

# Carey Olsen Starting Point Employment Law Guide – Jersey Employment Law

**Briefing Summary:** Carey Olsen Starting Point Guides are intended as a general introduction and guide to different aspects of Jersey law. They are a summary of the most important issues that we come across. It is very much the edited highlights of those issues. If you would like legal advice in relation to any specific circumstances, please do give us a call. This Starting Point Guide provides a brief overview of Jersey employment law.

**Service Area:** Employment, Pensions and Incentives, Employee Incentives, Employment Law

**Sector:** Government and Public Sector

**Location:** Jersey

**Created Date:** 31 January 2023

## Introduction to Jersey

Jersey is the largest of the Channel Islands and is a British Crown dependency. It has its own financial legal and judicial systems. It is not part of the UK or of the European Union (although it has close relationships with both).

## Sources of Jersey Employment Law

The duties of Jersey employers and employees derive from a number of sources which include:

- statute;
- Jersey customary/common law; and
- employment contracts and other documentation.

There is less employment legislation in Jersey than in the UK, although the amount of legislation in this area is increasing.

There is a Jersey Employment Tribunal (the “Tribunal”) which hears employment related claims. The Tribunal has a limited jurisdiction in relation to contractual claims and generally will only deal with contractual claims of up to £10,000. Larger claims are dealt with by the Royal Court of Jersey. The Jersey law of contract is somewhat different from the English law.

However, when it comes to employment contracts, the Jersey courts and tribunals have generally (although not exclusively) had regard to English law and principles – particularly when it comes to implied contractual duties.

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In general, employment law in Jersey is heavily influenced by English case law and so it is often the case that English cases relating to employment law will be cited before the Tribunal or Courts in Jersey. Whilst English law heavily influences the development of employment law in Jersey, a company should be careful to ensure that it obtains Jersey employment law advice in relation to any employees working wholly or mainly in Jersey. This is because there are some important differences between the two jurisdictions.

## The Employment (Jersey) Law 2003 (The “Employment Law”) and the discrimination (Jersey) Law 2013 (The "Discrimination Law")

The Employment Law and the Discrimination Law are the key statutes governing Jersey employment issues. The following is a summary of their key provisions.

### Who is an employee?

The Employment Law applies to both those employed under a contract of employment and to certain individuals who are under an obligation to perform their work personally (and, in particular, to those who would be regarded as “workers” under English law).

### Notice periods

The Employment Law lays down the following periods of notice to be given by an employer:

Length of continuous employment	Minimum period of notice
Less than 2 years	1 weeks' notice
2 years +	2 weeks' notice
3 years +	3 weeks' notice
4 years +	4 weeks' notice
5 years +	5 weeks' notice
6 years +	6 weeks' notice
7 years +	7 weeks' notice

Length of continuous employment	Minimum period of notice
8 years +	8 weeks' notice
9 years +	9 weeks' notice
10 years +	10 weeks' notice
11 years +	11 weeks' notice
12 years +	12 weeks' notice

An employee must give a minimum of:

- 1 weeks' notice if his or her period of continuous service is one week or more but less than 26 weeks;
- 2 weeks' notice if his or her period of continuous employment is more than 26 weeks but less than 5 years; or
- 4 weeks' notice if his or her period of continuous employment is 5 years or more.

The above does not prevent an employment agreement from providing for a longer period of notice (but not a shorter period) – and nor does it prevent an employment contract being entered into for a fixed term.

## Written terms and conditions of employment

Employers are under a duty to provide employees with a written statement of the terms of their employment within 4 weeks of the commencement of their employment.

The key terms which must be provided include (amongst others):

- Names of the employer and the employee.
- Date the employment started.
- Date when employee's period of continuous employment began, taking into account any employment with a previous employer which counts, such as in a business transfer.
- Terms relating to rates of pay.
- Terms and conditions that relate to hours of work.

- Terms and conditions relating to:
- Holiday
- Sickness/sick pay
- Pension
- Maternity leave
- Redundancy
- Disciplinary and grievance procedures.

