

inBrief



Employment measures for Dubai International Financial Centre (DIFC) employers during COVID-19

By Charles Laubach | 28 April 2020

Presidential Directive No. 4 of 2020 (**Directive**) is the most recent measure taken in the DIFC to ensure proper management in the DIFC during COVID-19.

The Directive, issued on 21 April 2020 with immediate effect, announced employment and workforce measures which shall stay in effect up to and including 31 July 2020 (referred to herein as **COVID-19 emergency period**).

We will discuss in this inBrief employment measures included in the Directive. In so far as may be required to facilitate the implementation of employment measures included in the Directive, the Directive will supersede other relevant provisions contained in Law No. 2 of 2019 (**DIFC Employment Law**).

Emergency Employment Measures

During the COVID-19 emergency period, employers may impose one or more of the following employment measures in respect of any of their employees:

- reduction in working hours
- vacation leave
- leave without pay
- temporary reduction in remuneration
- workplace access restriction
- remote working conditions including remote working requirements

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To that effect, the following provisions in the DIFC Employment Law shall not apply to employees during the COVID-19 emergency period:

Article 14(3)

'Any amendment to an Employment Contract must be in writing and signed by both the Employer and Employee, unless such amendment is of an administrative nature only, in which case the Employer shall be required to record such amendment in writing and to give written notice thereof to the Employee prior to the amendment taking effect.'

Article 29(2)

'The Employer may require an Employee to take Vacation Leave on specified days in the current Vacation Leave Year by giving at least seven (7) days prior written notice to the Employee.'

Article 30(1)

'Vacation Leave accrues during an Employee's first year of employment on a monthly basis at the rate of one-twelfth (1/12) of the Employee's annual entitlement to Vacation Leave.'

Article 4(1)(b)(i) of the DIFC Employment Law, stating the physical location of employees to whom the DIFC Employment Law applies, is deemed to be satisfied for employees who work for employers in or from the DIFC by way of remote working during the COVID-19 emergency period.

An employer wishing to apply any of the above measures can do so without the prior consent of the affected employee. The employer is required, however, to give five days prior notice in writing to the affected employee.

COVID-19 Related Sick Leave

Under the Directive, sick leave taken by an employee during the COVID-19 emergency period as a consequence of having contracted COVID-19 or for being placed in quarantine shall not count towards sick leave entitlement of the employee as stated in the following provision of the DIFC Employment Law:

Article 34(1)

'An Employee is entitled to Sick Leave of sixty (60) consecutive or intermittent Work Days in aggregate in a twelve (12) month period. Any references in Articles 35 and 36 to a twelve (12) month period shall be deemed to be the same period as referred to in this Article 34(1).'

Additionally, employees in this case shall be entitled to 100 percent of their daily wage for the duration of the sick leave and may not be subject to any of the above emergency employment measures if those measures were not imposed on them prior to taking a COVID-19 related sick leave.

Finally, the following provision of the DIFC Employment Law shall not apply in the case of a COVID-19 related sick leave:

Article 36(1)

'Where an Employee takes more than an aggregate of sixty (60) Work Days of Sick Leave in a twelve (12) month period, the Employer may terminate the Employment Contract with immediate effect on written notice to the Employee.'

Working Conditions

The following provisions of the DIFC Employment Law (both inclusive) do not apply to employees that are working remotely during the COVID-19 emergency period:

Article 43

'General duties of Employers

- 1) *An Employer has a duty to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all its Employees.*
- 2) *An Employer shall provide and maintain a workplace that is free of discrimination and victimization and without risks to an Employee's health and safety.*
- 3) *An Employer who contravenes Articles 43(1) or (2) is liable to a fine as set out in Schedule 2.'*

Article 53

'No penalties for preventing health and safety risks

An Employer shall not dismiss or otherwise penalise, directly or indirectly, any Employee for:

- 1) *carrying out activities that may reasonably be considered to prevent or reduce risks to health and safety in the workplace where the Employee has been specifically designated to do so; or*
 - a) *taking reasonable steps to avert serious and imminent danger or for refusing to return to*
 - b) *the place of danger until the danger no longer exists.*
- 2) *An Employer who contravenes Article 53(1) is liable to a fine as set out in Schedule 2.'*

Visa and Permits of Terminated Employees

During the emergency period, employers may defer the cancellation of residency visas of terminated employees provided that the employer continues to provide basic medical insurance and accommodation (where the terminated employee is dependent on the employer for accommodation) until the cancellation of terminated employees' visas. No other core benefits or rights shall accrue in favour of terminated employees who remain on an employer's sponsorship during the COVID-19 emergency period.

The following provision of the DIFC Employment Law shall not apply in the case of terminated employees during the COVID-19 emergency period:

Article 57(3)

'If an Employee is sponsored for UAE residence visa purposes by their Employer, the Employer and the Employee must cooperate to ensure the cancellation of the Employee's UAE residency visa as soon as reasonably practicable following the Termination Date and by no later than thirty (30) days following the Termination Date.'

DIFC Available Employee Database

The Government Services Office in the DIFC shall create and maintain the DIFC Available Employee Database (**Database**) consisting of employees that have been terminated or those that are surplus to employers' need during the COVID-19 emergency period. This Database may be shared with any other competent authority maintaining a virtual labour market during the COVID-19 emergency period. DIFC employers wanting to employ new employees during the COVID-19 emergency period may search the Database.

Gratuity Payment Protection

The Directive ensures that end of service gratuity payments will not be adversely affected by the implementation of any of the Directive's emergency measures. For purposes of Article 66(1) and Article 66(6) of the DIFC Employment Law, gratuity payments during the COVID-19 emergency period for all employees will be calculated by reference to an employee's basic wage as at 29 February 2020.

Any shortfall of gratuity payment by employers who terminated employees subsequent to 1 March 2020 and prior to the issuance of this Directive shall be rectified by the employer topping up the shortfall. ■

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