

**International
Comparative
Legal Guides**



Practical cross-border insights into employment and labour law

Employment & Labour Law
2022

12th Edition

Contributing Editors:

Stefan Martin & Jo Broadbent
Hogan Lovells

ICLG.com

Expert Analysis Chapters

- 1** **Global Development of ILO International Labour Standards**
Maria Paz Anzorreguy & Rita Yip, International Organisation of Employers
- 8** **International Labour Rights and Modern Slavery**
Anne O'Donoghue & Palwasha Nawabi, Immigration Solutions Lawyers
- 16** **Impact of COVID-19 on Employment in Japan**
Yoshikazu Abe & Yuko Kanamaru, Mori Hamada & Matsumoto

Q&A Chapters

- 21** **Austria**
GERLACH LÖSCHER | Littler: Markus Loescher & Armin Popp
- 28** **Bahrain**
Hassan Radhi & Associates: Ahmed Abbas & Al Sayed Jaffer Mohamed
- 36** **Bermuda**
MJM Limited: Fozeia Rana-Fahy & Dan Griffin
- 45** **Brazil**
A. Lopes Muniz Advogados Associados:
Zilma Aparecida S. Ribeiro & Fábida de Almeida Bertanha
- 53** **Canada**
Fasken Martineau DuMoulin LLP: Mathias Link & Rebecca Rossi
- 61** **Chile**
Porzio Ríos García: Ignacio García Pujol, Fernando Villalobos Valenzuela & Laura Kottmann Recabarren
- 68** **China**
King & Wood Mallesons: Linda Liang, Sasa Ma, Chutian Wang & Xuanyin Yao
- 77** **Croatia**
Buterin & Posavec Law Firm, Ltd:
Snježana Posavec Mitrov
- 85** **Denmark**
Lund Elmer Sandager Law Firm: Michael Møller Nielsen, Julie Flindt Rasmussen & Helene Lønningdal
- 94** **France**
Latournerie Wolfrom Avocats: Sarah-Jane Mirou
- 105** **Germany**
michels.pmks Rechtsanwälte Partnerschaft mbB:
Dr. Gunther Mävers & Dr. Jannis Kamann
- 117** **Greece**
Kyriakides Georgopoulos Law Firm: Kelly Papadaki, Dorita Bezati, Ioanna Chanoumi & Natalia Soulia
- 127** **Hong Kong**
Deacons: Paul Kwan, Jasmine Yung & Mandy Pang
- 139** **India**
Khaitan & Co: Anshul Prakash & Kruthi N Murthy
- 146** **Indonesia**
ABNR – Counsellors at Law: Indra Setiawan & Ridzky Firmansyah Amin
- 154** **Italy**
Carnelutti Law Firm: Marco Sartori & Giulia Busin
- 164** **Ivory Coast**
GENI & KEBE: Dr. Mouhamoud Sangare, Dr. Francky Lukanda & Mouhamed Kebe
- 171** **Japan**
Mori Hamada & Matsumoto: Shiho Ono & Yuko Kanamaru
- 182** **Luxembourg**
Etude Jackye Elombo: Jackye Elombo
- 190** **Malta**
Mifsud & Mifsud Advocates: Charlene Gauci
- 200** **Netherlands**
ACG International: Edith N. Nordmann
- 211** **Nigeria**
Udo Udoma & Belo-Osagie: Jumoke Lambo & Victoria Agomuo
- 220** **Philippines**
SyCip Salazar Hernandez & Gatmaitan: Leslie C. Dy & Anna Loraine M. Mendoza
- 227** **Poland**
CDZ Chajec & Partners: Ewa Don-Siemion, Piotr Kryczek, Dariusz Zimnicki & Monika Politowska-Bar
- 236** **Portugal**
PLMJ: Nuno Ferreira Morgado & José João Henriques
- 245** **Saudi Arabia**
Alburhan Law Firm: Muhannad Al Qaidi, Hussein Al-Zahrani, Saeed Al-Qarni & Mohammed Al-Ashabah
- 254** **Singapore**
Drew & Napier LLC: Benjamin Gaw & Lim Chong Kin
- 264** **Spain**
Monereo Meyer Abogados: Monika Bertram
- 272** **Sweden**
EmpLaw Advokater AB: Linnéa Lindahl & Abraham Dal

