

A M E R E L L E R

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Client Alert: Labor and Immigration Bans in the UAE

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Visa bans and immigrations bans are one of the more confusing topics facing employers and workers in the UAE. Despite a push by the public authorities to codify practice, the application of a ban can still be arbitrary, and subject to the discretion of the officials involved in the process. This article aims to provide some clarity between the differences between the two main types of bans, how they are applied, the and how long they may apply.

The Labor Ban

Historically, an employer was able to prevent an employee from transferring to a new employer for a period of six months by blocking the visa application with the former Ministry of Labor (now the UAE Ministry of Emiratization and Human Resources, or MEHR). This system was substantially liberalized with UAE Cabinet Resolution No 25 of 2010 which removed bans after employment of two years.

In late 2015, the MEHR issued three decrees with the aim to further liberalize the employment ban and reduce the threat of a labor ban on persons with educational certificates (i.e. a legalized and attested high school diploma or greater submitted as part of the visa application process), or who have been employed for more than six months.

This new liberalized system came into effect on 1 January 2016. Although there are still instances where officials create special exemptions or place exceptional bans, and the labor ban has no real impact for hiring in the free zones, a general explanation of the labor ban is explained in [Chart #1](#) and [Chart #2](#) of this Client Alert.

The Immigration Ban

The steps liberalizing the labor ban have not affected the immigration ban. This is a separate ban that is administered by the Immigration and Naturalization Department, part of the Ministry of Interior. These bans apply across the UAE without exception, both inside and outside the free zones.

The differences between the Immigration Ban and the Labor Ban are explained on [Chart #3](#) of this Client Alert.

Free zone-specific Bans

From time to time, some free zones have also applied bans on the transfer of employees within companies in the free zones registered within them without the approval of the previous employer. The existence of such bans are often not publicized and the policy is changing from time to time, and from free zone to free zone.

What Employers Need to Know

Multinational companies operating in the UAE typically confront labor bans when hiring new employees or when seeking to stop a resigning employee from joining a competitor.

When hiring, employers can conduct a check to determine whether a prospective employee faces a labor ban, and if so, how it can be lifted. In some instances, the ban cannot be lifted, and the prospective employee cannot be hired.

However, many professional workers can limit their exposure to the ban, as the ban is typically waived if an employee moves to a position with a higher salary (at least AED 5,000 for high school diploma, AED 7,000 for post-secondary diploma, and AED 12,000 for bachelor degrees).

Placing a ban on an employee that is leaving a company should be straightforward when the employee meets any of the elements set out in Chart #1 or Chart #2 below. However, placing a ban when there has been a breach of a non-compete or confidentiality obligation is complicated.

Given the discretion available to officials, companies should consult with professional advisors on a case-by-case basis.

Chart #1: Labor Ban Matrix: Limited Term Contract

	First 6 months of employment	After 6 months of employment	After Renewal of Initial Fixed Term
With Education Certificate	Limited risk of labor ban if: <ol style="list-style-type: none"> the employer consents to resignation; or employer terminates without cause. 	Risk of ban if employer does not consent to employee resignation, unless if resignation is effective as of the end of a limited term contract.	Generally no labor ban, but risk of ban if the employee breaches the Labor Law or contract, such as not giving and honoring the required notice period.
No Education Certificate	No risk of labor ban, if: <ol style="list-style-type: none"> the employer has failed to meet its legal or contractual obligations, including, without limitation, the duty to pay the wages for over 60 days; or the employer winds up its business; or Court ruling in favor of the employee. 	Risk of ban if: <ol style="list-style-type: none"> Before end of limited term contract; or Employer does not consent during the limited term 	

Chart #2: Labor Ban Matrix: Unlimited Term Contract

	First 6 months of employment	After 6 months of employment
With Education Certificate	Risk of labor ban, unless: <ol style="list-style-type: none"> 1. Mutual agreement of the parties; 2. The employer has failed to meet its legal or contractual obligations, including, without limitation, the duty to pay the wages for over 60 days; or 3. The employer winds up its business; or 4. Court ruling in favor of the employee. 	Generally no labor ban, but risk of ban if the employee breaches the Labor Law or contract, such as not giving and honoring the required notice period.
No Education Certificate	Risk of labor ban, unless: <ol style="list-style-type: none"> 1. The employer has failed to meet its legal or contractual obligations, including, without limitation, the duty to pay the wages for over 60 days. 2. The employer winds up its business. 3. Court ruling in favor of the employee. 	

Chart #3: Comparison between Immigration Ban and Labor Ban

	Immigration Ban	Labor Ban
Regulator	Immigration and Naturalization Department, Ministry of Interior	Ministry of Emiratization and Human Resources (former Ministry of Labor)
When activated	Employer must submit a formal complaint that the employee either: <ol style="list-style-type: none"> 1. committed a crime; or 2. seriously damaged the employer. 	See Chart #1 and Chart #2 .
Scope of ban	Prevents the person from entering or staying in the country. An immigration ban is typically followed by an order to leave the UAE.	Prevents the person from applying for a new work visa, but not from entering or residing in the country. A labor ban does not prevent a person from visiting the UAE by way of a valid visit visa.
Term	One year (generally), but may be as short of six months or may be a lifetime ban.	Generally, six months.
Territory	The territory of the UAE, without exception.	The territory of the UAE outside the free zones. Although some free zones maintain separate labor ban systems, a labor ban may stop an employee from being issued a work visa in a free zone, or to work for a government entity
Reversible	Generally not possible, although may be removed on an exceptional basis.	Reversible with: <ol style="list-style-type: none"> 1. a court order; 2. the issuance of a Non-Objection Certificate (NOC) from the former employer; and 3. in some cases, the payment of a fine.

If you would like more information about this topic then please contact us.

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