

# STATES OF JERSEY

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## **DRAFT EMPLOYMENT (AMENDMENT No. 5) (JERSEY) LAW 200**

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**Lodged au Greffe on 24th February 2009  
by the Minister for Social Security**

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**STATES GREFFE**





Jersey

## **DRAFT EMPLOYMENT (AMENDMENT No. 5)(JERSEY) LAW 200**

### **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. 5, (Jersey) Law 200- are compatible with the Convention Rights.

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

# REPORT

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## Introduction

The purpose of this Proposition is to amend the Employment (Jersey) Law 2003 to make provision for the protection of employees in redundancy situations by inserting a new part into that Law.

The previous Minister for Social Security asked the Employment Forum to consult on Phase 2 of the employment legislation programme in 2007. The Forum started by consulting on 2 issues in tandem; redundancy and transfers of undertakings, as elements of the provisions are based on similar principles (consulting with employees).

The Minister proposes the draft amendment on the basis of the Forum's recommendations relating to redundancy and intends to propose legislation relating to transfers of undertakings later in 2009.

This proposition accords with the States Strategic Plan (2006 to 2011), which commits to establishing basic rights and equal opportunities for all sectors of society by extending legislation to "provide a comprehensive range of basic rights to employees and employers by moving into the second phase of employment reform, as approved by the States."

## Background

Following public consultation during 2006, the Employment Forum issued the Minister for Social Security with its recommendations on 16th February 2007<sup>[1]</sup>.

The Minister issued his response to the Forum's recommendations as a Report to the States on 26th April 2007 (R.C.43/2007) and the draft amendment has been prepared on that basis. The majority of the Forum's recommendations were accepted, however based on advice received during the preparation of the draft amendment, there are a number of differences from the recommendations.

Subject to the States adopting the amendment, it is anticipated that the amendment would come into force towards the end of 2009, or early 2010. Whilst the passage of the draft Law through Privy Council may take 6 to 9 months, this period will be important in order to give employers sufficient notice to prepare for the introduction of the legislation, particularly as the new rights may result in an additional cost to employers. A notice period such as this is also essential for the publication of guidelines to raise employee and employer awareness of the provisions; the development of training (e.g. by the Jersey Advisory and Conciliation Service); as well as preparing the Jersey Employment Tribunal to adjudicate under the new legislation.

## Previous Consultation

The former Employment and Social Security Committee issued a consultation paper, "Fair Play in the Workplace" in November 1998. This was the Committee's first consultation on employment legislation that was widely circulated and debated publicly.

Eight out of 10 respondents to that consultation supported the right of workers to receive redundancy payments and three quarters of respondents felt that employees' rights should be protected following the transfer of an undertaking.

Having considered the responses to that consultation, the former Committee submitted a Report and Proposition (P.99/2000) to the States proposing a two-phased approach to the introduction of employment rights. The States approved the proposition to develop measures as may be necessary in Phase 2 to deal with the issues of redundancy and the protection of employees involved in business mergers and acquisitions.

The former Committee's proposition noted that demand for labour was high at that time, however recognised that the situation might not continue and that genuine hardship can result when jobs are lost in industries where there is little or no further demand for those skills; for example due to economic decline, outsourcing, business rationalisations, increased competition, or population policies. It was therefore felt that provisions should be introduced to provide for employees who are made redundant.

## Employment Forum Consultation

During the period June to August 2006, the Forum consulted about the proposal to introduce legislation in Jersey relating to redundancy and business transfers by circulating a questionnaire to its database of approximately 150 employers, employees, trade unions, employer associations, as well as other interested parties, groups and

stakeholders. Twenty-four responses were received representing the range of respondent types, including the main stakeholders. On the basis of the responses received, the Forum issued a detailed recommendation to the Minister in February 2007.

## **Redundancy legislation in other jurisdictions**

### ***The UK***

Entitlement to statutory redundancy pay was one of the early aspects of employment legislation in the UK with the introduction of the 1965 Redundancy Payments Act. Payments were originally funded largely by the Government. A redundancy payments scheme is now provided under the Employment Rights Act (1996) which provides that employees with more than 2 years' service, from any age, may claim a redundancy payment.

UK redundancy payments are calculated by counting the years of continuous employment and awards are banded by age within that range –

- Up to age 21, half a week's pay for each full year of continuous service
- Age 22 to 40, one week's pay for each full year of continuous service
- Age 41+, one and a half week's pay for each full year of continuous service.

The maximum earnings for the purpose of the payment is £350 per week (as of 1st February 2009) and a maximum of 20 years' service, irrespective of age, may be taken into account. This means that a UK redundancy payment can be a maximum of £10,500.

### ***Isle of Man***

The 1990 Redundancy Payments Act provides the right to a redundancy payment. The qualifying criteria and method of calculation for redundancy payments are very similar to the UK; however there is no age related scale in the Isle of Man; until the age of 65 redundant employees are entitled to one week's pay for every full year of continuous service. The weekly earnings payable are capped; however the cap is higher than the UK at £420.

### ***Guernsey***

There are no statutory provisions in Guernsey requiring employers to pay employees a redundancy payment or to notify employees that redundancies may occur.

### ***Other jurisdictions***

Some countries do not provide any statutory redundancy payments, including Denmark, Finland, Greece, Norway, Spain and Sweden, although collective agreements provide redundancy payments in some cases. In the countries that do provide statutory redundancy payments, the amount of redundancy pay varies greatly and tends to be related to the employee's length of service.

Redundancy payments in France, Germany, Italy, Luxembourg and the Netherlands are considered to be generous, whereas payments in Belgium, Ireland and the UK are considered to be less generous. Most provide a lump sum payment, but others, including Belgium and Italy, provide a monthly allowance for a specified number of months following the redundancy. The financing of payments varies also; in most countries employers are responsible by law for paying compensation payments, however some countries have set up central funds.

