

STATES OF JERSEY



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 15) (JERSEY) LAW 202-

**Lodged au Greffe on 1st December 2023
by the Minister for Social Security
Earliest date for debate: 16th January 2024**

STATES GREFFE



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European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security, the provisions of the Draft Employment (Amendment No. 15) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy M.E. Millar of St. John, St. Lawrence and Trinity**
Minister for Social Security

Dated: 30th November 2023

REPORT

Introduction

In April 2023 the Jersey Employment Forum presented its Report and Recommendations on the operation and regulation of zero hour contracts in Jersey, together with a review of specific employment protections, to the Minister for Social Security.

One of the Forum's recommendations related to amending the [Employment \(Jersey\) Law 2003](#) to make provision for an employee to request a change in their terms and conditions of employment, to reflect the reality of their working pattern. The Minister accepted this recommendation in her response ([R.70/2023](#)) to the Forum's Report and requested law drafting to give effect to it.

This Report outlines the effect of the amendments to the Employment Law and the reasons for them.

The Amendments to the Employment Law relating to settled work patterns

The amendments provide that an employee working a settled, consistent pattern of regular hours, which is not currently reflected in their contract of employment, may request a change to their contract to reflect that pattern.

In its Report, the Employment Forum drew attention to the fact that its consultations suggested that some employees working on a zero hour contract – which by its nature does not guarantee a fixed or settled number of hours – were nonetheless working regular hours. The Forum concluded that this was an unfair practice and that such employees should have the opportunity to have their actual working arrangements formally recognised.

The amendments will apply to those employees employed on a zero hour contract as well as those not.

The Forum's recommendation – reflected in the drafted amendments – is that the settled pattern of work has to be evidenced over a significant period of time (the amendment prescribes a period of 6 months) and that one request to change may be made in a 12-month period; that the reasons for a refusal by an employer to agree a request for a change to the employment contract should be tightly circumscribed to reflect the fact that a consistent and settled pattern of working hours provides strong evidence and presumption for a change in employment contract terms; and that there should be an opportunity for an employee to be able to request a review of the refusal and ultimately to be able to make a claim to the Employment Tribunal.

An employer who fails to give the employee new particulars of employment within 4 weeks of the request for an amendment being granted will be subject to a criminal penalty of a fine of up to £10,000.

Examples of when the new right might be exercised in a zero hour contract situation and a non-zero hour contract situation may be helpful.

The new right would cover an employee working to a zero hour contract in the hospitality sector who has regularly worked 16 hours on a Saturday and Sunday for the last 6 months. The employee will have the right to request a contract that specifies a 16-hour working week.

A non-zero hour contract example would be the case of an employee contracted to work three days out of five during a Monday to Friday working week, who in practice always works Monday, Tuesday and Wednesday and wishes to formalise that working pattern. The employee will have the right to request a contract that specifies a working week of Monday, Tuesday and Wednesday.

Amendment to the flexible working provisions of the Employment Law

The Minister is also taking the opportunity to amend the current provision in the Law relating to the number of times an employee may exercise their right to request a change to their working arrangements in a 12-month period.

Again, the Minister accepts the Forum's recommendation in this regard. If this amendment is agreed, an employee will henceforth have the right to make two requests in a 12-month period for a change in working arrangements, rather than one as at present. The Minister recognises the value both to employers and employees of flexibility in working patterns. Flexible patterns not only contribute to the success of a business and the ability to retain experienced employees who might otherwise be a loss to the business, but also more generally support families and the community in creating a good work/life balance.

Financial and staffing implications

There are no financial or staffing implications arising from this Proposition.

Human Rights

No human rights notes are annexed because the Law Officers' Department have indicated that the draft Law does not give rise to any human rights issues.

EXPLANATORY NOTE

This Law, if passed, will amend the Employment (Jersey) Law 2003 (“the Law”) to allow a person to request that the particulars in the statement of the terms of their employment are amended to reflect a settled pattern of work.

Article 2 inserts new Articles 3A and 3B into the Law. Article 3A provides an employee with the right to request amended particulars if the particulars are flexible in relation to hours or place of work but the employee has had a settled pattern of work for at least 6 months. Such a request may be made once in a 12-month period. An employer may only refuse the request on limited grounds: the amendments do not reflect the employee’s work pattern, the change would have a detrimental effect on the employer’s business, the employer has reasonable grounds to consider that the employee’s work pattern will change in the next 4 weeks, the employee’s contract ends within the next 4 weeks. Article 3B sets out the initial process to be followed if the employer refuses to make the amendment.

Articles 3 to 5 make consequential amendments so that a statement that contains particulars that have been amended under Article 3A or 3B is subject to the same requirement to be updated if it changes and may be referred to the Tribunal.

Article 6 amends Article 9 of the Law to make it an offence for an employer to fail to give the employee a written statement of the amended particulars within 4 weeks if the request for an amendment is granted. The penalty for the offence is fine of up to level 3 on the standard scale (£10,000).

Article 7 amends Article 15A of the Law, which allows a person to request a change in the terms and conditions of their employment, to allow 2 applications in a 12-month period instead of just one.

