

1. In cases where you are the legal employer of an individual (but provide the benefit of such individual's services to an organisation), do you consider that the extension of benefits to your employee under the proposals will cause you practical problems? If so, please specify.

While we are keen to support family friendly rights in Jersey for our own internal employees, we are very concerned about the practical issues in applying the extension of benefits to Temporary zero hours workers that we supply as a recruitment agency service to other organisations. We are most concerned about the practical issues in applying the extension of benefits to Temporary employees. Unlike other jurisdictions where the government financially supports statutory family friendly leave payments through the individuals' involved or through the business affected, there is no such arrangement in Jersey.

The full responsibility lies with the employer and in the case of Agencies, these are for the most part small commercial companies. Furthermore, it appears that the legal concept of proportionality has not been applied to the law as it stands or the new enhanced provisions (apart from potentially in respect of the provision of breastfeeding facilities). It does not take into account the size of a business (according to States of Jersey statistics 80% of businesses in Jersey employ 5 or fewer people) and whether it will cause undue hardship. We feel that the financial realities of this statutory leave is of grave concern.

The Agencies continue to be caught in a difficult situation as they are deemed under Jersey employment law to be the legal employer of an agency temp, although this was not the original intention when employment law was first drafted. Unlike UK employment law, which provides for more than one employment status i.e. 'worker' and 'employee' to which different employment rights apply, Jersey employment law only has 'employee' status. Therefore agency temps are deemed to be employees from day one.

Many Agencies will provide a temporary resourcing service in addition to their core services of permanent and contract recruitment. In most cases these agencies are small privately owned commercial companies who self-fund a weekly payroll to be able to provide this temporary workforce solution to other companies in Jersey. These Agencies then receive payment back from the client between 30 and 60 days. There are several hundred agency temps undertaking assignments at any given point with hourly rates paid to the temporary workers (depending on their level or specialist area of expertise) between £10 and £100 per hour. The Agency charges a small margin to support temporary needs within the local employment market gaps and provide payroll services to the Temporary workers who are contracted to the agency under zero hours contracts. This means the temporary worker only receives payment for the hours worked by the client and receives no other benefits other than 4% rolled up holiday pay which is earned and paid for by the client for the hours they work. Agencies will charge a small fee to cover the cost of sourcing a bank of suitable individuals to be available to undertake temporary assignments and thereafter to pay the temp and manage the statutory aspects. It is the hiring client that enjoys the benefits of the temps' work contribution to their business without being encumbered with any of the employment or statutory obligations. It is a complicated tri-party relationship (the temp, the agency and the hiring client) with the supervision, direction and control for the agency temp resting with the hiring client and the employment agency assuming all the employment obligations (even though they have little or no influence over the assignment). We are currently drafting a letter to the States of Jersey to have this relationship addressed under the employment law.

There are several hundred agency temps undertaking assignments at any given time, as noted above the Agency charges a margin to support and payroll the Temps. Over the last decade this agency margin has reduced significantly to the point where there has been discussion by agencies over how commercially viable the provision of a Temporary service is. An example, using a 'live' situation to demonstrate the difficulties in relation to statutory leave, is the payment by the Agency of a Temporary employee's 6 weeks maternity leave (or paternity leave if this is also extended to 6 weeks). Therefore the higher the hourly rate (and specialist skill) the longer it would take to recover if at all and most agencies would risk a financial loss by providing these highly skilled candidates to meet the needs of the Jersey economy and growth strategy. It would take the agency 66 weeks to recoup this 6 weeks statutory based on the margin paid by the end user. In all likelihood the Temporary Employee will only be employed for a short period by the agency; a matter of days, weeks or a few months. The Agency would essentially be unable to recoup any cost and would then run at a significant loss. It is also possible, in fact, that in the case of paternity leave, there is little or no notice for the Agency.

The Temporary Employee can be employed by many agencies at one time, there is no contract exclusivity which we are all completely supportive of. A point was raised in our discussions about the possible 6 week paternity leave being used as additional paid work time, one agency would not know that the individual was on paid paternity leave with another agency. This could become a concern for the end user also in that the additional paid work may be a conflict of interest for their business.

The recommendation that the additional leave is taken in cost of the 100% paid leave in up to 4 blocks over a period of 3 years is only practical in the sense that the Temporary Employee can confirm this plan however their role is not protected and therefore it is unlikely they will have this benefit made available to them, as other Employees would as often it is week to week depending on the demands of the business and client needs. Our understanding is that the 'role' the Temporary Employee is contracted with is with the Agency; their position with the end user Company is the Assignment they have been offered. The Agency has no control or influence over the end user Company, therefore at their request the Assignment may cease and the Temporary Employee's blocks of leave will simply be additional periods of time that they do not work. There is no position to return to.

Finally, the effect of the proposed amendments is likely to cause hardship to small businesses especially (both existing and new undertakings) and they will have the effect of discouraging start-up ventures or expansion (where Temporary staff is often in demand) This will then impact on individuals because the employment market will eventually become more limited and therefore less fluid. The likely conclusion to this situation is that only large employers will remain in the recruitment market and as with other market entities, those large employers may become unduly powerful to the ultimate detriment of the market and the employees.

2. In the same situation, do you consider that organisations may view employment through agencies (rather than direct with an employee) as being more attractive? For example, legal responsibility for keeping the position open after periods of absence will rest with the agency as opposed to the organisation to whom the individual is allocated.

Yes, most definitely, this question has been raised by organisation recently so it would appear to have already been given consideration.

We feel that the current legislation giving Employer status to the Agency does tend to make the Temporary Employees more vulnerable as the Employer responsibility rests with a 'distant' Employer with no day to day involvement in their working environment and conditions. Any ability to support them through a grievance for example is severely hindered and in reality quite impossible, as a result of this unusual tri-party relationship. Based on what we have stated above and experience to date we believe it is possible that a Temporary Employee may be seen as a more attractive option, leaving the responsibility of statutory leave periods and payments with the Agency. The Agency may have legal responsibility to keeping the position open but the Employee's contracted position with the Agency is that of a Zero Hour Employee - unlike every other Employee the Agency Temporary Employee is very unlikely to have the comfort of their assigned role to return to after a block of leave.

Ultimately this will have a negative effect on the rights of the Temporary Employee and the benefits and good working conditions they experience.

3. Leading on from the above, would the proposals cause you to vary your terms of engagement both with the individual and the business organisation to which he/she is 'seconded' and, if so, in what respect.

The proposal for extended family friendly has increased our concern over the liability and commercial viability of providing Temporary resource. In some cases Agencies have discussed transferring liability for statutory payments to the end user (the Organisation) and potentially deciding on a case by case basis what companies would be 'safe' to work with based on the agreement, dependent on their appetite for risk. Ultimately this would potentially result in Jersey having a smaller number of high volume and high financial risk Temp Agencies. Some larger organisations however provide their own PSLs and there is no opportunity for variance, it is literally a 'take it, or leave it approach' to include all the liability.