

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT No. 11) (JERSEY) LAW 201- (P.17/2019): THIRD AMENDMENT

**Lodged au Greffe on 15th April 2019
by the Minister for Social Security**

STATES GREFFE

1 PAGE 18, ARTICLE 3 –

In the draft Article 15G to be inserted by Article 3, in sub-paragraph 8(a) for clauses (i) and (ii) substitute –

- “(i) a registered medical practitioner,
- (ii) a registered midwife, or
- (iii) a registered nurse;”.

2 PAGE 26, ARTICLE 4 –

In the draft Article 55D to be inserted by Article 4(7), in clause (2)(b)(ii) for “3” substitute “2”.

3 PAGE 28, ARTICLE 4 –

In the draft Article 55F to be inserted by Article 4(7) –

- (a) in the heading for “: mothers and surrogate parents” substitute “ in relation to childbirth”;
- (b) in sub-paragraphs (2)(a) and (b) in each case for “14” substitute “28”.

4 PAGES 28 AND 29, ARTICLE 4 –

(1) In the draft Article 55G to be inserted by Article 4(7) –

- (a) in the heading for “: adopters” substitute “ in relation to adoption”;
- (b) in sub-paragraphs (2)(a) and (b) in each case for “14” substitute “28”.

(2) In the draft Article 55H to be inserted by Article 4(7), in sub-paragraph (1)(a) for “4” substitute “3”.

5 PAGE 31, ARTICLE 4 –

In the draft Article 55K to be inserted by Article 4(7), in paragraphs (1) and (2) in each case for “2 weeks’ ” substitute “28 days’ ”.

MINISTER FOR SOCIAL SECURITY

REPORT

The adoption by the States Assembly of [P.17/2019](#) (*Draft Employment (Amendment No. 11) (Jersey) Law 201-*) would complete a significant step forward in employment legislation, supporting gender equality, and providing parental rights on an equal footing to men and women; and encouraging the provision of facilities to allow women to return to work and maintain a breastfeeding routine.

P.17/2019 would provide the final stage of family-friendly changes to the [Employment \(Jersey\) Law 2003](#) (the “Employment Law”). Following consultation during 2017, the Employment Forum made recommendations¹ for a second stage of family-friendly employment rights to build on the existing rights introduced in September 2015. The Minister at that time accepted the recommendations, and a number of those changes came into force in September 2018.

The forthcoming debate would implement the full set of recommendations for changes to the Employment Law. The Minister intends to honour the timetable that the former Minister for Social Security committed to in December 2017, by completing the extension of family-friendly employment rights to come into force in September 2019.

The Economic and International Affairs Scrutiny Panel is currently undertaking a review of the proposals included in P.17/2019. At the request of the Panel, the Minister agreed to defer the debate from 26th March to 30th April to enable the review to take place.

The Scrutiny Panel’s review is focussing on the possible impacts that the changes might have on businesses and the Island’s economy. While the Panel has not yet presented the report on its findings, the Minister has listened to the Hearings and taken full account of the views and submissions that have been presented to the Panel by local businesses during the course of the review. The Minister appreciates the concerns that have been expressed, and is lodging this amendment to propose a number of changes to address these concerns and improve the position for businesses without detracting from the original policy intent.

This draft amendment to P.17/2019 clarifies 2 minor technical issues, as well as making 3 changes to the way in which employees can take parental leave to address the key concerns raised by businesses in the Scrutiny Hearings. Some examples of relevant quotes from the transcripts of those hearings are provided.

1. To increase from 14 days to 28 days the notice periods that an employee must give to their employer to vary their parental leave dates.

The draft Law requires employees to notify their employer of the start date and duration of each of their blocks of leave at least 15 weeks before the expected week of childbirth. This was specifically included to assist the employer in planning for periods of leave.

The current Employment Law requires employees to give 28 days’ notice of any changes to their parental leave dates. While preparing P.17/2019 to provide that parental leave may be taken in smaller blocks of leave (of no less than 2 weeks each), each of the existing provisions was reviewed in the context of the proposed new rules. It was

¹ www.gov.je/SiteCollectionDocuments/Benefits%20and%20financial%20support/R%20Review%20of%20Family%20Friendly%20Employment%20Rights%2020171218%20AC.pdf

noted that a 28-day notice period may be excessive where a person has taken a block of only 2 weeks' parental leave and wishes to return to work a few days early. Details such as this often arise, and are clarified by discussion during the legislative drafting process, which resulted in the original decision to change to a 2-week notice period. However, having understood the concerns raised by employers, this amendment now maintains the existing 28-day notice period, as the Minister is conscious that employers would generally prefer a longer notice period. This was raised as a key point of concern for employers, as demonstrated by the following comments –

“Deputy S.M. Wickenden:

The employee can give 14-day notice to the employer that the leave is either moved or changed within 14 days.

The Deputy of St. Mary:

Yes. That is a basic problem as I see it.

Chair, H.R. Committee, Chamber of Commerce:

Yes, absolutely. For employers it is a real concern that they are going to be held to ransom under those circumstances.

Chief Executive, Chamber of Commerce:

So to have that inflexibility as an employer and to have something put on to you with 14 days' notice ... I do not know what experience we have all had around this table of trying to employ people but not only is it difficult in the labour markets, we have already said, to find people but to find people from this Island or elsewhere within 14 days' notice, to have them up and running, trained and in your employ so that you do not notice any damage to your business is just not workable.”

