

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT OF LAW) (No. 2) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 6th February 2018
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT OF LAW) (No. 2) (JERSEY) REGULATIONS 201-

REPORT

SUMMARY OF FAMILY-FRIENDLY PROPOSALS

The Draft Employment (Amendment of Law) (No. 2) (Jersey) Regulations 201- (“the draft Regulations”) would amend the [Employment \(Jersey\) Law 2003](#) (“the Employment Law”) to extend the family-friendly employment rights, as follows:

	CURRENT RIGHTS		SEPTEMBER 2018
Maternity leave	<u>18 weeks</u> 2 weeks compulsory leave paid at 100% of pay and either 6 weeks unpaid leave with no qualifying period or 16 weeks unpaid leave with a 15 month qualifying period.	⇒	<u>26 weeks</u> 26 weeks of leave of which 6 weeks paid at 100% of pay by the employer, both with no qualifying period.
Parental leave	2 weeks unpaid leave, no qualifying period.	⇒	26 weeks of leave of which 2 weeks paid at 100% of pay by the employer, both with no qualifying period. Can be taken in up to 3 blocks of leave.
Adoption leave	Same as maternity and parental leave for adoptive parents.	⇒	Paid and unpaid leave equivalent to maternity leave and parental leave.
Ante-natal father/partner	No right to time off to attend appointments.	⇒	Unlimited attendance at appointments – up to 10 hours paid, the rest unpaid.
Flexible working	Right to request for employees with caring responsibilities, subject to a 15 month qualifying period.	⇒	Right to request for all employees with no qualifying period.

BACKGROUND

The proposed amendments to the Employment Law via the draft Regulations are based on a recommendation that was presented to the Minister for Social Security by the Employment Forum (“the Forum”) in December 2017.

The Forum is a non-political, independent body which was set up under the Employment Law to consult on matters relating to the Employment Law at the direction of the Minister for Social Security. The members of the Forum are representatives of employers, employees and independent members.

In August 2016, the Minister directed the Forum to consult on extending the existing family-friendly employment rights, which came into force on 1st September 2015. This maintained a previous Ministerial commitment to review the rights one year after they came into force. The Minister directed the Forum to consider a number of improvements, including longer periods of maternity, parental and adoption leave; paid periods of leave; removing the qualifying period for the right to leave; antenatal appointments for the father/partner; and to remove the qualifying conditions for the right to request flexible working.

The Forum consulted during the period January to March 2017 and received 331 written responses, as well as detailed comments from a number of public stakeholder meetings. The Forum delivered its recommendation to the Minister on 15th December 2017, which the Minister has presented as a Report to the States ([R.140/2017](#)).

The Forum recommended a number of improvements to the family-friendly employment rights that are intended to improve the position for parents in the workplace, give families more choice and flexibility, and encourage gender balance in childcare roles. The Forum’s intention was to recommend a two-staged approach with relatively straightforward changes in September 2018, and then more significant changes in September 2019. This took into account the short period of notice for the first stage of changes and to give employers time to prepare for the second stage of changes. A summary table of all the Forum’s recommended changes to the Employment Law is provided in **Appendix 2** to this Report.

The Minister has accepted all of the Employment Forum’s recommendations for changes to the Employment Law. Many of the changes can be achieved swiftly with minor amendments via these draft Regulations. This is because family-friendly rights are already established in the Employment Law. Some of the changes that had been recommended for introduction in September 2018 will require primary law amendments and changes that cannot be drafted in time for debate before the coming election, and so they have been included in the second stage. The Minister’s intention is to bring those further changes to the States Assembly for approval later this year so that all of the changes are in place by September 2019, as the Forum had recommended.

To ensure that most of the recommended improvements are available from 1st September 2018, the Minister has lodged for debate the following changes to the Employment Law that can be made by Regulations:

By Regulations, in force September 2018

1. Increase maternity, adoption and parental leave to 26 weeks.
2. Increase paid maternity leave to 6 weeks.
3. Introduce 2 weeks of paid parental leave.
4. Introduce 6 weeks of paid adoption leave.

5. Introduce antenatal appointments for the father/partner.
6. Extend the right to request flexible working to all employees.

The Minister has requested law drafting for the following additional changes to the Employment Law that would be debated by the States later in 2018, to come into force in September 2019:

Primary law amendment, in force September 2019

1. Provide 52 weeks of parental leave (combining maternity, adoption and parental leave) for all parents.
2. Provide equivalent leave for the intended parents in a surrogacy situation.
3. Introduce time off for appointments for adoptive and intended parents.
4. Introduce breastfeeding rights (breaks and workplace facilities).
5. Introduce a right to paid absence on health and safety grounds.

Minister's response to Forum's recommendation

Having carefully considered the Employment Forum's unanimous recommendation relating to family-friendly employment rights, the Minister is satisfied that the Forum has taken a balanced view of all of the evidence. The Minister is pleased to see that the Forum received a good response to this consultation, particularly from parents, many of whom provided detailed responses based on their own experiences of the current employment rights.

The Minister considers that the overall package of recommendations represents a much-needed and significant step forward. The Minister accepts the Forum's position that the period of leave can be increased to 52 weeks by September 2019, in 2 stages, with limited financial impact on employers. The Minister had some initial reservations about the impact of a 6 week period of maternity leave to be paid by the employer, which is an additional 4 weeks of paid maternity leave on top of the current 2 weeks. The Forum stated that it would have preferred to recommend more than 6 weeks of paid leave given the strength of support in the consultation, but the recommendation was balanced in view of the cost to business.

The Minister notes that, in the UK, a statutory maternity fund was created through increases in employers' contributions. Most employers are able to recover 92% of the statutory maternity pay. Employers in Jersey may deduct the value of Maternity Allowance – which is currently £209.51 per week – from any maternity pay. A major review of Jersey's Social Security scheme is underway, and public consultation in 2017 has focused on parental benefits. Any additional benefit costs would need to be funded, for example, through an increase in employer contributions.

The current family-friendly rights, introduced in 2015, provided a cautious first step to enable mothers to recover from childbirth, establish breastfeeding and to provide fundamental rights, including the right to return to the same job and protection against detriment and dismissal. The latest recommendation from the Forum is a much bolder step. The Minister agrees with the Forum, that while this will be a significant change for some employers, it is vital that the statutory periods of paid and unpaid parental leave are increased as quickly as possible.

The Forum has not recommended, and the Minister does not propose to include, a small business exception. If small businesses were to be exempt, any new rights would be ineffectual given that around three-quarters of local businesses employ less than 6 employees in Jersey. If employees need legislative protection, it should generally be available to them irrespective of the size of an employer. The trend in employment

laws in other jurisdictions has been to move away from small business exemptions. In the UK, for example, a limited exception relating to the right to return to work after maternity leave was abolished in 1994.

