

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT No. 10) (JERSEY) LAW 201- (P.38/2016): AMENDMENT

**Lodged au Greffe on 10th May 2016
by Deputy S.Y. Mézec of St. Helier**

STATES GREFFE

DRAFT EMPLOYMENT (AMENDMENT No. 10) (JERSEY) LAW 201-
(P.38/2016): AMENDMENT

1 PAGE 15, ARTICLE 5 –

Delete Article 5, and renumber Articles 6 to 14 accordingly.

2 PAGE 21, ARTICLE 15 –

Delete Article 15, and renumber Articles 16 to 19 accordingly.

3 PAGE 21, ARTICLE 17 –

In Article 17 for “Article 13(b)” substitute “Article 12(b)”.

4 PAGE 21, ARTICLE 19 –

In Article 19 –

- (a) in paragraph (a), for “Articles 13(b) and 17” substitute “Articles 12(b) and 15”;
- (b) in paragraph (b), for “Articles 2, 3, 4, 6, 7, 8, 9, 10, 12(b), 13(a) and 16” substitute “Articles 2, 3, 4, 5, 6, 7, 8, 9, 11(b), 12(a) and 14”.

DEPUTY S.Y. MÉZEC OF ST. HELIER

REPORT

The purpose of this proposition is to remove from the Draft Employment (Amendment No. 10) (Jersey) Law 201- ([P.38/2016](#)) all of the clauses which would enable the States Assembly to set a lower minimum wage rate for people based on their age.

This Proposition is supported by, and presented on behalf of, Reform Jersey

On 12th April 2016, the Minister for Social Security lodged [P.37/2016](#) – the Draft Discrimination (Age) (Jersey) Regulations 201-, paving the way for an incredibly important piece of social legislation which is well overdue, to help combat ageism in public service provision and in the workplace.

On the same day, the Minister for Social Security lodged [P.38/2016](#) – the Draft Employment (Amendment No. 10) (Jersey) Law 201- to pave the way for legalised age discrimination in the workplace and to enshrine in the Law the idea that ‘equal pay for equal work’ should not apply for young people.

The concept of a “youth” or “student” rate for the minimum wage is one which has been considered several times by the States Assembly and has always been rejected, usually on the basis that it would be both discriminatory and unfair, but also that there was no evidence that it would have a positive impact on economic growth and employment opportunities.

Whilst the Employment Forum has previously recommended the introduction of a youth rate (for workers below the age of 18) almost a decade ago, on the most recent occasion where it considered a youth rate¹ (see Appendix 1) it concluded that there was no concrete evidence that it would benefit the economy or protect the opportunities for young people in the labour market, and was rejected once more.

The Forum received a submission from Unite the Union, which said that in workplaces where they had managed to negotiate an end to differential wages based on age, there had been no impact at all on the opportunities for young people, and that employers had recognised that it was better for recruitment, motivation and retention for younger workers to be treated equally to those older than them.

As the youngest member of the States Assembly, as somebody who has only recently attained the age at which the proposed minimum wage premium would apply to, and as somebody who has many people within my social group who are below the age of 25 and who could be subjected to this legalised discrimination, I wholeheartedly reject the idea that young people’s labour is less valuable than people marginally older than them for no reason other than their age.

Currently, Jersey does not have any different minimum wage rates which apply to people of different ages, instead there are 2 trainee rates.

It seems to be entirely logical and non-discriminatory to say that a worker could be paid a different wage whilst they are being trained on the job, as that training could be argued to constitute a sort of benefit in kind. However, this trainee rate applies equally to a

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<https://www.gov.je/SiteCollectionDocuments/Working%20in%20Jersey/R%20Recommendati onMinimumWage2010%20EV.pdf>

trainee aged 17 as a trainee aged 37. Their age is not what they are being discriminated against for, it is their experience and ability.

It would be wrong to say to employers that they may not alter their wage rates depending on their worker's ability and experience; however, age is not necessarily an indication of either of those, and the assumption that young people are automatically worth less than older workers is both patronising and wrong.

