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Recruitment of employees in the UAE: background checks



By Bronwyn Colgan

In the wake of the global economic crisis, many employers are reviewing and strengthening their policies in relation to background checks performed on prospective employees during the recruitment process. When performing background checks on a prospective employee in the United Arab Emirates (UAE), there are various legal obligations and considerations which an employer must bear in mind.

Reference checking

The UAE Labour Law¹ places an obligation on employers, on the termination of employment, to provide a certificate to an employee upon request which sets out certain prescribed information. It is open to the employee to request such a certificate from his or her ex-employer and provide it to a prospective employer. Whilst a prospective employer may seek to obtain information regarding an individual from the previous or current employer directly, the latter is, generally, under no statutory obligation to provide the requested information and may, for a variety of reasons, be unwilling or unable to do so.

It is common practice, internationally, for an employer to require a prospective employee to supply contact details for at least two referees who may be contacted and asked to provide a reference. It is increasingly common for references to include limited factual details only without including more personal information relating to the individual, such as details of remuneration or comments on the individual's character or performance. Any reference should include an appropriate disclaimer in order to reduce the possible risk of liability on the part of the referee.

Confidentiality

It is important that employers understand their statutory confidentiality obligations when providing a reference or information regarding past or current employees or obtaining information on a prospective employee. Breaches of the applicable laws can have serious implications for an employer and result in criminal penalties, including imprisonment.

Employers (whether past, current or prospective) in the UAE fall within the scope of the general duty under the Penal Code² prohibiting the disclosure of confidential information relating to an individual. This places restrictions on the nature of the information an employer can provide to a third party or prospective employer in relation to a current or past employee (and even a prospective employee). However, an individual may provide a specific written waiver to the employer so that the relevant information can be disclosed.

In addition to the above, there is a wide body of law in the UAE which restricts, and in some cases prohibits, the divulgence or publication of electronic information, records, correspondence or other forms of electronic documentation, which employers will need to consider with respect to information obtained by electronic means in relation to individuals.

Other types of checks

An employer should make background checks to verify a prospective employee's work experience and education prior to the employment. The employer may also wish to obtain information regarding an employee's traffic violation history and any criminal record. Recruiting employees into particular roles attracts additional considerations. For example, the appointment of a board member requires compliance with the UAE Commercial Companies Law³. An employer may also wish to consider other types of background checks where an individual is being recruited into a finance-related or senior position within the business.

Obtaining references and performing other background checks on a prospective employee can be important aspects of the recruitment process. An employer should take care when requested to provide information about a past or current employee, or when it obtains information about a prospective employee, to ensure that it does not breach any statutory or contractual obligations placed on it in relation to such information.

1. UAE Law No. 8 of 1980, as amended.

2. UAE Law No. 3 of 1987, as amended.

3. UAE Law No. 8 of 1984, as amended.

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