

# STATES OF JERSEY



## MAXIMUM EMPLOYMENT PROBATION PERIODS

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**Lodged au Greffe on 14th December 2023  
by Deputy M.B. Andrews of St Helier North  
Earliest date for debate: 16th January 2024**

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**STATES GREFFE**

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to agree that employment probation periods should be amended within the Employment (Jersey) Law 2003 to –

- (a) set a maximum employment probation period of no more than 6 months;
- (b) ensure that any employment probation period cannot be extended more than once;
- (c) permit the suspension of a probation period if an employee is absent from the workplace for one month or more for reasons not related to performance; and
- (d) ensure that any employee on a fixed term contract of 6 months or less will not be subject to a work probation period;

and to request the Minister for Social Security to bring forward the necessary legislative changes to implement these amendments no later than June 2025.

DEPUTY M.B. ANDREWS OF ST. HELIER NORTH

## **REPORT**

I am lodging this proposition to introduce a maximum work probation period of six months under the [Employment \(Jersey\) Law 2003 \(jerseylaw.je\)](#) to mirror legislation in several European countries including Germany and the Netherlands. These countries have such legislation in place to enhance workers' rights and to protect vulnerable adults against potential abuses. I am also proposing work probation periods cannot be extended more than once.

I am also proposing fixed-term contracts of less than six months will not be subject to a work probation period under the Employment (Jersey) Law 2003. Fixed-term contracts exceeding six months can be subject to a work probation period which should not exceed a period of six months.

### **The Probation Period**

Work probation is an opportunity to see whether the working arrangements are suitable for both the employee and the employer. The length of the work probation period will vary among employment contracts. Generally, the work probation period will be three to six months. An employee is expected to meet performance-related measures to pass work probation. Where an employee faces difficulties during the work probation period, the work probation period may be extended.

### **Maximum Probation Period**

Due to there being no maximum work probation period in the Employment (Jersey) Law 2003. Employees can face long probation periods that can be extended more than once.

Not all employees will feel able to object when their employer proposes a work probation period extension without a valid reason. The employee is left with little choice but to accept the work probation extension or risk the possibility of losing their job and facing financial hardship.

In most instances, the employer will provide a valid reason to the employee when extending the work probation period. Occasionally, however, an employer can take advantage of the employee during the work probation period. I am aware of several incidents where an employer has failed to inform the employee whether they have passed the work probation before the work probation expiry date. It could be implied that the employee being retained beyond the expiry date has been employed. However, as Employment (Jersey) Law 2003 has no provision to cover these circumstances there is inadequate protection for employees.

### **Fixed-Term Contracts**

An employee on a fixed-term contract of six-months or less should not be subject to a work probation period.

Where an employee's services are retained, consideration must be given for extending a fixed-term contract, or where the employee's contract is made permanent. Depending on whether the role of the employee is the same or not, the work probation period can be satisfied under previous employment. It should be at the discretion of the employer as to whether a work probation period is deemed necessary.

I believe it should not be automatic for work probation to be mandatory when the employee has been retained under a fixed-term or permanent contract. The employee at

this point has proven themselves to be capable having been retained and granted a new contract of employment. Therefore, it could be deemed a work probation period is superfluous in some cases.

### **European Legislation**

The Irish government recently introduced a maximum work probation period under the S.I. No. 686/2022 - European Union (Transparent and Predictable Working Conditions) Regulations 2022 ([S.I. No. 686/2022 - European Union \(Transparent and Predictable Working Conditions\) Regulations 2022 \(irishstatutebook.ie\)](#)). Within the regulations private sector workers are now subject to a maximum six-month work probation period and public sector workers are subject to a maximum twelve-month work probation period. The work probation period can be extended for unforeseen circumstances not related to performance-related matters which include bereavement or sickness. The work probation period will be suspended when such cases arise until the employee returns to work to fulfil the remainder of the work probation period.

In the Netherlands, a fixed-term contract lasting no longer than two years has a maximum work probation period of one month, a permanent or fixed-term contract that is beyond two years has a maximum work probation period of two-months, and since 2015, the Dutch government introduced a new measure that ensures that employees on a fixed-term contract lasting no longer than six-months are not be subject to a work probation period ([Probation period in the Netherlands \(dutch-law.com\)](#)). Germany also has a maximum work probation period of six months too ([German Civil Code BGB \(gesetze-im-internet.de\)](#)).

### **The Proposals**

I believe this proposition will help protect workers from the rare but existing malpractices that continue to affect employees. A maximum six-month work probation period is sufficient. In the event the employee takes a leave of absence for non-performance related matters, then the employee should be able to return to complete the remainder of the work probation. The work probation period can be extended, and completed later, however, the work probation period cannot exceed six months of active work. In essence, an employee who takes a leave of absence two months into the work probation period will be required to complete four months' work probation upon their return.

It could be argued an employee who has not been satisfactory during the work probation should be given a work probation extension. I believe a period of six-months work probation is sufficient to demonstrate one's capabilities. Where an employee is deemed unsatisfactory then the employee will simply have failed the work probation. Six months is adequate for the employer to address any issues they have with the employee which should be resolved within the work probation period. Where an employee is on a work probation period of three months, then the work probation can be extended, however, it cannot be extended over the maximum work probation period of six months.

I am also asking the Minister for Social Security to ensure a work probation period cannot be increased more than once to prevent abuses and a prolonged period of job instability for employees. I am also proposing the Minister for Social Security bring forward the relevant changes to the Employment (Jersey) Law 2003 to ensure fixed-term contracts less than six months are not subject to a work probation period. I propose the Minister for Social Security be responsible for the legislative amendments to the Employment (Jersey) Law 2003, to be implemented no later than June 2025.

**Financial and staffing implications**

There will be a legislative drafting amendment to the Employment (Jersey) Law 2003 which will require a manpower requirement from the legislative drafting team. The work to undertake this amendment will come from within the existing legislative drafting team budget.

**Child Rights Impact Assessment**

A Child Rights Impact Assessment has been prepared in relation to this proposition and will be accessible for review on the States Assembly website.