

Jersey Employment Law update

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

Location / [Jersey](#)

Date / [November 2019](#)

Jersey's States Assembly (its main legislative body) was busy in October 2019 and passed a number of pieces of legislation with significant employment law impact.

Sunday shop opening

Pressure has for some time been building to permit greater Sunday trading in Jersey.

The [Shops \(Regulation of Opening\) \(Amendment\) \(Jersey\) Regulations 2019](#) came into force on 30 October 2019 and created a new Restricted Hours Permit, which will allow large shops (those with a footprint of more than 700 square metres) to open on all ordinary Sundays, Good Friday and Liberation Day for up to six hours (between 10:00 – 16:00 inclusive).

The new permit will not allow large shops to open on either Christmas Day or 26th December.

The Regulations include within the Restricted Hours Permit a provision confirming that road fuel sales (of any type – including electric charging points) on any Sunday, Good Friday and on Liberation Day may be permitted beyond the 10.00 – 16.00 limitation on other retail activity on large shop sites.

Employers considering taking advantage of the new Restricted Hours Permit will need to consider:

- Obtaining an appropriate permit
- Reviewing terms and conditions
- Reviewing pay scales for Sunday/public holiday working

- Ensuring that the provisions of the Employment (Jersey) Law 2003 in relation to rest periods are complied with (and/or that employees do not work an excessive number of hours).

Changes to family friendly legislation

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 [proposition](#) 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](#).

What came out 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.

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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 come into force in July/July 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;
 - 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 already unreasonably refused suitable alternative employment with the employer.

Benefit changes

The intention is that the current Maternity Allowance sum will be replaced by a Parental Allowance, with both parents able to claim a contributory benefit.

To support this additional cost, a rise in payroll taxes is proposed. It is proposed that the liability of employers and Class 2 contributors, paying contributions above the Standard Earnings Limit of £53,304 will be increased from January 2020, as follows:

- the Upper Earnings Limit – the maximum level of earnings that is taken into account for contribution purposes – will increase from £176,232 to £250,000;
- the percentage rate levied on earnings above the Standard Earnings Limit (£53,000–£250,000) will increase by 0.5% from 2% to 2.5%

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Priorities for HR professionals

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

- 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 management of parental leave absences.
- 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 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.

- Ensure managers are aware of the changes and undertaking any training required.

Further information

We are happy to supply specific advice where required.

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Appendix – The development of Family Friendly Law in Jersey

| Right | 1 September 2015 | 1 September 2018 (Current) | June/July 2020 |
|--|--|--|--|
| 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 | <p>Parental leave 52 weeks of parental leave for both parents including 6 weeks' paid leave at 100% of pay by the employer</p> <p>Can be taken in up to 3 blocks of leave over a 2 year period</p> <p>Also available to adoptive and intended surrogate parents</p> |
| 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 | |
| Adoption leave | Paid and unpaid leave equivalent to maternity leave and parental leave | Paid and unpaid leave equivalent to maternity leave and parental leave | |
| 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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