

STATES OF JERSEY



PUBLIC SECTOR EMPLOYMENT CONTRACTS (P.71/2022): COMMENTS

Presented to the States on 21st April 2022
by the States Employment Board

STATES GREFFE

COMMENTS

The States Employment Board (the 'Board') opposes the proposition in its entirety as such provision are already in place, with the exception of introducing an amnesty.

Placing the Board under these additional duties, overrides the role and purpose of the Board that the States has, by law, established it for these purposes.

The Proposition alleges knowledge of certain employees who are in breach of their obligations. [Schedule 3, Section 6 of the Standing Orders of the States of Jersey](#) require Members to raise such matters without undue delay. All such referrals will be investigated by the States Employment Board.

Comment

The Board is established by the Employment of States of Jersey Employees (Jersey) Law 2005 that places the Board under a duty to, amongst other duties:

- (a) employ persons on behalf of the States and administrations of the States;
- (b) ensure that the public service conducts itself with economy, efficiency, probity and effectiveness;
- (c) ensure the health, safety and well-being of States' employees;
- (d) determine any other matter that may reasonably be considered necessary for the proper administration and management of States' employees; and
- (e) discharge any other function conferred on it by or under any enactment.

For this Proposition, we give particular regard for (a) (b) and (d) within the Law.

The States Employment Board have already undertaken a review Codes and policies and they are compliant with natural justice, and employment legislation and regulations. We issue Codes of Practice and approve policies. In this case, we have in place a Code of Practice: Standards in Public Service. The standards are as follows (with pertinent provisions for this Proposition underlined):

Governance: Public servants should act within the law, regulations, and policies to ensure decision-making, and actions are taken in the public interest. They must not act for the personal gain for themselves, families or friends either financially or through other benefits.

Loyalty: Public servants should put the interest of the Island and Islanders first and foremost.

Integrity: Public servants should not place themselves under any obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties, direct how they conduct themselves or provide a higher order of loyalty.

Objectivity: Public servants must provide sound, objective advice based on evidence and research. This must be done without political objective or motive.

Probity: Public servants should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands. They have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Accountability: Public servants are accountable for their decisions and actions to the public and must submit themselves to appropriate oversight through management, audit and Scrutiny as appropriate. They must be clear about their personal accountabilities and responsibilities in discharging their duties.

Respect: Public servants must promote respect within their organisation, including standards of conduct within the workplace, promotion of equality and fairness in employment and decision-making.

Ethics: Public servants should act to promote good ethical decision-making and effective decisions through demonstrating trust, responsibility, fairness and caring; in line with good citizenship. Decisions must be objective and seek to demonstrate advancement and a contribution to the objectives of our organisations.

Additionally, the Code specifically places a duty on public servants to disclose concerns relating to:

- Safeguarding of a child or young adult
- Safeguarding of a vulnerable adult
- Unlawful conduct
- Health and safety
- Professional misconduct (for regulated professions)
- Fraud or corruption
- Anti-competitive practices
- Conflicts of interest or potential conflicts of interest
- Outside interests of material importance to confidence in the integrity of your work
- Discrimination
- Compliance with Codes of Practice and the Public Finance Manual

The Board assures the States that it is already a requirement that employees and contact holders for the States Employment Board have to adhere to standards, Codes and policies. These already provide for disciplinary matters where there are allegations related to conduct and matters concerning the employers' reputation.

We would contend that a requirement not to act in a dishonest manner is an implied term in any contact.

The States Employment board have already undertaken a review of Codes and policies and they are compliant with natural justice, and employment legislation and regulations. The proposition both raises the need for 'natural justice' whilst predetermining that the level of a misdemeanour should automatically be 'gross misconduct' and require

dismissal without notice and withholding contractual benefits. This an entirely contradictory position.

The proposition states:

‘ that such lying, obstructing, misleading and covering up should be punishable by termination of their employment without any compensation or compromise agreements, pension rights or bonuses depending upon the severity of the offence they have committed.’

The proposition limits how the employer discharges its duties fairly, and potentially breaches contracts of employment obligations giving rise to potential claims. Particularly where this concerns accrued benefits within a pension scheme where a members’ entitlement is accrued over a period of time. Such matters are determined by Regulations of the pension schemes and the employers’ policies. This creates potential liability for the employer, over which it has no control.

The ‘amnesty’

The Board does not see the merit in issuing an amnesty.

The ‘register’ of past breaches

Records are maintained of all allegations and investigations and are done so in line with requirements for data protection and compliance with the General Data Protection Regulation (GDPR). As such, we retain information for limited purposes. A general register may breach these obligations.

Where a concern or a breach has been upheld, a sanction is placed on the employees’ file. This is for a specified period of time and should not be used for further consideration when lapsed (other than safeguarding concerns).

Comment under Standing Order 37A

This comment was provided late to the States Greffe due to an administrative delay.