

STATES OF JERSEY



Jersey

DRAFT EMPLOYMENT AND DISCRIMINATION (JERSEY) AMENDMENT LAW 202-

**Lodged au Greffe on 6th November 2024
by the Minister for Social Security
Earliest date for debate: 21st January 2025**

STATES GREFFE



Jersey

DRAFT EMPLOYMENT AND DISCRIMINATION (JERSEY) AMENDMENT LAW 202-

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 and Discrimination (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy L.V. Feltham of St. Helier Central**
Minister for Social Security

Dated: 5th November 2024

REPORT

Introduction

In June 2024 the Employment Forum produced its report and recommendations on the compensation awards regime in Jersey: [Employment Forum report and recommendations on the compensation awards regime in Jersey.pdf \(gov.je\)](#). Compensation awards are those made to employees for breaches of their employment rights.

On 1st August 2024 the Minister for Social Security published her response to the Forum's recommendations: <https://statesassembly.gov.je/assemblyreports/2024/r.129-2024.pdf>

Amendments to the Employment and Discrimination Laws

The Minister decided to accept each of the Forum's recommendations and requested law drafting to amend the relevant provisions of the [Employment \(Jersey\) Law 2003](#) and [Discrimination \(Jersey\) Law 2013](#). The Minister now brings the proposed amendments to the States Assembly for its approval.

(i) Increasing the maximum number of weeks' pay for breaches of an employee's statutory or contractual employment rights

The current maximum award in respect of breaches of an employee's statutory or contractual employment rights is 4 weeks' pay. The Employment Law will be amended wherever that provision is found in the Law to prescribe a new maximum award of 8 weeks' pay. The Minister considers that this will give the Tribunal increased flexibility to deal with the scale of any breach, particularly those at the more serious level.

(ii) Amendments to the monetary amounts and length of service relating to claims for unfair dismissal

The Schedule to the Employment Awards Order will be amended to reflect increased amounts and increased lengths of service which qualify for compensation for unfair dismissal. As the Minister points out in her response to the Forum's report, it is appropriate to reflect increased compensation for greater lengths of service.

(iii) Increased maximum awards for employment-related discrimination claims

Article 42 of the Discrimination (Jersey) Law 2013 will be amended to provide for new maximum limits for compensation awards in relation to employment-related discrimination claims. The maximum limit will, if the Assembly agrees, rise from £10,000 per claim to £50,000 or 52 weeks' pay, whichever is the greater, per claim. The Minister is satisfied that such an increase is justified, bearing in mind both the length of time that has passed since the current maximum award was set (2013) and the possible effects on the health and well-being of an employee, and how such effects might impact their prospects of continuing in employment or securing alternative employment.

In addition, the Law will be amended to provide that the Minister must review every three years the maximum level of compensation able to be awarded by the Tribunal in employment-related

discrimination claims. The Law will also be amended to provide that changes to the maximum amounts that may be awarded will be made in future by Ministerial Order rather than Regulations.

(iv) The requirement to give a written statement of reasons for the dismissal of an employee

In its report, the Employment Forum also recommended that the Employment Law be amended to provide for a new right for an employee to receive a written statement of reasons for dismissal. There is currently no provision in Jersey law for this right.

If agreed to by the Assembly, the amendment will require an employer to provide a written statement of reasons for dismissal to an employee within seven days of their last day of employment. If an employer does not provide the employee with a written statement, then the employee may make a claim to the Tribunal. The Tribunal may order the employer to provide the employee with the written statement. In addition, if the Tribunal is not satisfied that the employer had a reasonable excuse not to provide the statement within the seven-day time limit, the Tribunal may award compensation of up to 8 weeks' pay to the employee.

The Employment Awards Order

The Employment Forum made recommendations in respect of awards for breach of contractual obligations and length of service and amounts of compensation for unfair dismissal. Agreeing with each of the recommendations of the Forum, the Minister has requested law drafting to amend the figures for both in the Employment Awards Order, and this will happen in due course. The Minister will sign the relevant Orders into force at the time this amended Law comes into force.

Further recommendations of the Employment Forum

The Employment Forum also made several separate recommendations relating specifically to the processes and procedural rules of the Employment and Discrimination Tribunal. These include the anonymising of Tribunal judgments; the introduction of a limited costs regime for vexatious conduct on the part of an employee or employer; and the extension of the time permitted for an employer to file a response to a claim. The Minister has accepted each of these recommendations as well. They will be progressed as part of a wider review of the Tribunal's rules and regulations which will take place in 2025.

Communication of the new provisions

The Minister acknowledges the fact that effective communication is key to the successful implementation of these new Employment and Discrimination Law provisions. The Employment Forum pointed out in its report that a significant factor in non-compliance with the Employment Law is the level of ignorance about the relevant provisions.

The Jersey Advisory and Conciliation Service (JACS) has already begun to raise awareness of the proposed new provisions and will repeat the exercise in the coming weeks. The Minister will also consider how best available Government resources can be deployed to ensure that employees and employers have good access to sources of advice and assistance. Again, JACS has an important part to play in this respect.