## **The Draft Employment (Amendment No. 5) (Jersey) Law 200**

The following sections provide details of the provisions proposed in the draft amendment.

### ***Qualifying for a redundancy payment***

Under this Proposition, employees who have at least 2 years' continuous employment will be entitled to a redundancy payment of one week's pay for every year of employment with that employer.

The continuous service requirement is significantly longer than that required to qualify for protection against unfair dismissal because the purpose of redundancy payments is different from protection against unfair dismissal; it compensates employees for loss of job security where they have remained in employment for such a period of time that justifies them having a stake in it.

The right applies irrespective of hours worked per week. An employee working less than 8 hours per week would receive a proportionate (and probably small) redundancy payment. Under future sex discrimination legislation, to exclude people working less than 8 hours per week is likely to be indirectly discriminatory to female employees who are more likely than men to work less than eight hours per week.

### ***Calculating the redundancy payment***

The Employment Forum had recommended to the previous Minister for Social Security in February 2007 that a week's pay (as defined in Schedule 1 of the Employment Law) should be uncapped for the purpose of the redundancy award. The Forum considered that "*an uncapped amount is straightforward and will reward all employees accordingly, proportionate to what they have earned.*"<sup>[2]</sup>

The Forum did however note that "*there is the danger that if the redundancy payment is set too high, employers will not be able to afford to stay in business at all, and more jobs may be lost.*" The current Minister for Social Security considers that the Forum would have been bound to take into account the current recession if it were making its recommendation for redundancy payments in 2009. Caution is vital in the current economy.

The draft amendment therefore continues to provide that a redundancy payment is calculated in accordance with the definition of a week's pay, as set out in Schedule 1 of the Employment Law, however it is also subject to a maximum weekly amount. The intention is to prevent further business collapse which could jeopardise the jobs of employees that may remain due to employers potentially having to make huge payouts in times that are already economically difficult.

The maximum amount of one week's pay is the reported weekly average earnings (for full-time equivalent employees), as quoted in the Statistics Unit's June Average Earnings Report (released in August each year). The relevant figure for each redundancy will be the most recent figure published at least one month before the effective date of termination of employment. The amendment also provides that the Minister may make an Order setting a different maximum weekly amount; however it is intended this provision would only be used if necessary in future, and with sufficient notice to employers of any proposed change in the maximum weekly figure.

Based on the current weekly earnings figure of £600, the cap will continue to protect the long-serving low and middle earners and will compare favourably with the maximum weekly pay that applies in the UK and Isle of Man. In the UK, a week's pay for the purpose of the redundancy payment is capped at £350 and in the Isle of Man the weekly payment is capped at £420.

Jersey's phased introduction of employment legislation provides minimum standards in employment rights. Employers may then build upon these rights contractually, and further legislation can develop and improve upon at an appropriate pace for a small jurisdiction so as not to be onerous, particularly to the small local employer.

The Employment (Awards) (Jersey) Order 2005 will be amended at the appropriate time to enable the Employment Tribunal to award the redundancy payment.

### ***Tribunal time limits***

No time limit applies with respect to an employee's right to claim a redundancy payment, provided that at least one of the following 4 events has occurred in the 6 months following the effective date of termination of employment:

- The payment is agreed and paid
- The employee makes a written claim for the payment to the employer
- The employee refers the claim to the Employment Tribunal
- The employee makes a claim of unfair dismissal to the Tribunal.

If an employee has made a claim in writing to the employer within 6 months and subsequently the amount is disputed, the employee can present a claim to the Tribunal at any time; there is no time limit.

If an employee fails to make a written claim, or apply to the Tribunal within 6 months, they may lose the right to a payment. However, if during a further period of 6 months, the employee makes a written claim to the employer refers a redundancy claim to the Tribunal, or presents an unfair dismissal complaint to the Tribunal, the Tribunal has the discretion to award a redundancy payment, if it considers it just and equitable to do so.

A strict time limit on redundancy claims would unnecessarily force all redundant employees to make a claim to the Tribunal as a matter of precaution, regardless of any progress the employee may be making in negotiations with their employer. Redundancy is not like the other sorts of claims made to the Tribunal where the nature of the claim necessarily involves a dispute between the employer and the employee, such as unfair dismissal which has an 8 week time limit for Tribunal applications. The same procedure in respect of the time limit for redundancy payment rights is applied in the UK and Isle of Man.

### ***Alternative work***

This right to a redundancy payment does not apply if the employee has unreasonably refused an offer of the same or other suitable employment to start within 4 weeks of termination of employment, or the employee has unreasonably terminated such new employment within 4 weeks of starting work (or such longer period as agreed). Reasonableness and suitability will be determined by the Tribunal, for example, whether similar terms and conditions of employment apply, including hours, location and remuneration.

Unless the new terms and conditions of employment are identical to the previous terms and conditions, employees will be allowed a trial period (to include any retraining) of 4 weeks, which may be reviewed and extended for a further period as necessary where the employer and employee both agree. Employees would continue to be entitled to redundancy pay if they “reasonably” refused the alternative employment at any time during the trial period.

### ***Consultation requirements***

Good practice requires employers to consult with employees regarding redundancies at the earliest opportunity. It is vital that the employer uses a fair system of redundancy selection to avoid complaints of unfair dismissal. Case law<sup>[3]</sup> shows that the Tribunal will take the matter of individual consultation into account as one of the 4 ordinary principles of fairness.

Further to this, the amendment will require employers to consult with employees collectively where 21 or more redundancies are proposed in a 90 day period, and that consultation must begin at least 30 days before the first dismissal is due to take effect.

Where a registered trade union is recognised by the employer, representatives of that union will represent employees in collective consultation. Where a union is not recognised, representatives from within the establishment may be nominated and elected by the employees for the purpose of taking part in consultation about redundancies on their behalf. This may include representatives of trade unions or staff associations that are not recognised by the employer for collective bargaining purposes. Where elections fail, the employer must provide the required information to all employees individually.

