

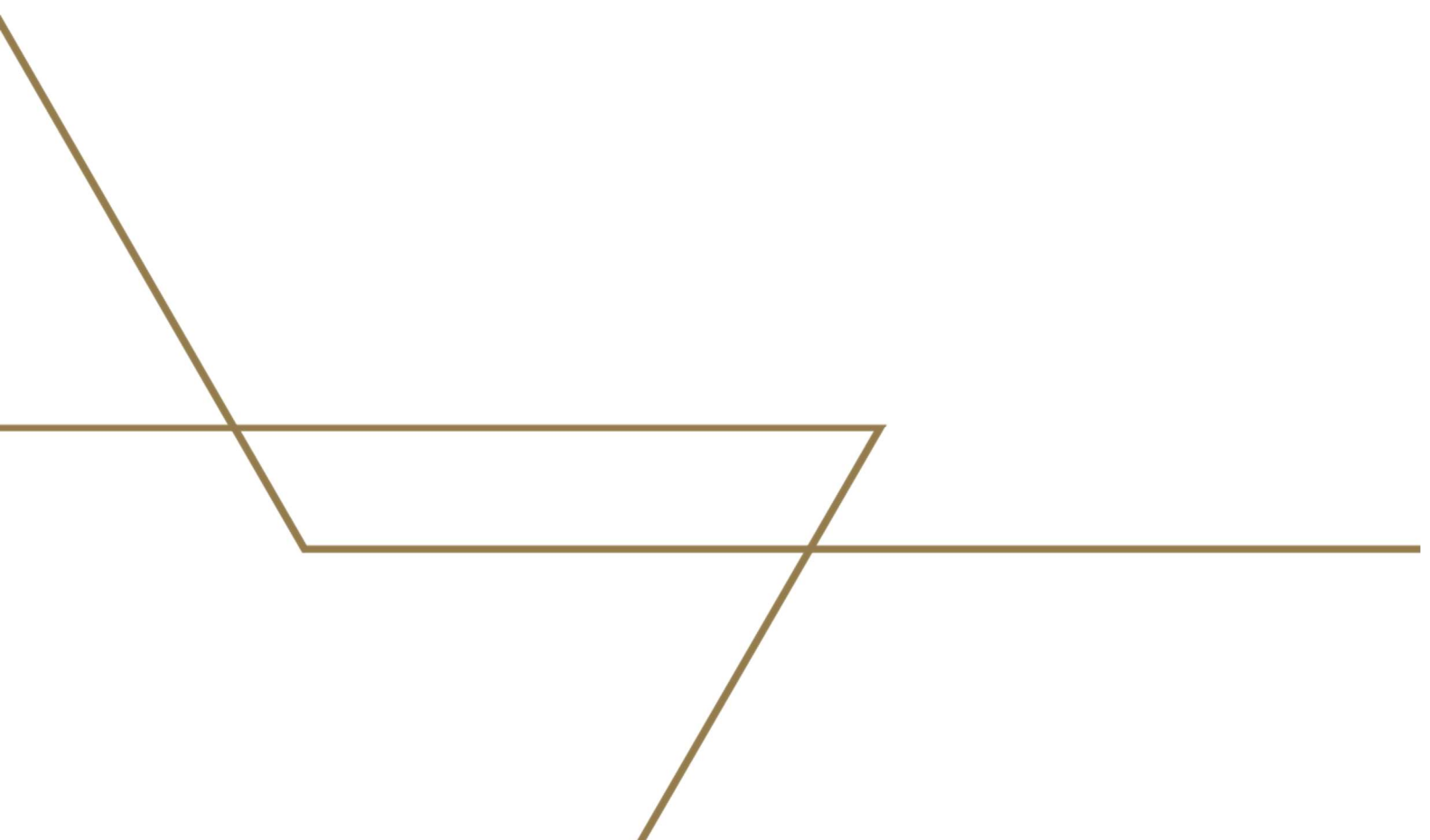


ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

CONSULTATION PAPER
NO. 6 OF 2024

**PROPOSED AMENDMENTS TO EMPLOYMENT
REGULATIONS**

26 July 2024



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Introduction

Why are we issuing this paper?

