

## Briefing

# Amendments to the DIFC Employment Law

October 2021



Employment relationships in the Dubai International Financial Centre ("**DIFC**") are governed by the laws of the DIFC.

DIFC based entities will not be unfamiliar with the laws being updated and changing having seen major changes to DIFC Employment Law when end of service gratuity was abolished in favour of mandatory contributions into Qualifying Savings Schemes.

Notwithstanding these major changes, the DIFC recently implemented further changes to its employment laws and regulations.

DIFC Law No. 2 of 2019 (as amended by DIFC Law No. 4 of 2020) has been amended by DIFC Law No. 4 of 2021 (the "**Amendment Law**").

The Amendment Law was enacted on 14 September 2021 and came into effect on 21 September 2021. Additionally, the DIFC has issued the Employment Regulations (Qualifying Scheme requirements under Article 66 of the Law) Consolidated Version No. 2 (the "**New Regulations**"), effective as of 21 September 2021.

A summary of the changes is provided below:

### The Amendment Law

Topic	Details of amendment
Labour claims	Employees may bring claims against their employer during their employment period. Please note, the limitation period remains unchanged and is six (6) months.
Probation period for fixed term employment contracts	The probationary period for an employee on a fixed term employment contract (duration of six (6) months or less) must not exceed half the period of the term of the employment contract.
Employee deductions	New provisions have been introduced regulating an employee's ability to bring claims for unlawful deductions from their wages and limit claims for outstanding wages going back two (2) years (subject to some exceptions).
Vacation leave carry over	The amount of accrued but untaken vacation leave to be carried forward may be agreed between the employer and employee, provided that nothing shall preclude an employee from rolling over at least five (5) working days per vacation leave year.
Remote working	Where an employee is required or permitted to work from home, the employer will be exempted from basic workplace-related health and safety duties.
Short-term employees protection	Protection from discrimination and harassment will be afforded to short-term employees.

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**Calculating ESG/DEWS for multiple fixed-term contracts**

Where an employee is employed by way of multiple fixed term contracts, the aggregate of all fixed terms of employment served by the employee shall determine the years of service for the purposes of calculating their end of service gratuity and contributions into DEWS.

**Definition of "Additional Payment"**

The definition has been amended so that it now includes bonuses, incentives, grants commission, drawings, distributions and any other payments which are discretionary, non-recurring or calculated by reference to the profits of the employer or an affiliate of the employer. These "Additional Payments" may be excluded from the calculation of an employee's DEWS contributions and the requirement to pay an employee all their remuneration within fourteen (14) days of the employee's termination date.

**Definition of "Exempted Employee"**

The definition of "Exempted Employee" has been amended to reflect the fact that many "equity partners" of international firms have partnership interests in, or are members of, an affiliate of their DIFC employing entity.

**Employees on "Secondment"**

Employees on "Secondment" will now be subject to the provisions relating to settlement agreements, employees' statutory obligations and protection from discrimination and harassment.

**The New Regulations**

- Qualifying Schemes (i.e. any scheme, plan, superannuation, provident fund or similar arrangement established for purposes of pension benefits, retirement contributions, gratuity or saving) must be established as an Employee Money Purchase Scheme in the form of a DIFC Trust with both its operator and administrator being established in the DIFC and regulated by the DFSA in order to be issued with a Certificate of Compliance.
- An Exemption Certificate will only be issued to an employer in respect of specific employees where:
  - the employer is under a statutory duty in another country to make pension, retirement, saving, gratuity or any substantially similar contributions into a Scheme in such other country for those employees; or
  - the employer is making payments to a Group Scheme on behalf of employees where the value of such payments (not including any payment or contribution made by the employer or the Group to the costs of operating the Group Scheme), is in excess of the Core Benefits payable under the Amendment Law. A "Group Scheme" is defined in the New Regulations as being available in at least four (4) countries (although this requirement may be waived by the DIFCA) exclusively to employees of the group of entities which includes the employer and its Affiliates and is regulated and supervised by a financial services regulator.
- In the event an employer holds a Certificate of Compliance or an Exemption Certificate which will no longer be compliant under the New Regulations, they will be granted a grace period of twelve (12) months to comply with the New Regulations.
- Employers will be under an obligation to notify the Operator of a Qualifying Scheme (e.g. in the case of DEWS, it is Zurich) of any other change in circumstances that will affect the amount of an employee's contributions.
- The cost of applying for a Certificate of Compliance or an Exemption Certificate is US\$500 respectively.

**Action** – the changes are not considered significant and this briefing is intended to keep our clients up-to-date.

We consider the exemption from health and safety obligations in respect of remote working will provide employers with clarity concerning remote working which has very much become the new norm.

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