2. To reduce the parental leave entitlement period by one year so that it may start no earlier than the 11th week before the expected week of childbirth or adoption and would end 2 years after the date of childbirth or adoption.

The draft Law would permit employees to take their 52 weeks of parental leave in up to 4 blocks over a 3-year period. The existing Employment Law allows parental leave (for the father of the child or the partner of the mother) to be taken in up to 3 blocks over a one-year period. However, employers have now clearly identified concerns about the extended period in which leave may be taken, and the amendment ensures that the period of parental leave only covers a 2-year period. Comments included the following –

“Chief Executive Officer, Jersey Retail Association:

But on the surface, when presented with the draft legislation, the first thing that all business sizes again said, mainly the bigger ones, was: “How are we going to cover this if we have somebody taking leave over 3 years in chunks?”

Chief Executive Officer, Jersey Business:

Yes, I do support what Lorie says, in particular the 3-year spread in terms of understanding what the benefits of that are compared to the actual concerns that it would have of the small businesses. In practice it probably would not be utilised to an extreme extent but small businesses will look at that scenario and my concern with that is if they are concerned about that, that will impact in

terms of their recruitment policies and what have you. So it could have an unforeseen impact that is not desired.”

3. To reduce the number of separate blocks in which parental leave may be taken from 4 blocks to 3 blocks.

The number of separate blocks in which leave may be taken was clearly a fundamental issue for employers, as demonstrated by the following comments –

“Chief Executive, Chamber of Commerce:

I think the biggest gasp from most employers in terms of how they were going to cope with that. How they were going to deal with 4 blocks over 3 years because that really does hit a business very hard.

President, Chamber of Commerce:

I think the 52 weeks in 4 blocks over 3 years is the key challenge, especially to smaller businesses ... Supporting the unpaid leave and backfilling that person; that is the key challenge that we are seeing in the legislation here.”

The overall impact of this amendment is to allow parental leave to be taken in up to 3 blocks over a period of up to 2 years. This compares with the original proposal in P.17/2019 of being able to take parental leave in up to 4 blocks over a period of up to 3 years.

4. To amend the heading to Article 55F to clarify that the Article applies to parental leave in relation to childbirth.

The Panel had noted that the heading to Article 55F refers to mothers and surrogate parents. However, the Article itself applies to all parents other than adoptive parents. An amendment is proposed for clarity.

5. To amend the categories of person who may provide proof of pregnancy in relation to the right to paid time off work on health and safety grounds.

The Panel had noted that there are 2 provisions in the draft Law where proofs of pregnancy are required, but they are not consistent. These are notification of intention to take parental leave, and a new provision that would give the right to paid time off work on health and safety grounds where it is not safe for a woman who is pregnant, has recently given birth, or is breastfeeding, to work in her usual employment. For consistency, this draft amendment would provide that, in both circumstances, a certificate of pregnancy may be provided by a registered medical practitioner, a registered midwife or a registered nurse.

Conclusion

The proposed extension of employment rights – equalising parental leave rights and introducing workplace rights around breastfeeding – is intended to give parents more choice and flexibility to help meet their work and family responsibilities, as well as encouraging gender balance in childcare roles. This would contribute to the agreed strategic priorities for the next 4 years, as outlined in the [Common Strategic Policy 2018–22](#). The proposals put children first, help to create a sustainable, vibrant economy

and skilled local workforce for the future, while also reducing income inequality and improving the standard of living.

At the same time, the Minister understands the concerns that have been raised by some businesses, and this amendment to P.17/2019 aims to address those issues without creating any delay in the overall timetable. The need to press on with the legislation was a view expressed to the Scrutiny Panel by some of the business representatives, as demonstrated in the following comments –

“Chief Executive Officer, Jersey Retail Association:

As Graeme said, it would have been beneficial to have had a clear year’s data to see what happens with the 3 years. However, we are so significantly behind the U.K. (United Kingdom) I see the need to make us an island that appeals to everybody. So we do need to, in some instances, fast-track legislative changes to make us an appealing employer. So there is also that recognition. We had a very polar view on this. Our smaller members felt that we would need more data on that period of leave. Larger employers again felt we needed the data but we really needed the legislation more because currently we are the third joint biggest employer but when you look at somebody like at finance, the biggest employer, they would already give these 52 weeks normally because they would mirror the U.K. So in this very competitive job market I don’t think² we can afford to wait. Is that a good summary?

Deputy K.F. Morel:

Perfect, yes.

Chief Executive Officer, Jersey Retail Association:

We have to be competitive and family first, and that is a big cornerstone of the Island Plan. So I think delaying it, is that really going to be of benefit? No, I do not think so.

Deputy S.M. Wickenden:

Is there anything that you want to include otherwise that we have not maybe talked about?

Chief Executive Officer, Jersey Business:

No, I would say I think this is absolutely the right direction. We are not going to get everything perfect. While I have indicated areas that I would do this slightly differently, I do not think we should slow the process because of some of the words. It is the right way to go. Whenever we do this, we will always get some noise from business owners, which is inevitable.”

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this amendment.

² Transcript wording corrected to accord with webcast of hearing.