If a candidate for a job is equally qualified to do that job as well as somebody older than them, then it serves no economic purpose to say that they should be paid less for it.

A 'trainee rate' serves the purpose of allowing people onto the first step of the employment ladder, and assists businesses to take a chance on a worker about whom they may be less confident in their ability. An 'age rate' simply allows for discrimination.

The National Living Wage in the UK

The United Kingdom Government has decided to introduce their 'National Living Wage' ("NLW") exclusively for the over-25s, as effectively a 'minimum wage premium', as it does not constitute a living wage as established by the Living Wage Foundation.

The age variation has proven to be controversial, and seems to have been adopted for political reasons, rather than economic reasons.

The Resolution Foundation², in analysing the likely impact of differing age rates, noted that rather than helping young people into the job market, it could act as a disincentive to slightly older workers from seeking to progress into higher-paid jobs, as the wage they were on would be more satisfactory. This would leave fewer vacancies to then be taken up by younger workers.

They also noted that young workers have already been those worst affected by the financial crash, with those aged 22–29 seeing their wages fall by 13%, compared to a 5% fall for those over the age of 50. The NLW will not benefit the youngest of those workers.

The UK's Office for Budget Responsibility (see Appendix 2) has forecast that over the coming years the NLW will rise at a faster pace than the National Minimum Wage, meaning that the spending power and standard of living for younger workers is destined to reduce year on year.

Low Pay Commission

Paragraph 5.50 of the Low Pay Commission's latest report³, in which it investigated the impact on young workers of the introduction of the NLW, said that they had received submissions from businesses who believed that the introduction of a minimum wage

² <http://www.resolutionfoundation.org/wp-content/uploads/2015/07/RF-National-Living-Wage-briefing.pdf>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519773/National_Minimum_Wage_Low_Pay_Commission_Spring_2016.pdf

premium for workers over the age of 25 would “squeeze” their pay budget and likely mean that they would reduce hours, and that this would inevitably be targeted at the workers they would achieve most savings from.

Conversely, there was also a suggestion that older workers would become less likely to move jobs, meaning fewer opportunities for younger people to move up until they reach the age of 25, regardless of their ability.

Jersey’s minimum wage is broken. It leaves many people working full-time, yet still having to claim Income Support to make ends meet, meaning the taxpayer is essentially subsidising low-wage employers.

My proposition – Minimum Wage: revised hourly rate from 1st April 2016 ([P.150/2015](#)) called for an investigation into the impact on the tax and benefits system of a significant rise in the minimum wage. It did not call for new discriminatory rates, which will make it virtually impossible to predict the economic outcomes of raising some rates and lowering others.

It cannot be right that we seek to create a minimum wage which works for older workers, but leaves younger workers seeing their standard of living decline further and further as the 2 rates drift apart. It cannot be beyond the capability of the States to create a minimum wage which works for everybody.

This amendment allows the States to commit to creating a fit-for-purpose minimum wage which all workers will benefit from, rather than accepting as an inevitability that the youngest workers will have to accept being treated as second-class citizens because of their age.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this amendment to the draft Law.

APPENDIX 1

Extract from RECOMMENDATION – MINIMUM WAGE RATES FOR 1st APRIL 2010, issued by the Employment Forum, 27 October 2009⁴

“Youth and Student rates

In its 2006 recommendation, the Forum had recommended that a lower minimum wage rate should be available for students aged 16 to 18 who are in full time education. The Forum had proposed that a student rate would enable it to consider recommending that the minimum wage should be increased by more than average earnings in the future, as a student rate would assist in avoiding the possible negative consequences on labour market opportunities for young people.

The proposal was rejected by the States and was therefore not implemented. It was considered that the rate would introduce unnecessary complexity and would be open to abuse; that it is discriminatory and exploitative to pay one 16 year old a lower rate where he is doing the same job in the school holidays as another 16 year old who is working full time; and that there is no evidence that the supply of jobs for students has become more limited.

