

STATES OF JERSEY



DRAFT EMPLOYMENT AND DISCRIMINATION (JERSEY) AMENDMENT LAW 202- (P.78/2024): COMMENTS

**Presented to the States on 16th January 2024
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

On 6th November 2024, P.78/2024 – Draft Employment and Discrimination (Jersey) Amendment Law 202- (hereafter referred to as the ‘draft amendment’) was lodged with the States Assembly by the Minister for Social Security. This Law, if passed, will amend the [Employment \(Jersey\) Law 2003](#) (the “Employment Law”) and the [Discrimination \(Jersey\) Law 2013](#) (the “Discrimination Law”).

The amendments are in response to the Jersey Employment Forum’s consultation, and subsequent report and recommendations on Jersey’s compensation awards regime presented to the Minister for Social Security in June 2024. Compensation awards are made by the Jersey Employment and Discrimination Tribunal (the “Tribunal”) in cases where an employee’s employment or discrimination rights have been breached by their employer.

The report covered four main areas:

- Compensation for breaches of most statutory employment rights,
- Compensation for findings of unfair dismissal,
- Compensation for financial loss and for hurt and distress in employment-related discrimination cases,
- The £10,000 limit on the Tribunal’s jurisdiction to hear claims for contractual breaches of an employee’s rights.

The Minister accepted all of the report’s recommendations and also committed to requesting law drafting to address the report’s recommendations concerning ancillary issues as part of a thorough review of the Employment and Discrimination Tribunal’s Rules and Regulations planned in 2025.

The Employment Law is amended to increase awards of compensation from a maximum of 4 weeks’ pay to a maximum of 8 weeks’ pay. Further amendments to the Employment Law at this time, not related to compensation, will require an employer, when terminating an employee’s contract of employment, to give the employee a written statement setting out the reasons for the employee’s dismissal. If no reasons for dismissal are given, the employee has the right to refer the matter to the Tribunal.

The amendments to the Discrimination Law will, in relation to employment-related discrimination claims, increase the maximum award for financial loss from £10,000 to either £50,000 or 52 weeks’ pay, whichever is the greater. The maximum award for hurt and distress will increase from £5,000 to £30,000.

Commentary

The Panel was briefed on the proposed draft amendment on 19th November 2024 by an Officer from Strategic Policy, Planning and Performance. The Panel are encouraged by the Minister’s willingness to accept all the Jersey Employment Forum’s recommendations, and appreciates that the work undertaken on these amendments has been carried out in a timely manner.

The Panel considers the proposed amendments and response to the Jersey Employment Forum's report as a positive and progressive development in support of employee rights and protection. The changes address that the current limit of £10,000 compensation has been in place since 2005, has not kept pace with levels of inflation and wages, and is no longer adequate.

The Panel notes that the consultation exercise included consideration and comparison with other jurisdictions, including Guernsey, the Isle of Man, Ireland and the United Kingdom, and that in comparison, the current compensation regime in Jersey was considered simple and straightforward.

The Panel welcomes the amendment to the Discrimination Law in relation to employment-related discrimination claims; increasing the maximum award for financial loss from £10,000 to £50,000 or 52 weeks' pay, whichever is greater. The maximum award for hurt and distress will increase from £3,000 to £30,000. The Panel felt these amendments may encourage employers to consider claims of discrimination in the workplace more seriously and does not feel the increase in potential award value will lead to a rise in weak or vexatious claims. The Panel is encouraged that this will support vulnerable employees, and whilst this change may not prevent workplace discrimination, it may draw focus to the issues, meaning they are considered more seriously by employers and thereby assist in prevention.

The Panel also welcomed the alignment of this award to reflect the jurisdiction of the Petty Debts Court (£30,000), and notes that the Tribunal is the preferred forum for consideration of such claims.

The Panel understands the conclusion of the Employment Forum that to move from a £10,000 cap to an uncapped system would be too great a step at this time, and that time needs to be afforded to employers to adjust their processes before an uncapped system can be considered. The Panel would welcome further consideration as to the feasibility of future increases in the caps on compensation. This would support the progression of the Tribunal's abilities, and the Panel would encourage consideration of the merits, or otherwise, of an unlimited amount of compensation, such as in the UK, or a cap of two year's pay, as in Ireland, and the impact this may have on employers, particularly small and medium-sized enterprises.

The Panel also notes that the Employment Forum's consultation report expressed the view of respondents that non-compliance of employers would appear to arise from a lack of awareness and understanding of Employment Law, with the report noting continued breaches of the most basic statutory requirements, such as provision of payslips and employment contracts, despite nearly 20 years operation of the Employment Law. An emphasis should be placed on education and awareness raising to support best practice through legislative compliance. There may also be a requirement for improved education regarding Discrimination Law, particularly given that the legislation is relatively recent.

The Panel would like to see the Tribunal's processes assessed and access to justice carefully considered as part of the planned review of the Employment and Discrimination Tribunal's Rules and Regulations. The Panel would like included, as

part of this work, an assessment of the roles of commissioned services. Specifically, the Jersey Advisory and Conciliation Service (JACS) and the Citizens Advice Jersey (CAJ), to assess whether sufficient support is in place to ensure access to the process is not considered onerous by some potential claimants and allows access to justice to be simple and without barriers. JACS has a statutory duty to advise employers and employees on their respective rights and responsibilities under the Law and the report recognises their work. The Panel would like to see the Minister assess how this service could be further engaged to support employers to take their obligations seriously, minimise breaches and ensure employees are aware of their rights.

The Panel look forward to receiving information on the Minister's plans for the review into the Employment and Discrimination Tribunal's Rules and Regulations in 2025, and to address the other recommendations for change not directly related to the compensation awards scheme.