

COVID-19: PEOPLE: 10 KEY POINTS YOU SHOULD KNOW ABOUT THE UAE GOVERNMENT'S EMERGENCY COVID-19 MEASURES IN THE DIFC (UAE)

27 April 2020 | UAE
Legal Briefings

The Dubai International Financial Centre (“**DIFC**”) published Presidential Directive Number 4 of 2020 on 21 April 2020 (the “**Directive**”) to announce emergency measures (the “**Emergency Measures**”) currently being taken in the DIFC in response to COVID-19. The Emergency Measures will continue to be in effect for the duration of the Emergency Period (the period from the effective date of the Directive up to and including 31 July 2020, or such other date confirmed by the President of the DIFC, H.E. Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum).

The Directive reflects similar measures adopted by the UAE Government that affects employees outside the financial free zones, as we reported [here](#). Below we set out 10 key points arising out of the Directive.

1. EMERGENCY EMPLOYMENT MEASURES

An employer may implement one or more of the following Emergency Measures during the Emergency Period without their employees’ consent:

- A. Impose reduced working hours;
- B. Impose vacation leave;
- C. Impose leave without pay;
- D. Reduce remuneration on a temporary basis;
- E. Restrict workplace access; and / or
- F. Impose remote working conditions and requirements including but not limited to measuring employee engagement and / or productivity during remote working.

Any relevant provisions in an employees' contract shall not apply to employers during the Emergency Period in so far as required to facilitate the Emergency Measures. Moreover, Articles 14(3), 29(2) and 30(1) of DIFC Law No 2 of 2019 ("DIFC Employment Law") will also not apply during the Emergency Period, meaning amendments to employment contracts are not required, the requirement for an employer to give 7 days' notice of vacation leave is lifted and the vacation leave of an employee in the first year of employment is not limited to that accrued at the time of such leave.

Any employer who wishes to apply any of the above Emergency Measures will need to give five days' written notice prior to imposing any such measures.

2. COVID-19 RELATED SICK LEAVE

An employee who takes sick leave during the Emergency Period either because they have contracted COVID-19 (as confirmed by a sick leave certificate or by a Competent Authority) or have been placed in mandatory quarantine by a Competent Authority in order to limit the spread of COVID-19, shall be entitled to 100% of their daily wage during the period of such sick leave. Any such sick leave will not count towards sick leave entitlement under the DIFC Employment Law.

A Competent Authority includes the UAE Federal Ministry of Health and Prevention, the Government of Dubai Health Authority and / or any law enforcement or other federal local government department authority in the UAE that may impose quarantine restrictions on DIFC employees.

3. VISAS AND PERMITS OF TERMINATED EMPLOYEES

An employer may defer the cancellation of residency visa and / or sponsorship of any Terminated Employees (any employee whose contract is terminated during the period of 1 March 2020 up to the end of the Emergency period).

If an employer defers such cancellation, he shall be obligated to continue to provide basic medical insurance for Terminated Employees, and in the case of the retail, service or hospitality industries, where the Terminated Employee was dependent on the employer for accommodation, continue to provide such accommodation to the Terminated Employee until the cancellation of their residency visa.

Any other core benefits, rights or benefits of such Terminated Employees would not accrue in favour of said employee.

4. DIFC AVAILABLE EMPLOYEE DATABASE

Employers in the DIFC have a positive obligation to maintain a list of Terminated Employees and employees that are surplus to its current needs. The list will be provided, and updated as necessary, to the Government Services Office through an online portal (the “**DIFC Available Employee Database**”). It would also be necessary for employers to indicate whether the Terminated Employees have provided written consent to appear on the DIFC Available Employee Database.

Any employers who wish to employ new employees during the Emergency Period will be able to search the DIFC Available Employee Database for suitable candidates using the DIFC Available Employee Database.

5. GRATUITY PAYMENT PROTECTION

If an employee’s basic wage has been reduced due to the Emergency Measures, the gratuity payment of that employee for any period of service prior to the qualifying scheme commencement date, pursuant to the DIFC Employment Law, will be calculated by reference to their basic wage as at 29 February 2020 for the duration of the Emergency Period. Similarly, the basic wage used in the calculation of a gratuity transfer amount shall be the basic wage of the employee as at 29 February 2020 for the duration of the Emergency Period.