Article 8 provides the citation and that the Law comes into force 7 days after registration.



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A **LAW** to amend further the [Employment \(Jersey\) Law 2003](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

1 [Employment \(Jersey\) Law 2003](#) amended

This Law amends the [Employment \(Jersey\) Law 2003](#).

2 **Article 3A (right to request amendment of particulars in statement of terms of employment) and Article 3B (review of refusal to amend particulars in statement of terms of employment) inserted**

After Article 3 there is inserted –

“3A Right to request amendment of particulars in statement of terms of employment

- (1) If the particulars in a statement under Article 3 or 4 provide for flexibility in relation to hours or place of work and the employee has had a settled work pattern (whether formally agreed with the employer or not) for at least 6 months immediately before the request, the employee has the right to request that those particulars are amended to reflect that settled work pattern.
- (2) A request under this Article must –
 - (a) be made in writing;
 - (b) specify which particulars of the statement of the terms of employment are the subject of the request and how they should be amended; and
 - (c) state that it is a request under this Article for an amendment of those particulars.

- (3) The employee may request an amendment under this Article only once in a 12-month period.
- (4) The employer must consider the request and provide a response no later than 4 weeks after the day on which the request is made.
- (5) The employer may only refuse the request if –
 - (a) the amendments do not reflect the employee’s work pattern;
 - (b) the amendment to the statement of the terms of employment would have a seriously detrimental effect on the performance of the employer’s business;
 - (c) the employer has reasonable grounds to consider that the employee’s work pattern will change within 4 weeks of the date on which the request is made; or
 - (d) the employee’s contract of employment is due to end within 4 weeks of the date on which the request is made.
- (6) The employer must –
 - (a) if granting the request, no later than 4 weeks after granting the request, give to the employee a written statement reflecting the employee’s requested amendments to the particulars and specifying the date from which the statement is to take effect; or
 - (b) if refusing the request, give reasons for the refusal in writing.
- (7) If the person who would ordinarily consider the request is absent from work on the day on which the request is made, the 4-week period referred to in paragraph (4) commences on the day on which that person returns to work, or 4 weeks after the day on which the request is made, if that is sooner.
- (8) The employer and employee may agree to an extension of the 4-week period referred to in paragraphs (4) and (7).

3B Review of refusal to amend particulars in statement of terms of employment

- (1) If the employer refuses to amend the particulars as requested by the employee under Article 3A, the employee may request a review of the decision by giving notice in writing to the employer no later than 2 weeks after the day on which the employee was informed of the decision.
- (2) No later than 2 weeks after the day on which the employer receives the employee’s notice, the employer must –
 - (a) grant the request for the amendment of the particulars and, no later than 4 weeks after granting the request, give to the employee a written statement reflecting the employee’s requested amendments and specifying the date from which the amendment is to take effect; or
 - (b) hold a meeting with the employee, at a time convenient to the employer and employee and any person representing the employee, to discuss the request for the amended particulars.
- (3) If a meeting is held under paragraph (2)(b) the employer must –
 - (a) notify the employee of the employer’s decision about the request for the amendment of the particulars no later than 2 weeks after the meeting; and

- (b) if the employer grants the request for the amendment of the particulars, no later than 4 weeks after granting the request, give to the employee a written statement reflecting the employee's requested amendments and specifying the date from which the statement is to take effect.
- (4) The rights conferred by Article 78A and 78B apply in respect of any meeting held under paragraph (2)(b) as they do in respect of disciplinary and grievance hearings.
- (5) If the person who would ordinarily consider the request is absent from work on the day on which the notice of review is given, the 2-week period referred to in paragraph (2) commences on the day on which that person returns to work, or 4 weeks after the day on which the notice is given, if that is sooner.
- (6) The employer and employee may agree to an extension of the periods referred to in this Article except the period of 4 weeks within which the employer is required to provide a written statement.”.

3 Article 4 (change in terms of employment) amended

In Article 4 after paragraph (5) there is inserted –

- “(6) This Article also applies to a statement of terms of employment that has been amended under Article 3A or 3B.”.

4 Article 7 (references to the Tribunal) amended

In Article 7 –

- (a) in paragraph (1) after “Article 3 or 4” there is inserted “, or as requested under Article 3A or 3B,”;
- (b) in paragraph (2)(a) for “Article 3 or 4” there is substituted “Article 3, 3A, 3B or 4”.

5 Article 8 (determination of references) amended

In Article 8(1) and (2) for “Article 3 or 4” there is substituted “Article 3, 3A, 3B or 4”.

6 Article 9 (offences under this part) amended

In Article 9(1) after sub-paragraph (a) there is inserted –

- “(aa) after granting a request under Article 3A or 3B, fails to give the employee a written statement of the amended particulars;”.

7 Article 15A (entitlement to request change in the terms and conditions of employment) amended

In Article 15A for paragraph (5) there is substituted –

- “(5) An employee must not make more than 2 applications under paragraph (1) in 12-month period.”.

8 Citation and commencement

This Law may be cited as the Employment (Amendment No. 15) (Jersey) Law 202- and comes into force 7 days after it is registered.