

15<sup>th</sup> June 2019

## NEW EMPLOYMENT LAW IN THE DIFC

The Dubai International Financial Centre Authority (“DIFCA”) has recently enacted a new DIFC Employment Law (the “New Law” or “Law”), which replaced the DIFC Employment Law (Law No. 4 of 2005), as amended by Law No. 3 of 2012 (the “Previous Law”) in its’ entirety and will enter into force on 28<sup>th</sup> August 2019.

Much of the structure and contents of the Previous Law is retained but in a number of instances existing principles were expanded or refined and would have to be considered for existing and new employment contracts.

The refinements include for instance:

- Introduction of a fines and penalties regime in case of violation of the basic conditions of employment and the visa and residency sponsorship requirements;
- Removing the mandatory nature of penalties on Employers for late payment of amounts due to Employees at Termination;
- Reducing the amount of Sick Leave pay;
- Introduction of Paternity Leave for male Employees;
- Expanding the definitions relating to discrimination and the grounds for discrimination to include pregnancy and age;

### I. Summary of the key changes

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

PREVIOUS LAW	NEW LAW	COMMENTS
<b>APPLICATION OF THE LAW</b>		
The Previous Law referred only to “Employees” and not Employer. It was applicable to employees working in establishments having a place of business within the DIFC or an entity that is created by Law No. 9 of 2004, and who were based within or ordinarily work within or from the	Application of the DIFC’s New Law to Employers and Employees, as well as in respect of Part-Time Employees and Short-Term Employees (with special regulation on the calculation of a pro-rata leave entitlement depending on the working days and further specification under Art. 17 of the	The New Law allows for the possibility in certain cases for Employers to contract out of the New Law, provided that some fundamental regulations of employment under the New Law remain applicable to such Employers.

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DIFC.	New Law), and excluding the application of the DIFC employment law regime to certain categories of Employees (e.g. Secondment or employees working in federal government entities within DIFC).	
<b>LIMITATION PERIOD FOR EMPLOYMENT CLAIMS</b>		
DIFC Court Law No.10 of 2004 rules that a proceeding must not be commenced more than 6 years after the date of the events that give rise to the proceedings.	Claims must be brought to the court within six months of the termination date. For discrimination matters claims must be brought to the court before the end of the period of six months starting with the relevant act /omission of the employer or starting with the date the Law comes into force (whichever is later).	Employee are now forced to act within reasonable time to ensure not to forfeit their employment right.
<b>WAIVER OF EMPLOYEE RIGHTS</b>		
Previous Law prohibits the waiver of the provisions of the Previous Law and renders any such waiver of rights as having no effect.	The New Law allows for the employee to waive his/her rights in termination or dispute resolving situations, provided the employee received independent legal advice as to the terms of waiver or both parties took part in mediation proceedings provided by the Court prior to entering into the waiver agreement.	The New Law aims to provide the parties the possibility to enter into a settlement agreement even if the agreement conditions are not necessarily in accordance with the rights and regulations for employment in DIFC, however resulting in a satisfactory settlement for both parties. In the past any disputes between Employers and Employees could potentially render parts of settlement agreements void - and therefore create a situation of uncertainty - as a consequence of the no-waiver rule.
<b>MINIMUM EMPLOYMENT AGE</b>		
No employment under the age of fifteen.	No employment under the age of sixteen.	This is in line with the requirements of the Federal Law.
<b>MAXIMUM RETENTION PERIOD OF EMPLOYEE'S RECORDS</b>		
Retention obligation of employees' records for two years after termination of employment.	Retention obligation of employees' records for six years after termination of employment.	The extended time period is in line with the time periods required for record keeping by the Dubai Financial Services Authority (DFSA).