If an employer has already terminated an employee’s employment contract subsequent to 1 March 2020, and has already paid their gratuity payment on a basic wage lower than that as at 29 February 2020, then the employer will have the responsibility to top-up any shortfall.

6. PRIVACY, CYBERSECURITY AND HEALTH & SAFETY

Employers must ensure that adequate cybersecurity measures are in place for remote working as necessary and reasonable. Employers should also inform their employees that IT systems and equipment may be monitored to prevent misuse of business assets. If no notification is provided then employers must document, and be able to demonstrate, the clear purpose and benefits of monitoring technologies during remote working, to the extent it outweighs the privacy of the employees.

Employers may also collect, process and share personal data of employees for any reasonable purpose related to health and safety of their employees, or as required by a Competent Authority, as long as they do not process more than reasonably necessary. Personal data can include, but not be limited to, information regarding their health, travel and / or COVID-19 related symptoms.

Articles 43 - 53 of the DIFC Employment Law, relating to employers' general duties and their health & safety obligations are stated not to apply to employees who are remote working during the Emergency Period.

7. WRONGFUL TRADING RULES

Wrongful trading rules relating to the actions of DIFC company directors are suspended during the Emergency Period. The Directive provides that the suspension is intended to ensure that directors of DIFC companies in the current uncertain environment are able to take decisions to continue to trade, incur new credit and make decisions which may otherwise cause directors concern about the potential for personal liability under the wrongful trading regime set out in the DIFC Insolvency Law.

8. EXEMPTIONS, VARIATIONS AND FINES

Any exemption or variation of the application of the DIFC Employment Law is made pursuant to the powers provided to the President under Article 4(2)(c) of the DIFC Employment Law, which provides that the President may exempt the Employee's Employer from being such to the DIFC Employment Law.

Any fines or contraventions in respect of DIFC Employment Law exempted or varied as a consequence of the Directive shall not accrue and / or be capable of being imposed.

9. WORKFORCE RESTRICTIONS

The Board of Directors of the DIFCA may during the Emergency Period from time to time issue directions as to:

- A. restricting employers' workplace attendance in the DIFC, inclusive or restricting percentages of the Employees that may physically attend the workplace;
- B. specifying vital roles for employers or key sectors of employment that require a presence in the DIFC during or after working hours;
- C. any permits that may need to be applied for;
- D. which directives of Competent Authorities need to be adhered to in the DIFC; or
- E. any matters related to (A) - (D) above.

Any employer who fails to comply with the above could be liable to a fine payable to the DIFC Authority in an amount not exceeding USD 50,000. Any employee who fails to follow the requirements of their employer pursuant to the above shall be capable of immediate dismissal.

10. LEGISLATIVE AMENDMENTS

In so far as any DIFC laws and regulations are in contradiction with the contents of this Directive, the DIFC Authority may effect legislation with the necessary retrospective application to give full effect to this Directive for the duration of the Emergency Period.

COMMENT

Prior to issue of the Directive, the DIFC had published some guidance to employers regarding precautionary measures relating to COVID-19. This new Directive has significant implications for the relationship between employers and their employees. The Directive now gives DIFC employers further enhanced clarity over steps they are able to take in relation to their workforce, including by temporarily disapplying certain obligations under the DIFC Employment Law, in order to seek to protect their business (albeit only until the end of July).

The Directive also includes protections for employees, in particular the rules on visa cancellation and COVID-19 related sick leave entitlements. We watch with interest how employers will rely on the Directive in treating their employees and whether a further Directive will be issued in July extending the Emergency Period.

This update reflects the state of affairs as at the time of writing on 27 April 2020 and is subject to change depending on the UAE's response to the COVID-19 pandemic. We will continue to monitor developments with COVID-19 and provide updates when appropriate.

At any time you can access our most up-to-date legal insights from across our global network via our [COVID-19 hub](#). Urgent updates will be emailed to you directly, as well as shared on our [LinkedIn page](#).

For further information, please feel free to contact one of the lawyers below or your usual Herbert Smith Freehills contact.

[More on COVID-19](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



STUART PATERSON
PARTNER, HEAD OF
MIDDLE EAST
DISPUTES, DUBAI
+ 971 4 428 6308
stuart.paterson@hsf.com



BENJAMIN HOPPS
OF COUNSEL, DUBAI

+971 4 428 6369
Benjamin.Hopps@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2021

SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE

Close

© HERBERT SMITH FREEHILLS LLP 2021