If an employee is transferring from the UK to work for the Jersey branch of the same company then it is likely that his or her continuous employment will begin from the date he began working for the company in the UK. The length of continuous employment is relevant when calculating whether an employee has sufficient length of service to be eligible to bring a claim for unfair dismissal.

If there is a change in the terms the employer must inform the employee of the change in a further written statement not more than 4 weeks after the change.

The tribunal can award up to 4 weeks' pay as compensation for failure to provide a written statement of terms or any update to existing terms.

## Minimum rest periods and annual leave

The UK Working Time Regulations 1998 (as amended) do not apply in Jersey. However, under the Employment Law, an employee is entitled to an uninterrupted rest period of not less than 24 hours in each seven day period and a 20 minute rest break when working continuously for 6 hours or more. The employer and employee may agree how this should work.

The Tribunal will be able to award up to 4 weeks' pay where an employer fails to comply with statutory rest period requirements.

Under the Employment Law an employee is entitled to a minimum period of 3 weeks' paid annual leave, although his or her contract of employment may provide for a longer period of annual leave. Employees are also entitled to have as paid leave Christmas Day, Good Friday and all other public or bank holidays observed in Jersey provided that they are normally required to work on the days upon which those public and bank holidays fall.

The Law does allow an employee to work on these days provided equivalent leave, selected by the employee, is provided.

## Minimum wage

An employee who is above compulsory school age is entitled to receive the minimum wage.

The minimum wage is currently £10.50 per hour and is reviewed periodically. The intention is to move to a Jersey Living Wage in 2024.

A trainee rate may be paid to an employee of any age who is undertaking approved training for a maximum period of two years, at any time within the first two years of a new job.

The maximum two year training period starts running from the first day of employment in the particular job. Training does not have to start on day one of the new job, but the trainee rate may only be paid whilst an employee is undertaking approved training.

Training is 'approved training' if it is formal training that:

- is agreed in writing by both parties before employment starts;
- has a defined structure and objectives that relate to the performance of the employee in their particular job; and
- has training outcomes which are assessed and documented.

The current trainee rate is:

- Year one - £7.87 per hour; and
- Year two - £9.19 per hour.

The current maximum values that may be offset each week against the minimum wage where accommodation, or accommodation and food, are provided to an employee, are:

- £115.00 for accommodation; or
- £153.28 for accommodation and food.

## Unfair dismissal

Qualifying employees have the right not to be unfairly dismissed. Such rights generally accrue after 52 weeks. There are exceptions to this qualification period – in particular where a dismissal is shown to be discriminatory.

Any employee may claim that a dismissal was automatically unfair at any stage of employment if it is for one of the 'automatically unfair reasons' specified in the Employment Law (for example, where the dismissal is discriminatory or is on grounds related to union membership or activities).

Once it has been established that a dismissal has taken place, it must then be determined whether the dismissal was fair or unfair and it is for the employer to show that the reason for the dismissal falls under one of the six "fair reasons" specified in the Employment Law.

The six potentially fair reasons are as follows:

- a reason relating to the capability or qualifications of the employee for performing the work of the kind they were employed to do;
- a reason which relates to the conduct of the employee;
- by reason of redundancy;
- by reason of the fact that the employee was required to retire;
- by reason of the fact that the employee could not continue to work in the position which they held without contravention of a restriction or a duty imposed by statute; or
- some other substantial reason justifying dismissal.

Whether a particular dismissal based on one of the six reasons set out above will be fair or unfair will depend on whether in the circumstances of the case (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee.

