

# TOWARDS A LEGAL REGULATION OF THE EXCLUSIVE EMPLOYMENT CLAUSE IN UAE LABOR LAW

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**Abstract:** *The UAE Labor Law lacks provisions for the exclusive employment clause despite its complex and unclear nature. Due to this neglect, the exclusive employment clause is often used by employers to bind the workers to work exclusively for them. This study reviews UAE labor laws pertaining to exclusive employment clauses, examining legal provisions to regulate this clause and ensure worker freedom of work. The study clarified the legal restrictions for exclusive employment clauses to ensure their validity and enforceability in the workplace. In addition, the study emphasized the jobs where the exclusive employment clause is not covered and pointed to the disciplinary and civil penalties the worker may incur if he violates this clause. The study recommends regulating the exclusive employment clause in UAE Labor Law and demanding male provisions to balance worker freedom with the employer's legitimate interests.*

**Keywords:** UAE labor law, wage, exclusive employment clause, French labor code, exclusive employment clause, liberty of work, duty of loyalty, non-competition, legitimate interests.

## INTRODUCTION

In professional practice, people often engage in remunerated or compensated part-time jobs in their off-duty hours to earn an extra amount to improve their living. While some inform their employers, most do not, preferring to keep it discreet to avoid conflict of interest and potential legal and disciplinary actions (Jaworski et al. 2018). These actions are often outlined in exclusive employment clauses; which employers add to their contracts to protect their interests. Some employers allow workers to earn extra income during off-duty hours by incorporating a clause in their contract requiring prior approval<sup>1</sup> (Carlson et al., 2023). However, most employers discourage this and instead encourage workers to focus on their assigned tasks to maintain loyalty to their employer<sup>2</sup> (Urbig et al., 2021). Furthermore, the exclusive employment clause is a work contract provision where a worker agrees not to work for another employer during the contract implementation period. The employer's goal is to encourage the worker to focus on their work and maintain loyalty to the employer, unlike the non-competition clause that applies at the end of the contract<sup>3</sup>. Also, the exclusive employment clause in a work contract requires workers to adhere to it if health restrictions are met. If the clause is absent, workers can work for another employer as long as they maintain loyalty and avoid competing businesses with their first employer<sup>4</sup> (Popescu, 2019).


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<sup>1</sup>See Carlson et al. Employment law. (2023). Aspen Publishing.

<sup>2</sup> See Urbig, D., Reif, K., Lengsfeld, S., & Procher, V. D. Promoting or preventing entrepreneurship? Employers' perceptions of and reactions to employees' entrepreneurial side jobs. (2021). Technological Forecasting and Social Change, 172, 121032.

<sup>3</sup> See Al-Sharaf & Al-Tourah. Validity of the Arbitration Clause in the International Employment Contract: the Viewpoint of the GCC Countries. (2023). Comparative Law Review, 29, 175-208.

<sup>4</sup> See Popescu, A.. Short Considerations on the Clauses of the Individual Employment Contract. (2019). Revista Drept Social, 3.



To regulate this relationship between employees and employers, the UAE Labor Law No. 33 of 2021 was introduced effective 2/2/2022<sup>5</sup> (Zerara, 2023). But it still lacks regulation of the exclusive employment clause as, clause 9 of Article 16, which mandates workers not to work for others that violate the law and other relevant legislation. This text imposes a general duty on all workers, prohibiting them from working for others, and It does not provide details on whether workers have the right to work for another employer during contract during the execution of the employment contract and whether the exercise of this right is subject to certain legal restrictions<sup>6</sup>.

The Cabinet Resolution No. 1 of 2022 outlines the parameters of a part-time work permit, allowing laborers to engage with multiple employers if they secure a work permit from the Ministry. This provision aligns with the UAE Civil Transactions Law, which prohibits workers from diverting their attention to alternative endeavors during work hours or engaging in employment with a party other than the primary employer<sup>7</sup>. Failure to comply can lead to the termination of the contract or reduced remuneration, highlighting the laborer's right to seek employment with additional entities. However, this right also grants the initial employer the power to terminate the contract or reduce compensation due to the worker's negligence in fulfilling their responsibilities<sup>8</sup>.

Moreover, this complex relationship and the unclear interpretation of the labor law related to the exclusive employment clause raises several questions, including whether it conflicts with worker freedom of work, if there are legal restrictions on its validity and effect, what type of work the clause covers, and the nature of the sanctions a worker may face if they violate the requirement<sup>9</sup>. To address these issues, this study aims to clarify these issues by explaining how a worker can enjoy their freedom without legal liability, the legal restrictions needed for the validation of the clause in a worker's contract, and the liabilities for a worker under this clause. The study provides a clear interpretation of the UAE labor law, allowing for the limitation of penalties for violating the clause by defining the type of work not covered by the labor law.

#### METHODOLOGY

This study used a qualitative doctrinal legal review methodology to analyze primary legal sources like legislation, regulations, and case law to understand and evaluate black letter laws<sup>10</sup><sup>11</sup>. It thoroughly reviewed the UAE Labor Law No. 33 of 2021 and the Federal Civil Transactions Law to identify provisions related to exclusive employment. Relevant ministerial resolutions, standard employment

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<sup>5</sup> See Zerara, A. L. The Legislative Balance between Stability and Sustainability in the Labor Market-A Study of the United Arab Emirates Legislation. (2023) Journal of Legal Sciences, 38(1).

<sup>6</sup> See Ramadan et al. "Solving Individual Labor Disputes Online in accordance with the United Arab Emirates (UAE) Labor Law No.(33) of 2021". (2023). Journal of Law and Emerging Technologies, 3(1), 13-32.

<sup>7</sup> See Blanke, G., & Shafi, F. United Arab Emirates. (2023). Yearbook of Islamic and Middle Eastern Law Online, 22(1), 342-353.

<sup>8</sup> See Al Article on Tamimi & Company. Accessed from: <https://www.tamimi.com/law-update-articles/post-termination-restrictions-how-useful-is-a-stick-without-a-carrot/>.

<sup>9</sup> See Khassawneh, O., & Abaker, M. O. S. M.. Human resource management in the United Arab Emirates: Towards a better understanding. In HRM in the Global South: A Critical Perspective. (2022). (pp. 103-128). Cham: Springer International Publishing.g

<sup>10</sup> See Mitchell, M.. Analyzing the law qualitatively. (2023). Qualitative research journal, 23(1), 102-113.

