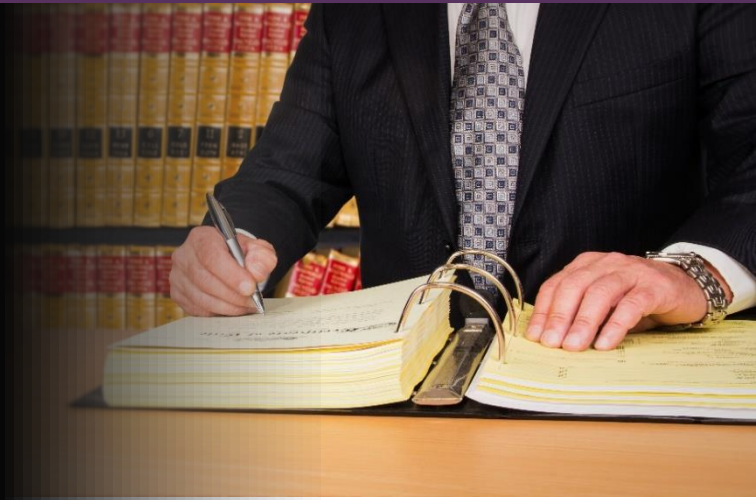


10 Key Changes Proposed in the New DIFC Employment Law



Employment

Introduction

The Dubai International Financial Centre Authority (“DIFCA”) recently issued a consultation paper seeking comments on the proposed new Employment Law (the “Proposed Law”). The Proposed Law is intended to replace the current Employment Law, DIFC Law No. 4 of 2005 (the “Current Law”) applicable in the Dubai International Financial Centre (the “DIFC”). A summary of 10 key changes proposed in the new Employment Law is set out below.

10 Key Changes Proposed in the New DIFC Employment Law		
1	Applicability of the Employment Law	<p>The Proposed Law shall apply to full-time employees and part-time employees as well as short-term employees. In addition, the Proposed Law shall be applicable to any individual who agreed in an employment contract to be subject to the Proposed Law; and any individual who “has been determined by the DIFC Court to have a sufficiently close connection to the DIFC for it be appropriate to deal with any right, remedy, privilege, debt or obligation of that individual.”</p> <p>The “sufficiently close connection” test is intended to include individuals who may from time to time be working in or from the DIFC under laws other than the Proposed Law.</p>
2	Fines and Penalties	<p>The Proposed Law shall introduce a fines and penalties regime since the Current Law does not have any compliance mechanism in place for the various restrictions, and obligations imposed on employers or employees.</p> <p>The DIFC Authority’s ability to impose fines and penalties under the Proposed Law does not limit the rights of the employers or employees to enforce any rights, remedies, claims or actions under the Proposed Law or any other applicable law.</p>
3	Waiver of Rights	<p>Waiver of the provisions of the Current Law is prohibited. The Proposed Law shall allow employers and employees to waive any statutory right, remedy, privilege, claim or action provided it is in the context of resolving a dispute.</p>

		Nevertheless, the DIFC Court may set aside any agreements waiving any right, remedy, privilege, claim or action which the Court considers unreasonable in the circumstances.
4	Penalties on Late Payment	<p>The penalty for late payment of the amount due to an employee on their termination is currently calculated based on the last daily wage of the employee for each day such payment is outstanding.</p> <p>Under the Proposed Law, the penalty for late payment shall be applicable only if the outstanding amount exceeds 5% of the total amount due to the employee at termination. In addition, such penalty shall be capped at an amount equal to six months' wages.</p>
5	Paternity Leave for Male Employees	<p>Under the Proposed Law, male employees to whom a child is born or who adopts a child under the age of 5 shall be entitled to a paternity leave of five working days.</p> <p>In addition, male employees shall have the right to take time off work for attending medical appointments for ante-natal care or adoption proceedings.</p>
6	Grounds and Remedies for Discrimination	<p>In addition to the grounds for a discrimination claim provided under the Current Law, the Proposed Law shall include pregnancy and age as new grounds for discrimination claims.</p> <p>The Proposed Law shall also prohibit discrimination against an employee who helps another employee raise a discrimination complaint in good faith.</p> <p>A mechanism shall be introduced enabling an employee who considers himself/herself to be a victim of discrimination to request information from the employer in order to ascertain whether discrimination has taken place.</p> <p>In respect of proceedings for discrimination claims, the DIFC Court shall be able to provide the following remedies:</p> <ol style="list-style-type: none"> (1) make a declaration in respect of the rights of the complainant and respondent; and/or (2) make appropriate recommendations; and/or (3) order the respondent to pay compensation, which cannot exceed the employee's annual wages unless the respondent fails to comply with the initial recommendation, whereby the Court can then increase the compensation to an amount equal to two times the annual wage of the employee.
7	Forfeiture of Gratuity Payments	The current provisions enabling forfeiture of an employee's gratuity payment in the event of termination for cause shall be removed pursuant to the Proposed Law.
8	Protection to Whistle-Blowers	The Proposed Law shall include provisions in respect of affording protections to whistle-blowers. Such provisions shall align the Proposed Law with the proposed new DIFC Companies Law and extend fair protection to persons reporting contraventions of applicable law from civil or contractual liability, unfair dismissal and other prejudicial actions.
9	Rights of Parties on Termination for Cause	<p>The Current Law allows both an employee and employer to terminate employment for cause if it is considered "reasonable" to do so. However, the Current Law does not provide any guidance on what constitutes "reasonable" in the circumstances.</p> <p>Under the Proposed Law, in order to determine whether termination for cause was "reasonable", the circumstances of the termination shall need to be considered in accordance with principles of equity.</p>

		<p>The Proposed Law shall provide that where an employee terminates his/her employment for cause, the employee shall be entitled to:</p> <ol style="list-style-type: none"> (1) payment of wages in lieu of the full notice period; (2) gratuity payment that is inclusive of the applicable notice period; (3) payment of all outstanding vacation leave that is inclusive of the applicable notice period; and (4) such other compensation as deemed reasonable by the DIFC Court in the circumstances; however, the compensation is capped at the employee's annual wage. <p>In the event that the employer terminates an employee's employment for cause, the employee:</p> <ol style="list-style-type: none"> (1) shall not be entitled to payment of wages in lieu of the notice period; and (2) shall only be entitled to receive gratuity payment and payment in respect of outstanding vacation leave up to the termination date.
10	Employer's Vicarious Liability	<p>Under the Current Law, vicarious liability of the employer covers any act of the employee done in the course of employment. However, under the Proposed Law, the employer shall only be held liable for acts, attempted acts or omissions of the employee where such acts, attempted acts or omissions are authorised by the employer or expected of the employee in the course of employment.</p>

The information mentioned in this article is current at the date of publication of this article and available from public sources. Nothing in this article constitutes legal advice and should not be construed as any form of advice.

For further information and assistance with any aspect of the DIFC legal framework, please do not hesitate to contact us.

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