

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT No. 11) (JERSEY) LAW 201- (P.100/2019): SECOND AMENDMENT

**Lodged au Greffe on 7th October 2019
by the Connétable of St. Mary**

STATES GREFFE

1 PAGE 26, ARTICLE 3 –

- (1) Before the existing draft Article 15G to be inserted by Article 3, insert –

“15G Application of Part 3B

- (1) Subject to paragraph (2), Articles 15H to 15O do not apply in respect of any employee of an employer where the total number of that employer’s employees is 5 or less.
- (2) Paragraph (1) does not prevent the inclusion, in a contract between an employer and an employee in respect of whom that paragraph applies, of any term or condition conferring a right equivalent to any right conferred by an Article mentioned in that paragraph.
- (3) For the avoidance of doubt, in this Article “employee” includes any person employed by any other person, regardless of the number of hours worked or whether the employment is permanent or temporary or part-time or full-time.”.
- (2) Renumber existing draft Articles 15G to 15N as Articles 15H to 15O.

2 PAGE 31, ARTICLE 4 –

- (1) After Article 4(2) insert –

“(3) For the heading to Article 55A, there is substituted –

“Interpretation and application of Part 5A”.”.

- (2) Renumber existing Article 4(3) as (4), and after that paragraph insert –

“(5) After Article 55A(3), there is inserted –

“(4) Except for this paragraph and as provided by paragraphs (5) to (7), the provisions of this Part do not apply in respect of any employee of an employer where the total number of that employer’s employees is 5 or less.

(5) In respect of the employees of such an employer as mentioned in paragraph (4), this Part applies as though it had not been amended by Article 4(1), (2), (4) and (6) to (13) of the Employment (Amendment No. 11) (Jersey) Law 201-, but as though instead –

(a) in Article 55D –

- (i) sub-paragraph (2)(a) and paragraphs (3) to (5) were deleted, and
- (ii) in sub-paragraph (2)(b) after “employment” there were inserted “, except terms and conditions about remuneration,”;

- (b) in Article 55K –
 - (i) sub-paragraph (4A)(b) and paragraphs (4B) to (4D) were deleted, and
 - (ii) in sub-paragraph (4A)(c) after “employment” there were inserted “, except terms and conditions about remuneration,”; and
 - (c) Chapter 5, and references in Chapter 6 to parental leave and rights to such leave as conferred by that Chapter, were deleted.
- (6) Paragraphs (4) and (5) do not prevent the inclusion, in a contract between an employer and an employee in respect of whom paragraph (4) applies, of any term or condition conferring a right equivalent to any right conferred by a provision of this Part as it applies without the derogation made by paragraph (4) and without any such modification as made by paragraph (5).
 - (7) For the avoidance of doubt and for the purposes of paragraphs (4) to (6), “employee” in those paragraphs includes any person employed by any other person, regardless of the number of hours worked or whether the employment is permanent or temporary or part-time or full-time.”.
- (3) Renumber existing paragraphs (4) to (11) of Article 4 accordingly.

CONNÉTABLE OF ST. MARY

REPORT

The purpose of this amendment is to support the small businesses who cannot sustain the disruption caused by the existing parental leave legislation, and to prevent an unacceptable further disruption that will compound that by doubling the leave period.

All businesses are struggling at the moment with lack of available staff. Doubling the leave period from 26 weeks to 52 weeks for both parents is irresponsible, given that we have a recruitment problem in the Island. It has now become impossible to recruit resident and non-resident staff, and because of this there are plans to look further afield to entice semi-skilled and skilled workers from Nepal and other places.

This is clearly a venture that should not be considered at the moment, especially as the result of Brexit remains uncertain.

It could be possible for large corporations to absorb the 6-week payment to the female employee. However, the replacement recruitment of staff creates a massive problem.

The States, as an example, would not suffer the same result as the burden that would be placed on the taxpayer.

A simplified explanation of this amendment is as follows, which is to apply to businesses employing 5 and less staff.

- (A) Parental leave to apply to birth mother only totalling 26 weeks as at present.
- (B) No payment to be made by the employer with regard to the present 6 weeks currently paid.
- (C) Rescind any payment and parental leave offered to the father or partner of the birth mother. This to apply to the current regulation and the Minister for Social Security's proposal.

It is to the discretion of the employer should they wish to offer any additional incentive, and minimal conditions should be stipulated in the work contract.

Financial and manpower implications

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

Re-issue Note

This publication is re-issued in order to correct paragraph references "(8) to (15)" by replacing them with "(6) to (13)" within the inserted paragraph (5) on page 2.