

# STATES OF JERSEY



Jersey

## **DRAFT EMPLOYMENT (AMENDMENT No. 14) (JERSEY) LAW 202-**

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**Lodged au Greffe on 16th August 2023  
by the Minister for Social Security  
Earliest date for debate: 3rd October 2023**

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**STATES GREFFE**



Jersey

## **DRAFT EMPLOYMENT (AMENDMENT No. 14) (JERSEY) LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security, the provisions of the Draft Employment (Amendment No. 14) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy M.E. Millar of St. John, St. Lawrence and Trinity**  
*Minister for Social Security*

Dated: 11th August 2023

## REPORT

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### Introduction

No amount of time off work or financial support can compensate for the devastating impact of the death of a child. However, the role of government is to ensure that appropriate support is in place for a parent in that situation.

Following campaigning by the parents of Jack Herd, the UK introduced “Jack’s Law” in 2020 to guarantee working parents time off work after the death of a child.

In 2021, Deputy Ahier brought a proposition forward to introduce similar rights in Jersey and ([P.70/2021](#)) was debated and approved at the States sitting on 20th July 2021.

The previous Minister for Social Security set out her proposals for the implementation of parental bereavement leave in a report which was presented to the Assembly on 7th April 2022 ([R.41/2022](#)).

This proposed change to primary legislation ([Employment \(Jersey\) Law 2003](#)) provides for statutory leave entitlement in this situation, in accordance with Deputy Ahier’s original proposition.

### Primary law amendments to the Employment (Jersey) Law 2003 (the “Employment Law”)

This amending law amends Part 5A of the Employment Law and will create a new statutory entitlement to parental bereavement leave under Article 55HA of the Law.

Working parents will be entitled to 2 weeks unpaid leave from their employer from the date of death of a child under 18 years of age (including a child that is stillborn after 24 weeks of pregnancy). The leave can be taken at any time up to 56 weeks from the date of death. The leave can be taken in up to 3 separate periods, with each period being of any amount of time and with no requirement for the parent to give the employer notice of taking parental bereavement leave. Entitlement to parental bereavement leave will be a “day one” employment entitlement.

Government believes that the great majority of employers in the Island already adopt a sensitive and considered approach when giving parents time off work in these tragic circumstances. However, the introduction of a statutory period of leave will ensure that parents in Jersey are in no doubt as to their rights to time off work.

Parental bereavement leave will be available to the mother and father of the child, including adoptive or surrogate parents. It will also be available to the partner of a parent if the partner is involved with the upbringing of the child. This could include up to 4 individuals (two sets of parents and step parent(s)).

The balance of any leave is transferable if an employee moves to a different employer and the right to this leave does not impact any other form of parental leave under the Employment Law i.e. it is an additional right to time off work.

### Other amendments to the Employment Law

There are a number of minor amendments to the relevant part of the Employment Law as a result of this legislation. In order that the Law treats parental bereavement leave in the same way as other forms of leave, the newly defined right will be added to the following Articles:

- Article 55I (application of terms and conditions during unpaid parental leave)
- Article 55L (right to return to work after parental leave)

- Article 55R (contractual rights to time off work for ante-natal and pre-adoption appointments and for parental leave)
- Article 55S (complaints to Tribunal for breach of requirements under Article 5A)

There are also a number of consequential amendments to other sections of the Employment Law as a result of this legislation i.e. parental bereavement being added so that it is treated in the same context as parental leave, those amendments are to the following:

- Article 31 (right to not suffer detriment)
- Article 67 (dismissal for family or other reasons)
- Article 71 (replacements)

### **Payment scheme**

Alongside this legislation, the Minister will implement (via a Ministerial Decision) a non-statutory payment scheme that will be available to any parent taking parental bereavement leave. This scheme will make payments to parents regardless of whether or not their employer decides to pay them while they are off work. Payments will match the value of the current mean average weekly earnings based on reporting published by Statistics Jersey. The current mean average wage is £860 per week i.e. £1,720 for each parent for a total of 2 weeks parental bereavement leave. The payment amount will adjust annually according to the latest mean average weekly wage.

