

# **RULES OF PROCEDURE FOR THE REVIEW OF COMPLAINTS BY THE DIRECTOR OF EMPLOYMENT STANDARDS/ACTING (“RULES OF PROCEDURE”)**

## **Introduction**

- 1 In accordance with the DIFC Employment Law 2005 (the “Law”) an employee/s, former employee/s or other person/s (the “complainant/s”) may complain to the Director of Employment Standards/Acting (the “Director”) that a person has committed a contravention of the Law or the Regulations (as defined in the Law). In these Rules of Procedure, the person or persons against whom the complaint is made shall be known as the respondent (the “respondent/s”, and together with the complainant, the “parties”).
- 2 The procedures for filing, reviewing of and resolving a complaint with the Director is set forth herein.
- 3 The Director has the discretion to adopt different procedures in accordance with the Law and any issued Regulations to ensure the just, expeditious and economical resolution of proceedings brought before the Director.
- 4 Proceedings conducted before the Director shall be conducted in English and all documents required to be filed must be in English. All such procedures shall be magnetically or digitally recorded and will subsequently be transcribed by personnel assigned by the Director for such purposes and distributed to the parties.

## **Address for Service**

- 5 Complaints and other documents required to be filed with the Director must be filed at one of the following addresses:

### Personal service or courier:

The Director of Employment Standards/Acting  
Level 14, The Gate,  
Dubai International Financial Centre,  
P.O. Box 74777  
Dubai, UAE

Email: DES@DIFC.ae

Fax: +971 4 362 2236

- 6 The complaint and the response to the complaint (and any other relevant documents) shall be served by the complainant and the respondent respectively to the respondent by personal service or courier. Service shall be deemed to be the same day as delivery, provided that it is delivered before 5.00pm on a working day. If not so effected, it will be deemed effected at 5.00pm on the following working day.

### **Exercise of Powers**

- 7 The powers of the Director (and those delegated or appointed by him in accordance with Article 61(2) and (4) of the Law) are as set out in the Law and any issued Regulations. A copy of the applicable Articles contained in the Law in respect of the powers of the Director are contained in the attached Schedule (the "Schedule"). For the purposes of these Rules of Procedure, the Director shall also refer to and include any such person as appointed or delegated by the Director.
- 8 The Director shall exercise his powers in accordance with the prevailing principle to deal with matters before the Director justly. The parties to any such matter are required to help the Director in the furtherance of the prevailing principle. Dealing with a matter before the Director justly includes, so far as is practicable:
- 8.1 ensuring that the parties are on an equal footing;
  - 8.2 saving expense;
  - 8.3 dealing with the case in ways which are proportionate to
    - (1) the amount of money involved;
    - (2) the complexity of the issues;
    - (3) the financial position of each party;
    - (4) ensuring that the matter before the Director is dealt with expeditiously and fairly; and
    - (5) allotting to the matter before the Director an appropriate share of the Director's resources, while taking into account the need to allot resources to other complaints.

### **The Complaint and Response**

#### Form of complaint

- 9 A complaint filed before the Director in accordance with Article 65 of the Law must be made in writing and contain the following:
- 9.1 the name, address and telephone number of the complainant and similar details of the complainant's legal representative (if any);

- 9.2 the name, address and telephone number (if known) of the respondent and (if known), similar details of the respondent's legal representative(s) (if any);
- 9.3 details of the complaint, including (a) a succinct statement of the relevant matters on which the complainant relies, (b) the remedy or remedies sought by the complainant; and (c) list of the documents, if any, on which the complainant relies and a submission of true copies of those documents;
- 9.4 the relationship between the complainant and the respondent and whether the complainant is currently or had formerly been an employee of the respondent and all dates relevant thereto;
- 9.5 where the complainant is or had been an employee of the respondent, whether or not the complainant contends that the respondent has terminated the complainant's employment or has communicated any contemplation of doing so;
- 9.6 where the complainant is or had been an employee of the respondent, whether or not the complainant has raised the subject matter of the complaint with the respondent in writing prior to presenting the complaint to the Director;
- 9.7 signature of the person making the complaint or that of his/her duly authorised officer or legal representative; and
- 9.8 the date on which the complaint is filed with the Director (the "Effective Date")