<sup>11</sup> See Gawas, V. M.. Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development. (2017).



contracts, and judiciary circulars were also analyzed for further insights<sup>12</sup>. Furthermore, the study analyzed labor law in the UAE, focusing on worker rights, loyalty duties, and contractual interpretation. It used court judgments and secondary sources to understand how UAE judges treat exclusive clauses. The analysis included books, articles, and research papers on employment restrictions, non-competition obligations, and comparative labor models. Overall, it has considered both supporting and opposing exclusive clauses, analyzing data and common themes to refine complex issues.

### **THE WORKER'S ENJOYMENT OF FREEDOM OF WORK**

The exclusive employment clause in a worker's contract prohibits them from working for another employer, contradicting the fundamental constitutional freedom of "the freedom of the worker to work." The clause obligates the worker to work exclusively for their employer, but it also grants them the right to work outside their working hours with unwaged or wages work<sup>13</sup>. This creates a contradiction between the worker's right to work freely and being bound to work exclusively for one employer<sup>15</sup>. This issue is further discussed in the underlying section with reference to relevant laws:

#### **The First Requirement: Definition of the Worker's Freedom of Work**

The right to work and worker freedom are fundamental rights and freedoms that are explicitly stipulated in global constitutions. For example, Article 20 of the 1971 Constitution of the United Arab Emirates states: "Every citizen is free to choose his work, profession or trade within the limits of the law...." In addition, the right of a person to obtain employment was stated explicitly in the preamble to the French Constitution, which was approved on October 27, 1946<sup>16</sup>.

Consequently, with respect to the above-highlighted constitutions, it can be argued that worker freedom of work is a fundamental right, and it is not permissible to infringe it unless there is a legitimate justification, as in the exclusive employment clause<sup>18</sup>. Furthermore, another law relating to this is Article (L1121-1) of the French Labor Code stipulates that: "No one may impose restrictions on people's rights and individual and collective freedoms that are not justified by the nature of the task to be performed or commensurate with the desired goal<sup>19</sup>".

Therefore, the general principle stipulates that every worker has the right to practice any work he desires in his spare time, that is after completing the work agreed upon in the work contract. Yassin (2004) confirms this by highlighting, "The worker enjoys complete freedom to benefit from his spare time after performing the required work on the specified dates." He can invest his free time in entertaining himself, practicing his hobbies, or working for his interest or another employer<sup>20</sup>. This illustrates that a worker is obligated to work for their employer during specified working hours, and

<sup>12</sup> See 05.

<sup>13</sup> See Bednarowicz, B. Delivering on the European pillar of social rights: the new directive on transparent and predictable working conditions in the European Union. (2019). *Industrial Law Journal*, 48(4), 604-623.

<sup>14</sup> See Haak-Saheem, W., & Festing, M. Human resource management-a national business system perspective. (2020). *The International Journal of Human Resource Management*, 31(14), 1863-1890.

<sup>15</sup> See Andrew Willis. Agreement Not to Work for Competitors. (2020). Croner. Retrieved December 20, 2023, from Croner website: <https://croner.co.uk/resources/contracts-documentation/exclusivity-clause-agreement-employment-contracts/>

<sup>16</sup> See Raafat, R.. MANIFESTATIONS OF THE FEDERAL SYSTEM IN THE UNITED ARAB EMIRATES. (2022). *Journal of Positive School Psychology*, 6(7), 1470-1490.

<sup>17</sup> See Wright, G. The reshaping of French democracy. (2022). Taylor & Francis.

<sup>18</sup> See Davidov, G.. Non-waivability in Labour Law. (2020). *Oxford Journal of Legal Studies*, 40(3), 482-507.

<sup>19</sup> See Perulli, A. A Purposive Approach to Labour Law by Guy Davidov: A comment. A Purposive Approach to Labour Law by Guy Davidov: a comment. (2017). 759-772.

<sup>20</sup> See Yassin A R, a mediator in explaining labor laws and social insurance provisions: the individual work contract. In: Dubai Police Academy. (2004). UAE: 541-544.



outside these times, they can work on any other work, whether paid or unpaid, without being related to a "slavery contract"<sup>21</sup>.

Nonetheless, based on the global constitutions, it can be asserted that workers have the right to use their spare time for work and benefit from their experiences for financial or moral purposes. Employers can object unless the job outside their working hours competes with the employer's work or affects their performance<sup>22</sup>. Workers who wish to work for another employer are not obligated to seek permission or notify their employer, as they exercise constitutional freedom. However, they must inform the employer that their second job does not exceed the legal maximum working hours<sup>24</sup>

### *3.2. The Second Requirement: The Conditions for the Worker to Enjoy Freedom of Work*

In essence, labor laws and regulations do not prevent a worker from working for another employer, whether working full-time or part-time or according to any other type of work permitted by the Labor Law and its executive regulations<sup>25</sup>. If any worker wishes to work for another employer, Workers can work for another employer without needing to notify or seek permission<sup>26</sup>. However, employers must respect maximum working hours. To enjoy freedom, workers must not exceed hours and adhere to loyalty to the employer<sup>27</sup>. Both employers must ensure maximum working hours are respected. This latter is further discussed below in more depth:

#### *3.2.1. First - Not to Exceed the Maximum Working Hours*

Article 17/1 of the UAE Labor Law has set eight hours per day and forty-eight hours per week as the maximum for regular working hours. Article 19/1 of the law above also permits the employer to employ the worker for additional working hours in addition to the regular working hours, provided that they do not exceed two hours per day. Article 17/5 of the same law allows the worker to combine more than one paid job, mainly when he works without a full-time system. Under these laws, a worker is not prohibited from working for another employer if the total regular working hours in both exceed the previous maximum<sup>28</sup>.

However, it is evident that the worker should not be allowed to work for another employer whenever such work would lead to the worker exceeding the maximum regular working hours specified in the UAE Labor Law<sup>29</sup>. Therefore, the UAE legislator should adopt a general principle that prohibits the worker from engaging in remunerated work for more than the maximum working hours specified in labor laws

<sup>21</sup> See Dubal, V. B. Wage slave or entrepreneur? Contesting the dualism of legal worker identities. (2017). California Law Review, 65-123.

