

HFW



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Marhaba and welcome to Issue 4 of the HFW UAE Corporate and Commercial Bitesize Bulletin.

In this issue we will be covering the recent changes to employment laws in the UAE.

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Employment

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Paternity leave and equal pay in the UAE

President His Highness Sheikh Khalifa Bin Zayed Al Nahyan has approved Federal Decree Law No. 6 of 2020 amending provisions of UAE Labour Law (Federal Law No. 8 of 1980) (the Decree). The Decree grants employees in the UAE private sector parental leave and mandates that a female worker is to be paid the same as a male worker when she is performing the same work or work of equal value.

It is understood that the Decree will apply equally to male and female employees such that mothers and fathers of new-borns will be entitled to five paid working days of parental leave. Such leave is to be taken within 6 months of the date of birth of the child. The Decree will apply to all employees in the private sector (onshore and free zones outside of the DIFC and ADGM). Prior to the Decree, there was no requirement in the UAE Labour Law to provide any kind of parental leave to male employees, although some employers offered it at their own discretion.

Female employees are currently entitled to 45 days maternity leave at full pay (or half pay for those with less than a year's service). There is also a period of 100 days unpaid leave to support maternity-related illness.

Additionally Article 32 of the UAE Labour Law has been amended to mandate that women are to be paid an equal wage to men for undertaking the same work or work of "equal value". Previously an employer was required to pay a female worker the same wage as a male for undertaking the "same work" only. The procedures, controls and standards required to evaluate whether work is of "equal value" will be published in a Cabinet Decision and be based on a proposal from the Minister of Human Resources and Emiratisation.

The Decree was published on 25 August 2020 and the amendments to the UAE Labour Law came into force on 25 September 2020. It is recommended that employers review their existing leave policies and update them to comply with these changes.

ADGM issues new rules regulating the engagement of non-employees

Following the introduction of the new Employment Regulations 2019 (Employment Regulations) which came into force on 1 January 2020, the ADGM issued the Employment Regulations 2019 (Engaging Non-Employees) Rules 2019 (the Rules). The Rules were published on 13 November 2019 and came into force 6 months later on 13 May 2020. The aim of the Rules is to supplement the Employment Regulations and to set out the conditions for issuance of temporary work permits in the ADGM.

The Rules apply to any licensed person in the ADGM (an **ADGM Entity**) that engages or intends to engage secondees, outsourced individuals, interns and temporary freelancers (collectively, a **Non-Employee**).

Under the Rules, an ADGM Entity must obtain, maintain and pay for an ADGM work permit for a Non-Employee issued by the Registrar (a **Temporary Work Permit**) prior to the Non-Employee commencing the provision of services in the ADGM to the ADGM Entity. In order to be granted a Temporary Work Permit, the Non-Employee must either be a UAE or GCC national or hold a UAE residence visa which is valid for longer than the requested duration of the Temporary Work Permit.

The ADGM Entity must maintain records in English detailing the names of any Non-Employees and the date of commencement and expiry of the engagement of each Non-Employee. These records must be kept at the ADGM Entity's principal place of business in the ADGM and may be in electronic format. In addition, mirroring the ADGM Entity's obligations under the Employment Regulations, where the Non-Employee is between 15 and 18 years of age, the ADGM Entity is required to take all appropriate measures to ensure that conditions for that Non-Employee's engagement are safe, reasonable and appropriate for their age and wellbeing.

Temporary Work Permits are valid for either 3, 6 or 12 months. Unless an exemption is granted by the

Registrar, a Temporary Work Permit for a secondee or an intern shall be valid for a maximum of 12 months and is not renewable. A Temporary Work Permit for an outsourced individual or a temporary freelancer may be renewed indefinitely. The Registrar has the power to revoke a Temporary Work Permit at its sole discretion.

The fees payable for obtaining a Temporary Work Permit vary depending on the length of the permit and are between AED150 and AED600. An additional fee is charged if the ADGM Entity makes the application for the Temporary Work Permit after the engagement of the Non-Employee has commenced. If an ADGM Entity fails to apply for a Temporary Work Permit prior to the commencement of the engagement of the Non-Employee or to renew a Temporary Work Permit, it will be liable for a fine not exceeding USD25,000.

