

DIFC EMPLOYMENT LAW UPDATE: NEW DEWS SCHEME REPLACES ESG FROM 1 FEBRUARY 2020 - 10 KEY FEATURES EVERY EMPLOYER NEEDS TO KNOW

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Legal Briefings - By **Benjamin Hopps and Stuart Paterson**

As we previously reported, the new DIFC Employment Law, Law No. 2 of 2019, came into effect on 28 August 2019 (click [here](#) to read our employment e-bulletin on 16 key changes introduced by the new law). Also as previously reported ([here](#)), following a period of consultation, the statutory end of service gratuity (“**ESG**”) scheme in the DIFC was to be replaced by a defined contribution savings scheme. On 14 January 2020, the Employment Law Amendment, DIFC Law No. 4 of 2020, and the Employment Regulations (Qualifying Scheme requirements under Article 66 of the Law) (the “**Amended Employment Law and Regulations**”) were enacted, with the key aim of repealing the law on ESG and introducing rules around the new savings scheme. Below we highlight ten key points arising out of the Amended Employment Law and Regulations:

NEW FRAMEWORK

From 1 February 2020, the previous ESG arrangement will cease and be replaced by the DIFC Employee Workplace Savings Plan ("**DEWS**") or a Qualifying Alternative Scheme ("**QAS**") (together the "**Qualifying Scheme**"). The Qualifying Scheme will be a defined contribution savings scheme, into which an employer is obliged to make mandatory contributions ("**Core Benefits**") into a professionally managed and regulated savings plan for the benefit of their employees.

ACCRUED ESG

Any ESG 'accrued' as at 1 February 2020 for existing employees is not paid out at that stage; it will either be held by the employer until termination of employment (the value of the gratuity accrued up to 31 January 2020 will be adjusted to reflect any increase in salary in the period from 1 February 2020 to termination of employment so that the correct amount of ESG up to 31 January 2020 can be calculated) or the 'accrued' sum may be paid by the employer into a Qualifying Scheme. At termination of employment, the employee will be entitled to the ESG 'accrued' until 31 January 2020 and any monies in the savings plan.

EMPLOYER CONTRIBUTIONS

The Core Benefits paid by the employer into the Qualifying Scheme must be at least 5.83% of the employee's basic salary for the first five years of service and 8.33% for each additional year of service; provided that the basic salary is not less than 50 percent of the employee's total monthly compensation.

EMPLOYEE CONTRIBUTIONS

An employee may opt to make voluntary contributions into the Qualifying Scheme by informing their employer in writing. The employer will then be permitted to make relevant deductions from the employee's remuneration to pay to the Qualifying Scheme on behalf of the employee.

ALTERNATIVE SCHEMES

The default Qualifying Scheme is the DEWS plan. Employers wishing to enrol in an alternative Qualifying Scheme must apply for and obtain a certificate of compliance from the board of directors of the DIFC authority.

TIMING OF CONTRIBUTIONS

An Employer must make the requisite contributions for an Employee into DEWS (or QAS) by no later than the 21st day of the month following the month in respect of which the contributions are due.

ENROLMENT DEADLINE

Employers have until 31 March 2020 to register their employees in a Qualifying Scheme and thereafter within a time period of sixty days prior to each subsequent anniversary of the scheme commencement date.

EMPLOYER EXEMPTIONS

- The board of directors of DIFC Authority may exempt an employer from the requirements of a Qualifying Scheme if the employer can demonstrate that:
- the employer is under a statutory duty in another country to make pension, retirement, savings or substantially similar contributions into a scheme in respect of an employee; or
- the employer, with prior written consent of an employee, is paying defined benefits to an employee under a scheme where the defined benefits are in excess of the Core Benefits required under the Amended Employment Law and Regulations; and
- the individual undertaking the function of operating the scheme is regulated by DFSA or a regulator in a recognised jurisdiction equivalent to an operator in the DIFC.

EMPLOYEE EXEMPTIONS

The Qualifying Scheme will apply to all DIFC-based employees except:

- employees registered with the General Pension and Social Security Authority (i.e. UAE and GCC nationals);
- employees working in the DIFC on the basis of a secondment;
- employees employed in the DIFC by a local or federal government entity established by decree in the UAE;
- employees serving a notice period on 1 February 2020; or
- an equity partner (provided that an equity partner is only an exempted employee to the extent that they make drawings from a partnership, equity, capital or profit account of the employer or receive profit contributions or dividends from their employer).
- Any agreements between the employer and employee against participating in a Qualifying Scheme or to pay contributions less than the amount stipulated in Amended Employment Law and Regulations shall be null, void and unenforceable.

PENALTIES FOR NON-COMPLIANCE

DIFC employers shall be subject to a maximum fine of USD 2,000 per contravention for each employee for non-compliance of any of the Qualifying Scheme requirements set out in the DIFC Employment Law and Regulations.

WHAT SHOULD DIFC EMPLOYERS DO NEXT?

Given the short two month grace period from 1 February 2020 for enrolment, employers and employees will need to act quickly to ensure compliance with Amended Employment Law and Regulations. Below, we highlight some practical steps for DIFC employers to consider:

1. Register now with DEWS or with a QAS.
2. If applying for QAS, ensure you obtain a certificate of compliance from the board of directors of the DIFC Authority.
3. Identify any employees who (i) are exempt or (ii) wish to make voluntary contributions to the Qualifying Scheme.
4. Ensure all employees understand the changes and their rights under the applicable scheme.
5. Register all eligible employees to a Qualifying Scheme by 31 March 2020.
6. Confirm the new arrangements in relation to end of service gratuity, employer contributions and employee contributions in writing.
7. Update any employment contracts and employee handbooks as necessary.
8. Update payroll systems to make monthly contributions in line with the Qualifying Scheme.

We are actively assisting our clients to implement these changes. If you require help or advice, please do get in touch.

KEY CONTACTS

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



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