

Carey Olsen Starting Point Employment Law Guide – grievance management in Guernsey

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

Location / [Guernsey](#)

Date / [October 2015](#)

Introduction

Carey Olsen Starting Point Guides are intended as a general introduction and guide to different aspects of Guernsey 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 addresses the fundamentals of employment law in Guernsey.

Introduction to Guernsey

Guernsey is the second largest of the Channel Islands and is a British Crown dependency. The Bailiwick of Guernsey also includes the islands of Alderney and Sark and smaller islands of Herm, Jethou and Lihou.

Guernsey has its own financial, legal and judicial systems, as do Alderney and Sark. Although it is not part of the UK, the Queen is head of state and the UK retains an oversight responsibility for the Channel Islands. Similarly, although not a member state of the European Union, the Channel Islands have a formal link with Europe through a formal treaty.

Sources of Guernsey Employment Law

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

- statute law
- customary/common law (i.e. judicial precedent)
- employment contracts

There is less employment legislation in Guernsey than in the UK, although the volume of legislation is increasing.

There is a Guernsey Employment and Discrimination Tribunal (the Tribunal) which hears certain employment related claims, the main claims being for unfair dismissal, discrimination and breach of Guernsey's minimum wage regime. The Tribunal does not have jurisdiction in respect of contractual matters arising under an employment contract. Such matters are reserved to the Magistrates Court or Royal Court of Guernsey, depending on their value.

The Guernsey law of contract is similar but not identical to English contract law. However, when it comes to employment contracts, the Guernsey courts and tribunals generally (although not exclusively) have regard to English law and principles, particularly when it comes to implied contractual duties.

In general, employment law in Guernsey 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 Guernsey. However, while English law is influential in Guernsey, there are important differences such that employers need to get Guernsey employment law advice in relation to any employees working in or from Guernsey.

OFFSHORE LAW SPECIALISTS

Employment legislation in Guernsey

The list below sets out the key statutes in relation to employment law in Guernsey:

- The Conditions of Employment (Guernsey) Law, 1985
- The Employment Protection (Guernsey) Law, 1998
- The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005
- The Minimum Wages (Guernsey) Law, 2009

Who is an employee?

The employment legislation referred to above covers individuals who have entered into or work under a contract of employment and who ordinarily work in Guernsey.

Notice Periods

The Employment Law provides that all employees employed for one month or more are entitled to the minimum statutory notice periods determined by the length of their continuous service. A table setting out the minimum notice periods is copied below:

Length of continuous employment	Minimum period of notice
More than one month but less than two years	Not less than one week's notice
More than two years but less than five years	Not less than two weeks' notice
More than five years	Not less than four weeks' notice

Minimum statutory notice periods do not apply to contract for a fixed term of three months or less, or to a contract for the performance of a specific task which is not expected to last for more than three months, unless in either case the employee has been continuously employed for more than three months.

These are the minimum statutory periods of notice and employers are entitled to provide for a longer period of notice (but not a shorter period) in their employment contracts. Also, the provisions do not 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 (among others):

- Names of the employer and the employee
- Date the employment started
- Terms relating to rates of pay
- Terms and conditions relating to:
 - a. Holiday
 - b. Sickness/sick pay
 - c. Pension
 - d. Maternity leave¹

If an employee is transferring from the UK to work for the Guernsey 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 four weeks after the change.

Annual leave and minimum rest periods

There is no statutory obligation placed on employers to provide employees with annual leave in Guernsey, although in practice most employers generally include some provision for annual leave in their contracts .

The UK Working Time Regulations 1998 (as amended) do not apply in Guernsey and there is no legislation setting out minimum rest periods.

Minimum wage

Under Guernsey law workers are entitled to be paid a minimum wage as follows:

- Adult Rate (18 years and over) £6.85 per hour
- Young Person's Rate (16 and 17 years old) £6.10 per hour (with effect from 1 October 2015)

Unfair dismissal

Qualifying employees have the right not to be unfairly dismissed. Employees generally will have unfair dismissal rights after one year (for permanent employment).

¹ Guernsey has decided to introduce compulsory maternity, paternity and adoption leave provisions and legislation in this respect is expected to be introduced in 2016.

