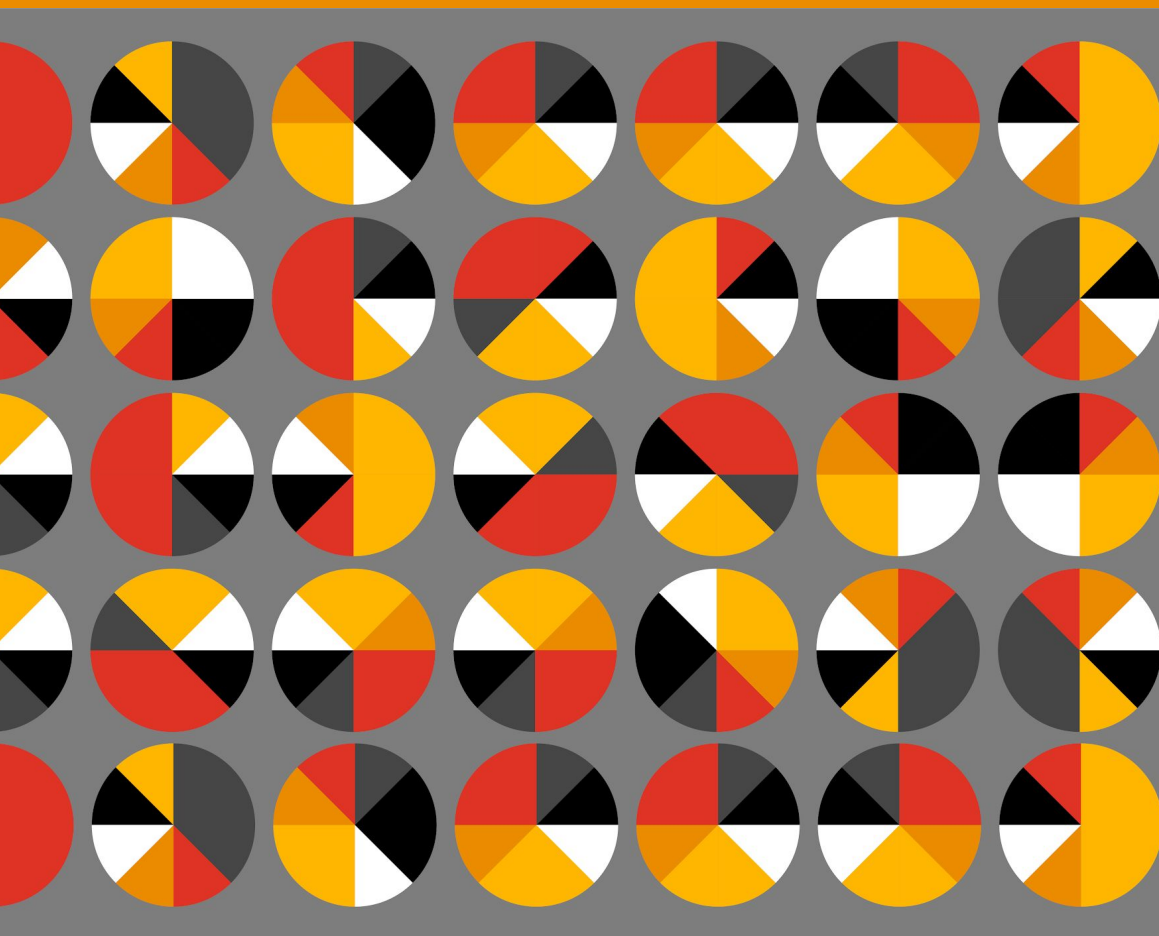


UAE: The New DIFC Employment Law 2019

June 2019



In brief

The revised version of the DIFC Employment Law, Law No.2 of 2019 (the “New DIFC Employment Law”) is due to come into force on 28 August 2019 and will completely replace and overhaul the existing employment law regime in operation in the DIFC, Law No.4 of 2005, as amended (the “Old DIFC Employment Law”).

