

# STATES OF JERSEY



## MATERNITY LEAVE: RIGHTS OF EMPLOYEES

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Lodged au Greffe on 2nd June 2014  
by Deputy G.P. Southern of St. Helier

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

- (a) to agree that pregnant employees should have the right to 26 weeks of statutory maternity leave without having to work for an employer for a qualification period, and that they should be able to return to their previous job following their maternity leave;
- (b) to agree that the period for which a maternity allowance is payable should be increased from 18 weeks to 26 weeks; and
- (c) to request the Minister for Social Security to bring forward for approval the necessary amendments to legislation to give effect to the proposal.

DEPUTY G.P. SOUTHERN OF ST. HELIER

## REPORT

The question of maternity leave has long been an issue in Jersey, where there has historically been no statutory entitlement to such leave, in contrast to the position in the UK and in most European countries. There is no such statutory entitlement at all in Jersey, but movement towards the introduction of such rights extends back to the recommendations of the Employment Forum made in 2008. Approval for developing such a project was accepted by the States in P.99/2000.

The Minister, in his response to the recommendations of the Employment Forum dated 18th June 2010, is to be congratulated for finally bringing legislation to the States, and in particular establishing the rights to –

- Paid leave
- Paid time off for ante-natal care
- Return to previous job
- Paternity and adoption leave
- Keeping in touch training
- Request flexible working.

Whilst there is no argument over the need to introduce statutory maternity leave, there is however an argument over the quality and length of such leave. In order to understand that argument, one must first ask the question “What is its purpose?” The response is that statutory maternity leave is to protect the health, both physical and mental, of both mother and baby before and after a birth. As Fiona Vacher, executive director of the Jersey Child Care Trust, put it in a media interview –

*“A lack of time with a new-born can lead to post-natal depression. To have a baby is a massive trauma on your physical and emotional wellbeing as a mother. Also, for the child’s wellbeing to get to know and bond with its mother, it’s absolutely fundamental... The social problems that this can cause and the fact that children aren’t bonding with their parents because of not having that time... It’s going to cost society.”*

Elsewhere in the Employment Forum’s advice we find the comment –

*“The greater the period of leave the more chance the mother has to develop a sustainable lasting attachment with their child. This attachment has a longer term protective factor.”*

In a further comment, Ms Vacher said –

*“We have the highest rate of working women in the world in Jersey. To not have a maternity law, where mothers have a basic right to be with their child for the first few weeks and months, isn’t good.”*

In the same article, the Chief Minister described the absence of statutory maternity leave as “a glaring omission.”

The reasons for Jersey having lagged behind is perhaps because employees in Jersey have historically had the benefit of a market of abundant, well-remunerated jobs and, accordingly, the issue may not have featured high on the radar amongst those groups pressing for legislative intervention or protection. Moreover, a large proportion of Jersey workers are employed by businesses who have their roots elsewhere, typically the UK, and so will have the benefit of maternity and paternity provisions incorporated from the policies applicable in that jurisdiction, irrespective of what the legal requirements in Jersey are. Indeed many companies in the finance sector in particular, and the States of Jersey, who must be competitive to recruit professionals largely from the UK, do accept the need to move towards comparable terms and conditions, including maternity.

The wide range of maternity provision amongst Jersey employers can be illustrated by the following quotes from a JCCT focus group report published in November 2012 –

*“14 weeks is allowed... I extended it to 26 weeks... I was on 90% pay and they kept the extra 10% back until I had been back in my original hours for 3 months.”*

*“I get 90% pay for 12 weeks and when I do go back they withhold it for 3 months... that makes me feel as if I’m not trusted.”*

*“I think if you didn’t have some savings you would seriously jeopardise your mortgage.”*

*“My contract gave me 3 months of which 6 weeks was paid.”*

*“I wasn’t entitled... Because I hadn’t been with them for 2 years.”*

*“The contract says I have to wait a year for maternity leave.”*

*“There is no statutory protection whatsoever – it’s still not unfair dismissal to be sacked when you are pregnant.”*

In order to get a picture of the position of our largest trading partner, I have reproduced the UK maternity statutory terms, taken from the ACAS guide, below:

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## **UK maternity leave and pay**

### **Key points**

- Pregnant employees have the right to 52 weeks’ maternity leave.
- 39 weeks could be paid, which may be statutory maternity pay, maternity allowance or contractual maternity pay (contractual pay may be more than statutory pay or could be paid for longer than 39 weeks – this will depend on the terms of employment).
- During maternity leave employee and employer can agree to have up to 10 ‘keep in touch’ days.
- Paid reasonable time off for ante-natal care.
- Employee has the right to return to original job or suitable alternative.

