

Changes to family friendly legislation – Proposed implementation date of 28 June 2020

Service area / [Employment, Pensions and Incentives](#)

Location / [Jersey](#)

Date / [May 2020](#)

The Minister for Social Security has lodged a draft appointed day act (see [here](#)) which if it is passed by the States Assembly (it is due to be debated on 16 June 2020) will bring Amendment No 11 of the Employment (Jersey) Law into force on 28 June 2020.

We understand that the Minister has declined a request from Jersey's Chamber of Commerce to delay the implementation of the new regime.

The (proposed) implementation of Amendment No 11 on this date has come as something of a surprise to many commentators. Whilst this is in line with the timetable which was set out when the law was passed, the advent of COVID-19 had given rise to a widespread expectation that the new Law would be deferred. Associated changes to benefits are also not ready yet, meaning that employers will, in some circumstances, be financially worse off where parents/partners other than birth mothers take parental leave.

It had been intended to reform the current Maternity Allowance sum to replace it with a Parental Allowance, with both parents able to claim a contributory benefit.

However, COVID-19 has led to delays in extending the benefit system to include parental benefits for both parents, which will, in turn, reduce the cost to the employer.

Therefore, in the interim, when the legal right to take paid leave is extended to all parents, the Minister proposes to introduce a temporary subsidy scheme to support employers with some of their additional costs arising from the extended rights.

This subsidy scheme is intended to continue until the work on the parental benefits has been completed, scrutinised and approved by the States Assembly. The anticipated timeline for this is to bring forward these benefit regulations for approval in late 2020 for implementation in early 2021.

Immediate priorities for employers and HR professionals

These are radical changes and HR professionals should ensure that the changes are well understood. The main priorities for HR professionals should be:

- Understanding which rights come into force and when – the new rights relating to parental leave (and accordingly pay in respect of parental leave) only apply to employees whose expected week of childbirth or adoption begins on or after the first Sunday following the date on which this Law comes into force. On the basis that Amendment No 11 comes into force on 28 June 2020 (a Sunday), the new parental leave and pay rights will apply to those whose expected week of childbirth or adoption falls on or after 5 July 2020. The balance of the rights will have effect on 28 June 2020 (subject to the final approval of the States Assembly) – so the new ante-natal and adoption appointment rights and the new rights in connection with breastfeeding will have immediate effect and (in relation to breastfeeding) will apply to those who have given birth prior to the new law coming into force.
- Working out who the new rights will apply to and/or impact – particularly new fathers/partners of mothers-to-be. More generous parental leave pay provision will make it more likely to mean that employees will wish to take longer periods of leave. You may have already reached

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agreement about leave and pay with employees – such agreements may need to be revisited.

- Deciding how you will communicate the changes to employees (who may have planned their leave) and how you will facilitate any requested changes.
- Considering the availability of breastfeeding facilities;
- Ensuring that appropriate health and safety policies and procedures are in place for the identification and management of risks to pregnant and breastfeeding women.
- Ensuring that temporary flexible working requests for the purposes of breastfeeding are considered and implemented appropriately
- Ensuring that managers are aware of the changes and undertake any training required.
- Reviewing policies and procedures in order to ensure that they reflect the changes.
- Ensuring that any Control of Housing and Work (Jersey) Law 2012 issues are understood and dealt with.
- Ensuring that employees and managers are encouraged to engage early in order to facilitate the good management of parental leave and the other new rights which are coming into force.

One point to consider in particular for employers who provide enhanced maternity pay (eg over and above the statutory minimum) is whether equivalent enhancements should also be offered to men and/or adoptive parents taking parental leave. This is a complex point – the latest changes include an amendment to the Discrimination (Jersey) Law 2013 so that Article 6(8) will now read: “In relation to the protected characteristics of pregnancy, maternity and sex, for the purposes of Parts 3, 4 and 5 and where the subject is not a woman, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth”. However, the impact of this change is unclear and it remains the case that employers may need to consider enhancing entitlements for men on parental leave in the same manner as for women.

Development of family friendly legislation in Jersey

It is no exaggeration to say that Jersey was late to the idea of maternity rights and other “family friendly” legislation. The first such rights were introduced in September 2015 by the Employment (Amendment No. 8) (Jersey) Law 2014 (Amendment No 8), which introduced new elements into the Employment (Jersey) Law 2003 including:

- a new Part 3A (dealing with Flexible Working)
- a new Part 5A (dealing with Maternity, Adoption and Parental Rights)

The [proposal](#) which introduced Amendment No 8 to the States Assembly made it clear that the rights which it introduced were a first stage and that they would be reviewed after a year with the express intention of extending those rights.

During the course of 2017, Jersey’s Employment Forum launched a consultation in relation to proposals for a significant extension to Jersey’s employment law in relation to “family friendly employment rights”. The outcome of that consultation exercise can be viewed [here](#).

The main result of the consultation was a wide ranging proposal to restructure Jersey’s employment law in this area, in particular, the end of qualifying periods for statutory maternity leave and pay.

The intention was to enact the proposals in two tranches; each a year apart. In the end, the exercise has taken longer than expected, primarily due to the complexity of the subject area.