If a claim does go before the Tribunal and a finding is made in favour of an employee then the employee will be awarded compensation. In Jersey calculating the compensation payable is simpler than in England since an award will be made based on the length of service as follows:

Continuous Service	Amount of wages to be awarded
Not more than 26 weeks	An amount not exceeding 4 weeks' pay, in the discretion of the Tribunal, having regard to the actual length of service
More than 26 weeks but not more than 1 year	4 weeks' pay
More than 1 year but not more than 2 years	8 weeks' pay
More than 2 years but not more than 3 years	12 weeks' pay
More than 3 years but not more than 4 years	16 weeks' pay
More than 4 years but not more than 5 years	21 weeks' pay
More than 5 years	26 weeks' pay

The Tribunal has other (rarely used) powers which include the power to direct that an employee who has been dismissed should be re-employed by his or her previous employer, as well as allowing the Tribunal to reduce the amount of compensation awarded to an employee in certain circumstances (for example, where an employee's conduct directly contributed to the dismissal).

## Redundancy

In broad terms an employee is eligible to receive a statutory redundancy pay under Jersey law if he/she is dismissed by his/her employer by reason of redundancy and he/she has at least two years' continuous service with the employer. In certain circumstances employees who have been employed under a series of fixed term contracts can also accrue the requisite two years' service.

Statutory redundancy pay is calculated on the basis of one week's pay for every full year of service. There is no upper limit on the number of years' service which qualify. Pay is capped at the level of weekly average earnings, currently £860 (rising to £920 on 25 September 2023).

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.

Specific collective consultation provisions apply where an employer makes 12 or more employees redundant from one establishment within a 30 day period. A minimum of 30 days' collective consultation is required prior to the first of the dismissals taking effect.

If collective consultation requirements are not triggered then an employer will still have to engage in an individual consultation process to avoid an unfair dismissal claim.

An employee who is given notice of dismissal by reason of redundancy (and who has been continuously employed for two years or more) is entitled to take paid time off during his notice period equivalent to 40% of one of his normal working weeks (i.e. a total of two working days for those working a standard five day week), for the purposes of looking for work.

## Other employment issues

### The Discrimination Law

The Discrimination Law came into force on 1 September 2014. The legislation works by prohibiting direct and indirect discrimination in relation to certain protected characteristics. The legislation also outlaws harassment and victimisation on the grounds of the protected characteristics. The protected characteristics are as follows:

- race;
- sex;
- sexual orientation;
- gender reassignment;
- pregnancy and maternity;
- disability; and
- age.

Remedies for breaches of the discrimination legislation include compensation which is limited to a maximum of £10,000. The Tribunal can also make declarations and recommendations.

## Family friendly rights

So-called “family friendly” rights have been steadily expanded in Jersey law. The most recent changes came into effect on 28 June 2020:

### Flexible working

Any employee has the right to request flexible working arrangements. This right entitles an employee to submit a flexible working request to their employer. The request may comprise a request to change the employee’s:

- hours of work
- the time at which those hours are worked and/or
- place of work.

The employer must consider the request in accordance with the statutory procedure and can only refuse the request for one of a number of specified reasons related to the requirements of the business.

### New parents

Now include:

- The mother of the child
- The father of the child or the person who is married to, the civil partner of, or the partner of the child’s mother or adopter, and who is expected to also have responsibility for the child’s upbringing;
- Adoptive parent(s); and
- The intended parent(s) in a surrogacy situation.

### Temporary flexible working for breastfeeding mothers

Breastfeeding mothers are entitled to request temporary variations to terms and conditions of employment in order to permit breaks from work for the purpose of breastfeeding (which includes expressing milk).

Where new mothers have returned to work within the 52 week period beginning with the birth of the child, they are entitled to be paid for such breaks to breastfeed their child or express milk. Following the expiry of the 52 week period, time off for the purposes of breastfeeding will be unpaid.

### Antenatal and pre adoption appointments

Pregnant employees are entitled to attend antenatal appointments without loss of pay. Fathers and/or partners of pregnant employees have the right to attendance at antenatal appointments in Jersey and are entitled to be paid up for up to 10 hours in respect of those appointments.

The definition of “qualifying relationship” has been expanded to include the intended parents in a surrogacy situation who are now entitled to an unlimited number of antenatal appointments in Jersey, of which up to 10 hours will be paid.

Adoptive parents are also entitled to an unlimited number of pre adoption appointments in Jersey, of which up to 10 hours of such appointments are paid.