#### Copy relevant parties

- 10 The complainant shall send a true copy of the complaint to the respondent, with confirmation of the Effective Date, at the same time as filing the complaint with the Director. The complainant must confirm in writing when filing the complaint with the Director that a true copy of the complaint has been sent to the respondent (and confirm the method of service) and that the respondent has been informed of the Effective Date.
- 11 At the discretion of the Director, delivery of a true copy of the complaint upon the intended respondent may be made directly by the Director.

#### Response

- 12 Each respondent shall within fourteen (14) calendar days from the Effective Date to file a response with the Director (the "response") and at the same time send a true copy of the response to the complainant. A response to a complaint shall:
  - 12.1 confirm the name, address and telephone number of the respondent and the details of the respondent's legal representatives (if any);



- 12.2 identify all matters in the complaint which are disputed by the respondent;
- 12.3 state succinctly the grounds on which those matters are disputed, and any other grounds on which the respondent relies;
- 12.4 list the documents, if any, on which the respondent relies and attach them to the response; and
- 12.5 be signed and dated by the respondent or by the respondent's duly authorised officer or legal representative, which designation, if any, will be so indicated.

#### Limitation and Acceptance of Complaint and Response

- 13 The Director must not accept and/or consider a complaint presented after twelve (12) months as of the date when the action or failure to act to which the complaint relates or, where the act or failure is part of a series of similar acts or failures, the last of them took place, unless the Director is satisfied that it was not reasonably practicable for the complaint to be presented within such twelve months period. Such time limitation shall not affect any right a party may have to file a complaint before the DIFC Court.
- 14 The Director may not accept and/or consider a complaint which does not contain the required information set out in Rule 9 above.
- 15 The Director may not accept and/or consider a response presented after fourteen (14) calendar days of the Effective Date, unless prior approval of an extension of time has been requested and granted, or alternatively the Director is satisfied that it was not reasonably practicable for the respondent to present the response within the fourteen (14) calendar day period. Such time limitation shall not affect any right a party may have to respond to a complaint before the DIFC Court.
- 16 The Director may not accept and/or consider a response which does not contain the required information set out in Rule 12 above.
- 17 For the purposes of these Rules of Procedure, a period of time shall be computed as clear days. This means that the day on which the period begins (or the end of the period if it is defined by reference to an event) shall not be included. For example,

The Response must be sent within 14 days of the Effective Date

The Effective Date is 1 October

The last date for service of the response is 15 October.

## **Hearings**

- 18 Hearings shall be conducted in an appropriate manner without the need for excess formality. Any oral examination shall be conducted in such manner as the Director considers most appropriate for the clarification of issues and generally for the just, efficient and expeditious handling of the proceedings. This shall include, at the Director's discretion, the placing of any witness appearing before the Director under oath, or affirmation, as to the completeness and truthfulness of all oral evidence adduced.
- 19 The Director's powers are more fully set out in the Law (as contained in the Schedule) and any issued Regulations.

## **Information before the Director**

- 20 The Director shall conduct such investigation as he considers necessary, which may include the requirement for the attendance of a certain party or parties to the complaint or response who may be able to give information or produce a document which may be relevant to the complaint or response, in accordance with the Law.
- 21 The Director may receive and consider any material whatsoever by way of oral or written statements or documents in relation to the matter before the Director.
- 22 The Director may control such material by giving directions as to:
  - 22.1 the issues on which he requires such material;
  - 22.2 the nature of such material that he requires to decide those issues; and
  - 22.3 the manner in which such material is to be placed before the Director.

