

New DIFC Employment Law – What Do You Need to Know?

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The new Dubai International Financial Centre (DIFC) Employment Law (DIFC Law 2/2019) has now been published and will come into force on August 28, 2019. The new law contains significant amendments to the old DIFC Employment Law (DIFC Law 5/2004) and there have been revisions to the draft law published earlier this year.

This alert looks at what this means for employers in the DIFC and the potential impact of the key changes.

DIFC employers should familiarize themselves with the new provisions of the law and ensure that their employment contracts, policies and business practices are in line with the new regime.

Key Changes to the Law

(1) Scope

- The new law extends the application of the law in certain areas to short-term and part-time employees.

(2) Waiving statutory rights

- The new law explicitly provides that employees can now waive claims and the right to legal entitlements under a settlement agreement terminating employment or resolving an employment-related dispute. For the settlement agreement to be valid, certain conditions must be met, the most notable of these being that the employee must confirm in writing that she has been provided with the opportunity to seek legal advice on the terms and effect of the settlement agreement from a registered DIFC lawyer.

(3) Article 18 penalty removed

- The old law imposed an unlimited financial penalty on employers if all legal entitlements due on termination were not paid within 14 days of termination.
- Article 19 of the new law now establishes that: (i) the penalty will be triggered only when the amount due and not paid to the employee is in excess of the weekly wage (i.e. the employee's basic salary and allowances *excluding* bonuses and commission payments); (ii) the penalty will be reduced if the court considers it reasonable to do so; and (iii) there is no express cap on the amount, but the penalty will stop accruing once a complaint is issued to the court.

- As the limitation period for bringing employment-related claims has been reduced to six months under the new law, in practice the majority of penalty claims will be limited to six months.

(4) Annual leave and sick leave reduced

- The amount of accrued but untaken annual leave that an employee can carry forward has been reduced from 20 to five working days.
- Sick pay has been reduced under the new law to:
 - full pay for the first 10 working days' absence;
 - half pay for the next 20 working days' absence; and
 - no pay for any remaining sickness absence in a 12-month period.

(5) Parental leave expanded

- The new law has added several new provisions relating to parental leave, including in relation to nursing breaks, paid time off for fathers pre-birth and paternity leave after birth. In relation to the latter, paternity leave of up to five working days is now an entitlement for fathers who have at least 12 months' service and also applies to adoption.

(6) Anti-discrimination expanded

- The new law has expanded the scope of the anti-discrimination provisions to include:
 - i. new protected characteristics of age, pregnancy and maternity;
 - ii. a new definition of "discrimination", which includes the application of a "provision, criterion or practice" in a discriminatory manner to one of the protected characteristics ("indirect discrimination");
 - iii. a new ground of harassment, which occurs if an employer "engages in unwanted treatment or conduct related to one of the protected characteristics, and which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive workplace for an employee or violating an employee's dignity"; and
 - iv. a new ground of victimization, whereby an employer cannot subject an employee to retaliation for committing a "protected act", such as claiming or alleging that the employer has committed an act of discrimination.
- Claims for discrimination must be brought within six months of the date of the discriminatory act, and the DIFC courts will have the power to order the respondent to pay compensation of an amount up to one year's salary.

(7) End of service gratuity changes

- The new law provides that end of service gratuity ("**Gratuity**") is payable to all employees, even in circumstances where the termination is for cause. This change is based on the rationale that Gratuity stands in place of employer contributions to pension, and it would therefore be unfair to deprive employees of this, whatever the reason for termination.

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- In addition, salary breakdowns must meet particular thresholds, such that Gratuity can no longer be artificially reduced. Basic pay must now comprise at least 50% of an employee's gross wage.
- As an alternative to Gratuity, DIFC employees can opt to receive pension contributions in lieu of Gratuity, provided that the pension contributions are not less than the value of Gratuity that the employee would otherwise have been entitled to on termination.

(8) Secondments

- Secondments are expressly recognized under the new law, eliminating confusion as to whether such an arrangement is permitted in the DIFC. DIFC employers using seconded employees must obtain a secondment card for such employees from the DIFC Authority. However, the new provisions are very much aimed at local (or domestic) secondments.
- Specific provisions of the new law do not apply to seconded employees.

(8) Other noteworthy changes

- Record keeping. Payroll records must be retained by employers for a minimum of six years, rather than two years as under the old law.
- Notice pay. Payment in lieu of notice is now only permitted where this is agreed to by the parties under a settlement agreement.
- Employment costs. If an employee terminates his or her employment within the first six months of employment, the employer can recoup reasonable costs and expenses incurred in the recruitment process, provided the employment contract specifies that such costs are recoverable.

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