVE**
The minimum entitlement to sick leave is 120 calendar days a year, with full pay for 30 days, 75% pay for 60 days and nil pay for 30 days.

**HAJ**
Once during the employment and conditional on accruing two years’ service, an employee is entitled to between 10 to 15 days’ paid leave to perform Haj.
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