

New DIFC Employment Law to come into Force on 28 August 2019

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A new employment law for the Dubai International Financial Centre ('DIFC') has been enacted and will enter into force on 28 August 2019 (DIFC Law No. 2 of 2019) (the 'New Law'). The New Law will replace the current DIFC Employment Law (DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012) (the 'Current Law') in its entirety and introduces quite extensive changes to the Current Law.

To reflect and recognise recent developments and trends in working practices, the New Law will accommodate a variety of different working arrangements in the DIFC including part-time and short-term employment. Further, the New Law specifically provides for secondments to the DIFC whereby an individual can remain employed by a third party (inside or outside of the UAE) and have their employment continue to be governed by a different employment law. The new secondment arrangements should be particularly helpful where an individual will only be working for a DIFC company on a particular project (e.g. for 6 to 12 months) before returning to their employer, whether in the UAE or elsewhere.

There are various changes to employee leave entitlements under the New Law, some of which enhance an employee's rights under the Current Law and others which reduce them. For example, the New Law introduces five working days of paid paternity leave, provides male employees with paid time off work to attend ante-natal appointments or adoption proceedings with their wives, and extends the right to statutory maternity leave to females who are adopting a child under the age of five. Certain other leave entitlements are being reduced, however, including the entitlement to sick leave at full pay (reducing from 60 to 10 working days per year), special leave to perform the Hajj pilgrimage (reducing from 30 to 21

calendar days) and the ability to carry over accrued but untaken annual leave to the following year (reducing from 20 to 5 working days). In general, these changes to employee leave entitlements are intended to strike a fairer balance between the respective rights of employers and employees than under the Current Law.

A number of changes under the New Law enhance an employee's rights and benefits when their employment terminates. For example, an employer will only be permitted to pay an employee in lieu of notice if the employee agrees, pursuant to a written agreement on termination of their employment, and an employer and employee will no longer be able to agree to a shorter notice period than the statutory minimum requirements. In addition, for the purpose of calculating end of service gratuity ('ESG') the employee's basic salary must comprise at least 50 percent of their fixed monthly remuneration, and an employee will not forfeit their entitlement to ESG even if they are dismissed for cause. While these changes are largely to the benefit of employees, one change under the New Law which is beneficial to employers is the watering down of the penalties which an employer must pay an employee for late payment of the employee's termination benefits.

In the event that a dispute does arise on the termination of an individual's employment, the New Law introduces a six-month limitation period in which an employment claim can be filed with the DIFC Courts. In an attempt to encourage the settlement of employment disputes out of court, the New Law specifically provides for the use of settlement agreements in order to terminate the employment or settle a dispute, and allows an employee to waive their minimum rights provided they have had an opportunity to seek legal advice or have engaged in court-facilitated mediation proceedings prior to entering into the settlement agreement.

One of the most important developments under the New Law is the expansion of the anti-discrimination provisions. Age, pregnancy and maternity will all be added to the current list of protected characteristics on which an employer may not discriminate against an employee, and the New Law prohibits the victimisation of an employee who has made a claim or allegation of discrimination (or otherwise participated in such proceedings). Significantly, the New Law introduces specific remedies where an employer is found to have unlawfully discriminated against an employee, whereby the DIFC Courts can make a declaration, make a recommendation and/or award the employee compensation of up to one year's salary (which can be increased to two years' salary in certain circumstances). DIFC companies should carefully review their policies, procedures and practices for dealing with HR and employment matters in light of the increased scope (and repercussions) for employee discrimination claims under the New Law.

The New Law also includes various additional provisions from a compliance and enforcement perspective, including the right for the DIFC Authority to inspect DIFC companies' premises and records and to impose monetary fines (up to USD \$10,000) for non-compliance with the New Law.

In light of the extensive changes under the New Law, all DIFC companies should review and update their employment contracts, employee handbooks and any other HR policies and procedures to ensure compliance with the New Law. Consideration must also be given to how existing employees' employment contracts and accrued benefits will be dealt with in light of the new developments.

Al Tamimi & Company's Employment & Incentives team regularly advises on the full spectrum of employment and HR matters, both within and outside of the DIFC. For further information please contact [Anna Marshall](mailto:a.marshall@tamimi.com) (a.marshall@tamimi.com) or [Gordon Barr](mailto:g.barr@tamimi.com) (g.barr@tamimi.com).