

STATES OF JERSEY

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DRAFT EMPLOYMENT (AMENDMENT No. 2) (JERSEY) LAW 200

**Lodged au Greffe on 15th November 2005
by Deputy G.P. Southern of St. Helier**

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 2)(JERSEY) LAW 200

REPORT

The detailed arguments supporting the objections and reservations that continue to be expressed by trade union representatives on the Island over Employment Laws and their associated Codes of practice have been laid out in the submission by John Hendy Q.C., one of the U.K.'s foremost Employment Law specialists, which accompanies the petition which I presented to the States on 4th October 2005.

This amendment deals with one of those many reservations, the failure of the island's employment laws to address the issue of an individual employee's right to representation in a grievance or disciplinary matter.

In its Consultation document "Fair Play in the Workplace: Trade Union Issues" issued in July 2001, the Employment and Social Security Committee set out a *Charter of Basic Trade Union Rights in Jersey* as follows –

Every worker should have the right:

1. to join a trade union and not be discriminated against on the grounds of union membership or participation in union activities;
2. to be a trade union representative and have reasonable time off for trade union duties and not be discriminated against on these grounds;
3. to be represented by a trade union, individually or collectively on any work issue;
4. to take industrial action to protect his or her occupational, social, economic or legal interests without the threat of dismissal or discrimination;
5. to picket at the workplace relevant to the dispute where the worker is employed.

It is the belief of the employees' representatives in Jersey that the employment laws and codes of practice as currently drafted do not even reach the standards of this Charter under workers' right 3, right to representation.

In any dealings with authority, where a fundamental imbalance in power exists, for example, in a court of law, this right to representation is accepted as fundamental. Even at a hearing of a parish welfare board, it is accepted that a parishioner may be accompanied and represented by his or her deputy, or a friend. The right of an individual to be represented in a disciplinary or grievance procedure is widely recognised and accepted as "best practice" by many employers. This amendment serves merely to place this best practice where it belongs, in the island's employment law.

There are no manpower or financial costs to this amendment

Explanatory Note

This draft Law would amend the Employment (Jersey) Law 2003 to confer upon an employee the right to be represented by any person of his or her choice in a disciplinary matter or grievance relating to his or her employment. In particular, it gives the employee the right to be represented by a representative of a trade union.

If the employer denies or threatens to deny the employee that right, the latter may bring a complaint before the Jersey Employment Tribunal.

If the Tribunal is satisfied that the complaint is well founded, it is required to make a declaration to that effect and award the employee such compensation as it thinks fit (not exceeding 13 weeks' pay). If the employer has taken any action against the employee in respect of the disciplinary matter or grievance (for example dismissal), the Tribunal must also declare such action void.

The Law would come into force 7 days after its registration.



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 2)(JERSEY) LAW 200

A LAW to further amend the Employment (Jersey) Law 2003.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 New Part 7A inserted

After Article 78 of the Employment (Jersey) Law 2003,^[1] but before Part 8 of that Law, there shall be inserted the following Part –

‘PART 7A

RIGHT TO REPRESENTATION

78A Right to representation

- (1) An employee shall have the right, in any disciplinary matter or grievance relating to his or her employment, to be represented by any person whom the employee wishes to represent the employee.
- (2) In particular, the employee shall have the right in a disciplinary matter or grievance to be represented by a representative of a trade union, but this paragraph does not limit the generality of paragraph (1).

78B Complaints to the Tribunal

- (1) Subject to paragraph (2), a complaint may be presented to the Tribunal against an employer, by any of his employees –
 - (a) that the employer has denied the employee the right conferred by Article 78A; or
 - (b) that the employer has threatened to deny the employee that right.
- (2) The Tribunal shall not consider a complaint under this Article unless it is presented to the Tribunal –
 - (a) before the end of the period of 3 months beginning with the date of the denial or threatened denial of the right; or

- (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

78C The remedy: compensation

- (1) Where, on a complaint under Article 78B, the Tribunal finds that the grounds of the complaint are well-founded, the Tribunal shall –
 - (a) make a declaration to that effect; and
 - (b) make an award that the employer pay to the employee such sum, not exceeding 13 weeks' pay, as the Tribunal shall determine.
- (2) Where, on a complaint under Article 78B, the Tribunal finds that the grounds of the complaint are well-founded, and the employer has in respect of the disciplinary matter or grievance to which the complaint relates dismissed or taken any other action against the employee, the Tribunal shall also make a declaration that the dismissal or other action so taken is void.”.

2 Citation and commencement

- (1) This Law may be cited as the Employment (Amendment No. 2) (Jersey) Law 200-.
- (2) This Law shall come into force on the seventh day after its registration.

^[1] L.42/2003.