

Guide to Amendment of the Employment Law
of the Kingdom of Saudi Arabia
(Royal Decree No. M/46 of 05/06/1436)



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Employment Law of the Kingdom of Saudi Arabia: Key Amendments

1. Introduction

Employment Law of the Kingdom of Saudi Arabia has been amended by Royal Decree No. M/46 of 05/06/1436H and came in to force on 24 October 2015¹. It is now critical that all existing contracts of employment and internal procedures and work manuals are reviewed and amended to ensure that they comply with the new amendments.

2. Transfer of Undertakings Protection of Employment²

Where a business is transferred in whole or in part (sale or otherwise), the employees will automatically transfer to the transferee, who must protect in full all “rights and privileges” provided by the original employer.

3. Employment Policy Manual (the “Manual”)³

- (a) All employers irrespective of their size must now have Employment Policy Manual drafted in accordance with the Ministry of Labour Model Employment Policy Manual (“Model”)⁴.
- (b) Additional⁵ provisions that do not contravene the Model may be added⁶.
- (c) The Model must be displayed in a place that is easily accessible or by any other means that ensures that the employees have seen it⁷.

4. Training⁸

Businesses that employ more than 50 employees must ensure that their Saudi employees equal to 12% of the work force undergo work related training.

¹ Published in Umm Al Qurra – The official gazette on No. 4563 dated 24 April 2015.

² Article 11

³ Article 13.

⁴ Article 13.1

⁵ Article 13.2

⁶ Provisions that have a positive impact on the employees will be allowed.

⁷ Get each employee to sign a disclaimer that they have seen and read the Manual. Obligation is to show but to ensure no evidentiary issues arise in case of dispute a signed disclaimer is better.

⁸ Article 43

5. Employment Contract⁹

- (a) The Ministry of Labour will publish a Model Employment Contract (the “MEC”)¹⁰.
- (b) Additional¹¹ provisions that do not contravene the MEC may be added¹².

6. Probationary period – The two rules

*(a) The 180 day rule*¹³

The initial 90 days probation period may be extended by a mutual agreement in writing for another 90 days to a total of 180 days (6 months)¹⁴.

(b) Re-employment and new probation rule

An employee who leaves (by termination or otherwise) and is re-employed after a period of not less than 180 days, may be put on probation.¹⁵

7. Unlimited Contracts¹⁶

- (a) Fix terms contracts terminate at the stipulated end date. If the contract is renewed it automatically converts to an unlimited contract in the case of Saudi employees only¹⁷.
- (b) Where a contract stipulates renewal for a specified period, any renewal will be for a similar period, except where the contract has been renewed three times or a period of four years has been reached, the contract converts to an unlimited contract¹⁸.

⁹ Book 5, Chapter1, Article 50 to 60.

¹⁰ Article 52.1

¹¹ Article 52.2

¹² Provisions that have a positive impact on the employees will be allowed.

¹³ Article 53.

¹⁴ The Arabic drafting appears not be very precise. It does not appear to allow an automatic right for the employer to set a probation period of 180 days / 6 months.

¹⁵ This provision ensures that any termination is for a genuine reason as opposed to terminating at the initial 90 day or at the secondary 90 day probation period under the 180 day rule and then immediately re-employing the terminated employee and initiating a new probationary period and accordingly having the employee on probation for a total 360 days (a lunar calendar year).

¹⁶ Article 55 – Applicable to Saudi nationals only.

¹⁷ Article 55.1 Non-Saudi contracts of employment only extend for a continual fixed period irrespective of the number of extensions

¹⁸ Article 55.2 Non-Saudi contracts of employment only extend for a continual fixed period irrespective of the number of extensions

8. Change work location¹⁹

- (a) Employers may not change the employment location that requires a change in the employee's residence²⁰.
- (b) Employers may change the employment location for a period of 30 days in a year where they bear all the expenses of the change²¹.

9. Employee Reference on Termination / Expiry²²

- (a) A free and non – prejudicial employment reference must be given on request²³.
- (b) All employee documents must be returned²⁴.

