

23.12.11.

15. Deputy M.B. Andrews of St Helier North of the Minister for Social Security regarding employment probation periods (OQ.252/2023)

Will the Minister advise what consideration, if any, she has given to introducing a maximum length of time for employment probation periods, including any extension to the probation period; and if none, why has she not?

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

I thank the Deputy for his question. Probationary employment periods are a matter for contractual agreement between an employee and an employer. Probation has no impact on an employee's employment rights. I have no evidence to suggest that this is a priority issue, or that abuse of probation periods have any prevalence on the Island, and I have no plans to reduce such legislation.

2.2.1 Deputy S.Y. Mézec of St. Helier South:

Could the Minister explain whether she or her department, in preparing for this question, have had any feedback on what in many employment contracts may be a discrepancy between what is their probation period and what is the qualifying period for unfair dismissal?

Deputy E. Millar:

I do not believe there is any discrepancy. Probation does not affect an employee's employment rights. Probationary periods, I believe, are generally between 3 months and 6 months. The period for unfair dismissal is 52 weeks, so that is broadly a year. However, I believe that if someone was dismissed during their probationary period for a reason that is automatically unfair; for example, something that is discriminatory, then they still have that right. But given that most people's probation periods expire within at most 6 months, that it has no impact on their ability to claim unfair dismissal.

2.2.2 Deputy S.Y. Mézec:

The Minister said there was no discrepancy and then went on to describe the discrepancy, which is that probation periods are often 3 or 6 months and the qualifying period for unfair dismissal is a year.

[9:45]

Or to put it another way, you can prove to your employer that you are a good employee and worth employing, but do not get your rights to claim unfair dismissal if they sack you for no reason after you have passed your probation. So will the Minister, given those facts and having been asked by Deputy Andrews this question, endeavour to look at this issue again to work out whether the length of time we have for qualifying for unfair dismissal is appropriate in Jersey?

Deputy E. Millar:

I am not sure I fully understand the question. When an employer employs someone, they will often put them on a probation period of either 3 months or 6 months. That is there to ensure that the person is right for the business and that the business is right for the employee. When I said there is no discrepancy, everybody has ... whether you have a probation period or not, your rights to unfair dismissal come in at 52 weeks unless your dismissal is automatically unfair; for example, discrimination. It is very difficult to legislate for probationary periods because it really is a matter for the business. Some jobs will be very complex and therefore will merit a longer period. Others will be fairly straightforward and all you need to know in a matter of 3 months is whether the employee is reliable, turns up, and does a good job. I think the notion that people are employing people for 3 or 6 months and then sacking them is probably misplaced, and I have no evidence that that is the case.

2.2.2 Deputy G.P. Southern:

If one were to replace the phrase “probation periods by traineeships”, would that make a difference to the Minister’s answer? If so, how would it make a difference?

Deputy E. Millar:

It would not make any difference whether you are a young person starting a first job. I have started a job as a fully-qualified lawyer with some experience and had to do a 6-month probation period. How do you decide? How do you legislate for who needs a probation period and for how long? It is a matter between employer and employee. If an employee feels their probationary period is being abused, then they can go and seek the advice of J.A.C.S. (Jersey Advisory and Conciliation Service). But I do not think this is an area that can easily be legislated, and I do not intend to do that in the absence of evidence that it is really required.

2.2.3 Deputy G.P. Southern:

The difference between a traineeship and a probation period is likely to be different amounts of wages to those 2 categories, is that not the case?

Deputy E. Millar:

I am sure the Deputy will remember that I believe earlier this year we have removed the trainee minimum wage. Whether you are a trainee or not, you will earn the same minimum wage as any other employee. But most employers will pay someone at the outset, I expect, someone who has no qualifications or skills, slightly less than a fully-qualified employee, and a probationary period will have no impact on that.23.12.11.