## Maternity leave and pay

A pregnant employee has the right to both 26 weeks of ordinary maternity leave as well as 26 weeks of additional maternity leave. To qualify for maternity leave, an employee must tell their employer by the end of the 15th week before the expected week of childbirth –

- that she is pregnant
- the expected week of childbirth
- the date she intends to start maternity leave.

Once notification has been given to the employer they must then write to the employee, within 28 days of her notification, setting out her return date.

## Statutory maternity pay

Statutory maternity pay (SMP) will be payable if the employee has been employed continuously for at least 26 weeks ending with the 15th week before the expected week of childbirth, and has an average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SMP is payable for 39 weeks; for the first 6 weeks it is paid at 90% of the average weekly earnings. The following 33 weeks will be paid at the SMP rate or 90% of the average weekly earnings, whichever is the lower. The SMP rate from April 2014 is £138.18 per week, the standard rate for SMP is reviewed every April.

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Clearly, times have changed, and with unemployment levels having reached record highs in recent years, the need to protect employees through the introduction and development of our domestic employment law has become starker. The Minister now wishes to ensure that there is greater parity of rights offered to workers across all industries in the Island.

Some caution has to be exercised in addressing these issues however. At this difficult economic time, the States of Jersey will be urged not to impose overly onerous and expensive requirements upon *employers*, many of whom will already be struggling to survive and to avoid making redundancies. The Minister for Social Security has clearly responded to these cautionary calls (largely from employers and their representatives) by limiting the period of maternity leave paid by the employer to 2 weeks.

*“I believe that we must take this first step as soon as possible to give vital protection to parents but with minimal cost to employers.”*

The important thing to note here is that the introduction of further protection for employees must have a cost. If this cost is not to be borne by employers and their employees, then it must be met by the States, in this case through social security contributions.

The issues that need to be addressed are as follows –

- duration
- right to return
- pay level
- who pays?
- qualifying period
- employer exemptions.

### **Small business exemptions**

*“The Forum recommends that there should not be an exemption for small businesses. If small businesses were to be exempt, the Forum considered that any rights would be ineffectual given that three quarters of local businesses employ less than 6 employees and that big businesses, particularly those with links to UK companies, are likely to have existing contractual provisions in place.”*

The Minister has had no difficulty accepting this recommendation, but what is more interesting are the arguments surrounding this issue –

*“One of the main concerns for small businesses was the source of funding for any paid leave. Many of those who supported an exemption generally did so because they felt that small businesses would not cope with the added cost.”*

*“A large employer said that small businesses should be exempt, unless the leave is supported financially by the States; and an employee commented that small business should not be exempt so long as financial support is provided.”*

The Forum, and the Minister, in his acceptance of the recommendations on who should bear the cost of statutory maternity, have ducked the issue in 2 ways. Firstly, they have opted for the minimum possible contribution of 2 weeks’ full pay from employers, and secondly by postponing the decision on any further States contribution to a second stage of implementation.

The first issue to note here is that this 2-stage approach will introduce yet further delay, of the order of 2 or 3 years in implementation, to add to the 14 years of delay we have already had on this issue. This must surely be unacceptable.

The recommendation for up to 18 weeks’ maternity leave seems to accept without argument that the current provision of 18 weeks of Maternity Allowance through Social Security is the correct period; and yet the evidence produced by the Forum would suggest that 26 weeks should have been given greater weight –

*“Most respondents said 26 weeks.”*

*“The Forum considered an advisory body’s suggestion of 18 weeks paid and 8 weeks unpaid to be useful and... fairly common in local workplaces.”*

*“A trade union said that women should have the right to 26 weeks’ leave, irrespective of funding, with the option to extend leave to 52 weeks.”*

*“A respondent in the Health sector suggested 26 weeks, irrespective of funding.”*

**The UK provision is based on this 26-week period. This is founded, amongst other factors, on recommendations from the NHS and Unicef on the benefits of breastfeeding:**

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### **Health benefits for your baby**

Breastfeeding is the healthiest way to feed your baby. Exclusive breastfeeding (giving your baby breast milk only) **is recommended for around the first 6 months (26 weeks)** of your baby's life. After that, giving your baby breast milk alongside other food will help them continue to grow and develop.

