

In case you missed them

Summary of the key changes to employment laws in the UAE in 2019

January 2020



Introduction



Amendments to DIFC Employment Law



New ADGM Employment Regulations



DIFC's introduction of mandatory workplace savings scheme



UAE's new labour law anti-discriminatory provisions





Introduction



Throughout 2019, the United Arab Emirates (“**UAE**”) welcomed significant developments to the private sector employment rules and regulations in force in the region. These developments were introduced both by the UAE Federal government and by the two leading financial free zones in the UAE, the Dubai International Financial Centre (“**DIFC**”) and the Abu Dhabi Global Market (“**ADGM**”). The changes introduced by the DIFC and ADGM restate their commitment to adopt international best practice within their respective jurisdictions and to attract and retain the best talent within a fiercely competitive global market.

In summary, 2019 saw the introduction of:

- DIFC Law No. 2 of 2019 (the “**New DIFC Employment Law**”) which has since been amended following a consultation on the proposal to introduce mandatory workplace savings scheme
- ADGM Employment Regulations 2019 (the “**New ADGM Employment Regulations**”)
- Consultation Paper No. 7 of 2019 governing the new DIFC Employee Workplace Savings Scheme (“**DEWS**”) and the subsequent amendments to the DIFC Employment Law which were finalised in January 2020
- Federal Decree No. 6 of 2019 amending certain provisions of UAE Law No. 8 of 1980 (the “**UAE Federal Labour Law**”) in respect of discrimination at work (the “**New Labour Law Anti-Discriminatory Provisions**”) and the conditions of employment for female employees

For 2020, lawyers in the UAE are hopeful that the UAE Federal Labour Law, adopted as far back as 1980, is revised in order to keep up with changes in the DIFC and ADGM. Emiratisation remains a key priority for the Federal government and we can expect to see some further legislative activity on this front in the coming months. February 2020 will also see the introduction of the much awaited DEWS Scheme and employers will need to be aware of the ramifications of not making the required contributions.

Warmest regards,



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This update is designed to provide you with an overview of the key changes that have been introduced to the employment laws applicable to the private sector in the UAE, DIFC and ADGM and to help you identify areas where you may need our further advice. It is to be used for guidance purposes only and should not be taken as a substitute for taking legal advice. Further, this update sets out only those legislative changes which are considered key changes governing the relationship between employers and employees in the UAE, DIFC and ADGM. It is not intended to be a comprehensive review or commentary on all changes which have been introduced.

In case you missed them

Key changes to Employments Law in the UAE in 2019





Amendments to DIFC Employment Law



Probationary Periods

The New DIFC Employment Law now expressly recognises probationary periods of no more than six months, which must be expressly set out in the employment contract. The previous law was silent on probationary periods.

Maternity & Paternity Leave

- maternity leave has been extended to:
 - apply to the adoption of children under the age of five years old (previously it was three months)
 - include an entitlement to a “reasonable period” of time off to attend ante-natal appointments and up to eight hours for adoption proceedings
 - include a right to nursing breaks following a return to employment after childbirth
- male employees with at least 12 months’ service are now entitled to:
 - five working days’ paternity leave
 - a “reasonable period” of time off to attend ante-natal appointments and up to eight hours for adoption proceedings

Male employees were not previously entitled to paternity leave.

Discrimination

- extension of the anti-discrimination provisions including:
 - age, race, pregnancy & maternity are now expressly referred to as prohibited grounds
 - discrimination includes any provision, criterion or practice which is discriminatory in relation to a prohibited ground
 - an employee must not be victimised due to their carrying out of a protected act (for example, for raising complaints of discriminatory conduct)
- complaints of discrimination must be brought within six months of the alleged discriminatory act or within such period as the court considers reasonable
- significantly, the DIFC Courts now have the right to make a recommendation or award compensation not exceeding one years’ wages where the employer is found to be in contravention of the discrimination provisions

Garden Leave

The New DIFC Employment Law expressly recognises that employees may be placed on garden leave for all or part of their notice period.

Sick Leave & Sick Pay

Employees remain entitled to 60 working days’ sick leave. However, sick pay has been reduced from 60 working days full pay to:

- 100% of daily wage for the first 10 working days
- 50% of daily wage for the next 20 working days
- no pay for the final 30 working days

Holidays

- leave for Hajj pilgrimage has been reduced to 21 days (previously 30 days)
- a maximum of five days accrued but untaken leave may be carried forward into the next holiday year (previously 20 days could be carried forward)

Part-Time Employment & Secondments

- the New DIFC Employment Law now expressly recognises part-time employees who will be subject to all of the provisions of the New DIFC Employment Law, save for leave entitlements which will be pro-rated
- employees may be employed on a secondment basis pursuant to a Secondment Card issued by the DIFC, subject to a maximum secondment period of 12 months

End of Service Entitlements & Payments Following Termination

Previously, an employee terminated for cause (gross misconduct) was not entitled to an end of service gratuity (“**EoSG**”). The New DIFC Employment Law removed this provision and confirmed that all employees, even if dismissed for cause, would be entitled to an EoSG.

While payments following termination must still be paid to employees within 14 days, an employer will only be required to pay a penalty payment if it fails to pay the employee an amount which exceed the employee’s weekly wage. Furthermore the penalty payment is capped at six months salary.

From 1 February 2020, EoSG will be replaced by an obligation on employers to make mandatory contributions into a qualifying workplace savings scheme.

