

NAVIGATING MINISTERIAL RESOLUTION 279 OF 2020 FAQs for UAE Private Sector Employers and Employees

NOTE: The information in this article covers employment issues pertinent to private sector companies and their employees governed by the UAE Labour Law (as defined below). If you are not governed by the UAE Labour Law please contact your relevant jurisdiction's authority in relation to the application of the Ministerial Resolution and available guidance.

As part of the precautionary measures taken to contain the spread of the coronavirus, COVID-19, the UAE Government requires private sector companies to implement work from home for a majority of their employees unless they are offering essential services and many businesses to close their doors temporarily.

During this time, many employers have made, or are considering making, redundancies due to the impact of COVID-19 on their business. In its efforts to provide private sector employers with innovative solutions, the Ministry of Human Resources and Emiratization (“**MOHRE**”), which governs the employer/employee relationship, issued Ministerial Resolution No. 279 of 2020 “*Employment Stability in Private Sector during the Period of Application of Precautionary Measures to Curb the Spread of Novel Coronavirus*” (the “**Ministerial Resolution**”). The Ministerial Resolution is effective from 26 March 2020 and will remain in place so long as the UAE Government is taking precautionary measures against the coronavirus. It is important to note that the Ministerial Resolution does **not** apply to UAE national employees.

Let's take a look at the options and rights of employers and employees under the Ministerial Resolution, the UAE Federal Law No. 8 of 1980, as amended (“**UAE Labour Law**”), and generally the guidance provided by the UAE government to minimize the impact of the coronavirus. At this point no one knows how long this situation will last and the impact on the world post COVID-19. Employers should consider the cost of lay-offs and re-hiring once the situation improves.

**Summary of Options Available for Employers and Employees under the
Ministerial Resolution**

Option	Written Consent Required for Change?	Change to MOHRE Contract Required?
Mandatory work from home for employees, with no change to the current compensation package	No	No
Paid leave (these can be annual leave days)	No	No
Unpaid Leave	Yes	No
Temporary Reduction of Salary	Yes	No, but supplemental contract required, see below
Permanent Reduction of Salary	Yes	Yes

FAQ FOR EMPLOYERS

1. As an employer, what are my options under the Ministerial Resolution?

The Ministerial Resolution grants an employer the right to take the following actions (so long as an employee's consent is obtained for items 'c' through 'e'):

- a. require an employee to work from home (with no change to compensation package);
- b. grant paid leave (annual leave days may be utilised);
- c. request an employee to take unpaid leave;
- d. request an employee to consider a temporary reduction of salary; and
- e. request an employee to consider a permanent reduction of salary.

Note: *Any change in salary, as in the case of scenarios 'c' through 'e' must be agreed in writing with the employee.*

2. Does the Ministerial Resolution allow me to lay-off my staff?

No, the Ministerial Resolution does not explicitly set out that an employer may dismiss employees without compensation. If you have a surplus of employees, Article 3 of the Ministerial Resolution gives you an option to register these employees on MOHRE's jobseeker portal, the "Virtual Labour Market" so that they may be recruited by other companies. However, you must bear in mind that registration on this portal does not relieve you of your obligations to such employees. You must continue to provide employees housing (as per their contract, whether that is physical accommodation or payment in lieu of) and their allowances (except for basic salary) until the employee finds permanent employment or exits the UAE.

Nonetheless, if you still wish to terminate an employee, you should compensate the employee for unfair dismissal (usually 1 – 3 months), and must pay them through the notice period as per their employment contract and the entitled end of service benefit, essentially in the same manner you would have before the issuance of the Ministerial Decree. Although the UAE Labour courts may be sympathetic to employers due to the economic impact of COVID-19 on businesses, termination for the reason of COVID-19 is not a guaranteed defence in the event an employee files a case for unfair dismissal.

3. Can I permanently reduce the salary of my employees?

Yes, so long as the employee agrees. If the employee agrees, the MOHRE labour contract must be amended and a signed copy must be filed with the MOHRE.

4. Can I temporarily reduce the salary of my employees during COVID-19?

Yes, under the Ministerial Resolution, a temporary reduction of salary is permitted so long as both the employer and the employee agree. The employer and employee must sign a “temporary additional appendix” (a form provided by the MOHRE) indicating the reduced salary. Each of the employer and employee must retain a copy of this signed appendix. The appendix will expire at the earlier of the expiration of the term in the appendix or once the Ministerial Resolution is not valid. This “temporary additional appendix” may also be renewed upon mutual consent of the parties while the Ministerial Resolution remains enforced. A temporary reduction in salary does not require an amendment to the MOHRE contract.

