



DIFC

CONSULTATION PAPER NO. 4

December 2011

**AMENDMENTS TO THE EMPLOYMENT LAW,
DIFC LAW No. 4 of 2005**

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Why are we issuing this paper?

1. This Consultation Paper seeks public comment on DIFCA's proposals to amend the Employment Law, DIFC Law No. 4 of 2005 ("DIFC Employment Law").

Who should read this paper?

2. The proposals in this Consultation Paper would be of interest to:
 - (a) employers currently operating in the DIFC or intending to operate in or from the DIFC;
 - (b) employees currently working in the DIFC or intending to work in the DIFC;
 - (c) legal advisors advising on matters of employment in the DIFC.

How to provide comments

3. All comments should be provided to the person specified below. You may, if relevant, identify the organisation you represent in providing your comments. DIFCA reserves the right to publish including on its website any comments you provide, unless you expressly request otherwise at the time of making comments.

What happens next?

4. The deadline for providing comments on this proposal is 14 January 2012. Once we receive your comments, we will consider if any further refinements are required to this proposal. We will then proceed to enact the changes to the DIFC Employment Law. Because these are still proposals, you should not act on them until the relevant changes to the DIFC Employment Law are made. We will issue a notice on our website advising you when this happens.

Comments to be addressed to:

Roberta Calarese
Chief Legal Officer
Legal Affairs
DIFC Authority
Level 14, The Gate, P. O. Box 74777
Dubai, UAE

or e-mailed to: roberta.calarese@difc.ae

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Defined Terms

5. Defined terms are identified throughout this paper by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the DIFC Employment Law. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

6. Since its enactment in 2005, a number of issues relating to the application of the DIFC Employment Law have come to light.
7. The DIFC Authority has consulted with a number of participants in the DIFC to determine which provisions raised issues in their practical application and how best to address them.

Legislative Proposal

8. The legislative proposal is attached at Annex A.

Proposed amendments

9. We provide below an explanation of the substantive changes made to the DIFC Employment Law.

Article 3 Purpose of this Law

10. This Article has been amended to state that the DIFC Employment Law provides minimum employment standards to employees who work in the DIFC. The Employment Law has been drafted taking into consideration international standards but it is difficult to assess what are the minimum international standards as these vary substantially from jurisdiction to jurisdiction.

Article 4 Application of the Law

11. A new paragraph (2) has been added making it compulsory for an employer to apply DIFC Employment Law to contracts of employment for DIFC based employees. This change clarifies the legal position that the DIFC Employment Law applies to employees based within or ordinarily working in the DIFC.

Article 8

12. This is a new Article which makes the DIFC Authority responsible for the administration of the DIFC Employment Law.

Article 9

13. This is a new Article however the power of the DIFCA Board to make Regulations under the DIFC Employment Law is currently under Article 63(2).

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Article 11 Right to a contract

14. Previously the requirement was for an employer to provide a statement of employment particulars. However, DIFC participants felt that in practice all the information required to be included in the statement of employment particulars was included in the employment contract. In order to avoid confusion and to provide greater legal certainty, now all employers must provide employees with a contract containing the information prescribed in the Article.

Article 25 Annual Leave

15. Paragraph (2) has been re-drafted to provide greater clarity in relation to the fact that an employee is entitled to carry forward any unused part of his annual leave into the next calendar year for a maximum period of twelve months.

Article 31 Special Leave

16. The number of days to perform Haj for muslim employees has been reduced from 30 calendar days to 20 calendar days.

Article 36 Termination without notice

17. If an employee takes more than 60 working days of sick leave in any 12 month period, an employer is entitled to terminate the employment without notice. This amendment aims to clarify the confusion relating the termination of an employee who has exceeded his sick leave in relation to the notice period to be given by the employer.

Article 58 Discrimination

18. The definition of "Discrimination" has been expanded to provide greater guidance on what is meant by "discrimination".

Article 62 End of Service Gratuity

19. It is proposed to amend Article 62 by making it compulsory for an employer to enrol UAE or GCC nationals in their state pension scheme in order to comply with the relevant GCC treaties and the intent of Federal legislation.

Part 11 Director of Employment Standards, Part 12 Complaints, Investigations and Determinations, Part 13 Enforcement, and Part 14 Appeals

20. These Parts has been deleted in their entirety as it was felt that it would be more appropriate for employees and employers to bring their claims to the Small Claims Tribunal of the DIFC Court which has the required expertise to look into these matters and address them in a fair and independent way.

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Issue for consideration

This amendment is a substantive one which removes from employees and other persons an alternative avenue for complaints from the DIFC Court. Do interested persons feel that such an amendment would adversely affect their rights? If yes, why?

21. Schedule 1

Paragraph 1 Rules of Interpretation

The definition of day has been amended to clarify that reference in the DIFC Employment Law to a “day” means a “calendar day” unless expressly stated otherwise. All references to “working days” are clearly expressed in the DIFC Employment Law.

Paragraph 3 Defined Terms

New definitions of “basic calendar wage”, “daily wage”, “hourly rate” and “vacation pay” have been inserted to provide greater clarity in relation to how wages and other payments are to be calculated.

Schedule 2 Permanent Disabilities/Dismemberment Compensation Scale

22. We have provided for a compensation scale in relation to permanent disabilities or dismemberment as required under Article 52.

Consequential and miscellaneous amendments

23. Throughout the DIFC Employment Law, miscellaneous amendments have been made which do not alter the substance of the Law but are aimed to improve drafting, legal interpretation and provide greater legal certainty.

Consequential amendments have also been made throughout the DIFC Employment Law to give effect to changes made to relevant Articles and the Schedule.