

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT No. 5) (JERSEY) LAW 2010 (APPOINTED DAY) ACT 201-

**Lodged au Greffe on 5th October 2010
by the Minister for Social Security**

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 5) (JERSEY) LAW 2010 (APPOINTED DAY) ACT 201-

REPORT

This Appointed Day Act would amend the Employment (Jersey) Law 2003 (“the principal Law”) with effect from 1st January 2011 to insert new provisions that relate mainly to redundancy.

The Act would bring into force Articles 1, 2, 3, 4 and 7 of the Employment (Amendment No. 5) (Jersey) Law 2010 (“the amending Law”), as well as those parts of Article 5 of the amending Law relating to new Articles 60A–60E and 60K–60M of the principal Law.

The effect is that employees who have at least 2 years’ continuous employment with an employer would have the right to receive a redundancy payment from that employer equivalent to one week’s pay in respect of each full year of employment with that employer. In addition, the statutory minimum periods of notice on termination of employment would be reduced from the current maximum of 16 weeks, to a maximum of 12 weeks’ notice after 12 or more years’ service.

Certain provisions would not be brought into force at this stage – Article 6 of the amending Law; and the remaining new Articles of the principal Law provided by Article 5 of the amending Law. These relate to collective redundancy situations, the election of employee representatives, protective awards and the removal of the upper age limit, which would be enacted at a later date, following further consultation.

In Article 5 of the amending Law, in relation to new Articles 60F and 60H of the principal Law – the Employment Forum presented a recommendation to the Minister for Social Security on the matter of consultation with employees in collective redundancy situations and the Minister has reviewed the provisions as drafted.

The Minister proposes that the collective consultation requirements should be triggered when an employer proposes 12 or more employees for redundancy in a 30 day capture period, irrespective of whether the employees are represented by a trade union or not. The Minister balanced the Forum’s recommendation against the wishes of the States Assembly and proposes this pragmatic solution.

As recommended by the Forum, the protective award where an employer fails to consult with union representatives and elected staff representatives would be up to 9 weeks’ pay. The Minister also approved the recommendation that a claim for a protective award would only be taken to the Tribunal by union representatives and

elected staff representatives, rather than individuals, other than where representatives have not been appointed, but should have been.

The Draft Employment (Amendment No. 6) (Jersey) Law 201-, also lodged on 5th October 2010 (P.134/2010), sets out the proposed amendments and the Forum's full recommendation.

In relation to Article 6 of the amending Law – the Minister proposes to temporarily withhold the removal of the upper age limit on the right to claim unfair dismissal. Currently, the right to claim unfair dismissal is not available to an employee who, on or before the effective date of termination of employment, has reached 'retirement age'; either the normal retirement age for the position within the undertaking, or when pensionable age has been reached under the Social Security (Jersey) Law 1974.

Before removing the upper age limit on unfair dismissal, the Minister wishes to review all issues again in the light of the probability that age discrimination legislation will not be in force in the near future. In the UK, the upper age limit on unfair dismissal was removed when age discrimination legislation was introduced.

The new UK coalition Government is consulting on a proposal to remove the 'default retirement age' from October 2011, including consideration of the management of dismissals and any unintended consequences. The Minister wishes to await the outcome of that consultation, without further delaying the introduction of the right to redundancy payments.

The Minister is satisfied that, subject to States approval, an appointed day of 1st January 2011 will give sufficient notice for the introduction of the Employment (Amendment No. 5) (Jersey) Law 2010.

Financial and manpower implications

There are no additional financial or manpower implications arising from this proposition. The existing budget for employment relations, which includes the cost of providing the Employment Tribunal and the Jersey Advisory and Conciliation Service, is sufficient for the implementation of this legislation.

Explanatory Note

This Law brings into force on 1st January 2011 certain provisions in the Employment (Amendment No. 5) (Jersey) Law 2010. The provisions amend the Employment (Jersey) Law 2003 and relate mainly to redundancy. Certain provisions relating to redundancy are not being brought into force at this stage; these provisions concern collective consultation requirements; protective awards and rights during the protected period; notification to the Minister and employee representatives.



Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 7(2) of the Employment (Amendment No. 5) (Jersey) Law 2010¹, have made the following Act –

1 Commencement of Law

The following provisions of the Employment (Amendment No. 5) (Jersey) Law 2010² shall come into force on 1st January 2011 –

- (a) Articles 1, 3, 4, 6 and 7;
- (b) Article 2 in so far as it inserts the definition “effective date of termination” in the Employment (Jersey) Law 2003³;
- (c) Article 5 except in so far as it inserts Articles 60F, 60G, 60H, 60I, 60J, 60N, 60O, 60P, 60Q, 60R, and 60S in the Employment (Jersey) Law 2003.

2 Citation

This Law may be cited as the Employment (Amendment No. 5) (Jersey) Law 2010 (Appointed Day) Act 201-.

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- ¹ *L.9/2010*
² *L.9/2010*
³ *chapter 05.255*