The scheme will aim to be as simple as possible for parents with any administration incorporated into existing processes. As far as possible, payments will be made using information already held by the Government, although in some cases it may be necessary to obtain banking information from parents to make payments.

### **Financial and manpower implications**

Recent statistics<sup>1</sup> indicate an average of approximately 10 child deaths and stillbirths per year. There are no additional manpower implications arising from this legislation. The approximate maximum cost (based on ten child deaths (including stillbirths) per year and up to 40 working parents receiving a payment) of the non-statutory payment scheme is £70,000 a year – this will be drawn from existing Customer and Local Services budgets.

### **Human rights notes**

No human rights notes are annexed because the Law Officers' Department have indicated that the draft Law does not give rise to any human rights issues.

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<sup>1</sup> Source – Annual Reports of the OSIR

## EXPLANATORY NOTE

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This Law, if passed, will amend the Employment (Jersey) Law 2003 (the “2003 Law”) (*Article 1*) to introduce parental bereavement leave.

The term “parental bereavement”, along with other definitions is added to Article 55A which is the interpretation Article of Part 5A of the 2003 Law (*Article 2*).

*Article 3* inserts a new Article 55HA into the 2003 Law and gives a right to 2 weeks’ unpaid leave during the 56-week period from the death of a child (or stillbirth in the case of a child that is stillborn after 24 weeks of pregnancy). Those eligible are the mother, father, adopter or surrogate parent of the child and their partners (whether or not married or in a civil partnership) if they had or were expected to have responsibility for the child’s upbringing. The leave may be taken without notice and in up to 3 blocks of time. If the employee changes employers the balance of the leave may be carried forward. Parental bereavement leave does not affect the right to other types of leave that parents may be entitled to.

*Articles 4 to 7* make consequential changes to other provisions in the part of the 2003 Law concerned with parental rights that are relevant to parental bereavement leave.

*Article 8* makes consequential changes elsewhere in the 2003 Law where references to parental bereavement leave need to be included and *Article 9* makes a consequential amendment to some pensions Regulations to expand a definition to include parental bereavement leave.

*Article 10* provides how the Law may be cited and provides for it to come into force in accordance with an Order made by the Minister for Social Security.



Jersey

## DRAFT EMPLOYMENT (AMENDMENT No. 14) (JERSEY) LAW 202-

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Jersey

## DRAFT EMPLOYMENT (AMENDMENT No. 14) (JERSEY) LAW 202-

A **LAW** to amend further the [Employment \(Jersey\) Law 2003](#).

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

### 1 Part 5A of the [Employment \(Jersey\) Law 2003](#) (parental rights) amended

Articles 2 to 7 of this Law amend Part 5A of the [Employment \(Jersey\) Law 2003](#).

### 2 Article 55A (interpretation) amended

In Article 55A(1) –

- (a) after the definition “paid parental leave period” there is inserted –
  - “ “parental bereavement leave” means the leave to which a person is entitled under Article 55HA;”;
- (b) for the definition “partner” there is substituted –
  - “ “partner” means –
    - (a) in the case of parental leave, a person (whether of a different sex or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not the mother’s or adopter’s relative;
    - (b) in the case of parental bereavement leave, a person (whether of a different sex or the same sex) who lives with a parent, adopter or surrogate parent and the child in an enduring family relationship but is not the parent’s or adopter’s or surrogate’s relative;”;
- (c) after the definition “registered nurse” there is inserted –
  - “ “relative”, in relation to a parent, adopter or surrogate parent means their parent, grandparent, sister, brother, aunt or uncle;”.