Even without specific employment rights, pregnancy and childbirth brings administrative implications for employers, particularly as Jersey has a high proportion of women in the workplace (85% according to the Jersey Lifestyle and Opinions Survey for 2016). It is expected that the extended rights can create genuine benefits for employers in terms of productivity, retaining skills and reduced administration costs. If the draft Regulations are adopted, JACS will help employers to prepare for the changes, with guidance on the website, advice on changing policies and procedures, template application forms, public and private training sessions and the JACS outreach service will continue to support small businesses.

The draft Regulations would extend employment rights to provide parents with more choice and flexibility to help meet their work and family responsibilities and promote gender balance in parenting, while ensuring that businesses in Jersey are not unduly affected. The potential benefits to the proposed extension of the family-friendly rights include –

- ensuring that fathers and partners can take time off work to attend antenatal appointments for early investment in the child’s welfare
- enabling the father/partner to better support the mother by introducing more flexibility as to when parental leave may be taken
- greater choice and flexibility to enable parents to make arrangements to suit their own family and financial circumstances
- benefits for child health by spending more time with one or both parents in their first year (e.g. bonding and cognitive development)
- increasing the likelihood of exclusive breastfeeding for 26 weeks, improving child health and development
- greater economic stability for the family, with both parents entitled to take a period of leave and return to the same job
- economic benefits from measures that allow working parents to more effectively combine their parenting responsibilities with work
- staff retention – minimise the risk of losing valuable staff members and loss of skills, reduced turnover and training costs
- improved staff morale and productivity
- reducing discrimination against women in employment and recruitment through greater gender balance in parenting
- encouraging a change in workplace attitudes and practices towards early and continued involvement of the father/partner in child care
- family-friendly workplaces become more commonplace.

Family-friendly rights in the workplace are closely linked with protection against sex discrimination. ‘Sex’ and ‘pregnancy and maternity’ were introduced as protected characteristics under the [Discrimination \(Jersey\) Law 2013](#) in September 2015. Any less favourable treatment which has its root cause in pregnancy is likely to be seen by a Tribunal as direct sex discrimination, as pregnancy is a gender-specific condition. Without sex discrimination legislation, the proposed family-friendly legislation would protect parents who are already working, but there would be a risk that parents (women of childbearing age in particular) may suffer in recruitment, particularly if employers consider the family-friendly rights to be onerous.

With the proposals to bring parity in parental leave, providing 26 weeks of leave for both parents from September 2018 and 52 weeks of parental leave from September 2019, it is anticipated that employers are less likely to discriminate against women in recruitment and employment as men start to take more parental leave. In theory, a man is just as likely as a woman to request 52 weeks of parental leave. However, it is recognised that it may take some time for this shift in attitudes to take place.

THE DRAFT REGULATIONS

The draft Regulations would introduce the following changes to the Employment Law from 1st September 2018 (set out in points 1 to 5 below).

1. Antenatal appointments for the father/partner

Pregnant employees already have the right to take paid time off work to attend antenatal care appointments. The father of the child, or the partner of the mother, currently does not have the right to take time off work. As recommended by the Forum, the draft Regulations would extend the right so that the father/partner has the right to take time off work to attend local antenatal appointments with the mother, and up to 10 hours of that time off must be paid. The intention is to enable fathers and partners to be more involved with their children from the early stages, and to ensure that they have the opportunity to do so where their employer might not otherwise give permission. JACS guidance will provide more details to help employers manage this; for example, what an employer might expect in terms of a reasonable amount of time off, and that employers should be notified in advance of the dates and times of appointments, where possible.

2. Maternity leave

Women currently have the right to a maximum of 18 weeks' maternity leave, including 2 weeks which must be paid by the employer at the normal rate of pay¹. The draft Regulations would increase the period of maternity leave to 26 weeks, to include 6 weeks of leave which must be paid by the employer at the normal rate of pay.

Increasing the period of statutory maternity leave to 26 weeks is in line with the recommendation of the World Health Organisation for 26 weeks of exclusive breastfeeding.

An employee would be entitled to take up to 26 weeks of maternity leave, including 6 weeks of paid leave, irrespective of her length of service with the employer. The removal of the qualifying period that currently applies to 10 weeks of the maternity leave means that the right will apply to a wider group of working women. The Forum recommended that maternity leave must be a social right to provide more choices for families, rather than a reward or compensation for long service; women should not have to protect their employment entitlements when planning to have children to the potential detriment of their careers.

The 26 weeks of maternity leave will continue be available to take in one block, starting no earlier than the 11th week before the expected week of childbirth. As currently, a woman must tell her employer that she is pregnant and wishes to take maternity leave no later than 15 weeks² before the baby is due, or as soon as is

¹ Subject to the deduction of any Maternity Allowance received by the employee. See page 13 for more details about Maternity Allowance.

² The 15th week is relevant because legal termination rights are available before the end of the 24th week of pregnancy. Under normal conditions in Jersey, terminations are available until the 12th week of pregnancy. Terminations between 12 and 24 weeks are only available in specified circumstances including that the woman's life would be in danger.

reasonably practicable. The relatively long notice periods help employers to make any necessary arrangements.

Most of the existing Law will continue to apply, including the provisions for evidence, commencement, terms and conditions during leave, intention to return early, work during leave period, and the right to return to the same job. The Employment Law currently requires that an employer must not permit an employee to work during her 2 week paid ‘compulsory’ maternity leave period. The draft Regulations will remove the prohibition on work during this period of paid leave. The Forum recommended that this provision is unnecessary, ineffective and inappropriate, as it is not the role of the Employment Law to take a medical position in preventing a woman from working if she chooses to do so.

3. Parental leave

The Employment Law currently gives employees the right to 2 weeks of unpaid parental leave, from day one of employment. This right is available to the father of the child, or the person who is married to, the civil partner of, or the partner of, the child’s mother or adopter. That person must also expect to have responsibility for the upbringing of the child. A partner is defined as a person who lives with the mother and child in an enduring family relationship but who is not an immediate relative.

Based on the Forum’s recommendation, the draft Regulations will extend this right to provide 26 weeks of parental leave from 1st September 2018, to include 2 weeks of leave paid by the employer at the normal rate of pay. Pay will be calculated in the same way as for maternity leave. The employee would have the right to return to the same job (where that job still exists) after 26 weeks of statutory parental leave.

The Forum recommended that it would be a step too far to move from the current position of 2 weeks’ unpaid parental leave to 6 weeks of paid leave in September 2018, particularly in combination with the other recommendations. Parity in parental rights would be achieved in September 2019.

As with maternity leave, the employee must advise their employer of their intention to take parental leave 15 weeks before the expected date of birth, unless it was not reasonably practicable to have given notice earlier. Parental leave will be available to take within a 52 week period, in up to 3 blocks of not less than 2 weeks each. This is because, unlike maternity leave, it is expected that fathers and partners are likely to want to take a short period of leave, such as 2 to 4 weeks shortly after the birth and another period later, either at the same time as the mother, or after maternity leave has ended.

