

Employment Update July 2014 -Family Friendly Rights

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Family Friendly Rights

The States approved the proposed Employment (Amendment No 8) (Jersey) Law 201- on Friday 18 July 2014. This will bring statutory family friendly rights to Jersey for the first time, including maternity leave, paternity leave and the right to request flexible working. These proposals were originally raised in 2008. We are now six years on and it is likely that these family friendly rights will come into effect on 1 September 2015 at the same time as sex discrimination legislation. This follows on from the implementation of race discrimination later this year.

The key points are:

Maternity:

- The employer 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 should be able to deduct the full amount of the statutory maternity allowance, currently £191.38, from the 2 weeks' maternity pay, whether the employee qualifies for receipt of the statutory maternity allowance or not;
- All employees will be entitled to 8 weeks maternity leave, regardless of length of service;
- Employees with over 15 months' service will be entitled to an additional 10 weeks maternity leave;

Adoption:

- All employees will be eligible to receive unpaid adoption leave of 8 weeks, and those with over 15 months' service will be able to take an additional 10 weeks;

Parental leave:

- A partner with parental responsibility for the child can take 2 weeks unpaid parental leave. This is similar to paternity leave, but it is open to all partners including those in civil partnerships. It is not limited to men; and

Flexible Working:

- All employees with 15 months service and with parental responsibility for a child can request flexible working. Employers do not need to agree to a request, but any refusal must be based on one of the statutory grounds.

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 manager their workforce effectively.

Sex Discrimination Consultation

The States of Jersey have recently consulted upon sex discrimination. The outcome of this consultation has yet to be published. However there is a high degree of crossover between sex discrimination and family friendly rights. The proposed legislation will have to be reviewed to see how the interplay between the two has been dealt with.

Comment: We will provide an update on this once the proposed legislation has been published.

Case Report: Piazza v Dominion [2014]

JRC138

In a recent appeal before the Royal Court, Commissioner Clyde-Smith has helpfully set-out the test for the Jersey Employment Tribunal to apply when faced with an application to stay a tribunal claim pending a Royal Court action.

The Tribunal stayed Mr Piazza's claim on the basis that he intimated that he might bring subsequent proceedings in the Royal Court to enforce his contractual claim. Commissioner Clyde-Smith held that a stay was not appropriate where, as here, the Royal Court claim had not been issued. A claim should not be stayed in these circumstances.

If however there were concurrent proceedings, then the Tribunal will be asked to consider a number of factors. The key questions are which is the most appropriate venue, and how can the unnecessary repetition of costs be avoided.

Comment: This case provides useful guidelines for parties to consider where there are or might be claims before the Tribunal and the Royal Court.

Reminder: Race Discrimination Law - 1 September 2014

Finally, this is just a reminder that the D-day is coming. The Discrimination (Jersey) Law 2013 is due to come into force on 1 September 2014. It will be illegal to discriminate against a person on the grounds of their race.

You will need to ensure that you have updated your policies and procedures ahead of this date.

If you have any concerns or require any assistance ahead of the 1 September 2014, please contact Ogier's Employment Team.

Ogier were retained by the Scrutiny Panel to review and report upon Amendment No 8. This report may be made available by the Scrutiny Panel in the future.

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Meet the Author



[Helen Ruelle](#)

Director of Local Legal Services

[Jersey](#)

E: helen.ruelle@ogier.com

T: [+44 1534 514417](tel:+441534514417)

Key Contacts



[Will Austin-Vautier](#)

Counsel

[Jersey](#)

E: will.austin-vautier@ogier.com

T: [+44 1534 514460](tel:+441534514460)



Laura Shirreffs

Senior Associate

Jersey

E: laura.shirreffs@ogier.com

T: [+44 1534 514096](tel:+441534514096)

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