Financial and staffing implications

There are no financial or staffing implications arising from the implementation of these new legislative provisions.

Human Rights

No human rights notes are annexed because the Law Officers' Department have indicated that the draft Law does not give rise to any human rights issues.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

EXPLANATORY NOTE

This Law, if passed, will amend the Employment (Jersey) Law 2003 (the “Employment Law”) and the Discrimination (Jersey) Law 2013 (the “Discrimination Law”).

The amendments to the Employment Law will require an employer, when terminating an employee’s contract of employment, to give the employee a written statement setting out the reasons for the employee’s dismissal (the “reasons for dismissal”). If no reasons for dismissal are given, the employee has the right to refer the matter to the Jersey Employment and Discrimination Tribunal (the “Tribunal”). The Employment Law is also amended to increase awards of compensation from a maximum of 4 weeks’ pay to a maximum of 8 weeks’ pay.

The amendments to the Discrimination Law will, in relation to employment-related discrimination claims, increase the maximum award for financial loss from £10,000 to either £50,000 or 52 weeks’ pay, whichever is the greater. The maximum award for hurt and distress will increase from £5,000 to £30,000.

Article 1 states that *Part 1* amends the Employment Law.

Article 2 inserts the definition “reasons for dismissal” into Article 1 of the Employment Law.

Article 3 is a consequential amendment resulting from the introduction of new Article 63A (employer to give written statement of reasons for dismissal) of the Employment Law.

Article 4 inserts new Articles 63A to 63C into the Employment Law. New Article 63A requires an employer, when terminating an employee’s permanent or fixed term contract, to give the employee reasons for dismissal. The reasons for dismissal must be given in person, by post or by email not later than 7 days after the date of the employee’s last day of employment.

New Article 63B (reference to Tribunal for non-compliance with Article 63A) will enable an employee to refer the matter to the Employment Tribunal if their employer has failed to comply with Article 63A. The Tribunal cannot determine the matter unless the reference is made not later than 8 weeks after the date on which the employment ended. But the Tribunal does have the discretion to extend that period. The Tribunal will determine whether the employer had a reasonable excuse for not giving the reasons for dismissal, whether the employer should pay the employee compensation and the amount of compensation up to a maximum of 8 weeks’ pay.

New Article 63C provides that if the Tribunal determines that the employer had no reasonable excuse for failing to give the reasons for dismissal, the Tribunal may order them to pay compensation, to give the reasons for dismissal or both. If the Tribunal determines that the employer did have a reasonable excuse, the employer may still be ordered to give the reasons for dismissal.

Article 5 amends Article 77F of the Employment Law. The Tribunal may take into account an employer’s conduct when making an award of compensation for unfair dismissal and, if it considers it reasonable to do so, increase the amount of the award by up to 25%.

Article 6 amends 9 Articles of the Employment Law relating to the payment of compensation, to increase awards of compensation from a maximum of 4 weeks’ pay to a maximum of 8 weeks’ pay.

Article 7 states that *Part 2* amends the Discrimination Law.

Article 8 amends Article 42 of the Discrimination Law so that in employment-related discrimination claims the maximum award for financial loss is increased from £10,000 to either £50,000 or 52 weeks’ pay, whichever is the greater. The maximum award for hurt and distress is increased from £5,000 to £30,000. A new requirement is placed on the Minister for Social Security (the “Minister”) to review, every 3 years, the maximum amount of those compensation

awards. The existing power to amend amounts of compensation by Regulations made by the States is replaced with a power to amend by Order of the Minister.

Article 9 gives the title of this Law and provides for it to come into force 7 days after it is registered.



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Contents

Article

PART 1		9
AMENDMENT OF THE EMPLOYMENT (JERSEY) LAW 2003		9
1	Employment (Jersey) Law 2003 amended.....	9
2	Article 1 (interpretation and application) amended	9
3	Article 62 (circumstances in which an employee is dismissed) amended.....	9
4	Articles 63A to 63C inserted	9
5	Article 77F (compensation awards) amended.....	11
6	Amendment of Articles relating to payment of compensation.....	11
PART 2		11
AMENDMENT OF THE DISCRIMINATION (JERSEY) LAW 2013		11
7	Discrimination (Jersey) Law 2013 amended	11
8	Article 42 (remedies available) amended.....	11
PART 3		12
CLOSING		12
9	Citation and commencement	12



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DRAFT EMPLOYMENT AND DISCRIMINATION (JERSEY) AMENDMENT LAW 202-

A LAW to amend the [Employment \(Jersey\) Law 2003](#) and the [Discrimination \(Jersey\) Law 2013](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

PART 1

AMENDMENT OF THE [EMPLOYMENT \(JERSEY\) LAW 2003](#)

1 [Employment \(Jersey\) Law 2003](#) amended

This Part amends the [Employment \(Jersey\) Law 2003](#).

2 **Article 1 (interpretation and application) amended**

In Article 1(1), after the definition “prescribed” there is inserted –

“reasons for dismissal” has the meaning given in Article 63A;

3 **Article 62 (circumstances in which an employee is dismissed) amended**

In Article 62(2) “and the reason for the dismissal is to be taken to be the reason for which the employer’s notice is given” is deleted.