Breastfeeding is good for babies. Breastfed babies have:

- less chance of diarrhoea and vomiting and having to go to hospital as a result
- fewer chest and ear infections and having to go to hospital as a result
- less chance of being constipated
- less likelihood of becoming obese and therefore developing type 2 diabetes and other illnesses later in life
- less chance of developing eczema.

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If we were to adopt 26 weeks as the appropriate duration of statutory maternity leave on the grounds that this has significant benefits for both the mother and baby, then it seems only right to extend the duration of maternity allowance to cover the full period. This will require additional funding from the Social Security Fund. This is the almost inevitable consequence of the Minister's decision to ensure minimal costs to business – if employers do not pay, then the States must, if it decides to put this new protection in place.

### **Qualifying period**

The Employment Forum has ended up with a really complex version of maternity leave with –

- 2 weeks compulsory paid (by the employer)
- An additional 6 weeks unpaid giving all the right to return to the same job
- For those with 15 months' service an additional 10 weeks unpaid, with the right to return
- These 18 weeks to be eligible for Maternity Allowance
- In stage 2, the additional 6 weeks to be paid (by the States)
- An additional 8 weeks unpaid for those with 15 months' service

In the UK by contrast, a much simpler system prevails –

- Every pregnant employee has the right to 52 weeks of maternity leave, with the right to return
- 39 of these weeks will be paid
- All are subject to a minimal qualification period of 41 weeks before due date. (This effectively means that all employed women have the right to maternity leave should they become pregnant whilst in service with an employer.)

I propose a system which parallels the simplicity of the UK system, as follows –

- Every pregnant employee has the right to 26 weeks of maternity pay, the first 2 weeks of which will be paid by the employer.
- These 26 weeks will be eligible for maternity allowance.

As with many issues of social protection legislation, I believe that it is important to keep the rules as simple as possible so that all stakeholders can easily understand their rights and responsibilities. The proposals brought forward by the Employment Forum are far from simple, containing different rules at 2, 8, 18, and 26 weeks, along with different rates of pay applying to each of these periods to be introduced in 2 stages. Establishing the 26-week duration as the standard then allows the second stage to be focussed on raising the level of pay and establishing how the appropriate payments are to be funded.

While I have built this proposal on comparisons with the UK system, recent research by the TUC reveals that while the UK allows generous time for maternity leave, the level of benefit (replacement rate) falls well below standards elsewhere in Europe. This low level of support may be forcing mothers to return to work earlier than they would wish.

### **Financial and manpower implications**

Examination of the Social Security 2012 Report and Financial Statement reveals the following –

86% of mothers who gave birth in 2012 claimed maternity allowance (944 out of 1,100 births). This may have been because they did not meet the contribution conditions for this benefit.

If all of these claims were for the full 18 weeks, then the total 2012 cost would have been £3.1 million. However, the actual expenditure was recorded as £2.4 million. Extending the period that the allowance can be claimed to the full 26 weeks would increase this sum to between £3.5 million and £4.5 million.

The income and expenditure account for the year ended 31st December 2012 shows a net balance of income over expenditure of £7 million.

**UK is the “scrooge of Europe” when it comes to decent parental pay**

The UK ranks last in Europe when it comes to giving new parents well-paid leave following the birth of their child, according to a TUC analysis published today (Monday).

The analysis – published to coincide with the Children and Families Bill beginning its Committee Stage in the Lords today – says that in the UK new mothers get just 6 weeks of statutory maternity pay at 90% of their wage. Across the Channel, the European average for well-paid leave for new mothers is 43 weeks.

Under the official European definition, ‘well-paid’ means someone getting at least two-thirds of their pre-maternity leave earnings, or a rate of pay greater than £840 (€1000) per month.

Mothers in Britain are also entitled to an additional 33 weeks’ pay, but only at £136 per week – a rate which has fallen in real terms under this government. And in the UK only about one in 4 women receive extra occupational maternity pay from their employers.

Similarly the analysis says that there’s not much support available to new dads in the UK. Fathers only receive 2 weeks of paternity leave, plus the right to take additional paternity pay of up to 19 weeks, but all at only £136 per week. These entitlements are rarely topped up by employers, says the TUC.

