



Boiled down New DIFC employment law

DIFC Employment Law No. 2 of 2019

The arrival of a new employment law in the DIFC will not come as a surprise to most DIFC based employers. A draft law underwent consultation in March last year and its implementation has been much anticipated. The final version of DIFC Employment Law No. 2 of 2019 (New Law) is now available and is confirmed as coming into force on 28 August 2019. It will replace DIFC Employment Law No. 4 of 2005 as amended entirely (Old Law).

There has been a hive of activity surrounding the New Law and the internet has been inundated with articles warning employers of the changes and action required. Here at Eversheds Sutherland, we recognize that the New Law and the flurry of information surrounding it could be cause for alarm for some employers. However, we understand that what our clients really want to know is "what are the key changes that need to be on our radar and at the forefront of our minds" in order to avoid any obvious practical trip-ups when the New Law comes into force

Your key contacts

Our UAE employment team are recognized by Chambers Global 2019 with one client saying the practice is their "go-to for employment advice in the UAE". Geraldine Ahern heads up the employment practice and according to industry sources, Sarah Anderson has "a good understanding of DIFC law, but also of English employment law, so she is able to explain and compare the two legal systems."

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What employers in the DIFC should have on their radar

The position under the Old Law (up to 27 August 2019)	What's new under the New Law?	Key actions, steps to be taken
Paternity and maternity leave – rights extended		
<p>Paternity leave was not provided for under the Old Law.</p>	<p>Under the New Law, fathers expecting a child or adopting a child (under the age of 5) are entitled to five working days' paternity leave. In order to qualify, the employee must have 12 months employment (at the expected or actual week of childbirth/adoption date). The employee must provide their employer with eight weeks notice and the leave must be taken within one month of the child being born/adopted.</p> <p>In addition, fathers are now entitled to time off to attend ante-natal appointments and to attend adoption proceedings. Previously, only women had the right to time off for ante-natal appointments.</p>	<p>Be aware that expectant fathers are now legally entitled to up to five working days' paternity leave and that rights related to adoption have been extended.</p> <p>We suggest employers amend their handbook and, possibly also, employment contracts to reflect this.</p>
<p>Maternity leave of 65 working days was offered to expectant mothers and to women adopting children under three months subject to them meeting the qualifying criteria (most notably 12 months' service).</p>	<p>Maternity leave has been extended to include adopted children under the age of 5 (previously it was three months). There is also a new right to time off to attend adoption proceedings appointments.</p>	<p>It is also important for personnel responsible (HR teams and/or legal teams) to be aware that this entitlement exists and to understand to whom it applies.</p>
Discrimination – protection extended and remedies introduced		
<p>Under the Old Law, discrimination on grounds of the following was prohibited:-</p> <ul style="list-style-type: none"> sex marital status race nationality mental/physical ability 	<p>Age, pregnancy & maternity are now expressly stated as being grounds upon which an employer should not discriminate and the provisions related to discrimination are much more detailed. In addition, the New Law sets out that employees can bring claims for up to a year's wages (possibly two years for repeat offenders).</p>	<p>Ensure that your employment documentation recognizes the additional non-discrimination grounds and consider educating staff by way of training about how not to discriminate especially as employers may be vicariously liable for actions of its staff.</p>
Gratuity – payable regardless of reason for termination		
<p>Employees terminated for "cause" (i.e. with immediate effect and without notice), were not entitled to an end of service gratuity payment.</p>	<p>All employees (unless in receipt of qualifying pension payments) will be entitled to end of service gratuity on termination.</p>	<p>Carefully check what payments are due to any employee on termination and make sure these are paid promptly (and in any event within 14 days of termination).</p>
Sick leave and sick pay – sick pay reduced		
<p>Sick leave entitlement was 60 days full pay per year.</p>	<p>Under the New Law, employees are still entitled to 60 working days, but sick pay will be paid as follows:</p> <ul style="list-style-type: none"> full pay for first 10 days half pay for a further 20 days No pay thereafter 	<p>Make sure that employees and those responsible managing sickness absence and pay are aware that entitlement to pay has been significantly reduced.</p>
Part-time and secondment		
<p>Part-time employees and secondees were not previously expressly referred to in the Old Law.</p>	<p>Part-time employment is defined in the new law as an employee who works less than 8 hours a day and/or less than 5 days a week. Part-time employees will be entitled to many of the same entitlements as full-time employees but on a pro rata basis.</p> <p>DIFC employers may now engage individuals on a secondment basis by obtaining a Secondment Card for periods not exceeding 12 months. Certain provisions of the New Law will apply to these secondees.</p>	<p>Ensure that any part-time employees and secondees are issued with employment documentation which clearly sets out what parts of the New Law applies to them and which parts do not.</p>