The Minister considers that providing longer defined periods of leave for each parent is an attractive approach. In the UK, take-up of ‘shared leave’ has been low, partly because women tend to prefer to take all of their maternity leave rather than transferring it to the other parent. The Minister also notes the experience of parental leave Sweden where men have been found to be more likely to use a defined period of leave³. For this reason in particular, the Minister considers that a defined leave approach may be more successful than a shared leave system in addressing sex discrimination in the workplace, by enabling both parents to take an equal part in the responsibility and encouraging a culture change in local workplaces.

The Forum explained in its recommendation that, while many of the respondents supported a shared leave system, what parents seem to be seeking is more choice and flexibility to adjust periods of leave to suit their particular family and financial

³ For more information on shared leave in the UK and Sweden, see pages 24–25 of the Forum’s recommendation.

circumstances. The Minister hopes that this change to the Employment Law might help to address the findings of the Jersey Lifestyle and Opinions Survey (2016) that around two-thirds of men had not taken any parental leave at all, and 92% of men said they would have liked to have taken more leave (69% of men said they were prevented from taking more leave because the length of leave was limited by their employer).

4. Adoption leave

The draft Regulations will ensure that adoptive parents continue to be entitled to leave which is equivalent to maternity and parental leave. This means that the periods of leave will be extended so that each adoptive parent may take 26 weeks of leave from day one of employment. Where there are 2 adoptive parents, one will elect to be ‘the adopter’ and will take the equivalent of the maternity leave period, to include 6 weeks of paid leave. The other adoptive parent will take the parental leave period, to include 2 weeks of paid leave. Pay will be calculated in the same way as for maternity leave and parental leave.

The current notification conditions will continue to apply, in that the employee must notify the employer within 7 days of having been given official notification of being matched with a child. Adoption placements often happen at short notice after a couple have waited a long time to be notified of a suitable placement. There are around 6 to 7 adoptions each year in Jersey (including both local and inter-country adoptions).

5. Right to request flexible working

Employees currently have the right to request a change to their working conditions, including a change to their hours, times or location of work. This right will continue to apply, but it will be extended so that more employees have the right to make such a request. The draft Regulations will remove the 2 qualifying conditions so that the right is available to all employees, from day one of employment, irrespective of the reasons for the request.

The Law already requires an employer to deal with such a request appropriately, and provides a clear process for employers to follow. The employer has the right to refuse a request on genuine business grounds, and the employee can only make one request in a 12 month period. While the right is known as the ‘right to request flexible working’, not all requests will seek flexible hours or flexi-time, but might include requests for changes to working hours, part-time working, term-time working, annual hours, compressed hours or different start and finish times.

A ‘Working parent survey 2017’ carried out by the Jersey Child Care Trust found that 48% of respondents said more flexibility from employers would help them meet their work and family needs. Removing the qualifying period for this right would have no direct financial implications for employers. The Forum’s consultation responses supported extending the right to all employees to benefit families and children, as well as employers and the economy, for reasons including –

- “1. To address the perception that flexible working is a benefit for mothers of young children. If the right is extended to all employees, it may become more socially acceptable for fathers to make a request and the career penalty for women may reduce.*
- 2. Helping families to manage life and work – More flexible working options might help a wide range of people, not just parents, including people with disabilities, carers, young people seeking entry to the workforce and older employees in a more gradual approach to retirement.*

3. *Flexible working can be offered by employers as an incentive to attract and retain skilled staff, and as a way of making better use of existing skills.*⁴

Zero-hour contracts – The Forum noted in its recommendation that a ‘day one’ right to request a change to the contracted times and hours of work is likely to make a significant difference to zero-hour contract employees. The Minister is particularly pleased to propose this change to the Law. The UK government report “Good work: the Taylor review of modern working practices”⁵ recommended that zero-hour contract workers in the UK should have the right to request guaranteed working hours. The Minister noted that Jersey’s Employment Law already provides a right to request a change to the terms and conditions of employment relating to the hours, times, or location of work. However, that right is currently restricted to employees who have 15 months’ service, and only where the requested change is enable the employee to provide care for another person.

Extending the right to all employees – including those employees working under zero-hour contracts – is expected to improve the position for employees who would prefer to work fixed hours each week, while allowing zero-hour contracts to continue to be used by those who value their flexibility. A request from an employee in such a case might be based, for example, on the average weekly hours worked over the previous 6 months.

Detriment and dismissal

Employees will continue to be protected under the Employment Law against detrimental treatment for reasons relating to the new and existing rights, including pregnancy, giving birth, adoption, requesting flexible working, and seeking to take a period of maternity, parental or adoption leave. Detriment might include, for example, changing the working hours of a woman who has recently become pregnant, or not promoting a man who has recently given notice of his intention to take parental leave.

In addition, the Employment Law provides a number of “automatically” unfair reasons for dismissal where the normal upper age limit and length of service requirements do not apply. This includes where the reason or principal reason for a dismissal relates to an employee’s pregnancy or adoption of a child, requesting flexible working, and the taking of a period of statutory maternity, paternity or adoption leave.

The 2019 changes

The draft Regulations do not set out the changes that are proposed to come into force in September 2019. The Minister intends to bring forward a primary law amendment later in 2018 that would implement the remaining recommendations of the Forum.

The proposed move to a position where parents are each entitled to 52 weeks of leave is seen as a progressive and inclusive approach where there is parity across periods of maternity, parental and adoption leave. This would mean that, in September 2019, all new parents would independently be entitled to 52 weeks of parental leave each (including the intended parents in a surrogacy arrangement). Extensive redrafting will be required to align the 3 types of leave.

The proposed new rights relating to breastfeeding (breaks and facilities) will also provide a significant improvement and will support the 1,001 Critical Days manifesto. This change will also require a primary law amendment in September 2019. The 2017 Jersey Opinions and Lifestyle Survey found that 62% of adults agreed that employers

⁴ See page 59 of the Forum’s recommendations.

⁵ <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>

should provide rest-breaks for breastfeeding mothers, and 60% of adults agreed that employers should provide facilities for breastfeeding mothers.

The other changes that will be proposed from September 2019 are set out in the table at **Appendix 2** to this Report, and are described in more detail in the Forum's recommendation.

States of Jersey policy and strategy

- **Social Security Review**

The Minister is currently reviewing the benefits that are provided under the [Social Security \(Jersey\) Law 1974](#). A major review of the Social Security scheme started in 2016. The review will run over several years and has been timed to allow input into the development of the next Medium Term Financial Plan which will be agreed in 2019. Any changes to Social Security benefits may bring a potential cost. Public consultation in 2017 focused on the future of contributory parental benefits and survivors' benefits. The results of this part of the review will be published in March 2018.

- **States' Strategic Priorities**

The extension of family-friendly employment rights contributes both directly and indirectly to a number of the commitments set out in the current States' Strategic Plan for **2015 to 2018**, which includes the following relevant priorities:

- **Optimising economic growth**

Desired outcomes include a skilled workforce aligned to the needs of productivity-led economic growth, and that all working-age people fulfil their potential in rewarding employment.

