

# STATES OF JERSEY



## **DRAFT EMPLOYMENT (AMENDMENT No. 11) (JERSEY) LAW 201- (P.100/2019): SECOND AMENDMENT (P.100/2019 Amd.(2)) – COMMENTS**

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

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**STATES GREFFE**

## COMMENTS

### SMALL BUSINESS EXCEPTION (P.100/2019 Amd.(2)(re-issue))

The Council of Ministers does not support the proposed amendment.

**The amendment does not acknowledge that both parents have a part to play in bringing up a child, which is essential if Jersey is to improve gender equality in the workplace.**

The amendment would be a significant backward step in employment rights. For employees who work in a business that employs 5 staff or less, most of the existing family friendly employment rights would be removed –

1. Father and partners would have no right to take parental leave of any duration, with no right to return to the same job or protection against dismissal.
2. Only the birth mother (or one adoptive parent) would be entitled to 26 weeks of unpaid leave.
3. The existing periods of paid leave would be removed for all parents, including the paid compulsory maternity leave period which provides a fundamental protection for women following childbirth.
4. The birth mother and father/partner would not be entitled to time off work to attend antenatal appointments.

By contrast and subject to States' approval, the employees of business with 6 or more staff would be entitled to the proposed extended employment rights, including –

- up to 52 weeks of parental leave for each parent
- up to 6 weeks of paid leave for each parent
- breastfeeding breaks and facilities
- time off work to attend antenatal or pre-adoption appointments.

Businesses have reported a very tight labour market. Limited employment rights would mean that employees are less likely to be attracted to work in a small business, and some employees might seek alternative employment that offers better employment rights. The Council of Ministers is concerned that this amendment could affect the ability of small businesses to recruit and retain staff.

In addition to the above, the Council of Ministers cannot support the proposed small business exception for the following reasons –

1. **Unfair on children** – The children of parents who work for small businesses do not deserve a lower level of protection than the children of parents who work for larger companies. The effect on employees who suffer a detriment, dismissal or discrimination is the same, whatever the size of the business.
2. **Law appropriate for all business sizes** – The Employment Law has been developed to provide fundamental employment protections that are appropriate for businesses of all sizes. All employees in Jersey have the same level of employment protection today.

3. **Fails to acknowledge international good practice** – Neither the UK nor Isle of Man has a small business exception. As employment laws have progressed in other jurisdictions, small business exceptions have been removed. Women who work for small businesses are excluded from maternity protection laws only in 3 countries –
  - (a) The Republic of Korea, where women working in enterprises with less than 5 employees are not entitled to maternity leave.
  - (b) Honduras, where maternity protection does not cover workers in agricultural and stockbreeding enterprises with fewer than 10 permanent staff.
  - (c) The USA, where the 12 weeks’ family leave is limited to employers with more than 50 employees<sup>1</sup>.
4. **No evidence of difficulties** – Contrary to the Connétable’s statement in his report, there is no evidence that the existing legislation, which came into force in 2015 and was extended in 2018, has caused difficulties for small businesses. The Jersey Advisory and Conciliation Service will continue to provide proactive support targeted to small businesses through its outreach service.
5. **Confusing** – Employers and employees would be uncertain as to their entitlements and responsibilities, and would not be able to plan periods of leave. For example, a mother who is taking a period of maternity leave under the existing Law could immediately lose those rights when the amendment to the Law comes into force.
6. **Hard to implement** – The amendment does not clarify how, or from what date, the number of employees within the business would be calculated. For example, if the number of employees changes seasonally, or if one full-time employee is replaced by 2 part-time employees.
7. **Encourages avoidance** – Businesses might split themselves up into small units to stay under the 5-employee limit. This could lead to less productive businesses because each unit would be kept artificially small.

#### **Key statistics**

933 births in Jersey in 2018<sup>2</sup>  
794 maternity allowance claims in 2018<sup>3</sup>  
62,440 jobs<sup>4</sup>

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.

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<sup>1</sup> Report of the International Labour Organisation on ‘Maternity at work: A review of national legislation’ (2010)

<sup>2</sup> [R.21/2019](#)

<sup>3</sup> [www.gov.je](http://www.gov.je) open data

<sup>4</sup> [Labour Market Report for June 2019](#)