## 52 weeks' parental leave

Regardless of length of service, all employees have the right to 52 weeks of parental leave, including six weeks' paid leave, which will include the provision of normal employment benefits. This entitlement is on the basis that a new parent informs their employer of their intention to take such leave 15 weeks before the expected week of childbirth, or within 7 days of receiving official notice of having been matched with a child for the purpose of adoption.

All expectant parents can take their parental leave in up to 3 blocks of leave over a 2 year period.

## Right to return

All employees taking parental leave have the right to return to their role on the same terms and conditions as would have applied if the employee had not been absent.

## Breastfeeding

Employers have the duty to "take all reasonable steps" to provide breastfeeding facilities for new mothers

## Health and Safety

Any employee who is pregnant, breastfeeding or has recently given birth (i.e. within the past 6 months) is entitled to paid leave where:

- A health and safety assessment (undertaken in accordance with Article 3 of the Health and Safety at Work (Jersey) Law 1989) identifies that it is not reasonably practical for the employee to fulfil the usual requirements of her work; and
- It is not possible to make necessary adjustments or allocate the employee alternative duties.

The employee will only be entitled to such paid leave if she has not unreasonably refused suitable alternative employment with the employer.

## Unfair dismissal and discrimination

A dismissal for asserting any of the above rights will be automatically unfair (without the need for a qualification period). A dismissal on the grounds of pregnancy or maternity is also likely to constitute sex discrimination.

The above does not prevent employers from providing more generous benefits to their employees.

There are also sums available from the Government of Jersey by way of parental leave benefits.

## Sick pay

There is no requirement under Jersey law for employers to pay any sick pay to their employees. However, employers in the financial services industry in the Island generally do pay contractual sick pay.

An employee in Jersey is currently entitled to claim from the Government of Jersey the sum of £246.89 per week by way of Short Term Incapacity Allowance, provided such employee is covered by a medical certificate and eligible to receive the payment. This sum is payable for the duration of the medical certificate and a claim should be made by the employee.

## Income tax and social security

Jersey has a similar system to collect income tax as the PAYE system in the UK. This is known as the Income Tax Instalment Scheme (“ITIS”). The authorities issue each employee with an ‘effective rate’ notification which is the rate at which their income will be taxed, taking into account any benefits or allowances to which they are entitled. Officially the rate of income tax is 20%, but most employees’ effective rate under ITIS is usually less than this due to tax allowances which they are able to claim (unless they are in arrears). From 1 January 2015, an additional long-term care contribution component was added to an employee’s ITIS rate. This is designed to assist individuals who require long-term care. The maximum long-term care contribution rate is currently 1.5%.

## Social security contributions

Social security contributions are paid by both the employer and employee in a similar way to National Insurance contributions in the UK.

### From January 2023:

	Employee social security contributions	Employer social security contributions
<b>Standard earnings limit (SEL)</b>	Any income up to <b>£5,060</b> per calendar month (or <b>£60,720</b> per year) will attract social security contributions at the rate of <b>6%</b> .	Any income up to <b>£5,060</b> per calendar month (or <b>£60,720</b> per year) will attract social security contributions at the rate of <b>6.5%</b> .

	Employee social security contributions	Employer social security contributions
Upper earning limit (UEL)	Any income above <b>£5,060</b> per calendar month will not attract employee social security contributions.	Any income above the SEL but below the UEL (i.e. between <b>£5,060</b> and <b>£23,072</b> per calendar month, or <b>£60,720</b> to <b>£276,864</b> per year) will attract social security contributions at the rate of <b>2.5%</b> .

## Data protection and monitoring

The Data Protection (Jersey) Law 2018 together with the Data Protection Authority (Jersey) Law 2018 currently imposes a similar framework to the EU’s General Data Protection Regulation. Jersey currently has an adequacy finding from the EU (C/2016/3727) which is due for review.

The Regulation of Investigatory Powers (Jersey) Law 2005 (similar in scope and content to its UK equivalent) imposes restrictions on employee monitoring and the interception of communications.