<sup>22</sup> See Mansour M Labor Law. (2010). In: Al-Halabi Human Rights Publications, Beirut, Lebanon: 310-316.

<sup>23</sup> See Fattal R. Explanation of the Law Regulating Labor Relations and the Principles of Social Security in the United Arab Emirates. (2018). In: Bright Horizons Publishers, Sharjah, UAE: 171-177-177.

<sup>24</sup> See Dorothee P Can You Combine Two jobs? The Conditions to Be Respected Depending on the Case. On: aide-social.fr website. (2022). Available at: <https://www.aide-sociale.fr/cumul-emploi/> (accessed 1 October 2022)

<sup>25</sup> See Article 7/1 of the UAE Labor Law. (1980)

<sup>26</sup> See Website: Herbert Smith Freehills. UAE Labour Law: Executive Regulations. (2020). Retrieved December 20, 2023, from Employment notes website: [https://hsfnotes.com/employment/2022/02/24/uae-labour-law-executive-regulations-now-published/#:~:text=Article%20of%20the%20Labour,and%20\(4\)%20flexible%20work.](https://hsfnotes.com/employment/2022/02/24/uae-labour-law-executive-regulations-now-published/#:~:text=Article%20of%20the%20Labour,and%20(4)%20flexible%20work.)

<sup>27</sup> See Mamycheva. (2016). Instrumentation organizational and economic support of labor motivation of employees. International Review of Management and Marketing, 6(15).

<sup>28</sup> See Website: The Official Portal of the UAE Government. Working hours and overtime. (2021). Retrieved December 20, 2023, from U.ae website: <https://u.ae/en/information-and-services/jobs/working-hours>

<sup>29</sup> See Website MOHRE (1980). Punishment and Penalties. Retrieved from: <https://www.mohre.gov.ae/handlers/download.ashx?YXNzZXQ9NDky>



and regulations, similar to the position of some national legislators, especially the French legislator (Article L8261-1 of the French Labor Code)<sup>30</sup>.

Nevertheless, there is still one question that arises, which is “Should self-employed activities outside regular working hours be included in calculating maximum working hours? Mostly, the arguments are against it, as such time falls outside labor law enforcement. Additionally, workers labelled “full-time” may work below legal maximums, like teachers with a six-hour workday<sup>31</sup>. This affirms the right of such workers to seek additional employment to reach the legal maximum, fostering flexibility within labor regulations<sup>32</sup>. These highlighted gaps demand new provisions for relevant laws governing working hours, part-time employment, and worker freedom.

Moreover, if a worker exceeds legally allowed working hours for another employer, they must be held accountable. If they wish to continue with their first employer, they must terminate their contract with the second employer. Otherwise, according to Article 44/10 of the UAE Labor Law, they face dismissal without warning for their first and second work. The second employer must pay the worker for hours worked, even if they exceed legally permitted hours. If the second employer knows the worker will exceed these hours, administrative and criminal penalties must be imposed for violating Labor Law and executive regulations<sup>33</sup>.

Lastly, some of the maximum working hours’ liability does not apply to some categories or workers under Article 15/4 of the Executive Regulations of the UAE Labor Law. This worker includes board members, honorary holders, sailors, and others. The UAE Labor Law does not cover paid or unpaid work outside working hours<sup>35</sup>. However, national legislations like the French Labor Code have specific requirements for excluding certain work from the rule. For example, Article (L8261-3) of the French Labor Code excludes certain fields such as scientific, literary, artistic, public interest, personal account work, free or voluntary work, small household work, and emergency work<sup>36</sup>.

#### **Second - The Worker's Commitment to the Duty of Loyalty to the Employer**

If the worker enjoys - in principle - the freedom of work and occupies his spare time with any work whatsoever, whether this work is paid or not, and whether it is for his own account or of another employer, in that case, he remains bound by the duty of loyalty without the need to stipulate it explicitly in the work contract. The duty of loyalty imposes on the worker to do everything that would preserve the employer’s interests and, at the same time, refrain from anything that could harm or conflict with those interests<sup>37</sup>.

A worker exercising his right to freedom of work and engaging with any work, whether it is self-employed or with another employer in his off-duty hours, would still be liable by his duty of loyalty towards his employer, without the need to stipulate it explicitly in the work contract. This duty

<sup>30</sup> See Article on French Business Law.com (2023, November 5). Retrieved December 20, 2023, from French Business Law website: <https://french-business-law.com/french-legislation-art/article-l8271-1-of-the-french-labour-code/>

<sup>31</sup> See Lott & Klenner, Are the ideal worker and ideal parent norms about to change? The acceptance of part-time and parental leave at German workplaces. (2018). *Community, Work & Family*, 21(5), 564-580.

<sup>32</sup> See Damir-Geilsdorf, & Pelican. Between regular and irregular employment: subverting the kafala system in the GCC countries. (2019). *Migration and Development*, 8(2), 155-175.

<sup>33</sup> See Website: The Official Portal of the UAE Government. (n.d.). Accessed from:

<https://u.ae/en/information-and-services/jobs/terminating-employment-contracts#:~:text=any%20parties'%20rights.-,Termination%20of%20contract%20without%20notice%20by%20the%20employer,submits%20forged%20documents%20or%20certificates>

<sup>34</sup> See Barnett et al. Shooting the goose that lays the golden egg: the case of UAE employment policy. (2015). *Journal of Economic Studies*, 42(2), 285-302.

<sup>35</sup> See FAGHR. Executive Regulations of Human Resources Law in the Federal Government. (2018)

<sup>36</sup> See on Légifrance. for Article L8261-3 - Code du travail. (2008).

[https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000006904878](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006904878)

<sup>37</sup> See Mansour. Labor Law. (2010). In: Al-Halabi Human Rights Publications, Beirut, Lebanon: 310-316.



demands the worker to preserve their interests and refrain from any activities that could bring harm or conflict with his current employer<sup>38</sup>.

