

Employment issues in Jersey

Briefing

Employment legislation in Jersey has undergone a major overhaul. Other than unfair dismissal, there is, at present, no statutory control over issues such as redundancy or maternity payments, sex or racial discrimination, although many of these matters are being introduced in phases over the next few years.

The Employment (Jersey) Law 2003 (the 'Law') which came into force on 1 July 2005 introduced the concept of unfair dismissal into Jersey. It also introduced and addressed employee issues such as minimum wage, minimum holiday and rest day entitlements and the basic minimum standards to be incorporated into all employment contracts.

The Law consolidated and amended two primary pieces of Jersey employment legislation, namely the Termination of Employment - Minimum Periods of Notice (Jersey) Law 1974 ('the 1974 Law') (as amended by regulation) and the Terms of Employment (Jersey) Regulations 2001 ('the 2001 Regulations').

The 1974 Law

In relation to the 1974 legislation, the law makes it clear that the notice period is the contractual or the statutory period, whichever is the greater. The notice periods to be given by the employer are :

Period of continuous employment	Notice to be given
Under 26 weeks	1 week
26 weeks to 2 years	2 weeks
2 to 5 years	4 weeks
5 to 10 years	8 weeks
10 to 15 years	12 weeks
15 years and more	16 weeks

The employee on the other hand is only obliged to give two or four weeks' notice, depending on whether they have worked for less or more than five years.

Notwithstanding these notice periods, an employer can still dismiss an employee without notice if the behaviour of the employee justifies it, in the case of gross misconduct. These minimum notice periods remain unchanged by the Law.

The Law also removed the previous requirement to serve notice of termination of employment on a pay day.

The 2001 Regulations

These regulations require an employer to provide every employee, within four weeks of commencing employment, with a statement setting out that employee's terms of employment. This requirement will remain in the new legislation. The 2001 Regulations specify what terms of employment must be included in the statement (for example job title, level of pay and date of payment, normal working hours, redundancy or maternity leave entitlement, holiday entitlement and disciplinary and grievance procedure). The 2001 Regulations do not however grant statutory benefits and therefore the employer is entitled to state that such right is not applicable or available to the employee.

The employer is under a statutory obligation to notify the employee of any change in such terms of employment within four weeks of implementing the change. Under the Law these provisions remain largely unaltered although there are additional minimum requirements (such as specifying the place of work, the date on which continuous employment commenced and whether there are any applicable collective agreements).

Unfair dismissal

The Law introduces the concept of statutory protection from unfair dismissal. A dismissal will be treated as automatically unfair if it is on grounds:

- of trade union membership or activities;
- that the employee brought proceedings to an employment tribunal;
- relating to health and safety; or
- relating to the employee asserting their statutory rights.

In addition, it is proposed that grounds relating to 'family reasons' (including pregnancy) will be treated as automatically unfair although this is subject to the introduction of an Order.

Dismissal will be considered fair, if it satisfies a reasonableness test on grounds:

- relating to capability qualifications;
- relating to conduct;
- of redundancy;
- relating to preventing a breach of a statutory duty; or
- relating to some other substantial reason which would justify dismissal.

The award for a successful claim for unfair dismissal is based on the length of service multiplied by salary. The maximum award of 26 weeks' salary will be made to an employee employed continuously for five years or more. There is no duty on the employee to mitigate their loss.

An employee will need to be employed for 26 weeks to qualify for protection against unfair dismissal under the new law or have completed two thirds of a fixed term contract, subject to certain specific exceptions.

Minimum holiday and rest day entitlement

The Law will bring in statutory rights for employees' to the following:

- one uninterrupted period of not less than 24 hours in each seven day period; or if the parties agree,
 - two uninterrupted periods of not less than 24 hours in each 14 day period; or
 - one uninterrupted rest period of not less than 48 hours in each 14 day period; and
- two weeks' minimum paid leave in each leave year (pro-rated at the start and end of employment) and all bank and public holidays or paid time off in lieu.

Contracts of employment - drafting considerations

In addition to the employment terms required by statute, an employer may wish to consider the inclusion of additional terms in a contract of employment such as:

- Confidentiality clause (covering not only the period of employment but after termination)
- Restriction on dealings with clients/other employees after termination of employment
- Right to immediate termination and suspension in specified circumstances
- Non-termination in case of reconstruction or amalgamation of the employer
- Agreed deductions from wages
- Ability to restrict performance of duties during notice period ('a garden leave clause')
- Governing law clause

Financial considerations

Obviously, employers need to consider the financial implications of entering into contracts of employment. Some of the main considerations are set out below:

1) Wages

The Law introduced a statutory minimum wage of £5.10 per hour and a trainee rate of £3.08, which are subject to review. The Payment of Wages (Jersey) Law 1962 (the concept of which will continue into the new laws) ensures that, generally, wages must be paid in legal tender and not payment in kind. Wages must be paid on normal working days at regular intervals of not more than one month. Employees also have a right to receive itemised pay statements.

2) Social Security payments

Under the Social Security (Jersey) Law, 1974, as amended (the 'Social Security Law') an employer is obliged to pay secondary Class 1 contributions in respect of each employee who fulfils the appropriate residential requirements. These payments cannot be deducted from the employee's wages. The employer must also pay the employee's primary Class 1 contributions on his behalf.

These sums may be deducted from the employee's wages. All Social Security contributions must be paid within the appropriate time limits. Any failure to comply with the provisions of the Social Security Law could subject the employer to a financial penalty. This liability extends to the officers of a corporate employer.

Different rules apply under the Social Security Law to those workers who are self-employed and specific advice should be taken in this regard.

3) Income tax

The payment of Income Tax in Jersey is governed by the Income Tax (Jersey) Law, 1961, as amended (the 'Income Tax Law'). The liability of each business to pay tax on the income earned from that business will of course differ as will the liability for tax of the officers or managers of the business who draw a salary. Individual advice should be sought in this respect. The same is true in respect of workers who are self employed. With regard to the taxation of employees, from January 2006 employers are required by law to deduct payments for income tax from employees salaries, at a rate notified to them by each employee.

It is worth noting that the Income Tax Law contains exemption provisions in relation to superannuation funds, which are designed to benefit both employer and employee.

Pursuant to the Income Tax Law an employer may be required to provide information relating to their employees to the Comptroller of Income Tax. Employees, in this context, include company directors and managers of the business.

Generally speaking, however, the employee taxation system is less onerous than, for example, in the United Kingdom, and involves less administration time and expenditure for the employer.

4) Pensions

Any liability upon the employer to contribute to pensions is a contractual matter. There is no compulsory statutory requirement for an employer to contribute towards an employee's pension, other than through the state run social security scheme, although many employers do so as part of the employment package.

The employer's common law duty to their employees

At common law, every employer owes a duty to provide their employees with a safe system of work. This forms part of the contract of employment and is considered to be of fundamental importance to that contract, even though the obligation may well be one that is implied rather than expressed. In addition to this, the employer has a general obligation not to act negligently towards their employee. If the employer fails to fulfil these obligations and the employee suffers injury as a result, then the employee has the ability to seek damages from the employer.

The employer's statutory duty to their employees

The Health and Safety at Work (Jersey) Law 1989, (the 'Health and Safety Law') as amended makes provision for securing the health, safety and welfare of persons at work. It is not limited to an employer's duty to their employees but also seeks to protect others from risks caused by the activities of persons at work. To this end, it also imposes some duties on employers towards people other than their employees.

The basic effect of those provisions which apply to the employer/ employee relationship is to reinforce the contractual and other common law duties of the employer (as discussed above). The same is true of the employee's duty in respect of their own, and their colleague's safety.

A breach of the terms of the Health and Safety Law does not in itself provide the employee with a civil action against the employer. It can however lead to the prosecution of the employer and to the imposition of a fine.

The Health and Safety law is administered by the Accident Prevention officers who are based within the Employment and Social Security Department of the States of Jersey. They inspect and take statements from work places when an accident has occurred. They may send a report to the island's Attorney General concerning the prosecution of the employer. They will, if civil proceedings are issued, provide the parties to those proceedings with a factual report about the accident. In addition to the Health and Safety Law there are a variety of regulations in place which relate to specific types of employment and work places.

These include, for example, regulations safeguarding workers in relation to harmful substances and dangerous working practices. An employer should, therefore, seek advice as to whether there are particular provisions which apply to a particular industry or undertaking.

Industrial relations/ conciliation in Jersey

There is a union presence in the island, although union involvement in the employment market is not as predominant as in other larger jurisdictions. There is however a variety of collective agreements in force which reflect employment conditions in various trades.

Currently there is no legislation and limited case law on trade union matters such as strikes and union membership. Recognition and status of trade unions will be dealt with in the new employment laws.

The Industrial Disputes (Jersey) Law, 1956, as amended, makes provision for the settlement of larger scale industrial disputes connected with employee's terms of employment or conditions of labour. The States of Jersey have appointed an Industrial Disputes Officer to assist with this process. The Jersey Advisory and Conciliation Service was recently established and its aim will be to promote good employment relations and practices to conciliate in employment disputes and give general advice on industrial relations matters.

Jersey Employment Tribunal (JET)

The Law creates an Employment Tribunal whose role will be to hear employment disputes. Hearings will generally be held in public before the Chair/ Deputy Chair (both legally qualified) and lay/ wing members (who are not legally qualified).

The JET was created to hear disputes brought by employees against employers in relation to their terms and conditions of employment and to act as a reference regarding the terms and conditions (e.g. entitlement to annual leave, rest days, paid leave on Jersey bank/ public holidays and itemised pay statements).

The JET hears individual employment disputes connected with claims about an employee's labour and the employer's duties under the Law. These include claims for an employer's failure to pay the minimum wage or provide two weeks' minimum paid leave per year.

Individual employment disputes where the claim relates to damages for personal injuries and breaches of employment contracts for intellectual property will continue to be dealt with by the Royal Court.

Recovery of costs in the JET

If involved in a claim, you are unlikely to recover preparation/ presentation costs. Although the JET can order a party to pay the other's costs, (where the other party has abused the processes of the JET), such instances are unlikely.

Employer's liability insurance

In order to protect the employee, who has a civil personal injury claim against his employer, the Employer's Liability (Compulsory Insurance) (Jersey) Law 1973, (the 'Compulsory Insurance Law') as amended, requires employers carrying on business in the island to insure with an authorised insurer against their liability towards their employees for personal injuries suffered, or disease contracted, in the Island.

The Compulsory Insurance Law does not apply where the employee is a family member or is not ordinarily resident in the Island (unless they have been resident in Jersey for a continuous period of fourteen days). The Compulsory Insurance Law also provides for a minimum limit to be set in respect of the relevant amount of insurance: currently £2,000,000.

Relocation to Jersey

Other than the matters set out above, any employer wishing to relocate its business and employees to Jersey will have to consider the following issues:

1) Consent to operate a business in Jersey

The Regulations of Undertakings and Development (Jersey) Law 1973 (the 'Regulation of Undertakings Law') is a major consideration for any business wishing to relocate to Jersey. Any person wishing to set up a new undertaking in the island, must obtain a licence under the Regulation of Undertakings Law.

The regulatory authority controlling the issue of such licences (the Economic Development Department (the 'Department') will have regard to the economic benefit to the Island and other factors before deciding whether to grant a licence.

The licence will also specify the number of permitted employees. Any increase in employees is controlled by the Department. Consent is required for the engagement of any new employee. There are certain limited exemptions to this requirement, one such exemption being replacement to an existing position, provided the position is filled within six months by a person who has been resident in Jersey for at least five years.

2) Residential accommodation for employees

Owing to the limitation on the pool of residential accommodation in Jersey, there are strict statutory controls governing the use of residential accommodation by non-local residents.

Whilst there is a limited source of unrestricted residential accommodation available, this does not always provide a sufficient amount of accommodation of the quality sought for relocation of top employees.

The local authorities recognise this difficulty and will consider granting, usually time-restricted, residential qualifications to persons whose employment in the Island is considered essential. Customarily such 'J Category' consents (so described because it is Article 1(1)(j) of the Housing Regulations, which describes this category of resident) will lapse after three to five years. Every application is considered on its merits.

3) Work permits

Under the Immigration (Work Permits) (Jersey) Rules, 1995, any employer wishing to bring an employee into the island must apply for a work permit for such employee, unless the employee is from a member country within the European Union. The Defence Committee in considering an application will have regard to such factors as the availability of suitable alternative employees within the island and the economic situation of the Island, as well as the individual's particular expertise. Permits are normally limited in time.

Public sector employees

It should be noted that there are laws not covered within this guide which relate to public sector employees i.e. those employed by the States of Jersey or other public bodies within the island.

This briefing can only provide a general review of this area. Legal advice should be taken with regard to individual circumstances.

If you have any queries regarding the information in this briefing or simply wish to discuss your specific needs please contact:

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