

# STATES OF JERSEY



## STATES OF JERSEY EMPLOYEES: BREASTFEEDING POLICY

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Lodged au Greffe on 13th August 2019  
by Deputy L.M.C. Doublet of St. Saviour

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to request the States Employment Board to ensure that, with immediate effect, paid breastfeeding breaks are accessible by States employees within the 52-week period following their child's birth, in line with the proposed legislative changes related to breastfeeding outlined within P.17/2019.

DEPUTY L.M.C. DOUBLET OF ST. SAVIOUR

## REPORT

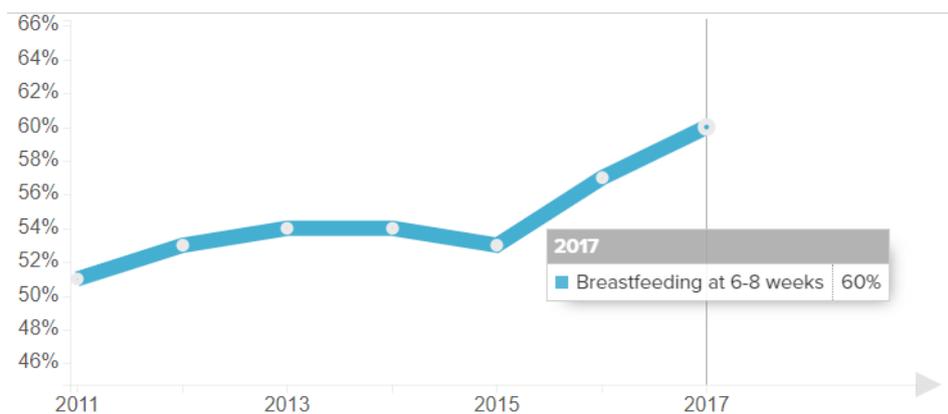
This proposition, if adopted, will have the effect of extending the provision for paid breastfeeding breaks that were proposed within [P.17/2019](#) – Draft Employment (Amendment No. 11) (Jersey) Law 201- (known as the ‘family-friendly’ Employment Law amendments) to States employees, with immediate effect. If we wait until the revised draft of this Law is brought to the Assembly, then it will be at least January/February 2020 before the Law is in force and any employees can access these rights. As an employer, the States does not need to wait to offer these rights to its employees.

The proposed changes would have permitted employees to request a temporary variation in terms and conditions – to vary the hours/times/place of work – to enable the employee to breastfeed or express milk. Requests are not automatically granted, but rather are subject to a test of reasonableness and agreed by the employer and employee together, allowing consideration for department needs, alongside the needs of mother and child. From the research I have carried out, I understand that there is not usually any problem with finding suitable times and space for mothers to express milk in any States department. The difficulty is whether those breaks are paid as part of the normal working day, or whether pay is deducted for the times the employee is feeding/expressing. In some cases, employees are being asked to use their holiday time to express milk – <https://www.bailiwickexpress.com/jsy/news/mother-brings-discrimination-claim-against-government-over-breastfeeding-rights/#.XVE1aehKjIU>

It is the case quoted in the article above that has prompted me to bring this proposition, but unfortunately the case is not an isolated one. No parent should have to suffer such extreme detriment to their career and health due to not being supported to continue breastfeeding after returning to work. As the Minister for Social Security pointed out in the report within [P.17/2019](#), the aim of paid breaks is “to ensure that breastfeeding does not have to be a financial choice for the mother”.

The Government of Jersey has demonstrated its commitment to raising breastfeeding levels across Jersey’s population. Significant progress has already been made –

% of mothers who are breastfeeding (either fully or partially) at 6-8 weeks (i)



<https://www.gov.je/Government/PlanningPerformance/FutureJersey/Examine/LearnGrow/Pages/BreastfeedingRates.aspx>

This trend looks set to continue, with the UNICEF Baby-Friendly Steering Group leading the work in this area under the remit of the Minister for Health and Social Services. The group is led by Senator K.L. Moore, and membership includes Assistant Minister for Health and Social Services, Senator S.W. Pallet, myself, and health professionals including senior doctors and midwives. The work of the Steering Group is underpinned by a full-time staff member – a Certified Breastfeeding Specialist, whose role focuses on raising breastfeeding rates via the implementation of the UNICEF Baby-Friendly Initiative. This represents a significant investment in improving breastfeeding rates locally, so it seems strange that our own employment policy does not yet reflect this.

Another key piece of work which has enormous potential for facilitating an improvement in breastfeeding rates is the family-friendly employment legislation proposals that the Minister for Social Security is working on. The second tranche of these was withdrawn earlier this year for various reasons, after a thorough review by the Economic and International Affairs Scrutiny Panel ([S.R.9/2019](#) – Family Friendly Employment Rights), presented to the States on 4th June 2019. The Minister has stated that she intends to bring the proposals back to the Assembly with the same breastfeeding rights within the Law.