Furthermore, a worker's duty of loyalty to their employer includes not performing work outside regular working hours that competes with the employer, regardless of whether it is for their account or another employer. It is impossible to work with and compete with one person simultaneously. However, a worker may engage in work related to their employer's field, even if the employer allows it. The worker must remain committed to performing their work honestly and loyally without causing damage to their institution<sup>39</sup>.

The basis of the worker's duty of loyalty is due to his obligation to implement his contractual and legal obligations towards the employer in goodwill by the general rules stated in Article 246/1 of the UAE Civil Transactions Law, which states that "The contract must be executed by what it includes and, in a manner, consistent with what it requires goodwill." The parties to any contract -not only the work contract - are obligated to implement the agreement they conclude in goodwill<sup>40</sup>.

Moreover, their obligations extend beyond contract clauses and legal requirements, encompassing all obligations under the principle of good faith for implementing agreements<sup>42</sup>. Based on this principle, a worker must adhere to working hours and avoid activities that could affect their energy and productivity for their employer. Breaching this duty can result in disciplinary sanctions, including dismissal without warning, and is an essential obligation<sup>43</sup>.

#### **THE LIMITATIONS OF THE VALIDITY OF THE EXCLUSIVE EMPLOYMENT CLAUSE**

The UAE Labor Law and executive regulations do not explicitly address the permissibility of the exclusive employment clause, making it crucial to consult the UAE judiciary to determine its validity and enforceability. However, it is difficult to access rulings from UAE courts related to the aforementioned situation<sup>44</sup>. For instance, taking the example of the French labor law, it was observed that if the French legislator failed to consider regulating the exclusive employment clause, the French judiciary did not forget to set the necessary regulations for the legality of this condition<sup>46</sup>. Based on this, the exclusive employment clause in France is only valid if it includes both formal restrictions on "writing" and several substantive restrictions, as determined by French jurisprudence.

##### **The First Requirement: The Formal Constraint "Writing"**

The UAE Labor Law does not require writing to validate or prove the exclusive employment clause, which is only valid if the worker and employer agree not to work for another employer. However, it is being debated that the UAE legislator must mandate the inclusion of an exclusive employment clause in the work contract to validate and enforce it against the intended worker. The condition restricts

<sup>38</sup> See De Stefano. 'Masters and Servers': Collective Labour Rights and Private Government in the Contemporary World of Work. (2020). *International Journal of Comparative Labour Law and Industrial Relations*, 36(4).

<sup>39</sup> See Daleure, & Krishnan. *Emiratization in the UAE labor market*. (2016). Springer.

<sup>40</sup> See Rankin & Hill, S. L. *The United Arab Emirates*. In *The International Application of FIDIC Contracts* (pp. 386-405). (2019). Informa Law from Routledge.

<sup>41</sup> See Malkawi, B. *Uniformity or Diversity of the Concept of Good Faith Under the CISG and UAE Law*. In *Quo vadis Commercial Contract? Reflections on Sustainability*. (2023). *Ethics and Technology in the Emerging Law and Practice of Global Commerce* (pp. 251-260). Cham: Springer International Publishing.

<sup>42</sup> See Article 246 of the Civil Transactions Law. UAE.

<sup>43</sup> See Website: MOHR. *Federal Law No. (1) 1987 Concerning Civil Transactions Law of the U.A.E.* (2023)

<sup>44</sup> See Bantekas. *Transnational Islamic Finance Disputes: Towards a Convergence with English Contract Law and International Arbitration*. (2021).

<sup>45</sup> See Su.. *Legality of unilateral exploitation of space resources under international law*. (2017) *International & Comparative Law Quarterly*, 66(4), 991-1008.

<sup>46</sup> See Website ICLJ. *Employment & Labour Laws and Regulations France 2023*. (2023)



worker freedom, makes it easier to prove the clause's content, and ensures mandatory restrictions are available for the validity of the clause<sup>47</sup>48.

Furthermore, the exclusive employment clause must be clearly and explicitly stated, ensuring it meets all necessary conditions for its validity and is easily comprehensible. The condition was formulated as such, "The worker expressly pledges to request the company's authorization for any additional activity he wishes to carry out," due to the lack of imprecision in the meaning of the additional activity mentioned in this clause<sup>49</sup> (Ass. Plan. Fr. 16/5/2018, n. 16-25272)<sup>50</sup>51.

On the other hand, the agreement to prevent the worker from working for another employer may not be comprehensive and general because this is a flagrant violation of the worker's freedom of work. The French Court of Cassation confirms this in one of its rulings, which states, "The condition of exclusive work is valid as long as it relates to a worker charged with duties affecting the company's activity and the confidentiality of work in it, and as long as it does not create an absolute prohibition" (Cass. Soc. Fr. 29/9/2016, n. 14-24296)<sup>52</sup>. To validate the exclusive employment clause, it is necessary to specify the scope of prohibited activities, such as preventing the worker from working in a competing establishment with similar business activities.

However, it may be possible to allow the worker to practice outside their working hours, provided prior permission is obtained from the employer<sup>53</sup>. For instance, there is some room for an agreement which can permit a worker to work outside normal hours, provided they receive advance permission from their first employer, regardless of whether the work falls within their first employer's scope.

Similarly, an employer can offer a worker exclusive work after the contract is concluded, which is considered an amendment to the employment contract. The worker can accept or reject this agreement. If the worker agrees to exclusive work, they must only work for another employer from the effective date of the agreement once the contract expires. However, if a worker refuses to accept exclusive employment and is dismissed by their employer, it is illegal. The worker can receive specific compensation for the damage caused, provided it doesn't exceed their last wages for three months, as per Article 47/2 of the UAE Labor Law<sup>54</sup>.

An agreement between an employer and a worker allowing the worker to work for another employer after obtaining prior approval is less restrictive than an exclusive employment clause. If the employer refuses, the effects remain the same. Therefore, it was decided in the judiciary to consider the condition of prior approval to enable the worker to work for another employer<sup>55</sup>as a form of the exclusive employment clause, and they are subject to the same provisions (Cass. Soc. 16/5/2018, n. 16-25272)<sup>56</sup>.

<sup>47</sup> See Cummings. *The Price Is Rights: Getting the United Arab Emirates up to International Speed in the Labor Law Department*. Brook. (2018). *J. Int'l L.*, 44, 410.