Despite concerns around age discrimination, the UK and other jurisdictions continue to justify different rates for different age groups on the grounds of evidence that a lower rate is necessary to protect their position in the labour market. In order to justify recommending a lower rate for young people or students, the Forum would require evidence that young people are suffering from a loss of work experience and job opportunities.

Of the ten employers who responded to the consultation, seven reported that they do employ some young people, depending on the season, almost all of whom are aged 16 to 18 and still in full time education. Of those employers, four reported that they have either employed fewer young people, or have been discouraged from employing young people, since the introduction of the minimum wage (one in Retail and three Hospitality and tourism employers).

One Retail employer and two Hospitality and tourism employers said that they would employ more young people and that their business would benefit from a youth or student rate. One employer commented that “16–17 year olds have less flexibility than other staff and there are restrictions on tasks they can carry out and where they can work, for example behind bars, in kitchens, in pool plant rooms (lifeguards) etc. It is only fair that they should be paid less than a full time, fully skilled and flexible employee.” Another commented that young people “need more supervision, more training and have to learn or come to understand the work ethic.”

There was support for either a youth rate, or a youth rate and a student rate, from seven respondents, including the JHA and the JFU, two Hospitality and tourism employers, and a Law firm. The Forum was interested to note that JACS supported a youth rate despite previously opposing a youth rate on the grounds that there is no reason to pay an employee less for doing the same job simply because they are 16 or 17 years of age.

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<https://www.gov.je/SiteCollectionDocuments/Working%20in%20Jersey/R%20RecommendationMinimumWage2010%20EV.pdf>

JACS view is that the minimum wage has had a detrimental effect on young people or students in terms of the availability of part time jobs; “Anecdotal evidence of a reduction in opportunities in general office duties in particular, but also in tourism related attractions and retail – not an issue before the economic downturn but appears to be an issue at the present time.”

JACS now notes from their experience that “employers are often reluctant to employ 16 or 17 year olds due to the need for additional supervision, restrictions on activities such as selling alcohol or tobacco products etc as outlined in the consultation paper ... those who are still students appear to have struggled to find vacation work that provides valuable work experience over the last couple of years.

It is believed that the application of a youth/student rate would assist in the generation of employment opportunities for these groups.”

Four respondents, including Unite, an individual employee, a utilities employer and a Law firm, said that there should be neither a youth rate nor a student rate. Unite noted that in those areas where Unite is organised, they have “abolished youth rates by negotiation there is no evidence that this has led to a decrease in young people employed. This is largely because many companies are prepared to abolish youth rates in recognition that doing so aids recruitment, retention, motivation and productivity.”

Unemployment figures released by the Social Security Department show that of the 908 people registered with the Department as unemployed and actively seeking work on 31 August 2009, 171 were aged 16 to 18 (see Appendix 2). This represents 18.8 percent of all registered unemployed people.

The Forum is aware of a new Advance to Work (ATW) scheme which has been set up as part of the States’ package of measures to assist the Island through the financial downturn. The scheme is intended to help young people (aged between 16 and 19, who have left school) by providing them with work placements and training, so that when the recession ends, they will be in a good position to get a job. More than 100 people have applied to join the scheme and 25 young people are on work experience placements.

The Forum prepared a questionnaire which was specifically designed for students and was circulated to schools in the Island via Careers teachers. Eighty students responded, 71 of whom were aged 16 to 18. Only 14 of those who responded did not have a job and the vast majority (66) were working. The most common jobs were in a supermarket or retail sales (32), in a restaurant (12) and in hairdressing (9). The Forum notes that it is possible that working students were more likely to complete the questionnaire than other students who were not working because they perceived the questionnaire as being more relevant to them.

The Forum notes the relatively small number of students working in the Hospitality industry compared to Retail, however it is not clear whether this is due to lack of desire amongst young people to work in that industry, or lack of opportunities presented by that industry.

Thirty of the students who responded said that they had not been able to get a job at some time when they had wanted one (only six of whom are not currently working).

Only 10 of these students felt that the minimum wage had been a factor in not being able to find, or losing, work.