Q&A Chapters Continued

- 280** **Switzerland**
Homburger: Balz Gross & Nicole Hilpert
- 289** **Turkey**
CVG Law Firm and Consultancy: Volkan Önkibar & Ibrahim Can Çayırpare
- 297** **United Kingdom**
Hogan Lovells: Stefan Martin & Jo Broadbent

- 305** **USA**
Becker & Poliakoff: Ned Bassen & Catelyn Stark
- 311** **Zambia**
Dentons Eric Silwamba, Jalasi and Linyama Legal Practitioners: Lubinda Linyama, Cynthia Kafwelumzumara & Mailesi Undi
- 321** **Zimbabwe**
Wintertons Legal Practitioners:
Matsika Ruvimbo T.L & Tatenda Nyamayaro

Bahrain

Hassan Radhi & Associates



Ahmed Abbas



Al Sayed Jaffer Mohamed

1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

Legislative Decree no. 36 of 2012 promulgating Bahrain's Labour Law ("Bahraini Labour Law").

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

The Bahraini Labour Law offers protection to all types of employees regardless of whether they are part-time, full-time, local or expatriate employees. An employee is defined by the Bahraini Labour Law as every natural person employed in consideration of a wage with an employer and under his management or supervision.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Yes, contracts of employment must be in writing, in Arabic, and recorded in duplicate, one copy of which shall be retained by each of the parties thereto. If a contract is drawn up in a language other than Arabic, it must be accompanied by an Arabic version thereof, pursuant to Article 19 of the Bahraini Labour Law. In absence of a written contract, the employee alone may establish all his rights by all methods of evidence.

1.4 Are any terms implied into contracts of employment?

Most provisions of the Bahraini Labour Law are considered commanding principals that may not be contravened. These provisions include, but are not limited to, annual and sick leave entitlements, wages and working hours. The Bahraini Labour Law sets out the minimum requirements such as 30 days of annual leave and similarly the maximum threshold in other cases, such as eight working hours. However, employers are free to amend these requirements for the benefit of the employees. For example, an employer may grant an employee more than 30 days of annual leave and require the employee to work for less than eight hours per day.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Some of the employee rights set down by the Bahraini Labour Law represent the minimum threshold; such rights include 30 days of annual leave and 55 days of sick leave allowance, which comprises 15 days with full pay, 20 days with half-pay and 20 days without pay.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

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.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Trade unions are governed by Legislative Decree no. 33 of 2003 promulgating the Law of Labour Unions ("LUL"). For a trade union to be recognised, it must file its articles of association and the names of its founders with the Ministry of Labour and Social Development. The recognition of a trade union is subject to its articles not violating any of the public order policies in the Kingdom of Bahrain.

2.2 What rights do trade unions have?

Trade unions have the right to attend member employees' investigations, in addition to the right to assemble industrial strikes.

2.3 Are there any rules governing a trade union's right to take industrial action?

Yes, Article 21 of LUL stipulates that trade unions have the right to assemble industrial strikes subject to the following conditions:

1. It must have a peaceful aim for the members' economic and social welfare.

2. It must be approved by the majority of the given trade union members in an extraordinary general assembly, through secret ballot.
 3. Employers must be notified 15 days in advance of the employees' intention to assemble a strike.
 4. The strike shall not take place while the dispute is in the process of mediation or arbitration.
- Strike action at vital facilities that affects national security and the day-to-day life of citizens is prohibited.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Employees are not required to set up work councils.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

This is not applicable in Bahrain.

2.6 How do the rights of trade unions and works councils interact?

This is not applicable in Bahrain.

2.7 Are employees entitled to representation at board level?

Employees are not entitled to representation at board level.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

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. Such discrimination also covers discrimination in wage based on gender.

3.2 What types of discrimination are unlawful and in what circumstances?

Please refer to our answer to question 3.1 above.

3.3 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

There are no mandatory training requirements but Article 192 *bis* of the Bahraini Labour Law stipulates as follows: if any employee during his work sexually harasses any of his colleagues, either by reference, by word, by deed or by any other means, they shall be punished by imprisonment for a period not exceeding one year or by a fine not exceeding 100 Dinars.

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

3.4 Are there any defences to a discrimination claim?

Yes, however, it is subject to the Law of Evidence provisions whereby the employer may offer witness testimonies or other documents to substantiate the contrary.

3.5 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees may enforce their discrimination rights through the Labour Court and these claims may be settled before the initiation of a labour claim if a settlement was reached between the employer and employee. Please note that the Ministry of Labour and Social Development may be approached before a claim is initiated to settle such dispute.