10. Ending an employment relationship²⁵

*(a) Redundancy*²⁶

An explicit termination for redundancy is now provided in case of either (i) permanent business closure²⁷; or (ii)²⁸ the business activity in which the employee is employed is terminated.

(b) Notice period

- Unlimited contracts – Legitimate reason and the greater of: (a) the expressly agreed period in the contract; (b) 60 days for monthly paid employees; or (b) 30 days for all other employees²⁹.
- The party that fails to provide the notice must pay an amount equal to the notice period³⁰.

¹⁹ Article 58

²⁰ Article 58.1

²¹ Article 58.2

²² Article 64

²³ Article 64.1

²⁴ Article 64.2

²⁵ Chapter 3 – Article 74 to 79

²⁶ Article 74.6 and 74.7

²⁷ Article 74.6

²⁸ Article 74.7

²⁹ Article 75

³⁰ Article 76

- ³¹Compensation for wrongful termination must be: (a) agreed in the contract; or the greater of; (i) 15 days of each year; (ii) wage for remaining period in case of a fixed period contract; or (iii) the total wage for two months.
- ³²The parties can expressly set out in the contract of employment what compensation is payable if either party terminates the contract for an unlawful reason³³.
- An employee is entitled to a day or 8 hours a week to be absent from work to seek alternative employment³⁴.
- An employee may be put on garden leave on full pay for the notice period³⁵.
- A contract may be terminated if the worker is absent without a valid reason for more than thirty days in one contract year or more than fifteen consecutive days, provided that the termination is preceded by a written warning by the employer to the worker after his absence for twenty days in the first case and or ten days in the second case³⁶.

11. Non – Compete / Competition

- An employer may insist on a non-compete clause for a period not exceeding two years³⁷.
- An employer has a right to insist on a confidentiality provision to protect the employer's trade secret³⁸.
- An employer may issue legal proceedings against the employee within 1 year of establishing a breach³⁹.

12. Wage Protection

Employers must deposit employee salaries through a Saudi Arabian Bank⁴⁰.

³¹ Article 77

³² Article 77

³³ **There is no right to reinstatement. It is critical that Employee and Employer agree this in advance to quantify in advance the total compensation that is payable.**

³⁴ Article 78.

³⁵ Article 78.

³⁶ Article 80.7

³⁷ Article 83.1

³⁸ Article 83.2

³⁹ Article 83.3

⁴⁰ Article 90.2

13. Working hours

- (a) No worker should be kept at the place of work for a period exceeding 12 hours in any 24 hour period⁴¹.
- (b) Two days paid leave is to be provided with one day being Friday except where an exemption is obtained and religious obligations are protected⁴².

14. Leave

- (a) Paternity leave: three calendar days⁴³.
- (b) Marriage leave: five calendar days⁴⁴.
- (c) Compassionate leave: five calendar days⁴⁵.
- (d) Four months and 10 days in leave for a Muslim wife in case of death her spouse⁴⁶.
- (e) Maternity leave: 10 Weeks leave as desired but not earlier then from the expected delivery date⁴⁷ and an additional 4 weeks unpaid leave⁴⁸ and in the case the baby is ill or disabled a further paid month commencing on the expiry of the maternity period⁴⁹.

15. Labour violations⁵⁰

Breach of Saudi Arabian Employment law will lead to one of the following⁵¹:

- A fine SR 100,000⁵² per violation per employee⁵³.
- The fine can be doubled in case of repeat offender⁵⁴.

⁴¹ Article 101

⁴² Article 104

⁴³ Article 113

⁴⁴ Article 113

⁴⁵ Article 113

⁴⁶ Article 160

⁴⁷ Article 151.1

⁴⁸ Article 151.2

⁴⁹ Article 151.3

⁵⁰ Article 229

⁵¹ Article 229.1

⁵² Article 229.2

⁵³ Article 229.6

⁵⁴ Article 229.5

- Temporary closure for a maximum period of 30 days⁵⁵ or permanent closure⁵⁶.
- Violations must be remedied within a specified date, failure to comply will mean a new offence has been committed⁵⁷.
- Fines once collected will be transferred to the Human Resources Development Fund⁵⁸.

16. Whistleblowing⁵⁹

Anyone successfully reporting a violation will be entitled to 25 percent of the collected fine.

