

STATES OF JERSEY



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

**Presented to the States on 28th October 2021
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

The Health and Social Security Panel (the ‘Panel’) has lodged an amendment to the [Draft Employment \(Amendment of Law\) \(No. 3\) \(Jersey\) Regulations 202- \(P.88/2021\)](#). The amendment proposes to:

- increase the uninterrupted rest period to no less than 20 minutes in each continuous period of working no less than six hours.

As referenced in the accompanying report (to [P.88/2021 Amd.](#)), the Panel also considered lodging an amendment to further increase the statutory annual leave entitlement, however, decided against that action at this time. The Panel feels that it would be useful for the Assembly to understand the reasons for this decision.

Comments on the statutory annual leave entitlement

The Panel received a report by the Employment Forum ‘*Statutory Annual Leave Entitlement and Working Day Rest Breaks in Jersey*’, which had been produced for the Minister for Social Security, following a public consultation exercise on the current level of statutory annual leave entitlement, and the issue of rest breaks during the working day, in Jersey. The Minister used the recommendations provided in the Report to propose that the statutory annual leave entitlement for employees in Jersey is increased to 3 weeks.

The Panel noted that the current statutory annual leave entitlement, as per the Employment (Jersey) Law 2003 (the ‘Law’), is 2 weeks plus public or bank holidays (or substitution leave) amounting to (approximately) 9 days (note: the approximation reflects potential for ‘one-off’ public holidays and, also, that a ‘substitute day’ does not have to be provided for Liberation Day if it falls on a non-working day). The definition of a ‘week’ will depend on the usual working period for the employee. For an employee working a 5-day week, the Law provides entitlement to 10 days of leave, plus public / bank holidays, which would provide a total of 19 days across the year. The Panel’s comments provide examples using a 5-day week for consistency; however, the Panel acknowledges that the working week will differ in length for different sectors / employees.

The Panel was surprised to learn that 2 weeks (plus bank holidays) was the statutory minimum for annual leave; and was pleased to note that a number of employers offer their employees more leave entitlement than this.

However, on review of the ‘Other Jurisdictions’ section of the Report by the Employment Forum, the Panel noted that the statutory annual leave proposed by P.88/2021 would still be below the entitlement offered by some jurisdictions, for example, in the United Kingdom the annual leave entitlement is 5.6 weeks (including bank holidays). For a UK employee working 5 days a week, 5.6 weeks is the equivalent of 28 days. If P.88/2021 is adopted, a Jersey employee working 5 days a week would be entitled to a minimum of 15 days holiday, plus 9 for public or bank holidays, totalling 24 days.

The Panel considered the wider benefits of annual leave for businesses and their employees, namely benefits to wellbeing, a good work-life balance, and providing a

good quality of life. All of these factors were highlighted as important principles in the Employment Forum's Report.

Whilst acknowledging that P.88/2021 would provide an improvement to the minimum requirement for annual leave, the Panel considered that there was still further room for improvement. The Panel therefore considered lodging an amendment that would increase the minimum statutory annual leave entitlement to 3.6 weeks.

For an individual working for 5 days a week, the 0.6 of a week would equate to 3 days. The proposal to add 0.6 weeks (opposed to specifically stating 3 days) would have made the entitlement proportionately equal for all employees, regardless of the length of their work week.

However, after further discussion, the Panel recognises that changing the statutory holiday entitlement to a proportion of a week could cause wider implications for employers. Article 11 (4) of the Law states that; *“where...the period of leave to which an employee is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.”*

The Panel understands that if entitlement to a fraction of a day is rounded up to a whole day, it could have unintended consequences, for example, an employee could be paid more than they might be entitled to, in remuneration for annual leave. This would also have an unintentional impact on the employer, who would potentially have to pay an employee more than expected.

The Panel was therefore mindful that the amendment it was considering could be inequitable, because of the current wording of the Law.

Per Article 11 (6) of the Law, the States Assembly is able to amend the period specified for statutory annual leave through Regulations, however, a change to Article 11 (4) would require a change to the primary legislation. This would take time and could delay the introduction of any increased entitlement to employees.

Therefore, in the interests of improving the minimum statutory provision of annual leave at the earliest opportunity, the Panel has decided not to lodge an amendment which would further increase statutory annual leave at this time.

The Panel is supportive of the element of the Minister's proposition that will increase the statutory annual leave entitlement to 3 weeks but wishes to record its hope that the Minister, or any successor to that post, will be mindful to review the statutory annual entitlement again in the future.