

# STATES OF JERSEY



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

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**Lodged au Greffe on 15th October 2019  
by the Deputy of St. Peter**

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**STATES GREFFE**

**PAGE 2, AMENDMENTS 1 TO 4 –**

- (1) Before the Amendment numbered 1, insert –

**“1 PAGE 26, ARTICLE 3 –**

- (1) Before the existing draft Article 15G to be inserted by Article 3, insert –

**“15G Application of Part 3B**

- (1) Articles 15H to 15O do not apply in respect of an employee whose period of continuous employment by the employer is less than 15 months on the date any application is made under those Articles.
- (2) Paragraph (1) does not prevent the inclusion, in a contract between an employer and an employee in respect of whom that paragraph applies, of any term or condition conferring a right equivalent to any right conferred by an Article mentioned in that paragraph.
- (3) For the avoidance of doubt, in this Article “employee” includes any person employed by any other person, regardless of the number of hours worked or whether the employment is permanent or temporary or part-time or full-time.”.
- (2) Renumber existing draft Articles 15G to 15N as Articles 15H to 15O, and replace existing cross-references to any of Articles 15G to 15N accordingly.

**2 PAGES 31 TO 42, ARTICLE 4 –**

- (1) After Article 4(2) insert –

“(3) For the heading to Article 55A, there is substituted –  
**“Interpretation and application of Part 5A”.**”.

- (2) Renumber existing Article 4(3) as (4), and after that paragraph insert –

“(5) After Article 55A(3) there is inserted –

“(4) Except for this paragraph and as provided by paragraphs (5) to (8), the provisions of this Part do not apply in respect of an employee whose period of continuous employment by the employer is less than 15 months ending with the beginning of the expected week of childbirth.

- (5) In the case of a woman who is pregnant or has given birth, and is an employee such as mentioned in paragraph (4), this Part applies as though it had not been amended by Article 4(1), (2), (4) and (6) to (13) of the Employment

(Amendment No. 11) (Jersey) Law 201-, but as though instead, in Article 55D –

- (a) sub-paragraph (2)(a) and paragraphs (3) to (5) were deleted; and
- (b) in sub-paragraph (2)(b) after “employment” there were inserted “, except terms and conditions about remuneration”.

(6) In the case of an employee who would, were it not for the deletion of Article 55N by the Employment (Amendment No. 11) (Jersey) Law 201-, be entitled to parental leave by virtue of fulfilling the condition in paragraph (2)(a)(i) of that Article, this Part applies –

- (a) only if the employee’s period of continuous employment by the employer is 15 months or more ending with the beginning of the expected week of childbirth; and
- (b) as though it had not been amended by Article 4(1), (2), (4) and (6) to (13) of that Law, but as though instead, in Article 55N –
  - (i) in paragraph (4A) “first 2 weeks’ ” and “2 weeks’ ” were deleted,
  - (ii) sub-paragraph (4A)(b) and paragraphs (4B) to (4D) were deleted, and
  - (ii) in sub-paragraph (4A)(c) after “employment” there were inserted “, except terms and conditions about remuneration,”.

(7) Paragraphs (4) to (6) do not prevent the inclusion, in a contract between an employer and an employee in respect of whom paragraph (4) or (6) applies, of any term or condition conferring a right equivalent to any right conferred by a provision of this Part as it applies without the derogation made by paragraph (4) and without any such modification as made by paragraph (5) or (6).

(8) For the avoidance of doubt and for the purposes of paragraphs (4) to (7), “employee” in those paragraphs includes any person employed by any other person, regardless of the number of hours worked or whether the employment is permanent or temporary or part-time or full-time.”.

(3) Renumber paragraphs (4) to (11) of Article 4, and cross-references to those paragraphs, accordingly.”.

- (2) Renumber the existing Amendments as Amendments 3 to 6.

DEPUTY OF ST. PETER

## REPORT

This amendment is primarily aimed at small businesses. 25% of companies in Jersey have between 2–5 employees and a further 7% have between 6–9 employees. This group makes up one third of Jersey businesses. In addition, we have 4,430 sole traders. How many may wish to expand and take on a trainee or apprentice is unknown, but this [draft Law](#) certainly won't encourage them.

The draft Law is generous to the employee, and if exploited to its extreme, potentially devastating to the employer and fellow employees. The unforeseen consequences, which have been presented at public scrutiny hearings, have not been truly reflected in the [revised Law](#). Links to 2 such transcripts are below –

- <https://statesassembly.gov.je/scrutinyreviewtranscripts/2019/transcript%20-%20family%20friendly%20employment%20rights%20-%20chamber%20of%20commerce%20-%20203%20april%202019.pdf>
- <https://statesassembly.gov.je/scrutinyreviewtranscripts/2019/transcript%20-%20family%20friendly%20employment%20rights%20-%20small%20business%20owner%20-%20209%20april%202019.pdf>

It is entirely possible that a new employee could start a new job at 9 a.m. on a Monday, and announce at lunchtime that they, or their partner, is pregnant. This could easily be unintentional, not necessarily the pregnancy, but the discovery.

The result of this is the employer could lose 52 weeks of the next 2 years, pay 6 weeks of maternity/ paternity leave (plus holiday pay for 2 years, and bank holiday pay) for what has been ½ a day's work.

It is given the generosity and loyalty that will be demonstrated by the employer if this draft Law is approved, that there has to be some loyalty demonstrated by the employee. Fifteen months of continuous service seems fair, and my research suggests that small businesses also think it is fairer.

It also reflects the previous Law, so the precedent has been set. The 15 weeks' qualifying period was in the original Part 5A, inserted by the [Employment \(Amendment No. 8\) \(Jersey\) Law 2014](#) into the [Employment \(Jersey\) Law 2003](#).

I suggest the 15 months of continuous service is up to the time that the employee must legally advise the employer of the notice to parental leave, currently the 15th week before the expected week of childbirth.

### **Financial and manpower implications**

There are no additional financial or manpower implications for the States arising from this proposed amendment.