

The Dubai International Financial Center (DIFC) is one of the UAE's many free zones. Free zones are economic areas created by each of the seven UAE Emirates, established to be governed by rules and regulations that are generally different from those governing the "onshore" UAE. More precisely, UAE federal criminal law applies to the free zones while federal civil law (such as the Commercial Companies Law and the Commercial Transactions Law) applies only to matters with respect to which the free zone has not developed its own laws or regulations on. In many respects, the free zones are like foreign countries territorially located within the UAE.

The DIFC is currently the most advanced free zone in terms of the development of its own laws. It has its own contract laws, company formation and insolvency laws, legal rules of interpretation, real estate regulations and its own arbitration centre and court system, including a Court of Appeal. Unlike the UAE, which is a civil law jurisdiction, its laws are entirely based on common law principles.

The uniqueness of the DIFC extends to its governance of labour relations. While the vast majority of employment relationships in the UAE and its free zones are regulated by UAE Federal Labour Law No. 8 of 1980 (as amended) ("**Federal Labour Law**"), within the DIFC the Federal Labour Law is excluded and Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 ("**Employment Law**"), applies to all employment arrangements. It is the purpose of this article is to give an overview of the Employment Law and its practical application.

Application of the Employment Law

The Employment Law is applicable to those employees working for a corporate entity with a place of business in the DIFC and who are based in, or ordinarily work in, the DIFC. It is also applicable to employees of regulatory agencies within the DIFC, including employees of the Dubai Financial Services Authority, the DIFC's chief regulating body.

The Employment Law sets out a number of benefits that are considered the minimum to be afforded to employees, these benefits cannot be waived or reduced by contract. If an employment contract stipulates less favourable terms than the minimum rights afforded under the provisions of the Employment Law, then that contractual term is void.

Employment Contracts

Employees are entitled to a written employment contract which shall include among other things the following:

- a. names of the employer and employee
- b. date of employment commencement
- c. particulars of remuneration
- d. terms and conditions relating to working hours or days
- e. any terms and conditions relating to: (i) vacation leave and vacation pay, national holidays and holiday pay for such national holidays; and (ii) sick leave and sick pay
- f. notice period
- g. job title and/or description of the employee's work
- h. whether employment is for a fixed term or indefinite
- i. place of work
- j. disciplinary rules and/or grievance procedures applicable to the employee
- k. a general summary of the rights of employees under the Employment Law

Probationary Period

The Employment Law does not specify a specific probation period for employees, however periods of between three to six months are not uncommon for junior and mid-level employees. Where senior management is being recruited it is not unusual for shorter probationary periods, or none at all, to be agreed.

Working Hours

Employees shall not work a number of hours exceeding 48 within a seven day period, unless the employee's prior consent is obtained.

During the Holy Month of Ramadan, the ordinary working hours of a Muslim employee observing the fast shall not exceed six hours per day.

Payment of Salary

An employer is required to pay wages earned by the employee, including vacation pay, in a specific pay period on a monthly basis.

An employer must provide an employee with a written itemised pay statement. This requirement may be satisfied if an employer provides an employee with electronic access to the itemised pay statement.

Health Insurance

An employer is required to provide health insurance for all of its employees. The Employment Law does not, however, specify minimum coverage levels and therefore an employer is free to offer such coverage as it may deem appropriate. Employers often consider seniority and designation of employees when making such determinations.

Discrimination

Unlike the Federal Labour Law, the Employment Law specifically prohibits an employer from engaging in discriminatory treatment or conduct on the basis of an employee's sex, marital status, race, nationality, religion and/or mental or physical disability. The Employment Law also sets out additional protections for pregnant women, providing that an employer shall not, because of an employee's pregnancy or maternity leave, terminate employment or change the position or condition of employment without the employee's prior written consent. In addition, an employee has the right to return to work at the end of maternity leave to the same role or a suitable alternative on the same terms and conditions, and with the same seniority rights she would have had had she not taken maternity leave.

Leave

- Annual Leave

Annual leave entitlement for employees with more than one year of service is 20 working days in addition to official public holidays.

- Sick Leave

Sick Leave shall not exceed 60 working days in a 12-month service period.

- Special Leave

Muslim employees who have completed one year of continuous employment shall be entitled to 30 days of unpaid leave for the Hajj pilgrimage.

- Maternity leave & Antenatal Care

The Employment Law allows for paid maternity leave of 65 working days if the female employee has been continuously employed for at least 12 months prior to the expected (or actual) week of childbirth. It is worth noting that this leave is also granted to female employees adopting a child of three months or younger. In addition, a pregnant employee is entitled to time off to receive ante-natal care, such as doctors' appointments, subject to the provision of specified supporting documentation, including evidence of pregnancy and evidence of the appointment.

Notice Period and Termination of Employment

Notice Period

The employer and employee shall have the right to terminate the employment relationship provided either party has given a notice of:

- seven days if the period of continuous employment is less than three months
- thirty days if the period of continuous employment is less than five years
- ninety days if the period of continuous employment is five years and more

The Employment Law allows the employer and the employee to agree to a shorter or longer period, or to waive notice or agree to payment in lieu of notice.

Termination for Cause

An employer or employee shall have the right to terminate an employment agreement in circumstances where the conduct of one party warrants termination and where a reasonable employer or employee would have terminated the employment. This is decidedly different than is the case under the UAE Labour Law, where dismissal for cause is restricted to certain specific causes which are enumerated under the Federal Labour Law and which, in practice, are difficult to achieve.

Right to a Written Statement

Upon request an employee is entitled to a written statement of reasons for dismissal if she has been continuously employed for a period of one year or more on the date of termination of employment.

End of Service Gratuity

An employee who has completed one year or more of continuous service is entitled to an end of service gratuity payment at the termination of the employee's employment in accordance with the following guidelines:

- Twenty-one days' basic wage for each year of the first five years of service
- thirty days' basic wage for each additional year of service, provided that the total of the gratuity shall not exceed the wages of two years of service
- the daily rate for the employee's basic wage shall be calculated based on the number of days in the year
- where the termination occurs prior to the end of any full year of employment, the gratuity payment shall be calculated on a proportionate basis
- in cases where an employer has provided its employees with a pension scheme, the terminated employee shall be provided with the option to choose between participating in the pension scheme and receiving the end of service gratuity payment

There are limited circumstances under which no end of service gratuity is payable to an employee, for example, if:

- the employee is dismissed summarily for cause
- the employer has established a pension scheme for employees and the employee has provided a written statement of election with respect to amounts available under the pension scheme in substitution for end of service gratuity entitlements
- the employee is a GCC national, in which case the employee must be enrolled in mandatory pension schemes established for such nationals pursuant to applicable federal Law

Conclusion

The foregoing is intended to represent an outline of the Employment Law's principal terms and is not intended to serve as legal advice, nor should it be treated as such. Careful consideration is needed when entering into DIFC employment contracts. Simply copying templates and using employment agreements governed by the Federal Labour Law or the laws of another jurisdiction other than the Employment Law could lead to misunderstandings, complications and potential legal problems.

Key Contacts

Douglas G. Smith

Of Counsel

T +971 4 447 8737

E douglas.smith@squirepb.com

Mark J. Gilligan

Associate

T +971 2 651 5913

E mark.gilligan@squirepb.com

Radwa Al Rifai

Foreign Legal Consultant

T +971 4 447 8714

E radwa.alrifai@squirepb.com