5. Can I require employees to take unpaid leave?

No, you may request an employee to take unpaid leave and if the employee agrees, you must get the employee’s explicit consent in writing. If the employee does not agree and the you do not have any work for the employee, you must register the employee on MOHRE’s jobseeker portal, the “Virtual Labour Market”. See question 2 above for more details on this.

6. What will be the impact on the Wage Protection System (“WPS”) for unpaid leave?

It is not clear at the moment, but so long as you follow the instructions under the Ministerial Resolution, and because the WPS scheme is administered by the MOHRE, an employer is not likely to face any consequences, such as a block on the employer’s establishment card. This is also an important time for you to revisit any salary letters issued to an employee’s bank to ensure the you are complying with any commitments to the bank such as notification in any reduced salary or unpaid leave.

7. What are my options in respect of issuing paid leave?

Paid leave should be issued in the same manner as per the employment contract (MOHRE contract and any supplemental contract between the company and the employee) and company policy in respect of paid and/or annual leave which is line with the Labour Law. Once the annual leave entitlement is exhausted and the employee cannot return to work due to COVID-19, you will need to discuss the other options outlined above with them.

8. Are there any other options available?

Employers should take appropriate steps to safeguard their business. Employers may wish to consider implementing any pay-cuts from a top down approach, i.e. starting at the top of the organisational chart with senior management/officers because these reductions in salaries may cover the salaries of low-level employees, who are integral to the success of a business.

Should you wish to discuss your particular matter, you may contact the Legal Matters Portfolio at advisory@ismailicentredubai.org

FAQ for Employees

1. Can my employer reduce my salary?

Yes, so long as you agree in writing to a salary reduction. If it is temporary reduction, you must enter into a “temporary additional appendix” (a form provided by the MOHRE) indicating the reduced salary with your employer. Each of the employer and employee must keep a copy of this signed appendix. The appendix will expire at the earlier of the expiration of the term in the appendix or once the Ministerial Resolution is not valid. This “temporary additional appendix” may also be renewed upon mutual consent of the parties while the Ministerial Resolution is still in force.

If you agree to a permanent reduction in your salary, your MOHRE labour contract must be amended and a signed copy must be filed with the MOHRE.

2. Can my employer make me take un-paid leave?

Similar to the salary reductions, your employer cannot force you to go on unpaid leave. Unpaid leave has to be mutually agreed in writing between both parties.

3. Can my employer cancel my employment contract?

Yes, they can, as they would have been able to in normal circumstances, but you should be paid for unfair dismissal (usually 1 to 3 months’ salary), notice as per your contract, accrued but untaken annual leave, any other contractual entitlements, your accrued end of service gratuity (calculated at 21 calendar days’ basic pay for each year of the first five years of service and 30 calendar days’ basic pay for each additional year of service), and a ticket home if you have not found any other employment within 30 days of visa cancellation. You may wish to consider requesting your employer to not cancel your visa until you are able to exit the country to keep your health insurance active.

4. What if I do not wish to be terminated or accept a reduction in my salary?

You can request your employer to register you on MOHRE’s jobseeker portal, the “Virtual Labour Market” so that you may be considered for employment by other companies. During this time your employer must pay for housing and your other allowances (except for the basic salary) until you find permanent employment or leave the UAE.

5. If I am terminated, who will pay for my accommodation and food until I am able to leave the country?

You should ask your employer to register you on MOHRE's jobseeker portal, the "Virtual Labour Market" so that you may be considered for employment by other companies, see details above. Nonetheless, if your employer still terminates you, it is the responsibility of your employer to pay for your accommodation and food until you are able to leave the country. We strongly discourage you from signing any visa cancellation papers until you are ready to depart the UAE. Once your visa is cancelled, so is your health insurance, and in these times it is crucial to maintain valid health insurance.

6. Can my employer force me to resign, sign an amendment to my contract or sign my visa cancellation document?

Your employer cannot force you to resign, sign an amendment to your contract or sign a visa cancellation document. If you feel that you are being forced to sign any document, please contact the Legal Matters Portfolio to discuss your matter.

Should you wish to discuss your particular matter, you may contact the Legal Matters Portfolio at advisory@ismailicentredubai.org

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