1. What is COVID-19?

Coronaviruses (CoV) are a large family of viruses that cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS-CoV) and Severe Acute Respiratory Syndrome (SARS-CoV).

COVID-19 is a novel virus that has not been formerly found in humans. The usual symptoms of infection comprise fever, cough, shortness of breath and breathing difficulties. In more severe cases, COVID-19 can also result in the death of a patient.

Among other things, companies in UAE are imposing a 14-day self-quarantine on employees who have travelled to countries that have been affected by COVID-19. Study results have shown that 11 per cent of companies in the UAE have asked their employees to take “voluntary leaves” due to impact of Coronavirus, and the majority of them belong to hospitality, leisure and travel sectors.

2. What are the duties of an employer to ensure that the workplace is safe and protects the health of the employees?

Article 91 of the UAE Labour Law specifies that an employer shall provide the employees with adequate protection means against hazards of occupational injuries and diseases that may occur during the work.

It further mentions that an employer shall also adopt all other safety measures set by the Ministry of Human Resources and Emiratisation.

The UAE Labour Law also obliges the employees to abide by all instructions of the employer aiming at the protection thereof from hazards, and refrain from carrying out any work that may hinder the execution of such instructions.

The terms of this Article 91 would, therefore, also extend to COVID-19, thereby, obliging an employer to ensure that its premises are free from the virus. Additionally, employers should also follow the guidelines of the governmental authorities in order to contain the spread of the virus. The employers should, therefore, put in place precautionary and preventive measures to ensure the general safety of the employees.

For instance, employers can also refer to Business Continuity Readiness Guidelines for UAE Organisations published by the National Emergency Crisis and Disasters Management Authority (https://www.ncema.gov.ae).
3. Could an employer compel an employee to work from home if the said employee has contracted COVID-19 or has come into contact with a person who has tested positive for COVID-19?

An employer should determine whether the contractual arrangement or UAE Labour Law, provides that employer a right to compel an employee to take annual leave on specified dates.

Article 76 of the UAE Labour Law stipulates that an employer may determine the date of the commencement of the annual leave, and may divide it if necessary, to two or more periods. Therefore, on the presumption that the employee has adequate leaves remaining, an employer may compel the employee to take annual leave.

In the circumstances, where the employee does not have sufficient leave balance, the said employee could be required to work from home in light of Article 91 specified above.

Employers should also be aware that an employee shall be entitled to his/her basic salary plus housing expenses if any, during the annual leave.

4. What measures should employers adapt to if an employee declines to come into work due to COVID-19?

Employers ought to maintain an equilibrium in order to ensure that legitimately ill employees who are infected with COVID-19 are barred from coming into work and at the same time, unauthorised absence is counteracted. The circumstances necessitate that the employers are cautious and vigilant that the COVID-19 situation is not being abused by some employees.

Article 82 of the UAE Labour Law, as amended by Federal Law No. 12 of 1986 provides that upon completion of the probation period, an employee shall be entitled to a sick leave not exceeding 90 consecutive or non-consecutive days for every year of service, calculated as follows:

a. The first fifteen days with full pay.
b. The following thirty days with half pay.
c. The following periods without pay.

However, an employee who is not legitimately ill, cannot refuse to come into work or continue to be absent from work. Unauthorised absence provides the employer a right to unilaterally terminate an employment relationship depending on the provisions of the UAE Labour Law.

5. How can employers ensure that an employee is legitimately ill, and can an employer examine medical records of an employee?

The right to necessitate an employee to undergo medical check-ups to ascertain an employee’s medical status primarily lies under the local legislation and contractual terms between the parties. An employer would also have to consider the implications of data protection laws.

Article 82 of the UAE Labour Law provides that if an employee sustains an illness not caused by an occupational injury, he must notify the employer thereof within two days at most. The employer shall take the necessary procedures to expose the worker to a medical examination immediately in order to verify the illness thereof.

UAE Labour Law, therefore, grants the employer a right to request for medical examination and provide proof of illness.

6. Can the employees be made redundant due to lack of financial activity ensuing from the impacts of COVID-19?

The UAE Labour Law does not provide for the concept of redundancy, consequently, there is no provision for redundancy compensation. Moreover, the UAE Labour Law states that where an employer is considered to have terminated an employee for any reason other than a valid reason, or one of the grounds set out under Article 120, the employer will be liable to pay compensation to the employee.

Therefore, on the face of it, a redundancy could potentially create a liability on the employer to pay compensation to the employee. However, the UAE labour courts have recognised an employer’s right to restructure its business and have held that redundancy is a valid non-arbitrary reason to terminate an employee under UAE Labour Law, provided the certain procedure is followed.
7. Conclusion

COVID-19 is a pandemic which has spread to most part of the world. UAE entities which have been impacted by COVID-19 should:

- maintain equilibrium amongst providing a safe work environment whilst continuing its business activities;
- seek advice to ensure that they are in compliance with the laws and regulatory guidelines;
- put in place appropriate measures to contain the spread of the virus.

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