

Important DIFC Employment Law changes on the horizon

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The Dubai International Financial Centre Authority ("DIFCA") has recently drafted a new DIFC Employment Law (the "Proposed Law"), which is intended to replace the DIFC Employment Law (Law No. 4 of 2005), as amended by Law No. 3 of 2012 (the "Current Law") in its entirety. The Proposed Law is out for public consultation until 22 March 2018 and it is expected, subject any amendments, that the Proposed Law will be enacted shortly thereafter.

Summary of the changes

The Proposed Law sets out several key changes, a number of which we summarize below:

Part Time Employees

Current Law: Part time employees are entitled to the same benefits and leaves as full time employees.

Proposed Law: Part time employees will be entitled to leave entitlements on a pro-rated basis.

Article 18 Penalty

Current Law: 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. This Article 18 penalty has proven to be contentious and has been the subject of various DIFC Court decisions.

Proposed Law: Retains an obligation to pay certain sums to the employee within 14 days of the termination of employment. However, the penalty payment is no longer automatic and the following applies:

if the outstanding amount to be paid to the employee is less than 5% of the full amount due, no penalty will apply;

the penalty will be capped at 6 months' wages; and

the DIFC Courts may waive or reduce the penalty in unreasonable circumstances.

Sick Leave Pay

Current Law: Employees are entitled to 60 working days of sick leave with full pay.

Proposed Law: Sick leave remains at 60 days but sick pay will be calculated as follows:

The first 10 working days of sick leave: Full pay

The next 20 working days of sick leave: Half pay

Any additional working days of sick leave: Unpaid

Discrimination

Current Law: Protected characteristics for discrimination include sex, marital status, race, nationality, religion and mental or physical disability. No provision for a remedy in discrimination claims.

Proposed Law: Adds pregnancy and age to the above list of protected characteristics for discrimination purposes. Importantly, it also introduces a remedy 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 victimization

claim is included.

Termination for Cause & Constructive Dismissal

Current Law: Both employers and employees are entitled to terminate for cause where the conduct of the other party warrants termination and where it passes the test of reasonableness.

Proposed Law: Introduces an expanded test to determine whether termination for cause is reasonable, including:

whether or not the employer / employee acted reasonably or unreasonably, given the circumstances for termination; and

in accordance with equity and in consideration of the substantial merits of the case.

Importantly, the Proposed Law contains provision for a compensation claim of up to one years' wage if an employee terminates for 'cause'. Thus the Proposed Law introduces constructive dismissal as a concept.

Gratuity – Termination with Cause

Current Law: Where an employer terminates an employee for cause, they are not required to pay gratuity.

Proposed Law: Mandates that employers pay gratuity even in circumstances where the termination is with "cause".

Salary Split

Current Law: No minimum percentage for split of basic salary and allowances.

Proposed Law: Basic salary must comprise at least 50% of the total wage.

Weekly Working Hours

Current Law: Weekly working hours are capped at an average of 48 hours per week.

Proposed Law: Removal of 48-hour provision, but provisions remain with regard to daily and weekly rest.

The provision which states that employees are not allowed to work excessive hours which may be detrimental to their health is also retained.

Paternity Leave

Current Law: No provisions for paternity leave.

Proposed Law: Allows for 5 working days of paid paternity leave for male employees who have a child or adopt a child under the age of 5 years, subject to certain conditions being met. Further, male employees will now be entitled to attend medical appointments for ante-natal care or adoption proceedings.

Hiring Costs and Retaining Passports

Current Law: No reference to passing on costs of hiring an employee to the employee and does not specify the position with regard to an employer holding an employee's passport.

Proposed Law: Clarifies that employers are not allowed to pass on the hiring and sponsorship costs to employees. It further states that employers are not allowed to retain employee's original passports.

Fines and Penalties

Current Law: Specifies a number of basic requirements for employers to adhere to but does not specify any corresponding fines.

Proposed Law: Introduces fines and penalties to ensure adherence to basic employment and immigration requirements. It further allows for the DIFCA Board of Directors to expand the fines and penalties regime, impose additional fines and appoint inspectors to ensure compliance.

Use of Settlement Agreements

Current Law: Employees are not allowed to waive their minimum rights. This has proven problematic for employers and employees settling disputes.

Proposed Law: 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 when independent legal advice has been obtained by the parties.

Employer's Vicarious Liability

Current Law: Employers are vicariously liable for any act of an employee done during the course of employment.

Proposed Law: Specifies 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 what was authorised or expected of the employee.

Contributory Negligence

Current Law: Employers are fully liable for any injury arising out of or during employment.

Proposed Law: Introduces the principle of contributory negligence to employee compensation claims for injury or death arising out of or during employment. This means that the DIFC Courts may reduce the employer's liability if it found that the employee's negligence caused the injury or death.

Whistle-Blower Protection

Current Law: No protection for whistle-blowers.

Proposed Law: References whistle-blower protections included in the proposed new DIFC Companies Law (details awaited).

Additional Proposed Changes

The Proposed Law also includes additional changes, including but not limited to:

Current Law: Minimum age to employ a child is 15 years

Proposed Law: Increases the age of hiring children to 16 years.

Current Law: Requires employers to retain employee records for 2 years

Proposed Law: Increases the requirement for employers to retain employee records to 6 years

Dependent upon the final form of the Proposed Law, changes to existing employment contracts, employee handbooks and document retention policies will inevitably be required. Please let our employment practice know if you require our input.

For further information please contact Samir Kantaria (s.kantaria@tamimi.com) or Gordon Barr (g.barr@tamimi.com).