

STATES OF JERSEY



DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200- (P.19/2005): SECOND AMENDMENTS

**Lodged au Greffe on 26th April 2005
by the Employment and Social Security Committee**

STATES GREFFE

DRAFT EMPLOYMENT RELATIONS (JERSEY) LAW 200- (P.19/2005): SECOND AMENDMENTS

PAGE 59, ARTICLE 22 –

After paragraph (3) add the following paragraph –

“(4) In deciding whether or not a party to the dispute is acting unreasonably in the way in which that party is or is not complying with an available procedure in a relevant handbook for employees, regard shall be had to whether or not the handbook has been agreed by or on behalf of the parties to the dispute, but this paragraph does not limit the generality of paragraph (2)(b).”

PAGE 61, ARTICLE 25(4) –

In sub-paragraph (c), delete the words “applicable to or”.

PAGE 65, SCHEDULE, PARAGRAPH 2 –

Delete sub-paragraph (2)(e).

Re-letter sub-paragraph (2)(f) accordingly.

PAGE 68, SCHEDULE, PARAGRAPH 2 –

Delete sub-paragraph (5).

PAGE 69, SCHEDULE, PARAGRAPH 2 –

For sub-paragraph (6) substitute the following sub-paragraph –

“(6) In Article 36(1) of the principal Law, for ‘sub-paragraph (b) in the definition of “employ” in Article 1 substitute ‘Article 1A(3)(a)’.”

PAGE 69, SCHEDULE, PARAGRAPH 2 –

Delete sub-paragraphs (8) and (9).

PAGE 70, SCHEDULE, PARAGRAPH 2 –

Delete sub-paragraphs (12)(e), (13), (14), (15) and (16).

PAGE 70, SCHEDULE, PARAGRAPH 2 –

Delete sub-paragraphs (18) and (19).

PAGES 68 – 70, SCHEDULE, PARAGRAPH 2 –

Renumber sub-paragraphs (6), (7), (1), (11), (12), (17) and (18) accordingly.

EMPLOYMENT AND SOCIAL SECURITY COMMITTEE

REPORT

Page 59, Article 22

The effect of the amendment is that in deciding if a party to a collective employment dispute is acting unreasonably in complying or not complying with an available procedure in a relevant handbook for employees, the Employment Tribunal must have regard to whether it is an agreed handbook.

Deputy Southern had previously lodged an amendment to Article 22 that would remove the reference to a “relevant handbook for employees” from Article 22(3)(a). The grounds for the amendment were that procedures that may be contained in the two other elements in the Article, collective agreements and relevant contracts of employment, are open to negotiation and agreement by both parties, whereas a company handbook might not be.

The Committee considered that to remove the reference to the handbook may limit the ability of the Tribunal in gathering the relevant evidence for determining a case. This may prove detrimental to either party in the resolution of a dispute and an unnecessary restriction to place on the Tribunal. It was the Committee’s view that the handbook should be retained in the draft Law to allow the widest possible range of items for the Tribunal to look at in evidence.

Procedures contained in a handbook might work in favour of, or be detrimental to, either party. The content of the handbook may be more favourable to the employee than their contract and employees might assume that the employer will follow the procedure within it, when in fact they don’t. If the handbook isn’t included as an option, the Tribunal would not be able to consider it in looking at whether, as far as is practicable, all other available procedures have been applied unsuccessfully to seek to resolve the dispute; and that a party to the dispute is acting unreasonably in the way in which that party is or is not complying with an available procedure.

As it appeared unnecessary to completely remove the reference to the handbook, and in view of the TGWU’s concerns regarding the possibility of handbook containing non-negotiated procedures, an amendment to the draft Law is proposed to provide that the Tribunal takes into consideration whether the handbook referred to at Article 22(3)(a) has been subject to agreement, or has been imposed unilaterally.

Whilst the Committee might have supposed that a Tribunal would take into account whether an available procedure had been negotiated as part of its consideration as to whether one of the parties is acting unreasonably in complying, or not complying, with that procedure, the amendment gives further clarity.

A new paragraph to meet this requirement has been inserted at Article 22 and the Committee is pleased to report that the Regional Secretary of the TGWU has stated that the new paragraph as drafted *‘is a great improvement on the existing Article 22(3), and substantially meets our concerns.’*

Page 61, Article 25(4)

The amendment effects a drafting improvement.

Page 69, Schedule, Paragraph 2(6)

The amendment effects a drafting correction.

Remaining Amendments

The effect of each of the other amendments is to remove from the draft Employment Relations (Jersey) Law 200- (P.19/2004) all proposed amendments to the Employment (Jersey) Law 2003 that are not consequential on the enactment of the draft Employment Relations (Jersey) Law 200-.

These non-consequential amendments will now be proposed in a separate Draft Employment (Amendment) (Jersey) Law 200-.

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