



Background

The new DIFC Data Protection Law, Law No. 5 of 2020 (the **DIFC DP Law**) came into force on 1 July 2020 and, as of 1 October 2020, is now being enforced.

Unlike with the EU General Data Protection Regulation (GDPR), where companies had a two-year transition period to become compliant, there has not been much time for DIFC entities to prepare for compliance with the new DIFC DP Law. With enforcement now in effect, it is important for companies, branches and other legal entities operating in the DIFC to take action now to achieve reasonable compliance with the new law.

The new DIFC DP Law draws heavily on the GDPR. The two can almost be read side by side; however, the DIFC DP Law does have its own distinct legislative features. We have produced a helpful summary of the new law including a comparative overview of the key differences between the new DIFC DP Law and the GDPR, which can be accessed by clicking [here](#).

Considerations for HR

In our experience, we have found that HR is often the area of the business that tends to process the most sensitive data, which is employee data. This can, of course, include health information, equal opportunities data, financial information and bank account details. With the introduction and enforcement of the DIFC DP Law, HR has a key role to play when it comes to data protection compliance and must ensure it is fully aware of what the rights are that its respective employees have when assessing the data being retained, such as the right to be forgotten, the right to data portability and, a new right under the DIFC DP Law, the right not to be discriminated for exercising data subject rights.

In respect of the prohibition of discrimination, this is a new right under the DIFC DP Law, which has been derived from the recently enacted Californian Consumer Privacy Act, and it will be interesting to see how this develops in practice and the effect on employment relationships given the fines for non-compliance are relatively high, with thresholds starting at US\$10,000 and going up to US\$100,000, depending on the contravention in question.

Given the potentially severe penalties, employers in the DIFC also need to understand the types of personal data held about their respective staff, how and why it is collected and stored, how long it should ideally be retained for, any third parties to whom it is transferred and the safeguards that are in place to protect it. Consideration will, therefore, need to give as to what changes may be necessary to employment documentation.

Consent and justification for processing employee data are at the forefront of the key issues for consideration. Under the DIFC DP Law, employers must show that consent was freely given in a clear statement of words and employees have the right to withdraw consent at any time. There is, to a degree, an inequality of bargaining power between the employer and employee or job candidate and, therefore, much in the same way it has been posited in respect of the position under the GDPR, consent may not be deemed to have been truly freely given within the employment relationship. This notion has been confirmed by the DIFC Commissioner who has indicated that it will be hard for an employer to evidence that an employee consents "freely" to the processing of their personal data and employers may find that it is difficult to rely on consent as a justification for processing employee data. Those employers that seek to obtain consent for processing personal data by including standard wording in their contracts of employment will need to consider what other grounds are available to justify processing, such as being necessary for the performance of the employment contract, or to comply with a legal obligation.

How We Can Help

We can provide practical support on:

- Advising on the grounds/lawful basis on which employee data can be processed.
- Updating the data protection wording in your template contracts of employment to reflect the new rules.
- Reviewing and updating your data protection policies and privacy notices for staff. Remember, the DIFC DP Law requires that employees are provided with a privacy notice that explains the purpose and legal basis on which their data is processed, as well as containing information required by the law.
- Providing training to your workforce who will be affected by the new obligations.
- Assist with putting in place processes to deal with enhanced data subject rights.
- Putting record-keeping processing systems in place – companies will need record keeping systems to identify what employee data is processed, the purpose of that processing, to whom has the data been transferred and the legal basis on which the processing takes place. This may form part of a wider HR data processing review.
- Ensuring your procedures for handling data subject access requests have been updated.

We can support your company in dealing with these issues. We can tailor our approach, and the level of support we provide, adapting this, if required, to fit with your existing GDPR compliance.

If you would like further information on the new DIFC DP Law requirements and/or assistance in updating your employment documentation, please do not hesitate to contact us. We would be happy to discuss how we can help you.

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