

23.05.02

2 Deputy M. Tadier of the Minister for Social Security regarding parental leave (OQ.85/2023)

Will the Minister advise whether seasonal workers are able to claim parental leave, including 6 weeks' paid leave and 52 weeks' unpaid leave; and if so, is the Minister aware of this entitlement having ever been claimed?

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

Entitlement to parental leave is a day one employment right, enjoyed by employees regardless of the type of employment contract they have in Jersey. This will include those seasonal workers who come to the Island on work permits. On the expiry of the work permit and the departure of the employee the rights conferred by the Employment Law inevitably fall away. I am not aware whether this right has been exercised by such an employee as a seasonal worker. There is no reason why an employer would inform the Government about an individual's entitlement to parental leave or whether they decide to exercise that right. That is a matter between the employee and the employer.

4.2.1 Deputy M. Tadier:

I thank the Minister for confirming what I broadly thought was the case. I am slightly intrigued by the word "inevitably", in that the rights inevitably fall away. Could she confirm as, for example ... of course there are different seasonal workers for different contracts, maybe 9 months, maybe a year, maybe 3 years. What would happen if somebody, let us say, 8 months into a seasonal 9-month work permit decided they want to take their 6 weeks pregnancy leave? Would they then be deported at the end of the 4-week period because their work permit had finished? Would the payment, because I know it is a question to Social Security, after 4 weeks simply terminate or would the 6 weeks be paid in absence of the worker not being in Jersey?

Deputy E. Millar:

Employment rights are only enforceable when one is an employee. If the employment contract terminates then the employment rights under that contract terminate. I cannot comment on whether a person may be deported. That is not a matter for Social Security. I would like to think not. The work permit situation and the employment right situation overlap. But where a person has an accrued right then I am sure it will be paid.

4.2.2 Deputy G.P. Southern of St. Helier Central:

It occurs to me that these rights are statutory and cannot be dismissed by just saying that is a matter between the employee and the employer. It is a matter for the Social Security Department surely.

Deputy E. Millar:

I do not believe any employer is required to notify Government when employees take sick leave or maternity leave or parental leave, or any form of employment right, so we have no way of knowing that. I am not aware that this has been raised with us through any forum. Jersey Advisory and Conciliation Service have done a lot of work to make sure people are aware of parental rights. Parental rights and seasonal workers is not something that has been flagged with my department.

4.2.3 Deputy G.P. Southern:

Is the Minister's problem one that we have not defined how long contracts will last; whether it is 9 months, 2 years or 3 years? Therefore these rights must pertain to some of those workers; does she not agree?

Deputy E. Millar:

The rights in question, as I have said, apply to all employees from day one of their employment. The length of the contract is irrelevant. If you are in a contract and you require parental leave you are entitled to that leave under our employment law. It is statutory.

4.2.4 Deputy L.V. Feltham of St. Helier Central:

Could the Minister inform the Assembly what, if any, measures the department takes to ensure that employers are compliant with the Employment Law?

Deputy E. Millar:

I do not think that is a job of the Social Security Department. That is why we have ... the Employment Tribunal, I believe, has the remit to address issues for employers of failing employees and employers can go to the Advisory and Conciliation Service for advice to help deal with such matters. Where issues are flagged with us, we will address them. Where there appears to be serious breaches but nobody has applied to come to ... employees and employers do not come to Social Security if they have issues with the law.

4.2.5 Deputy L.V. Feltham:

The Minister mentioned that the tribunal is open to take employment disputes, however in order to go to a tribunal you do need to be aware of what your rights are and also employers need to know what they should be doing for their employees. If the Minister does not consider it her department's role to ensure compliance what has her department done to ensure that both employees and employers understand their rights in accordance with the law?

Deputy E. Millar:

As I have just said, the Jersey Advisory and Conciliation Service, which are funded by Government, are there to advise both employers and employees about employee rights. Those are, I believe, well publicised and an employer has a duty to know what his or her or their obligations to an employee are and to be aware with their legal advisers, with their H.R. (human resources) advisers who are professional people, what their obligations are.

4.2.6 Deputy M. Tadier:

There will no doubt be other follow-ups offline but can I thank the Minister first of all for those answers? Can I ask her whether she agrees that there is an inherent duty of care on her department and on Government to look after the hundreds, potentially in the thousands, of seasonal workers that we have in the Island, to make sure that we do not simply wait for problems to arise but we know that how these day one rights might work out in reality, so that when they arrive both they and the employer are fully informed? If so, would she look to having a piece of work in her department to explain these rights more clearly to those 2 groups?

Deputy E. Millar:

I do not think it is right to say that Government has a duty of care to employees of an employer. The employer has a duty of care and the liability to ensure that their employees' rights are observed. Work already exists to give seasonal workers guidance as to their rights. I think this may have been a subject of a question recently. I believe revised guidance for seasonal workers is in hand. There is already information available on websites. It is available on websites because it can be translated into multiple languages. I think we recently agreed with the Kenyan ambassador that certain of some of that information would be translated into Swahili. Government is doing everything it can to make sure that seasonal workers are aware of their rights and that employee and employers must also play their part in ensuring that those rights are observed.

