

STATES OF JERSEY



STATES EMPLOYEES STANDING FOR ELECTION: USE OF ANNUAL LEAVE AND TIME OFF IN LIEU

Lodged au Greffe on 11th May 2009
by Deputy T.M. Pitman of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that the Employment of States of Jersey Employees (Jersey) Law 2005 should be amended as necessary to provide that, in addition to the existing right to special unpaid leave, any politically eligible employee who intends to stand for election to the States should also be permitted to use any owed annual leave or time off in lieu before taking unpaid leave in the period between his or her public nomination for office and his or her resignation after the election (if elected to office) or his or her return to work (if unsuccessful); and
- (b) to request the Chief Minister to bring forward for approval the necessary legislation to give effect to the proposal.

DEPUTY T.M. PITMAN OF ST. HELIER

REPORT

“That which is not just is not law.”

William Lloyd Garrison

“Any person who believes every law passed by government is thus just or intellectually sound in construction should check the palms of their hands for hair.”

Translation of political graffiti on a wall in Mexico City

So we think all of *our* laws are just?

I believe the two quotes above to be applicable to any government in the world; in fact, to any government throughout recorded history. To try and convince ourselves that our own States Assembly would, on occasion, be in any different is quite frankly absurd: people, even politicians, are human and consequently make errors of judgement. Indeed, within the course of the past year or so as an avid ‘States watcher’ prior to my own election I have witnessed two such errors of collective judgement being cemented into law.

The most high profile, of course, is the deeply flawed Article 39A of the Public Elections (Jersey) Law 2002. This piece of legislation, which for very good reason appears to have no equivalent anywhere within the democracies of the Commonwealth, confused the inarguable necessity of ensuring the integrity of the postal ballot slip with the wholly separate process of simply *applying* to be added to the postal vote register to later receive one! But the second piece of recent legislation and the subject of this proposition, though not getting the media attention of the former, is every bit as flawed.

Sold to the Assembly as a step forward to encourage and allow more ‘ordinary’ working people employed by the States to put themselves forward to serve their island as elected representatives, Article 36, paragraph 2 of the Employment of States of Jersey Employees (Jersey) Law 2005 actually makes this nigh impossible for all but the most financially affluent – and/or doggedly committed. Even worse its construction is so warped that on the one hand it allows a States employee to use annual leave/T.O.I.L. owed to them by their department to campaign for a sitting politician who might just happen to be minister of the employee’s very *own* States department – yet *not* in an election campaign for his or herself! Fair? Well thought out? I think not.

Article 36 currently reads as follows –

“36 Where politically eligible States’ employee intends to stand for election

- (1) A politically eligible States’ employee who intends to stand for election as a Senator, Deputy or Connétable shall, as soon as reasonably practicable, notify the Chief Officer of the department or unit of administration in which the employee is employed.

- (2) A politically eligible States' employee shall be granted unpaid special leave on and from the date of his or her public nomination for office, until –
 - (a) he or she resigns from employment as a States' employee; or
 - (b) he or she returns to work under Article 37(3).”

Edmund Burke (1729 – 1797) wrote that: “*Hypocrisy can afford to be magnificent in its promises, for never intending to go beyond promises it costs nothing.*” Could this really have been the intent when the States employee election legislation was both drafted and debated? I believe members would agree surely not. Which leaves us with a piece of law that being clearly erroneous in construction necessitates we now remodel it to do what it was intended to do: i.e. permit any States employee classed as eligible to stand for election to do so on a level financial playing field with everyone else.

What the law *should* do

Having established that a States employee does fit into one of the politically ‘eligible’ categories – and few would argue that some, such as senior policy makers or the police do not – I believe there is one fundamental necessity that the law should focus on. This is to ensure that any employee now standing for election to government is removed from his or her place of work, and thus from any possible allegation of unduly influencing those around them, for the duration of the election campaign.