As with the rights provided for employee representatives in disciplinary and grievance hearings (Part 7A of the Employment Law), employee representatives will have the right to a reasonable period of paid time off work to represent employees and will be protected against detriment or dismissal on the grounds of any actions taken as a representative (or in elections to act as a representative).

Where an employer has failed to engage in meaningful consultation, the Tribunal may order the employer to pay each affected employee one week’s pay (as defined in Schedule 1 of the Employment Law) for each week of the protected period, up to 13 weeks. When considering making a protective award to employees, the Tribunal may take into account whether that employer took such steps as were reasonably practicable in the particular circumstances, including the seriousness and deliberateness of the employer’s failure to consult. The purpose of the award is to provide a sanction, not compensation for losses suffered.

### ***Time off to look for work***

An employee who is under notice of redundancy will have the right to a reasonable period of paid time off work, equivalent to at least 2 normal working days. As in the UK, this time may also be used to arrange retraining to improve future employment prospects.

### ***Notifying the Minister***

Where an employer proposes to make at least 21 employees redundant, the Minister for Social Security must be notified. This is to ensure that relevant government agencies, such as those providing employment services, are alerted and prepared to take any appropriate measures to assist or retrain the redundant employees. With that in mind the Minister for Social Security will have the discretion to notify other Ministers as appropriate in the circumstances (e.g. Economic Development), subject to data protection constraints.

### ***Removal of upper age limit***

Redundancy payments, as drafted, are calculated including all years of service, including years beyond age 65. The Employment Law currently provides that an employee over age 65 (or the normal retirement age for the job) is not protected against unfair dismissal.

In its February 2007 recommendation, the Forum recommended that all years of service up to age 65 (or normal retirement age) should count in calculating a redundancy payment to match the Employment Law age related provisions relating to unfair dismissal, whilst also recognising that future age discrimination legislation might

require the removal of the upper age limit in the calculation of awards.

Rather than making new legislation that would undoubtedly contravene future discrimination laws, the redundancy legislation was drafted without the upper age limit and it was intended to give further consideration to any consequences of the upper age limit remaining in the unfair dismissal provisions of the Employment Law.

If unfair dismissal protection continues to be limited by age, an employer could make an employee redundant at age 65 and claim that the grounds for dismissal were for a reason other than redundancy in order to avoid the redundancy payment, leaving the employee would have no recourse to the Tribunal to claim unfair dismissal. The proposed amendment therefore removes the upper age limit from the unfair dismissal provisions, giving employees the right to protection against unfair dismissal beyond the normal retirement age.

***Notice periods on Termination of Employment***

The generous periods of notice provided in the Employment Law were intended to compensate employees for the lack of redundancy legislation at that time. The notice periods set out in the Termination of Employment – Minimum Periods of Notice (Jersey) Law 1974 were doubled in 1994 specifically to provide that balance and the extended periods were transferred into the Employment Law.

The Minister considers that it is logical and equitable to reduce the periods of notice on enactment of the redundancy payments legislation. Article 3 of the draft amendment reduces the minimum notice periods to those required in the UK, which is considered to be an appropriate level below the current requirements, whilst being greater than the notice periods that applied prior to the 1994 increase in respect of the lack of redundancy legislation (as set out in Table 1, below).

To reduce the periods to those set out in the 1974 Law would be a regressive step and would not compare favourably with modern standards in other jurisdictions (see Table 1).

**Table 1– Minimum statutory notice periods on termination of employment**

<b>Length of Service</b>	<b>Current Employment Law</b>	<b>1974 Law</b>	<b>UK</b>	<b>Isle of Man</b>	<b>Guernsey</b>
<b>1 week</b>	1 week	None	none	none	none
<b>4 weeks</b>	1 week	None	1 week	1 week	1 week
<b>26 weeks</b>	2 weeks	1 week	1 week	1 week	1 week
<b>1 year</b>	2 weeks	1 week	1 week	1 week	1 week
<b>2 years</b>	4 weeks	2 weeks	2 weeks	2 weeks	2 weeks
	4 weeks	2 weeks	3 weeks	3 weeks	2 weeks
<b>3 years</b>	4 weeks	2 weeks	4 weeks	4 weeks	2 weeks
	8 weeks	4 weeks	5 weeks	5 weeks	4 weeks
<b>5 years</b>	8 weeks	4 weeks	6 weeks	6 weeks	4 weeks
	8 weeks	4 weeks	7 weeks	7 weeks	4 weeks
<b>8 years</b>	8 weeks	4 weeks	8 weeks	8 weeks	4 weeks
	8 weeks	4 weeks	9 weeks	9 weeks	4 weeks
<b>10 years</b>	12 weeks	6 weeks	10 weeks	10 weeks	4 weeks
	12 weeks	6 weeks			4 weeks



<b>11 years</b>		weeks	11 weeks	11 weeks	
<b>12 years</b>	12 weeks	6 weeks	12 weeks	12 weeks	4 weeks
<b>13 years</b>	12 weeks	6 weeks	12 weeks	12 weeks	4 weeks
<b>14 years</b>	12 weeks	6 weeks	12 weeks	12 weeks	4 weeks
<b>15 years +</b>	16 weeks	8 weeks	12 weeks	12 weeks	4 weeks

### **Insolvency Fund**

The Forum recommended that an insolvency fund should be set up, however it was considered that a great deal of further research would be required to create such a fund in order to ensure that employees are paid what they are owed in genuine insolvency situations, without the administration and cost of such a fund becoming disproportionate to its purpose.

The proposed amendment does not make any additional provisions for the protection of redundancy payments in insolvency situations. Work is progressing as a priority on the development of an insolvency fund and the Minister is committed to bring a proposition to the States later in 2009. The preparation of that legislation is likely to require amendments to existing legislation, including the bankruptcy law.