Settlement Agreements

The New DIFC Employment Law expressly recognises settlement agreements, pursuant to which employees may waive their right to bring an employment claim against their employer. The employee will be required to confirm within the settlement agreement that they have been given the opportunity to take independent legal advice on the terms and effect of the settlement agreement.





New ADGM Employment Regulations



Minimum Notice Periods

Employees continuously employed for the period set out below are entitled to:

- seven days' notice if employed for less than three months
- 30 days' notice if employed for three months or more

The New ADGM Employment Regulations remove the previous 90 day notice requirement for employees continuously employed for five years or more. The contractual notice period may be longer than these statutory minimum notice periods, if agreed to by both employer and employee.

Overtime Compensation

Employees are entitled to overtime compensation if they work more than 832 hours over a reference period of four months (excluding work carried out on national/public holidays that fall on an employer's usual working day). This will be pro-rated if the employee has worked less than four months but close to or in excess of the 832 hours.

The employer can decide on the form of overtime compensation which can either be in the form of: (i) money, (ii) time off in lieu, or (iii) a combination of both (i) and (ii).

If the compensation is monetary, the payment will be:

- 25% of the employee's hourly rate for day overtime in addition to their daily wage
- 50% of the employee's hourly rate for night overtime (between the hours of 21:00 and 4:00) in addition to their daily wage

Overtime compensation must be made no later than one month after the expiration of the four-month reference period. Employers are under an obligation to maintain records for employees who work or are likely to work overtime.

Employees in managerial or supervisory positions or in positions in which it is internationally recognised that employees should not receive overtime compensation (i.e. because of their level of seniority – e.g. equity partners/directors) are not entitled to overtime compensation.

Data Protection Provisions

The data protection provisions set out in the previous Regulations have been removed, given there is now a stand-alone data protection law in the ADGM.

Compensation Rules

New rules in respect of fines and compensation limits have been introduced. They are largely similar to those issued in 2016.

Sick Leave & Sick Pay

Employees remain entitled to 60 business days' sick leave. However, sick pay has been reduced from 60 business days' at full pay to:

- 100% of daily wage for the first 10 business days
- 50% of daily wage for the next 20 business days
- no pay for the final 30 business days

In addition, an employer has the right to immediately terminate the employment of any employee who takes more than 60 business days sick leave in a 12-month period, unless such leave is in connection with a disability (being a mental/physical impairment which lasts or is likely to last for at least 12 months).

Discrimination

- extension of the anti-discrimination provisions:
 - gender and colour are now expressly referred to as prohibited grounds
 - any provision, criterion or practice which places an employee at a disadvantage not faced by other because of a prohibited ground is discriminatory
- if the anti-discriminatory provisions are breached, the court has discretion to:
 - award compensation, subject to a cap of three years' basic salary
 - make a recommendation for the employer to take certain action within a specified period for the purpose of obviating or reducing the discriminatory impact. If the employer fails to comply, a USD 20,000 fine can be imposed

Repatriation Flight

The New ADGM Regulations confirm that on termination of employment, an employer must provide the employee with a one-way repatriation flight to the employee's home country unless:

- the employee obtains alternative employment or visa sponsorship within 30 days of termination
- the employee has been dismissed "for cause"





DIFC's introduction of mandatory workplace savings scheme UAE's new labour law anti-discriminatory provisions



The New DIFC Employment Pension Scheme

From 1 February 2020, expatriate employees in the DIFC will no longer be entitled to EoSG. Instead employers are required to enrol (non-exempted employees) into a Qualifying Scheme and to make mandatory minimum contributions into that scheme. Employer contributions will be (1) 5.83% of the employee's monthly salary for the first five years and (2) 8.33% of the monthly salary for each additional year thereafter.

The DIFC has issued Employment Regulations which set out the requirements which schemes must fulfil in order to be deemed to be a Qualifying Scheme.

The Employment Regulations also provide that where an employer is under a statutory duty in another country to make pension, retirement, saving or any substantially similar contributions into a scheme in another country, the DIFC Authority (DIFCA) may exempt such employers from being required to make contributions into a Qualifying Scheme.

In addition, employers who, with the written consent of the employee, pay defined benefits into a scheme which exceed the contributions required to be made into a Qualifying Scheme, may also be exempted by the DIFCA from making contributions into a Qualifying Scheme.

Employees' accrued EoSG up to 31 January 2020 will be preserved and employees who have less than a year's service will have their entitlement calculated on a pro-rata basis.

Accrued EoSG can either be calculated and paid out on termination of the employee's employment (applying their (usually higher) salary as at the termination date) or it can be paid into the Qualifying Scheme either with or without employee consent.

Employers can be fined up to a maximum of USD 2,000 per violation if they fail to make the required contributions.

The New Labour Law Anti-Discriminatory Provisions

The government has taken steps to update the UAE Federal Labour Law and in 2019 issued Decree No. 6 of 2019.

Key changes include the following in respect of anti-discrimination:

- discrimination which prejudices equal opportunities during the course of both recruitment and employment is prohibited
- discrimination between employees who have the same job duties is prohibited
- there is provision for the Ministry of Human Resources and Emiratisation to implement new laws regulating the employment of a male and female together in the same job/workplace and the circumstances in which this would be prohibited
- an employer is prohibited from terminating or serving a notice of termination on an employee who is pregnant. Any such termination would constitute an arbitrary dismissal entitling the employee to compensation

The UAE Federal Labour Law provisions regulating the employment of women at night time and in jobs that are hazardous, arduous or otherwise physically or morally detrimental, have been repealed.





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