Family-friendly rights help to maximise the potential of the Island's workforce by enabling increased participation rates, retention of appropriate skills in the workforce, and removing barriers to work, including a right to return to the same job on the same terms and conditions after a longer period of parental leave for both parents, and opportunities for flexible working for more employees. By introducing provisions to retain the skills of parents in the workplace and ensuring that workplaces are more family-friendly, this will help to ensure that locally qualified people are available to work and will support employers to retain and attract those locally qualified employees.

- **Improving education**

A key area of focus is to support children and families from conception, through the critical pre-school years, as outlined in the 1,001 Critical Days Initiative, and beyond. The Strategic Plan notes that: "The '1001 Critical Days' initiative recognises that the early years of life are a crucial period and key to brain development. The way in which we care for and treat children during these formative years shapes their lives."

The extension of family-friendly rights will support the 1,001 Critical Days manifesto, giving parents choices relating to their children, providing early investment in the health of the mother and child in the weeks surrounding childbirth, and ensuring that antenatal care and breastfeeding do not have to be a financial choice for the mother. Research indicates that there are links between a period of maternity leave and health and societal benefits, including stronger mother and child bonding, reduced post-natal depression, improved child cognitive development, increased rates of immunisation,

increased rates and duration of breastfeeding, and improved child health and development in later life⁶.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for Social Security, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

FINANCIAL AND MANPOWER IMPLICATIONS

Advice, conciliation and enforcement – JACS will continue to provide an independent advisory and conciliation service in relation to employment rights from its annual grant of £363,118 for 2018. The Judicial Greffe holds a separate budget for the Tribunal Service, which includes dealing with complaints under the Employment Law. No additional funding or resources would be allocated to these bodies to specifically to deal with the proposed extension to existing employment rights.

States Human Resources – There are likely to be cost implications arising from the proposed removal of the qualifying period for paid weeks of statutory maternity, adoption and parental leave. It is not known how many additional employees will become entitled and choose to take the periods of paid leave. However, based on a number of assumptions, the cost is estimated to be around £120,000 per annum⁷. This assumes a 25% increase in the number of employees qualifying for and taking maternity and parental leave⁸ and a weekly pay figure of £848⁹. Any costs will be met from within existing resources.

⁶ www.europarl.europa.eu/document/activities/cont/201010/20101005ATT85068/20101005ATT85068EN.pdf

⁷ 13 more paternity leave claims x £848 per week x 2 weeks' pay (0 weeks are currently paid with nil service) = £22,048. 29 more maternity claims x £848 per week x 4 weeks' pay (2 weeks are currently paid with nil service) = £98,368. Total £120,416.

⁸ 42 additional employees. 165 States employees took maternity leave or paternity leave in 2017

⁹ The median annual earnings figure for full-time equivalent staff is £44,268 per annum, as reported on page 54 of the [States' Financial Report and Accounts 2016](#).

BACKGROUND INFORMATION

The following background information was presented in the Forum’s consultation on family-friendly rights, released on 5th January 2017. Footnotes provide updated rates of benefit, where applicable.

LOCAL STATISTICS

Parental leave – Jersey Opinions and Lifestyle Survey 2016 (“JOLS”)¹⁰

- 87% of adults said that parents should be able to share parental leave (84% of men and 89% of women)
- Reasons for agreeing that leave should be shared were –
 - To allow both parents to be involved in childcare (65%)
 - To make it easier to fit childcare around work (17%)
 - More practical financially (13%)
- 59% of adults said that parents should not be able to share parental leave with the child’s grandparents
- Of the parents who had taken a period of maternity, paternity or adoption leave in the last 5 years –
 - 18 weeks’ leave was taken on average
 - Women had taken an average of 29 weeks’ leave (14 weeks’ paid and 15 weeks’ unpaid leave)
 - Men had taken an average of 2 weeks’ leave (2 weeks’ paid leave and 1 week’s unpaid leave)
 - Around two-thirds of men had not taken any parental leave
 - 8 out of 10 parents would have liked to have taken more leave (92% of men and 69% of women)
 - 69% of men said they were prevented from taking more leave because the length of leave was limited by their employer
 - 71% of women said financial reasons prevented them from taking a longer period of leave.

Economic activity – Jersey Opinions and Lifestyle Survey 2016 (“JOLS”)

- The economic activity rate for all working-age adults is 86% (87% of men aged 16–64 and 85% of women aged 16–59).
- Men were contracted to work 2.5 hours per week longer than women (37.5 and 35.0 hours on average, respectively).

¹⁰ www.gov.je/Government/Pages/StatesReports.aspx?ReportID=2481

Economic activity – Census 2011¹¹

- For men, the rate of economic activity (either working or looking for work) decreased from 86% in 1961 to 74% in 2011.
- The economic activity rate for women increased substantially over a 50 year period, from 37% in 1961 to 61% in 2011. (The economic activity rate for women in the UK in 2011 was 57%.)
- Of the **working-age** population in Jersey (age 16–64 for men and 16–59 for women) 82% were economically active.
- Over three-quarters (77%) of working-age women were economically active.
- Of those who were of working-age but economically inactive, 44% of the women and 3% of the men were looking after the home.
- 20% of working women worked part-time compared to 4% of men.

Sex discrimination – Jersey Annual Social Survey 2012 (“JASS”)¹²

- A quarter of respondents said they had been discriminated against at least once in the previous 12 months. For one in 20 people, the discrimination was on grounds of gender (5%).
- Women were more likely to report having been discriminated against on grounds of gender (9%) than men (2%).
- The most frequently cited location of the discrimination was at work (36% of respondents) and 23% reported discrimination when applying for a job.

SOCIAL SECURITY BENEFITS

Maternity grant is a lump sum payment which may be paid either before or following birth to help with the general cost of having a baby. The current rate is £612.57¹³ which is payable for each baby (including multiple births). To qualify, the mother or her husband/civil partner must have paid enough contributions for at least 3 months before the expected or actual date of childbirth. An equivalent grant for adoptive parents is also available where a person has been granted an adoption order.

Maternity allowance is a weekly benefit paid to help a mother take time off work to give birth and look after her baby. The full rate per week is currently £204.19¹⁴ (the amount paid is based on the mother’s own contributions), and can be paid for a maximum of 18 weeks as compensation for loss of earnings while the woman is not working. Jersey’s maternity allowance is more generous per week than the UK equivalent, but is available for fewer weeks in total (the UK benefit is paid for 39 weeks at £140.98 per week). There is currently no weekly allowance in Jersey associated with periods of parental or adoption leave.

