

In this document, underlining indicates new text and striking through indicates deleted text



Dubai International
Financial Centre

EMPLOYMENT LAW AMENDMENT LAW

DIFC LAW NO. [•] of 2019

[CONSULTATION DRAFT ONLY]

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PART 1: GENERAL**1. Title**

This Law may be cited as the “Employment Law Amendment Law, DIFC Law No. [•] of 2019”.

2. Legislative Authority

This Law is made by the Ruler of Dubai.

3. Date of enactment

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

4. Commencement

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

PART 2: AMENDMENTS TO THE EMPLOYMENT LAW

5. The Employment Law 2019 is amended as prescribed in this Part.
6. The following Articles of the Employment Law 2019 are to be amended by inserting the underlined text and deleting the struck through text as shown below:

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17. Part-Time Employees and Short-Term Employees

- (5) This Law applies to a Short-Term Employee, except for:

- (a) Articles 14(2), 15, 16(1)(f), (g), (h) and (i), 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, Part 5, Part 6, Part 9 and Part 10 of this Law which shall not apply to a Short-Term Employee;

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19. Payments following termination

- (1) An Employer shall pay, within fourteen (14) days after the Termination Date:

- (a) to an Employee;

- (i) all Remuneration, ~~(excluding, where applicable, any Additional Payments deferred in accordance with Article 18(2));~~

- (ii) the where applicable, any Gratuity Payment that accrued prior to the Qualifying Scheme Commencement Date under Article 66(1) not transferred into a Qualifying Scheme under Article 66(5); and

- (iii) a Daily Wage for each day of all accrued Vacation Leave not taken, within fourteen (14) days after the Termination Date; and

- (b) to an Employee's Qualifying Scheme, all outstanding amounts due in respect of the Employee pursuant to the provisions of Article 66(6).

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61. Proceedings under Part 9

- (6) An appropriate recommendation for the purposes of Article 61(~~35~~)(c) is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.
- (7) The amount of compensation that may be awarded by the Court under Article 61(5)(~~eb~~) shall not exceed an amount equivalent to the Employee's Annual Wage, calculated on the basis of the last Wage paid to an Employee prior to such compensation order.

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66. Gratuity Payment and Qualifying Scheme Benefits

- (1) ~~Subject to Article 66(6), a~~ An Employee who is not required to be registered with the GPSSA under Article 65(1), and who completed continuous employment of one (1) year or more with their Employer prior to the Qualifying Scheme Commencement Date, including any period of Secondment, is entitled to a Gratuity Payment on the termination of their employment, provided that any such Gratuity Payment shall stop accruing on the day before the Qualifying Scheme Commencement Date.

- (2) An Employee's Gratuity Payment shall be calculated as follows:

- (a) an amount equal to twenty one (21) days of the Employee's Basic Wage for each year of the first five (5) years of service prior to the Qualifying Scheme Commencement Date; and
- (b) an amount equal to thirty (30) days of the Employee's Basic Wage for each additional year of service prior to the Qualifying Scheme Commencement Date,

provided that the total Gratuity Payment shall not exceed an amount equal to two (2) times the Annual Wage of the Employee.

- (3) For the purposes of Article 66(2):

- (a) an Employee's Basic Wage shall not be less than fifty percent (50%) of the Employee's Annual Wage; ~~and~~
- (b) the daily rate of an Employee's Basic Wage shall be calculated by dividing the Employee's Basic Wage by three hundred and sixty five (365); and
- (c) all references to an Employee's Basic Wage and Annual Wage shall be to those applicable to the Employee on the Employee's Termination Date.

- ~~(4) Where the Termination Date occurs part way through a year, the Gratuity Payment shall be calculated on a pro rata basis.~~

- ~~(54)~~ An Employer may deduct from ~~the~~ Gratuity Payment any amounts due and owing to the Employer by ~~an~~ the Employee pursuant to the provisions of Articles 20 or 28(2).

- ~~(65)~~ An Employer may transfer the value of a Gratuity Payment accrued in favour of an Employee to a Qualifying Scheme (the "Gratuity Transfer Amount") at any point subsequent to the Qualifying Scheme Commencement Date, in which case the Employer shall be relieved of any obligation to make a Gratuity Payment to the Employee under Article 66(1) and, where such transfer took place with the prior written consent of an Employee, the Employer shall be relieved of any obligation to make up any negative difference between:

- (a) what the value of the Gratuity Transfer Amount would have been under Article 66(1) at the Termination Date had it not been transferred to a Qualifying Scheme; and
- (b) the value of the Money Purchase Benefits held for the benefit of the Employee in the Qualifying Scheme that is representative of the Gratuity Transfer Amount.