## **Determinations and Orders**

- 23 The Director may order that the complainant or respondent be responsible for the costs incurred by the Director in investigating or hearing the complaint. In determining whether any such costs shall be payable, the Director may take into account the following:
  - 23.1 the conduct of the parties;
  - 23.2 whether one party is successful on the whole or part of its case.
- 24 The conduct of the parties shall include:
  - 24.1 conduct before, as well as after, a complaint has been issued with the Director;

- 24.2 whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- 24.3 the manner in which a party pursued or defended a complaint or a particular allegation or issue, including with reference to the overriding objective.
- 25 Further Determinations and Order of the Director are as set out in the Law and any issued Regulations.

#### **Appeals of Director's Determinations, Decisions and Fines**

- 26 The rights in respect of a party seeking to appeal any of the Director's Determinations, Decisions and Fines are as set out in the Law (as contained in the Schedule) and any issued Regulations.

## **SCHEDULE TO THE RULES OF PROCEDURE FOR THE REVIEW OF COMPLAINTS BY THE DIRECTOR OF EMPLOYMENT STANDARDS**

Articles 61 to 84 of the Employment Law of 2005

### **PART 11: DIRECTOR OF EMPLOYMENT STANDARDS**

#### **61. Director of Employment Standards**

- (1) The President shall appoint a person to be the Director of Employment Standards.
- (2) The Director is responsible for the administration of this Law and may appoint any person necessary to discharge his duties and exercise his powers under this Law.
- (3) The Director shall develop and carry out policies to promote greater awareness of this Law.
- (4) The Director, by conditional or unconditional written authority, may delegate the Director's powers and duties under this Law to any person employed under Article 61(2).
- (5) A person to whom the Director, by written authority under Article 61(4), delegates powers and duties, may exercise the powers and shall perform the duties in accordance with the written authority.

#### **62. Powers of the Director**

The Director has such powers, duties and functions as may be conferred on the Director under this Law and any Regulation made under it and shall exercise such powers and perform such functions in pursuit of the objectives of this Law and The Regulations.

#### **63. Regulations**

- (1) The Director may propose Regulations to the Board of Directors of the DIFC Authority in respect of any matter that facilitates the administration of the Law or furthers the purposes of the Law, including but not limited to:
  - (a) the development and publication of information to employers and employees concerning the application and interpretation of the Law and Regulations;
  - (b) procedures for initiating and filing complaints;
  - (c) procedures for appealing and reconsidering decisions or determinations of the Director;
  - (d) minimum wage requirements for employees or classes of employees;
  - (e) a compensation grid for occupational diseases, employment deaths and accidents;



- (f) fines;
  - (g) the maximum compensation for discrimination or unfair dismissal;
  - (h) health and safety requirements; and
  - (i) minimum health insurance requirements.
- (2) The Board of Directors of the DIFC Authority may make Regulations under the Law in respect of:
- (a) any matters related to the fulfilment of the objectives of the Law; or
  - (b) as proposed by the Director under Article 63(1).

**64. Immunity of Director and others**

- (1) Neither the Director nor any officer, employee, delegate or agent of the Director can be held liable for anything done or omitted to be done in the performance or purported performance of the functions, or in the exercise or purported exercise of any power, of the Director.
- (2) Article 64(1) does not apply if the act or omission is shown to have been in bad faith.



## PART 12: COMPLAINTS, INVESTIGATIONS AND DETERMINATIONS

### 65. Complaints

- (1) An employee, former employee or other person may complain to the Director that a person has committed a contravention of this Law or the Regulations.
- (2) A complaint shall be made to the Director in the manner and time period prescribed in the Regulations.
- (3) No employee shall be penalised for filing a complaint with the Director unless the Director concludes that such complaint was in bad faith and has resulted in harm to the employer.

