

Employment (Jersey) Law 2003 Overview

The new law was passed in December 2003 and is expected to come into force in early 2005. It will only apply to the employees who work wholly or mainly in the Island. The new law will establish an Employment Tribunal and most significantly give employees the right not to be unfairly dismissed.

What Rights did employees have in Jersey previously?

Prior to the new law coming into effect, employees in Jersey have only minimal protection in relation to their employment under the law. In simple terms they are entitled to:

- a written statement of the main particulars of their employment within 4 weeks of commencing employment (applies to employees who work at least 8 hours a week);
- the payment of wages at regular intervals and in cash or other form of legal tender without unauthorised deductions;
- a statutory minimum period of notice (up to 16 weeks) to terminate the employment which depends upon how long the employee has been continuously employed; and
- not to be compelled to work on public and bank holidays

The new law will incorporate these rights as well as introducing significant new elements.

What is the same under the new law?

Written statement of main particulars of employment

The new law will broadly require the employer to provide a statement of employment particulars to every employee whose normal hours of work are 8 hours each week or more covering the same matters that are required under the current law with some additional matters, such as the date when the period of continuous employment began, place of work, and further details in relation to temporary staff. The statement must be given within 4 weeks after the employment begins.

Any change in the employment particulars must also be given in writing to all employees no later than 4 weeks after the change.

An employer who fails to provide written particulars or changes as required by the new law will be guilty of an offence and liable to a fine not exceeding £1,000 for each offence.

Compulsory minimum periods of notice

All employees who work for more than 8 hours per week will be entitled to a minimum period of notice under the new law, as now, which will depend on the number of continuous years for which the employee has been employed

Minimum periods of notice to be given by employer to employee:

Period of Continuous Employment	Length of Notice
More than 26 weeks	1 week
More that 26 weeks but less than 2 years	2 weeks
More than 2 years but less than 5 years	4 weeks
More than 5 years but less than 10 years	8 weeks
More than 10 years but less than 15 years	12 weeks
More than 15 years	16 weeks

Minimum periods of notice to be given by employee to employer:

Less than 5 years	2 weeks
5 years or more	4 weeks

The contract of employment may provide for a longer period of notice but not shorter than the minimum provided by the new law.

The employee will always be entitled to at least the statutory minimum period of notice whatever is provided in the contract of employment.

The minimum periods of notice under the new law are the same as they are currently although notice will start to run when it is given and there is no provision in the new law that notice should begin to run from the next payday, as under the current law.

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What is new?

There are new provisions relating to the payment of wages and holidays. In addition, the law adds the following

- it expands the definition of who is an employee;
- unfair dismissal;
- compulsory minimum weekly rest periods;
- paid annual leave;
- a minimum wage;
- the keeping and production of records by the employer;
- additional provisions with regard to remuneration-salary/wages, benefits in kind, etc.

Employee

The new law does not define 'employee' specifically but does provide that a person will become employed if he or she enters into and performs, a contract of service or apprenticeship whether that is express or implied, verbal or written.

The law will apply to anyone who, in reality, acts as an employee or has employee status.

Unfair Dismissal

Under the new law an employee will have the right not to be unfairly dismissed by the employer. There are two elements to this:

- There must be a must be a fair reason for dismissing an employee and
- the employer must also act reasonably in treating that reason as a sufficient reason for dismissing the employee.

The new law will incorporate these rights as well as introducing significant new elements.

What is a dismissal?

A dismissal occurs when:

- an employee is dismissed with or without notice by the employer;
- a fixed term contract (of any duration) comes to an end or is terminated early by the employer;
- the employee is constructively dismissed (i.e. where the employer has acted in such a way that the employee is reasonably entitled to walk out).

Fair Reason

The reason must relate to one of the following:

- capability;
- conduct;
- redundancy (which is defined for the first time);
- continuing the employment would be unlawful (e.g. a driver who has been disqualified from driving);
- and/ or some other substantial reason such as to justify the dismissal of an employee holding the position that the employee held.

The reason for dismissing an employee could be one incident but is just as likely to be a series of incidents over a period of time. One minor incident alone will not justify a dismissal unless it is the last straw (i.e. one of many similar incidents that have already occurred).

It will no longer be possible simply to dismiss an employee without a fair reason. This extends to fixed contracts coming to an end. An employer will have to show that there is a fair reason for not renewing a fixed term contract.

Acting reasonably

Where there is a fair reason, whether the dismissal is fair or unfair will depend on whether the employer acted reasonably in treating the reason as a sufficient reason for dismissing the employee. Reasonableness is determined in accordance with equity and the substantial merits of the case. It does take into account the size and resources of an employer. However, every organisation, whatever its size must take steps to handle a dismissal in a fair manner.

All the circumstances must be taken into account.