## Work permits

The following employees do not require a work permit to work in Jersey:

- a British or Irish citizen or a British subject with the right of abode;
- a European Union (EU) / European Economic Area (EEA) passport holder who holds settled/pre-settled status;
- a family member of an EU/EEA passport holder who holds settled/pre-settled status;
- a participant in the Youth Mobility Scheme;
- a Commonwealth citizen admitted on the grounds of UK ancestry;
- a Commonwealth citizen with a certificate of entitlement to the right of abode;
- a minister of religion;
- a business visitor; or
- a non EU/EEA passport holder who has no restrictions attached to his/her stay.

Employees from other countries may require a work permit.

To obtain a work permit for an employee, employers will need to be able to show that there are no suitable local candidates available.

## The Control of Housing and Work (Jersey) Law 2012

All Jersey employers need to understand the provisions of the Control of Housing and Work (Jersey) Law 2012, which governs:

- the residential and employment status of employees; and
- business licensing.

Residential and Employment Status of Jersey Residents Jersey residents fall into one of four residential and employment categories:

- **Entitled** – those with ten or more years' residence (similar to the previous (a) to (h) categories)
- **Licensed** – essential employees with less than ten years' residence requiring immediate housing rights (taking over from the previous (j) category, i.e. skilled workers)
- **Entitled for Work Only** – those with between five and ten years' residence.
- **Registered** – those with less than five years' residence.

Jersey property falls into one of two categories:

- **Qualified** – in which only those who are Entitled or Licensed may live.
- **Registered** – in which anyone may reside.

The Control of Housing and Work (Jersey) Law 2012 is currently under review and is likely to be reformed over the course of 2023. Final details of the reforms are yet to be published.

## Obtaining a business licence

Anyone commencing a business in Jersey must apply to the Population Office for a business licence.

Most employers will be resident undertakings, and will thus receive (or already have) a business licence specifying:

- their permitted licensed activity;
- the maximum number of Licensed employees they are permitted to engage; and
- the maximum number of Registered employees they are permitted to engage.

There is no upper limit to the number of Entitled and Entitled for Work Only employees which an employer may take on and, therefore, no additional application will be necessary to engage additional Entitled or Entitled to Work individuals.

If an undertaking is allowed to take on Licensed staff, a description of the work that may be done by those persons will be specified and other conditions may be attached relating to accommodation or naming individuals who may work for an undertaking.

Licences for non-resident undertakings are likely to come up most often for Jersey employers in the context of non-Jersey contractors who send personnel to Jersey for the purposes of specific projects. Such contractors will require a licence if they are in Jersey for more than 30 days in any period of 12 months (5 days in the construction industry) – and there is a fee payable.

## Exceptions to maximum licence numbers

An employer must keep a record of staff numbers and ensure that it does not breach the terms of its licence. The following can be excluded from the calculation of the number of Licensed and Registered workers engaged by an employer:

- **Replacements** – A person working as a replacement for another member of staff who is leaving (but continuing to work at present) – simultaneous working is permitted for up to 30 days;
- **Providing cover** – A person working as cover for another person who is on leave up to:
  - nine months in relation to maternity and sickness, or
  - three months in all other cases of leave;
- **De minimis** – Any person working for an undertaking for less than 10 days in any 12 month period;
- **Directors & Officers** – Directors of a Company, or Partners in a Partnership, or a Member of the Council of a Foundation, or equivalent persons, who are in the Island for 60 days or less in any 12 month period;
- **International Financial Services Groups** – having an office in Jersey where the employee works mainly outside Jersey may second employees to Jersey for up to 60 days in any 12 month period;
- **Zero-hours** – zero hours contract staff do not contribute to an employer's maximum numbers if they do not do any work for the undertaking (e.g. they count only when they work).
- **Agency Workers** – will be reflected on the agency's own business licence (rather than that of the end user).

There are also specific exceptions in relation to healthcare professionals.

## Registration cards

Any person wishing to start new employment must have a registration card. Conditions specifying the maximum number of Licensed and Registered persons allowed to work for an undertaking will be imposed when granting business licences (see above).