The Abu Dhabi Global Market (“**ADGM**”) Registration Authority (“**RA**”) has issued this Consultation Paper to invite public feedback and comments on proposed amendments to the Employment Regulations 2019 (the “**Regulations**”).

The proposed amendments to the Regulations are set out in Annex A to this Consultation Paper.

We have summarised the key proposed amendments to the Regulations in this Consultation Paper. The summaries provided within should be read as an introduction to the provisions only – many of the precise details and specifics are contained in the draft Regulations themselves.

Who should read this paper?

The proposals in this Consultation Paper would be of interest to all ADGM licensed employers and individuals employed or engaged by such employers (or those seeking to be employed or engaged by such employers) and their legal advisors.

How to provide comments

All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. If relevant, please identify the organisation you represent when providing your comments.

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

What happens next?

The deadline for providing comments on this proposal is **26 August 2024**.

After receiving your comments, we shall consider whether any modifications are required to the proposals and the ADGM Board of Directors (“**Board**”) and the RA will then proceed to enact the proposals in their final form.

You should not act on these proposals until they are finalised and the final Regulations, and any subordinate rules and guidance, are issued by the Board and the RA. We shall issue a notice on our website when this happens.

Comments to be addressed to:

Consultation Paper No. 6 of 2024

Registration Authority
Abu Dhabi Global Market Square Al Maryah Island
PO Box 111999
Abu Dhabi, UAE
Email: ra.consultation@adgm.com

Scope and Approach to the Proposed Amendments

1. This Consultation Paper aims to explain the proposed amendments to the Employment Regulations 2019.
2. The proposed changes include:
 - a. clarifying ambiguities related to some employee entitlements during the probation period;
 - b. amending the definition of 'Employee' by making it less restrictive and enabling employers to hire full time remote employees and to allow more flexible working arrangements;
 - c. addressing remote/hybrid working and making it clear that it is permissible;
 - d. adding a definition for part-time employees and clarifying the method of calculating part-time employees' entitlements;
 - e. removing the overly complex overtime payment calculation;
 - f. adding ante-natal appointment entitlements to adopting parents, and a paid 5 business days paternity leave to adopting fathers;
 - g. adding nursing break entitlements for female employees;
 - h. adding bereavement leave entitlements for employees in the event of the death of a spouse, parent, child or sibling;
 - i. expanding the list of employees' duties to their employer;
 - j. adding a section that entitles employers to terminate employment due to the employee's unauthorised absence;
 - k. adding eligibility for a certificate of experience upon the termination of the employees' employment;
 - l. clarifying that end of service gratuity is payable to an employee regardless of their reason for termination, and that the timeframe for payment of employees' entitlements upon termination commences on the effective date of termination;
 - m. adding further sections addressing discrimination and victimisation and the employer's vicarious liability, i.e., where an employer may be held liable for the act of an employee;

- n. integrating the Employment Regulations 2019 (Compensation awards and limits) Rules 2019 into the Regulations and moving the powers granted to the ADGM Courts into the Regulations to make such information easily accessible and more efficient;
 - o. adding a new section requiring employers to obtain an employee's work permit and identity card before commencement of work in ADGM, or to have initiated the process, and requiring that the employer must cancel the visa within the time frame stipulated by the relevant authority at no cost to the employee; and
 - p. other miscellaneous amendments.
3. A draft of the amended Regulations can be found in Annex A.

Proposed Amendments to the Employment Regulations 2019

Current Position

1. The current Regulations were enacted in 2019 to provide minimum employment standards for employees, to promote a fair balance of rights and obligations between employees and employers, and to foster employment practices that would contribute to the success of the ADGM.
2. During the five years that the Regulations have been in force, the RA has identified a number of areas in the Regulations and the subordinate rules which would benefit from being amended and updated to reflect global changes in work practices, and also to provide greater clarity to employees and employers with respect to their rights and obligations. The RA, therefore, is seeking to amend and update the Regulations and rules in view of such changes and the need for greater clarity.

Proposed Changes

Definition of an Employee

1. Over time it has become apparent that the current definition of an 'Employee' causes confusion. For example, whether an individual must meet one limb or all three limbs of the definition in order to qualify as an 'Employee', and whether this definition restricts an ADGM entity's ability to hire remote working employees.
2. The proposed amendments clarify that only one of two limbs must apply to qualify as an 'Employee':
 - a) the individual agrees to be subject to the Regulations in an employment contract with the ADGM entity; or
 - b) the individual is based within, or ordinarily working within or from, the ADGM for an employer.