⁵⁵ Article 229.3

⁵⁶ Article 229.4

⁵⁷ Article 231

⁵⁸ Article 232

⁵⁹ Article 233

17. Schedule 1: Guide for in house attorneys and HR Managers of the changes

Royal Decree No. M/46 – The Amendments	Royal Decree No. M/51 – Employment Law	Comments <i>(This is drafted using very basic Mnemonic structure to anchor the ideas to the reader)</i>
1	5	Stipulates the parties and contract covered - generally covers all contracts of employment other than as provided under Article 7.
2	7	Lists the excluded categories – players, trainers, domestic and similar, agriculture, shepherds, sea works with cargo less than 500 tons, non-Saudi workers working less than 2 months.
3	11	Transfer of Undertakings Protection of Employment – On sale or transfer of business - worker rights fully transfer to new owner of business automatically.
4	11 bis	Labour Minister authorised to take any actions required to regulate labour market
5	12 - 13	12,13, and 14 deleted and combined into 12 and 13. Deals with Ministry of Labour Model Employment Policy Manual – non contrary provisions may be added.
6	35	Ministry of Labour will not licence of an employer that violates Saudisation rules.
7	43	A number of Saudi’s representing 12% of the total employees to be trained on an annual basis.
8	48	Employer can terminate training of any trainees unable to complete their training.
9	52	The Ministry of Labour will publish a Model Employment Contract – non contrary provisions may be added.
10	53	Probation can be up to two periods of 90 days totalling 180 days but 180 days cannot be stipulated at commencement.
11	54	180 days probation period cannot be extended – new probation only possible after termination and period prior to re-employment being 180 clear days from date of termination.
12	55	Contracts expire at end of fixed term. If renewed to the greater of 3 times or 4 years, contract becomes unlimited in the case of Saudi nationals.

13	58	Employment location may not be changed where it leads to a change of residence. Location change for 30 days allowed in any contract year subject to employer paying all expenses.
14	64	Employer must issue non-prejudicial work reference at the end of employment.
15	73	Employer must keep a register of fines.
16	74	8 ground of employment termination including for the first time – redundancy for closure of business as a whole or a particular business activity.
17	75	Termination notice for legitimate reason, 60 days for monthly and 30 days for all other employees.
18	76	If notice of termination is not given, Employer must pay for the notice period as a minimum except where a higher amount is agreed in the contract.
19	77	Deals with compensation for wrongful termination, greater of two months or 15 days for each year of service. For fixed term contract the unexpired term.
20	78	A day or 8 hours per week to look for new job. Can Gives full paid garden leave?
21	80	Employer right of termination without notice.
22	83	Deals with non- compete and confidentiality. Employer can sue within 1 year of discovery of breach.
23	90	Salary must be paid through Saudi banks.
24	101	Half an hour break for each 5 hours of work. Maximum of 12 hours at place of work in any one day.
25	113	Compassionate leave of 5 days, 5 days for marriage, 3 days paternity.
26	115	Time to be given to attend examinations.
27	137	Work related disability – 100% par for first 60 days and then 75% for up to a year and then right to terminate.
28	149	Women not allowed to work in dangerous work environment.
29	151	151 and 151 merged. 10 weeks maternity leave, at any time, but must by four weeks prior to expected delivery, 1 month unpaid leave plus additional month if baby is ill or disabled.