It is important to note that the sections of the Law relating to breastfeeding breaks have not been viewed as contentious in any way –

*“The Panel is however, in no doubt that the provisions in the proposed law relating to breastfeeding ... are welcome and should play an important role in changing attitudes to breastfeeding and supporting mothers who wish to work whilst continuing to breastfeed.”*

Furthermore, the Panel’s research indicated that many stakeholders, including childcare experts and local businesses, were in favour of these proposed breastfeeding rights –

*“The Panel accepts that the rights on breastfeeding ... will create more choice and flexibility. These are very positive aspects of the proposals and were welcomed by many stakeholders.”*

There are good reasons for the proposals being withdrawn, but in the meantime, the impact of the lack of any breastfeeding rights is being felt by employees within the States sector –

*“I did this five times a week in my tea break because I had to do it in my own time. My tea break only lasted 20 minutes so everything was always rushed to try and express as fast as possible. But I stuck it out until my babies were old enough to drop that fed [sic] (when they were about 12 months old) ...it was really rushed and I felt under pressure to express enough in my time limit. I just used to say to myself at least I’m doing the best thing for my babies. I reckon a lot of people probably give up when they go back to work because of the hassle of trying to sort things out.” – States employee, May 2019.*

*“I was signed off work by my GP with work related stress ... – particularly relating to my wanting to breastfeed my son and my work making me feel as if I have been a hassle, an inconvenience, a problem. My GP has signed me off*

*until I feel that I no longer require any department flexibility to express in the workplace. The problem I am faced with is the difficulties expressing milk is hindered by stress. These constant obstacles and obstructions ... are uncondusive to facilitate my need to express milk in the work place. Since my return to work I have had days where I am in so much pain due to my need to express milk, blocked ducts and possible mastitis – making my day miserable and if I spoke about my pain, the managers would be uncaring and unwilling to assist and facilitate a small change in arrangements. There were days that I would be in tears on my way home as I was in so much pain and desperately hoping my son would feed.” – States employee, July 2019.*

There are pockets of good practice within various States departments, often championed by understanding managers –

*“When I returned to work ..., I was allowed to pump when I needed to and didn’t have to be within my “break time”. I ... think my managers at the time were very accommodating, as I am sure other ... departments may not have done the same. I don’t know where I will be at when I return with baby no 2 ... or whether my manager now will be accommodating.” – States employee, April 2019.*

*“I used to have my son brought in to breastfeed him. His dad or nanny would bring him in to feed. I was allowed to take time during paid hours. Maybe my department managers are just nice? I normally used my break though because we’re always so busy. But I didn’t have to.” – States employee, May 2019.*

Whilst the evidence above shows that there are some managers who are extremely supportive and do already allow time within working hours, others are quite understandably following the current policy and do not allow this. This inconsistency can in itself lead to confusion and upset, as mothers are perhaps unsure of what they can expect from their employer. The relevant policy states that breastfeeding breaks would ‘normally be unpaid’, but this inconsistent treatment risks being unlawful.

It is my firm view that the Government of Jersey, as an employer, should immediately extend rights to paid (reasonable) breastfeeding breaks to all States employees.

This would be in line with Government policy, and would show employers around the Island that they too can extend these rights to their employees without waiting for the Law to change.

I am aware of several employers that have done this, as they understand that these rights improve employee morale and retention –

*“Logicalis were great and allowed 2 separate expressing breaks every working day, 25–30 minutes each, paid, and recently updated their staff handbook to fall in line with the maternity/breastfeeding and parental leave propositions from the social security department.” – Breastfeeding Mum, July 2019.*

*“My employers allowed me to use paid time and didn’t take from my normal lunch hours etc. Have also encouraged me to seek more flexible working on my return ... I am due to go back after my second baby in November. We also have one of the better maternity leave policies I have heard about” – Local bank employee, July 2019.*

The States of Jersey as an employer should be amongst these trailblazers, whilst continuing to prioritise legislation that will empower **all** breastfeeding mums across the Island.

I call upon the States Employment Board to immediately extend reasonable, paid breaks for the purpose of breastfeeding or expressing, to all States employees.

