

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT No. 11) (JERSEY) LAW 201- (P.100/2019): AMENDMENT (P.100/2019 Amd.) – COMMENTS

**Presented to the States on 18th October 2019
by the Council of Ministers**

STATES GREFFE

COMMENTS

SCRUTINY AMENDMENT (P.100/2019 Amd.)

The Council of Ministers accepts Parts 2, 3 and 4 of the Panel's amendment:

- Changes to leave dates – increase notice period to 42 days
- Changes to leave dates – take account of other employees.

The Council of Ministers does not accept Part 1 of the Panel's amendment:

- Provide right to a maximum of 26 weeks' leave (rather than 52 weeks).

The Minister for Social Security's current proposals have addressed all of the issues raised by the Scrutiny Panel in their review. Significant changes have been included in the current draft Law to limit the right of the parent as to when and how leave can be taken. The draft amendment to the Employment Law will only come into effect if the Assembly also agrees to an extension of parental benefits, significantly reducing the financial cost of paid leave to employers. A full list of the changes that have been made is given in Appendix 1, with the Scrutiny recommendations at Appendix 2.

1. 26 WEEKS OF PARENTAL LEAVE

CSP1 – We will put children first.

The proposal for up to 52 weeks' parental leave acknowledges this Assembly's firm commitment to put children first, including the 1,001 critical days agenda.

The Scrutiny Panel's first amendment (Part 1) would retain the current entitlement to a maximum of 26 weeks of leave for each parent. This would provide a maximum of 1 year of leave if both parents took their maximum allocation.

The Minister's proposal to increase the maximum entitlement to 52 weeks of leave would provide up to 2 years of leave between 2 parents, in line with the 1,001 days agenda.

CSP3 – We will create a sustainable, vibrant economy and skilled local workforce for the future.

The Scrutiny Panel's first amendment (Part 1) would retain the current entitlement to a maximum of 26 weeks of leave for each parent. This will do nothing to address the significant gender pay gap in Jersey.

According to the Channel Islands Women in Work Index 2019 produced by PwC¹, if Jersey could increase its female employment rate by 8%, then GDP could be increased by 6% – the equivalent of £239 million.

The PwC report says that "*Gender equality is now on the government and business agenda in the Channel Islands, yet progress has been slow.*". According to the report, other benefits to increasing female employment include introducing fresh ideas and

¹ <https://www.pwc.com/jg/en/publications/women-in-work-index.html>

protecting's Jersey's international reputation as customers increasingly look at gender diversity when making decisions about where they will do business. The PWC report goes on to say –

“Getting this wrong could have significant reputational risk issues for a brand, not to mention the impact on attracting customers, investors and talent...As international finance centres, it needs to be obvious that Jersey and Guernsey are modern, forward-thinking and progressive places in which to do business.”

A key finding of the recent report from Scrutiny's Gender Pay Gap Review Panel (17th July 2019) is that *“The importance of flexibility in the workplace for parents was a common theme throughout the review. Flexibility for both parents is particularly important to women as it enables them to not have to make a choice between a career and starting a family.”*

Providing for up to 52 weeks of leave per parent allows families to start to think more flexibly about how they will share the responsibilities of a new baby. Cultural change will not come overnight, and the right to take a longer period of unpaid leave will have a limited impact on employers in the short term.

Limiting leave to 26 weeks per parent will do nothing to support fairness in the employment market or remove the barriers that many working mothers currently face.

If the statutory parental leave period is restricted to 26 weeks, parents will lose the right to return to the same job if they take a few weeks longer, and may risk not being permitted to return at all. This restriction will have a greater impact on mothers who are likely to take the first period of leave, particularly if they are breastfeeding. A mother who wishes to take 7 or 8 months of leave will have no guarantee of returning to her employer and may choose instead to leave the workforce completely.

While many parents will not be able to take full advantage of the maximum leave available, the provision of up to 52 weeks per parent provides flexibility in the first 2 years of a baby's life. Choice and flexibility for parents was a critical factor for the Forum in its recommendation –

“The Forum noted that, even if a 52 week period of statutory maternity leave is available, many employees will not take the full 52 weeks, particularly if part of it is unpaid. However, it is considered important to give working families the choice of taking longer periods of leave with the financial security of returning to work afterwards, even if some cannot afford to take a period of unpaid leave. This view came across strongly from parents who attended the Forum's first stakeholder meeting, including the view that this should be a statutory right, rather than a matter for negotiation with the employer, with some employers being more likely to grant it than others.”²

In addition, some of the specific points raised in the Panel's report are addressed, as follows –

² www.gov.je/SiteCollectionDocuments/Benefits%20and%20financial%20support/R%20Review%20of%20Family%20Friendly%20Employment%20Rights%2020171218%20AC.pdf
(page 12)

- **Parents can already take 26 weeks of leave** – The Panel believes the move to 52 weeks is too extreme as it doubles the number of people eligible to leave.