The first extension of rights – primarily removing the qualifying period and extending the maternity leave entitlement to 26 weeks – came into force on 1 September 2018 (see the Employment (Amendment of Law) (No. 2) (Jersey) Regulations 2018 [here](#)).

The final stage of the changes was due to come into force in September 2019. However, the Minister for Social Security’s initial proposals (see [here](#)) met with some resistance, particularly from the Economic and International Affairs Scrutiny Panel. Accordingly, on 14 June 2019, the Minister for Social Security temporarily withdrew her proposition for changes to family-friendly employment rights.

The proposition was reintroduced in an amended form in October 2019 and passed on 24 October 2019 (see [here](#)).

The proposals were not adopted without opposition – an amendment to the proposals from the Economic and International Affairs Scrutiny Panel to the parental leave entitlement from 52 weeks to 26 weeks was rejected; as was a proposed amendment that would have meant the new rights would not have applied in businesses employing 5 people or fewer.

However, the States Assembly did adopt a proposition that a review of family-friendly employment rights be undertaken within 2 years.

We have set out a table in the Appendix which looks at the development of family friendly rights in Jersey.

The latest amendments agreed by the States Assembly on 24 October 2019 will (if approved) come into force on 28 June 2020 and will provide for the following:

52 weeks’ parental leave

- All new parents will be entitled to 52 weeks of parental leave, including 6 weeks of paid leave, on the condition that a new parent informs their employer of their intention to take such leave 15 weeks before the expected week of childbirth.
- New parents include:
 - a. The mother of the child;

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- b. 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;
 - c. Adoptive parent(s); and
 - d. The intended parent(s) in a surrogacy arrangement.
- All expectant parents can take their parental leave in up to 3 blocks of leave over a 2-year period.
 - Where there are any changes to agreed parental leave or where parents would like to return to work earlier or later, 42 days' advanced notice must now be given. The employer must also make reasonable adjustments to accommodate any such change requests.

Time off to attend appointments – adoptive and surrogate parents

- Adoptive parents will be entitled to an unlimited number of appointments in relation to the adoption, of which up to 10 hours of appointments are paid.
- The definition of "qualifying relationship" has been expanded to include the intended parents in a surrogacy situation, and will now mean that they too will be entitled to an unlimited number of antenatal appointments, of which up to 10 hours of appointments are paid.

Breastfeeding

- Breastfeeding mothers will be entitled to request temporary variations to terms and conditions of employment in order to permit reasonable breaks from work for the purpose of breastfeeding (which includes expressing breast milk).
- Where new mothers have returned to work within the 52 week period beginning with the birth of the child, they will be entitled to be paid for such breaks to breastfeed their child or express milk as required. Following the expiry of the 52 week period, time off for the purposes of breastfeeding will be unpaid.
- Employers will also 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) will be entitled to paid leave where:
 - a. 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
 - b. it is not possible to make the necessary adjustments or allocate the employee to alternative duties.
- The employee would only be entitled to such paid leave if she has not unreasonably refused suitable alternative employment with the employer.

Further information

We are happy to supply specific advice where required.

Appendix – The development of Family Friendly Law in Jersey

Right	1 September 2015	1 September 2018	With effect from 28 June 2020 (subject to approval by the States Assembly)
Maternity leave	2 weeks' compulsory leave paid at 100% of pay and either 6 weeks' unpaid leave with no qualifying period or 16 weeks' unpaid leave with a 15 month qualifying period	26 weeks of leave of which 6 weeks paid at 100% of pay by the employer, no qualifying period	Parental leave 52 weeks of parental leave for both parents including 6 weeks' paid leave at 100% of pay by the employer
Parental leave	2 weeks' unpaid leave, no qualifying period	2 weeks' paid leave at 100% of pay by the employer and 24 weeks' unpaid leave, both with no qualifying period. Can be taken in up to 3 blocks of leave	Can be taken in up to 3 blocks of leave over a 2 year period
Adoption leave	Paid and unpaid leave equivalent to maternity leave and parental leave	Paid and unpaid leave equivalent to maternity leave and parental leave	Also available to adoptive and intended surrogate parents
Surrogacy leave	No rights	No rights	
Ante-natal attendance – father/partner	No right to time off to attend appointments	Unlimited attendance at appointments – up to 10 hours paid, the rest unpaid	No change
Antenatal attendance – intended surrogate parents	No right to time off to attend appointments	No right to time off to attend appointments	Unlimited attendance at appointments – up to 10 hours paid, the rest unpaid
Adoption appointments	No right to time off to attend appointments	No right to time off to attend appointments	Unlimited attendance at appointments – up to 10 hours paid, the rest unpaid
Flexible working	Right to request for employees with caring responsibilities, subject to a 15 month qualifying period	Right to request for all employees with no qualifying period	No change
Breastfeeding variation	None	None	Right to request reasonable temporary variation of terms and conditions of employment for the purposes of breastfeeding
Breastfeeding facilities	None	None	Employers must take reasonable steps to provide facilities in the workplace
Paid absence on health and safety grounds	None	None	Right to paid absence where risk assessment prevents a pregnant or breastfeeding employee from carrying out her normal job and she cannot be allocated to other duties



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