

## **DIFC: a new employment legislation**

On 28 August 2019, the revised version of the DIFC employment legislation, i.e. Law No. 2 of 2019 (“2019 Law”), went into effect. It replaced the former employment law, i.e. Law No. 4 of 2005, as amended (“2005 Law”).

The 2019 Law introduces a number of noteworthy changes which employers operating in the DIFC need to be mindful of, especially because a new penalty system of fines for contraventions, non-compliance and/or breaches has been annexed to the new legislation.

The new regime concern the following aspects: scope of application of the rules (A); limitation period (B); secondments (C); late payments (D); discrimination (E); family benefits (F); sick leave (G); termination of employment (H); end-of-service gratuities/pensions (I); settlement agreements (J); and others (K).

### ***A. Scope of application***

Employers and employees can now contractually opt into the 2019 Law. (The application of the former legislation was restricted to employees of an establishment having a place of business in the DIFC and who were based within, or ordinarily working within or from, the DIFC.) Moreover, the 2019 Law specifically recognises part-time and short-term employees.

### ***B. Limitation period***

Employment claims must be brought before the DIFC Court within six months of the employee’s termination date (save in discrimination cases where the limitation period commences on the date of the act or omission underlying the discrimination claim).

### ***C. Secondments***

The 2019 Law explicitly recognises the concept of “secondments”, with a specific secondment card to be procured and maintained by the parties from the DIFC Authority in order to legitimise and validate the secondment arrangements. However, the 2019 Law does not contain specific provisions that apply to seconded employees.

### ***D. Late payments***

The penalty payment regime has been revised. The new regime will now only be triggered where the amount due and not paid to an employee (which expressly excludes any bonuses, grants and/or commission payments) is held by the DIFC Court to exceed an employee’s weekly wage. What is more, the penalty is (i) limited to six months’ daily wage, and (ii) waived by the DIFC Court in respect of any period during which a dispute is pending in the DIFC Court or where the employee’s unreasonable conduct is the material cause of the employee failing to receive the amount due from the employer.

### ***E. Discrimination***

The anti-discrimination provisions have been expanded to include: further protected characteristics (namely, age, pregnancy and maternity) and victimisation (i.e. protection against a protected act). Employers are liable for any act of discrimination by an employee done in the course of their employment unless the employer is able to produce evidence that it took reasonable steps to prevent the employee from carrying out that act.

What is more, as of now, the DIFC Court can, in the event discrimination and/or victimisation, award the following remedies: (i) compensation of up to one year's wage (being salary and allowances) which can include an award in respect of injury to feelings; (ii) a declaration; and (iii) a recommendation for the employer to take certain steps to reduce the adverse effect on the successful employee. If the employer unreasonably fails to comply with any recommendation made by the DIFC Court, the judges have the discretionary power to increase the amount of monetary compensation awarded to two years' wage.

#### ***F. Family benefits***

Increased or expanded family benefits include: (i) five working days of paid paternity leave for male employees who have been continuously employed for at least twelve months; (ii) paid time off to attend appointments related to antenatal care for expectant fathers; (iii) specific nursing breaks for female employees returning to work from maternity leave; and (iv) statutory maternity leave for female employees adopting a child who is less than five years old at the time of adoption.

#### ***G. Sick Leave***

Sick leave remains at 60 working days per year. However, (i) only the first 10 days will be at full pay; (ii) the next 20 working days will be at half pay; and (iii) the remaining 30 working days will be unpaid.

#### ***H. Termination of employment***

The 2019 Law maintains the existing minimum notice periods. However, as of now, parties cannot agree on shorter, but only on longer, notice periods. Employers will only be allowed to make a payment in lieu of notice if an employee agrees to the payment in a settlement agreement (which meets specific terms as outlined in the new legislation).

Employers will be entitled to place an employee on garden leave for all or part of their notice period.

#### ***I. End-of-service gratuity (ESG)/pensions***

For ESG calculation purposes, basic salary will need to comprise at least 50% of the employee's total wage (which includes allowances but excludes bonuses, grants and commissions). The ESG will be payable to an employee even if the employee is dismissed for cause (gross misconduct).

Employees may choose to receive pension contributions into a non-UAE retirement fund (or substantially similar scheme) instead of receiving an ESG payment, provided the aggregate contributions made by an employer are not less than the ESG the employee would have been entitled to receive.

***J. Settlement agreements***

Under the 2019 Law, an employee may enter into a written agreement with the employer to terminate the employment or settle a dispute with such an agreement including a waiver of the employee's rights, remedies, obligations or claims, provided that specific conditions are met.

***K. Miscellaneous***

The 2019 Law also brings about additional changes, including (i) the introduction of a stringent penalty system of fines (of either USD 2,000 or USD 10,000 per infraction) in the event of breaches or non-compliance with the 2019 Law; (ii) the increase of the minimum age for an employee from 15 to 16 years of age; (iii) the increase of the mandatory retention period for employee records from two to six years; and (iv) the limitation to five days' accrued vacation that the employees are allowed to carry over to the following year.