This is not the case.

Both parents are already entitled to 26 weeks of leave. There is no evidence from the Jersey Advisory and Conciliation Service that the existing 26-week period of parental leave has caused difficulties for businesses.

- **Further delay is not acceptable** – The Minister’s amendment to introduce the final extension to family friendly rights was expected to come into force on 1st September 2019. It is now unlikely to be in place until July 2020, as it will be brought into force alongside changes to parental benefits. This will give employers almost an additional year to prepare. It is the Council of Ministers’ judgement that further lengthening this process would not be advantageous to children, parents or business. In addition, the Minister for Social Security has already agreed to conduct a review after 2 years, as proposed by Deputy L.M.C. Doublet of St. Saviour in [P.54/2019](#).
- **Limited impact of unpaid leave on businesses** – The Council of Ministers recognises that businesses are concerned about external pressures, particularly the economic uncertainty around Brexit. However, parents are already taking time off work following childbirth. Less than 3% of employees in Jersey would have become entitled to take parental leave in 2018, and so the impact of unpaid parental leave is limited.
- **Benefits for employers** – While pregnancy and childbirth bring administrative implications and costs for employers, businesses benefit from enabling staff to take a period of parental leave and return to the same job, retaining staff with appropriate skills who feel valued. Under the Scrutiny proposals, some parents will move out of paid employment completely to allow them to spend more than 6 months with a new baby, with their skills, training and experience lost to the employer.
- **Replacement staff** – Existing legislation supports employers in finding replacement staff to cover a period of parental leave. The [Control of Housing and Work \(Jersey\) Law 2012](#) (the “CHW Law”) allows employers to recruit anyone to fill the vacancy in this situation, regardless of their CHW status.
- **The Employment Forum’s consultation and recommendation are robust** – The Forum’s background research, public consultation, and its detailed report on its recommendations, provide a comprehensive review of the subject. Considerable background work, research and preparation goes into the Forum’s recommendations. In this case, that process was undertaken over a year. Stakeholders are not always satisfied with the outcomes following public consultation, particularly in relation to an issue such as employment legislation where views are often polarised.

2. INCREASE NOTICE PERIOD TO 42 DAYS

The Council of Ministers accepts the proposed amendment (Parts 2(a), 3 and 4).

The Employment Law currently requires employees to give their employer notice of their intended leave dates (the start date and duration of each block) at least 15 weeks before the expected week of childbirth. The employee may change their original leave dates if they give the employer at least 28 days' notice of any change.

The existing 28-day notice period has been in place since 2015 to assist the employer in planning for periods of leave. No concerns have been raised via the Jersey Advisory and Conciliation Service in relation to its operation in practice.

The Panel's amendment would increase the notice period for changes to parental leave to 42 days. The Council of Ministers considers that a requirement to give an additional 2 weeks of notice does not detract significantly from the policy intent, and intends to accept the amendment.

In most cases the employee will take their parental leave on the dates specified in the original notice, which will give the employer a notice period of almost 4 months' (15 weeks before the expected week of childbirth).

3. CHANGING LEAVE DATES – IMPLICATIONS FOR OTHER EMPLOYEES

The Council of Ministers accepts the proposed amendment (Part 2(b)).

As part of the existing requirement for an employee to give the employer notice of their intended leave dates, the employer must take all reasonable steps to accommodate an employee's wish to vary the original dates of their second and third blocks of leave, or to return to work earlier than planned. In determining what steps are reasonable to accommodate the employee's request, the draft Law currently says that the matters to be considered include the financial and administrative resources of the employer, and the size of the business.

This amendment from the Scrutiny Panel would provide that the matters to be considered also include the implications in relation to other employees. This might include where other employees have already booked periods of annual leave during the same period of time.

The Council of Ministers considers that including this additional matter for the employer to consider does not detract significantly from the policy intent, and intends to accept the amendment.

