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Private and confidential
Mr Nathan Beddoe

29 March 2019

Dear Mr Beddoe

Draft Employment (Amendment No.11) (Jersey) Law 201-

Thank you for your letter of 20 March 2019 setting out the concerns of small business owners in relation to the draft Employment (Amendment No.11) (Jersey) Law 201-.

You have listed your concerns about the draft Law which I have responded to below -

- **The proposed amendment is a step too far and is unsustainable for small businesses.**

Work has been underway to improve family friendly employment rights in Jersey since 2007 with the intention of making changes gradually at a pace that employers can tolerate. Following the introduction of the initial family friendly employment rights in September 2015, the Minister at that time agreed to provide a 12-month review period before any further actions were taken. Following that period, the Employment Forum started a second consultation in 2017 on extending family friendly rights and this led to their recommendation in December 2017 that the Employment (Jersey) Law 2003 should be extended in two further stages. The first stage came into force in September last year. This second stage of changes was always planned to follow one year later in September 2019 to give employers more time to prepare. The Jersey Advisory and Conciliation Service has been regularly advising and training employers on the existing and proposed new employment rights since 2015.

- **Employers have to pay an absent member of staff a full wage for an extended length of time**

The draft Law would introduce four extra weeks of paid parental leave for the father or partner. The Employment Law already provides that both parents are entitled to 26 weeks of leave, including 6 weeks of paid maternity leave for the mother and 2 weeks of paid parental leave for the other parent (e.g. father of the child, husband/partner of the mother). The draft Law would extend the period of paid leave from 2 weeks to 6 weeks for the other parent.

- **Cause a drop in productivity due to reduced staffing levels resulting in customer demand not being met, contracts not being fulfilled and the Island's economy suffering as a result.**

Family friendly rights can bring genuine benefits for employers in terms of productivity, retaining skills in the workplace and reducing administration costs by enabling increased participation rates. According to the Channel Islands Women in Work Index 2019 produced by PwC recently¹, if Jersey could increase its female employment rate by 8% then GDP could be increased by 6% – the equivalent of £239 million. The report recommends that the States could help to achieve this by promoting examples of family-friendly working and improving family support, such as through proposals for improved parental leave. It also recommends that businesses should work to destigmatise flexible working for men and women.

- **Promoting discrimination against employing young people of child-bearing age.**

By providing equality in periods of parental leave for different types of parents, the legislation is intended to encourage gender balance in childcare roles, reducing discrimination against women by encouraging a change in workplace attitudes and practices towards involvement of the father or partner in childcare. I appreciate that this culture change may take time, particularly in some traditionally male-dominated sectors. Parental leave would also be available to adoptive and surrogate parents and so it will not be easy for an employer to determine who might seek to take parental leave simply by age. In addition, the 2018 'Births, fertility and breastfeeding' report from Statistics Jersey indicates that women are delaying child birth. The proportion of mothers aged 35 and over in Jersey has increased from 24% in 2000 to 30% in 2018 and is significantly higher than the proportion of mothers aged 35 and over in the UK (21.5%) and the EU average (24%). If an employer decides not to employ young people, they are potentially disregarding a significant proportion of the working population. Protection against sex and age discrimination are already in place. If an employer has a policy of not employing young people (or young women) then they risk a discrimination complaint.

- **The report exclusively refers to the cost implication to the Government of Jersey. Small to medium size businesses taken into consideration?**

All reports that accompany draft legislation to the States Assembly are required to report on the financial and manpower implications to the Government of Jersey.

The cost of parental leave to employers will depend on how much employees are paid each week and how many weeks they take off work. It is not clear how many fathers and partners will choose to take the full period of paid leave, much of which will depend on culture change for fathers. According to the 2016 Jersey Opinions and Lifestyle Survey², around two-thirds of recent male parents said that they had not taken any parental leave. For those that did, on average, they took a total of 2 weeks' parental leave. 92% of male parents would have liked to have taken more leave.