### **Financial/manpower implications**

It is anticipated that the Jersey Advisory and Conciliation Service and the Jersey Employment Tribunal will be able to manage any additional case load within existing budgets. However, additional funding of approximately £20,000 per year (allowing an additional one day Tribunal hearing per month, plus administrative support and services) might be required to enable the Employment Tribunal to deal with applications from redundant employees, particularly in the current economic climate.

### **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 23rd February 2009 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. 5, (Jersey) Law 200- are compatible with the Convention Rights.

## Explanatory Note

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This Law amends the Employment (Jersey) Law 2003 (the “principal Law”) by making provision for rights on redundancy. Redundancy rights are set out in a new Part 6A of the principal Law.

*Article 1* is an interpretation provision.

*Article 2* amends the principal Law by inserting into it definitions used in the new Part 6A.

*Article 3* amends Article 56 of the principal Law by changing the minimum periods of notice that an employer is required to give to an employee to terminate his or her employment.

*Article 4* amends the principal Law so that the definition of “effective date of termination” in Article 63 of that Law applies to the new Part 6A.

*Article 5* inserts Part 6A into the principal Law.

### **PART 6A RIGHTS ON REDUNDANCY**

#### **Article 60A The right to redundancy payment**

This Article entitles employees to a redundancy payment.

#### **Article 60B Qualifying period of employment**

This Article provides that an employee must be continuously employed for at least 2 years to be entitled to a redundancy payment.

#### **Article 60C Amount of redundancy payment**

This Article provides that the amount of redundancy payment shall be one week’s pay for each year of employment subject to a cap. The cap shall be such amount as the Minister specifies by Order or, if no such Order is in force, the figure for average weekly earnings published by the States of Jersey Statistics Unit.

#### **Article 60D Time limits applicable to redundancy payments**

This Article provides that, for an employee to be entitled to a redundancy payment, any of the following events must have occurred within 6 months from the date of termination of employment –

- the payment must have been agreed and paid;
- the employee must have claimed the payment from the employer;
- a claim for redundancy payment must have been presented to the Tribunal; or
- a claim for unfair dismissal must have been presented to the Tribunal.

However, even if none of the above has occurred, the Tribunal may allow an employee to claim redundancy if it thinks it is just and equitable to do so if, within a further period of 6 months, the employee claims a redundancy payment from the employer or presents a claim relating to the amount of redundancy payment to the Tribunal or presents a claim for unfair dismissal to the Tribunal.

#### **Article 60E Renewal of contract or re-engagement**

This Article provides that an employee is not entitled to a redundancy payment if an employee’s contract is renewed or he or she is re-engaged under a new contract of employment within 4 weeks after the end of the employee’s previous employment. This does not apply, however, if the terms of the new employment differ from the previous employment and either the employer or the employee terminates the new employment on the ground that it is not suitable for the employee. Such termination must occur within four weeks of the starting date of the new employment or such longer period as the employer and employee may agree.

#### **Article 60F Collective consultation requirements**

This Article provides that where an employer proposes to make 21 or more employees redundant he or she must consult with representatives of those employees. This Article makes provision for determining the identity of such representatives. If there are no such representatives the employer must give each employee the information that the employer would have been required to give the representatives under this Article.

### **Article 60G Election of employee representatives**

This Article sets out requirements for elections of employee representatives, including provisions for the employer to determine how many representatives are to be elected and whether they should represent all employees or classes of employees.

### **Article 60H Protective awards- complaint to Tribunal**

This Article provides that an employee has 8 weeks or such longer period as the Tribunal thinks is reasonable, to make a complaint to the Tribunal if the employer has breached Article 60F or Article 60G. If the complaint is well-founded, the Tribunal must make an award requiring the employer to pay remuneration to each relevant employee for a period of up to 13 weeks (“protected period”).

### **Article 60I Entitlement under protective award**

This Article provides that the amount of remuneration of an award made by the Tribunal under Article 60H is one week’s pay for each week during the protected period. Calculation of a week’s pay is not subject to a cap.

### **Article 60J Termination of employment during protected period**

This Article provides that an employee is not entitled to remuneration under a protective award if –

- (a) the employee is fairly dismissed other than for redundancy during the protected period;
- (b) the employee unreasonably terminates employment during the protected period;
- (c) the employee unreasonably refuses an offer of the same or other suitable employment to start before or during the protected period; or
- (d) the employee unreasonably terminates such new employment within 4 weeks of starting work or during such longer period as may be agreed.

### **Article 60K Right to time off to look for work or arrange for training**

This Article provides that an employer must give an employee who is to be made redundant a reasonable period of time off work of at least 2 days to look for another job or arrange for training.

### **Article 60L Right to remuneration for time off under Article 60K**

This Article provides that an employee has a right to 2 days’ pay to look for another job or arrange for training. The Articles sets out detailed provisions of how the remuneration is calculated for employees who do not have regular working patterns.

### **Article 60M Complaints to the Tribunal**

This Article provides that an employee has 8 weeks, or such longer period as the Tribunal thinks is reasonable, in which to make a complaint to the Tribunal that the employer has refused to allow the employee to take the time off required under Article 60K or has failed to pay the amount required under Article 60L. If the complaint is well founded the Tribunal must direct the employer to pay the employee reasonable remuneration. This amount may exceed the 2 days’ pay for which an employer is liable under Article 60L.

### **Article 60N Notifying the Minister**

This Article provides that if an employer proposes to make at least 21 employees redundant he or she must notify the Minister for Social Security.

### **Article 60O Employee representative’s right not to be subject to detriment**

This Article provides that an employer must not subject an employee representative to any detriment on the grounds of participating in an election of employee representatives under this Part or of doing anything as such a representative or candidate for such a representative.