### 66. Investigations

- (1) The Director may conduct an investigation as the Director considers expedient to ensure compliance with this Law and the Regulations, whether or not the Director has received a complaint.
- (2) Subject to Article 66(4), the Director shall accept and review a complaint made under Article 65.
- (3) A person is entitled to legal representation during the course of an investigation.
- (4) For the purposes of this Law, where the Director considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, the Director has the power to:
  - (a) enter the business premises of such person during normal business hours for the purpose of inspecting and copying information or documents stored in any form on such premises;
  - (b) require such person to give, or procure the giving of, specified information in such form as The Director reasonably require;
  - (c) require such person to produce, or procure the production of, specified documents;
  - (d) require such person to attend before the Director at a specified time and place to answer questions, including under oath or affirmation administered by an officer of the Director that the statements that the person will make will be true; and
  - (e) require such person to give the Director any assistance in relation to the investigation which the person is able to give.
- (5) A requirement made under Article 66(4)(b),(c),(d) or (e) shall be stated in writing.

- (6) The Director may require the relevant person to give such information or produce such documents by the end of a reasonable period and at a place specified in the notice.
- (7) The Director may refuse to accept, review, mediate, investigate or adjudicate a complaint or may stop or postpone reviewing, mediating, investigating or adjudicating a complaint if:
  - (a) the complaint is not made in the manner prescribed in the Regulations;
  - (b) the Director determines that this Law does not apply to the complaint;
  - (c) the complaint is frivolous, trivial or is not made in good faith;
  - (d) the employee has not taken the requisite steps specified by the Director in order to facilitate resolution or investigation of the complaint;
  - (e) there is not enough evidence to prove the complaint;
  - (f) the Director or Court has previously made a decision or an order relating to the subject matter of the complaint; or
  - (g) the dispute that caused the complaint is resolved.

**67. Opportunity to be heard**

- (1) If an investigation is conducted, and before the Director makes any determination or order, the Director shall give the person under investigation an opportunity to be heard.
- (2) During the course of an investigation, the Director shall provide translation services in a language understood by an employee, if the Director considers that such employee cannot understand or communicate in English.

**68. Determinations and orders by the Director**

- (1) In addition to any other powers the Director has under the Law, the Director may, if satisfied that a person has contravened a requirement of this Law or the Regulation make a determination to that effect and may order the person to do one or more of the following:
  - (a) comply with the requirement;
  - (b) remedy or cease doing an act or thing; and
  - (c) pay any costs incurred by the Director in connection with an investigation.

- (2) In addition to Article 68(1), if satisfied that an employer has contravened a requirement of the Law or the Regulations, the Director may order the employer to do one or more of the following:
- (a) hire a person and pay the person any wages lost because of the contravention;
  - (b) reinstate a person in employment and pay the person any wages lost because of the contravention;
  - (c) pay all wages to an employee;
  - (d) pay a person compensation;
  - (e) pay a person any amount the Director determines is owing under any provision of the Law or Regulations;
  - (f) take within a specified period, any action the Director considers reasonable that eliminates or reduces the adverse effect on the complainant of any matter relating to the complaint;
  - (g) pay an employee, or other relevant person, reasonable and actual out of pocket expenses incurred because of the contravention;
  - (h) limit the hours of work of employees to the hours or schedule specified by the Director;
  - (i) post notice, in a form and location specified by the Director, respecting:
    - (i) a determination; or
    - (ii) a requirement, or information about, this Law or the Regulations; or
  - (j) employ, at the employer's expense, a payroll service for the payment of wages to an employee.
- (3) The Director may make a requirement under Article 68(1) or (2) subject to any terms and conditions that the Director considers appropriate.
- (4) The Director shall serve an employer with notice of a requirement imposed under Article 68(1) or (2) including any terms and conditions imposed under Article 68(3).
- (5) A person on whom the Director imposes a requirement under this section shall comply with that requirement.
- (6) If the Director requires a person to pay an amount referred to in Article 68(1)(e), the amount required to be paid is a debt due and may be collected by the Director in the same manner as wages.
- (7) If satisfied that the requirements of this Law and the Regulations have not been contravened, the Director shall dismiss a complaint.