<sup>48</sup> See Cherian, J., Gaikar, V., Paul, R., & Pech, R. *Corporate culture and its impact on employees' attitude, performance, productivity, and behavior*. (2021). *Journal of Open Innovation: Technology, Market, and Complexity*, 7(1), 45.

<sup>49</sup> See Ajman University. *A peer-reviewed scientific periodical magazine concerned with legal studies*. (2023). Accessed from: [https://www.ajman.ac.ae/upload/files/financial\\_documents/New\\_Booklet\\_2023-2024\\_Eng\\_and\\_Ar-1.pdf](https://www.ajman.ac.ae/upload/files/financial_documents/New_Booklet_2023-2024_Eng_and_Ar-1.pdf).

<sup>50</sup> See (40)

<sup>51</sup> See (49)

<sup>52</sup> See *Légifrance* for Cass. Soc. 16/5/2016 (2016).

<sup>53</sup> See *Avocat.fr Blog*. (2018, June 15). Accessed at: <https://consultation.avocat.fr/blog/vincent-delaroches/article-24613-l-emploi-d-un-materiel-inadapte-peut-engager-la-responsabilite-penale-de-l-employeur-lors-de-la-survenance-d-un-accident.html>

<sup>54</sup> See Kamøy. *Diversity of Law in the United Arab Emirates: Privacy, Security, and the Legal System*. (2020). Routledge.

<sup>55</sup> See (23)

<sup>56</sup> See *Légifrance*, for Cass. Soc.

16/5/2018. (2017) <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007051006/>



Overall, an exclusive work agreement between an employee and employer is subject to general rules, with the burden of proof falling on the employer, who is harmed by the employee's breach. An exclusive employment clause is a legal act of absolute value, and its validity can only be established in writing or equivalent documents if the condition is considered non-formal. If the law requires writing for the clause's validity, it is not valid or proven. The worker's commitment to the exclusive employment clause represents an exception to the principle of freedom of work, and the interpretation of this exception should not be expanded. If doubts arise about the existence of the exclusive employment clause, the worker must be interpreted in favor, as it restricts their freedom to work

### **The Second Requirement: Objective Limitations**

As discussed earlier, the UAE Labor Law did not regulate the exclusive employment clause, and the UAE judiciary has not had a similar case. However, the French judiciary's jurisprudence has considered the exclusive employment clause valid and enforceable. (Cass. Soc. 11/5/2005, Bull. Civ. V, 2005, n. 159).<sup>57</sup> The text states that a worker's rights are protected when necessary to protect the legitimate interests of the establishment and are justified by the nature of their job, except when there is inconsistency in opinion regarding the condition if the worker is associated with the employer<sup>58</sup>, these conditions are further interested below:

#### **First - Justified by the Nature of the Work Assigned to the Worker**

The exclusive employment clause in UAE Labor Law, Article 10/1, prohibits workers from working for another employer unless their assigned job allows them to know the employer's clients or access business secrets. This prohibition is valid and enforceable based on the nature of the job and the worker's non-competition obligations. Additionally, a worker's job nature allows them to know their employer's clients, potentially influencing them to switch to another facility.

Consequently, if the worker can see the secrets of their work, potentially disclosing them to another employer for profit which could threaten the legitimate interests of the first employer. Furthermore, the exclusive work condition is a legal provision that restricts workers' freedom of work in a facility, only applicable to those assigned tasks that allow them to know the employer's clients or access work secrets (Norton, 2016). Examples of workers who may be subject to this condition include executives, purchasing and sales staff, and others.

However, suppose an exclusive employment clause is agreed upon with workers whose tasks do not allow them to know the employer's clients or see work secrets, such as those entrusted with material or bodily work. In that case, it is considered void, as there is no justification to limit the worker's freedom of work analogy with the non-competition clause<sup>59</sup>. Therefore, if the exclusive work condition is found in a work contract for workers performing jobs that do not pose a severe threat to the employer's legitimate interests, it must be ruled invalid (Klub and Mezher, 2021).

#### **Second - Necessary to Protect the Legitimate Interests of the Employer**

According to Abu Bakr (2019), the condition of exclusive work is only valid if it protects the employer's legitimate interests. If a dispute arises between the worker and employer, the employer must prove that the condition is necessary to avoid economic damages caused by the worker's work for another employer. The employer cannot obligate a worker to work exclusively for them unless the tasks threaten their legitimate interests, such as accessing work secrets or knowing the employer's clients<sup>60</sup>. Furthermore, expanding Abu Bakr's work, it can be argued that employers have the right to protect their legitimate interests by ensuring that their workers do not divulge work secrets, benefit from them

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Cour de cassation, civile, Chambre sociale, 16 mai 2018, 16-25.272, Inédit

<sup>57</sup> See Legifrance, for Cass. Soc. 11/5/2005, Bull. Civ. V, 2005, n. 159 (2005). Retrieved from: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007051006/>

<sup>58</sup> See Ely, J. H. *The wages of crying wolf: A comment on Roe v. Wade*. In *Conscience, Expression, and Privacy* (pp. 104-134). (2018). Routledge.

<sup>59</sup> See Shanab, *Explanation of Labor Law Provisions*. (2010). In: *Al-Wafa Legal Library*, Alexandria, Egypt: 250-254.

<sup>60</sup> See Abu Bakr. *"The worker's commitment not to compete with the employer between legislation and judicial rulings"*. (2019). *Journal of Legal and Political Sciences*, September, Amman, Jordan: 463.





in private projects, or incite clients to work for their own projects. If an employer stipulates that a worker works exclusively for them and the job does not threaten their interests, this condition is arbitrary. It must be ruled void, as protecting the employer's legitimate interests is unnecessary.

### **Third - The Worker Is Not Bound by A Part-time Work Contract**

For the validity of the exclusive work condition, it is required that the issues discussed earlier exclude a part-time worker because this condition deprives this worker of his right to work for more than one employer. Article 6/1/f of the Executive Regulations of the UAE Labor Law allows a part-time worker to work for multiple employers, provided they have obtained a permit from the Ministry of Human Resources and Emiratization<sup>61</sup>. This condition is necessary to ensure the validity of the exclusive work condition, as it deprives the worker of their right to work for more than one employer<sup>62</sup>.

