

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT OF LAW) (NO. 3) (JERSEY) REGULATIONS 202- (P.88/2021): AMENDMENT (P.88/2021 AMD.) – COMMENTS

**Presented to the States on 28th October 2021
by the Minister for Social Security**

STATES GREFFE

COMMENTS

Introduction

The Health and Social Security Scrutiny Panel has lodged an amendment to Proposition P.88/2021. The Proposition seeks to raise the level of statutory annual leave entitlement from two to three weeks and to introduce an entitlement to a daily rest break of a minimum of 15 minutes in any period of six or more hours worked.

The amendment by the Scrutiny Panel asks the States Assembly to agree to a daily rest break of a minimum of **20** minutes in any period of six or more hours worked, instead of 15 minutes.

The Minister has previously endorsed the findings and recommendations of the Forum including the recommendation to provide a statutory rest break entitlement of 15 minutes in any period of 6 hours or more worked and urges Members to reject the amendment and support the proposals put forward by the Forum.

Forum consultation

In response to instructions issued by the Minister, in March 2021, the Employment Forum presented its Report and Recommendations on the provision of rest breaks and annual leave to the Minister. The conclusions and recommendations of the Forum were accepted by the Minister and form the basis of P.88/2021. The original instructions included suggestions for the length of a rest break at 20 minutes. The role of the Forum is to consider the Minister's instructions in detail and obtain evidence from employers, employees and others on the proposals and come to a consensus opinion. From the evidence it collected during its detailed consultation, the Forum came to the conclusion that it should recommend a 15-minute break as opposed to a 20-minute break.

The Forum decided not to recommend whether the rest break should be paid or unpaid, but to leave that to the individual contractual arrangements between employee and employer. The evidence collected by the Forum demonstrated that both paid and unpaid breaks were offered.

The Minister notes that the Chair of the Employment Forum has written to the Scrutiny panel to provide more information on the detailed wording of the questions posed by the Forum during its consultation. With the permission of the Chair, this letter is appended to this comment.

Conclusion

The Minister welcomed the Report and Recommendations of the Employment Forum. She considers that the Forum carried out a thorough and comprehensive consultation exercise and analysis of the results, based on clear evidence. The Minister sees no reason to depart from the Forum's recommendations which establish a system that is right for Jersey.

At present, Jersey workers have no right to a rest break during a working day. P.88/2021 seeks to create this right. Most local employers do provide for a least a 15-minute break at present but the law, for the first time, will create this right for every Jersey worker.

The role of employment law is to provide for a fair workplace – it must create a balance in which businesses have the confidence to recruit employees and workers have the confidence to take up work without fear of exploitation. This balance needs to be kept under regular review and to adapt to changing practices and workplaces.

The Minister will continue to keep all aspects of the Law under review, including further extensions to annual leave and/or rest breaks.

But for now, the Minister urges the Assembly not to accept the amendment lodged by the Scrutiny Panel.



Deputy Mary Le Hegarat
Chair, Health and Social Security Scrutiny Panel

21 October 2021

Dear Deputy Le Hegarat,

STATUTORY ANNUAL LEAVE ENTITLEMENT AND DAILY REST BREAKS

On 19 October 2021, the Health and Social Security Scrutiny Panel lodged an amendment to Proposition P.88/2021, for which the Minister for Social Security is seeking the agreement of the States Assembly to increase the amount of statutory annual leave entitlement in Jersey from two to three weeks. The Proposition also asks the States to agree the introduction of a minimum daily rest break of 15 minutes in any period of six or more hours worked.

The Minister has based her Proposition on the recommendations of the Employment Forum in its Report and Recommendations of March 2021.

As I understand it, the Panel's motivation in proposing an entitlement to a longer rest break period – a minimum of 20 minutes in any period of six or more hours worked – is that the question in the consultation exercise about how long a 20-minute unpaid rest break should apply disclosed a majority of respondents in favour of the six hours or more option. In the Report accompanying its amendment the Panel argues that such a result shows support for a 20-minute rest period.

I hope it will be helpful to the Panel if I set out in more detail the reasons for the Forum's conclusions in respect of the daily rest break issue. The Panel is entirely correct to draw the reader's attention to the conclusion in our Report which stated: "*.....after studying the responses to consultation, the former (15 minutes) appears to be at the level most frequently operated by businesses in Jersey.*"

The consultation exercise included a question for both employees and employers, in these terms:

"How long is each rest break (in minutes?)"

It is clear from the responses to the survey that some employees and employers included lunch breaks in their response, which was not the intention of the question. With hindsight it is, perhaps, unfortunate that the question was not phrased specifically to exclude a reference to lunch breaks.

The Forum decided not to include in its considerations responses that either mentioned lunch breaks specifically, or those that could be reasonably assumed to be lunch breaks by virtue of

their length. Having carried out that exercise, the figures in terms of rest breaks disclosed the following:

For employees, 24 responses were received which showed rest break periods of up to and including 15 minutes and 5 responses which showed a rest break period of 20 minutes.

For employers, the figures were: 32 responses of up to and including 15 minutes and 18 responses of 20 minutes.

It is on that basis that the Forum came to the conclusion it did about the appropriate level of working day rest breaks.

Given those figures, I am not sure it is entirely correct to suggest that the results of the question relating to a working hour period before which a 20-minute rest break could be taken, support the Panel's contention. This question was designed to elicit a response on the working hours period and not whether 20 minutes was the appropriate level. The reason the question was phrased in the way it was is that the 20-minute break formed part of the Minister's original directions to the Forum to begin the consultation exercise.

In terms of numbers in relation to the question, there was a total of 171 responses. Of those, 28 responses mentioned specifically the length of a rest break and 14 responses indicated the entitlement to a rest break of 20 minutes or more. Again, some respondents mentioned lunch breaks, which, for the reasons outlined above in relation to the length of daily rest breaks, the Forum felt bound to disregard.

It is very common in contracts of employment that a distinction is made between the length of time allowed for a lunch break and for a rest break. This is also apparent from many of the responses the Forum received in the survey.

I hope these clarifications are helpful to the Panel. The Forum shares the Panel's belief that both an increase in statutory annual leave entitlement and the introduction of a right to a minimum period of daily rest break is in the interests of both employees and employers in Jersey, for all the reasons set out in our Report and Recommendations.

I am copying this letter to the Minister for Social Security.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Carla Benest".

Carla Benest
Chair, Jersey Employment Forum