

STATES OF JERSEY



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

**Lodged au Greffe on 7th October 2019
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

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

1 PAGE 34, ARTICLE 4(7) –

In the substituted Article 55D(1) for “52” substitute “26”.

2 PAGE 37, ARTICLE 4(7) –

In the substituted Article 55F –

(a) in sub-paragraphs (2)(a) and (b) for “28” in each place substitute “42”;

(b) for sub-paragraphs (4)(b) and (c) substitute –

“(b) the characteristics of the employer such as the nature and size of the employer’s business;

(c) the implications in relation to other employees of the employer; and

(d) the requirement under Article 55D(5)(b) that the intended second and third parental leave periods must take place within the entitlement period.”.

3 PAGES 37 AND 38, ARTICLE 4(7) –

In the substituted Article 55G(2), in sub-paragraphs (a) and (b) for “28” in each place substitute “42”.

4 PAGE 40, ARTICLE 4(7) –

In the substituted Article 55K(1) and (3) for “28” in each place substitute “42”.

ECONOMIC AND INTERNATIONAL AFFAIRS SCRUTINY PANEL

REPORT

Part 1: To amend the parental leave entitlement from 52 weeks to 26 weeks.

Parental leave period

During its review of [P.17/2019](#), the Panel found that the proposals put forward by the Minister were based on a consultation which was not as thorough as it should have been. It did not achieve a representative balance of responses, particularly from employers, and more work should have been carried out to assess the impact of the existing legislation before the extensions were developed.

This led the Panel to make an overarching [recommendation](#) in its report that the Minister should withdraw Article 4 (the parental leave aspects of the legislation) in order to undertake an evidence-based review. This was subsequently rejected by the Minister in her [response](#) to the Panel's report.

In following up its review, the Panel has lodged this amendment to maintain the status quo of 26 weeks' leave. The Panel fully supports all other related aspects of the proposals, such as new parents being entitled to parental leave.

The Panel believes that proposing 52 weeks' leave is too extreme a move by the Government, particularly as the proposal already doubles the number of people eligible to leave, and the 52 weeks proposal would double again the burden on employers.

Insufficient analysis of the current rights

The Panel found that there has been no analysis of the impact of the current rights, which have only been in force since 1st September 2018 ([Key Finding 39](#)). The Minister responded to the Panel's finding as follows –

“No commitment was given to undertake a review between the two stages of legislation and the Forum did not recommend such a review. As the Forum Chair explained during the hearing with the Panel “The 2019 recommendations were always the Forum’s recommended targets and there was no “We think the recommendation is that you review in 2018”. That was not the Forum’s recommendation. 2018 and 2019 were inextricably linked. I think you will see from the recommendation it was only because it was such a short period of time and there happened to be an ability to ... we could have just said: “Let us just go straight to 2019”.”

Insufficient research undertaken

The Panel was disappointed that the only research undertaken was by the Employment Forum in its recommendation ([Key Finding 38](#)). The Forum's recommendation was based on the consultation responses and, other than providing an overview of parental leave rights in other jurisdictions, no other evidence or research was undertaken in terms of –

- Women in the workplace and the barriers they may face once they go back to work after a period of maternity leave.

- The number of people requesting part-time work or flexible working since family-friendly legislation was implemented.
- The number of males and females on zero-hour contracts.
- The economic effects of the legislation since it was implemented.

The Minister [responded](#) to the Panel’s finding –

“The Minister is satisfied that the Forum’s background research, public consultation and its detailed report on its recommendations provide a comprehensive review of the subject. Considerable background work, research and preparation goes into the Forum’s recommendations. In this case, that process was undertaken over a year.

As well as setting out examples of parental leave rights in other jurisdictions, a number of reports drawing international comparisons were taken into account. A summary of that research was set out in the Forum’s consultation paper.

In addition, survey questions were included in the 2016 Jersey Annual Social Survey specifically to provide statistics to inform this piece of work.”