Q1: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED CHANGES TO THE DEFINITION OF AN EMPLOYEE?

Probation

3. The Regulations do not address whether an employee during their probationary period is entitled to any sick pay, paid ante-natal leave and/or a repatriation flight should the employment be terminated. The Regulations also provide that employees are entitled to 20 working days of holiday per annum after 90 days of employment but does not clarify the holiday position for employees who may still be in their probationary period.

4. The proposed amendments clarify that an employee on probation is:
- a) not entitled to paid ante-natal leave or maternity leave;
 - b) entitled to a repatriation flight, except where the employee is resigning to join another employer in the UAE or terminated for cause;
 - c) entitled to at least 1 day's paid sick leave per month of probation; and
 - d) entitled to leave during probation, subject to the employer's approval.

Remote/Hybrid Working

5. The Regulations do not currently address remote or hybrid working, which suggests that it is not permitted by the ADGM, particularly given the current definition of 'Employee'. Since remote and hybrid working has increased in the last few years, it would be prudent for the ADGM to address remote and hybrid working in the Regulations.
6. Under the proposed amendments, remote and hybrid working will be permissible in the ADGM. The employment contracts must stipulate whether the employment relationship is a full-time remote relationship based either in the UAE (i.e., outside the ADGM) or abroad. Different obligations will apply to an employer with respect to a full-time remote employee based in the UAE versus an employee based abroad, such as the requirement to obtain healthcare or a residency visa. Additionally, other sections of the Regulations will not be applicable to full-time remote employees, such as the employers' obligations in relation to the workplace.

Q2: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED ENTITLEMENTS FOR EMPLOYEES DURING THEIR PROBATIONARY PERIOD?

Q3: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED REQUIREMENTS WITH RESPECT TO REMOTE WORKING?

Part Time Employment

7. There is no definition of a part time employee in the Regulations and therefore there is some ambiguity as to when the entitlements set out in section 32 (pro-rata entitlements for part time employees) are applicable.
8. The proposed amendments provide a definition of a part time employee, which would be an employee whose employment contract stipulates:
- a) working less than 8 working hours per day;
 - b) working less than 5 working days per week; or
 - c) other terms of employment that do not constitute full-time under an employer's normal practices.

9. Part time employment entitlements are proposed to be calculated as follows:

- a) for a part-time employee who works on each working day of an employer's working week, the entitlements will not be pro-rated; and
- b) for a part-time employee who will not work on each working day of an employer's working week, the days worked by the part-time employee during the working week shall be calculated as a percentage of the working week worked by the employer's full-time employees. Such percentage will be applied to the entitlements owed to the part-time employee.

Overtime

10. The RA has observed that the overtime calculations are overly complicated and cause significant confusion for both employer and employee. Further, with flexible working arrangements becoming more common, it has proven difficult to have a 'one size fits all' approach to overtime calculations.

11. The proposed amendments, therefore, suggest removing overtime from the Regulations; as such, there will be no statutory entitlement to overtime pay. However, the Regulations will continue to include maximum weekly working hours of 48 hours per 7-day period, which may be waived if the employer has obtained the employee's consent in writing. Additionally, an employment contract or internal policy may allow for employee entitlements to overtime pay.

Q4: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED DEFINITION OF PART TIME EMPLOYEES?

Q5: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED CALCULATION FOR PART TIME EMPLOYEE ENTITLEMENTS?

Q6: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED REMOVAL OF OVERTIME CALCULATIONS?

Adoption Entitlements and Maternity Pay

12. The Regulations currently entitle female employees to maternity leave if they are adopting a child of less than 3 months old. However, the Regulations are silent on time off in the event of an adoption for fathers. Furthermore, the Regulations entitle female employees to take paid time off to attend ante-natal appointments but are silent on adoption proceedings. Additionally, the Regulations do not impose any qualifying service requirement for maternity pay.

13. The proposed amendments allow adopting fathers to take 5 business days paid paternity leave within two months of the child being adopted. Furthermore, adopting parents can take reasonable paid time off to attend adoption appointments, subject to providing relevant

evidence of the same. The proposed amendments also increase the age cut-off in the case of adopted children; as such, the proposed adoption entitlements will now apply to parents adopting any child of less than 6 months old rather than the previous cut-off of 3 months old.