### **Financial and manpower implications**

The States of Jersey maternity policy asks employees to discuss short-term flexible working arrangements to accommodate breastfeeding on the basis that breaks from work for this purpose during working hours would normally be unpaid. Under the proposed draft Law (as lodged in [P.17/2019](#)), where an employee returns to work within 52 weeks of the child's birth, she must be paid for any breaks for breastfeeding or expressing at the normal rate of pay for any time during that 52 week period. After the 52 week period, any breastfeeding or expressing breaks would be unpaid. It is estimated that 20 employees each year might return to work after less than 52 weeks' parental leave and seek to temporarily vary their terms of employment for this purpose. It is also estimated that the employee will request a one hour paid break each day at £21.53 per hour (£861/40 hours) for a 3 month period, working a 5 day week. One hour x £21.53 x 5 days x 13 weeks = £1,399 per employee x 20 employees = **£27,989**. Experience of requests to use facilities at Cyril Le Marquand House in 2018 indicate that 4 mothers booked the well-being room for the purpose of expressing, in 30 minute slots around lunchtimes for a duration of around 2 months each.

When I questioned the Chief Minister on 18th June 2019, this was his response –

**5.4 Deputy L.M.C. Doublet:**

*Given that the breastfeeding rights contained within the family-friendly legislation were not contentious in any way, does the Chief Minister agree that we should not wait for the legislation for States employees, but lead by example and change the policy, so that States employees can have the breastfeeding rights, before the change in legislation?*

**Senator J.A.N. Le Fondré:**

*In principle, I do not have any problems with what the Deputy is proposing, but I would sit down and discuss it with the Minister for Social Security and the other Ministers beforehand.*

– Extract from Hansard, 18th June 2019.

**Extracts from P.17/2019 (page numbers given at the end of extracts)**

“JACS will provide new model agreements, forms and templates to help employers.” (page 6)

**“4. Breastfeeding breaks**

The draft Law would give employees the right to request reasonable breaks from work for the purpose of breastfeeding or expressing breastmilk. On the basis that breastfeeding breaks are potentially a short-term and temporary arrangement, rather than a permanent change to terms and conditions of employment, provision is made for a temporary variation to terms and conditions relating to breastfeeding. Changes might include a longer lunch-break, combining lunch and tea-breaks, an extra break, shorter working hours, or different working hours.

Where the employee returns to work within 52 weeks of the child’s birth, she must be paid for any breaks for breastfeeding or expressing at the normal rate of pay for any time during that 52 week period. After the 52 week period, any breastfeeding or expressing breaks would be unpaid.

The 2017 Jersey Opinions and Lifestyle Survey found that 62% of adults agreed that employers should provide rest-breaks for breastfeeding mothers.” (page 7)

“The extension of family friendly rights will support the priority to put children first, giving parents greater choice relating to their children, providing early investment in the health of the mother and child in the weeks surrounding childbirth, and to ensure that breastfeeding does not have to be a financial choice for the mother.” (page 9)

“One of the ambitions of Future Jersey<sup>1</sup> is to improve breastfeeding rates. This indicator monitors the proportion of mothers who are breastfeeding (fully or partially) at 6–8 weeks. There has been significant progress in this indicator – in 2017 the proportion of babies being breastfed rose to 60%. Around 1 in 5 women in Jersey choose to breastfeed at 9–12 months<sup>2</sup>. It is likely that a small proportion of women will continue to breastfeed for longer than 12 months. (In the UK, less than 1 in 100 mothers breastfeed at 12 months.) Low prevalence of continued breastfeeding may be partially due to lack of adequate breaks and facilities in the workplace.” (page 9)

“By introducing provisions to retain the skills of parents in the workplace, and ensuring that workplaces are more family friendly, such as workplace breastfeeding rights, this will help to ensure that locally qualified people are available to work, and will support employers to retain and attract those locally qualified employees.” (pages 9–10)

#### “FINANCIAL AND MANPOWER IMPLICATIONS

... ..

#### 4. Breastfeeding breaks

- The SoJ maternity policy asks employees to discuss short-term flexible working arrangements to accommodate breastfeeding on the basis that breaks from work for this purpose during working hours would normally be unpaid. Under the proposed draft Law, where an employee returns to work within 52 weeks of the child’s birth, she must be paid for any breaks for breastfeeding or expressing at the normal rate of pay for any time during that 52 week period. After the 52 week period, any breastfeeding or expressing breaks would be unpaid. It is estimated that 20 employees each year might return to work after less than 52 weeks’ parental leave and seek to temporarily vary their terms of employment for this purpose. It is also estimated that the employee will request a one hour paid break each day at £21.53 per hour (£861/40 hours) for a 3 month period, working a 5 day week. One hour x £21.53 x 5 days x 13 weeks = £1,399 per employee x 20 employees = £27,989. Experience of requests to use facilities at Cyril Le Marquand House in 2018 indicate that 4 mothers booked the well-being room for the purpose of expressing, in 30 minute slots around lunchtimes for a duration of around 2 months each.