4 **Articles 63A to 63C inserted**

After Article 63 (effective date of termination) there is inserted –

63A Employer to give written statement of reasons for dismissal

- (1) Paragraph (2) applies if an employer terminates –
 - (a) an employee’s contract of employment under Article 62(1)(a); or
 - (b) an employee’s fixed term contract of employment before the expiry of the fixed term.
- (2) The employer must give the employee a statement in writing setting out the reasons for the employee’s dismissal (the “reasons for dismissal”).
- (3) The reasons for dismissal must be –
 - (a) signed and dated by the employer, or if the employer is a body corporate, a limited liability company or a partnership, by an officer or partner authorised to sign the statement; and
 - (b) given to the employee not later than 7 days after the date of the employee’s last day of employment.
- (4) The reasons for dismissal must be given to the employee even if they have not been continuously employed in accordance with Article 73(1).
- (5) In this Article “given”, in relation to giving reasons for dismissal means –
 - (a) delivered to the employee in person; or
 - (b) sent to the employee by post or email.

63B Reference to Tribunal for non-compliance with Article 63A

- (1) Paragraph (2) applies if an employer does not give an employee reasons for dismissal as required by Article 63A(2), (3) and (4).
- (2) An employee may refer the matter to the Tribunal to determine –
 - (a) whether the employer had a reasonable excuse for not complying with the requirements of Article 63A(2), (3) and (4);
 - (b) whether the employer should pay compensation to the employee for failing to comply with those requirements; and
 - (c) the amount of compensation, if any, that is to be ordered, subject to Article 63C(2)(a).
- (3) If the employment has ended, the Tribunal may consider a reference only if it was made –
 - (a) not later than 8 weeks after the date that the employment ended; or
 - (b) within a further period that the Tribunal considers reasonable if it is satisfied that it was not reasonably practicable for the reference to be made within 8 weeks.

63C Determination of Article 63A reference

- (1) Paragraph (2) applies if, on a reference under Article 63B, the Tribunal determines that the employer has no reasonable excuse for not complying with Article 63A(2), (3) and (4).
- (2) The Tribunal may order the employer –
 - (a) to pay compensation to the employee of an amount not exceeding 8 weeks’ pay;

- (b) to give the reasons for dismissal.
- (3) If the Tribunal determines that the employer has a reasonable excuse for not complying with the requirements of Article 63A(2), (3) and (4), the Tribunal may, despite that determination, order the employer to give the reasons for dismissal.

5 Article 77F (compensation awards) amended

In Article 77F after paragraph (2) there is inserted –

- (2A) The Tribunal may –
 - (a) have regard to the employer’s conduct when making an award of compensation under Article 77(2), or Article 77E(3)(a); and
 - (b) if it considers it reasonable to do so, increase the amount of the award by up to 25%.

6 Amendment of Articles relating to payment of compensation

In the Articles listed in the table, for “4 weeks’ ” there is substituted “8 weeks’ ” –

Article 8 (determination of references)	paragraph (1)(b)
Article 10 (rest period)	paragraph (2E)
Article 15F (remedies)	sub-paragraph (b)
Article 15N (remedies for breach of Part 3B)	sub-paragraph (c)
Article 33 (remedies)	paragraph (1)(b)
Article 54 (determination of references)	paragraph (1A)
Article 55T (remedies for breach of Part 5A)	paragraph (1)(b)
Article 60P (complaints to Tribunal for breach of Article 60O)	paragraph (5)(a)
Article 78B (complaints to Tribunal)	paragraph (3)(a)

PART 2

AMENDMENT OF THE [DISCRIMINATION \(JERSEY\) LAW 2013](#)

7 [Discrimination \(Jersey\) Law 2013](#) amended

This Part amends the [Discrimination \(Jersey\) Law 2013](#).

8 Article 42 (remedies available) amended

- (1) For Article 42(1)(b) there is substituted –
 - (b) order the respondent to pay to the complainant compensation for financial loss, and hurt and distress;
- (2) After Article 42(1) there is inserted –
 - (1A) The amount of compensation that may be ordered under paragraph (1)(b) for –

- (a) financial loss, must not exceed the greater of £50,000 or 52 weeks' pay; and
 - (b) hurt and distress, must not exceed £30,000.
- (1B) But the total amount of compensation ordered under paragraph (1A)(a) and (b) must not exceed the greater of £50,000 or 52 weeks' pay.
- (3) After Article 42(2) there is inserted –
 - (2A) The Minister must review the maximum amounts of compensation that the Tribunal may order under this Article –
 - (a) not later than 3 years after the date on which the Employment and Discrimination (Jersey) Amendment Law 202- comes into force; and
 - (b) subsequently, not later than 3 years after the date of each previous review.
- (4) In Article 42(4) for “The States may by Regulations amend paragraph (1)(b) so as to” there is substituted “The Minister may by Order amend paragraph (1)(b) to”.

PART 3

CLOSING

9 Citation and commencement

This Law may be cited as the Employment and Discrimination (Jersey) Amendment Law 202- and comes into force 7 days after it is registered.