

In Brief: Jersey
Employment
Law
Autumn 2021

1 The weekly cap for **statutory redundancy pay** in Jersey increased from £780 to £820 with effect from 28 September 2021, reflecting the latest mean average earnings figure.

2 The Social Security Minister has passed an Order increasing the Island's **minimum hourly wage** to £9.22 from 1 January 2022. The current rate is £8.32 but the last increase was made in April 2020.

3 The States Assembly has passed regulations introducing a new statutory entitlement to a **20 minute uninterrupted rest break** for Jersey employees working any continuous period of six hours or more, and extending the statutory minimum **annual leave entitlement** from two to three weeks. The new rules take effect on 1 January 2022.

4 A scheduled legislative debate on Jersey's **population policy** has been postponed to 22 January 2022. The debate, which was due to take place on 23 November 2021, is to consider government plans for reform but detailed proposals are yet to be published. A recent public consultation generated over 1,700 responses, according to reports.

5 In *Fortun v G4S Secure Solutions (Jersey) Limited* the Employment and Discrimination Tribunal considered a disability discrimination claim arising from the provision of goods and services.

The respondent, a service provider to an apartment block, had no contractual relationship with the claimant, a resident, but the Tribunal said that was 'irrelevant' to the question of whether the law was engaged. Despite this, the claimant could not establish that she had suffered discriminatory treatment and the claim failed.

6 Two recent cases, *Carey v JP Mauger Limited* and *Leech v The Car Clinic Limited*, examined whether or not the definition of 'employee' was met for the purposes of Jersey's statutory employment law.

In *Carey* the Tribunal found that the claimant, a quantity surveyor, was more likely to be in business on his own account, and engaged and remunerated on that basis, than as an employee. In *Leech*, the claimant, a mechanic and founder of the respondent business, was held to be in a relationship closer to employee and employer than independent contractor and client. Both cases illustrate the need for employers to take a holistic view of the nature of a particular engagement.

7 *Pallot v Jersey Heritage Trust*, another decision arising directly from the Covid-19 pandemic, saw the Tribunal reject claims for disability discrimination and unfair dismissal brought by an employee who refused to wear a face mask.

The employee, who had worked as a public driver on a passenger vehicle, argued that he was unable to wear a mask due to an anxiety condition that amounted to a disability. Referring to Jersey's low threshold for

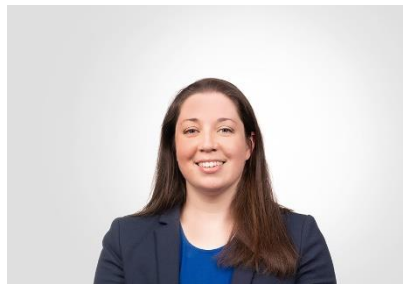
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disability, the Tribunal was prepared to assume that the test was met. However, it went on to find that the employee's dismissal was to ensure compliance with the mandatory face mask requirement in place at the time, and consequently was not discriminatory.

Face masks are not mandatory in Jersey at present, and the same outcome will not necessarily be reached in future. But in this case, the Tribunal was notably clear in upholding the employer's efforts, under challenging circumstances, to act decisively and comply with the Island's Covid-19 requirements and health and safety duties.

8 A recent English case, *Carillion Services Limited (in compulsory liquidation) v Benson*, highlights the high threshold required where an employer seeks to rely on the 'special circumstances' defence in the context of collective redundancy consultation. The English Tribunal rejected the company's argument that a refusal of short-term lending arrangements justified a failure to collectively consult. Although not binding in Jersey, similar statutory provisions apply and the judgment is a warning to local employers who may be contemplating redundancies as a result of the COVID-19 pandemic.

Contacts



Carla Benest
Partner | Advocate
Mourant Ozannes (Jersey) LLP
+44 1534 676 076
carla.benest@mourant.com



Laurie Child
Senior Associate
Mourant Ozannes (Jersey) LLP
+44 1534 676 067
laurie.child@mourant.com



Katie Phillips
Associate
Mourant Ozannes (Jersey) LLP
+44 1534 676 417
katie.phillips@mourant.com



Lillian Garnier
Trainee
Mourant Ozannes (Jersey) LLP
+44 1534 676 043
lillian.garnier@mourant.com