### **Article 60P Complaints to Tribunal for breach of Article 60O**

This Article provides that an employee has 8 weeks, or such longer period as the Tribunal thinks is reasonable, in which to make a complaint to the Tribunal that the employer has acted in breach of Article 60O. If the complaint is well founded the Tribunal must direct the employer to pay the employee

compensation not exceeding 4 weeks' pay and declare that any other action taken against the employee by the employer, other than dismissal, is void.

**Article 60Q Right to time off for employee representatives**

This Article requires an employer to allow an employee reasonable time off work to act as an employee representative for the purposes of this Part.

**Article 60R Right to remuneration for time off under Article 60Q**

This Article requires an employer to pay an employee representative the appropriate hourly rate for time taken off work under Article 60Q. That rate is a week's pay divided by the employee's normal working hours in a week.

**Article 60S Complaint to Tribunal for breach of Article 60Q or 60R**

This Article provides that an employee has 8 weeks, or such longer period as the Tribunal thinks reasonable, to present a complaint to the Tribunal for breach of Article 60Q or Article 60R. If the complaint is well-founded, the Tribunal must order the employer to pay remuneration to the employee of an amount to which the employee is entitled under Article 60R (or to which the employee would have been entitled if the employer had allowed him or her the requisite time off work).

*Article 6* repeals Article 74 of the principal Law. Article 74 provides that the right not to be unfairly dismissed does not apply to persons who have reached normal retiring age.

*Article 7* cites the title of the Law and provides that it shall come into force by appointed day Act.





Jersey

## DRAFT EMPLOYMENT (AMENDMENT No. 5)(JERSEY) LAW 200

### Arrangement

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#### Article

- 1      Interpretation
- 2      Article 1 amended
- 3      Article 56 amended
- 4      Article 63 amended
- 5      Part 6A inserted into the principal Law
- 6      Article 74 repealed
- 7      Citation and commencement





Jersey

## DRAFT EMPLOYMENT (AMENDMENT No. 5)(JERSEY) LAW 200

A LAW to amend further the Employment (Jersey) Law 2003.

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*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 –

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### 1 Interpretation

In this Law, the “principal Law” means the Employment (Jersey) Law 2003<sup>[1]</sup>.

### 2 Article 1 amended

In Article 1 of the principal Law there shall be inserted at the appropriate places the following definitions–

“ ‘affected employee’ for the purposes of Part 6A has the meaning in Article 60F(13);

“ ‘effective date of termination’ for the purposes of Parts 6A and 7 has the meaning in Article 63;”.

### 3 Article 56 amended

For Article 56(1) of the principal Law there shall be substituted the following paragraph–

“(1) Subject to paragraph (9), the notice required to be given by an employer to terminate the employment of an employee who has been continuously employed for one week or more shall be not less than –

- (a) one week’s notice if his or her period of continuous employment is less than 2 years;
- (b) 2 weeks’ notice if his or her period of continuous employment is 2 years or more but less than 3 years;
- (c) 3 weeks’ notice if his or her period of continuous employment is 3 years or more but less than 4 years;
- (d) 4 weeks’ notice if his or her period of continuous employment is 4 years or more but less than 5 years;
- (e) 5 weeks’ notice if his or her period of continuous employment is 5 years or but less than 6 years;



- (f) 6 weeks' notice if his or her period of continuous employment is 6 years or more but less than 7 years;
- (g) 7 weeks' notice if his or her period of continuous employment is 7 years or more but less than 8 years;
- (h) 8 weeks' notice if his or her period of continuous employment is 8 years or more but less than 9 years;
- (i) 9 weeks' notice if his or her period of continuous employment is 9 years or more but less than 10 years;
- (j) 10 weeks' notice if his or her period of continuous employment is 10 years or more but less than 11 years;
- (k) 11 weeks' notice if his or her period of continuous employment is 11 years or more but less than 12 years;
- (l) 12 weeks' notice if his or her period of continuous employment is 12 years or more."

#### **4 Article 63 amended**

In Article 63(1) of the principal Law, after "in this Part" there shall be inserted "and in Part 6A".

#### **5 Part 6A inserted into the principal Law**

Immediately after Part 6 of the principal Law there shall be inserted the following Part–

### **“PART 6A**

#### **RIGHTS ON REDUNDANCY**

##### **60A The right to redundancy payment**

Subject to the following provisions of this Part, if an employer dismisses any employee by reason of redundancy, the employer shall pay the employee a redundancy payment.

##### **60B Qualifying period of employment**

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, computed in accordance with Article 57, ending with the effective date of termination.

##### **60C Amount of redundancy payment**

- (1) The amount of a redundancy payment shall be calculated by allowing one week's pay for each year of employment during the period, ending with the effective date of termination, in which the employee has been continuously employed.
- (2) For the avoidance of doubt, in this Article 'year' means a period of 12 calendar months.
- (3) For the purposes of paragraph (1), the amount of one week's pay shall not exceed the amount specified by Order under paragraph (4), or, if no such Order is in force on the effective date of termination, the most recent figure for the average weekly earnings published by the States of Jersey Statistics Unit at least one month before the effective date of termination (disregarding any more recent figure published less than a month

before the effective date of termination).

(4) The Minister may, by Order, specify an amount for the purposes of paragraph (3).

#### **60D Time limits applicable to redundancy payments**

- (1) An employee does not have any right to a redundancy payment under this Part unless, before the end of the period of 6 months beginning with the effective date of termination any of the following has occurred –
  - (a) the redundancy payment has been agreed and paid;
  - (b) the employee has made a claim for the redundancy payment by notice in writing given to the employer;
  - (c) a question as to the employee's right to, or the amount of, the redundancy payment has been referred to the Tribunal;
  - (d) a complaint relating to his or her dismissal has been presented to the Tribunal by the employee under Article 76.
- (2) An employee is not deprived of his or her right to a redundancy payment by paragraph (1) if, during the period of 6 months immediately following the period mentioned in that paragraph, the employee –
  - (a) makes a claim for the payment by notice in writing given to the employer;
  - (b) refers to the Tribunal a question as to his or her right to, or the amount of, the payment; or
  - (c) presents a complaint relating to his or her dismissal under Article 76,and it appears to the Tribunal to be just and equitable that the employee should receive a redundancy payment.
- (3) In determining under paragraph (2) whether it is just and equitable that an employee should receive a redundancy payment the Tribunal shall have regard to –
  - (a) the reason shown by the employee for his or her failure to take any such step as is referred to in paragraph (2) within the period mentioned in paragraph (1); and
  - (b) all other relevant circumstances.