In total the UK offers up to 41 weeks of paid leave to new parents, but this is the fifth lowest in Europe and less than half the European average of 89 weeks.

With such low rates of pay, barely one in three (29%) new fathers in the UK are able to spend longer than 2 weeks at home following the birth of their child. This means that mothers end up taking the majority of leave, which can lead to a drop in their incomes and permanent damage to their career prospects, says the TUC.

The current lack of financial support for new parents is having a disproportionate effect on low-income families in the UK, says the TUC. Government figures show that better-paid fathers are 50% more likely to take paternity leave than those on lower incomes.

As part of the Children and Families Bill, the government plans to introduce a system of shared parental leave from 2015 – but it will still be low-paid (£136 per week). Even on the government’s own estimates only between 2–8% of new fathers will be able to afford to make use of it.

As the Bill comes under scrutiny during its House of Lords Committee stage, the TUC is calling on Peers to support an amendment to be debated today, establishing 6 weeks of better-paid leave for fathers.

Since Norway introduced and then extended a fathers’ quota in the 1990s, the proportion of men taking some leave increased twenty-fold (from 4% to 89%). Key to its success has been pay set at 80 to 100% of a father’s ordinary wage.

Commenting on the figures, TUC General Secretary **Frances O’Grady** said:

“Unfortunately when it comes to supporting parents looking after a new baby, the UK is the scrooge of Europe.

“Countries across Europe are incredibly diverse, especially in the challenges they face, yet all of them have found ways to offer better support for new parents.

“A modest way to start turning this around would be for the government to give new fathers six weeks of well-paid leave.

“Without a properly-paid system of shared parental leave, women will continue to be forced to put their careers on hold as they continue to be the primary carers in their child’s all-important first year.”

Working Families Chief Executive **Sarah Jackson** said:

“We know from callers to our helpline and from research that families are losing out. Many fathers can’t afford to take paternity leave as it is paid well below the national minimum wage.

“We’re supporting the introduction of a ‘father quota’ based on the international evidence of what works – independent leave for fathers, and paid at adequate wage replacement levels.

“We want to encourage more fathers to share the care but it sends a poor message about valuing family time if we offer less than the minimum wage to care for new born children.”

Chief Executive of the Fatherhood Institute **Adrienne Burgess** said:

“In Iceland, reserving three months’ leave for fathers in the first year and paying this at a reasonable rate, has transformed the nature of parenting.

“Icelandic fathers now take more than a third of all the leave available to parents and Iceland now ranks first in the world for equality between men and women, according to the World Economic Forum.”

**NOTES TO EDITORS:**

<b>Country</b>	<b>Number of months of well-paid leave</b>	<b>Total number of months of paid leave</b>
Norway	35.4	35.4
Lithuania	24.9	24.9
Hungary	24.2	36.2
Czech Republic	24	36

<b>Country</b>	<b>Number of months of well-paid leave</b>	<b>Total number of months of paid leave</b>
Estonia	18.6	36.5
Sweden	13.4	16.4
Poland	12.5	48.5
Germany	12	24
Slovenia	11.7	14.2
Denmark	11.2	11.2
Finland	11.1	38.1
EU average	9.9	20.6
Iceland	9	9
Slovakia	6.5	36
Croatia	6	12
Greece	6	12
Ireland	6	6
Spain	5.1	5.1
Portugal	5	11
France	3.8	9.8
Belgium	3.7	35.7
Italy	3.7	13.7
Switzerland	3.2	3.2
Netherlands	2.8	14.8
Russia	2.3	18
Luxembourg	1.9	13.9
Austria	1.8	24
United Kingdom	1.4	9.5

*Source: Adapted from the International Review of Leave Policies and Related Research (2013) Peter Moss (ed), Institute of Education University of London*

**NOTES TO EDITORS:**

- The table includes the total amount of post-natal statutory leave (maternity, paternity, parental and childcare leave) available to a two-parent family.
- The definition of well-paid leave is taken from European Commission (2010) indicators for monitoring the employment guidelines.
- Where parents are entitled to different amounts of leave and pay, the shorter periods have been used in this table.
- Statutory pay in Slovakia is 65% of earnings, which has been considered to be well paid for the purposes of this comparison.