Furthermore, the condition of bounding a worker with a part time contract as he should be free to work for another employer or obtain prior permission to do so. The invalidation of conditions that prevent the worker from working for another facility during the work contract is necessary to enable them to utilize their full work capacity and earn sufficient income to cover their needs and the needs of their family.

Additionally, in this case, if we take an example from the French judiciary, they have previously established a general principle that invalidates the exclusive work clause that is included in the part-time work contract (Cass. Soc. Fr. 11/7/2000, Bull. civ. V, 2000, n. 277), given that such a worker does not work at his total capacity, and because the condition above represents a violation of the worker's right to work full-time<sup>63</sup>.

However, starting in 2004, judicial rulings contradicted the principle that exclusive work conditions in part-time employment contracts were treated the same as those in full-time contracts. This means that the exclusive work condition in part-time contracts is valid only if it meets the legal restrictions required for the validity of the exclusive work condition, which is necessary to protect the employer's legitimate interests and justified by the nature of the worker's tasks (Cass. Soc. Fr. 25/2/2004, n. 01-43392)<sup>64</sup>. But, despite this it is still argued that the principle of nullifying the exclusive work clause should be continued if it is mentioned in the part-time work contract.

Lastly, it can be concluded from the continued debate that if all restrictions in the exclusive work condition are met, it becomes a valid and enforceable condition. The worker adheres to it throughout the work contract's implementation without extending it beyond the contract's expiry. Once the contract expires, the worker is released from this obligation and can resume any work, regardless of the type of work they were previously doing with their previous employer<sup>65</sup>.

Additionally, after a worker's work contract ends, they can continue to work for their previous employer unless they are bound by a non-competition clause that prevents them from competing with the employer. This clause, similar to exclusive employment, restricts the worker's freedom to work but only applies after the contract ends. However, if the exclusive work condition's validity is not guaranteed by one or more required restrictions, the condition can be deemed invalid according to Ass. Plan. Fr. 11/7/2000, n. 98-43240. (Ass. Plan. Fr. 11/7/2000, n. 98-43240).

Overall, if the exclusive employment clause is invalid, the worker can seek compensation for damages caused by their legally incorrect condition, which prevents them from working with another employer

<sup>61</sup> See Hartay et al. PRINCIPLES FOR STATUTORY REGULATION AND SELF-REGULATION OF FUNDRAISING. (2020). European Center for Not-for-Profit Law Stichtung.

<sup>62</sup> See Fares, Explanation of the UAE Labor Law and Social Insurance System. (2022). In: Dar Al Nahda Al-Ilmiyya, Dubai, UAE: 197.

<sup>63</sup> See Legifrance, for Cass. Soc. Fr. 25/2/2004, n. 01-43392 (2000) <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007415893>

<sup>64</sup> See Vallée & Gesualdi-Fecteau. Setting the temporal boundaries of work: an empirical study of the nature and scope of labour law protections. (2016). International Journal of Comparative Labour Law and Industrial Relations, 32(3).

<sup>65</sup> See Tomprou & Lee. Employment relationships in algorithmic management: A psychological contract perspective. (2022). Computers in Human Behavior, 126, 106997.



and missing opportunities for additional income as per the Cass. Soc. Fr. 24/3/2021, n. 19-1641866. Furthermore, it also illustrated that if a worker was penalized for violating exclusive work and found invalid due to lack of health restrictions, they can demand the annulment of the disciplinary penalty decision and seek compensation for the damage they suffered as a result of the lawful violation.

### THE WORKER'S IMPLEMENTATION OF HIS COMMITMENT TO THE EXCLUSIVE EMPLOYMENT

An important aspect related to the validity of the exclusive employment clause is If an employer mandates a worker not to work for another employer while maintaining their valid work contract, and this condition meets health restrictions, the worker is bound to do so while maintaining their right to practice a business not covered by the exclusive employment clause<sup>67</sup>. Violations may result in disciplinary and civil penalties, with the employer imposing the disciplinary penalties and the worker facing civil penalties through the judiciary. These two conditions are also not regulated with specified instructions in the UAE labor<sup>68</sup>. To provide a clear interpretation and the needed provisions, these requirements are discussed from different aspects as under:

#### The First Requirement: Works Not Covered by the Exclusive Employment Clause

If the contract includes an exclusive work condition stating that the worker is prevented from working for another employer (this condition meets the legal restrictions required for his health previously presented), this condition should be considered valid and enforceable against the worker. Because of the validity and enforceability of the exclusive work conditions, the worker is obligated not to work for another employer and to be satisfied with the work assigned to him in the work contract. However, he reserves the right to engage in business not covered by the condition above, particularly non-wage business (first) and non-competitive business for the employer (second).

#### First, Unpaid Work

At the outset, it is noted that the employer may not adhere to the exclusive employment clause in facing a worker who, in addition to his work, exercises a voluntary activity, that is, unpaid because the condition above has no effect except on paid professional activities. This is regardless of whether these activities compete with the activity of the employer or not. There is almost unanimity that it is not permissible to invoke the condition of exclusive work to a worker who performs voluntary activities in parallel with his work for the employer<sup>69</sup>.

Additionally, Voluntary activities are unpaid, regardless of their charitable nature. Workers can be members of a charitable association and hold positions, including director, without their employer having the right to enforce exclusive work conditions if included in the employment contract. Furtherly, according to CJS 3e, 31/10/2019, (n. 00698), voluntary activities are not limited to charities but can include cultural, sports, and recreational activities<sup>71</sup>. A worker's voluntary participation in a tennis camp as a coach does not breach the exclusive work requirement as long as they do not receive any financial advantage in return<sup>72</sup>. Based on this is argued that it is not permissible to calculate the

<sup>66</sup> See Legifrance, for Cass. Soc. Fr. 24/3/2021, (2021).

[https://www.legifrance.gouv.fr/juri/id/JURITEXT000043302335?init=true&page=1&query=19-16.418&searchField=ALL&tab\\_selection=all](https://www.legifrance.gouv.fr/juri/id/JURITEXT000043302335?init=true&page=1&query=19-16.418&searchField=ALL&tab_selection=all)

<sup>67</sup> See Glynn et al. at. Employment law: Private ordering and its limitations. (2019). Aspen Publishing.