#### **60E Renewal of contract or re-engagement**

- (1) Where –
  - (a) an employee's contract of employment is renewed or he or she is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made before the end of that person's employment under the previous contract; and
  - (b) the renewal or re-engagement takes 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.
- (2) Paragraph (1) does not apply if–
  - (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,differ (wholly or in part) from the corresponding provisions of the previous contract; and
  - (b) during the period specified in paragraph (3)–

- (i) the employee or employer terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated, and
  - (ii) the reason, or principal reason, for the termination is that the employer or employee, as the case may, considers that the employment is not suitable for that employee.
- (3) For the purposes of paragraph (2)(b), the period is the period–
  - (a) beginning at the end of the employee’s employment at the end of the previous contract; and
  - (b) ending with –
    - (i) the period of 4 weeks beginning with the date on which the employee starts work under the renewed or new contract, or
    - (ii) such longer period as may be agreed in writing by the employer and employee or the employee’s representative.

#### **60F Collective consultation requirements**

- (1) Where an employer is proposing to dismiss as redundant 21 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are the appropriate representatives of the affected employees.
- (2) The consultation shall begin at least 30 days before the first of the dismissals takes effect.
- (3) For the purposes of this Article, the appropriate representatives of the affected employees are –
  - (a) if the employees are of a description in respect of which a trade union is –
    - (i) registered under the Employment Relations (Jersey) Law 2007<sup>[2]</sup>, and
    - (ii) recognized in accordance with a code of practice approved under Article 25 of that Law,representatives of the trade union; or
  - (b) in any other case, 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.
- (4) The consultation shall include consultation about ways of –
  - (a) avoiding the dismissals;
  - (b) reducing the numbers of employees to be dismissed; and
  - (c) mitigating the consequences of the dismissals,and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.
- (5) In determining how many employees an employer is proposing to dismiss as redundant, account shall be taken of employees in respect of whose proposed dismissals

consultation has already begun if the redundancy of those employees is regarded as arising out of the same proposal and it would be reasonable to regard those employees as part of the same group of employees for the purpose of applying the consultation requirements in this Article.

- (6) For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives –
  - (a) the reasons for the employer's proposals;
  - (b) the numbers and descriptions of employees whom it is proposed to make redundant;
  - (c) the total number of employees of any such description employed by the employer at the establishment in question;
  - (d) the proposed method of selecting the employees who may be dismissed;
  - (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect; and
  - (f) the proposed method of calculating the amount of any redundancy payments to be made to employees who may be dismissed.
- (7) That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or in the case of representatives of a trade union, sent by post to the union at the address of its head or main office.
- (8) The employer shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.
- (9) If, in any case, there are special circumstances which mean that it is not reasonably practicable for the employer to comply with a requirement of paragraph (2), (4) or (6) the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.
- (10) For the purposes of paragraph (9), where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances meaning that it is not reasonably practicable for the employer to comply with such a requirement.
- (11) Where –
  - (a) the employer has invited any of the affected employees to elect employee representatives; and
  - (b) the invitation was issued long enough before the time when the consultation is required by paragraph (2) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this Article in relation to those employees if he or she complies with those requirements as soon as is reasonably practicable after the election of those representatives.

- (12) If, after the employer has invited affected employees to elect representatives, the affected employees fail to do so within a reasonable time, the employer shall give to each affected employee the information set out in paragraph (6).
- (13) In this Part 'affected employee' means any employee who may be affected by the proposed redundancy or who may be affected by measures taken in connection with such redundancy.

## **60G Election of employee representatives**

- (1) The requirements for the election of employee representatives under Article 60F(3)(b) (ii) are that –
  - (a) the employer shall make such arrangements as are reasonably practicable to ensure that the election is fair;
  - (b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;
  - (c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;
  - (d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under Article 60F to be completed;
  - (e) the candidates for election as employee representatives are affected employees on the date of the election;
  - (f) no affected employee is unreasonably excluded from standing for election;
  - (g) all affected employees on the date of the election are entitled to vote for employee representatives;
  - (h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;
  - (i) the election is conducted so as to secure that –
    - (i) so far as is reasonably practicable, those voting do so in secret, and
    - (ii) the votes given at the election are accurately counted.
- (2) Where, after an election of employee representatives satisfying the requirements of paragraph (1) has been held, one of those elected ceases to act as an employee representative and any of those employees are no longer represented, they shall elect another representative by an election satisfying the requirements of paragraph (1)(a) (e), (f) and (i).

## **60H Protective awards – complaint to Tribunal**

- (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 affected employees, any of the employees who have been dismissed as redundant or any of the appropriate representatives, as the case may be.
- (2) If on a complaint under paragraph (1) a question arises as to whether or not any employee representative was an appropriate representative for the purposes of Article 60F, it shall be for the employer to show that the employee representative had the authority to represent the affected employees.
- (3) On a complaint under paragraph (1) that there has been a failure relating to the election of employee representatives, it shall be for the employer to show that the requirements in Article 60G have been satisfied.
- (4) If the Tribunal finds the complaint well-founded it shall make a declaration to that effect

and may also make a protective award.