3.6 What remedies are available to employees in successful discrimination claims?

The Bahraini Labour Law distinguishes between dismissal without a justifiable cause and unfair dismissal. If an employee is dismissed on discriminatory grounds, it is considered unfair dismissal. Compensation for each type of dismissal varies based on whether the employee's contract term is fixed or indefinite. If an employee's contract term is indefinite and is dismissed without a justifiable cause, 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 12 months' wages. On the other hand, if the employee's contract term is fixed and is dismissed without a justifiable cause, 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.

On top of the different compensations mentioned above, if an employee is unfairly dismissed, he/she shall be entitled to additional compensation equivalent to one-half of the abovementioned compensations due, unless the contract provides for a higher compensation.

3.7 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

The Bahraini Labour Law does not distinguish between full-time workers and "atypical" workers. Hence, all types of employees are treated similarly.

3.8 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?

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.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

A female employee shall be entitled to maternity leave on full

pay for 60 days, which shall include the period before and after their confinement, provided that they produce a medical certificate attested by a government health centre or one of the clinics approved by the employer stating the expected date of her confinement.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

During the maternity leave, the employee's pay and benefits shall remain unaffected. In addition, a female employee shall be entitled to obtain leave without pay to provide care for her child who is not more than six years of age for a maximum of six months in each case and for three times throughout the period of her service.

4.3 What rights does a woman have upon her return to work from maternity leave?

A female employee shall be entitled, after her maternity leave and until her child is six months of age, to two periods to breastfeed her newly born child, each of which shall not be less than one hour. She is also entitled to two periods of care for 30 minutes each until her child reaches one year of age. A female employee has the right to combine these two periods and such two additional periods shall be considered as part of the working hours without resulting in any reduction of her wage. An employer shall fix the time of the aforementioned care period according to the female employee's conditions and the interest of the business.

4.4 Do fathers have the right to take paternity leave?

Fathers are only entitled to one day of leave with full pay upon the birth of his child.

4.5 Are there any other parental leave rights that employers have to observe?

There are no other parental leave rights that employers must observe.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

The Bahraini Labour Law does not provide for such flexibility; however, it may be agreed upon separately between the employer and employee.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

Yes, employees will automatically transfer to the buyer. Both the buyer and seller shall remain jointly liable to settle the employees' entitlements.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

All employee rights will transfer on a business sale. Furthermore, collective agreements shall remain binding on the buyer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Employees are not entitled to be consulted before a business sale; however, the employer may do so voluntarily. It is not possible to estimate a rough timeframe to conclude a business sale as it depends on the size of the entity and number of employees to be transferred.

5.4 Can employees be dismissed in connection with a business sale?

In general, a business sale shall not entitle an employer to dismiss employees freely. However, employees may be dismissed on the grounds of reorganisation, downscaling of business and partial or total closure of the entity. In such case, employees will be entitled to one-half of the compensation that they would be entitled to in the case of termination without a justifiable cause.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Any change can be achieved only by way of mutual agreement. Employers are not free to make any amendments unilaterally, unless such power to unilaterally amend is derived from the employment contract terms.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Yes, an employer is obliged to serve a termination notice should it wish to dismiss an employee. As per the Bahraini Labour Law, the notice period must not be less than 30 days. However, the employers are bound to follow a longer notice period if it is stated in the employee's contract.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

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

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

Employees are considered dismissed upon the expiry of their termination notice period.

As per the Bahraini Labour Law, upon termination, employees are entitled to the following:

1. **Leave balance**

Article 58 of the Bahraini Labour Law stipulates that an employee is entitled to 30 days of annual leave.

The employee is entitled to receive payment *in lieu* of the accrued leave days.

2. **Travel tickets**

As per Article 27 of the Labour Market Regulatory Law, expatriates are entitled to a travel ticket back to their home country if they do not start working with another employer in Bahrain.

3. **End of service indemnity**

Expatriates who do not benefit from social insurance under the Social Insurance Law are entitled to an end of service indemnity. Article 116 of the Bahraini Labour Law explains the calculation method by stating that: *“a worker shall be entitled upon the termination of his employment to a leaving indemnity at the rate of half month’s wage for each of the first three years of employment and one month’s wage for each of the following years in service. A worker shall be entitled to receive his leaving indemnity for fractions of the year in proportion to the period spent in the employer’s service.”*

The calculation in the abovementioned Article shall be based on the employee’s most recent wage, excluding all allowances except social allowance.