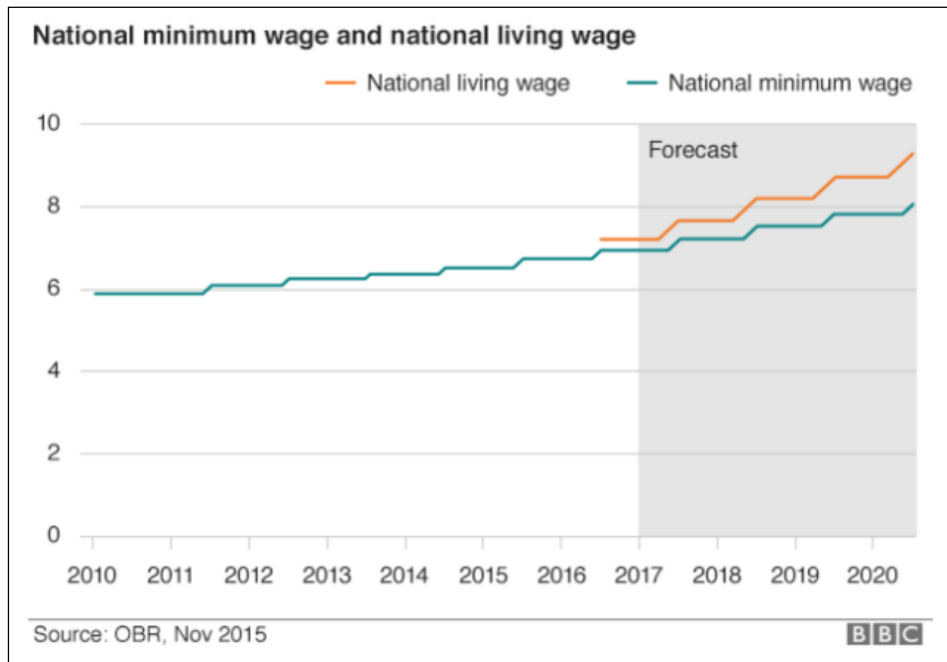
Some of the comments included that employers would rather employ adults “as they are stronger and could probably work harder and for longer,” and “it’s better to get someone who can work more hours.” One student commented that “It’s cheaper for employers to hire someone that they don’t have to pay minimum wage for, so if they had a choice between over or under 16 or they would go under 16”. This comment suggests that some employers may opt to employ 15 year olds to avoid paying the minimum wage at all.

Students were also asked, if there were to be student or youth rate, whether it should be the same hourly rate of pay as the trainee rate. An overwhelming 54 students said that it should be higher than the trainee rate. Some of the comments included that “£4.56 is very low compared to now and is a big drop from £6.08;” and “If the minimum wage for students or youths was lower than £6 it would discourage a lot of people from looking for a job”.

The Forum was surprised by the high level of employment amongst the students who responded and the lack of evidence that students are finding it difficult to find work. Where finding a job has been a problem, the responses give little evidence that the minimum wage is perceived to have been a factor in this. The over-riding impression from the comments received is that, if there were to be a youth or student rate, the students feel very strongly that the current level of the trainee rate is not sufficient.

The Forum considers that the consultation has not revealed sufficient evidence that employers have a strong need for the rate and that the availability of a lower rate would impact on employers’ behaviour sufficiently. Where employers do not employ young people, there are likely to be reasons other than the minimum wage; including one Agriculture employer who said that ethical trading protocols deter employers from employing minors in this sector, and one Hotelier who said that a policy decision had been taken by the company not to employ people under age 18.

With the supportive “advance to work” scheme underway and little evidence from the consultation that students are suffering from lack of part time work opportunities, the Forum is concerned that the introduction of a youth or student rate could have a detrimental effect on young people who already have a holiday or weekend job if their employer reduced hourly pay to the new lower rate, particularly students and young people who are supporting themselves, such as mature students. **The Forum recommends that neither a student rate nor a youth rate should be introduced.**”



Re-issue Note

This publication is re-issued because a consequential amendment was inadvertently omitted from the original draft. This has now been inserted as paragraph 3 of the amendment, and the original paragraph 3 has been renumbered as paragraph 4.