Continued

However, an employee may claim that a dismissal was unfair at any stage of employment if it is for one of the following reasons which the law recognises as being automatically unfair, including dismissal:

- for membership or non-membership of a trade union
- in connection with pregnancy or childbirth
- constituting an act of discrimination against the employee prohibited by the Ordinance
- for asserting health and safety rights/regulations
- for refusing to do Sunday shop work, or
- for asserting statutory rights

Once it has been established that there has been a dismissal, the question is then whether or not the dismissal was fair or unfair and in that context it is for the employer to show that the reason for the dismissal falls under one of the five statutory fair reasons. The five potentially fair reasons are as follows:

- a reason relating to the capability or qualifications of the employee for performing the work of the kind he was 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 could not continue to work in the position which he 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 these reasons 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.

The maximum award which can be made to an employee who is found to have been unfairly dismissed is an amount equal to six months' pay (where the employee is paid monthly) or one week's pay multiplied by 26 (where the employee is paid weekly). 'Pay' is likely include cash benefits received by the employee and may include bonuses.

The Tribunal has the power to reduce the amount of compensation awarded to an employee in certain circumstances (e.g. where the employee unreasonably refused an offer of reinstatement from the employer or is considered to have caused or contributed to the dismissal).

The States of Guernsey Commence and Employment Department has issued a Code of Conduct relevant to handling disciplinary processes. A failure to observe the Code does not of itself a person liable to proceedings, but the breach may be taken into account by the Tribunal in any proceedings before it.

Redundancy

There is no statutory requirement in Guernsey for employers to provide employees with redundancy pay. Therefore, provided an employer fairly selects employees for redundancy and observes a fair procedure in relation to a redundancy situation, employees can be made redundant in Guernsey at no additional payments being required of the employer.

The States of Guernsey Commence and Employment Department has issued a Code of Conduct relevant to handling redundancy processes. A failure to observe the Code does not of itself a person liable to proceedings, but the breach may be taken into account by the Tribunal in any proceedings before it.

b) of 2 working days for those working a standard 5 day week), for the purposes of looking for work.

Other employment issues

Maternity and paternity leave and pay

The current situation is that an employer is not obliged to pay an employee maternity pay under Guernsey law, nor to provide maternity leave. However, employers often provide in their contracts for some payment and maternity leave. As noted above, Guernsey has decided to introduce statutory maternity, paternity and adoption leave and legislation in this regard is expected in 2016. It is likely that legislation will follow in 2017 in relation to compulsory pay for such leave.

Employees may be able to claim Maternity Allowance from the States of Guernsey Employment and Social Security Department. Maternity Allowance is usually paid for an 18 week period, it can commence no earlier than 11 weeks before the week in which the baby is expected and ends no later than 18 weeks after the birth of the baby. The current rate is £147.91 per week.

Sick pay

There is no requirement under Guernsey law for employers to pay any sick pay to their employees. However, notwithstanding this employers generally do pay contractual sick pay. Employees may be entitled to claim sickness benefit from the States of Guernsey Employment and Social Security Department. The current rate is £147.91 per week.

Income tax and social security

Guernsey has a similar system to collect income tax as the PAYE system in the UK. This is known as the Employee's Tax Instalment Scheme (ETI).

The authorities issue each employee with a tax number and coding reference 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' rate under ETI is usually less than this due to tax allowances which they are able to claim (unless they are in arrears).

Continued

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.

Data protection and monitoring

The Data Protection (Bailiwick of Guernsey) Law 2001 imposes a similar framework to the UK legislation in this area.

Employers should notify an employee of the types of data and the purposes for which it will process data and should be registered with the Data Protection Commissioner's Office.

The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003 (similar in scope and content to its UK equivalent) imposes restrictions on employee monitoring and the interception of communications.

Anti-discrimination legislation

The Sex Discrimination (Employment) (Guernsey) Ordinance 2005 came into force in Guernsey on 1 March 2006. The Ordinance outlaws all discrimination on grounds of sex, gender reassignment or marital status in employment.

The Ordinance also provides a procedure for complaints of discrimination to be made to the Tribunal and defines the three types of sex-based discrimination, which are: direct discrimination, indirect discrimination and victimisation.

