

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT No. 6) (JERSEY) LAW 201-

**Lodged au Greffe on 5th October 2010
by the Minister for Social Security**

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 6) (JERSEY) LAW 201-

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. 6) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Deputy I.J. Gorst of St. Clement**

REPORT

This draft Law would amend the Employment (Jersey) Law 2003 (“the principal Law”), as amended by the Employment (Amendment No. 5) (Jersey) Law 2010 (subject to States approval of the Appointed Day Act (P.133/2010)).

The amending Law address 3 specific issues relating to redundancy.

1. Qualifying period of employment

The Law as drafted provides that an employee’s period of employment would be computed in accordance with Article 57 of the Employment Law, which states that only weeks in which an employee works for more than 8 hours will count. An employee who works for less than 8 hours per week would therefore not qualify for a redundancy payment.

Article 60B is amended so that employees working less than 8 hours per week would qualify for a redundancy payment, in accordance with the Minister’s original intention; that the right to a redundancy payment should apply to employees who have at least 2 years’ continuous service, irrespective of the number of hours worked per week. The intention was to avoid issues of indirect sex discrimination that might arise if employees who are contracted to work for less than 8 hours per week are excluded from protection.

2. Offer of alternative work – Article 60E

In the process of making some improvements to the draft legislation, 2 paragraphs were inadvertently removed from the draft Law. The effect is that an employee who is made a reasonable offer of the same or similar, suitable employment to start within 4 weeks of termination is free to refuse and take a redundancy payment. This was not the Minister’s intention.

Article 60E is amended so that an employee who is made a reasonable offer of the same, or similar, suitable employment to start within 4 weeks is not entitled to a redundancy payment, in accordance with the Minister’s original intention.

3. Collective Consultation – Article 60F

The Draft Employment (Amendment No. 5) (Jersey) Law 201-, as proposed to the States, provided that employers would be required to consult collectively with trade union representatives and elected staff representatives when proposing 21 or more redundancies in a 90 day period. The States, however, approved an amendment to provide that employers will be required to consult collectively when proposing to make 6 or more non-unionised employees, or 2 or more unionised employees, redundant in a 90 day period.

The Minister directed the Employment Forum to consult on the collective redundancy process in view of the impact of the reduced thresholds and, on the basis of strong consultation responses, the Forum recommended that the threshold should revert to 21 or more proposed redundancies in a capture period of 90 days.

The Minister is convinced that the low number of proposed redundancies, as currently drafted, does not represent a **collective** redundancy situation. Employers are already required to consult employees **individually** about redundancies to avoid claims of

unfair dismissal and associated penalties. Collective consultation is intended to provide an appropriate method of consultation about issues that will affect a large group of employees, rather than individual issues that would be discussed individually with employees.

The Minister proposes the following amendment –

- (i) The collective consultation threshold should be set at 12, so that an employer proposing to dismiss as redundant 12 (both unionised and non-unionised) employees within a capture period of 30 days is required to consult with union representatives and/or elected staff representatives. The Minister balanced the Forum's recommendation against the wishes of the States Assembly and proposes the Forum's suggested alternative as a pragmatic solution in view of some support from consultation respondents.

The Minister proposes the following amendments, in accordance with the Forum's recommendations –

- (ii) The maximum protective award shall not exceed 9 weeks' pay.
- (iii) On the basis that the process relates to collective rather than individual issues, a claim for a protective award may only be taken to the Tribunal by union representatives and elected staff representatives, rather than individuals, other than where representatives have not been appointed, but should have been.

Financial and manpower implications

There are no additional financial or manpower implications arising from this proposition. The existing budget for employment relations, which includes the cost of providing the Employment Tribunal and the Jersey Advisory and Conciliation Service, is sufficient for the implementation of this legislation.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 4th October 2010 the Minister for Social Security made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Social Security the provisions of the Draft Employment (Amendment No. 6) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This draft Law amends the Employment (Jersey) Law 2003 (“principal Law”) by making some changes in relation to the provisions on redundancy inserted in the principal Law by the Employment (Amendment No. 5) (Jersey) Law 2010.

Article 1 defines “principal Law”.

Article 2 amends the principal Law by setting out the way in which employment will be computed for the purposes of entitlement to a redundancy payment. Under the principal Law as amended by the Employment (Amendment No. 5) (Jersey) Law 2010, a person does not have any right to a redundancy payment unless that person has been continuously employed for a period of at least 2 years computed in accordance with Article 57 of the principal Law. Article 57 provides that any week in which a person works for 8 hours or less under a contract of employment does not count in computing a period of employment. The effect of Article 2 of this amending Law is that any week governed by a contract of employment counts in computing a period of employment regardless of the number of hours worked. Particular provisions in the principal Law relating to fixed term contracts, strikes and lock-outs in computing a period of employment also apply in computing the period of employment for the purposes of a redundancy payment.

Article 3 amends the principal Law in relation to renewed contracts by adding to the circumstances in which a person will not be entitled to a redundancy payment. Under the principal Law as amended by the Employment (Amendment No. 5) (Jersey) Law 2010, an employee is not entitled to a redundancy payment if the employee starts a new contract of employment within 4 weeks with the same employer unless the terms and conditions differ and either the employer or employee terminates the contract on the ground that the employment is not suitable for that employee. Article 3 amends the principal Law so that, in addition, an employee will not be entitled to a redundancy payment if he or she unreasonably refuses an offer of new employment, such offer being (a) on the same terms and conditions as the previous contract or (b) on different terms and conditions provided such offer constitutes an offer of suitable employment in relation to the employee. The offer must be for the contract to take effect within 4 weeks of termination of the previous employment.