### 3 Article 55HA inserted

After Article 55H there is inserted –

#### **“55HA Parental bereavement leave**

- (1) The following employees are entitled to 2 weeks’ unpaid leave (“parental bereavement leave”), from the date of death of a child (or, in the case of a child that is stillborn after 24 weeks of pregnancy, the date of the child’s birth) up to and including 56 weeks after the death or birth –
  - (a) the mother of the child;
  - (b) the father of the child;
  - (c) an adopter of the child; or
  - (d) a surrogate parent of the child; or
  - (e) a person who is married to, or the civil partner or partner of, a person mentioned in any of sub-paragraphs (a) to (d), if that person had, or expected to have, responsibility for the upbringing of the child.
- (2) Parental bereavement leave may be taken without notice and may be taken in no more than 3 separate periods of any amount of time.
- (3) Parental bereavement leave applies in the case of any employer who employed the employee on the day the entitlement accrues.
- (4) But if the employee changes employer during the period in which the entitlement to the leave remains, the employee may still take the balance of the leave during the period of entitlement.
- (5) Entitlement to parental bereavement leave does not affect any right to parental leave or additional contractual entitlement to leave following the birth or adoption of a child.”.

### 4 Article 55I (application of terms and conditions during unpaid parental leave) amended

In Article 55I –

- (a) at the end of the heading there is inserted “or parental bereavement leave”;
- (b) in paragraph (1) after “parental leave” where first occurring there is inserted “or parental bereavement leave”;
- (c) in paragraphs (2), (3) and (4)(a) after “parental leave” there is inserted “or parental bereavement leave”;
- (d) for paragraph (4)(b) there is substituted –
  - “(b) to a period (other than a period of parental leave or parental bereavement leave) before the beginning of a period of the employee’s parental leave or parental bereavement leave, are not to be treated as remuneration.”.

### 5 Article 55L (right to return to work after parental leave) amended

In Article 55L in the heading and in paragraph (1) after “parental leave” there is inserted “or parental bereavement leave”.

## **6 Article 55R (contractual rights to time off for ante-natal and pre-adoption appointments and for parental leave) amended**

In Article 55R –

- (a) in the heading, after “parental leave” there is inserted “and parental bereavement leave”;
- (b) in paragraph (1) after “parental leave” there is inserted “or parental bereavement leave”.

## **7 Article 55S (complaints to Tribunal for breach of requirement under Part 5A) amended**

In Article 55S(4)(c) after “parental leave” (in both places) there is inserted “or parental bereavement leave”.

## **8 Consequential amendments to the [Employment \(Jersey\) Law 2003](#)**

- (1) This Article amends the [Employment \(Jersey\) Law 2003](#).
- (2) In Article 31 (right not to suffer detriment), in paragraph (3)(c) (vi) after “parental leave” there is inserted “or parental bereavement leave”.
- (3) In Article 67 (dismissal for family or other reasons) in paragraph (1)(f) after “parental leave” there is inserted “or parental bereavement leave”.
- (4) in Article 71 (replacements), in paragraph (2)(a) after “parental leave” there is inserted “or parental bereavement leave”.

## **9 [Public Employees \(Pension Scheme\) \(Membership and Benefits\) \(Jersey\) Regulations 2015](#) amended**

- (1) This Article amends the [Public Employees \(Pension Scheme\) \(Membership and Benefits\) \(Jersey\) Regulations 2015](#).
- (2) In Regulation 1 (interpretation), in the definition “child-related leave” –
  - (a) for “and parental leave” there is substituted “, “parental leave” and “parental bereavement leave” ”;
  - (b) after “birth” there is inserted “, death”.
- (3) In Regulation 16 –
  - (a) in paragraph (4), after “child-related leave” there is inserted “other than parental bereavement leave”;
  - (b) in paragraph (5) for “before giving notice” there is substituted “before giving any notice required”.

## **10 Citation and commencement**

This Law may be cited as the Employment (Amendment No. 14) (Jersey) Law 202- and comes into force in accordance with an Order made by the Minister for Social Security.