

### **3.3 Deputy N.B. Le Cornu of St. Helier of the Minister for Social Security regarding unfair dismissal safeguards:**

Will the Minister advise what safeguards, if any, are in place for employees who are unfairly dismissed prior to completing 6 months of employment?

#### **Senator F. du H. Le Gresley (The Minister for Social Security):**

Employees are protected against unfair dismissal when they have at least 26 weeks continuous service with their employer. The Employment Law also provides that employees can make an unfair dismissal complaint to the Employment Tribunal from day one of employment, that is with no requirement for any period of service in certain specified circumstances. These circumstances include where the main reason for dismissal is one of the following grounds: the employee was or proposed to become a member of the Trade Union, the employee took part in or proposed to take part in the activities of the Trade Union, the employee asserted a statutory right or brought proceedings against an employer to enforce the statutory right, including the right to be paid the minimum wage, the employee represented or proposed to represent another employee in a disciplinary or grievance hearing or asserted the right to be represented in such a hearing. The automatically unfair reasons for dismissal will be extended when we introduce race discrimination legislation this September. The Discrimination Law would introduce a new article into the Employment Law so that dismissal will be unfair from day one of employment where the reason for dismissal constitutes an act of racial discrimination. The automatically unfair reasons for dismissal would be extended again with the introduction of family friendly and sex discrimination legislation in 2015, subject to States approval.

#### **3.3.1 Deputy N.B. Le Cornu:**

Would the Minister accept that there are those who suffer the injustice of what we can put, in inverted commas, “unfair dismissal” prior to those 26 weeks, who only have a lesser period of employment and recognising that injustice any extension of the period of time from 26 weeks perhaps onwards, as in the U.K. (United Kingdom), would increase the injustice?

#### **Senator F. du H. Le Gresley:**

I would agree with that statement but I am sure the Deputy is probably aware that we consulted through the Employment Forum on whether we should extend the 26 weeks. Last year the Forum recommended to me that the 26 weeks would not have any major change to employment prospects of unemployed people and based on their recommendations I have retained the period of 26 weeks.

#### **3.3.2 Deputy M. Tadier of St. Brelade:**

Will the Minister explain whether he believes that it is okay to dismiss somebody unfairly as long as it is done before 6 weeks, even if it falls outside the exceptions that he listed a moment ago?

#### **Senator F. du H. Le Gresley:**

No, I do not think it is ever right for somebody to be dismissed unfairly. It is not okay, as the Deputy put it. There are procedures that every employer should follow. We recently put out a new Code of Practice for disciplinary and grievance procedures, which was heavily consulted upon and clearly it is a responsibility of an employer to go through those procedures and make sure people are dismissed fairly.

#### **3.3.3 Deputy M. Tadier:**

Does the Minister accept though that far from seeking to extend from 6 months that we should be considering whether or not there is a period at all which qualifies unfair dismissal because surely if somebody is unfairly dismissed after 3 months, after 2 months or 4 months, they should have exactly the same recourse as somebody who has been unfairly dismissed after 6 months and one day?

**Senator F. du H. Le Gresley:**

The 26 weeks I believe is a fair period in which time for an employer to assess the abilities of an employee and to take steps within that time to address any training issues that might be required. It is a fact, of course, that an employee is not required to give notice to an employer during those 6 months and therefore an employee can simply walk out of a job without giving any real reasons and this can place an employer in a difficult position. There are rights on both sides, which can be misused.

**3.3.4 Deputy J.H. Young of St. Brelade:**

Would the Minister confirm or otherwise that he is yet to bring forward the Regulations under Article 67 of the Employment Law, which sets out specified circumstances where by definition people are unfairly dismissed by reasons of pregnancy, childbirth or maternity? Would he say what the situation is with his Regulations?

**Senator F. du H. Le Gresley:**

The Deputy is absolutely correct. There is a provision in the Employment Law to make it automatically unfair to dismiss somebody by reason of pregnancy, childbirth or maternity but subject to Regulations being made. Those Regulations will be made when we introduce family friendly legislation, which will then make dismissal on the grounds of pregnancy, childbirth or maternity automatically unfair.

**Deputy N.B. Le Cornu:**

I would certainly thank the Minister for mentioning about the new disciplinary and grievance procedure guidelines, and having used them in practice they are very useful and would be recommended to any employer or employee who is considering these issues.