The Panel accepts that questions were included in the 2016 Jersey Opinions and Lifestyle Survey; however, it notes that the survey found that, over a 5-year period, females took an average of 14 weeks’ unpaid leave and 15 weeks’ paid leave; and males took an average of 2 weeks’ unpaid leave and one week’s paid leave. The reasons preventing parents from taking more leave were split between financial reasons (52%), and length of leave limited by the employer (48%).

It is important to note that the survey was undertaken at a time when the leave period was 18 weeks’ maternity leave and 2 weeks’ unpaid parental leave for a man or woman (other than the mother) who had parental responsibility for the child. In 2018, extensions to the leave period were implemented which increased maternity, adoption, and parental leave to 26 weeks.

26 weeks’ parental leave

During its review, the Panel received a submission from the Jersey Child Care Trust which was concerned about whether there would be much uptake of the leave period beyond the 6 weeks paid element –

“Jersey Child Care Trust

As we understand the proposal for Jersey is to offer up to 52 weeks leave for BOTH parents, of which the first 6 weeks will be paid in full by the employer. If we compare this to the UK’s shared parental leave (where the leave is shared and more weeks are paid), whilst Jersey is offering a longer period of leave to both parents the paid element is still limited to just 6 weeks. Considering the reported uptake of the UK leave provision is just 2% we would be concerned that we would see an even lower uptake here in Jersey beyond the paid 6 week period. The reasons given for the low uptake in the UK are the cultural and financial barriers, which we think would be present here too – so will it really

improve gender balance in childcare roles? Only for those families where the father can sacrifice their salary and faces no cultural barriers in taking extended periods of leave to care for their children.

[...]

On the whole it's a generous policy on paper but the reality for most families is that the financial barrier will be too great for them to benefit from the extended unpaid leave element. It would be fairer to see a statutory maternity/parental pay provision in place that could help extend the period of paid leave for parents beyond 6 weeks."

This view is supported by evidence compiled by the Organisation of Economic Co-operation and Development ("OECD"). Its report explains that the evidence supports the provision of 6 months' paid leave available to both parents –

"There is rigorous research on the effects of paid parental leave on health, economic, and gender equality outcomes. The best available evidence strongly supports making 6 months of paid leave available to parents of infants, with 3 months as a minimum bar for supporting health and women's economic opportunities. While most research focuses on paid maternity or maternal leave, there is a growing body of literature around the importance of paid leave for fathers as well."

It is also interesting to note that Luxembourg is identified as the country making most progress for women in work. In 2017, it introduced new [parental leave laws](#) which included a maximum of 6 months' full-time parental leave.

The Panel acknowledges that extensions beyond the 6 weeks paid element are unlikely to be brought forward in the current economic climate. However, it is worth noting that there is uncertainty over whether parents will be able to afford to take a larger proportion of unpaid leave, even if 52 weeks is offered as the statutory maximum.

Effect on employers in the current economic climate

The Panel's review also found that 52 weeks' parental leave gave rise to unanswered questions about its effect on employers, particularly small and third sector organisations, who, in an extremely tight employment market, could find themselves struggling to operate.

The Panel would like to draw Members' attention to the recent [updated assumptions](#) from the Fiscal Policy Panel that Brexit (and other external factors) "*is likely to put more downward pressure on Jersey's economy in 2020 than was anticipated six months ago. As a result, the Panel has downgraded its forecast for 2020*". Increasing the parental leave period to 52 weeks will put a burden on businesses, and in times of uncertainty in the current economic climate, the Panel believes that remaining at 26 weeks will have less of a negative impact on the Island's economy.

Understanding the impact of the parental leave period

The Panel also believes that further analysis is required before the leave period is extended. It is important that the Government understands the impacts of proposed legislative changes first, before they are enshrined in law. By remaining at 26 weeks, this will not prevent businesses from offering enhanced periods of leave to their employees, as is already the case in some organisations.

