

STATES OF JERSEY



TERMINATION OF EMPLOYMENT: MINIMUM NOTICE PERIODS (P.14/2024) – COMMENTS

**Presented to the States on 8th April 2024
by the Minister for Social Security**

STATES GREFFE

COMMENTS

Introduction

Deputy Andrews' Proposition seeks to amend and increase the current arrangements for the minimum notice periods required to be given by an employer, which are contained in Article 56 of the Employment Law 2003.

The Minister for Social Security is unable to support the Proposition. The Minister is not persuaded that the current statutory notice periods are in need of amendment and has seen little evidence of a problem which needs to be resolved. Bringing a Proposition to change the statutory notice periods in the way the Deputy proposes does not address any deficit in an employee's rights under employment legislation. This is not a change that has been requested by the trade unions, and it is not seen as a priority by them.

In reaching that conclusion the Minister has sought the views of the Jersey Advisory and Conciliation Service (JACS), whose remit is to provide advice and assistance to employees and employers on employment legislation; the Chamber of Commerce's Employment Committee; and trade unions.

The Proposition

The Proposition lacks evidence of a need for amendment. The current statutory notice periods have been in place for many years and have operated satisfactorily. There is no evidence that they are harming the prospects of employees. JACS reports little concern among employers and employees that their interests are being compromised by the law as it stands. Jersey's current statutory notice arrangements are not untypical of many other jurisdictions internationally, and are more generous than some, including Guernsey, whose statutory notice periods are four weeks for both employee and employer.

The Minister is concerned that the Deputy's proposals for increasing the periods of notice that an employer would have to give could have unintended negative consequences for both employee and employer. The Minister sets out her detailed concerns below.

The Deputy contends that the changes proposed will enable employees, who have been given an extended period of notice by their employer, to devote time to seeking alternative employment, meaning they can still receive an income to meet their financial obligations and maintain their standard of living.

The Employment Law already contains detailed provisions relating to rights on redundancy. These include the right to time off work to seek employment elsewhere; the right to remuneration when doing so; and a "protected period" during which an employee continues to receive remuneration.

In a situation where the employee faces dismissal by reason other than redundancy, he or she has recourse to a claim to the Tribunal if that dismissal is unfair, and the Tribunal is able to make awards in appropriate circumstances. Legislation sets out the situations in which a claim can be made.

Unintended negative consequences

Based on advice taken from employee and employer groups (and from JACS), the Minister is concerned about the potential for unintended negative consequences, since the imbalance in the required statutory notice periods for employee and employer will widen still further if the Deputy's Proposition is adopted.

In general terms, if a notice period from either party is too long, it is less likely the employee will work their notice, if they have the opportunity to move to a better-paid job or enhance their employment prospects by doing so.

Holding an employee to a longer statutory notice period could disadvantage an employee in gaining better employment. One consequence may be that an employee resigns their job and foregoes the salary and benefits that would have accrued to them during the notice period. An employee could also open themselves up to a claim for breach of contract if the employer is relying on the statutory notice periods.

From an employer's perspective, longer notice arrangements may mean having to pay an employee for a longer period when that employee simply disengages from his or her employment, which in turn may mean the employer having to take disciplinary action, which is in neither's interests.

Extending the statutory notice period in the way the Deputy envisages for "new" employees may mean that employers compensate for that by extending probationary periods. This could give rise to more employee insecurity, not less. The Minister has significant concerns about the increased imbalance at that point in the employment cycle.

Extending employer notice periods may have an impact on employee recruitment, with an employer losing out having to wait for a new employee and a potential employee, in turn, losing out on the opportunity to enhance their career prospects.

Conclusion

The Minister cannot support the Deputy's Proposition. The potential disbenefits of extending the current statutory employer notice periods significantly outweigh the perceived benefit as outlined in the Deputy's Report. Little evidence has been presented that this is a necessary or desirable amendment to the Employment Law.

The Minister's priorities in Employment Law terms are focused on supporting new legislation on whistleblowing (a project already agreed by the Assembly), and to address those areas of employment protection not currently covered in Jersey law and needing improvement. The Minister has already commenced meetings with trade unions and will continue to consult with them about what they consider to be priorities to improve protection for employees.

The Minister urges Members to reject the Proposition.