Please note in this respect that a Bahraini employee whose salary exceeds 4,000 Dinars is also entitled to leave indemnity in respect of the amount in excess of the 4,000 Dinars only, pursuant to Article 17 of the SIL.

4. **End of service certificate**

Upon termination or during the course of employment, an employer is obliged to give an employee an end of service certificate pursuant to Article 13 of the Bahraini Labour Law, which stipulates as follows: *“an employer shall give to a worker, upon request and free of charge, a certificate confirming the date of employment, type of job, wage, other benefits received, experience, professional skills, date and reason for termination of the contract of employment.”*

5. **Notice period**

Employees are entitled to be served notice in accordance with the terms of their contracts, subject to which the notice period should not be less than 30 days in advance. If the employer fails to serve the notice in a timely manner, the employee is entitled to his/her wages for the notice period.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

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 a foreign employee which has the same qualification and experience as the local employee instead.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so, how is compensation calculated?

1) **Employee-related reasons:**

An employer may terminate a contract of employment without notice or compensation in any of the following instances:

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 its 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 20 intermittent days or for more than 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 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 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 carry out the mutually agreed work.

If the employee has not committed any of the abovementioned offences, upon dismissal the employee will be entitled to compensation which varies subject to the type of contract pursuant to Article 111 of the Bahraini Labour Law, which stipulates as follows:

- A. *“If an employer terminates an employment contract of indefinite period within the first 3 months from the effective date thereof, the worker shall not be entitled to any compensation unless the termination is an unfair dismissal...”*
- B. *“If an employer terminates an employment contract of an indefinite period without cause or for an unlawful cause three months after the commencement of employment, he shall compensate the worker 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.”*
- C. *“If an employer terminates an employment contract of definite period without cause or with an unlawful cause, he shall compensate the worker 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...”*

2) **Business-related reasons:**

Business-related reasons are mentioned under Article 110 of the Bahraini Labour Law, which states as follows: *“An*

employer may terminate the contract of employment because of the total or partial closure of the establishment, scaling down of its business or replacement of the production system by another that may affect the size of the workforce, provided that the contract's termination shall not take place except upon giving the Ministry concerning the reason for the termination 30 days before the date of giving the worker notice of termination. In cases other than the total closure of the establishment, the contract of the Bahraini worker who has the same competence and experience as the foreign worker with whom he works in the establishment shall be given priority.

In case of termination of the contract for any of the reasons provided for in the preceding paragraph, the worker shall be entitled to receive a bonus equivalent to one half of the compensation referred to in Article (111) of this Law."

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

If an employee commits an offence which is punishable by dismissal, the employer must investigate the employee in question within seven days from the date of discovering the violation. The trade union to which the employee belongs shall be entitled to nominate a representative thereof to attend the investigation once a written notice is given by the employee to the employer.

An employer shall be empowered to personally investigate the employee or to assign the investigation to another person who has experience in respect of the subject-matter of the violation or to one of the company's staff members, provided that the investigator's position shall not be less than the level of the employee involved in the investigation.

Upon conclusion of the investigation, the employee will be served a written notice of the penalties inflicted upon him/her. If the employee refuses to receive the written notice, it will be sent to his/her address via registered post with an acknowledgment of receipt.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

An employee may seek legal redress on the grounds that he/she was unfairly dismissed or dismissed without a justifiable reason. We have previously outlined compensation for unjustifiable dismissal in our answer to question 6.5. In the case of unfair dismissal, which is dismissal based on gender, race, religion, etc., an employee will be entitled to additional compensation equivalent to one-half of the compensation due for unjustifiable dismissal.

It is also common for employees to file claims upon the termination of their contracts to claim unpaid wages, notice period compensation, annual leave payments, travel tickets, end of service indemnities and end of service certificates. The same have been listed in our answer to question 6.3.

6.8 Can employers settle claims before or after they are initiated?

Yes, it is possible to settle claims before or after they are initiated if the employer pays the employee the entitlements that he/she is entitled to.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

If the dismissal was due to reorganisation, downscaling of business, or partial or total closure of the entity, the employer is obliged under Article 110 of the Bahraini Labour Law to notify the Ministry of Labour and Social Development of such dismissal.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

In the 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.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Non-competition restrictions are recognised.

