



Article 18 penalty in DIFC Employment Law – Potentially Harsh Effect on Employers

On 03 April 2016, judgment was issued in the first case in the DIFC Court of First Instance in which the DIFC Employment Law Article 18 penalty provision has been considered - CFI 015/2014 ***Asif Adil v Frontline Development Partners Limited***.

Article 18 of the DIFC Employment Law provides that an employer is liable to a penalty if the employer fails to pay an employee his or her wages (or any other amount owing) within 14 days of the employment being terminated. The penalty is equivalent to the last daily wage of the employee for each day the employer is in arrears. The purpose of the penalty provision is to deter employers from causing undue delay in paying dues to employees.

In the case of *Asif Adil v Frontline Development Partners Limited*, the penalty to be paid to the employee, Mr Adil, is in excess of USD 1.5 million as the last daily wage of USD 1,643.84 was determined to be payable from 15 July 2013.

Justice Roger Giles held that Article 18 does not provide for any judicial discretion as to whether to apply the penalty or how to apply the penalty. In particular, he said: "*Article 18 must be construed on its own terms, as a unique provision and as part of the Employment Law ... the strong terms of the Article were deliberately chosen. They are indeed strong terms ... There is no alleviation by regard to wilfulness or reasonable excuse*".

He further said: "*the penalty falls upon the employer by force of the Article; the Court then may be called on to exercise its ordinary function of ordering payment of the debt thereby created, as with any other debt*".

Whilst the judgment is a great result for KBH's client, Mr Adil, it serves as a strong warning to any DIFC employer to promptly pay employee dues on termination of the employee's employment.

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