

STATES OF JERSEY

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DRAFT EMPLOYMENT (AMENDMENT No. 2) (JERSEY) LAW 200

Lodged au Greffe on 20th October 2006
by Deputy G.P. Southern of St. Helier

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 2)(JERSEY) LAW 200

REPORT

Members will recognise this amendment as similar to that which I unsuccessfully brought to the States in May as P.270/2005. This amendment deals with one of the many reservations which continue to be expressed by trade union representatives over Employment Laws and their associated Codes of practice, the failure of the island's employment laws to address the issue of an individual employee's right to representation in a grievance or disciplinary matter.

In its Consultation document "Fair Play in the Workplace: Trade Union Issues" issued in July 2001, the Employment and Social Security Committee set out a *Charter of Basic Trade Union Rights in Jersey* as follows –

Every worker should have the right:

1. to join a trade union and not be discriminated against on the grounds of union membership or participation in union activities;
2. to be a trade union representative and have reasonable time off for trade union duties and not be discriminated against on these grounds;
3. to be represented by a trade union, individually or collectively on any work issue;
4. to take industrial action to protect his or her occupational, social, economic or legal interests without the threat of dismissal or discrimination;
5. to picket at the workplace relevant to the dispute where the worker is employed.

It is the belief of the employees' representatives in Jersey that the employment laws and codes of practice as currently drafted do not even reach the standards of this Charter under workers' right 3, right to representation.

In any dealings with authority, where a fundamental imbalance in power exists, for example, in a court of law, this right to representation is accepted as fundamental. Even at a hearing of a parish welfare board, it is accepted that a parishioner may be accompanied and represented by his or her deputy, or a friend. The right of an individual to be represented in a disciplinary or grievance procedure is widely recognised and accepted as "best practice" by many employers. This amendment serves merely to place this best practice where it belongs, in the island's employment law.

I previously sought the strongest possible terms for my 2005 amendment, extending the time limit for complaint, increasing the maximum compensation which could be paid when a complaint was upheld and even including the right to reinstatement if dismissal was involved. Whilst few members strongly contested the principles underlying that amendment in May, many argued that this strong approach was too draconian, and the amendment was defeated.

This new amendment inserts the right to representation into the law whilst reducing the sanctions and conditions to the level previously contained in the original law.

There are no manpower or financial costs to this amendment.

Explanatory Note

This draft Law would amend the Employment (Jersey) Law 2003 to confer upon an employee the right to be represented by any person of his or her choice in a disciplinary matter or grievance relating to his or her employment. In particular, it gives the employee the right to be represented by a representative of a trade union.

If the employer denies or threatens to deny the employee that right, the latter may bring a complaint before the Jersey Employment Tribunal.

If the Tribunal is satisfied that the complaint is well-founded, it must make a declaration to that effect and award the employee such compensation as it thinks fit (not exceeding 4 weeks' pay). If the employer has taken any action against the employee in respect of the disciplinary matter or grievance (otherwise than by way of dismissing the employee), the Tribunal must also declare that action void.

Moreover, if the employer dismisses the employee in consequence of the disciplinary matter or grievance in respect of which the employer has denied his or her right to representation, the dismissal will be deemed to be unfair. The employee will then be entitled to additional compensation in accordance with Part 7 of the principal law (which relates to unfair dismissals).

The amending Law is set out in the following way –

Article 1 is an interpretation clause.

Article 2 provides that an employee who is dismissed in consequence of disciplinary or grievance proceedings in which he or she is denied the right to representation is to be taken to have been unfairly dismissed.

Article 3 consequentially amends Article 70 of the principal Law.

Article 4 consequentially amends Article 73 of the principal Law.

Article 5 consequentially amends Article 74 of the principal Law.

Article 6 inserts the new Part 7A into the principal Law. This gives an employee the statutory right to be represented in disciplinary and grievance proceedings. It allows the employee 8 weeks in which to make a complaint to the Tribunal in respect of a denial or threatened denial of that right. It also requires the Tribunal to award up to 4 weeks' pay by way of compensation and to set aside any action taken by the employer (other than dismissal).

Article 7 provides for the citation and commencement of the amending Law. It will come into force 7 days after its registration in the Royal Court.



Jersey

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Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 68 amended</u>
<u>3</u>	<u>Article 70 amended</u>
<u>4</u>	<u>Article 73 amended</u>
<u>5</u>	<u>Article 74 amended</u>
<u>6</u>	<u>New Part 7A inserted</u>
<u>7</u>	<u>Citation and commencement</u>



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 2)(JERSEY) LAW 200

A LAW to amend further the Employment (Jersey) Law 2003.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, “principal Law” means the Employment (Jersey) Law 2003^[1].

2 Article 68 amended

(1) After Article 68(1) of the principal Law there shall be inserted the following paragraph –

“(1A) An employee who is dismissed shall also be regarded for the purposes of this Part as unfairly dismissed if –

- (a) the employer has denied the employee the right conferred by Article 78A to be represented in a disciplinary matter or grievance; and
- (b) the employee is dismissed in consequence of that disciplinary matter or grievance.”.

(2) In Article 68(3) of the principal Law, for “paragraph (1)” there shall be substituted “this Article”.

3 Article 70 amended

For Article 70(c)(i) of the principal Law, there shall be substituted the following sub-paragraph –

“(i) Article 68(1) (read with Article 68(2) and (3)) or Article 68(1A) (read with Article 68(3)), or”.

4 Article 73 amended

In Article 73(2) of the principal Law, after “68(1)” there shall be inserted “or (1A)”.

5 Article 74 amended

In Article 74(2) of the principal Law, after “68(1)” there shall be inserted “or (1A)”.

6 **New Part 7A inserted**

After Article 78 of the principal Law, but before Part 8 of that Law, there shall be inserted the following Part –

“PART 7A RIGHT TO REPRESENTATION

78A Right to representation

- (1) An employee shall have the right, in any disciplinary matter or grievance relating to his or her employment, to be represented by any person whom the employee wishes to represent the employee.
- (2) In particular, the employee shall have the right in a disciplinary matter or grievance to be represented by a representative of a trade union, but this paragraph does not limit the generality of paragraph (1).

78B Complaints to the Tribunal

- (1) Subject to paragraph (2), a complaint may be presented to the Tribunal against an employer, by any of his or her employees –
 - (a) that the employer has denied the employee the right conferred by Article 78A; or
 - (b) that the employer has threatened to deny the employee that right.
- (2) The Tribunal shall not consider a complaint under this Article unless it is presented to the Tribunal –
 - (a) before the end of the period of 8 weeks beginning with the date of the denial or threatened denial of the right; or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.

78C The remedy: compensation

- (1) Where, on a complaint under Article 78B, the Tribunal finds that the grounds of the complaint are well-founded, the Tribunal shall –
 - (a) make a declaration to that effect; and
 - (b) make an award that the employer pay to the employee such sum, not exceeding 4 weeks’ pay, as the Tribunal shall determine.
- (2) Where, on a complaint under Article 78B, the Tribunal finds that the grounds of the complaint are well-founded, and the employer has in respect of the disciplinary matter or grievance to which the complaint relates taken any action against the employee, the Tribunal shall also make a declaration that the action so taken is void.
- (3) However, paragraph (2) does not apply to action by way of dismissing the employee.”.

7 **Citation and commencement**

- (1) This Law may be cited as the Employment (Amendment No. 2) (Jersey) Law 200-.

(2) This Law shall come into force on the seventh day after its registration.

