

STATES OF JERSEY



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

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

STATES GREFFE

COMMENTS

QUALIFYING PERIOD AMENDMENT (P.100/2019 Amd.Amd.)

The Council of Ministers does not support the proposed amendment to introduce a qualifying period.

The amendment would introduce a qualifying period so that only parents with 15 months' service with their employer would qualify for –

- parental leave
- adoption and surrogacy leave
- breastfeeding breaks
- breastfeeding facilities
- paid leave on health and safety grounds
- time off work for antenatal or pre-adoption appointments.

The amendment would also remove the paid periods of leave for the birth mother and the father of a baby, including pay for the compulsory maternity leave period.

Parental leave from Day 1 of employment

The Deputy of St. Peter's report states that a precedent was set for a qualifying period in the family friendly employment legislation, introduced in 2015.

However, in 2015, the original legislation provided that parents were entitled to a period of leave from Day 1 of employment. The Employment Law provided the following entitlements with no qualifying period of employment –

- 8 weeks of maternity leave, including 2 weeks paid
- 8 weeks of adoption leave
- 2 weeks of parental leave.

A 15-month qualifying period applied only to the additional 10 weeks of 'ordinary' maternity leave (taking the total number of weeks to 18).

The qualifying period for leave was removed completely in September 2018 on the recommendation of the Employment Forum, as approved by the States Assembly in March 2018.

A social right to protect the family – not a reward for long service

The Deputy's report says that if an employer is required to be generous in allowing new parents to take time off work, the employee should have to show loyalty to that employer.

The Forum explained in its December 2017 recommendation why parental leave is a social right that should not be subject to a qualifying period –

“In relation to a qualifying period for maternity leave, the Forum has recommended that periods of paid and unpaid statutory maternity leave should be available to an employee from day one of employment, with no minimum

period of continuous employment. The Forum recognises that a day one right to paid leave would be a big commitment for some employers. However, the Forum's intention, as with maternity leave, is to provide a social right to protect the family and provide more choices and flexibility. Any qualifying period would automatically exclude some employees from this right. Paid parental leave is not a reward, a bonus, an insurance scheme, a benefit or compensation for long service. The Forum considers that parents should not have to protect their employment entitlements when planning to have children to the potential detriment of their careers."

Employer must have 4 months' notice of intention to take leave

The Deputy's report states that an employee could start a new job and announce on their first day that they will immediately take 52 weeks of parental leave. However, entitlement to parental leave is subject to the employee giving the employer notice of their intention to take leave 15 weeks before the expected week of childbirth – this means that the employer must be given almost 4 months' notice and effectively builds in a 4-month qualifying period.

In the vast majority of cases an employee will not be able to take parental leave from Day 1 of employment as they will not meet the requirements of the law. The requirement for notice is only disapplied where it was not 'reasonably practicable' to give notice. This relates to very limited circumstances, such as where a woman did not know that she was pregnant.

To address a number of other points raised in the Deputy's report:

- The report states that the amendment is primarily aimed at small businesses. A qualifying period would apply to the employees of all businesses, irrespective of their size or resources, including the Government of Jersey.
- The report refers to 4,430 sole traders in Jersey. To clarify, those businesses do not employ any staff, and so there would be no obligations under the Employment Law.
- The Deputy refers to employees exploiting the law to the extreme. 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. 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. 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 in line with the 1,001 critical days initiative.
- The Deputy refers to the generosity of the law to employees and the consequences for employers. The Minister has made significant changes to reduce the impact on employers, including –

- 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 the 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 employee must give at least 6 weeks' notice of any change to blocks 2 or 3 of leave
- Subject to approval in the Government Plan, a new parental benefit will be introduced in 2020 to provide a total of 32 weeks of benefit, and so the weekly cost to the employer will be reduced by the value of benefit – currently £220 a week.
- The proposals are subject to an Appointed Day Act. They will not be brought into force immediately.

Key statistics

933 births in Jersey in 2018¹

794 maternity allowance claims in 2018²

62,440 jobs³

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.

¹ [R.21/2019](#)

² www.gov.je open data

³ [Labour Market Report for June 2019](#)