

Consultation Paper No.11

Introduction

1. Why are we issuing this paper?

This Consultation Paper aims to explain the proposed amendments to the existing AIFC Employment Regulations (the “Regulations”).

The amendments are proposed because of following:

- Under section 36 of the AIFC Court Regulations, subject to any other AIFC Regulations, a proceeding cannot be commenced more than 6 years after the date of the events that gave rise to the proceedings. This allows for employment disputes raised under the AIFC Employment Regulations (the Regulations) to be brought before the AIFC Court in the period up to 6 years. However, under section 17(2)(c) of the Regulations the Contract of Employment shall be kept only for a minimum of 2 years after the Employee’s employment terminates. In this regard, if a claim is brought in a period exceeding 2 years from the date of termination of employment, an Employer might have lost evidence necessary to disprove the claims. Also, considering that organisation may crucially change in 6 years, the reinstatement at work can be impossible. In this regard, it is suggested to establish a 2-year limitation period for the disputes arising between a former Employee and former Employer under the Regulations and 2-year limitation period for notification of the Employer. There is an example of setting out a limitation period for employment disputes in the DIFC. In accordance with section 4 of the DIFC Employment Law 2021, a Court shall not consider a claim under this Law unless it is presented to the Court either during an Employee’s employment with an Employer or not later than six (6) months after the relevant Employee’s Termination Date. At the same time, the Labour Code of Kazakhstan states that an employee may bring a job reinstatement claim to the conciliation commission within 1 (one) month of receipt of an employer’s notice of termination, and the court within 2 (two) months of receipt of the decision of the conciliation commission. All other labour claims must be made within (1) one year after the employee learned or should have learnt of the breach of his or her labour rights. So, the proposed subsection (4) suggests the better conditions for the Employees as compared to the DIFC and Kazakhstan.
- Section 29 of the Regulations if an Employee wishes to take vacation leave, the Employee must give the Employer at least 5 Business Days prior written notice. At the same time, section 18 (4A) of the Regulations requires the Employer to pay the vacation leave pay no later than 5 Business Days before the day the vacation leave starts. This follows that Employer must proceed vacation payments at the same day when notice was provided by Employee. In practice, however, the processing of vacation leave pay might take more than 1 business day, depending on the time when transaction was initiated. This creates risks for Employers of non-compliance with section 18(4A) of the Regulations

2. Who should read this paper?

This Consultation Paper may be of interest to the current and prospective AIFC Participants, as well as all the AIFC Bodies and their organisations, individuals employed by AIFC Participants or AIFC Bodies or individuals seeking to be employed by AIFC Participants or AIFC Bodies, as well as legal advisors and human resources departments of the abovementioned entities, and generally, to all interested in providing their feedback to the Proposed Regulations.

3. How to provide comments?

AIFC encourages interested parties to provide their views and comments in writing on the issues outlined in the Consultation Paper.

All comments should be provided to the following person:

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You may as well identify your organisation in the provided comments.

By submitting your comments to the AIFC Authority you expressly consent to the processing by the AIFC Authority of the personal data pertaining to you, including, but not limited to the collection, recording, organisation, storage, adaptation or alteration, retrieval, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of thereof, as per the AIFC Data Protection Regulations 2017.

The AIFC Authority reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. Comments supported by reasoning and evidence will be given more weight by AIFC Authority.

4. What happens next?

The deadline for providing comments on the proposals in this Consultation Paper is January 20, 2022.

Once we receive your comments, we will consider if any further refinements are required to the Proposed Regulations annexed to this Consultation Paper at Annex 1. Once the task is complete, the draft of the Proposed Regulations will be further processed in accordance with the requirements, stipulated in the AIFC Regulations on AIFC Acts 2017.

The Proposed Regulations are in draft form only and are, therefore, subject to change following consultation as mentioned above. Consequently, you should not act on it until the Proposed Regulations are formally enacted.

Legislative proposal

Annex 1 – Policy paper

Annex 2 – the proposed AIFC Act

Annex 3 – Comparative table

Annex 1: Policy Paper on Amendments to the AIFC Employment Regulations 2017

Nur-Sultan

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2. Proposal type

a) New Regulations Rules Policy Procedure Other: _____
b) Amendment to Regulations Rules Policy Procedure Other: _____

3. Introduction

The AIFC Employment Regulations 2017 (the “Regulations”) have been developed with purposes to provide minimum employment standards, to promote the fair treatment of Employees and Employers, and to foster employment practices that contribute to the prosperity of the whole AIFC.