DIFC introduces the DIFC Employee Workplace Savings (DEWS) Scheme

Under DIFC Law No. 4 of 2020 which amended the DIFC Employment Law (DIFC Law No. 2 of 2019) and came into force on 14 January 2020, the DIFC replaced the end of service gratuity payment regime with the DIFC Employee Workplace Savings (DEWS) scheme effective from 1 February 2020. The DEWS scheme is a funded workplace saving plan for expatriate employees who are not required to be registered with the General Pension and Social Security Authority (GPSSA). Additional requirements in relation to the DEWS scheme are set out in the DIFC Employment Regulations (Regulations) which came into force on 1 February 2020.

From the Qualifying Scheme Commencement Date, employers in the DIFC are obliged to make monthly contributions into a Qualifying Scheme on behalf of all eligible employees. A "Qualifying Scheme" is an Employee Money Purchase Scheme which complies with the requirements set out in the Regulations and for which a Certificate of Compliance has been issued by to the employer by the

Board of the DIFCA. The DIFC has established a Qualifying Scheme – the DEWS Plan – which may be used by employers. Alternatively, employers may seek a Certificate of Compliance for an alternative qualifying scheme (**QAS**). The requirements for recognition of a QAS as a Qualifying Scheme are set out in the Regulations.

For employees employed on 1 February 2020, the Qualifying Scheme Commencement Date was 1 February 2020. For new employees the Qualifying Scheme Commencement Date is the date of commencement of employment. Employers are required to register new employees as a member of a Qualifying Scheme within two months from the date of commencement of employment. An employer may defer payments into a Qualifying Scheme during any probation period agreed in the employment contract. If payments are so deferred, the Qualifying Scheme Commencement Date will be the date on which the employee's employment is confirmed, however, contributions will need to be made retrospectively to the date of commencement of employment.

An employer must make monthly contributions into a Qualifying Scheme for each eligible employee as follows:

1. 5.83% of an employee's Monthly Basic Wage, for the first five years' of an employee's service; and
2. 8.33% of an employee's Monthly Basic Wage, for each additional year of service,

(the **Core Benefits**). An employee's "Monthly Basic Wage" is the employee's Annual Wage (being the total wage payable to the employee under their employment contract) excluding any allowances or additional discretionary payments (such as a bonus or commission) divided by 12, provided, however, that an employee's Basic Monthly Wage must equate to at least 50% of the employee's Annual Wage. Core Benefits are based on the Monthly Basic Wage for the month in respect of which the Core Benefits are paid. Where applicable, an employer is required to pay Core Benefits retrospectively to the relevant

Qualifying Scheme Commencement Date, for example, between the date of commencement of employment and the date on which an employee is registered with a Qualifying Scheme. The Core Benefits will be pro-rated when an employee's employment is terminated part-way through a month.

Employees are also entitled to make voluntary contributions to the Qualifying Scheme which they are registered with, should they choose to do so. On receipt of notice in writing that an employee wishes to make a voluntary contribution, the employer is obliged to make the payment and deduct it from the employee's monthly remuneration.

The obligation for an employer to register an employee with a Qualifying Scheme and pay Core Benefits does not apply in respect of certain "Exempted Employees", namely an employee who is:

1. required to be registered with the GPSSA for the state government pension;
2. working in or from the DIFC on the basis of a secondment;
3. employed in the DIFC by a local or federal government entity established by decree or similar instrument in the UAE, except for those established pursuant to the DIFC Founding Law;
4. an employee of an employer that has been exempted from being subject to the DIFC Employment Law by the President of the DIFC;
5. serving their notice as at 1 February 2020;
6. on a fixed term employment contract that will end within three months of 1 February 2020; or
7. an Equity Partner (an employee who owns a partnership interest, membership interest or shares in an employer), to the extent that they make drawings from a partnership, equity, capital or profit account of the employer or receive profit distributions or dividends from their employer.

Upon termination of employment, the employer must pay the employee any end of service gratuity accrued for the period between the commencement of employment and

up to 1 February 2020, unless such payment has been transferred to the Qualifying Scheme.

An employer that fails to register an employee in a Qualifying Scheme within the prescribed timescales, does not obtain a Certificate of Compliance or provide any additional filings that may be required under the Regulations in respect of their chosen Qualifying Scheme or pay Core Benefits in respect of an employee in accordance with the DIFC Employment Law, is liable to a fine of USD2,000 per contravention in respect of each employee.

We hope you have enjoyed reading our update. If you have any questions, please do not hesitate to contact the authors of this article



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