Of those few States employees who stood for election in 2008 I am yet to meet a single one who disagrees with this. Certainly, as a professional educator at the time of the recent elections I endorse this wholeheartedly for it is in the interests of all. Tellingly, this was also the firm view of my Line Manager, Principal Officer and HR Manager. How this necessary absence from an employees’ place of work is ensured should, in the interests of natural justice and a ‘level playing field’, place the employee at no financial disadvantage to any other candidate if they are prepared to use up their paid annual leave entitlement to campaign rather than enjoy the usual holiday.

Offering unpaid ‘special leave’ as the law currently does is fine, of course, if that employee suddenly decides to put him or herself forward via a late decision, having already taken their allotted annual leave entitlement – after all, why should the taxpayer be expected to foot the bill for another’s political ambitions? Yet with the significant costs inherent in running even a modest election campaign these days most individuals will have had to plan ahead and save accordingly. Probably for some considerable time. I can attest to this from personal experience. Indeed, even with the huge step forward Jersey has made recently with the introduction of campaign spending caps to prevent the more wealthy effectively buying their way into office the financial capital necessary will still be a deterrent to all but the most committed ‘ordinary’ person.

For the States to demand that such an employee has to try and fund an election campaign while simultaneously paying the rent or mortgage, feeding a family and paying the every day bills *without* their salary while the individual has annual leave entitlement as yet untaken is, I believe, frankly immoral. I also believe that such a policy could only be supported knowingly by any sitting States Members who have no

grasp of how ordinary working people live. Thus I believe this piece of legislation was passed by the Assembly in error.

An employee could also, let us not forget, even find themselves fighting not one election but two if their commitment to serving their island eventually results in them standing in both Senatorial and Deputies elections. All with no income – while leave/T.O.I.L. to which they are entitled by law lies unused!

Putting this in perspective – a personal experience

In my own case I followed the legislation and had advised my department more than a year in advance that I would almost certainly be offering myself up for election. I also agreed with the department that I would save up my annual leave entitlement. I worked closely with my Line Manager to ensure the possible impact upon my staff and the 300+ young people utilising the project I ran would be as minimal as possible. Finally, because the department wanted the centre open as much as possible throughout the summer, and being further committed to facilitating an educational project for a group of young people travelling to France, I also eventually ended up with a significant number of T.O.I.L. hours being owed to me.

Yet ultimately – due to what I can only describe as the internal wranglings of HR – commonsense still went out of the window and I was told that in spite of being owed enough time to fight both Senatorial *and* Deputies elections if necessary (with days to spare!) I could not use this annual leave and T.O.I.L. and would have to take unpaid leave, as per the letter of the legislation. The final argument given being that ‘the States couldn’t be seen to be paying someone whilst they campaigned.’

As already highlighted, given that this legislation as it is written makes it quite legitimate for an employee to campaign during their paid leave for another person, including any sitting politician – in my case at the time even my ‘boss’ the then Minister of ESC (No! You can be quite sure I *didn’t!*) to describe this law as absurd beyond belief would be an understatement.

Conclusion

I feel that it should go without saying that the States of Jersey have many employees who would make excellent representatives for the people of the island. I ask members the question: should that opportunity really be limited upon whether one has the financial capital to survive several weeks without any income – an income that with sensible, negotiated use of one’s annual leave entitlement need not be a problem at all? I hope members will agree that it should not.

Similarly, I would also hope members will agree that with the exception of participating in any activity that would bring their employer into disrepute, in the 21st century a States employee should be free to spend their annual leave doing anything they so choose: playing golf, painting the house, lying on a beach or standing for election – it should make no difference.

For a government to pretend otherwise is to intrude into a citizen’s life where a democratic State has no place.

Financial and manpower implications

I do not believe that there are any financial or manpower implications resultant from this proposition. Indeed, if passed by the States the fact that employees could then utilise annual leave already built into contracts could actually result in financial savings. This would be because the employee's absence from his/her workplace would be built into departmental plans, and there would be no need to second or even recruit other employees to provide cover.