

# **STATES OF JERSEY**

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## **DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200- (P.19/2005): AMENDMENTS**

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**Lodged au Greffe on 1st March 2005  
by Deputy G.P. Southern of St. Helier**

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**STATES GREFFE**

(1) PAGE 58, NEW ARTICLE 21A

*Insert after Article 21, but before Part 4, the following new Article –*

**“21A Restrictions on Interim Relief**

(1) Where –

- (a) an application for an injunction is made to a court in the absence of the party against whom it is sought or any representative of that party, and
- (b) the party claims, or in the opinion of the court would be likely to claim, that the party acted in contemplation or furtherance of a trade dispute,

the court shall not grant the relief sought unless satisfied that all steps which in the circumstances were reasonable have been taken with a view to securing that notice of the application and an opportunity of being heard with respect to the application have been given to the party.

(2) Where –

- (a) an application for interim relief is made to a court pending the trial of an action, and
- (b) the party against whom it is sought claims that the party acted in contemplation or furtherance of a trade dispute,

the court shall, in exercising its discretion whether or not to grant the relief, have regard to the likelihood of that party’s succeeding at the trial of the action in establishing any matter which would afford a defence to the action under Article 19 (protection from certain tort liabilities).”

*Renumber subsequent provisions and cross-references accordingly.*

(2) PAGE 59, ARTICLE 22(3)(a) –

*For the words “, a relevant contract of employment or a relevant handbook for employees” substitute the following words –*

“or a relevant contract of employment”.

(3) PAGE 60, ARTICLE 23(3)(a) –

*After the words “the case” insert the words “or that, in the opinion of the Tribunal, ought to be applicable to the case”.*

(4) PAGE 60, ARTICLE 25 –

*Insert in paragraph (1), after the words “this Law” the following words –*

“(being a code of practice that is consistent with such international agreements and international

obligations as relate to employment relations and are applicable to or binding on Jersey)”.

DEPUTY G.P. SOUTHERN OF ST. HELIER

## REPORT

Members will be aware of the many fundamental reservations that have been expressed by both trade union representatives and their members concerning many issues contained in this draft Law over the past months. In its earlier drafts it appeared to restrict the ability of trade unionists to represent their members to such an extent as to render their task nigh on impossible. This version, lodged on 1st February, has gone some way to meet those reservations, but still in my opinion, contains much that may be harmful rather than helpful to fostering good industrial relations. These amendments have been brought in an attempt to achieve the fundamental aim of this Law, which is to have “fair play in the workplace”.

I shall start this report with Amendment (4), which despite being last in the order of the Article that it affects, is in fact the most critical in giving reassurance to those with the reservations outlined above, and I believe central to the effective operation of the Law. As has been pointed out by several members prior to this stage, the Law will take effect through a series of codes of practice. This amendment attempts to ensure that any such codes of practice are consistent with such international obligations as are applicable to Jersey.

These codes will deal with the sensitive areas around balloting for action, rules concerning picketing, and secondary action. In particular, many concerns have been expressed about the powers of the tribunal to go to binding arbitration following application from a single participant on the grounds of the “unreasonable” behaviour of the other party. There is a danger that the action of proceeding to a ballot for action (the right to strike) could be deemed as “unreasonable” in certain circumstances depending upon the manner in which the appropriate code is drafted. This amendment ensures that the assurances given by the President of the Employment and Social Security Committee on many occasions that it is his intention to abide by international obligations are translated into their proper place in the main legislation.

Amendment (2) is a very straightforward matter which strikes out the words “relevant handbook for employees” from Article 23(3)(a). The grounds are equally straightforward in that the two other elements in the Article are clearly open to negotiation and agreement by both parties; the third element, the company handbook, may not be.

Amendment (3) again seeks to put best practice in place in terms of protecting employees where possible. I can best illustrate this by way of example. Imagine a situation where a particular task is performed in a particular company according to 30-year old “custom and practice”. An employee finally recognizes that this task is now dangerous, and that other companies have adopted much safer practices, and refuses to do the task. A dispute arises where the best solution is not something that was already applicable but one that “ought to be applicable”.

The introduction of the new Article 21A seeks also to facilitate the smooth operation of the tribunal process and to maintain standards of “fair play” in employment relations. In this case, employers in the U.K. and elsewhere have resorted to the courts to find ways of putting a stop to the possibility of forthcoming action in a dispute that would otherwise be perfectly defensible under what we are to introduce in Article 19– Immunities from liability in tort for industrial action. These employers seek to use other mechanisms within the Law to render trade disputes illegal in effect avoiding or short-circuiting the basis envisaged for the Employment Relations Law. Paragraph (1) of the Article seeks to prevent the application for an injunction in the absence of the other party to a dispute. Paragraph (2) seeks to prevent use of an application for temporary relief from being used to bypass Article 19 of this Law, thereby preventing the effective operation of this Law and the States intentions for it.

There are no financial or manpower implications arising from this amendment.