

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY G.P. SOUTHERN OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 28TH JUNE 2016**

Question

Can statutory employee maternity leave rights be protected under zero hours contracts, and if not, what measures might be put in place to extend this statutory right into this sector of employment?

Answer

Statutory maternity leave rights are protected under Part 5A of the Employment (Jersey) Law 2003 (the “Law”) irrespective of the type of employment contract, zero hours or otherwise.

Individuals engaged under zero hour contracts are “employees” for the purposes of the Law. The term “zero hours” often refers to casual work. The main principle being that the employer does not have to offer work and when it does, it is dependent on the arrangement as to whether the employee has to accept the work offered.

Maternity Leave

Compulsory maternity leave (CML) is 2 weeks in duration and it commences on the day the child is born. An employee is not permitted to work during compulsory maternity leave (Article 55D(1) of the Law). This right is automatic and there is no qualifying period. An employee on a zero hours contract is therefore automatically entitled to 2 weeks CML. An employee on CML is only entitled to be paid remuneration by her employer if she would normally have been required to work during that period under her contract of employment (Article 55D(2) of the Law).

In addition to the 2 week leave period for CML, subject to certain conditions, an employee is entitled to unpaid ordinary maternity leave (OML) and is entitled to either 6 weeks’ or 16 weeks’ OML depending on their length of service. An employee who takes OML is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment, except any terms and conditions about remuneration (Article 55G(1) of the Law). It is therefore for the contract to stipulate what remuneration will be paid, if any, to an employee who takes OML.

An employee who has worked for her employer for a period of less than 15 months (ending with the beginning of the expected week of childbirth) is entitled to a total of 6 weeks OML. There is no qualifying period. However, an employee who has worked for her employer for a period of 15 months or more (ending with the beginning of the expected week of childbirth) is entitled to a total of 16 weeks OML. In computing a period of employment the continuity of employment provisions under Article 60B(2) of the Law apply. Continuity of employment can be broken. It is broken if there is a week whereby the employee’s relations with the employer are not governed by a contract of employment (and the conditions set out in Article 60B(2) do not apply). If it is established there is no contract of employment governing the relationship between the parties during a period where no work is undertaken by the employee (the period being no less than one week) the continuity of employment breaks.