**69. Failure to comply**

If a person, without reasonable excuse, fails or refuses to comply with an order, notice, requirement or prohibition made by the Director pursuant to this Law or the Regulations, the Director or any aggrieved party may apply to the Court for:

- (a) an order restraining the person from engaging in the conduct that may constitute a contravention of the Law;
- (b) an order requiring that person to do any act or thing including, but not limited to, acts or things to remedy the contravention or to minimise loss or damage; or
- (c) any other order as necessary in the circumstances;

and the Court may make such orders.

**70. Power to vary determination**

- (1) The Director may vary or cancel a determination if circumstances have changed or the Director considers it is appropriate to do so.
- (2) The Director may refer a matter to the Court for disposition.

**71. Notifying others of determination**

- (1) On making a determination under this Law, the Director shall serve any person named in the determination with a copy of the determination that includes the following:
  - (a) if an employer or other person is required by the determination to pay wages, compensation, interest, a fine or another amount, the amount to be paid and how it was calculated;
  - (b) if a fine is imposed, the nature of the contravention and the date by which the fine shall be paid;
  - (c) the time limit and process for appealing the determination to the Court.
- (2) A person named in a determination under Article 71(1) may request from the Director written reasons for the determination and the Director shall comply with such request.
- (3) On being served with a determination requiring the employer to limit the hours of work of employees, an employer shall display a copy of the determination in each workplace in locations where the determination can be read by any affected employees.



**72. Settlement agreements**

The Director may do one or more of the following:

- (a) assist in settling a complaint or a matter investigated under the Law or the Regulations; or
- (b) direct that a person pay directly to an employee or other person any amount to be paid as a result of a settlement agreement under Article 72(a).

**73. Employee not to be mistreated because of complaint or investigation**

An employer shall not:

- (a) refuse to employ or refuse to continue to employ a person;
- (b) threaten to dismiss or otherwise threaten a person;
- (c) discriminate against or threaten to discriminate against a person with respect to employment or a condition of employment; or
- (d) intimidate or coerce or impose a monetary or other fine on a person;

because a complaint or investigation may be or has been made under this Law or Regulations or because an appeal or other action may be or has been taken or information may be or has been supplied under this Law or the Regulations.

**74. Obstruction of the Director**

A person shall not without reasonable excuse engage in conduct, including without limitation the:

- (a) destruction of documents;
- (b) failure to give or produce information or documents specified by the Director;
- (c) failure to attend before the Director at a specified time and place to answer questions;
- (d) giving of information that is false or misleading; and
- (e) failure to give assistance in relation to an investigation which the person is able to give,

that is intended to obstruct the Director in the exercise of his powers under the Law or the Regulations

**75. Power to grant exemptions**

- (1) The Director, on application of any employer, may exempt an employer from a requirement of the Law or the Regulations if the Director is satisfied that:
  - (a) a majority of the employees who will be affected by the exemption are aware of its effect and approve of the application; and
  - (b) the exemption is not inconsistent with the purposes of this Law set out in Article 3.
- (2) The application of an exemption under this Part shall not be interpreted as a waiver described in Article 8.
- (3) In addition, if the application is for an exemption of a time period, the Director shall be satisfied that the exemption will facilitate:
  - (a) the preservation of the employer's operations;
  - (b) an orderly reduction or closure of the employer's operations; or
  - (c) the short term employment of employees for special projects.
- (4) The Director may:
  - (a) specify that an exemption applies only to one or more of the employer's employees;
  - (b) specify an expiry date for an exemption; and
  - (c) attach any conditions to an exemption.
- (5) On being served with a determination on an exemption application, the employer shall display a copy of the determination in each workplace, in locations where the determination can be read by any affected employees.

**76. Obligation to keep information confidential**

Every person acting under the authority of this Law and the Regulations shall keep confidential all information and records obtained or provided under this Law, except so far as the person's public duty requires or this Law permits the person to disclose them or to report or take official action on them.