The majority of parents who had a baby in 2015 received a maternity grant in 2015. From 1st January 2015, women have had more flexibility in the timing of their maternity allowance claim. The Social Security Department’s annual report for 2015¹⁵

¹¹ www.gov.je/Government/Census/Census2011/Pages/2011CensusResults.aspx

¹² www.gov.je/Government/Pages/StatesReports.aspx?ReportID=859

¹³ Since the Forum’s consultation was released, the rate has been increased to £628.53 per week.

¹⁴ Since the Forum’s consultation was released, the rate has been increased to £209.51 per week.

¹⁵ www.gov.je/SiteCollectionDocuments/Government%20and%20administration/Social%20Security%20Department%20Minister's%20Report%202015.pdf

states that this is likely to explain the reduction in the number of claims made in the latter months of 2014. Between September and December 2014, claims for Maternity Allowance decreased by 15% on average each month, and claims for a Maternity Grant decreased by 28% on average each month. This was followed by a significant increase in the number of claims in January 2015 when the rule change was in force (see Table 2).

A number of other benefits are available from the Social Security Department to support families, including Income Support and Home Responsibility Protection. More information is available on the website¹⁶. It is not within the Forum's remit to consult on, or to recommend, changes to Social Security benefits.

Table 2 – Maternity indicators, 2011 to 2015

Indicator	2011	2012	2013	2014	2015
No. of Maternity Allowance claims in the year	944	982	894	834	876
No. of Maternity Grant claims paid in the year	1,056	1,011	970	837	1,020
No of Births Recorded	1,102	1,123	1,017	985	997

OTHER JURISDICTIONS

This section provides a high level summary of the main provisions in some relevant jurisdictions that you may wish to consider when you respond to the survey. In presenting this information, the Forum is not advocating any particular system or approach.

Guernsey

From 1st April 2016, the Maternity Leave and Adoption Leave (Guernsey) Ordinance 2016 provides the following statutory rights –

- paid time off for antenatal appointments during working hours
- basic maternity leave of 12 weeks (includes 2 weeks' compulsory leave)
- enhanced period of an additional 14 weeks' maternity leave for employees who have 15 months' service
- the right to return to the same job or a suitable alternative
- the partner of an employee who is entitled to basic maternity leave and has 15 months' service has a right to take 2 weeks' maternity support leave
- maternity allowance at a rate of £150.43 per week for up to 18 weeks.¹⁷

Employers in Guernsey are not required to provide paid maternity leave, paternity or adoption leave. Employers who choose to do so provide such benefits through a discretionary or contractual agreement, and reference to any such policy must be included in the statement of the main terms and conditions of employment.

Isle of Man

Family-friendly rights are set out in the Employment Act 2006 and Regulations made under that Act, including the Maternity Leave Regulations 2007 and the Paternity Leave Regulations 2007. These include –

- paid time off for antenatal appointments during working hours

¹⁶ www.gov.je/benefits/maternityfamilysupport/Pages/index.aspx

¹⁷ Since the Forum's consultation was released, the benefits system has changed, and maternal health allowance and parental allowance are paid at a maximum of £206.43 per week.

- 26 weeks' Ordinary Maternity Leave (includes 2 weeks' compulsory leave)
- 26 weeks' Additional Maternity Leave for employees with 26 weeks' service
- the right to return to the same job
- paternity leave of either one or 2 weeks
- adoption leave matching maternity and paternity leave for birth parents
- a right to request flexible working for the parents of a child under 6 years old; the parents of a disabled child under 18 years old; and/or have defined caring responsibilities; available to employees with 26 weeks' qualifying service
- maternity allowance at a rate of £179.85 per week for up to 39 weeks.

As in Guernsey, employers in the Isle of Man are not required to provide paid maternity leave, paternity or adoption leave.

UK

Family-friendly rights are provided primarily in the Employment Rights Act 1996, the Employment Relations Act 1999, the Employment Act 2002, the Work and Families Act 2006 and the Children and Families Act 2014. These include –

- paid time off for antenatal appointments during working hours
- unpaid leave for fathers or partners to attend 2 antenatal appointments
- for adopters, 5 paid adoption appointments for the main adopter and 2 unpaid appointments for the other adopter
- statutory maternity leave of 52 weeks with no qualifying period of employment
 - ordinary maternity leave – 26 weeks (includes 2 weeks' compulsory leave)
 - additional maternity leave – 26 weeks
- statutory maternity pay – depending on contributions for up to 39 weeks
 - 90% of average weekly earnings for the first 6 weeks
 - £139.58 (or 90% of average weekly earnings if lower) for 33 weeks¹⁸
- the right to return to the same job or a suitable alternative
- paternity leave of either 1 or 2 weeks with pay at £139.58 per week
- adoption leave matching the periods of maternity and paternity leave
- a right to request flexible working for all employees with 26 weeks' service
- 50 weeks of shared parental leave at £139.58 per week or 90% of average weekly earnings, whichever is lower.

Maternity rights have been available in the UK for many years. The system of funding statutory maternity pay in the UK originates from a historic Maternity Fund, which was funded through increases in employers' contributions. Most employers are able to recover 92% of the statutory maternity pay by deducting it from their national insurance contributions, and small employers can reclaim 103% of payments. An employee who does not qualify to receive statutory maternity pay may be entitled to the social security maternity allowance at the standard rate of benefit (£139.58 per week). Other than 6 weeks' maternity leave at 90% of pay, the remaining weeks of statutory maternity pay are paid at the standard rate of benefit.

¹⁸ The rate of statutory maternity pay will increase to £140.98 from 1st April 2018.

Other family-related rights are more recent. Shared Parental Leave (“SPL”) was introduced in April 2015. This allows eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed for adoption. Parents are still entitled to take maternity, paternity and adoption leave. However, an eligible mother or adopter may choose to end their maternity/adoption leave early and opt in to SPL (subject to the 2 weeks’ compulsory leave period). SPL may be taken between the date the child is born or the date of the placement and ends 52 weeks after that date. This could involve the mother returning to work for part of the time while her partner takes leave, and then resuming her leave at a later date, or a partner could begin to take SPL while the mother is still on maternity or adoption leave.

Other countries and international standards

Most jurisdictions in the world make provision for maternity leave. Different levels of protection are provided based on length of service and other qualifying conditions. Leave is often a combination of paid and unpaid periods; where paid leave is provided this is often subject to a cap, particularly when the pay is provided through a social security system. In most countries, pay during statutory maternity leave is funded by the State or health and social insurance schemes, although some countries supplement that by requiring additional payments from the employer.

