

22.11.22

2 Deputy T.A. Coles of St. Helier South of the Minister for Social Security regarding employment legislation to protect employees when a business is sold (OQ.119/2022)

Will the Minister advise whether she has any plans to introduce employment legislation to protect the terms and conditions of employees when a business is sold, similar to the Transfer of Undertakings (Protection of Employment) legislation in the U.K.?

Deputy E. Millar (The Minister for Social Security):

I thank the Deputy for his question. It is particularly interesting and one that I have encountered many times in my career as a lawyer, having to deal with a lack of T.U.P.E. (Transfer of Undertakings (Protection of Employment)) and how we deal with transfer of employees. I recently published my Ministerial priorities for 2023. I am committed to completing and implementing a review on zero-hour contracts and similar employment practices. I am also committed to a full investigation into the creation of an official living wage rate for Jersey. These employment law issues, which I think are important affecting people right now, sit alongside a full work plan covering other areas under my remit, as discussed recently with my Scrutiny Panel. These are my priorities in respect of employment legislation for 2023. I will keep this issue under consideration for future years but I have no plans to introduce this legislation in the near future.

3.2.1 Deputy G.P. Southern:

Does the Minister accept that the issue of T.U.P.E. and the transfer of undertakings is intrinsically linked to insecure working practice and, in particular, to zero-hours contracts? If we are to solve the problem that is a problem of zero-hours contracts in our economy then we need to include T.U.P.E. alongside that.

Deputy E. Millar:

No, I do not agree with the Deputy that the question of zero hours contracts and T.U.P.E. are linked. The 2 are very different things. Zero-hours contracts I absolutely agree need review. That is part of my Ministerial priorities; the review of zero-hours contracts. It is also being investigated by the Employment Forum. The Employment Forum also have a full programme of work for 2023. T.U.P.E. arises where a business is being transferred. A zero-hours contract, there are ways of dealing with business transfers and in my experience, employees are not prejudiced when the employments are transferred. T.U.P.E. does not prevent redundancies. It simply means that the employees are taken over by the new employer and the new employer can make redundancies, provided they follow fair process and they do not make any distinction between their own existing employees and any new employees they accrue as a transfer of business. I think to suggest that anyone who is acquiring a business now in Jersey that they are then going to make numerous people redundant is a very low risk indeed because anyone buying a business now ... most businesses tell us that they are crying out for staff so why you would buy a business and not take the employees with you would be quite unusual. A purchase of a business will want employees and it is normally a condition precedent of the sale and purchase contract. If employees are not transferred the employees ... sorry, I can talk about this for quite some time. Our laws do give employees protection. Article 50 of the Employment Law gives employees protection that if they do not transfer automatically when the business is sold their existing employer must either redeploy them or give them full notice and redundancy in line with their employment rights. I would remind the Deputy as well that we are in a position of almost full employment in Jersey. I do not disagree that zero-hours contracts need looking at but I do not think there is a need to link zero hours and T.U.P.E. together.

3.2.2 Deputy G.P. Southern:

Could the Minister inform the Assembly what enforcement officers she has in place to prevent malpractice when this does occur in the employment market?

Deputy E. Millar:

I do not think enforcement of employment law legislation sits with my department. The Jersey Employment and Discrimination Tribunal can hear claims where people are not given redundancy pay or claims for unfair dismissal. Employees can go to that where they have those rights. I say again, however, that in my experience when someone is buying a business, they very much want to take the employees with them.

3.2.3 Deputy S.Y. Mézec:

Is the Minister aware that the T.U.P.E. legislation in the U.K. has been in place for several decades now, having been introduced under Margaret Thatcher, that well-known bastion of workers' rights, and does she therefore regard the situation that Jersey has in not providing these protections to workers here as a position which is to the right even of Margaret Thatcher, and that it is a settled matter that T.U.P.E. regulations do provide protection to employees and would be a good thing if they were at least at some point introduced in Jersey?

Deputy E. Millar:

I have seen transactions virtually collapse because employees do not consent to being transferred or because unions object to the fact that there is no T.U.P.E. and that employees' rights are not protected. I think that is a misunderstanding. As I previously said, Jersey employment law already provides safeguards for employees who are employed in businesses that are or may be the subject of transfers. T.U.P.E. legislation has not historically provided as many safeguards and critically does not guarantee employment on the transfer of a business. Employees can be made redundant when their business transfers by the new employer. Again, it is not simply a case of adopting U.K. legislation and bolting it into Jersey. T.U.P.E. is not a standalone issue in Jersey. We have to look at its interface with the Control of Housing and Work Law, licensing systems for employees; so these things all need to be dealt with. We also need to be careful that in a situation where businesses are already struggling, giving them additional bureaucracy and red tape when we do not need it, is unnecessary when a continuing volatile environment for business. We are in full employment and I cannot really envisage a situation where someone would buy a considerable business and not want to take the employees with them.

[10:00]

3.2.4 Deputy S.Y. Mézec:

It may well be the case that she cannot envision those situations, but they do happen. I have a close family member who lost their job when her business was taken over in this way. She can fail to envision it as much as she likes but it can and does occasionally happen in Jersey. Would it not be the case that we can join other jurisdictions in putting a protection in place in our rules and say when you buy a company you are buying the employment contracts as well. Then if they do go on to make those people redundant at least they are making them redundant on the basis of years of service as opposed to day one employment. Even that would be an improvement from where we are now. If she does regard those as good things, would she indicate to us when we might expect to be able to see that kind of legislation in Jersey?

Deputy E. Millar:

As I say, I do not think this is something that needs dealing with just at the moment. It is a very complex question. It was looked at almost 10 years ago and Ministers since then have reached a view that it is not of overall benefit to employers and employees. I have great sympathy for the Deputy's family member. That is unusual. In my experience, employees have a considerable amount of power. They have to be asked to consent to moving. Their period of continuous employment is protected. We have not had, I believe, in Jersey the vast amounts of outsourcing and transfers of businesses that generated T.U.P.E. in the first place. It is not a priority at the moment. It will be kept under review but there are more important things for the team to do. I would rather not divert the work that is already happening on zero hours and living wage into something that may be a nice to have in some jurisdictions but which is not something where there is clear detriment at the moment.

3.2.5 Deputy T.A. Coles:

I found it interesting that the Minister mentions about businesses being sold and successful and failing ... many people do not sell a successful business but they would seem to want to remove themselves from a failing business. My question is: does she believe there is anything under our laws that protects employees from fire and rehire conditions, which may be forced upon them when a transaction is carried out?

Deputy E. Millar:

On the contrary, people regularly sell successful businesses. There are all sorts of reasons why a business would be sold; the owner may wish to retire, they may be consolidating, they may find increasing regulation more than they want, but I can absolutely assure that successful businesses are sold regularly in this Island and their businesses continue to do very well. If the firing and rehiring, as I say, employees are generally asked to consent ... if they are not employed directly by the company being bought employees are asked to consent to moving. If they consent to move that is generally done in a contract where they preserve all their employment rights and the period of continuous employment. If they refuse to go, as I say it might be unusual for an employer not to offer them work, there is a risk that they would lose their job however their current employee still has to observe all their employment rights and they could then take another job elsewhere. I believe it is a relatively infrequent occurrence in Jersey, and I do not believe it requires the work to bring in T.U.P.E.-style legislation which works for Jersey.