

STATES OF JERSEY

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DRAFT EMPLOYMENT (AMENDMENT) (JERSEY) LAW 200-

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

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Employment and Social Security Committee has made the following statement –

In the view of the Employment and Social Security Committee the provisions of the Draft Employment (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F. Routier**

REPORT

The new Articles are inserted in the Employment Law to enable the Employment and Social Security Committee to approve codes of practice for the purposes of that Law, in the same way as it may approve codes of practice under the present draft Law.

Article 10 of the Employment Law, which relates to weekly rest periods, at present provides that an employer and an employee may agree to provide for such periods on a fortnightly basis instead of the weekly basis if the employer and employee so agree. On the recommendation of the Employment Forum, this provision is amended so that the agreement must be made via a 'relevant agreement' (i.e. in a collective agreement that forms part of the employee's contract with the employer or in some other agreement that is legally enforceable as between them).

In order to provide for serious 'operational urgency' situations, on the recommendation of the Employment Forum, Article 10 of the Employment Law is amended to enable the States to make Regulations in future specifying circumstances in which an employee will not be entitled to a rest period.

The Employment Law is amended to provide that no award by the Tribunal under the Employment Law (for example, in relation to an individual contract of employment) shall have the effect of compelling a person to work.

The Employment Law gives an employee the right not to be dismissed unfairly, however this right does not normally arise until the employee has been employed continuously for a qualifying period of at least 26 weeks and that protection against unfair dismissal does not apply if the employee has reached retiring age. The Employment Law provides various 'automatically unfair' reasons for dismissal (including dismissal on the grounds of union membership or non membership, and the assertion of a statutory right) for which the qualifying period and age limit do not apply. The amendment provides that the 26-week qualifying period will not be required for protection against unfair dismissal when the employee is dismissed for reasons related to his or her membership of or activities in a trade union, or to his or her redundancy (i.e. the employee may claim unfair dismissal from day one of employment) and also the age limit does not apply, so an employee may claim unfair dismissal after the normal retiring age.

The Employment Law currently provides the 'two-thirds rule', which provides that where an employee is engaged on contract for a fixed term of 26 weeks or less, the right to protection against unfair dismissal applies when the employee has served at least two-thirds of that fixed term. On the recommendation of the Employment Forum, an amendment to this provision requires that to become entitled to such protection, the employee must have served at least 13 weeks of the fixed term.

There are no additional financial or manpower implications for the States arising from this draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee 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). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 22nd April 2005 the Employment and Social Security Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Employment and Social Security Committee the provisions of the Draft Employment (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law would amend the Employment (Jersey) Law 2003 (“the principal Law”).

Article 1:

This is an interpretation provision.

Article 2:

This defines the expression “Employment Forum”, when used in the principal Law.

Article 3:

In the principal Law, Article 10 (which relates to weekly rest periods) now provides that an employer and an employee may agree to provide for such periods on the fortnightly basis to which paragraph (2) of that Article refers instead of the weekly basis stipulated in paragraph (1) of the Article.

Article 3 of this amending Law amends that provision so that the option will only apply if it is contained in a collective agreement that forms part of the employee’s contract with the employer or in some other agreement that is legally enforceable as between them.

Article 10 of the principal Law is also amended to enable the States to make Regulations specifying circumstances in which an employee will not be entitled to a rest period.

Article 4:

Article 62(1) of the principal Law defines dismissal, for the purposes of Part 7 of the Law which then goes on to define what amounts to an unfair dismissal.

At present the Article provides that non-renewal of a fixed term contract only constitutes dismissal (and therefore only gives rise to a question whether there has been an unfair dismissal) if the employee has been engaged under the contract (or under a series of fixed term contracts) for such continuous period as is prescribed by the Employment and Social Security Committee.

Article 4 of this amending Law removes that limitation. In the result, non-renewal of any fixed term contract will constitute dismissal – and accordingly be open to examination whether it is unfair.

Article 5:

Article 61 of the principal Law gives an employer the right not to be dismissed unfairly. Under Article 73 of the Law, this right does not arise until the employee has been engaged continuously for at least 26 weeks (or for such other period as may be prescribed).

One effect of Article 5 of this amending Law is to provide that the time limit will not apply when the employee is dismissed for reasons related to his or her membership of or activities in a trade union, or to his or her redundancy.

Article 73 of the principal Law also provides that where an employee is engaged on contract for a fixed term of 26 weeks (or such other term as may be prescribed), or less, the right to protection under Article 61 against unfair dismissal does not arise unless he or she has served at least two-thirds of the term.

The other effect of the amendment in Article 5 of this amending Law is to require in addition that, to become entitled to such protection, the employee must in any case have served at least 13 weeks of the fixed term.

Article 6:

Under Article 74, the right to protection under Article 61 against unfair dismissal does not apply if the employee has reached retiring age.

The effect of Article 6 of this amending Law is to provide that that limitation will not apply when the employee is dismissed for reasons related to his or her membership of or activities in a trade union, or to his or her redundancy.

Article 7:

The effect of this amendment is to provide that no award by the Tribunal under the principal Law shall have the effect of compelling a person to work.

Article 8:

This Article corrects a grammatical error.

Article 9:

This Article corrects a drafting error by removing 2 redundant clauses.

Article 10:

The amendment made by this Article is consequential on the amendment made by Article 7.