If a tribunal finds that an employer has been directly or indirectly discriminating against an employee (even if vicariously through another member of staff) the employee will be awarded a sum equal to three months' pay (including benefits) or where the employee is employed on a weekly basis, 13 weeks' pay (again including benefits).

There are currently no other anti-discrimination laws in Guernsey.

Work permits

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

- British citizens
- Nationals of member states of the European Economic Area (EEA)
- Family members of EEA nationals may also work without permits but must in possession of an 'EEA Family Permit' to enter the Bailiwick of Guernsey
- Swiss nationals
- Young persons admitted under the Youth Mobility Scheme
- Commonwealth citizens admitted as working holiday makers
- Commonwealth citizens admitted on the grounds of UK ancestry
- Other foreign nationals who have no restrictions attached to their stay – for example, long term residents

Employees from other countries may require a work permit.

To obtain a work permit for an employee, employers generally need to be able to show that there are no suitable local candidates available although there are some special dispensations which apply, primarily in relation to the finance industry.

Sunday workers

The Employment Protection (Guernsey) Law 1998 protects employees from dismissal, redundancy and generally for suffering detriment for refusing to work on Sundays. There are different rules for those employed to only work Sundays.

Right to work

The Right to Work (Limitation and Proof) Law, 1990 requires any person who has commenced employment in Guernsey since 1st December 1989 to possess a 'Right to Work' document. It is an offence to work or to employ someone without a valid Right to Work document. The Right to Work document is linked to the individual's right to housing as it is published by the States of Guernsey housing department.

The four principal categories of Right to Work documents are:

A status declaration

This is issued to a local person who is a qualified Guernsey resident as defined in the Housing Law. A qualified resident is typically a person who has lived in Guernsey for many years and has close connections with the Island.

A housing licence

This is any licence issued by the Housing Authority to allow a person who is not a qualified resident to live in a specific dwelling. It has an expiry date and may have employment conditions attached to it, e.g. naming a specific employer.

A declaration of lawful residence

This is issued to a person not otherwise residentially qualified, but who is living legally in the Island, for example as spouse or member of the household of a qualified resident or licence holder, or who is the lawful occupant of a certain type of open market property.

A temporary exemption certificate

This may be issued pending the raising of one of the categories of documents listed above.

Continued

Employing people – summary of initial requirements

Employers' duties

Employers must generally do the following for every employee:

- Ensure that they understand the residential status of the individual which they wish to employ
- Provide a written statement of terms for each employee, setting out the terms and conditions of employment. This must be done within 4 weeks of the employee's start date
- Pay each member of staff at or above the minimum wage
- Obtain Employer's Liability Insurance and display the certificate
- Obtain a Right to Work document for every new employee
- Make the correct deductions from the employee's wages
- Keep a record of the wages paid and deductions made for at least 6 years. In practice, employers should consider retaining records for the lifetime of the employment relationship plus at least 6 years
- Account to the income tax and social security departments for ETI and Social Security contributions in respect of each employee
- Provide each employee with an itemised payslip each time that wages are paid.

Collective issues

There is no statutory regime for trade union recognition in Guernsey and there is no specific statute relevant to trade unions or collective bargaining. This means there are no specific requirements to inform or consult with employees in relation to business transfers or redundancies.

Good industrial relations are, however, encouraged within the island. If negotiations between employer and employee representatives fail, matters can be referred to the Industrial Disputes Officer who will try to settle the dispute. If unsuccessful, the Industrial Disputes Officer may refer to dispute to the Industrial Tribunal. In addition, the Employment Protection (Guernsey) Law 1998 protects employees from dismissal for trade union related reasons.

Useful information

General tax and business links:

<http://www.gov.gg>

Useful links for employment:

<http://www.gov.gg/movingtoguernsey>

<http://www.gov.gg/CHttpHandler.ashx?id=2201&p=0>

<http://www.gov.gg/CHttpHandler.ashx?id=2200&p=0>



FIND US

PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272

F +44 (0)1481 711052

E guernsey@careyolsen.com



FOLLOW US

Visit our employment, pensions and incentives team at careyolsen.com

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. © Carey Olsen 2017