

STATES OF JERSEY



MATERNITY LEAVE: RIGHTS OF EMPLOYEES (P.104/2014) – COMMENTS

Presented to the States on 11th July 2014
by the Minister for Social Security

STATES GREFFE

COMMENTS

The Minister has proposed an amendment to the Employment (Jersey) Law 2003 (P.109/2014) that would give women the right to take a period of maternity leave. The Minister's proposal is part of a balanced package of important new family-friendly rights that include adoption leave, parental leave, paid time off work to attend antenatal appointments and the right to request flexible working.

The Minister's Proposition sets out the reasons why the Minister prefers his proposals for a first stage of family-friendly legislation and why he would propose to extend the rights as part of a second stage of legislation, as the Employment Forum recommended. Some of the details of the Minister's Proposition are set out below for the convenience of Members –

- (a) The Proposition seeks legislation that would give women the right to 26 weeks' maternity leave with no qualifying period of employment.

Deputy G.P. Southern of St. Helier has portrayed the Minister's proposals as complex, and he proposes that there should be no qualifying period on grounds of simplicity. However, the proposed rights are straightforward. A woman would have the right to either –

- 8 weeks' leave from Day 1 of employment; or
- 18 weeks' leave if she has 15 months' service with her employer.

The Minister believes that it is vital that we put in place this first stage of new rights in 2015 as a sensible first step that businesses can accommodate, along with protection against sex discrimination and the proposed improvements to maternity benefits, before we look to extend the periods of leave in the future. The Minister for Health and Social Services has recommended that Members support the Minister's proposition as "*an essential and important first step in securing the health and well-being of new mothers and their babies.*".

By international standards, the proposed new rights are modest. Maternity and sex discrimination legislation in the UK, for example, has evolved over decades. However, the significance of the Minister's proposals should not be underestimated, for example, giving the right for a woman to return to the same job after maternity leave and protection against dismissal on grounds of pregnancy from Day 1 of employment.

There is some evidence that whilst longer periods of maternity leave have a positive effect on the take-up of maternity rights, more time out of the labour market potentially has a negative effect on women's longer-term career prospects (e.g. earnings) and the likelihood of a return to work. It will be important to review these effects in more detail if the period of leave is to be extended in the future. A shorter period of leave is likely to be more readily accommodated by employers, requiring less planning in advance and potentially having less impact on the business and other staff. The employees' return to work after a shorter period of leave is likely to be more informal and straightforward than re-introducing a member of staff after a longer period of leave.

While some people will consider that the first stage of proposals should go further, it is important that we have the opportunity to assess the impact and effectiveness of the new rights through further consultation; particularly as any extension of family-friendly rights is likely to bring more significant funding and administrative implications, both for employers and for the States of Jersey. We have seen from the recent experience in Guernsey that these fundamental workplace protections for women have been delayed for one year or more because of a proposal to increase funding for the Maternity Allowance.

In addition, in order to be compatible with Article 14 of the European Convention on Human Rights, any entitlement to a longer period of parental leave for the purpose of allowing a parent to look after the child at home may need to be made available to either parent, rather than being restricted just to mothers.

- (b) The Proposition seeks to increase the period for which Maternity Allowance is payable from 18 weeks to 26 weeks.

The Proposition states that the Social Security Fund showed a net balance of income over expenditure of £7 million at the end of 2012. The Deputy appears to be suggesting that the Fund can tolerate the additional benefit costs with no increase in contributions. The Minister considers that it is irresponsible to bring a Proposition of this nature without a proposition to achieve the additional funding of around £1.5 million.

The Minister's Proposition for changes to the Maternity Allowance (P.106/2014), that would allow greater flexibility as to when women can start their maternity allowance period, is expected to lead to an increase in the number of weeks' benefit that are claimed, and so the cost to the Social Security Fund would already increase by a maximum of £341,700.

The Deputy will be aware that the recently published actuarial review of the Social Security Fund identified that the annual cost of benefits and pensions paid out would exceed the contribution income received into the Fund within the next 2 years. The actuary has recommended that action should be taken to adjust the social security scheme following the next review, which will take place during 2016. It would be appropriate, therefore, to consider the option of additional funding for maternity allowance at that time.

- (c) The Proposition asks the Minister to bring for approval the necessary amendments to the legislation.

The Minister has prepared legislative amendments that he considers to be an appropriate first step in family-friendly rights. The Minister has stated in the report accompanying his Proposition that he is committed to instigating a review of the legislation that would commence one year after the new rights come into force (i.e. September 2016), which would include consultation on a second stage of family-friendly rights with extended periods of leave. It would be sensible to co-ordinate this with the review of the Social Security Fund planned for 2016 and to consider the option of additional funding for Maternity Allowance at that time.

If Members were to support P.104/2014, the Minister would have to defer the debate of his proposition for family-friendly rights (P.109/2014) as well as his proposition for improvements to the Maternity Allowance (P.106/2014), in order to consider the

further amendments that would be required to the Employment Law and to the Social Security Law, particularly the requirement for funding. This could make it difficult to achieve the target date of 1st September 2015 for the amendment to the Employment Law and sex discrimination legislation to come into force.

Members are requested to oppose this Proposition and support the Minister's Proposition.