



The Jersey Chamber of Commerce

Chamber House, 25 Pier Road, St Helier,
Jersey, Channel Islands, JE1 4HF
Tel: 01534 724536 Fax: 01534 734942
E-Mail: admin@jerseychamber.com Website: www.jerseychamber.com

Health, Social Security and Housing Scrutiny Panel

27 June 2014

Dear Sir

Employment (Amendment No. 8) Law (family friendly policy)

The Jersey Chamber of Commerce has a present membership of 553 business organisations. These businesses represent, collectively 21700 employees

We would also underline that this membership has a mix of organisation size ranging from one person businesses to those employing in excess of 900

In fact we have a membership of over 185 businesses organisations that employ fewer than 6 people and it is, in our opinion, that the impact of these family friendly policies will have the most marked effect and unintended consequences as a result.

Chamber would first state that it supports and actively promotes good employment practice but the relentless imposition of compliance and regulation especially on smaller businesses is an issue. Chamber is convinced that that there must be recognition by government that the "one size fits all approach" to employment issues can no longer continue as this is having a negative effect on smaller companies ,their ability and desire to recruit and ultimately their competitiveness. We will expand on this point at the end of our submission.

We will take the individual policies raised in the consultation document and reply to the individual points;

1. Antenatal care - Paid time off work to attend antenatal appointments (no qualifying period of service)

Comment on proposal

Chamber considers that it is reasonable to expect a qualifying period of 15 months. The employee should be asked to confirm appointments. There must be an expectation that the employee acts reasonably and attempts to minimise disruption to their normal working hours.

Alternatively

Unpaid time-off to attend appointments, with no qualifying period.

2. Maternity leave – a maximum of 18 weeks maternity leave and the right to return to the same job after the relevant period of maternity leave (with no qualifying period of service)



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Two weeks compulsory leave immediately after childbirth at full pay (paid by the employer, subject to the deduction of Maternity Allowance) and six additional weeks' unpaid maternity leave which may be taken before or following the birth.

Comment on proposal

Chamber considers that it is reasonable that a qualifying period of 15 months is appropriate. It is also reasonable that the Employee provides start and end dates of their maternity leave in writing to the employer at least 15 weeks before the expected birth.

In the current Economic climate it is difficult to guarantee the right to return to THE SAME JOB. The right to return to the workplace is appropriate.

Proof of pregnancy to be provided to the employer, in common with the UK law if there were any cause for doubt

And, subject to 15 months' service - an additional 10 weeks' unpaid leave.

Comment on proposal

Chamber considers that it is reasonable and appropriate for the employer to ask the employee to utilise holiday allocation during this period

The employee should not be able to accrue holiday during the maternity period.

3. Parental leave (referred to as paternity leave in the UK) – with no qualifying period of service, two weeks unpaid parental leave for a man or woman (other than the mother) who has, or expects to have, parental responsibility for the child.

Comment on proposal

Chamber considers that it is reasonable that that a qualifying period of 15 months is appropriate.

Also that a seven day period may be appropriate and that this has to be applied for /granted/taken within a specified period after the birth-maximum 8 weeks after the birth.

There has to be an evidenced relationship to the satisfaction of the employer as purely a statement that a person "expects to have" parental responsibility may lead to several applications from different people at different employers.

4. Adoption leave - The right to unpaid leave on the adoption of a child of any age; the periods of leave being equivalent to maternity and parental leave, but available to either adoptive parent, irrespective of gender:

Up to 18 weeks' adoption leave, consisting of eight weeks' unpaid leave with no qualifying period of service, and an additional 10 weeks' unpaid leave if the employee has 15 months' service with their employer, and



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2 weeks' unpaid leave for the other parent.

**Chamber considers that it is reasonable that that a qualifying period of 15 months is appropriate
Chamber also suggests that an age limit of less than 16 for child adoption should also apply.**

5. Flexible Working - Employees who have caring responsibilities (for adults and children) will have the right to request a change to their working conditions, including, for example a change to hours, times or location of work, subject to 15 months' service with their employer.

Comment on proposal

The employer must have the right to refuse a request due to a valid business reason.

Would the inability of an employer to be able to meet the request to change working conditions even though there is a valid business reason, result in the potential of a constructive dismissal claim from the employee?

Once a decision is made no additional requests can be made for a period of 1 year.

6. Detriment and dismissal - Protection against detriment and dismissal on grounds relating to pregnancy, maternity and the above rights.

Summary

This area of legislation is highly emotive but in the debate we must try and remain balanced in both the appraisal of the proposed change, its impact and importantly, whether it is reasonable.

This is further complicated by the size of organisation and its position nationally, internationally and globally. Therefore it may be totally appropriate for a global employer with a significant number of employees locally to adopt these policies having the resources to support or even exceed these policies.

At the other end of the spectrum there will be small companies who will not be able to accommodate these proposals and will see them as a further disincentive to recruit and create employment opportunities.

These proposals are a significant cost to all businesses but may well be at a cost that smaller businesses are unable to afford unless some qualifying periods are introduced.

Looking at the strategy for the future there has to be recognition that small employers are being prevented from becoming larger employers by the constant and ever increasing burden of compliance and regulation.



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Terms of reference

The chamber refers first to point 2

1. To determine what impact, if any, the Employment (Amendment No.8) (Jersey) Law 2014 will have on businesses, in particular small businesses and employees

As we have previously stated 81% of all businesses on Island employ less than 6 people and the impact will obviously be felt hardest by these companies, on various levels, HR, replacement staff etc., than a larger organisation with an established HR function.

2. To compare the proposals contained in the Employment (Amendment No.8) (Jersey) Law 2014 with the UK

It has been interesting exercise researching and comparing the law proposed in Jersey and extant in the UK. It appears that in UK law all the areas require a qualifying period (apart from antenatal) and that Jersey has been rather selective in the protection of the employers position in these proposals.

For example Paternity leave in the UK requires a 26 week qualifying period, 15 weeks prior to the birth making a 41 week period.

Yours faithfully

For and on behalf of the Jersey Chamber of Commerce

Ian Taylor
Chief Executive Officer