<b>PENALTY FOR LATE PAYMENT OF EMPLOYEE'S DUES AFTER TERMINATION</b>		
<p>The Previous law imposed a penalty on an employer equal to the last daily Wage of an employee for each day the employer was in arrears within 14 days after termination of employment with payment of an employee's dues.</p>	<p>Payment of all remuneration within 14 days after the termination.</p> <p>A penalty will only be awarded to employee in case of delay of payment, if the amount due is in excess of the employee's weekly wage.</p> <p>The Court has a discretion to waive penalty in circumstances where imposing such penalty is unreasonable in the circumstances.</p>	<p>The New Law refers to timely payment of <u>remuneration</u> and not only <u>wage</u>. Which means also consideration of commission and bonus and any other payment that is discretionary.</p> <p>Exclusion of claims for minimal due amounts. Only claims of due amount of at least a weekly wage will be awarded.</p> <p>The reduced limitation period will force employees to claim the outstanding payment within a reasonable time. In the past they had a six years limitation period, hence the longer they wait, the higher their punitive reward.</p>
<b>ADJUSTMENT OF MAXIMUM WEEKLY WORKING TIME</b>		
<p>An employee's working time shall not exceed an average of 48 hours for each seven 7 day period unless the employer has first obtained the employee's consent in writing.</p>	<p>Employee's working time shall not exceed an average of 48 hours for each 7 day period <u>during the Relevant Calculation Period</u> unless the employer has first obtained the employee's consent in writing.</p>	<p>The Previous Law presented a number of difficulties in practice, since it did not refer to a period over which the average working hours for each seven-day period is to be calculated. The Relevant Calculation period is now considered a period of 17 weeks immediately prior to the date of the relevant calculation. The new calculation will take into consideration that DIFC being primarily a financial services centre and professional services hub and therefore the large majority of employees are often expected to work longer hours than the previous permitted limit.</p>
<b>REDUCTION OF SICK LEAVE PAY</b>		
<p>Employer shall pay an employee his daily wage in respect of sick pay for the entitled 60 working days in aggregate in any 12-month period.</p>	<p>Employer pays 100% of wage during sick leave for the first 10 working days in a 12-month period, and 50% for the next 20 working days for the same 12 months period. Employee is not entitled to receive any wage for any additional sick leave taken in the same 12 months period.</p>	<p>These changes are in favour of the employer and reflect balance between the needs of employers and employees.</p>

<b>PATERNITY LEAVE</b>		
Paternity leave was not regulated in the Previous Law.	Male employees are now entitled to request paternity leave for new-born child or adopted child under 5 years, if the employee has been employed for at least 12 months by the employer.	This change reflects the family - friendly and equal gender rights benefits of the New DIFC law.
<b>EMPLOYER'S OBLIGATION RELATED TO VISAS AND PERMITS</b>		
Visas and permits regime were not mentioned in the Previous Law.	<p>Employer is obliged to obtain the relevant permits for employment at his own costs.</p> <p>An employer is not permitted to:</p> <p>(a) recoup any costs and expenses incurred for the visas and permits from an Employee; or</p> <p>(b) retain the passport or other original personal documents of an Employee.</p> <p>(3) Cancellation of the Employee's UAE residency visa should be processed as soon as reasonably practicable following the termination date and by no later than 30 days following the termination date.</p> <p>(4) An employer who contravenes with the above obligation is liable to a fine of USD 2,000.00.</p>	These requirements are intended to reflect what is already part of the DIFC practice and reflect what employers are already required to adhere to pursuant to the Personnel Sponsorship Agreement. However, the regulation is ensuring statutory protection of employees' rights and also linking any misconduct to a fines and penalties regime to ensure compliance.
<b>GRATUITY PAYMENT OPT OUT OPTION</b>		
The Previous Law does not provide such options.	Employees are entitled to agree with their employer to receive contributions from their employer into a pension scheme, retirement savings scheme or any substantially similar scheme, whether located in the UAE or elsewhere, instead of the Gratuity Payment.	This is in line with the broader aim of DIFC to eventually replace the end of service gratuity with a funded workplace savings plan for its expatriate workforce with possibility of employee partial contribution.

## II. Conclusion

The New Law attempts to balance the needs of employers and employees in the DIFC with the emphasis being on providing a framework of minimum employment standards and fair treatment of Employees in the DIFC to enable businesses in the DIFC to thrive, while also ensuring the attraction of human capital to the DIFC.

For comprehensive legal advice on the relevant changes and how it effects your employment as an employee or your existing employment operation as an employer please reach out to MENA LEGAL.

**For more information, please contact: [info@mena-legal.com](mailto:info@mena-legal.com)**

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