This article provides an overview of the key changes made. Employers are well-advised to ensure their employment contracts, policies and handbooks are up-to-date and in alignment with the New DIFC Employment Law before the go-live date in August.

In detail

The Old DIFC Employment Law was subject to a public consultation in March 2018 and following extensive public comment to the draft changes proposed, the DIFC Authority has now published a final version of the New DIFC Employment Law, which shall come into force on 28 August 2019. A number of key changes have been introduced as part of the New DIFC Employment Law which employers operating in the DIFC will need to be mindful of, not least because a new penalty system of fines has been annexed as part of the New DIFC Employment Law for contraventions, non-compliance and/or breaches.

We have outlined below the key changes forming part of the new employment law framework.

Provision	New DIFC Employment Law
Application	Employers and employees can now contractually opt into the New DIFC Employment Law (previously its application was restricted only 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). The New DIFC Employment Law also specifically recognises (although has limited application to) part-time and short-term employees.
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 upon the later of when the New DIFC Employment Law is effective (28 August 2019) and the date of the act or omission forming part of the discrimination claim).
Secondments	The concept of “secondments” has been expressly recognised under the New DIFC Employment Law with a specific secondment card being required to be procured and maintained by the parties from the DIFC Authority in order to legitimise and validate the secondment arrangements (specific provisions of the New DIFC Employment Law will not have application to seconded employees, however).

Late payments	The late penalty payment regime (which was a particularly contentious provision in the Old DIFC Employment Law) has been revised such that it 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 be in excess of an employee's weekly wage. Importantly, the penalty will: • be capped at six months' daily wage • be 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.
Discrimination	The anti-discrimination provisions have been expanded to include: • additional protected characteristics - being age, pregnancy and maternity • victimisation - that is, protection against a protected act. For example, where an employee makes an allegation of, or brings a claim for, discrimination. Employers will be liable for any act of discrimination by an employee done in the course of their employment unless the employer is able to deduce evidence that it took such steps as were reasonably practicable to prevent the employee from carrying out that act. Relevantly, the DIFC Court can now, in the event of a finding of discrimination and/or victimisation, award the following remedies: • compensation of up to one year's wage (being salary and allowances) which can include an award in respect of injury to feelings • a declaration • 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, it has discretionary power to increase the amount of monetary compensation awarded to two years' wage.
Family friendly benefits	Increased or expanded family friendly benefits include: • male employees who will have been continuously employed for at least twelve months immediately preceding the expected or actual week of his wife giving birth will be entitled to five working days of paid paternity leave. The right to take paid time off to attend appointments for antenatal care is extended to expectant fathers • female employees returning to work from maternity leave will be entitled to specific nursing breaks • female employees who are adopting a child will be entitled to statutory maternity leave if the child is less than five years old at the time of adoption.

Sick Leave	Sick leave remains at 60 working days per year but only the first 10 days will be at full pay. The next 20 working days will be at half pay and the remaining 30 working days will be unpaid.
Termination of employment	The New DIFC Employment Law maintains the existing minimum notice periods but parties cannot agree to shorter (only 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 DIFC Employment Law). Employers will be entitled to place an Employee on garden leave for all or part of their notice period.
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.
Settlement agreements	Under the New DIFC Employment 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.
Miscellaneous	The New DIFC Employment Law also includes additional changes, including but not limited to: • the introduction of a stringent penalty system of fines (of either US\$2,000 or \$10,000 per infraction) in the event of breaches or non-compliance with the New DIFC Employment Law • the minimum age for an employee will increase from 15 to 16 years of age • the mandatory retention period for employee records will increase from two to six years; and employees will only be permitted to carry over five (rather than 20) days' accrued vacation to the following year.

The takeaway

The changes brought about by the New DIFC Employment Law are significant and comprehensive in nature and due to the penalty system of fines in place for breach, employers are well-advised to ensure their employment contractual documentation, policies and handbooks are in alignment with the New DIFC Employment Law before its go-live date of 28 August 2019.

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Let's Talk

For a deeper discussion of how this development might affect your business, please contact:

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