- There could be a fair reason for dismissing someone e.g. the employee is always late (conduct), has a lot of days off sick, is not very good at his job (capability) has punched another employee in the face (gross misconduct) but if the employer's manner of dismissal is unreasonable, the dismissal could still be unfair
- A serious incident of gross misconduct (e.g. fighting/theft) is likely to justify a dismissal but it still needs to be investigated and handled carefully unless the employee is caught 'red handed'.
- Whatever the issue, investigate it and the reasons behind it through management procedures or your disciplinary procedure. Tell employees what you expect in terms of your standards and that if the employee does not comply make the consequences clear.

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Who can make a claim?

Every employee who has been employed for 26 weeks or more whatever the type of contract and works not less than 8 hours a week will have the right to make a claim to the Employment Tribunal for compensation but not reinstatement or reengagement. The amount of any compensation that can be awarded has not yet been decided.

The law only applies to anyone who wholly or mainly works in Jersey

Fixed term contracts

If an employee is employed under a contract of employment for a fixed term of 26 weeks or less and at least two thirds of the fixed term have expired, that employee will still be entitled to make a claim for unfair dismissal, even though he or she will not have been employed for 26 weeks or more. This provision is designed to catch seasonal workers and to avoid fixed term contracts being used as a loophole. In practice, an employer needs to be clear why a fixed term contract is being used.

Denying an employee statutory rights

An employee will also be able to make a complaint, that is apply to the Employment Tribunal if an employer fails to comply with other obligations under the law, e.g. if the employee is not being allowed to take the minimum rest periods provided under the new law or is not being paid the minimum wage.

Compulsory minimum weekly rest periods and annual leave

All employees will be entitled to minimum weekly rest periods (24 hours complete break every 7 days or 48 hours every 14 days).

All employees who have worked for at least 28 days will be entitled to two weeks' paid annual leave plus payment for bank and public holidays (adjusted pro rata).

Minimum wage

All employees who are above compulsory school age will be entitled to a minimum wage. The minimum wage will be an hourly rate fixed 4 by the Employment and Social Security Committee from time to time. (currently £5.08).

An employer who fails to pay an employee the minimum wage as required by the new law will be guilty of an offence and liable to a fine not exceeding £1,000 for each offence.

Keeping and producing records

Employers will be obliged to keep records and employees will be entitled to have access to those records. An employee who believes, on reasonable grounds, that he

is or has been paid less than the minimum wage will have the right to inspect any relevant records.

Under the new law an employer must to keep and produce records relates to wages only but the obligation may be extended to other types of records e.g. disciplinary, performance, by the Employment and Social Security Committee in the future.

An employer who fails to keep any records required by the new law will be guilty of an offence and liable to a fine not exceeding £1,000 for each offence.

Payment of wages

An employee is entitled

- to be paid wages in legal tender or partially in kind (so long as the allowances are appropriate for the personal use and benefit of the employee and his family and the value attributed to such allowances is fair and reasonable);
- to be paid at regular intervals;
- to receive a written itemised pay statement and
- not to have any unauthorised deductions made.

An employer who fails to adhere to the new law in relation to the payment of wages will be guilty of an offence and liable to a fine not exceeding £1,000 for each offence.

Redundancy

The new law will not introduce the right to a redundancy payment but it will introduce the right to claim unfair dismissal if an employee is unfairly selected for redundancy.

An employee will only be entitled to a redundancy payment if the contract of employment provides for such a payment to be made.

Maternity rights

The new law does not introduce any right to maternity leave or maternity pay but it will be unfair to dismiss a person for a reason relating to pregnancy, child birth or maternity.

Disciplinary and Grievance procedures

An employer's procedures from recruitment to termination will now be subject to scrutiny and it is important that effective procedures are in place and working effectively. If such practices are in place and are followed, it is more likely that the employer will be seen as having acted reasonably and as having treated an employee fairly. Although there is no requirement under the new law for employers to have a disciplinary or grievance procedure, it is recommended that every individual should have the



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opportunity to respond to any allegations of misconduct, to appeal against any decisions made by the employer and to address any grievances that they might have.

In practice the form of procedure will depend upon the size of the business. For example, if the business is small with few employees and there is only one person who has the power to decide whether an employee should be disciplined or dismissed, then it might not be possible to provide a right of appeal.

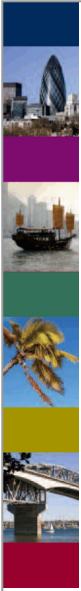
The establishment of an Employment Tribunal

A Jersey Employment Tribunal will be established to hear matters relating to employment disputes. It will be the Tribunal which decides if there has been a breach of the new employment legislation and whether such a breach necessitates an award in damages. Employers or employees appearing before the Tribunal may appear in person or seek representation. There will be a right of appeal on a question of law from a decision or order of the Tribunal to the Royal Court. The leave of the Tribunal or the Royal Court will be required for such an application.

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Contact details

Jersey

Steve Meiklejohn

+44 (0) 1534 504462

steven.meiklejohn@ogier.com

Michael Little

+44 (0) 1534 504374

michael.little@ogier.com

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