



Employment

Jersey's forthcoming redundancy legislation

April 2009

Introduction

New redundancy legislation is likely to come into force in Jersey in the last quarter of 2009 or the first quarter of 2010. The purpose of this briefing note is to summarise and explain the key changes to the law.

This legislation does not offer protection for employees in circumstances where their employers become insolvent. However, the Minister for Social Security has indicated that a Proposition on this issue is likely to be brought before the States during 2009.

1. Who will be eligible to receive statutory redundancy pay?

An employee will be eligible to receive statutory redundancy pay if (s)he is dismissed by his/her employer by reason of redundancy and (s)he has at least two years' continuous service with the employer.

2. How will statutory redundancy pay be calculated?

Statutory redundancy pay will be calculated on the basis of one week's pay for every full year of continuous service. There is no upper limit on the number of years service which will qualify for a redundancy payment. 'Pay' will be capped at the level of weekly average earnings, currently £600 (this is the most recently reported figure in the Statistics Unit's Average Earnings Report). This means that employees who earn more than £600 per week will not recover their full weekly wage.

Where an employee is entitled to receive a larger redundancy payment as a result of a contractual entitlement then this will override the statutory entitlement.

3. Will an employee still be entitled to receive statutory redundancy pay if (s)he is offered alternative employment with his/her employer?

Where an employee is offered alternative employment:

- (i) before the end of the employee's employment under his/her previous job; and
- (ii) such alternative employment will commence within four weeks of the employee finishing his/her previous job,

then if the employee refuses such an offer (s)he will no longer be entitled to receive statutory redundancy pay.

However, there is an exception to this. If the terms and conditions offered to the employee differ (wholly or in part) from the corresponding provisions of the employee's previous job then the employee may still be entitled to receive a redundancy payment if the contract is terminated because either the employer or the employee considers that the employment is not "suitable" for that employee. For this exception to apply the contract must be terminated (or notice must be given) before the expiry of a trial period. In such circumstances an employee would still be entitled to receive statutory redundancy pay.

4. What consultation obligations are envisaged?

The position under the current law is that employers must engage in a consultation process where redundancies are proposed in order to avoid an employee bringing a successful claim for unfair dismissal. There are no specific requirements regarding the form of this consultation process. Invariably, a consultation process

involves a group meeting, followed by a number of individual consultation meetings with affected employees which normally include a discussion of the following:

- any alternatives to redundancy;
- the pool for selection, the selection criteria to be adopted and how such criteria have been applied;
- the redundancy payment; and
- any redeployment opportunities.

The legislation does not propose to change the position in relation to individual consultation with employees. However, in certain circumstances, it will replace this individual consultation process with a statutory obligation for an employer to consult collectively with nominated representative(s).

Collective consultation will be necessary where, over a 90 day period, an employer proposes:

- (i) to make two or more employees redundant from an establishment where a registered trade union has been recognised by the employer; or
- (ii) to make six or more employees redundant from an establishment where there is no such trade union.

Where a registered trade union is recognised by the employer consultation will be with the trade union representatives. Otherwise, representatives will be appointed or elected by employees. This collective consultation must begin at least 30 days before the first dismissal is due to take effect.

The legislation also contains a requirement for the employer to notify the Minister for Social Security if it proposes to make six employees or more redundant.

5. What will collective consultation involve?

(a) Collective consultation includes consultation with the representatives about ways of:

- avoiding the dismissals;
- reducing the numbers of employees to be dismissed; and
- mitigating the consequences of the dismissals.

(b) The employer must provide the representatives with the following information in writing:

- the reasons for the employer's proposals;
- the numbers and descriptions of employees whom it is proposed to make redundant;
- the total number of employees of any such description employed by the employer at the establishment in question;
- the proposed method of selecting the employees who may be dismissed;
- the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are due to take effect; and
- the proposed method of calculating the amount of any redundancy payments to be made to employees who may be dismissed.

In the event that it is not reasonably practicable to comply with (a) and (b) above, or if it is not practicable to begin consultation at least 30 days before the first dismissal takes effect, then an employer shall take all such steps towards compliance as are reasonably practicable in the circumstances.

6. What are the consequences of failing to comply with the requirements for collective consultation?

Where an employer fails to comply with its collective consultation obligations then an employee will be entitled to bring a complaint before the Employment Tribunal. If the tribunal finds the complaint is well founded then it will make a declaration to that effect and may also make a 'protective award'.

If an employee receives a 'protective award' then (s)he will be entitled to receive a week's pay for each week of the 'protected period'. The 'protected period' will start from the date on which the first of the dismissals takes effect (or, if earlier, from the date of the 'protective award'). The tribunal will determine the length of the 'protected period', up to a maximum of 13 weeks.

In certain circumstances an employee will lose any payment under the 'protective award', for example where (s)he is fairly dismissed for a reason other than redundancy during the 'protected period'.

7. Will an employee have a right to receive paid time off to look for another job?

An employee who is given notice of dismissal will have a statutory right to reasonable time off to look for work or arrange

training. The legislation does not specify an upper limit for what is a reasonable amount of time off since this will vary, for example some employees might require only one interview, whereas others might need to make a number of appointments or travel some distance.

Employees should be paid the appropriate hourly rate for the period of absence from work, but an employer is only liable to pay an amount not exceeding 40% of a week's pay regardless of the length of time off allowed.

8. Other changes

The new legislation will also amend existing legislation in two important respects:

- (i) the removal of any upper age limit for unfair dismissal claims; and
- (ii) the statutory minimum notice periods will be reduced to one week per year of service up to a maximum of 12 weeks' notice (ie. 12 years' service). This change will bring Jersey into line with the statutory minimum notice periods in place in the UK.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.

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