

Bahrain: Employment & Labour Law

This country-specific Q&A provides an overview of **Employment & Labour** laws and regulations applicable in **Bahrain**.

1 What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

Employee's remuneration support was made available by the Government of Bahrain to Bahraini employees that are registered with the Social Insurance Organization in accordance with the Social Insurance Law No.24 of 1976. The Government supported the full remuneration of all Bahraini employees from April – June 2020. The Government support was then limited to 50% of the Bahraini employee's wage in certain business sectors from July 2020 until December 2020.

2 Following the covid-19 pandemic, have new employee rights or protections been introduced in respect of flexible or remote working arrangements?

Such rights were introduced voluntarily by some employers and not by virtue of the law.

3 Does an employer need a reason in order to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

An employer do not necessarily need a reason in order to lawfully terminate an employment relationship. Legislative Decree no. 36 of 2012 promulgating the Labour Law of the Private Sector ("Bahraini Labour Law") do not particularly describe reasons for lawful termination. Instead the Bahraini Labour Law in Article 107 lists cases where an employee may be dismissed without notice or compensation, which are as follows:

1. If the employee has assumed a false identity or submitted false certificates or testimonials.
2. If the employee has committed a fault that caused serious material loss to the employer, provided that the employer shall report the matter to the competent authorities within two working days of his knowledge of

the seriousness of the material loss.

3. If the employee, despite a written warning, fails to comply with written instructions which are required to be observed for the safety of workers or the establishment, provided that such instructions are posted up in a prominent place in the workplace.
4. If the employee does not attend to the workplace, without legitimate cause, for more than twenty (20) intermittent days or for more than ten 10 consecutive days in one year, provided that such dismissal shall be preceded by a warning in writing by the employer to the employee after an absence of ten 10 days in the former instance and an absence of five days in the latter instance.
5. If the employee fails to perform his essential duties under the contract of employment.
6. If the employee discloses, without a written permission from the employer, the secrets related to the work.
7. If the employee has been finally sentenced for a crime or misdemeanour involving dishonour, dishonesty or public morals.
8. If the employee is found during the hours of work to be under the influence of alcohol or drugs; or if he has committed an immoral act at the place of work.
9. If the employee assaults his employer or his responsible manager or commits a serious assault upon any of his supervisors of work during the course of employment or for reasons connected therewith.
10. The employee's failure to comply with the legally prescribed rules concerning the exercise of the right to strike.
11. If the employee becomes unfit to do his work subject to the contract due to a cause attributed thereto, such as cancelling his permit to practise his work or loss of the qualifications authorising him to do the mutually agreed work.

In case an employee was dismissed without any of the justifiable reasons mentioned above, the employee would be entitled to compensation. Compensation for dismissal varies based on whether the employee's contract term is fixed or indefinite. If an employee's contract term is indefinite, he/she shall be entitled to compensation by the equivalent of two days' wages for each month of service and at no less than one month's wages up to a maximum of twelve months' wages. On the other hand, if the employee's contract term is fixed, he/she shall be entitled to compensation at the equivalent of the wages for the remaining period of the contract unless the parties mutually agree at a lesser compensation, provided that the agreed compensation shall not be less than three months' wages or the remaining period of the contract, whichever is less.

4

What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

As per Article 110 of the Bahraini Labour Law, if an employer is forced to dismiss some employees due to reorganisation, down scaling of business, or partial closure. Local Bahraini employees must be retained if it is possible to terminate foreign employees who have the same competence and experience as the local employees instead. Remuneration to employees terminated due to any of the reasons mentioned in Article 110 shall be half of the compensation which was detailed in our answer to question 2 above. There is no fixed number of employees to be affected for the additional considerations to apply.

5

What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

Employees will automatically transfer to the buyer. Both the buyer and seller shall remain jointly liable to settle the employees' entitlements. In general, a business sale shall not entitle an employer to dismiss employees freely.