<sup>68</sup> See Website: The Official Portal of the UAE Government. Disciplinary rules and procedures. U.A.E. (2021). Accessed at: <https://u.ae/en/information-and-services/jobs/disciplinary-rules>

<sup>69</sup> See Noon & Morrell. The realities of work: Experiencing work and employment in contemporary society. (2017). Bloomsbury Publishing.

<sup>70</sup> See Vosko et al. Enforcing employment standards for temporary migrant agricultural workers in Ontario. (2019). International Journal of Comparative Labour Law and Industrial Relations, 35(2).

<sup>71</sup> See Ministry of Justice. Notification of applications that have not been finally determined (over 6 months old). (2021).

<sup>72</sup> See Al Saraidi et al. Volunteering in the United Arab Emirates' health system—motivations and challenges. (2020). Health. 12(4), 334-352.

unpaid or voluntary work hours that the worker implements outside his working hours for the account of a charitable association or rescue organization such as the Emirates Red Crescent because it is outside the scope of the application of the labor law, which only applies to paid work relationships<sup>74</sup>.

### **Second, Non-competitive Businesses**

Generally, people comprehend that the exclusive work clause is a legal provision that applies to all wage-earning jobs, regardless of whether they compete with the employer. However, it is generally supported that it only applies to wage jobs that are not competing with the employer. This is because it is unlikely that a worker would harm the employer's legitimate interests if they worked for a second employer that is not competing with the first employer. This means that if a worker works outside their working hours that do not fall within the employer's profession, they are not considered to have violated the exclusive work clause.

Furthermore, the exclusive employment clause doesn't apply to work done for a personal account as long as it's not in competition with the employer. However, if work competes with the employer, the condition applies as it violates the duty of loyalty to the employer and Article 16/2 of the UAE Labor Law, which requires good behavior, honesty, and professionalism. But, if a worker works full-time, they cannot work beyond the legal maximum hours with their employer or another employer. Therefore, imposing an exclusive employment clause on them is not necessary. The purpose of such a clause is to prevent the worker from working for their own account in the employer's activity, as it is not legally allowed to work beyond the maximum hours.

### **The Penalties for the Worker's Violation of the Exclusive Employment Clause**

The second important aspect that is worth consideration is the penalties that would be imposed on the workers if they violate the exclusive employment as without the set boundaries, this can have misused by the employers to exploit the worker. Employers can prove a worker's violation of the exclusive employment clause by providing all means of proof, even if the violation occurred through a second work contract. The first employer is considered a third party in the second contract, and the worker's performance for another employer violates the non-competition clause, as the object of proof is a material fact<sup>75</sup>.

Additionally, if it was proven that the worker violated the condition above, he was liable to be punished by the employer with a disciplinary penalty up to the point of dismissal without warning (first), in addition to the right of the employer to demand civil penalties for the worker who violated the condition of exclusive work (second). These two scenarios are explored further below:

### **Disciplinary Sanctions**

Hess-Fallon (2018) argued that a worker is not obligated to work for another employer during a work contract unless there is an agreement between them and the employer. If there is an exclusive employment clause, the worker is obligated not to work for another employer if their activity competes with the employer's. Violation of this condition is considered a fundamental breach of their agreed obligations and considered gross misconduct.

For instance, the "gross misconduct," as the French Court of Cassation puts it (Cass. Soc. 23/10/2013, n. 12-15893) (Légifrance., 2013). There is no doubt that the fact that the worker has violated any of his contractual or legal obligations justifies the disciplinary punishment of the employer, starting from the penalty for drawing attention in writing until the penalty of dismissal from work without warning<sup>76</sup>.

Furthermore, referring to Article 44/4 of the UAE Labor Law which states that a worker's failure to perform their essential duties as described in the work contract is a critical case that warrants

<sup>73</sup> See Dupuy. Self-determination-based design to achieve acceptance of assisted living technologies for older adults. (2016). *Computers in Human Behavior*, 65, 508-521..

<sup>74</sup> See Ababneh & Hackett. "The direct and indirect impacts of job characteristics on faculty organizational citizenship behavior in the United Arab Emirates (UAE). (2019). *Higher Education*, 77, 19-36.

<sup>75</sup> See (59).

<sup>76</sup> See Article 39/1 of the UAE Labor Law



dismissal without warning. This is particularly true if the worker's commitment to the exclusive employment clause, which prohibits working for another facility during the contract term, is a crucial duty. Therefore, an investigation is necessary to apply the penalty of release from work without warning to the worker who violated the exclusive employment clause.

Additionally, if a worker is repeatedly dismissed, the employer can warn them twice, and if they do not, they can release the decision to dismiss them without warning. The purpose of these warnings is to allow the offending worker to leave the second job and maintain the exclusive employment clause. Also it is argued that the worker should not face disciplinary action unless they violated the exclusive employment clause and took on a second job simultaneously within a facility that competes with their first employer facility<sup>77</sup>.

Overall, considering the disciplinary action which can be taken against a worker for violating the exclusive employment clause as per the CJS 8e, 4/4/2019 (n. 45383), protects the employer's legitimate interests and allows the first employer to discipline a violating worker, including dismissal without warning, as this breach of contractual duties constitutes a breach. However, the worker, who works as a manager, was deemed valid due to his work contract requiring him to work exclusively with the company, as he performed independent parallel activities in another competing company without the first employer's knowledge.

#### **Civil Penalties**

If it is proven that the worker has breached the exclusive employment clause, he shall be considered responsible towards the employer, a contractual responsibility based on the agreement not to work for any other competing facility during the validity of the work contract between them, and which is normally included in the terms of this contract. An employer can demand performance in kind and compensation from a worker if they can prove the three elements of contractual liability: damage, error, and causation.

Additionally, if a worker violates the exclusive employment clause, the first employer can demand the worker to stop performing the work. This is because the violation does not affect the work contract with the second employer, meaning the second contract remains valid. The worker's violation of the first contract's exclusive work condition does not lead to the invalidity or termination of the second contract. Most cases involve the worker terminating the second contract due to their previous commitment not to work for another employer. The worker may be sentenced to a threatening fine to force them to leave the second job that violates their commitment.