The European Union Pregnant Workers Directive (92/85/EEC) came into force in 1994. It states that: *“Employees are entitled to 14 weeks continuous maternity leave before and/or after delivery ... The employment rights relating to the employment contract must be ensured, including the entitlement to an adequate allowance.”*

The International Labour Organisation (ILO) Maternity Protection Convention, 2000 (183), which came into force in 2002, recommends that a woman *“shall be entitled to a period of maternity leave of not less than 14 weeks.”* It also states that *“Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.”*

According to the ILO¹⁹, there has been an improvement in maternity protection across the world, with a gradual shift towards leave periods that meet or exceed the 14 week ILO standard. In 1994, 38% of countries for which information was available provided at least 14 weeks of maternity leave. In 2013, 53% provided at least 14 weeks of maternity leave and 23% provided at least 18 weeks’ leave. Between 1994 and 2013 financing of cash benefits through employer liability fell from 33 to 25%. Fifty-eight per cent of countries now finance maternity leave cash benefits through social security. In addition to maternity leave, many countries also support working fathers. Of the 141 countries for which data was available in 1994, the ILO found that only 3% made provision for paternity leave. By 2013, paternity leave was available in 47% of 167 countries.

Across OECD countries²⁰, maternity leave is an average of around 18 weeks. Almost all OECD countries have public income support payments relating to the taking of maternity leave. In some countries (e.g. Australia, Iceland, New Zealand, Norway and Sweden), there is no separate provision for maternity leave, but provision for a parental leave scheme instead. In some countries parental leave is a shared entitlement with specific periods reserved for use by the mother or father. In other countries (e.g. Austria and Germany) ‘bonus’ weeks of leave are offered as an incentive if both parents use a certain portion of the total entitlement.

¹⁹ Maternity and paternity at work: Law and practice across the world (May 2014)

www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_242325/lang--en/index.htm

²⁰ www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

APPENDIX 2 TO REPORT

Recommended changes to the Employment Law

	CURRENT		SEPTEMBER 2018		SEPTEMBER 2019
Maternity leave	<u>18 weeks</u> 2 weeks compulsory leave paid at 100% of pay and either 6 weeks unpaid leave with no qualifying period (QP) or 16 weeks unpaid leave with a 15 month QP.	➔	<u>26 weeks</u> 26 weeks of leave of which 6 weeks paid at 100% of pay by the employer, both with no QP. 2018 REGULATIONS		<u>52 weeks</u> Parental leave Available for both parents. 52 weeks of leave including 6 weeks paid leave at 100% of pay by the employer. Can be taken in up to 4 blocks of leave.
Parental leave	2 weeks unpaid leave, no QP.	➔	2 weeks paid leave at 100% of pay by the employer and 24 weeks unpaid leave, both with no QP. Can be taken in up to 3 blocks of leave. 2018 REGULATIONS	➔	Also available to adoptive and intended parents. 2019 PRIMARY LAW
Adoption leave	Same as maternity and parental leave for adoptive parents		Paid and unpaid leave equivalent to maternity leave and parental leave. The elected adopter takes the paid leave. 2018 REGULATIONS		
Surrogacy leave	No rights for the intended parents in a surrogacy situation.	➔	Paid and unpaid leave equivalent to maternity leave and parental leave. The main intended parent takes the paid leave.	➔	2019 PRIMARY LAW
Ante-natal – father/partner	No right to time off to attend appointments.	➔	Unlimited attendance at appointments – up to 10 hours paid, the rest unpaid. 2018 REGULATIONS	➔	No further change.

	CURRENT		SEPTEMBER 2018		SEPTEMBER 2019
Adoption appointments	No right to time off to attend appointments.	➔	Unlimited attendance at appointments for both parents. Adoptive parent 1 – paid Adoptive parent 2 – up to 10 hours paid, the rest unpaid.	➔	No further change. 2019 PRIMARY LAW
Ante-natal – intended surrogate parents	No right to time off to attend appointments.	➔	Unlimited attendance at appointments for both parents. Intended parent 1 – paid Intended parent 2 – up to 10 hours paid, the rest unpaid.	➔	No further change. 2019 PRIMARY LAW
Flexible working	Right to request for employees with caring responsibilities, subject to a 15 month QP.	➔	Right to request for all employees with no QP. 2018 REGULATIONS	➔	No further change.
Breast-feeding rights	None	➔	Right to request reasonable breaks and employers must take reasonable steps to provide facilities in the workplace.	➔	2019 PRIMARY LAW
Paid absence on health and safety grounds	None	➔	Right to paid absence where risk assessment prevents a pregnant or breastfeeding employee from carrying out her normal job and she cannot be allocated to other duties.	➔	2019 PRIMARY LAW

Explanatory Note

These Regulations would further amend the Employment (Jersey) Law 2003 (the “Law”), first to extend the right to request flexible working to all employees i.e. not only those who have caring responsibilities or who have worked in their employment for a particular length of time (amendments made to Part 3A by *Regulation 2*), and also to enhance the rights of parents to take leave from their employment in connection with the birth or adoption of a child (amendments made to Part 5A by *Regulations 3 to 13*).

In relation to ante-natal appointments, *Regulation 4* would amend Article 55B of the Law to extend the right to time off for such appointments, on fulfilment of certain conditions, to employees who have a qualifying relationship with a pregnant woman or her expected child (“qualifying relationship” would be defined by new Article 55B(4)(c) as the husband or partner of the woman or the father of the child; “partner” is already defined by Article 55A(1) of the Law). In the case of such employees the right to paid time off would be limited to a total of 10 hours (amendments made to Article 55C of the Law by *Regulation 5*).

In relation to statutory maternity leave and pay, Article 55D of the Law would be amended by *Regulation 6* to increase the minimum paid (“compulsory”) maternity leave period to 6 weeks (rather than 2), and the period of unpaid (“ordinary”) maternity leave provided for by Article 55E as amended by *Regulation 7* would be increased to 20 weeks. The total period of maternity leave would thus be 26 weeks. (A consequential amendment is made by *Regulation 3* to the definition “compulsory maternity leave” in Article 55A(1) of the Law, and further consequential amendments are made by *Regulation 8* (to delete Article 55I(5) referring to a 2 weeks’ period) and by *Regulation 10* to Article 55M; *Regulation 8* also takes the opportunity to correct a typographical error in Article 55I(7).)

The period of statutory adoption leave for which provision is made by Article 55K of the Law would be similarly increased by *Regulation 9* to a total of 26 weeks, of which the first 6 weeks would be paid.

Parental leave entitlements would be enhanced by the amendments made to Articles 55N and 55O of the Law by *Regulations 11 and 12* respectively: the total period of such leave would again be 26 weeks, of which the first 2 weeks would be paid. Article 55O as amended would provide for a default condition that such leave could be taken in no more than 3 blocks, being a minimum of 2 weeks each in length. *Regulation 13* would insert a new Article 55QA of the Law to ensure that other arrangements for parental leave reflect those for maternity leave.

Regulation 14 would make consequential amendments to Article 55S of the Law which deals with the bringing of complaints to the Tribunal. *Regulation 16* would give the title by which these Regulations may be cited, and provide for them to come into force on 1st September 2018. A transitional provision in *Regulation 15* provides that the extended periods of leave shall have effect only in relation to employees whose expected week of childbirth or (as the case may be) adoption begins on or after 2nd September 2018.



