

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 21st April 2015
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

REPORT

The Draft Employment (Amendment of Law) (Jersey) Regulations 201- (the “draft Regulations”) would remove the 8 hour threshold from the Employment (Jersey) Law 2003 (the “Employment Law”) with effect from 1st September 2015. An 8 hour threshold currently applies to 3 specific employment rights –

1. **Written terms of employment** – Article 6 sets out an exception so that the right to written terms of employment does not apply to an employee whose normal hours of employment are less than 8 hours per week. The draft Regulations would amend the Employment Law so that an employee would not be required to normally work a minimum number of hours per week in order to be entitled to written terms of employment in accordance with Part 2 of the Employment Law.
2. **Minimum notice period on termination of employment** – Article 57(2) provides that a week governed by an employment contract for 8 hours or more per week counts in computing an employee’s period of continuous service for the purpose of calculating how much notice must be given by the employer or employee when terminating employment. If a week is not governed by an employment contract for 8 hours or more per week, it breaks continuity of employment. The draft Regulations would amend the Employment Law so that any week during which the employee’s relations with the employer are governed by a contract of employment will count in computing length of service.
3. **Unfair dismissal** – Article 73(4) provides that the right to protection against unfair dismissal does not apply to the dismissal of an employee whose basic contractual hours of employment are less than 8 hours per week. The draft Regulations would amend the Employment Law so that an employee need not be contracted to work a minimum number of hours per week in order to be entitled to protection against unfair dismissal.

All of the other Employment Law rights (annual leave, rest days, payment of wages, minimum wage and redundancy pay) are not subject to an 8 hour threshold. For example, in the calculation of redundancy pay, **any weeks** that are governed by a contract of employment are counted as continuous employment.

It has always been anticipated that the 8 hour threshold would be removed from the Employment Law when protection against sex discrimination is introduced because women are more likely than men to work part-time. The removal of the 8 hour threshold also fits with family-friendly policies, specifically the introduction of the

right to request flexible working from 1st September 2015. It would be inconsistent to have one aspect of the Employment Law that is intended to support employee requests for more flexible working patterns (such as reduced weekly hours), while other aspects of the Employment Law continue to penalise, rather than protect, employees if their hours are less than 8 per week.

As part of the Minister's recent technical consultation on the Draft Discrimination (Sex and Related Characteristics) (Jersey) Regulations 201- (*see* P.40/2015), stakeholders were invited to comment on the proposal to remove the 8 hour threshold, and those who responded were supportive of the proposed change. No concerns were raised, but it was noted that guidance will be required. The Jersey Advisory and Conciliation Service will provide additional guidance and highlight any new obligations that affected employers should be aware of, including to ensure that written terms of employment are provided to employees where they were not previously required.

The UK abolished its equivalent minimum hours threshold in the early 1990s as a result of a European Court of Justice case relating to part-time work, in which the requirement to work a minimum number of hours per week was found to be indirect sex discrimination. Prior to this, in order to qualify for a wide range of employment rights, an employee generally required a minimum of 2 years' service, working at least 16 hours each week, or 5 years' service working at least 8 hours a week, continuously with the same employer. The UK's Employment Protection (Part-time Employees) Regulations 1995 removed the minimum hours thresholds in respect of the full range of employment rights, including unfair dismissal, redundancy pay, written terms of employment and pay slips.

It is not intended that any change would be made to the 8 hour threshold that applies for the purposes of the Social Security (Jersey) Law 1974, which provides a threshold for "inconsiderable employment". It is not unusual to set different thresholds for determining whether a person is treated as employed or not for different purposes, such as employment rights, income tax liability, and social security classification.

The Minister intends that these draft Regulations would come into force on the same date – 1st September 2015 – as the new family-friendly employment rights and the legislation to protect against discrimination on grounds of sex.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations amend the Employment (Jersey) Law 2003 so that –

- (a) the rights conferred by Part 2 of that Law are extended to individuals who are employed for less than 8 hours a week;
- (b) a week during which an employee is employed for less than 8 hours counts towards the employee's period of continuous employment; and
- (c) Article 61 of the Law (the right not to be unfairly dismissed) is extended to employees whose basic contractual hours of employment are less than 8 hours a week.



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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 104(3B) of the Employment (Jersey) Law 2003¹, have made the following Regulations –

1 Employment (Jersey) Law 2003 amended

In the Employment (Jersey) Law 2003² –

- (a) Article 6 is repealed;
- (b) in Article 57(2) the words “for 8 hours or more weekly” shall be deleted;
- (c) Article 73(4) is deleted.

2 Citation and commencement

These Regulations may be cited as the Employment (Amendment of Law) (Jersey) Regulations 201- and shall come into force on 1st September 2015.

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- ¹ *chapter 05.255*
² *chapter 05.255*