The following problems have been identified in the existing Regulations:

(1) Statute of limitations for claims related to employment disputes

In accordance section 36 of the AIFC Court Regulations, subject to any other AIFC Regulation, a proceeding cannot be commenced more than 6 years after the date of the events that gave rise to the proceedings.

This allows for employments disputes arising under the Regulations to be brought before the AIFC Court in the period up to 6 years.

At the same time, under section 17(2)(c) of the Regulations the Contract of Employment and other employment records shall be kept only for a minimum of 2 years after the Employee’s employment terminated. In this regard, if a claim is brought in a period exceeding 2 years from the date of termination of employment, an Employer might have lost evidence necessary to disprove the claims.

Also, considering that organisation may crucially change in 6 years, the reinstatement at work can be impossible.

(2) Risk of delay with payment of vacation leave pay

In accordance with section 29 of the Regulations if an Employee wishes to take vacation leave, the Employee must give the Employer at least **5 Business Days** prior written notice. At the same time, section 18 (4A) of the Regulations requires the Employer to pay the vacation leave pay no later than **5 Business Days** before the day the vacation leave starts.

This follows that Employer must proceed vacation payments at the same day when notice was provided by Employee.

In practice, however, the processing of vacation leave pay might take more than 1 business day, depending on the time when transaction was initiated. This creates risks for Employers of non-compliance with section 18(4A) of the Regulations.

4. Best practice

With regards to the statute of limitations for claims related to employment disputes the UAE and DIFC have been considered as a benchmark.

Examples when special provision stipulates that the labour claims are time-barred are provided in the UAE Labour Law, that restrict the possibility on labour disputes after the lapse of one year from date of its maturity¹. Another example is Dubai International Financial Centre's Employment Law, that establish that Court shall not consider a claim on employment unless it is brought to the Court within six (6) months of the relevant Employee's Termination Date².

5. Proposal

Based on the international practices and aiming at enhancing the AIFC Employment Regulations it is proposed to:

- (1) establish a 2-year limitation period for the disputes arising under the Regulations in section 4 (4) of the Regulations and include a notification requirement in section 4 (5) of the Regulations**

It is suggested to set out a proceeding under the Regulations cannot be commenced in the Court by a former Employee against the Employee's former Employer more than 2 years after the date the Employee's employment terminated. In this regard, it is also suggested to include the requirement to notify the former Employer within this period, in order to avoid situations when Employer might have shredded the documents before the proceeding started. This period correlates with the term of keeping employment records under section 17(2) of the Regulations. This amendment will allow to avoid parties arguing over historic events, where there could not be a fair trial, given that the employment records are no longer kept with the Employer.

- (2) reduce the period for processing the vacation leave payment from 5 to 3 business days in section 18(4A).**

In accordance with the proposed amendments to section 18 (4A) the Employer would be required to pay the vacation leave payment 3 days before the vacation leave starts. This amendment will ensure that Employer can mitigate risks on delay with payment of vacation leave pay. Also, the proposed provision does not restrict Employers to pay the vacation leave payment earlier than 3 business days.

6. Financial implications

The proposed amendments do not require an additional expenditure from the AIFC budget.

7. Legislative amendments

To enforce the proposals, it is required to make amendments to the AIFC Employment Amendment Regulations 2017.

¹ [Current UAE Labor Law | UAE Labor Law](#)

² [Employment Law DIFC Law No.2 of 2019.pdf](#)

**AIFC EMPLOYMENT
AMENDMENT REGULATIONS 2022**

**AIFC REGULATIONS No. ___ of 2022
_____ 2022
Nur-Sultan, Kazakhstan**



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PART 1: GENERAL**1. Name**

These Regulations are the *AIFC Employment Amendment Regulations 2022*.

2. Commencement

These Regulations commence on __ _____ 2022.