- (5) A protective award is an award in respect of one or more descriptions of employee who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, requiring the employer to pay remuneration to each such employee for the protected period.
- (6) The protected period –
  - (a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier; and
  - (b) is of such length as the Tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's failure to comply with any requirement of Article 60F or 60G,  
but shall not exceed 13 weeks.
- (7) The Tribunal shall not consider a complaint under this Article unless it is presented to the Tribunal –
  - (a) before the date on which the last of the dismissals to which the complaint relates takes effect;
  - (b) during the period of 8 weeks beginning with that date; or
  - (c) where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of 8 weeks described in subparagraph (b), within such further period as it considers reasonable.
- (8) If, on a complaint under this Article, a question arises –
  - (a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of Article 60F or 60G; or
  - (b) whether the employer took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,  
it is for the employer to show that there were such circumstances and that such steps were taken.

#### **60I Entitlement under protective award**

- (1) Where a Tribunal has made a protective award, every employee of a description to which the award relates is entitled to be paid remuneration by that person's employer for the protected period, subject to this Article.
- (2) The rate of remuneration payable is a week's pay for each week of the protected period.
- (3) Remuneration in respect of a period less than one week shall be calculated by reducing proportionately the amount of a week's pay.
- (4) An employee is not entitled to remuneration under a protective award in respect of a period during which he or she is employed by the employer unless he or she would be entitled to be paid by the employer in respect of that period –
  - (a) under the contract of employment; or
  - (b) under Article 59.
- (5) For the purpose of this Article –
  - (a) a week's pay shall be calculated in accordance with Schedule 1; and
  - (b) the calculation date referred to in Schedule 1 shall be the date on which the protective award was made or, in the case of an employee who was dismissed before the date on which the protective award was made, the effective date of

termination.

- (6) If an employee of a description to which a protective award relates dies during the protected period, the award has effect in that person's case as if the protected period ended on that person's death.

#### **60J Termination of employment during protected period**

- (1) Where an employee is employed by the employer during the protected period and –
  - (a) that employee is fairly dismissed by the employer, otherwise than for redundancy; or
  - (b) the employee unreasonably terminates the contract of employment,then, subject to the following provisions, the employee is not entitled to remuneration under the protective award in respect of any period during which, but for that dismissal or termination, the employee would have been employed.
- (2) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of the employee's employment under the previous contract) to renew the employee's contract of employment, or to re-engage the employee under a new contract, so that the renewal or re-engagement would take effect before or during the protected period, and either –
  - (a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which the employee would be employed, and as to the other terms and conditions of the employment, would not differ from the corresponding provisions of the previous contract; or
  - (b) the offer constitutes an offer of suitable employment in relation to the employee,the following provisions have effect.
- (3) If the employee unreasonably refuses the offer, the employee is not entitled to remuneration under the protective award in respect of a period during which, but for that refusal, he or she would have been employed.
- (4) If the employee's contract of employment is renewed, or the employee is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in paragraph (2)(b), there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this Article).
- (5) The trial period begins with the ending of the employment under the previous contract and ends with the expiration of the period of 4 weeks beginning with the date on which the employee starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with paragraph (6) for the purpose of retraining the employee for employment under that contract.
- (6) Any such agreement –
  - (a) shall be made between the employer and the employee or a representative of the employee before the employee starts work under the contract as renewed or, as the case may be, the new contract;
  - (b) shall be in writing;
  - (c) shall specify the date of the end of the trial period; and
  - (d) shall specify the terms and conditions of employment which will apply in the employee's case after the end of that period.
- (7) If during the trial period –
  - (a) the employee, for whatever reason, terminates the contract or gives notice to

terminate it and the contract is thereafter in consequence terminated; or

- (b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter in consequence terminated,

the employee remains entitled to remuneration under the protective award unless, in a case falling with sub-paragraph (a), the employee acted unreasonably in terminating or giving notice to terminate the contract.

#### **60K Right to time off to look for work or arrange for training**

- (1) An employee who is given notice of dismissal by reason of redundancy is entitled to be permitted by that person's employer to take time off during the employee's working hours before the end of that person's notice period in order to –
  - (a) look for new employment; or
  - (b) make arrangements for training for future employment.
- (2) An employee is not entitled to take time off under this Article unless, on whichever is the later of –
  - (a) the date on which the notice is due to expire; and
  - (b) the date on which the employment would expire were notice given as required by Article 56,the employee will have been (or would have been) continuously employed for a period of 2 years or more.
- (3) For the purposes of paragraph (1) –
  - (a) an employee is entitled to be permitted to take such time off work as is reasonable provided that that period of absence is at least the period during which the employee would be entitled to 40% of his or her week's pay during the period of absence, calculated in accordance with Schedule 1; and
  - (b) the working hours of an employee shall be taken to be any time when, in accordance with that person's contract of employment, the employee is required to be at work.

#### **60L Right to remuneration for time off under Article 60K**

- (1) An employee who is permitted to take time off under Article 60K is entitled to be paid remuneration by that person's employer for the period of absence at the appropriate hourly rate.
- (2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force when the notice of dismissal was given.
- (3) Where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which notice was given.
- (4) If an employer unreasonably refuses to permit an employee to take time off from work as required by Article 60K, the employee is entitled to be paid an amount equal to the remuneration to which that employee would have been entitled under paragraph (1) if the employee had been permitted to take the time off.



- (5) The amount of an employer's liability to pay remuneration under paragraph (1) shall not exceed 40% of a week's pay of that employee during the period of absence, calculated in accordance with Schedule 1.
- (6) The right to any amount under paragraph (1) or (4) does not affect any right of an employee in relation to remuneration under that person's contract of employment.
- (7) Any contractual remuneration paid to an employee in respect of a period of time off under this Article shall go towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of such a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

#### **60M Complaints to the Tribunal**

- (1) An employee may present a complaint to the Tribunal that the employer of that person –
  - (a) has refused to permit that employee to take time off as required by Article 60K(1); or
  - (b) has failed to pay the whole or part of any amount to which the employee is entitled under Article 60L(1) or (4).
- (2) The Tribunal shall not consider a complaint under this Article unless it is presented –
  - (a) before the end of the period of 8 weeks beginning with the date on which it is alleged that the time off should have been permitted, whether or not it was in fact permitted then; or
  - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.
- (3) Where the Tribunal finds a complaint under this Article well-founded, the Tribunal shall –
  - (a) make a declaration to that effect; and
  - (b) direct the employer to pay to the employee such amount as it thinks reasonable.
- (4) The amount which may be directed by the Tribunal to be paid by an employer under paragraph (3) may exceed the amount for which the employer may be liable under Article 60L.