14. The proposed amendments suggest including a qualifying service requirement of 12 months before a female employee is entitled to maternity pay.

Nursing Breaks

15. The Regulations do not currently provide for nursing breaks. The provision of nursing breaks is a family friendly initiative that permits female employees to return to the workplace earlier than they otherwise may be able to after having a child.

16. Therefore, the proposed amendments entitle female employees to at least one paid nursing break per day of not less than 1 hour in aggregate, for 9 months from the date of delivery.

Bereavement Leave

17. The Regulations do not currently provide for bereavement leave.

18. Under the proposed amendments, employees will be entitled to 5 working days' paid leave in the event of the death of a spouse, parent, child (including adopted children) or sibling, subject to any reasonable evidential requirements requested by the employer.

Q7: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED ADOPTION ENTITLEMENTS?

Q8: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED QUALIFYING SERVICE REQUIREMENT FOR MATERNITY PAY?

Q9: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED NURSING BREAK ENTITLEMENTS AVAILABLE TO FEMALE EMPLOYEES?

Q10: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED BEREAVEMENT LEAVE ENTITLEMENTS?

General Duties of Employees

19. The Regulations state that an employee has a duty at work to comply with the health and safety instructions of the employer, among other duties.

20. The proposed amendments expand on the duties an employee has towards the employer during the course of employment, such as the duty to take reasonable care of their own health and safety and that of others affected by their conduct whilst at work, to exercise reasonable

skill and care in the performance of their duties, not to act in a position of conflict of interest, etc.

Q11: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED EXPANSION OF AN EMPLOYEE'S DUTIES TO THEIR EMPLOYER?

Termination of Absent Employees

21. Situations have arisen where employers face issues with employees suddenly being absent from work without a valid excuse, and sometimes not returning to work. Consequently, employers are sometimes unaware of what to do, if and when they can terminate the employment, and if and when they can cancel the employee's visa.
22. Under the proposed amendments, an employer can terminate for cause where an employee is absent from work without providing a legitimate reason or justification acceptable to the employer.
23. In such cases, the employer is required to serve the employee with a formal notification informing the employee that the employer will obtain an absconding charge if the employee does not contact the employer within 7 days of the date of the notification.

Certificate of Experience

24. The Regulations state that upon termination, the employee may request a written statement of reasons for dismissal, but the current language does not address the provision of a certificate of experience, which has sometimes been withheld by employers for leverage in negotiations with employees.
25. Under the proposed amendments, upon the termination of the contract of employment and at the request of the employee, the employer is obliged to provide a certificate of experience within 14 days of the employees' request, setting out the name of the employer, name of the employee, term of employment, last position held by the employee, and last salary of the employee. Where the employer fails to provide the certificate within the required timeframe or fails to provide a true and accurate certificate, the employer will be liable to pay one months' worth of wages to the employee.

Q12: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED PROCESS TO TERMINATE AN EMPLOYEE FOR CAUSE DUE TO UNAUTHORISED ABSENCE?

Q13: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED OBLIGATION ON EMPLOYERS TO PROVIDE A CERTIFICATE OF EXPERIENCE?

End of Service Gratuity

26. The Regulations state that an employee is not entitled to any end of service gratuity where they are terminated for cause, which means that such employee has no financial security available to them until they can secure another job.
27. The proposed amendments provide that end of service gratuity is payable to an employee regardless of their reason for termination, so that the end of service gratuity payment is more akin to a pension scheme where the employee cannot lose their entitlement to the payment and therefore provides the employee with some form of financial security on termination.

Payments on Termination

28. The Regulations state that all wages and other amounts owing to the employee are to be paid to the employee within 14 days of termination. It is unclear when the 14 days commence or what needs to be included in this payment.
29. The proposed amendments clarify that the 14-day timeframe commences on the effective date of the termination (i.e., the date on which the employee ceases to be an employee on the employer's records). Additionally, we are proposing clarifications to the amounts an employer will be required to pay during this period, as well as the penalties applicable to an employer in cases where it owes more than one week's wages to an employee. Such penalties may be waived by the ADGM Courts in situations where the employee's unreasonable conduct is the reason behind any delay in receiving payment from the employer, or if any litigation has commenced in the ADGM Courts regarding any amount due to the employee.