30	160	Muslim female entitled to 4 months and 10 days in case husband dies, if pregnant, automatic extension to delivery. Non-Muslim female entitled to 15 days.
31	194	MOL staff or other nominated staff may conduct investigations and inspection of work places.
32	196	Details responsibilities of MOL inspectors.
33	197	MOL inspectors must sign acknowledgement that they will do their job honestly and sincerely and will not do anything to compromise trade secrets of businesses that they inspect.
34	203	MOL Inspectors must prepare and submit a minute for all violation to the Minister to take appropriate actions.
35	229 and 230	<p>229, 230, 231, 232, 233, 234, 325, 236, 237, 238, 239 and 241 abrogated and combined into two.</p> <p>229: 1(a) Fine of SR100,000 for each violation: (b) temporary 30 day closure; or(c) permanent closure. 2. Fine doubled for repeat offenders. 3. Penalty per violating employee. The violator has a right to appeal to the appropriate Administrative Court</p> <p>230.1: Both or either of 1(a) and (b) may be imposed but not exceeding half of the maximum of the same.</p> <p>230.2: The ministerial resolution must be issued identifying the violations and the fine where the fine does not exceed half the maximum penalty allowed under 229.1 (a) and (b). The seriousness of the violation must be taken into consideration when fixing the fine.</p> <p>230.3: Same as 230.2 but deals with fines where they exceed half of the maximum penalty allowed and 229.1(c).</p> <p>230.4: Fines and final closure under 230.3 must be must be enforced through the appropriate courts.</p> <p>230.5:</p>
36	231	Employer must remedy violation within specified period otherwise a new offence is committed.
37	232	All fines collected will be deposited into the Human Resources Development Fund
38	233	Whistleblowers entitled to 25% of collected fines.

About Us

Mohammed A. Al-Aqeel Law Firm in cooperation with One 2 One Legal LLP provides legal services to clients based on the best local and international standards in accordance with our visions. Our team members are recognised as leaders in their respective fields. Most recently, our team was recognised in the Islamic Finance News leading lawyers list for project finance, offshore finance, cross border, banking, capital markets and corporate and commercial advisory.

Our vision

We aim to provide our legal services in a manner that builds trust with our clients. Navigating the legal framework of the Kingdom of Saudi Arabia however requires competent and commercially astute legal advisors. Now more than ever before there is a need for legal advisors to be able to provide and manage legal services which are tailored to daily business requirements of the client as opposed to offering a one fits all solution.

Our approach

Our approach is to provide an absolutely seamless service to clients in the Kingdom of Saudi Arabia, which focuses on understanding your needs and objectives. We take the time to get to know you, your business and goals and tailor our team and approach to your preferences. In short, we care about our clients and will deliver a tailored service underpinned by integrity and honesty.

While based in the Kingdom of Saudi Arabia, our work is often international in nature and we have a number of international law firms with whom we work based on the particular needs of the client, you. Where international legal assistance is required, we will work with you to find the best partner based upon your requirements and scope of work.

Our services in general

- Mergers and Acquisition
- Public Procurement
- Banking & Finance
- Capital Markets
- Real Estate
- Commercial (including Agency and Franchise)
- Corporate
- Dispute Resolution and Litigation Services
- Local and Foreign Investments

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Our Experience

Mergers / Acquisitions and Capital Markets

- Led due diligence on the £4B acquisition and refinance of ISS by Goldman Sachs in the UK; reviewed and presented to the board of directors all finance documents.
- Advised on and drafted an amendment agreement for waste water services in the central region of Saudi Arabia.
- Facilitated sales of companies for consideration value of €40M and €29M while also completing several business sales and due diligence on multiple acquisitions.
- Renegotiation of SPA due to advice.
- Setup and launched more than 20 companies across diverse industry segments.
- Managed legal activities for 70 companies in relation to corporate governance, risk mitigation, and regulatory compliance.
- Provided general advice on insolvency matters, including different types, advice on director's liability and indemnities, and process of placing a company into liquidation.
- Advised on shares issues such as: increasing share capital, reducing share capital, division, consolidation, and redistribution of shares.
- Conveyed expertise on directors' and shareholders' powers, explaining to the board the individual strength of directors and what business functions should be met at the board level and shareholder level.
- Generated a group-wide policy change on due-diligence requirement.
- Advised Banque Saudi Fransi (acting as a financial advisor) on the IPO of 40 percent of the share capital of MTC (Zain) Saudi Arabia (the third GSM operator)
- Advised Sahara Petrochemical Company in its secondary rights and bonus shares offering, and on various compliance matters and ongoing disclosure requirements
- Advised Abdullah Al Khodari Sons Company in the offering of 30% of its capital to the public through an IPO
- Advised PCCW in relation to its IPO on the Saudi Stock Market, especially in relation to liability relating to IPO prospectus and second opinion counsel on risk mitigation
- Advised a real estate investment company, as issuer, on a private placement of securities in Saudi Arabia

"I have been involved in several transactions where Siraj was advising the other side and each time I have welcomed his courtesy and professionalism and his willingness to give due consideration to any comments and proposals. He provided practical solutions for ensuring that the transaction proceeded smoothly to a successful conclusion."

