

INSIGHTS

New Employment Law for the Dubai International Financial Centre Issued

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The much anticipated and awaited DIFC Employment Law No. 2 of 2019 (“**2019 Employment Law**”) will come into full force and effect on 28 August 2019 (“**Effective Date**”).

Between now and the Effective Date, it is important that all employers licensed in the DIFC are fully aware of a number of changes between the 2019 Employment Law and the provisions of the existing DIFC Employment Law No. 4 of 2005 (“**2005 Employment Law**”), and (as applicable) fully review and update their employment contracts, employment handbooks and policies and procedures.

As a general remark, the changes between the 2005 Employment Law and 2019 Employment Law are not “seismic”, instead they are general “tidy ups” of a number of issues found with the 2005 Employment Law in practice and introductions of concepts (particularly in respect of discrimination) which reflect best practice elsewhere in the world.

The purpose of this client alert is to provide a high-level overview of the principal changes between the 2019 Employment Law and the 2005 Employment Law. Accordingly, we note as follows:

Hiring Costs and Retaining Passports

2005 Employment Law: The law was silent on whether costs of hiring and recruiting incurred by an employer could be passed on to the employee. Similarly, the law was equally silent on whether an employer could retain possession of an employee's passport.

2019 Employment Law: The law now clarifies that employers are not allowed to recoup any hiring and sponsorship costs and expenses from employees and are not allowed to retain an employee's original passport and/or personal documentation.

Part Time Employees

2005 Employment Law: The law provided that part time employees are entitled to the same benefits and leave entitlements as full time employees.

2019 Employment Law: The law now provides part time employees (i.e. employees with: (a) less than 8 working hours per work day (inclusive of any rest, nursing or prayer breaks); or (b) less than 5 work days per work week) will be entitled to leave entitlements (i.e. holiday leave, maternity leave, paternity leave, special leave and sick leave) on a pro-rated basis.

Secondments

2005 Employment Law: The law was silent on the concept of secondments.

2019 Employment Law: The law specifically recognises the concept of secondment (i.e. employees working on a temporary basis within the DIFC for no longer than a 12-month period or such longer period as may be approved by the DIFC under exceptional circumstances), and secondees will be entitled to certain rights (i.e. maternity leave, paternity leave, minimum notice period and gratuity payment) when certain conditions are satisfied.

Salary Split- Basic Salary and Allowances

2005 Employment Law: The law did not explicitly provide for basic salary to form a minimum percentage of an employee's overall remuneration.

2019 Employment Law: The law now provides that the basic salary component of an employee's remuneration must comprise of at least 50% of its total.

Record Keeping

2005 Employment Law: The law provided that employers were to retain employee records for 2 years following termination.

2019 Employment Law: The law has extended the retention of employee records to 6 years.

Sick Leave Pay

2005 Employment Law: The law entitled employees up to 60 working days of sick leave with full pay.

2019 Employment Law: The law retains the 60 working day entitlement, but not all of it is to be paid at full pay instead: (a) 100% pay for the first 10 working days of sick leave in a 12-month period; (b) 50% pay for the next 20 working days of sick leave in the same 12 month period; and (c) no pay for any additional working days of sick leave in the same 12 month period.

Paternity Leave

2005 Employment Law: The law made no provision for paternity leave.

2019 Employment Law: The law now permits up to 5 working days of paid paternity leave for male employee's whose spouse has a child or where a child under the age of 5 years old is adopted.

Discrimination

2005 Employment Law: The law previously recognised sex, marital status, race, nationality, religion and mental or physical disability as protected characteristics for discrimination. Importantly, there were no remedy or compensation provisions.

2019 Employment Law: The law has extended the concept of protected characteristics to include pregnancy and age. Crucially, the law also introduces proceedings for discrimination claims and provides that compensation can be sought. The compensation payable in respect of a discrimination claim is capped at one years' wages (or two years' wages for repeat offenders). In addition, the concept of a victimisation claim is included within the law.

Employer's Vicarious Liability

2005 Employment Law: The law provided that employers are vicariously liable for any act of an employee done during the course of their employment.

2019 Employment Law: The law now provides that employers can only be held liable for claims for loss, damages or compensation for any act, attempted act or omission on the part of an employee if the claim is sufficiently connected with the employee's employment that it would be fair and just to hold the employer vicariously liable in respect of the same.

Termination for Cause

2005 Employment Law: The law permitted either an employer or employee to terminate for cause where the conduct of the other party warranted termination and such termination passed a reasonableness test.

2019 Employment Law: The law introduces an expanded test to determine whether termination for cause is reasonable. Furthermore, in the event of a termination by an employer, an employee may request a written statement from an employer setting out the reasons for such termination.

Gratuity – Termination with Cause

2005 Employment Law: The law provided that where an employer terminates an employee for cause, they are not required to pay gratuity.

2019 Employment Law: The law now provides that an employee's right to gratuity is not lost irrespective of their employment being terminated for cause.

Use of Settlement Agreements

2005 Employment Law: The law provided that employees were not allowed to waive their minimum rights under the law, causing issues with the concept of settlement agreements.

2019 Employment Law: The law now allows for the waiver of rights if the waiver intends to settle a dispute. The DIFC Courts will have the discretion to void any settlement agreements found to be unreasonable, but it cannot do so where independent legal advice has been obtained by the parties.

Late Payment of Termination Monies

2005 Employment Law: The law provided that employers are required to pay all wages and termination payouts to an employee within 14 days of the termination of employment. If an employer fails to pay within 14 days, the employer is required to pay the employee a penalty of the last daily wage for each day delayed.

2019 Employment Law: The law retains an obligation to pay certain sums to the employee within 14 days of the termination of employment. However, the penalty for late payment is no longer automatic and will not apply where: (a) the outstanding amount to be paid to the employee is less than such employee's weekly wage; (b) a dispute regarding termination payments is pending with the DIFC Courts; and/or (c) the employee's unreasonable conduct is the material cause of the employee failing to receive the termination payments due from the employer.

Gratuity versus Pension

The DIFC have recently announced proposed plans to introduce a savings scheme to replace the existing system of end of service gratuity. The 2019 Employment Law makes specific provision that the value of the aggregate contributions made by an employer into a savings scheme must not be less than the employee's gratuity entitlement.

As noted above the new law does not represent a significant change to the employment landscape in the DIFC. It does however, tidy up a number of ambiguities which were found in practice and look to put the law in line with international practice. It will be interesting to see if any of the changes made are reflected in any future amendments to the UAE Labour Law that regulates employment relationships outside of the DIFC.