

Carey Olsen Starting Point Employment Law Guide – Jersey Employment Law

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

Location / [Jersey](#)

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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.

[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. Contractual claims of over £10,000 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.

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.

OFFSHORE LAW SPECIALISTS

The Employment (Jersey) Law 2003 (The “Employment Law”)

The Employment Law is the key statute governing Jersey employment issues. The following is a summary of its 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 |
| 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:
 - a. Holiday
 - b. Sickness/sick pay
 - c. Pension
 - d. Maternity leave
 - e. Redundancy
 - f. 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 four 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. The employer and employee may agree how this should work.

Under the Employment Law an employee is entitled to a minimum period of 2 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.

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

Minimum wage

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

The minimum wage is currently **£7.50** per hour. From **1 April 2019**, the minimum wage will increase to **£7.88** per hour. From **1 October 2019**, the minimum wage will further increase to **£8.02** per hour.

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 - **£5.63** per hour; and
- Year Two - **£6.56** per hour.

The trainee rate as of **1 April 2019** will be:

- Year One - **£5.91** per hour; and
- Year Two - **£6.90** per hour.

The trainee rate as of **1 October 2019** will be:

- Year One - **£6.02** per hour; and
- Year Two - **£7.02** 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:

- **£82.12** for accommodation; or
- **£109.47** for accommodation and food.

As of **1 April 2019**, the maximum values are due to increase to:

- **£86.23** for accommodation; or
- **£114.94** for accommodation and food.

As of **1 October 2019**, the maximum values are due to further increase to:

- **£87.78** for accommodation; or
- **£117.01** 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 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 was required to retire
- 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 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 |

Continued

| | |
|---------------------------------------------|---------------|
| 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 employer by reason of redundancy and he/she has at least 2 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 2 years' service.

Statutory redundancy pay is calculated on the basis of 1 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 £740.

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

Other employment issues

Anti-discrimination legislation

The Discrimination (Jersey) Law 2013 came into force on 1 September 2014. The legislation works by prohibiting direct and indirect discrimination in relation to certain protected characteristics. The first of the protected characteristics to be introduced was race. The legislation also outlaws harassment and victimisation on the grounds of the protected characteristics. Additional protected characteristics have since been added and the legislation now also includes:

- 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 following applies with effect from 1 September 2018:

- **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:
 - a. hours of work
 - b. the time at which those hours are worked and/or
 - c. 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.

- **Ante-natal care** – Pregnant employees are entitled to attend ante-natal appointments without loss of pay. Fathers and/or partners of pregnant employees have the right to attendance at ante natal appointments and are entitled to be paid up for up to 10 hours in respect of those appointments.
- **Compulsory paid maternity leave** – Regardless of length of service, all employees have the right to six weeks' paid maternity leave, which will include the provision of normal employment benefits. During this period, the employee may not be required to work.
- **Ordinary unpaid maternity leave** – All employees have the right to 20 weeks' unpaid maternity leave (a total of 26 weeks including the paid compulsory maternity leave above). All other benefits of employment will need to be maintained in any period of statutory unpaid leave.
- **Adoption leave** – An employee adopting a child will have the right to 26 weeks' leave (of which six must be paid). During adoption leave, all benefits of employment other than remuneration (save in respect of the first six weeks) continue.
- **Parental leave** – Employees have the right to 26 weeks' parental leave upon the birth or adoption of a child (of which two must be paid). Parental leave may be taken in up to three distinct "blocks".
- **Right to return** – All employees taking maternity or adoption 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.
- **Unfair dismissal and discrimination** – A dismissal for asserting any of the above rights will be automatically unfair

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(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 States of Jersey by way of maternity related 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 States of Jersey Employment and Social Security Department the sum of **£216.86** per week by way of Short Term Incapacity Allowance provided such employee is covered by a medical certificate. 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 System ("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 **1%** in 2018.

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.

| | Employee social security contributions | Employer social security contributions |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Standard earnings limit | In 2019, any income up to £4,442 per calendar month (or £53,304 per year) will attract social security contributions at the rate of 6% . | Any income up to £4,442 per calendar month (or £53,304 per year) will attract social security contributions at the rate of 6.5% . |
| Upper earnings limit | Any income above £4,442 per calendar month will not attract employee social security contributions. | Any income above the SEL but below the UEL (i.e. between £4,442 and £14,686 per calendar month, or £53,304 to £176,232 per year) will attract social security contributions at the rate of 2% . |

Any income above the UEL (£14,686 per calendar month) will not attract employer social security contributions.

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 in or around 2020.

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 citizen or a British subject with the right of abode;
- a national of a member state of the European Union (EU) / European Economic Area (EEA) (except a Croatian national);
- a non-EEA family member of an EEA national may also work without a permit but must obtain an EEA family permit before entering Jersey;
- a Swiss national;
- a Commonwealth citizen admitted as a working holiday maker;
- 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.

It should be noted that the work permit (and UK visa) position may change as a result of Brexit.

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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 10 or more years' residence (similar to the previous (a) to (h) categories).
- **Licensed** – essential employees with less than 10 years' residence requiring immediate housing rights (taking over from the previous (j) category, i.e. skilled workers).
- **Entitled for Work Only** – those with between 5 and 10 years' residence.
- **Registered** – those with less than 5 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.

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 licenced 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.

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 Licenced 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:
 - a. 9 months in relation to maternity and sickness, or
 - b. 3 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); and
- **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.

No additional application is necessary to engage Entitled or Entitled to Work individuals. If an undertaking is permitted 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.

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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. a director of a company
 - b. a partner in a partnership
 - c. a member of the council of a foundation
 - d. 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 hawkler 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 4 weeks of the employee's start date.
- Pay each member of staff at or above the minimum wage (currently **£7.50** per hour but due to rise to **£7.88** per hour in April 2019).
- 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:
 - a. **Code 1** – Recognition of Trade Unions;
 - b. **Code 2** – Balloting and Conduct in Employment Disputes; and
 - c. **Code 3** – Resolving Collective Disputes.



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