Employers need to ensure that they inspect an employee's registration card before they start work and:

- ask for photo identification (in addition to the registration card);
- ensure that the photo identification matches the registration card;
- take (and retain) a photocopy of the registration card and photo identification; and
- check the registration card is in date.

There are various individuals who will not require a registration card, including:

- existing employees;
- a person who is in Jersey for an aggregate period of 60 days or less in any period of 12 months for the purposes of that person's work as:
  - a director of a company
  - a partner in a partnership
  - a member of the council of a foundation; or
  - a trustee of an express trust (or the equivalent of any of the above).
- a person who is in Jersey for an aggregate period of 60 days or less for the purposes of a secondment within an international financial services group;
- a person who is a hawker or non-resident trader for the purpose of the activities of hawking or being a non-resident trader;
- a person who works in or for one or more undertakings in Jersey, the period of work for each undertaking being an aggregate period of 10 days or less in any period of 12 months; and
- a person who works in or for a non-resident undertaking.

## Employing people – summary of initial requirements

### Employers' duties

Employers must do the following for every employee:

- Ensure that they understand the residential and employment status of the individual which they wish to employ.
- Ensure that their business licence permits the engagement of the employee in question.
- Provide a written statement of terms for each employee, setting out the terms and conditions of employment. This must be done within four weeks of the employee's start date.
- Pay each member of staff at or above the minimum wage (currently £10.50 but subject to periodic review).
- Obtain Employer's Liability Insurance and display the certificate.
- Obtain a registration card and photographic identification for every new employee.
- Make the correct deductions from the employee's wages.
- Keep a record of the wages paid and deductions made for 10 years.
- Account to the income tax and social security departments for ITIS and Social Security contributions in respect of each employee.
- Provide each employee with an itemised payslip each time that wages are paid.

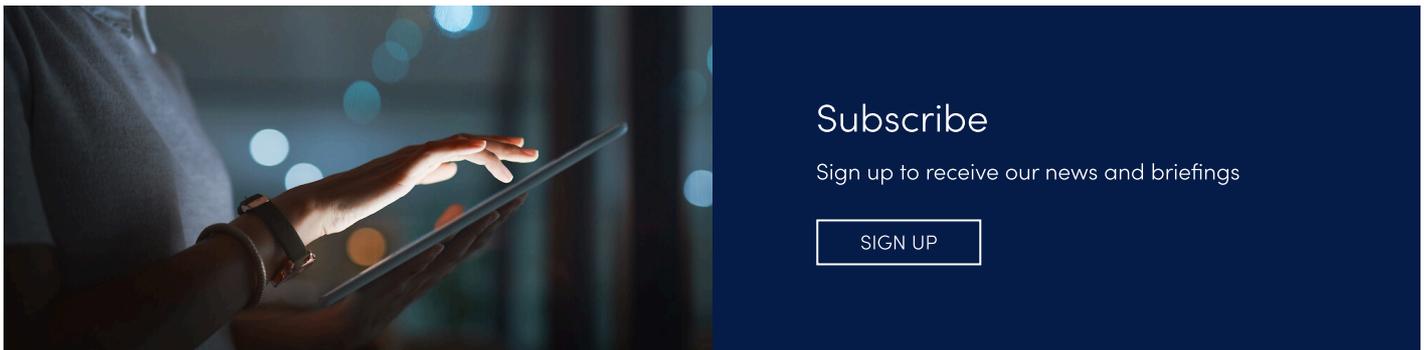
## Collective issues

The Employment Relations (Jersey) Law 2007 came into force on 21 January 2008. It provides for:

- a registration system for trade unions and employer associations;
- a legal dispute resolution process for collective disputes; and
- Codes of Practice for good industrial relations. The published Codes are as follows:
  - **Code 1** – Recognition of Trade Unions;
  - **Code 2** – Balloting and Conduct in Employment Disputes; and
  - **Code 3** – Resolving Collective Disputes.

*Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.*

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