Q14: DO YOU AGREE WITH PROVIDING END OF SERVICE GRATUITY TO AN EMPLOYEE WHO HAS BEEN TERMINATED FOR CAUSE?

Q15: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED PAYMENTS UPON TERMINATION?

Discrimination, Harassment and Victimisation

30. The current discrimination provisions in the Regulations do not address victimisation, which is where an employee is treated differently or unfairly because they have taken action to address discrimination.
31. The proposed amendments would prohibit an employer from subjecting an employee to a detriment or dismissing the employee because the employee had done a 'protected act' or the employer believes that the employee may do a protected act. A 'protected act' would cover bringing proceedings under the discrimination legislation, giving evidence or information in connection with the proceedings under the discrimination legislation, doing any other thing for

the purpose of or in connection with the discrimination legislation or alleging that the employer or another person had contravened the discrimination legislation.

Vicarious Liability

32. Vicarious liability is a common law principle rather than a statutory position, and as such it is not explicitly mentioned in the Regulations. The issue with the current position is the lack of clarity with respect to common law principles. As such, employers (and employees) may not know that an employer may be held liable for the act of an employee.
33. The proposed amendments provide that an employer would be liable for any act, attempted act, or omission of an employee done in the course of their employment where the act, attempted act, or omission leading to a claim is sufficiently connected with the employee's employment, such that it is reasonable to hold the employer vicariously liable, including where the claim is in relation to discrimination, harassment, or victimisation, where the employer is unable to show it took such steps as were reasonably practicable to prevent the employee from carrying out the act, attempted act, or omission.

Q16: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED ENHANCEMENTS TO THE DISCRIMINATION AND VICTIMISATION PROVISIONS?

Obtaining and Cancelling Visas

34. The Regulations state that the employer is responsible for obtaining, maintaining, and paying the cost of the employees' work permits, and as applicable, residency visa and identity card. However, it does not address the timing of this nor the timing of cancellation of such permits and visas. Employers sometimes fail to cancel an employee's visa on termination, which stops the employee from being able to take up new employment.
35. The proposed amendments clarify that the employee's work permit and UAE identity card must be obtained before an employee can commence work in the ADGM and that the employer must cancel the visa within the time frame stipulated by the relevant mainland authority. Furthermore, the proposed amendments clarify that employers must not cancel an employee's visa without the employee's consent if the employee has filed a case against them in the ADGM Court or while a case is ongoing.
36. The proposed amendments further clarify that an employer must not make the cancellation of an employee's visa conditional on the employee waiving any rights or making any payments to the employer.

Visa Costs

37. The Regulations provide that an employer may not request, demand or accept any sum from an employee as reimbursement of costs incurred by the employer in obtaining or maintaining

the employee's visa or UAE identity card. However, it has been observed that employers often ask employees to meet their own visa cancellation costs, as cancellation is not explicitly addressed in the Regulations. It has also been observed that once an employment relationship is terminated, particularly during probation, an employer would require the employee to reimburse them for visa costs, in addition to bearing the costs of cancellation.

38. The proposed amendments extend the current position to explicitly cover visa cancellation costs, including when the visa is cancelled in absconding cases.

Q17: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED CLARIFICATIONS REGARDING OBTAINING OR CANCELLING WORK VISAS AND WORK PERMITS?

Q18: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED CLARIFICATIONS REGARDING VISA CANCELLATION COSTS?

Procedural Requirements

39. The proposed amendments include procedural formalities should the RA propose to take action against an employer for any contraventions of an employer's obligations and responsibilities under the Regulations.
40. The RA is further considering whether a statute of limitation of one year should be introduced in the Regulations for bringing employment claims before the ADGM Courts.

Q19: DO YOU HAVE ANY BROADER FEEDBACK ON THE PROPOSED AMENDMENTS THAT IS NOT COVERED BY THE QUESTIONS SET OUT ABOVE?

*Proposed Amendments and Enactments***Regulations****Annex A** Proposed Employment Regulations 2024**Annex B** Proposed Employment Regulations 2024 (editorial blackline)