7.2 When are restrictive covenants enforceable and for what period?

The non-competition restriction is only valid if:

1. The employee has reached the age of 18 at the time of concluding the contract.
2. Restriction shall be limited as to the 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.

7.3 Do employees have to be provided with financial compensation in return for covenants?

In the case of breach of non-competition restriction, the employer is entitled to compensation.

7.4 How are restrictive covenants enforced?

If an employee breaches the non-competition restriction, the employer will need to substantiate the damage it incurred and claim for compensation.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

As per the Bahraini Labour Law, employers shall maintain a file for each employee containing all particulars related thereto, especially: his/her name, age, CPR, marital status, residential address and nationality; position or occupation; his/her experience and qualifications; the date of engagement for employment and wage, and any changes occurring thereto; leave he/she has taken and the penalties imposed on him/her; and the date of termination of service and the reasons therefor.

The employer shall also maintain on such file the minutes of investigation and the report of his supervisors on his/her work performance, as determined in the basic regulations of the establishment, as well as any other documents related to the employee's service.

The employer shall also maintain the employee's file for at least two years from the date of the termination of the work relationship.

Such data may be considered personal data and, as a result, shall not be transferred freely to other countries except upon obtaining the employee's explicit consent or if it is deemed necessary for the performance of the employment contract.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Yes, employees do have such right.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

There is no legal obligation on employers to carry out pre-employment checks on prospective employees; however, employers customarily do so.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Under the Bahraini Labour Law, if an employee causes by reason of his/her work the loss or destruction of items, machinery or products owned by the employer or kept the same in his/her custody, and where this is due to his/her deliberate act or gross negligence, he/she shall be liable for payment of the value of what he/she has lost or damaged. However, the Bahraini Labour Law does not specifically provide that the employer may monitor the employee's emails, telephone calls or use of computer systems.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

The Bahraini Labour Law does not specifically provide that the employer may monitor an employee's use of social media outside the workplace. However, an employee shall not use social media platforms to disrespect his/her managers or disclose confidential information.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

All employment claims must be filed before the Labour Case Administration Office ("LCAO"). The LCAO stage shall not exceed two months but may be extended by the LCAO chief. At the end of the LCAO stage, the LCAO judge will note their opinion in a report and refer the case along with the report to the High Civil Court.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

The employer and employee may mutually agree to refer their dispute to the Individual Labour Dispute Settlement Authority ("Authority") at the Ministry of Labour and Social Development before taking the dispute to the courts of law. If a settlement of the dispute is reached, the Authority shall draw up a statement in this regard to be signed by both parties to the dispute, or their representatives, and the concerned officer. Such statement shall have the force of an execution deed.

9.3 How long do employment-related complaints typically take to be decided?

Employment-related complaints typically take five to 12 months.

9.4 Is it possible to appeal against a first instance decision and if so, how long do such appeals usually take?

Yes, the High Civil Court judgments may be appealed within 45 days before the Court of Cassation. It takes approximately up to 12 months for the Court of Cassation to issue its judgment.

10 Returning to the Workplace After COVID-19

10.1 Can employers require employees to be vaccinated against COVID-19 in order to access the workplace?

In the event where in order to access the workplace, a vaccination certificate is required pursuant to governmental orders, the employer may request the employee to get vaccinated or otherwise the employee may be terminated on the grounds of the employee being deemed as unfit to perform his/her job.

10.2 Can employers require employees to carry out COVID-19 testing or impose other requirements in order to access the workplace?

Employers are free to set the rules to ensure the safety of their workplace. In the event where an employee does not abide by such rules, an employee may be dismissed pursuant to Article 107(3) of the Labour Law which states that an employer may terminate a contract of employment without notice or compensation if the employee fails to comply with the instructions to be

followed for the safety of the employees or establishment despite his written warning, provided that the instructions are written and posted in an apparent place at the workplace.

Kindly note that such position is not tested before the courts in Bahrain, and therefore the court may, subject to its own discretion, conclude that carrying out COVID-19 testing is not necessary.

10.3 Do employers need to change the terms and conditions of employment to adopt a “hybrid working” model where employees split their working time between home and the workplace?

It is well established under the Labour Law and the judicial precedents that the employer is free to organise his entity as he deems necessary. In order to assess whether the same requires

a formal amendment or not, the employment contract entered into between employer and the employees must be reviewed to specifically ensure whether it clearly identifies the workplace as a specific location or building or simply states the work shall be performed in the Kingdom of Bahrain in general.