#### **60N Notifying the Minister**

- (1) An employer proposing to dismiss as redundant 21 or more employees within a period of 90 days or less shall notify the Minister in writing of that proposal before giving notice to terminate an employee's contract of employment in respect of any of those dismissals, and at least 30 days before the first of those dismissals takes effect.
- (2) A notice given under this Article shall –
  - (a) be given to the Minister by delivery or by sending it by post to that person, at such address as the Minister may direct;
  - (b) where there are representatives to be consulted under Article 60F, identify them and state the date when consultation with them under that Article began;
  - (c) set out the reasons for the dismissal;
  - (d) specify the numbers of employees that the employer is proposing to dismiss as redundant; and

- (e) be in such form and contain such other particulars as the Minister may direct.
- (3) After receiving a notice under this Article from an employer the Minister may by written notice require the employer to give to the Minister such further information as may be specified in the notice.
- (4) Where there are representatives to be consulted under Article 60F the employer shall give to each of them a copy of any notice given under paragraph (1).
- (5) For the purposes of paragraph (4), copies shall be delivered to the representatives or sent by post to one or more addresses notified by the representatives to the employer, or, in the case of representatives of a trade union, sent by post to the union at its registered address.
- (6) If, in any case, there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of paragraphs (1) to (5), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances.
- (7) Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.
- (8) The Minister may use the information received under this Article to consult with such other persons as he or she thinks fit.

#### **60O Employee representative's right not to be subjected to detriment**

- (1) An employee has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his or her employer done on any of the following grounds –
  - (a) the employee's participation in an election of employee representatives, including his or her participation as a candidate, for the purposes of this Part;
  - (b) the employee's performance or proposed performance of any functions or activities as an employee representative, or candidate to become such a representative, for the purposes of this Part.
- (2) This Article does not apply where the detriment in question amounts to dismissal within the meaning of Part 7.

#### **60P Complaints to Tribunal for breach of Article 60O**

- (1) An employee may present a complaint to the Tribunal that he or she has been subjected to a detriment in contravention of Article 60O.
- (2) The Tribunal shall not consider such a complaint unless it is presented within –
  - (a) the 8 weeks immediately following the date of the act; or
  - (b) such further period as the Tribunal may, in the interests of justice, consider reasonable.
- (3) For the purposes of paragraph (2)–
  - (a) where an act extends over a period, the 'date of the act' means the last day of that period; and
  - (b) a deliberate failure to act shall be treated as done when it was decided on as construed in accordance with paragraph (4).
- (4) In the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he or she does an act inconsistent with doing the act or, if

the employer has done no such inconsistent act, when the period expires within which he or she might reasonably have been expected to do the act if it was to be done.

- (5) Where the Tribunal finds a complaint under this Article well-founded, it shall –
  - (a) order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay, calculated in accordance with Schedule 1; and
  - (b) declare that any action taken against the employee by the employer, other than the dismissal of the employee, is void.

#### **60Q Right to time off for employee representatives**

- (1) An employee who is –
  - (a) an employee representative for the purposes of this Part; or
  - (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,is entitled to be permitted by his or her employer to take reasonable time off during the employee's working hours in order to perform his or her functions as such employee representative or candidate or in order to undergo training to perform such functions.
- (2) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his or her contract of employment, the employee is required to be at work.

#### **60R Right to remuneration for time off under Article 60Q**

- (1) An employee who is permitted to take time off under Article 60Q is entitled to paid remuneration by his or her employer for the time taken off at the appropriate hourly rate.
- (2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay calculated in accordance with Schedule 1 divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.
- (3) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his or her contract of employment ("contractual remuneration").
- (4) Any contractual remuneration paid to an employee in respect of a period of time off under Article 60Q goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period, and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

#### **60S Complaint to Tribunal for breach of Article 60Q or Article 60R**

- (1) An employee may present a complaint to the Tribunal that his or her employer –
  - (a) has unreasonably refused to permit the employee to take time off as required under Article 60Q; or
  - (b) has failed to pay the whole or any part of the amount to which the employee is entitled under Article 60R.
- (2) The Tribunal shall not consider a complaint unless it is presented –
  - (a) before the end of the period of 8 weeks beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted; or

- (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.
- (3) Where the Tribunal finds a complaint under this Article well-founded it shall make a declaration to that effect.
- (4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the Tribunal shall also order the employer to pay compensation to the employee of an amount equal to the remuneration to which the employee would have been entitled under Article 60R if the employer had not refused.
- (5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under Article 60R, the Tribunal shall also order the employer to pay to the employee the amount which the Tribunal finds due to the employee.”.

**6 Article 74 repealed**

Article 74 of the principal Law shall be repealed.

**7 Citation and commencement**

- (1) This Law may be cited as the Employment (Amendment No. 5) (Jersey) Law 200.
- (2) This Law 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] [www.gov.je/SocialSecurity/Employment/Employment+Relations/The+Employment+Forum.htm](http://www.gov.je/SocialSecurity/Employment/Employment+Relations/The+Employment+Forum.htm)

[2] [www.gov.je/SocialSecurity/Employment/Employment+Relations/The+Employment+Forum.htm](http://www.gov.je/SocialSecurity/Employment/Employment+Relations/The+Employment+Forum.htm)

[3] Jersey Employment Tribunal Case Number 2502037/06

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[1] *chapter 05.255*

[2] *chapter 05.260*