**Potential cost £27,989”**

(page 12)

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<sup>1</sup> [www.gov.je/Government/PlanningPerformance/FutureJersey/Examine/LearnGrow/Pages/BreastfeedingRates.aspx](http://www.gov.je/Government/PlanningPerformance/FutureJersey/Examine/LearnGrow/Pages/BreastfeedingRates.aspx)

<sup>2</sup> <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Breastfeeding%20Profile%202018%2020180329%20SJ.pdf>

**“15H Entitlement to request temporary variation of terms and conditions of employment for the purposes of breastfeeding**

- (1) An employee who is breastfeeding is entitled to apply to her employer for a variation of her terms and conditions of employment, if the variation relates to –
  - (a) the hours during which the employee is required to work;
  - (b) the times when the employee is required to work; or
  - (c) the place where the employee is required to work,and is solely for the purpose of enabling her to breastfeed.
- (2) An application under this Article must –
  - (a) state the purpose for which the variation is sought; and
  - (b) specify the variation applied for and the period for which it is proposed to be effective.
- (3) Where an employee has any right, arising under her contract of employment or otherwise, which corresponds to the entitlement conferred by paragraph (1) to make an application for a variation in her terms and conditions of employment –
  - (a) the employee may not exercise both the entitlement conferred by paragraph (1) and the corresponding right, but may, in requesting a variation, rely on whichever of the entitlement, or the right, is the more favourable; and
  - (b) if she relies, under sub-paragraph (a), on the corresponding right as more favourable, the provisions of Article 15I relating to an application under this Article apply, subject to such modifications as may be necessary, in relation to that right as though the exercise of it were such an application.
- (4) Entitlement to request a variation of terms and conditions of employment under this Article is in addition to, and does not derogate from, an employee’s right to request a change in those terms and conditions under Article 15A.

**15I Employer’s duties in relation to variation under Article 15H**

- (1) Subject to paragraph (2), an employer to whom an application under Article 15H is made –
  - (a) must hold a meeting, at a time convenient to the employer and employee, to discuss the application within the period of 7 days beginning with the day on which the application is made;
  - (b) may agree to the variation as requested by the application, or vary the employee’s terms and conditions in such other reasonable manner as may be agreed between the employer and the employee; and

- (c) must give the employee notice of his or her decision on the application, within the period of 14 days beginning with the day on which the application is made.
- (2) Paragraph (1) does not apply where the employer –
  - (a) agrees to the variation as requested by the application; and
  - (b) gives notice of his or her decision to the employee, within the period of 7 days beginning with the day on which the application is made.
- (3) Where the employer's decision is to agree to a variation in the terms and conditions of the employee's employment, the notice under paragraph (1)(c) or (2)(b), as the case may be, must specify the agreed variation and the period for which it is to be effective.
- (4) Where the employer's decision is to refuse the application, a notice under paragraph (1)(c) must –
  - (a) specify the grounds for the refusal; and
  - (b) set out the appeal procedure for which provision is made by Article 15J.
- (5) If the period of the variation falls within the period of 52 weeks beginning with the birth of the child, paragraphs (1) and (2) to (5) of Article 55C (right to remuneration during time off to receive ante-natal care) apply in relation to the employee taking time off for breastfeeding in the same way as they would apply if the employee were taking time off for the purpose permitted by that Article.

#### **15J Appeal against refusal of variation**

- (1) An employee is entitled to appeal to her employer against –
  - (a) her employer's decision to refuse an application under Article 15H; or
  - (b) a failure by her employer to reach agreement as to a variation requested by such an application.
- (2) An appeal under this Article is made by giving notice of appeal to the employer –
  - (a) within the period of 7 days beginning with the day on which notice of the decision is given, or the failure occurs; and
  - (b) setting out the grounds of appeal.
- (3) Subject to paragraph (4), within the period of 7 days beginning with the date on which notice of appeal is given, the employer must hold a meeting with the employee, at a time convenient to the employer and employee and any person representing the employee, to discuss the appeal.
- (4) Paragraph (3) does not apply where, within the period of 7 days beginning with the date on which notice of appeal is given, the employer –

- (a) having considered the appeal, grants the application (whether unconditionally or by way of an agreed variation of the employee's terms and conditions); and
  - (b) notifies the employee of the decision on the appeal, specifying any agreed variation and the period for which it is to be effective.
- (5) Where a meeting is held under paragraph (3), the employer must give the employee notice of his or her decision within the period of 7 days beginning with the date of the meeting.
- (6) The rights conferred by Article 78A and 78B (rights to be represented, and to complain to the Tribunal) apply in respect of any meeting under paragraph (3) as they do in respect of disciplinary and grievance hearings.”

*(pages 19–21)*