Jersey

DRAFT EMPLOYMENT (AMENDMENT OF LAW) (No. 2) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

1	Interpretation	23
2	Part 3A amended	23
3	Article 55A amended	24
4	Article 55B amended.....	24
5	Article 55C amended.....	25
6	Article 55D amended	26
7	Article 55E amended.....	26
8	Article 55I amended.....	26
9	Article 55K amended	27
10	Article 55M amended.....	27
11	Article 55N amended	28
12	Article 55O amended	28
13	New Article 55QA inserted.....	29
14	Article 55S amended	29
15	Transitional provision	30
16	Citation and commencement.....	30



Jersey

DRAFT EMPLOYMENT (AMENDMENT OF LAW) (No. 2) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 55A(3), 55S(6) and 104 of the Employment (Jersey) Law 2003¹, have made the following Regulations –

1 Interpretation

In these Regulations, a reference to an Article by number and without more is a reference to the Article of the same number in the Employment (Jersey) Law 2003².

2 Part 3A amended

- (1) In Article 15A(1) –
 - (a) for the words “A qualifying” there shall be substituted the word “An”; and
 - (b) after sub-paragraph (c), the comma and the words “and the reason for the change is to enable the employee to provide care for another person” shall be deleted.
- (2) Article 15A(2)(c), 15A(3) and 15A(4) shall be deleted.
- (3) After Article 15A(5) there shall be added the following paragraph –
 - “(6) Where an employee has any right, arising under the employee’s contract of employment or otherwise, which corresponds to the entitlement conferred by paragraph (1) to make an application for a change in his or her terms and conditions of employment –
 - (a) the employee may not exercise both the entitlement conferred by paragraph (1) and the corresponding right, but may, in requesting any change to his or her terms or conditions of employment, rely on whichever of the entitlement, or the right, is the more favourable; and
 - (b) if he or she relies, under sub-paragraph (a), upon such a corresponding right as more favourable, the provisions relating to an application under this Article shall apply, subject to such modifications as may be necessary, in

relation to that right as though the exercise of it were such an application.”.

- (4) In Article 15B(5) –
- (a) after the semi-colon at the end of sub-paragraph (e) there shall be added the word “or”;
 - (b) in sub-paragraph (f) –
 - (i) for the semi-colon there shall be substituted a full stop, and
 - (ii) the word “or” shall be deleted; and
 - (c) sub-paragraph (g) shall be deleted.

3 Article 55A amended

In Article 55A(1), in the definition “compulsory maternity leave period” for the number “2” there shall be substituted the number “6”.

4 Article 55B amended

- (1) For Article 55B(1) and (2) there shall be substituted the following paragraphs –

“(1) An employee in relation to whom this Article applies as provided by paragraph (1A) or (1B) is entitled, subject to paragraph (2), to be permitted by her or his employer to take time off during the employee’s normal working hours for the purpose stated in either paragraph (1A) or (1B), whichever is applicable.

(1A) This Article applies –

- (a) in relation to an employee who –
 - (i) is pregnant, and
 - (ii) has made an ante-natal appointment;
- (b) for the purpose of enabling the employee to keep that appointment.

(1B) This Article applies –

- (a) in relation to an employee who has a qualifying relationship with a pregnant woman or her expected child;
- (b) for the purpose of enabling the employee to accompany the woman when she attends an ante-natal appointment in Jersey.

(2) An employee is not entitled to take time off under paragraph (1) unless, if the employer so requests, the employee produces for the employer’s inspection –

- (a) in the case of an employee to whom this Article applies by virtue of paragraph (1A) –
 - (i) a certificate from a registered medical practitioner, registered midwife or registered nurse stating that the employee is pregnant, and

- (ii) an appointment card or other document showing that the ante-natal appointment has been made;
 - (b) in the case of an employee to whom this Article applies by virtue of paragraph (1B) –
 - (i) a declaration, signed by the employee, to the effect that the purpose of his or her absence from work will be that specified in paragraph (1B)(b) and that he or she has a qualifying relationship as required by paragraph (1B)(a), and
 - (ii) such evidence that the ante-natal appointment has been made as the employer may reasonably require.”.
- (2) In paragraph (3) for the words “Paragraph (2)” there shall be substituted the words “Paragraph (2)(a)”.
- (3) For paragraphs (4) and (5) there shall be substituted the following paragraph –
 - “(4) For the purposes of this Article –
 - (a) the normal working hours of an employee shall be taken to be any time when, in accordance with the employee’s contract of employment, the employee is normally required to work;
 - (b) an ‘ante-natal appointment’ means an appointment made by a pregnant woman, on the advice of a registered medical practitioner, registered midwife or registered nurse, to attend at any place for the purpose of receiving ante-natal care (which does not include ante-natal classes to prepare the woman for motherhood); and
 - (c) a person has a ‘qualifying relationship’ with a pregnant woman or her expected child if the person is –
 - (i) married to, or the civil partner or partner of, the pregnant woman, or
 - (ii) the father of the expected child.”.

5 Article 55C amended

- (1) In Article 55C(1) after the words “under Article 55B” there shall be inserted the words “for the purpose stated in paragraph (1A) of that Article”.
- (2) After Article 55C(1) there shall be inserted the following paragraph –
 - “(1A) An employee who is entitled to take time off under Article 55B for the purpose stated in paragraph (1B) of that Article is entitled to be paid remuneration by his or her employer –
 - (a) at the appropriate hourly rate; and
 - (b) for a total period (which need not be continuous) not exceeding 10 hours,

whether or not the employer has permitted the employee to take the time off.”.

- (3) In Article 55C(4) for the words “paragraph (1)” there shall be substituted the words “this Article”.
- (4) In Article 55C(5) –
 - (a) for the words “under her contract” there shall be substituted the words “under his or her contract”; and
 - (b) for the words “paragraph (1)” in each place in which they occur there shall be substituted the words “this Article”.

6 Article 55D amended

- (1) In Article 55D(1) for the word “permit” there shall be substituted the word “require”.
- (2) In Article 55D(2) –
 - (a) for the words preceding sub-paragraph (a) there shall be substituted the words “An employee who would normally have been required, under her contract of employment, to work during that period –”;
 - (b) in sub-paragraph (a) for the number “2” there shall be substituted the number “6”.
- (3) For Article 55D(3) there shall be substituted the following paragraph –

“(3) For the purposes of paragraph (2)(a), the appropriate weekly rate is the amount of one week’s pay, calculated in accordance with Schedule 1.”.

7 Article 55E amended

- (1) For Article 55E(2) and (3) there shall be substituted the following paragraph –

“(2) An employee who is entitled under paragraph (1) to ordinary maternity leave is entitled to a total period of 20 weeks of such leave (in addition to 6 weeks’ compulsory maternity leave).”.
- (2) In Article 55E(5) –
 - (a) at the end of sub-paragraph (a) after the semi-colon, there shall be added the word “and”;
 - (b) at the end of sub-paragraph (b) –
 - (i) for the semi-colon there shall be substituted a full stop, and
 - (ii) the word “and” shall be deleted; and
 - (c) sub-paragraph (c) shall be deleted.