3. Legislative authority

These Regulations are adopted by the Governor under paragraph 3 of article 4 of the Constitutional Statute and subparagraph 3) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

4. Interpretation

Terms used in these Regulations have the same meanings as they have, from time to time, in the AIFC Employment Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

PART 2: AMENDMENTS OF AIFC EMPLOYMENT REGULATIONS 2017

5. This Part amends the *AIFC Employment Regulations 2017*.
6. In section 4 (Application of these Regulations) after subsection (3), insert:
 - “(4) However, a proceeding under these Regulations cannot be commenced in the Court by a former Employee against the Employee’s former Employer more than 2 years after the date the Employee’s employment terminated.
 - (5) Where a proceeding is to be commenced in the Court under subsection (4), the claim by the former Employee shall be served on the former Employer within 2 years after the date the Employee’s employment terminated.”.
7. Omit subsection (4A) of section 18 (Pay days), substitute:
 - “(4A) The Employee’s pay for a period of vacation leave must be paid no later than 3 Business Days before the day the vacation leave starts.”.

Comparative Table on Amendments to AIFC Employment Regulations 2017

Chapter Number/Section Number	Current version	Proposed version	Comments
PART 1: GENERAL	Absent	<p>4. Application of these Regulations</p> <p>...</p> <p>(3) Any dispute arising under these Regulations shall be subject to the jurisdiction of the Court.</p> <p><u>(4) However, a proceeding under these Regulations cannot be commenced in the Court by a former Employee against the Employee's former Employer more than 2 years after the date the Employee's employment terminated.</u></p> <p><u>(5) Where a proceeding is to be commenced in the Court under subsection (4), the claim by the former Employee shall be served on the former Employer within 2 years after the date the Employee's employment terminated.</u></p>	<p>In accordance section 36 of the AIFC Court Regulations, subject to any other AIFC Regulations, a proceeding cannot be commenced more than 6 years after the date of the events that gave rise to the proceedings.</p> <p>This allows for employments disputes raised under the AIFC Employment Regulations (the Regulations) to be brought before the AIFC Court in the period up to 6 years.</p> <p>However, under section 17(2)(c) of the Regulations the Contract of Employment shall be kept only for a minimum of 2 years after the Employee's employment terminates.</p> <p>In this regard, if a claim is brought in a period exceeding 2 years from the date of termination of employment, an Employer might have lost evidence necessary to disprove the claims.</p> <p>Also, considering that organisation may crucially change in 6 years, the reinstatement at work can be impossible.</p> <p>In this regard, it is suggested to establish a 2-year limitation period for the disputes arising between an Employee and Employer under the Regulations.</p>

			<p>There is an example of setting out a limitation period for employment disputes in the DIFC. In accordance with section 4 of the DIFC Employment Law 2021, a Court shall not consider a claim under this Law unless it is presented to the Court either <u>during</u> an Employee's employment with an Employer or not later than <u>six (6) months</u> after the relevant Employee's Termination Date.</p> <p>At the same time, the Labour Code of Kazakhstan states that an employee may bring a job reinstatement claim to the conciliation commission within <u>1 (one) month</u> of receipt of an employer's notice of termination, and the court within <u>2 (two) months</u> of receipt of the decision of the conciliation commission. All other labour claims must be made within <u>(1) one year</u> after the employee learned or should have learnt of the breach of his or her labour rights.</p> <p>So, the proposed subsection (4) suggests the better conditions for the Employees as compared to the DIFC and Kazakhstan.</p>
<p>PART 3: PROTECTION OF WAGES</p> <p>Section 18</p>	<p>18. Pay days ... (4A) the Employee must be paid vacation leave pay for any vacation leave no later than 5 Business Days before the day the vacation leave starts. ...</p>	<p>18. Pay days ... (4A) the Employee's must be paid vacation leave pay for any vacation leave <u>pay for a period of vacation leave must be paid</u> no later than 5-3 Business Days before the day the vacation leave starts. ...</p>	<p>In accordance with section 29 of the Regulations if an Employee wishes to take vacation leave, the Employee must give the Employer at least 5 Business Days prior written notice. At the same time, section 18 (4A) of the Regulations requires the Employer to pay the vacation leave pay no later than 5 Business Days before the day the vacation leave starts.</p> <p>This follows that Employer must proceed vacation payments at the same day when notice was provided by Employee.</p> <p>In practice, however, the processing of vacation leave pay might take more than 1 business day, depending on the time when transaction was initiated. This creates risks for Employers of non-compliance with section 18(4A) of the Regulations.</p>