6

What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

As per Article 99 of the Bahraini Labour Law, the notice period shall not be less than 30 days. However, the employers are bound to follow a longer notice period if it was mentioned in the employee's contract. In our experience, employment contracts of senior manager include a notice period in excess of the minimum period.

7

Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

Yes, it is possible.

8

Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

Yes, it possible to request from an employee to serve a period of garden leave.

9

Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

The employer is obliged to send a notice to the employee in order to effect the termination. In case of termination for a justifiable cause, the employer need to investigate with the employee and notify him/her of his/her shortfall, depending on the case.

10

If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

If an employer fails to send a notice of termination, the employment relationship will continue and both parties will maintain their rights and obligations. If the employer does not conduct an investigation or notify the employee of his/her shortfall the court may consider that the employment relationship was terminated unjustifiably.

11

How, if at all, are collective agreements relevant to the termination of employment?

Collective bargaining is recognised by the Bahraini Labour Law under Article 137, however it is not a common practice in the Kingdom of Bahrain to agree on the terms and conditions of employment through collective bargaining. As per the Bahraini Labour Law, bargaining may take place at company, business, industrial, professional or national level.

In case of mass dismissal, both the employer and employees shall initially aim to settle the dispute amicably. If no agreement is reached within 60 days, either the employer or employees may request the Ministry of Labour and Social Development (“Ministry”) to refer the dispute to the Collective Dispute Settlement Board (“CDSB”), whose formation shall be determined by the Minister. If the CDSB does not resolve the dispute within 60 days, either the employer or employees may request from the Ministry to refer the dispute to an arbitral tribunal. The arbitral tribunal shall then issue a binding and enforceable award.

12

Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate

the employment relationship? If yes, what are the sanctions for breach of this requirement?

The employer does not need to obtain the permission of or to inform a third party before being able to validly terminate the employment relationship. Unless termination is due to reorganisation, down scaling of business, or partial closure, as detailed in our answer to question 4. In such case the employer, may notify the Ministry of Labour 30 days prior to sending the termination notice to the employee(s), in order to avoid paying the standard compensation to the employee(s).

13

What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

Employers are prohibited from discriminating between workers based on sex, ethnicity, language, religion and belief pursuant to Article 2 bis of the Bahraini Labour Law. The Bahraini Labour Law also prohibits sexual harassment.

14

What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

If the employee was terminated on discriminatory grounds, he/she shall be entitled to additional compensation equivalent to one half of the compensations mentioned in our answer to question 1 above, unless the contract provides for a higher compensation. In case of sexual harassment, Article 192 bis of the Bahraini Labour Law stipulates as follows: Any employee during his work sexually harasses any of his colleagues, either by reference, by word, by deed or by any other means, shall be punished by imprisonment for a period not exceeding one year or by a fine not exceeding 100 dinars.

If this was committed by the employer or his representative, then he shall be punished by imprisonment for a period not less than six months or a fine not less than 500 Bahraini Dinars but not more than 1,000 Bahraini Dinars.

15

Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

No.

16

Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

The Bahraini Labour Law does not clearly provide protection to whistleblowers. However, under other legislation such as the Penal Code, whistleblowing is recognised as a mitigating factor.

17

What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

Please refer to our answer to question 3.

18

Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Employee entitlements upon termination may not be waived even by virtue of a mutual agreement.

19

Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

The non-competition restriction is only valid if:

1. The employee shall have attained 18 years of age at the time of concluding the contract.
2. Restriction shall be limited as to time for a period not exceeding one year after the termination of the employment contract and shall be limited in terms of place and type of work to the protection of the employer's legitimate interests.

An employer shall not invoke such agreement if the contract is terminated or if its renewal has been rejected without any justifiable action on the employee's part. The employer may not rely on such agreement if the employee has had a justifiable reason to terminate the contract of employment.

20

Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes.

21

Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

Employers are obliged to provide the employee with an end of service certificate, but are not obliged to provide references to new employers.

22

What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

Employers who terminate local employees may lose other benefits, such as a reduction in the number of work permits to hire an expatriate employees.

23

Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

None at this stage.