

Employment Update July 2015 – Family Friendly Rights and Sex Discrimination

Insights – 24/07/2015

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Family Friendly Rights

On 1 September 2015 statutory provisions will come into force, for the first time in Jersey, which grant employees family friendly rights including maternity leave, paternity leave and the right to request flexible working. These family friendly rights will come into effect at the same time as sex discrimination legislation. This follows on from the implementation of race discrimination last year.

The key points are:

Maternity & Adoption Leave:

- All employees will be entitled to 8 weeks' maternity or adoption leave, regardless of length of service;
- Employees with over 15 months' service will be entitled to an additional 10 weeks' maternity or adoption leave;
- For maternity (but not adoption) leave employers will incur a direct financial cost of 2 weeks' full maternity pay, which must be paid at the employee's normal contractual salary. Thereafter any maternity leave is unpaid. However, an employer will be able to deduct the full amount of the statutory maternity allowance, from the 2 weeks' maternity pay, whether the employee qualifies for the statutory allowance or not.

An interesting practical point arises in relation to adoption leave, because the law does not specify which parent has to take adoption leave. A couple can elect which person will be the carer, regardless of sex, and take adoption leave, and which parent will take the shorter parental leave. However, both adoptive parents cannot each take adoption leave. Employers will need to ensure that their maternity and adoption leave policy makes sufficient provision for an employee to certify the type of leave they and their partner are taking, particularly where their partner works for a different employer.

Parental Leave:

- A partner with parental responsibility for a child can take 2 weeks' unpaid parental leave within 8 weeks of the birth of or adoption of the child. This is similar to paternity leave in the UK, but it is open to all partners including those in civil partnerships. It is not limited to men and it is available to any partner who is not taking maternity or adoption leave.

Flexible Working:

- All employees with at least 15 months' service and with parental responsibility for a person can request flexible working which may include a change of hours. Employers do not need to agree to a request, but any refusal must be based on one of the statutory grounds, which include situations where: granting the request would have a detrimental effect on the employer's ability to meet customer demand or on the quality or performance of the employer's business or planned staffing changes; where the employer would be unable to re-organize work among existing staff or recruit additional staff; where there would be insufficient work for the employee to do during the periods the employee proposes to work; or if the employee will be entitled to financial benefit (other than a benefit granted from the States) for the provision of care to the person.

Comment: Such rights are common outside of Jersey. Our view is that, if viewed with an open mind, Family Friendly Rights provide employers with the opportunity to incentivise and support their work force. If employers are flexible over the rights, then they can use them to manage their workforce effectively.

Sex Discrimination

The Discrimination (Jersey) Law 2013 will also be amended with effect from 1 September 2015 to prohibit discrimination on the grounds of:

- Sex;
- Gender reassignment; or
- Sexual orientation.

The provisions in relation to breastfeeding generated significant publicity earlier this year, in light of late amendments introduced in the States Assembly. These amendments removed the upper age limit so that parents can elect to continue breastfeeding without risk of discrimination for as long as they deem it is appropriate. The outcome is that it will be unlawful to directly discriminate against a woman because she is breastfeeding, which applies equally to the workplace and outside of work. It remains to be seen how this will work in practice in the workplace, and it may be that early challenges are brought under a request for flexible working and the discrimination law.

However the most interesting elements of the amended law are provisions that allow for positive discrimination if it is a proportionate way of achieving a legitimate aim. For instance, the Royal Court or the Employment and Discrimination Tribunal will be able to excuse potentially discriminatory behaviour if its purpose or object is to reduce inequality in the work place. However the provisions do not allow employers to positively discriminate when choosing who to recruit or who to promote.

Comment: The discrimination landscape is becoming much more complicated with the implementation of provisions to cover these additional protected characteristics. Employers need to take care to ensure that they have policies and procedures in place to deal with these provisions.

If you have any concerns or require any assistance ahead of the 1 September 2015, please contact Ogier's Employment Team.

Ogier was retained by the Scrutiny Panel to review and report upon the Draft Family Friendly Rights. This report may be made available by the Scrutiny Panel in the future.

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