Additionally, employers can demand compensation from workers for material and moral damage caused by their violation of the exclusive employment clause, as per Article 390 of the UAE Civil Transactions Law. Compensation is assessed based on general rules. If the employer fails to prove harm due to the worker working for another employer, their request for compensation must be rejected if the second work performed by the worker is different from the first employer's work. (Cass. Soc. Fr. 11/7/2000, n. 98-43240). This asserts that Employers cannot enforce the exclusive employment clause if a worker takes on a second job concurrently with their first, which is similar to their first job within an enterprise that competes with and conflicts with the first employer's legitimate interests. (Ass. Plan. Fr. 4/5/2011, n. 09-71566).

Furthermore, as per Article 390/2 of the UAE Civil Transactions Law, in a working relationship, parties can include a penal clause in the agreement on exclusive employment, specifying the compensation a worker is bound by in case of a violation. If a penalty clause is included, the court must obligate the worker to pay the agreed amount to the employer when the worker proves harm due to their work at another facility. If the compensation is exaggerated and not proportionate to the extent of damage caused, the court can adjust the amount of compensation based on general rules that stipulate the invalidity of every agreement, preventing the court from adjusting the amount of the penalty clause.

Overall, for the liability of civil penalty on a worker for violating the exclusive employment clause in case a second employer hires a worker with an exclusive employment clause despite their knowledge or

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<sup>77</sup> See Vettori, S. (2016). *The employment contract and the changed world of work*. CRC Press.



later learning of the condition, they may face tort liability towards the first employer. This occurs because there is no contractual relationship between the two employers. If the second employer's liability is found to be breaching the exclusive work condition, they will be jointly liable with the worker and obligated to compensate the first employer for the damage caused by the worker's violation.

### FINDINGS

The study has closely examined UAE labor law and regulations related to the exclusive employment clause, focusing on complex issues arising from the unclear nature left by the UAE legislator. Comparing the UAE labor laws with global labor legislations, particularly the French constitution, the following findings are concluded.

Initially, every worker has the right to use his spare time to do any work he desires, regardless of whether these jobs are remunerated or not and whether he exercises them for his own account or for the account of others, based on his enjoyment of constitutional freedom, which is the "freedom to work."

A worker who decides to work for more than one employer must not exceed the maximum working hours. Otherwise, he will expose himself to the penalty of dismissal from work without warning from the first employer, with the possibility of penalizing the second employer if it is proven that the worker has exceeded the maximum number of work hours.

The duty of loyalty to the employer, which is based on the principle of goodwill, imposes on the worker not to perform any actions or behaviors that would harm the employer's institution, even if the employer authorized him to engage in competing businesses for his own account or the account of others.

The exclusive employment clause that prevents the worker from working for another employer, in general, is void because it represents a blatant infringement of the worker's freedom to work. Therefore, it is necessary to specify the scope of the prohibited works for the worker in the condition to ensure his health, which must be competitive to the business owner.

The exclusive employment clause is not valid unless it is justified by the nature of the worker's work that allows him to know the employer's clients or access work secrets and is necessary to protect the legitimate interests of the employer since this condition restricts the worker's freedom to work.


The employer may not adhere to the exclusive employment clause if the intended worker does unpaid or voluntary work, engages in paid work for the account of others, or works for the account that is not in competition with him because it is not envisaged that these actions would harm the legitimate interests of the employer.

The worker's violation of the condition of exclusive work is gross misconduct. It justifies the employer's punishment of him by dismissal from work without warning, but after duly investigating with him and warning him twice of release if he repeats it, to allow him to leave the second job, and to abide by the condition above to maintain on a working relationship.

The employer may not claim compensation from the worker who violates the exclusive employment clause. Nonetheless, he may do that if he can prove that he has suffered damage. In fact, it is difficult for him to prove the damage, especially if the second work practiced by the violating worker is different in nature from the first work and within a field of work different from the work of the first employer.

### CONCLUSION

In conclusion, this study explored the exclusive employment clause in UAE law and the restriction on workers' freedom to work under this, preventing them from using their spare time for personal and family needs. The aim was to balance worker rights with employer rights. However, UAE legislators have not regulated this clause, unlike the non-competition clause. French jurisprudence has been



helpful in finding legal rules for this condition, but there are shortcomings. The study aims to determine the legal restrictions for the validity of the exclusive employment clause, identify works that may not be covered by this clause, and clarify the effects of worker violations. The aim is to find a balance between worker rights and employer interests. Based on the in-depth examination of the UAE labor law dealing with the implementation and validation of the exclusive employment clause, it was observed that the UAE legislator had not provided a clear interpretation of several instances that were addressed in this study and provided recommendations to the UAE legislator to make provisions in the UAE labor law for a clearer interpretation, so it cannot be used by the employers to exploit their employees and vice versa.

### RECOMMENDATIONS

1. It is imperative to adopt a general rule prohibiting the worker from practicing remunerated work for more than the legal maximum working hours if he decides to work for more than one employer, with the necessity of excluding some categories of workers from this rule, especially those who practice scientific and literary works artistic, and other pieces of general interest.
2. The UAE labor law must stipulate that the agreement on exclusive employment clause must be written as a condition for the validity of this agreement and its proof under penalty of nullity. That is because this condition represents a restriction on the worker's freedom to work, which is one of the most critical constitutional freedoms and is stipulated in most national constitutions.
3. It seems necessary to invalidate the exclusive employment clause agreement with the part-time worker to enable him to utilize his full energy and efforts contrary to the improvement taking place in the French jurisprudence, which has come to recognize the validity of the condition in this case as if it had been agreed upon with a full-time worker.
4. The scope of the exclusive employment clause must be limited to paid work and the work practiced by the worker for his own account whenever these works compete with the employer to ensure that restricting the worker's freedom is justified by protecting the legitimate interests of the employer.
5. Granting the employer, the right to demand the specific implementation of the exclusive employment clause content if the worker violates this clause and performs work for another employer competing with his employer. The employer, in this case, can obligate this worker to terminate the work contract concluded with the second employer and warn him to dismiss him from the job if he does not immediately stop performing the violating act.
6. It is assumed that the second employer should be held accountable for the worker's violation of the exclusive work condition if he was aware of the worker's commitment to it. He nevertheless accepted the work for him if he is responsible, in this case, jointly with the violating worker for compensating the first employer for the damage he sustained.