Legal Counsel, Eige
Trading Advisor
Limited

Banking and finance

- Advising a consortium on the Qurayyah Independent Power Project 1 for the building of a facility to provide electricity generation of approximately 1800MW
- Advised on re-structuring and correcting erroneous Shariah documentations drafted by opposing counsel, requiring a complete overhaul and re-drafting for a facility in excess of SR1.2 billion
- Advised on and drafted standardized Islamic finance documents for a corporate borrower which are now used as standard precedents
- Advised on the Rabigh Independent Power Project for the building of the approximately 1,200 MW power plant
- Advised on the Riyadh Independent Power Project P11 for the development of the approximately 1,729 MW power generation capacity
- Advised on the re-structuring of existing facilities and renegotiations of key terms for the extension of the existing facilities for SR340 million in relation to the contract extension to build health centers
- Advised on Islamic Finance documents in connection with a US\$10 billion Ijara based Islamic Finance of a downstream petrochemical complex
- Advised on Ijara based Islamic Finance document in connection with a major development project in the holy city of Makkah valued at US\$750 million

Public Procurement

- Advised and provided second opinion legal advice on the King Abdulaziz Project for Public Transport in Riyadh city (please see the case study below)
- Advised on the London Underground PPP
- Advised and structured and drafted BOT / BOO based project in connection to a demilitarization facility in the Kingdom of Saudi Arabia
- Advising a consortium on the Qurayyah Independent Power Project 1 for the building of a facility to provide electricity generation of approximately 1800MW
- Advised on the Rabigh Independent Power Project for the building of the approximately 1,200 MW power plant
- Advised on the Riyadh Independent Power Project P11 for the development of the approximately 1,729 MW power generation capacity
- Advised on and worked on the MWDA (<http://www.merseysidewda.gov.uk>) - one of the UK's largest ever PFI projects in the waste sector as lead project assistant. Developed documents that are now being used firm wide as initial drafts for future projects
- Advised on the Department for Work and Pensions (DWP) PFI with Land Securities Trillium (LST)
- Advised on the STEPS (The Strategic Transfer of Estate to the Private Sector – a PFI initiative with HMRC)

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Mohammed is a recognised qualified lawyer in the fields of general laws and in particular Islamic Law as practised in the Kingdom of Saudi Arabia.

He obtained his BA in Islamic law from Imam Mohammed Bin Saud Islamic University in 2003. He obtained a higher diploma in laws from the Institute of Public Administration in 2005 (Saudi equivalent of an LLM degree). He has attended numerous "Law Skills Courses" from Cambridge Regional Collage between 2006-2007.

Mohammed trained and practised law at one of the pre-eminent law firms, a firm which is consistently listed as a tier one firm in the Kingdom of Saudi Arabia.



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Siraj Al Islam, CEO of ONE 2 ONE Legal LLP

In addition to specializing in Islamic banking and finance, Siraj has a long history of advising sponsors, banking institutions and quasi-governmental entities with the structuring, implementation and delivery of major projects including PPP and PFI including transport, hospital, waste and healthcare.

At the age of 28, Siraj was appointed and served as the United Kingdom General Counsel for ISS, a global organization listed by Forbes as the world's 5th largest private employer and as the 6th best outsourcing company in the world by American Fortune Magazine.

Prior to establishing One 2 One Legal, Siraj worked at international law firms including Clifford Chance LLP.

Siraj is consistently ranked as one the world's leading lawyers in all areas involving Islamic Banking and Project Finance.

"Siraj is currently assisting us with a project in Saudi. Until he came on board we were experiencing difficulties and delays with the respective authority. Once Siraj took control of things, the issues were resolved within a very short time and with the results we required. Siraj is a true professional and I would recommend his services to others."

Maura Brindley, Company Secretary at Mercer Limited

The experience listed in this document may have been gained at Al Aqeel / One 2 One Legal or the previous firm of a team member.

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