8 Article 55I amended

- (1) Article 55I(5) shall be deleted.

- (2) In Article 55I(7) for the word “days” there shall be substituted the word “day’s”.

9 Article 55K amended

For Article 55K(3) to (5) there shall be substituted the following paragraphs –

- “(3) Where the employer so requests, the employee must also provide evidence in writing of the date specified in accordance with paragraph (1)(c)(i) in the notice given to the employer.
- (4) An employee who is entitled under paragraph (1) to adoption leave is entitled to a total period of 26 weeks of such leave.
- (4A) An employee who would normally have been required, under his or her contract of employment, to work during the first 6 weeks’ period of his or her adoption leave –
- (a) shall not be required to work by his or her employer;
 - (b) is entitled to be paid remuneration amounting to 6 weeks’ pay at the appropriate weekly rate;
 - (c) is entitled to the benefit of all of the terms and conditions of employment which would have applied if he or she had not been absent; and
 - (d) is bound by any obligations arising under those terms and conditions (subject only to any exceptions in this Part),
- during that 6 weeks’ period.
- (4B) For the purposes of paragraph (4A)(b), the appropriate weekly rate is the amount of one week’s pay, calculated in accordance with Schedule 1.
- (4C) Any remuneration paid to an employee under his or her contract of employment in respect of a period of paid adoption leave under paragraph (4A) goes towards discharging any liability of the employer to pay remuneration under that paragraph in respect of that period; and conversely, any payment of remuneration under paragraph (4A) in respect of such a period goes towards discharging any liability of the employer to pay remuneration under the employee’s contract of employment in respect of that period.
- (4D) Any remuneration to be paid by an employer under paragraph (4A) shall be reduced by any amount that the employee receives by way of short term incapacity allowance under Article 15 of the Social Security (Jersey) Law 1974³ in respect of the period of paid adoption leave.”.

10 Article 55M amended

In Article 55M for the words “55I(1), (2), (3), (4), (6) and (7)” there shall be substituted the word “55I”.

11 Article 55N amended

- (1) In Article 55N(1) for the words “a total of 2 weeks’ unpaid” there shall be substituted the words “a total period of 26 weeks’ ”.
- (2) After Article 55N(4) there shall be inserted the following paragraphs –
 - “(4A) An employee who would normally have been required, under his or her contract of employment, to work during the first 2 weeks’ period of his or her parental leave –
 - (a) shall not be required to work by his or her employer;
 - (b) is entitled to be paid remuneration amounting to 2 weeks’ pay at the appropriate weekly rate;
 - (c) is entitled to the benefit of all of the terms and conditions of employment which would have applied if he or she had not been absent; and
 - (d) is bound by any obligations arising under those terms and conditions (subject only to any exceptions in this Part),

during that 2 weeks’ period.
 - (4B) For the purposes of paragraph (4A)(b), the appropriate weekly rate is the amount of one week’s pay, calculated in accordance with Schedule 1.
 - (4C) Any remuneration paid to an employee under his or her contract of employment in respect of a period of paid parental leave under paragraph (4A) goes towards discharging any liability of the employer to pay remuneration under that paragraph in respect of that period; and conversely, any payment of remuneration under paragraph (4A) in respect of such a period goes towards discharging any liability of the employer to pay remuneration under the employee’s contract of employment in respect of that period.
 - (4D) Any remuneration to be paid by an employer under paragraph (4A) shall be reduced by any amount that the employee receives by way of short term incapacity allowance under Article 15 of the Social Security (Jersey) Law 1974 in respect of the period of paid parental leave.”.

12 Article 55O amended

- (1) For Article 55O(1) there shall be substituted the following paragraph –
 - “(1) In the absence of any relevant agreement to more favourable effect between the employer and the employee, an employee may choose to take the 26 weeks of parental leave to which he or she is entitled under Article 55N(1), in respect of any one child –
 - (a) in no more than 3 separate periods; and
 - (b) for no less than 2 weeks in the case of each such period.”.
- (2) In Article 55O(2)(a) and (b) for the number “8” in each place in which it occurs there shall be substituted the number “52”.

13 New Article 55QA inserted

After Article 55Q there shall be inserted the following Article –

“55QA Arrangements during parental leave

Articles 55G, 55H, 55I and 55J shall apply to an employee who takes parental leave in the same way as if the employee had taken ordinary maternity leave.”.

14 Article 55S amended

For Article 55S(4) there shall be substituted the following paragraph –

“(4) For the purposes of paragraph (3), the ‘relevant date’ mentioned in sub-paragraph (3)(a) is –

- (a) in the case of an alleged contravention of Article 55B(1), the date of the ante-natal appointment referred to in either Article 55B(1A) or (1B) (whichever is the provision by virtue of which Article 55B applies in the particular case);
- (b) in the case of an alleged contravention of any of Articles 55C(1) or (1A), 55D(2) or (3), 55K(4A) or (4B), or 55N(4A) or (4B), the date which is 28 days after the date on which the employee concerned would expect normally to receive remuneration for the period during which he or she is absent;
- (c) in the case of an alleged contravention of Article 55D(1), the date of the day immediately following the day on which the compulsory maternity leave period ends;
- (d) in the case of an alleged contravention of any of Articles 55E(1) or (2), 55F(1), (4) or (6), 55G, 55I or 55J (other than a contravention such as mentioned in sub-paragraph (e)), the date of the day immediately following the day on which the ordinary maternity leave period ends;
- (e) in the case of an alleged contravention of rights connected with the adoption of a child conferred by any of Articles 55G, 55I, 55J (in each case as applied by Article 55M) or 55K(1) or (4), the date of the day immediately following the day on which the adoption leave period ends;
- (f) in the case of an alleged contravention of rights connected with parental leave conferred by any of Articles 55G, 55I or 55J (in each case as applied by Article 55QA) or 55N(1), the date of the day immediately following the day on which the parental leave period ends;
- (g) in the case of an alleged contravention of any of Articles 55O, 55P(4) or 55Q, the date of the day immediately following the day on which there ends the period of 52 weeks mentioned in sub-paragraph (a) or (b) of

Article 55O(2) (whichever is the provision applying in the particular case).”.

15 Transitional provision

The amendments to the Employment (Jersey) Law 2003 made by Regulations 3 and 5 to 14, in so far as these relate to extended periods of maternity, adoption or parental leave, shall have effect only in relation to employees whose expected week of childbirth, or, as the case may be, of adoption begins on or after 2nd September 2018.

16 Citation and commencement

These Regulations may be cited as the Employment (Amendment of Law) (No. 2) (Jersey) Regulations 201-, and shall come into force on 1st September 2018.

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- ¹ *chapter 05.255*
² *chapter 05.255*
³ *chapter 26.900*