## **PART 13: ENFORCEMENT**

### **77. Associated employers**

If the Director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction:

- (a) the Director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one employer for the purposes of this Law; and
- (b) if so, they are jointly and severally liable for payment of the amount stated in a determination, a settlement agreement or an order of the Director or the Court, and this Law applies to the recovery of that amount from any or all of them.

### **78. Contraventions attributable to officers, directors and agents**

If a person, other than an individual, contravenes a provision of this Law or the Regulations, or fails to comply with a decision of the Director or the Court, an officer, director or agent of the person who authorises, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply with the decision, as the case may be.

### **79. Monetary fines**

- (1) The Director may impose a monetary fine, as prescribed by the Regulations, against any person found to have contravened a provision of this Law or the Regulations.
- (2) A person who objects to the imposition of a fine under Article 79(1), may do so in the manner prescribed in the Regulations.
- (3) A fine imposed under this Article is in addition to, and not instead of, any order or requirement made as a consequence of, the Director's determination.
- (4) A determination made by the Director referred to in Article 79(2) shall include a statement of the applicable fine.
- (5) If a company contravenes a requirement of this Law or the Regulations, an employee, officer, director or agent of the company who authorises, permits or acquiesces in the contravention is also liable to the fine.
- (6) A fine imposed under this Part is a debt due to the DIFC and may be collected by the Director in the same manner as wages.

### **80. Payment of interest**

- (1) If an employer fails to pay wages or another amount to an employee, the employer shall pay interest at the rate prescribed in the Regulations on the wages or other amount from the earlier of:

- (a) the date the employment terminates; or
  - (b) the date a complaint about the wages or other amount is delivered to the Director,
- to the date of payment.

**81. Determination and orders may be filed and enforced as judgments**

- (1) The Director may at any time file in the Court registry a determination, a settlement agreement or order of the Director which may include a monetary fine.
- (2) Unless varied, cancelled or stayed under this Law, a filed determination, settlement agreement or order is enforceable in the same manner as a judgment of the Court in favour of the Director for the recovery of a debt in the amount stated in the determination.
- (3) If a determination or order filed under this section is varied, cancelled or stayed, the Director shall promptly withdraw the determination or order from filing in the Court registry.

**82. Publication of violators' names**

The Director may, as prescribed by the Regulations, compile information relating to contraventions of this Law or the Regulations, including information identifying the persons who, according to a determination or an order, committed the contraventions.



## **PART 14: APPEALS**

### **83. Appeal of Director's determinations, decisions and fines**

- (1) A person directly affected by a determination, decision, or fine of the Director may appeal the determination, decision, or fine to the Court.
- (2) The appeal shall be filed within thirty (30) days of receipt of the determination, decision, or fine appealed and in accordance with the requirements prescribed in the Regulations and Rules of Court.
- (3) The Court may grant a stay of the decision appealed from until the disposition of the appeal.
- (4) The Court may attach conditions to the stay, including requiring a party to deposit as security part or all of a monetary order.
- (5) The Director shall provide the Court with the record that was before the Director at the time the determination, order or fine was made, including any witness statement and documents considered by the Director.
- (6) The Director is a party to an appeal under this section of any determination, decision or fine under appeal.
- (7) The Director shall comply with any directions the Court gives to the Director.

### **84. Powers of the Court on appeal**

- (1) Before considering an appeal under this Part, the Court may:
  - (a) refer the matter back to the Director for further investigation; or
  - (b) recommend that an attempt be made to settle the matter.
- (2) The Court may dismiss an appeal without a hearing of any kind if satisfied that:
  - (a) the appeal is not within the Court's jurisdiction; or
  - (b) the appeal is frivolous or trivial or is not brought in good faith.
- (3) On an appeal under this Part the Court, in addition to any powers it has under the Rules of Court, may:
  - (a) consider any other relevant evidence, in addition to the record;
  - (b) decide all questions of fact or law arising in the course of an appeal;

- (c) refer the matter back to the Director; or
- (d) confirm, vary or cancel the determination, decision or fine under appeal, or make another decision that it considers proper.