

Amendments to Employment law in the DIFC

Samir Kantaria - Partner, Head of Employment & Incentives - Employment and Incentives
s.kantaria@tamimi.com - Dubai International Financial Centre

Luke Tapp
l.tapp@tamimi.com

We are privileged to have been involved in the consultation phase (which was launched in December 2011) where the various amendments were discussed and also in the drafting of the amendments on behalf of the DIFC Authority, which are the most significant amendments that have been made to the DIFC Employment Law since it was first introduced.

By way of background, DIFC Employment Law No. 4 of 2005 ("DIFC Employment Law") sets out all of the obligations and requirements on employers and employees operating within the DIFC. The amendments to the DIFC Employment Law were introduced pursuant to the implementation of the Employment Amendment Law, DIFC Law No. 3 of 2012 and were effective from 23 December 2012.

The amendments to the DIFC Employment Law tackled a variety of areas in respect of the relationship between employers and employees. As well as clarifying some of the rules and making them generally more user-friendly, the amendments have also sought to develop some important employee rights. In particular, the provisions regarding discrimination were significantly amended and the concepts of harassment, direct discrimination and indirect discrimination are now more consistent with the same concepts as defined in the UK Equality Act 2010.

The key amendments to the DIFC Employment Law are:

- **Provision of a written contract of employment:** The Law now requires all employers to provide employees with a written contract of employment which is in accordance with the Law, as opposed to the requirement to previously provide a statement of employment particulars. This is consistent with the obligation on employers to provide a signed contract of employment when submitting new visa applications and renewals to the DIFC Authority, an obligation which was introduced earlier in 2012.
- **Leave carry forward:** Employees now have a right to carry forward up to 20 working days of accrued and untaken annual leave from one holiday year to the next. The entitlement to the carried forward annual leave will expire after a period of 12 months following the end of the holiday year in which it was accrued.
- **Sick leave:** This entitlement has now been amended to 60 working days (as opposed to 90 calendar days).
- **Maternity leave:** This entitlement has now been amended to 65 working days (as opposed to three calendar months). In addition, the maternity leave period will be extended by the number of national holidays which fall on working days during the maternity leave period.
- **Compensation for Accidents:** There is now a minimum level of compensation that is payable to employees or their named dependents where they die or sustain an injury arising out of or during the course of their employment. Where the employee dies, the compensation payable to his/her named dependent is 24 months remuneration. Where the employee sustains an injury, the level of compensation will be a percentage of the 24 months remuneration, which varies depending on the seriousness of the injury suffered.
- **Health insurance:** Employers are now only obliged to obtain health insurance cover for its employees (as opposed to insurance cover for health and disability income, which was previously required).
- **Discrimination:** Provisions relating to non-discrimination have been significantly amended. In particular,

the following key amendments have been made:

- there is a clear distinction between the provisions prohibiting indirect and direct discrimination;
 - there is now protection for employees against harassment on the grounds of a protected characteristic;
 - the definition of a disability is set out in greater detail;
 - the provisions specifically state that they protect employees only; and
 - employers may now justify indirect discrimination where their actions are a proportionate means of achieving a legitimate aim.
- Termination for cause: Entitles the employer or employee to terminate the employment relationship for "cause" where the conduct of the other party warrants termination and a reasonable employer or employee would have terminated the relationship. The word "cause" replaces the previous term "misbehaviour" although it is unlikely to have a significant impact on the legal justification required when summarily terminating employees.
 - Pension for UAE and GCC nationals: Obliges employers to enrol an employee to their relevant state scheme and confirms that the pension is in lieu of end of service gratuity.
 - End of service gratuity: The previous ambiguous wording has been clarified so that for the purposes of the end of service gratuity calculation, one day's basic wage shall be a calendar day's pay.
 - Parts 11 to 14: These have been repealed in their entirety. The provisions previously set out the process for raising complaints with, and the decision making powers of, the Director of Employment Standards. The removal of these provisions is unlikely have any impact on the existing DIFC complaints procedure for employees and employers.
 - Other amendments:
 - Employers are permitted to provide the written itemised pay statement and retention of payroll records in an electronic format.
 - Employers are required to pay departing employees all wages and any other outstanding amount within 14 days of the termination of employment. If an employer fails to comply with this requirement, a penalty will be payable to the employee which is equivalent to his/her daily wage for each day the employer is in arrears.
 - Reduced Ramadan hours are now applied for fasting Muslim employees only.
 - Employees are entitled to national holidays which fall on working days only.
 - All Muslim employees are entitled 30 days unpaid leave to go on a Haj pilgrimage after one year of employment.
 - There were additions and amendments to the defined terms set out within Schedule 1 to the DIFC Employment Law.

Please contact any member of the employment team directly for further information or assistance, or contact the head of the team, Samir Kantaria (s.kantaria@tamimi.com).