If the workplace is not specifically identified in the employment contract, a formal amendment will not be necessary and *vice versa*.

10.4 Do employees have a right to work from home if this is possible even once workplaces re-open?

The law does not offer employees the right to work from home. Employees are only permitted to work from if permitted by the employer.



Ahmed Abbas has been an associate of the firm since 2016 and received his Bachelor of Laws from the University of Southampton, United Kingdom. He is an ambitious and very active young lawyer with a great deal of legal knowledge and researching skills. Ahmed proved himself within a short period of time since the commencement of his internship programme with the firm.

He has excellent analytical skills and compelling briefs, motions and arguments. He has conducted legal research that has benefitted our firm immensely. The legal team is consistently impressed with Ahmed's performance and productivity, which shows his high degree of diligence. He is involved in different tasks including drafting and reviewing contracts, rendering legal opinions for clients, and representing clients before the courts of Bahrain.

His practice focuses on employee benefits and pensions, employment and labour law, insurance and reinsurance, litigation, telecommunications, civil aviation, arbitration and civil law. Ahmed successfully passed The International Federation of Consulting Engineers (FIDIC), Maritime Disputes, and Stock Market Disputes programmes at the G.C.C. Commercial Arbitration Centre. He recently completed the advance diploma in Islamic Finance in 2021.

He has contributed to the annual report of *Doing Business* in Bahrain 2018–2021, a World Bank Group Flagship Report that compares business regulation for domestic firms in 190 economies, including the Kingdom of Bahrain, and has contributed to many legal articles and pieces of research.

Hassan Radhi & Associates

ERA Business Centre, 18th & 19th Floors
Flat 1801, Building 361, Road 1705
Block 317, Diplomatic Area, P.O.Box: 5366
Bahrain

Tel: +973 175 352 52
Email: ahmed.abbas@hassanradhi.com
URL: www.hassanradhi.com



Al Sayed Jaffer Mohamed is one of the partners at Hassan Radhi & Associates and he is also the Chief Executive Officer at the firm. He is responsible for leading the development and execution of the company's long-term strategy. He is licensed to practise before the Courts of Bahrain, including the Court of Cassation and the Constitutional Court of Bahrain. He received his Bachelor's degree in Accounting as well as a Bachelor's degree in Law from Bahrain University, Kingdom of Bahrain in 1990 and 2006, respectively. Sayed is a CPA holder from the American Institute of CPAs, USA, 2000.

Sayed has worked on a wide variety of transactions involving banking, capital markets, M&A, insurance and reinsurance and related corporate matters. His practice also focuses on labour law, and he has represented and advised clients on various employment issues.

Sayed served as Ex-Tender Board Member and Ex-Assistant Undersecretary for Financial and Technical Affairs at the Ministry of Health. Sayed is currently a member of the IBA, Lex Mundi, the internal auditing committee at the Bahrain Chamber of Commerce and Industry, a Certified Arbitrator at GCC Commercial Arbitration Centre and an Accounts Expert before the Ministry of Justice and Islamic Affairs.

Hassan Radhi & Associates

ERA Business Centre, 18th & 19th Floors
Flat 1801, Building 361, Road 1705
Block 317, Diplomatic Area, P.O.Box: 5366
Bahrain

Tel: +973 175 352 52
Email: alsayed.jaffer@hassanradhi.com
URL: www.hassanradhi.com

Hassan Radhi & Associates (HRA) is one of the largest and most reputable and leading law firms in Bahrain and in the Gulf region. The office was founded in 1974 by Dr. Hassan Ali Radhi, the senior partner of the firm that has more than 45 years of legal experience and professionalism in the legal sector, especially in banking & finance and corporate law. The firm has nine partners and eight lawyers, supported by a dedicated and professional administrative team, that provide exceptional legal services locally and internationally in Arabic and English.

As part of the Lex Mundi global network – the world's leading network of independent law firms – HRA is the exclusive member firm in Bahrain that can provide its clients with preferred access to more than 22,000 lawyers around the world with in-depth experience in 125+ countries worldwide, all from a single point of contact. Individually, each Lex Mundi member firm is a leader in its local market.

The firm has been consistently listed among the top law firms in the region by the world's largest legal referral guides, such as: *Chambers and Partners*; *IFLR1000*; *The Legal 500*; and others.

www.hassanradhi.com



ICLG.com



Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms