

UPDATE

Bailiff leaves his mark on Jersey employment law

Update prepared by Carla Benest (Partner, Jersey) and Laurie Child (Senior Associate, Jersey)

In this update, employment law experts Carla Benest and Laurie Child take a look at a recent series of employment appeal judgments issued by the Royal Court of Jersey.

With the Bailiff of Jersey due to retire from his post in October 2019, a series of appeal judgments issued by the Royal Court has provided important new guidance on Jersey's employment law framework.

Here's our summary:

1 Implied terms should not readily be recognised (even in employment contracts)

In Sumera v Atlantique Seafood t/a Soy Sushi Restaurant, a decision of the Tribunal was upheld that there was no right to payment for "time off in lieu" which had accrued but not been taken when the employee's employment ended. Referring to a 2005 decision of the Jersey Court, the Bailiff noted that a term may be implied only where it would customarily be implied in a contract of the kind in question, or where it is necessary to do so because otherwise the contract would be "futile, inefficacious or absurd".

2 A termination in breach of contract can lead to uncapped damages

In The States Employment Board (SEB) v Alwitry, SEB appealed against a judgment that a doctor whose employment was terminated before he started work was dismissed in breach of contract. Ruling on a number of significant legal issues, the Court of Appeal (over which the Bailiff presides) dismissed the appeal and decided that the original judgment stands. Confirming, among other points, that there is a mutual duty of good faith in Jersey law employment contracts, and that trust and confidence allegations must be judged objectively rather than on what the parties thought at the time, the Court of Appeal has paved the way for Dr Alwitry's uncapped compensation payment in line with the original judgment.

3 A breach of contract can automatically terminate a contract of employment

In de Sousa v Danny Yau Limited t/a Princess Garden, an employee's unexplained absence from work was deemed a resignation that automatically brought her employment contract to an end. Giving judgment for the employer, the Bailiff ruled that following a fundamental or "repudiatory" breach of contract, there is no need for the innocent party to elect to end the contract; it will end automatically. A clear step away from English law, it remains to be seen how this principle will apply in contrasting factual scenarios.

4 A Tribunal default judgment can be set aside

In Ladbrokes Betting and Gaming Limited & Others v Lawrie, an employer received a claim form late because the Tribunal sent it to an out of date address. No response to the claim was submitted within the deadline and "default judgment" was issued, upholding the claim. After the Tribunal refused to reconsider the default judgment, an appeal was lodged and the Bailiff ruled that the Tribunal does have power to set aside such judgments. The Tribunal must now decide the procedure that will be required for "set aside" applications, but it is clear that missing a response deadline is not necessarily the end of the road.

5 Reminder: Jersey law is not English (or French) law

A refrain in more than one of the judgments above is that Jersey law, in the employment context and beyond, is not simply a reflection of English law, or indeed of French law. Taking the opportunity to assert (and at times warn fellow judges not to overlook) Jersey's body of case law and established principles, the Bailiff has emphasised that Jersey's own legal tradition must remain first in mind.

For further information or to discuss the practical impact of these issues, contact Carla or Laurie in our [Jersey Employment team](#) or get in touch with a member of our [Guernsey Employment team](#).

Contact



Carla Benest
Partner, Mourant Ozannes
Jersey
+44 1534 676076
carla.benest@mourant.com



Laurie Child
Senior Associate
Jersey
+44 1534 676067
laurie.child@mourant.com

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