Article 11:

This Article corrects grammatical errors.

Article 12:

This Article revokes an obsolete reference to a Triennial Regulation.

Article 13:

This Article makes minor corrections to Schedule 4 to the principal Law. They relate to redundant provisions and to inapposite terminology.

Article 14:

This Article repeals the Terms of Employment (Jersey) Regulations 2004, whose provisions will be superseded by the Employment (Jersey) Law 2003.

Article 15:

This Article provides for the citation of the draft amending Law.



Jersey

DRAFT EMPLOYMENT (AMENDMENT) (JERSEY) LAW 200-

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 10 amended</u>
<u>4</u>	<u>Article 62 amended</u>
<u>5</u>	<u>Article 73 amended</u>
<u>6</u>	<u>Article 74 amended</u>
<u>7</u>	<u>Article 88 amended</u>
<u>8</u>	<u>Article 89 amended</u>
<u>9</u>	<u>Article 90 amended</u>
<u>10</u>	<u>Article 93 amended</u>
<u>11</u>	<u>Article 97 amended</u>
<u>12</u>	<u>Schedule 3 amended</u>
<u>13</u>	<u>Schedule 4 amended</u>
<u>14</u>	<u>Repeal</u>
<u>15</u>	<u>Citation</u>



Jersey

DRAFT EMPLOYMENT (AMENDMENT) (JERSEY) LAW 200-

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

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 –

1 Interpretation

In this Law, “the principal Law” means the Employment (Jersey) Law 2003.^[1]

2 Article 1 amended

In Article 1(1) of the principal Law^[2] after the definition “employment dispute”, there shall be inserted the following definition –

“ ‘Employment Forum’ means the body that, under Article 21, is to be regarded for the purposes of this Law as being the Employment Forum;”;

3 Article 10 amended

(1) In Article 10(2) of the principal Law,^[3] after the words “If the employer and the employee so agree” there shall be inserted the words “in a relevant agreement”.

(2) For Article 10(6) of the principal Law^[4] there shall be substituted the following paragraph –

“(6) The States may by Regulations –

- (a) amend any of the periods of time, whether expressed in hours or days, mentioned in this Article; or
- (b) specify circumstances in which an employee shall not be entitled to a rest period under this Article.”.

4 Article 62 amended

In Article 62(1)(b) of the principal Law,^[5] the words “for less than such continuous period of time as may be prescribed,” shall be deleted.

5 Article 73 amended

- (1) In Article 73(2) of the principal Law,^[6] after the word “Article” there shall be inserted the figures “65, 66,”
- (2) In Article 73(3) of the principal Law,^[7] after the words “at least two-thirds of the fixed term” there shall be inserted the words “or 13 weeks (whichever is the longer)”.

6 Article 74 amended

In Article 74(2) of the principal Law,^[8] after the word “Article” there shall be inserted the figures “65, 66,”.

7 Article 88 amended

After Article 88(4) of the principal Law^[9] there shall be inserted the following paragraph –

- “(5) However, no award shall, whether by way of –
- (a) a requirement as to the specific performance or specific implementation of a contract of employment; or
 - (b) a requirement that a person should refrain from committing a breach or threatened breach of such a contract,
- have the effect of compelling an employee to do any work or attend at any place for the doing of any work.”.

8 Article 89 amended

In Article 89(1)(c) of the principal Law,^[10] for the words “may appoint” there shall be substituted the word “appoint”.

9 Article 90 amended

In Article 90 of the principal Law,^[11] paragraphs (9) and (10) shall be repealed.

10 Article 93 amended

In Article 93(2) of the principal Law,^[12] after the word “may” there shall be inserted the words “(subject to Article 88(5))”.

11 Article 97 amended

In Article 97(2) of the principal Law^[13] –

- (a) the words “there are”, in the second place where they appear, shall be deleted;
- (b) in sub-paragraph (a), before the word “records” there shall be inserted the words “there are”.

12 Schedule 3 amended

In Schedule 3 to the principal Law,^[14] the words “The Terms of Employment (Jersey) Regulations 2001^[15],” shall be deleted.

13 Schedule 4 amended

In Schedule 4 to the principal Law^[16] –

- (a) in paragraph 2, for the word “general” there shall be substituted the word “annual”;
- (b) paragraphs 4 and 9(2) shall be repealed;
- (c) in paragraph 9(3), the words “or (2)” shall be deleted.

14 Repeal

The Terms of Employment (Jersey) Regulations 2004^[17] are repealed.

15 Citation

This Law may be cited as the Employment (Amendment) (Jersey) Law 200-.

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- [1] *Volume 2003, page 479.*
- [2] *Volume 2003, page 486.*
- [3] *Volume 2003, page 494.*
- [4] *Volume 2003, page 494.*
- [5] *Volume 2003, page 523.*
- [6] *Volume 2003, page 529.*
- [7] *Volume 2003, page 529.*
- [8] *Volume 2003, page 530.*
- [9] *Volume 2003, page 537.*
- [10] *Volume 2003, page 537.*
- [11] *Volume 2003, page 539.*
- [12] *Volume 2003, page 540.*
- [13] *Volume 2003, page 542.*
- [14] *Volume 2003, page 553.*
- [15] *R&O 32/2001.*
- [16] *Volume 2003, page 554.*
- [17] *R&O 20/2004.*