Parents would continue to have an absolute right to take blocks 1, 2 and 3 of parental leave if they have notified their employer at the appropriate time – i.e. at the 15th week before the expected week of childbirth (almost 4 months' notice). Parents would also have the right to change block 1 of leave, subject to a period of notice (42 days' notice, as amended by the Scrutiny Panel). JACS guidance will support employers and employees in this process.

Key statistics

933 births in Jersey in 2018³

794 maternity allowance claims in 2018⁴

62,440 jobs⁵

Less than 1.5% of women working in Jersey had a baby in 2018. With potentially 2 parents for each baby, less than 3% of employees in Jersey would have become entitled to take parental leave in 2018.

³ [R.21/2019](#)

⁴ www.gov.je open data

⁵ [Labour market report for June 2019](#)

Changes to the draft Law proposed by the Minister for Social Security

The Minister for Social Security has made significant changes to reduce the impact on employers since the Scrutiny Panel started its review. These include –

- A new parental benefit will be introduced in 2020 (subject to approval in the Government Plan) to provide a total of 32 weeks of benefit payments. Each parent will receive a minimum of 6 weeks of benefit payments to match the 6 weeks of paid leave available from the employer. The weekly cost to the employer will be reduced by the value of the benefit – currently £222.53 a week.
- All of the new proposals will be subject to an Appointed Day Act. They will not be brought into force immediately.
- The earliest date for implementation would be July 2020, with the changes to employment rights and benefits brought in on the same day. In the event of a disruptive Brexit, this date could be deferred until economic conditions are more stable.
- The number of separate blocks of leave available and the time period in which they can be taken have both been reduced.
- The employee cannot change the dates of blocks 2 or 3 without the agreement of their employer. The employer can take account of the size of their business, their ability to accommodate the change, and the impact on other employees in making their decision.
- The period of notice for any changes to leave dates has been increased.
- Two of the Scrutiny Panel's further changes in this amendment will be accepted by the Council of Ministers.

Scrutiny Panel Recommendations⁶

OVERARCHING RECOMMENDATION: In considering the significance of the various concerns surrounding the parental leave aspects of the draft Law and the difficulties this element of the proposals creates, the Minister should withdraw Article 4 from the legislation. Following the withdrawal of this Article, the Minister should then undertake an evidenced-based review to include:

- An examination of the best ways to ensure parents of all income brackets are able to afford to take a minimum of 6 months' leave;
- An examination of the level of government funding needed for paid leave as there are many parents who will not be able to afford to take unpaid time off work;
- A review of the impact of the changes on the full range of employers in all sectors.

The outcome of a comprehensive review of this nature will result in clear, evidence-based policy aims that will guide the creation of a parental leave system that strikes the appropriate balance of responsibility between employers, employees and the government in order to truly put children first.

Recommendation 1: The Customer and Local Services Department should use its own database, where practical, to support the promotion of consultations.

Recommendation 2: The Government should significantly improve its consultation guidelines. This should include comprehensive guidance on how to engage with stakeholders in a meaningful way and also how to identify relevant stakeholders. The guidance should be revised and published before the end of 2019.

Recommendation 3: If the proposals are adopted by the States Assembly, the Minister should lodge an amendment to clarify the position on transferability of leave within 6 months of its implementation.

Recommendation 4: The Government of Jersey should, in consultation with Parishes, create more child-friendly facilities for families, and in particular breastfeeding mothers, around the Island. This would allow the government to share some of the burden being placed on employers to create these types of facilities and would also support the ethos of "putting children first". This work should be carried out by Q3 2019 with a view to providing more facilities by the end of 2019.

⁶ <https://statesassembly.gov.je/ScrutinyReports/2019/Report%20-%20Family%20Friendly%20Employment%20Rights%20-%202019.pdf>

Recommendation 5: If the proposals are adopted by the States Assembly, the Minister should bring forward proposals to align the contributory benefits for employees and financial support for employers. This would support the ethos that parental leave includes all parties, and not only the mother or those with the financial means to take unpaid leave. Proposals should be brought forward before the end of 2019.

Recommendation 6: The Minister should lodge an amendment to the [Social Security \(Maternity Benefit\) \(Jersey\) Order 1975](#) to include all parents (non-mothers) so employers can claim the £216 from all parents taking leave and the period of maternity allowance should be extended from 18 weeks to 52 weeks.