In conclusion, the Panel would like to emphasise the importance of family-friendly legislation. There are many new provisions in the proposals contained in [P.100/2019](#) that the Panel is fully supportive of, namely –

- Parental leave for all parents
- Unlimited attendance for antenatal care (up to 10 hours paid)
- Provisions for breastfeeding
- Paid absence on health and safety grounds.

At a time of great economic uncertainty, this amendment seeks to strike balance. It does so by initiating the cultural change that will come with the introduction of parental leave, but without placing too great a burden on the Island's businesses. It therefore seeks to maintain the status quo by keeping leave at 26 weeks until further analysis of its effects is undertaken.

Parts 2(a), 3 and 4: To increase the notice period from 28 days to 42 days.

Notice period to change previously agreed parental leave dates

The Panel has lodged an amendment to increase from 28 days to 42 days the notice period that an employee must give to their employer to vary their parental leave dates.

Although employees going on parental leave must notify their employer 15 weeks before the birth of their child of their intended blocks of leave, they are able to change their leave periods by giving a period of notice to their employer.

Under the original proposals contained in [P.17/2019](#), the notice period was 14 days. In the revised proposals, the Minister acknowledged the concerns raised by employers, and agreed to increase the period to 28 days' notice.

The Panel believes that the increased notice period is still too short. When considering this amendment, the Panel had originally intended to propose an increase of 56 days, however, as a compromise, has proposed 42 days.

Implications for employers

As identified in its review of the original proposals, giving employers too short notice of a change in leave periods will create cost and resource implications in terms of –

- Providing temporary cover for interchangeable leave periods, and managing those periods, should changes to previously agreed blocks of leave be made.

- Training costs associated with temporary employees, particularly employed to cover specialist roles, and the implications this would have if changes to previously agreed blocks of leave were made.
- Recruitment and possible accommodation costs in employing people on a temporary basis and, if they are unable to recruit to cover changes to previously agreed blocks of leave, managing any shortfalls this would create within the existing workforce.
- In a very tight labour market, the difficulty in recruiting staff at very short notice.

Implications for other employees within an organisation

In addition to the implications mentioned above, a number of concerns were raised by stakeholders during the review as to the impact on other employees within a business. It is possible that the interchangeable blocks of parental leave could impact on other employees in respect of their holiday leave. For example, conflict could arise if an employee's previously agreed holiday leave was affected by a change in another employee's parental leave.

In an instance when an employer has employed a temporary employee to cover a block of leave, it is expected that increasing the notice period will enable the employer to give that relief employee a minimum of one month's notice of any changes.

Increasing the notice period to 42 days will minimise the risk of other employees within an organisation being affected. It is also expected that this amendment will help employers to manage the (interchangeable) blocks of leave for their workforce by giving them more notice of when that leave might change.

Part 2(b): Under Article 55F to insert the words “the implications in relation to other employees of the employer”.

In the draft Law, Article 55F(4) currently reads –

- “(4) Where notification of a new date is given under paragraph (2), the employer must take all reasonable steps to accommodate an employee's intended second and third parental leave periods, and in determining what steps are reasonable, the matters to be considered include –
- (a) the extent of the financial, administrative and other resources available to the employer, including any resources provided by a third party, for the purpose of taking such steps;
 - (b) the characteristics of the employer such as the nature and size of the employer's business; and
 - (c) the requirement under Article 55D(5)(b) that the intended second and third parental leave periods must take place within the entitlement period.”

The Panel has lodged an amendment to insert a new sub-paragraph to include the words –

“the implications in relation to other employees of the employer”.

During the Panel’s review of the original proposals, a number of stakeholders raised concerns about the impact the blocks of leave could have on other employees within an organisation. When an employer is taking all reasonable steps to accommodate an employee’s intended second and third parental leave periods, the Panel has inserted a sub-paragraph to ensure that due notice is taken of other employees within an organisation. In particular, this would include those employees who may have been employed specifically to cover another employee’s workload during their parental leave period.

Financial and manpower implications

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