~~Subject to Article 66(7), Article 66(1) does not apply to an Employee who agrees in writing to receive contributions from their Employer into a pension scheme, retirement savings scheme or any substantially similar scheme, whether located in the UAE or elsewhere, instead of a Gratuity Payment.~~

- ~~(76)~~ From the Qualifying Scheme Commencement Date onwards each Employer shall on a monthly basis, for the benefit of each Employee who is not required to be registered with the GPSSA under Article 65(1), pay to a Qualifying Scheme an amount equal to at least the Core Benefits, which shall be calculated as follows: The aggregate contributions made by an Employer in accordance with Article 66(6) must not be less than the Gratuity Payment the Employee would have been entitled to receive under Article 66(1), provided that the risk of any investment into a pension scheme, retirement savings scheme or any substantially similar scheme, if placed with a third party in a fiduciary capacity, shall be that of the Employee.;

- (a) an amount equal to five point eight three percent (5.83%) of an Employee's Monthly Basic Wage for the first five (5) years of an Employee's service.

inclusive of any period of employment or Secondment served prior to the Qualifying Scheme Commencement Date; and

- (b) an amount equal to eight point three three percent (8.33%) of an Employee's Monthly Basic Wage for each additional year of service,

provided that where a Termination Date occurs part-way through a month, the Core Benefits to be contributed by an Employer shall be calculated on a pro rata basis.

- (7) For the purposes of Article 66(6):

- (a) any calculation to establish an Employee's Monthly Basic Wage shall not be less than fifty percent (50%) of the Employee's Monthly Wage; and

- (b) the daily rate of an Employee's Monthly Basic Wage shall be calculated by dividing the Employee's Basic Wage by the number of days in the month the Termination Date occurs.

- (8) A Qualifying Scheme is one approved under the Regulations.

- (9) An Employer shall be required to obtain a Certificate of Compliance in respect of each Qualifying Scheme it pays Core Benefits to for the benefit of an Employee in the manner prescribed in the Regulations.

- (10) Any agreement or arrangement between an Employer and an Employee to the extent that:

- (i) the Employee's Core Benefits shall not be paid into a Qualifying Scheme; or

- (ii) the Employee shall be entitled to benefits less than the Core Benefits,

shall be null and void and unenforceable, and an Employee's rights, remedies, claims or actions in respect thereof shall not be capable of waiver under Article 11(2)(b).

- (11) An Employee who wishes to contribute any part of their Remuneration to a Qualifying Scheme shall inform their Employer thereof in writing, in which case the Employer shall be permitted to deduct the amount so indicated from the Employee's Remuneration.

- (12) Subject to Article 66(5), the risk in respect of any amounts paid by an Employer on behalf of an Employee to a Qualifying Scheme shall be that of the Employee.

- (13) An Employer who contravenes Articles 66(6), (7), (9) or (10) is liable to a fine as set out in Schedule 2.

- (14) Each Employee who is not required to be registered with the GPSSA under Article 65(1) and who is entitled to Core Benefits must become a member of the relevant Qualifying Scheme referred to under Article 66(9).

- (15) The provisions of this Article 66 shall not derogate from an Employee's right to approach the Court in respect of enforcing any right, remedy, claim or action it may have against an Employer for non-payment of any Gratuity Payment or Core Benefits.

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SCHEDULE 1

3. Defined terms

Term	Definition
<u>Certificate of Compliance</u>	a certificate issued by the Board of the DIFCA, or its delegate, to an Employer certifying that a particular scheme is a Qualifying Scheme as provided for under the Regulations.
<u>Core Benefits</u>	the benefits referred to in Article 66(6), as applicable to an Employee.
<u>Daily Wage</u>	an Employee's Annual Wage divided by two hundred and sixty (260), except in the case of a Part-Time Employee who does not work for five (5) Work Days per Work Week, in which case it shall be the Part-Time Employee's Annual Wage divided by the sum of (i) the average number of Work Days worked per Work Week by the Part-Time Employee for that period multiplied by (ii) fifty two (52).
<u>Employee Money Purchase Scheme</u>	a scheme or plan providing Money Purchase Benefits.
<u>Gratuity Payment</u>	the end of service gratuity payment entitlement under Article 66(1).
<u>Money Purchase Benefits</u>	means benefits the rate or amount of which is calculated solely by reference to assets which (because of the nature of the calculation) must necessarily suffice for the purposes of their provision to a member of an Employee Money Purchase Scheme (it being immaterial for the purposes of this definition if the calculation of the rate or amount of the benefit includes deductions in relation to administrative expenses or commission).
<u>Monthly Basic Wage</u>	an Employee's Basic Wage divided by twelve (12).
<u>Qualifying Scheme</u>	an Employee Money Purchase Scheme complying with the requirements set out in the Regulations, and for which a Certificate of Compliance has been issued to an Employer.
<u>Qualifying Scheme Commencement Date</u>	(i) 1 January 2020 in respect of Employees that are employed by an Employer at that date; or (ii) for Employees employed after 1 January 2020 any date not later than the fifteenth (15 th) day of the month following the month of employment of an Employee, provided that any Core Benefit entitlements shall be calculated retrospectively to the first date of employment.

SCHEDULE 2

CONTRAVENTIONS AND FINES

<i>Article</i>	<i>Contravention</i>	<i>Maximum Fine* (USD)</i>
<u>66(13)</u>	<u>Failing to comply with Articles 66(6), (7), (9) or (10).</u>	<u>\$2,000</u>