Article 4 amends the principal Law in respect of when employers must comply with the collective consultation requirements. Under the principal Law as amended by the Employment (Amendment No. 5) (Jersey) Law 2010, if an employer is proposing to make redundant, within a period of 90 days or less, 2 or more employees belonging to a recognized trade union or 6 or more employees who do not belong to such a union, the employer is required to consult with trade union representatives and, in respect of any employees who are not members of a union, other employee representatives. Article 4 amends these requirements so that instead the employer is required to undergo such consultation if he or she is proposing to make 12 or more employees redundant, such dismissals taking place within a period of 30 days or less.

Article 5 amends the principal Law in respect of who may bring complaints to the Tribunal concerning the employer’s compliance with the collective consultation requirements and the requirements for electing employee representatives. Under the principal Law as amended by the Employment (Amendment No. 5) (Jersey) Law 2010, any affected employee, or any employee made redundant or any

appropriate representative may bring such a complaint. Article 5 amends these provisions so that a complaint may be brought only by an appropriate representative, unless there is no such representative, in which case any affected or redundant employee may bring a complaint. Article 5 also amends the period during which an employer may be required to pay remuneration to employees liable to redundancy if the Tribunal finds a complaint well-founded and makes a protective award. Article 5 reduces that period from 13 weeks to 9 weeks.

Article 6 sets out the title of the Law and provides that it will come into force on such day or days as the States may by Act appoint.



Jersey

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Arrangement

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Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 6) (JERSEY) LAW 201-

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, the “principal Law” means the Employment (Jersey) Law 2003¹.

2 Article 60B amended

For Article 60B of the principal Law there shall be substituted the following Article –

“60B Qualifying period of employment

- (1) An employee does not have any right to a redundancy payment unless that person has been continuously employed for a period of not less than 2 years ending with the effective date of termination.
- (2) The provisions of Article 57 shall not apply in computing the period of employment for the purposes of this Article and instead the period of employment shall be computed as follows –
 - (a) any week during the whole or part of which the employee’s relations with the employer are governed by a contract of employment shall count in computing a period of employment;

- (b) except so far as otherwise provided by the following provisions of this paragraph any week which does not count under sub-paragraph (a) shall break the continuity of the period of employment for the purposes of this Article;
- (c) if –
 - (i) a fixed term contract of employment has expired in accordance with its terms, and
 - (ii) another fixed term contract of employment is entered into by the same parties which takes effect not more than 26 weeks after the expiry of the previous fixed term contract of employment,

the interval between the 2 periods of employment shall not be taken to break the period of employment when computing its length, but the length of the interval shall not be counted in the computation;
- (d) a week shall not count under sub-paragraph (a) if, in that week, or any part of that week, the employee takes part in a strike;
- (e) the continuity of an employee’s period of employment shall not be broken by a week which does not count under this paragraph if in that week, or part of that week, the employee takes part in a strike;
- (f) the continuity of the period of employment shall not be broken by a week which does not count under this paragraph if, in that week, or in a part of that week, the employee is absent from work because of a lock-out by his or her employer.”.

3 Article 60E amended

In Article 60E of the principal Law –

- (a) in paragraph (2)(b)(ii) the word “be” shall be inserted after the words “as the case may”;
- (b) after paragraph (3) there shall be added the following paragraphs –
 - “(4) Where an offer (whether in writing or not) is made to an employee before the end of that person’s employment –
 - (a) to renew that person’s contract of employment; or
 - (b) to re-engage that person under a new contract of employment,

with the renewal or re-engagement to take effect either immediately on, or after an interval of not more than 4 weeks after, the end of that employment, the employee is not entitled to a redundancy payment if the employee unreasonably refuses the offer and paragraph (5) is satisfied.
 - (5) This paragraph is satisfied where –

- (a) the provisions of the contract as renewed, or of the new contract, as to –
 - (i) the capacity and place in which the employee would be employed, and
 - (ii) the other terms and conditions of that employment, would not differ from the corresponding provisions of the previous contract; or
- (b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.”.

4 Article 60F amended

In Article 60F of the principal Law –

- (a) for paragraph (1) there shall be substituted the following paragraph –

“(1) Where an employer is proposing to dismiss as redundant 12 or more employees, such dismissals taking place within a period of 30 days or less, the employer shall consult about the dismissals all the persons who are the appropriate representatives of the affected employees.”;
- (b) for paragraph (3) there shall be substituted the following paragraph –

“(3) For the purposes of this Article, the appropriate representatives of the affected employees are –

 - (a) in respect of any employee of a description in respect of which a trade union is registered under the Employment Relations (Jersey) Law 2007² and recognized in accordance with a code of practice approved under Article 25 of that Law, representatives of the trade union;
 - (b) in respect of each employee of a description in respect of which there is no trade union as described in subparagraph (a), whichever of the following employee representatives the employer chooses –
 - (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this Article, who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf,
 - (ii) employee representatives elected by the affected employees, for the purposes of this Article, in an election satisfying the requirements of Article 60G.”.

5 Article 60H amended

In Article 60H of the principal Law –

- (a) for paragraph (1) there shall be substituted the following paragraph –
- “(1) Where an employer has failed to comply with a requirement of Article 60F or Article 60G, a complaint may be presented to the Tribunal on that ground by any of the appropriate representatives or, if for any reason there are no such appropriate representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant.”;
- (b) in paragraph (6) for the number “13” there shall be substituted the number “9”.

6 Citation and commencement

This Law may be cited as the Employment (Amendment No. 6) (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different provisions.

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- ¹ *chapter 05.255*
² *chapter 05.260*