¹ <https://www.pwc.com/jg/en/publications/women-in-work-channel-islands-2019.pdf>

² www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Opinions%20and%20Lifestyle%20Survey%202016%20report%2020161129%20SU.pdf

Some examples of the cost of an additional 4 weeks of parental leave for fathers and partners are as follows;

- £1,261 - Minimum wage (£7.88 from 1 April 2019 based on a 40 hour week)
- £2,000 - Mean weekly earnings in wholesale and retail (£500, AEI report for June 2018)
- £2,960 - Mean weekly earnings (£740 for all sectors, AEI report for June 2018)
- £3,120 - Mean weekly earnings in construction (£780, AEI report for June 2018)

- **The report states that it follows the UK model which it claims has been successful.**

The legislation does not follow the UK model. We have proposed a different approach, based on the recommendations from the Employment Forum. Our law would provide a defined period of leave for each parent, rather than a shared leave approach, as in the UK. Shared leave has been unpopular with parents in the UK as well as being administratively burdensome for employers. Defined periods of leave for each parent are likely to be more straightforward than shared leave because the employer only has to take into account the leave entitlements of their own employee.

- **It omits the fact that the UK Government offers funding to the employer to cover parental leave with small businesses able to claim up to 103 percent of their costs.**

Businesses in the UK are entitled to offset the cost of statutory maternity pay against their National Insurance contributions. This is provided by a maternity fund that was created through increases in employers' National Insurance contributions. Contributions for employers in the UK are set at 13.8%, more than double the rate in Jersey (6.5%). Employers in Jersey can deduct the value of maternity allowance - currently £216 per week - from the 6 weeks of maternity pay. If we were to set up a fund similar to the UK's maternity fund, additional contributions would have to be collected from employers.

You have also set out some questions that I have answered below -

- **If the employer takes on another member of staff to cover the absent employee, are we expected to simply terminate the new member of staff's contract when the absent employee returns?**

Yes, if that member of staff is no longer required the contract can be terminated. The Employment Law already protects the employer against potential unfair dismissal claims in these circumstances. Where an employer has taken on a replacement member of staff to cover absence because of pregnancy, childbirth, maternity leave, adoption leave, or parental leave, the replacement employee cannot claim unfair dismissal as long as the employer has informed the replacement employee that their employment will be terminated on the resumption of work by the other employee.

- **Will the employer have any say as to when the leave is to be taken over the three years?**

No. The Employment Law already provides that an employee has the right to decide when they take their maternity, adoption or parental leave. For example, the father or partner may currently take parental leave in up to 3 blocks during a one-year period. The proposed amendment follows the existing legislation. Employees will have to give the employer notice of all their intended leave dates 15 weeks before the expected week of childbirth. The Law means that an employee has the right to take their parental leave at a time that suits the family, for example, starting two weeks before childbirth, or starting immediately after the birth of a child.

- **If the employee has two children within two years is the employer reasonably expected to give them a total of two years off over the next six years?**

The parent's rights relate to the week of childbirth. If two children are born within a three-year period, the dates of potential leave will overlap. In reality, many employees will not be able to afford to take two years off work and so will not take the full period of leave available.

- **Is the employer still expected to pay the employees social security contributions for the time they are absent, a total of 52 weeks?**

No, employers and employees will only pay contributions when they are earning and so contributions would only be paid in relation to the 6 week paid leave period (unless the employer provides a more generous contractual entitlement to paid leave). The employee's contribution record is protected for 18 weeks while in receipt of Maternity Allowance and is also protected for an employee who continues with a period of unpaid leave and stays at home to care for a child under school age, or who works 20 hours or less per week (Home Responsibility Protection).

- **If the employee takes the leave that they are entitled to and then hands their notice in upon their return to work can the employer claim the money back?**

No. The Employment Law does not permit employers to claim back any amounts paid to the employee by way of paid maternity, adoption and parental leave. The same applies to the additional 4 weeks of paid parental leave that is being proposed under this draft Law. This is a statutory entitlement. If the employer provides a more generous contractual entitlement to paid leave (e.g. 12 weeks of paid leave) then the employer may make provision for the conditions on which any sums beyond the statutory minimum may be recouped.

- **Do you agree that this could encourage the use of zero hour contracts resulting in the individual being entitled to nothing?**

No, employees on zero-hour contracts in Jersey are entitled to these rights. All that is required to be entitled is a contract under which the individual undertakes to perform work. The definition of 'employee' in Jersey includes the UK category of 'worker'. In the UK, workers have fewer employment rights (no unfair dismissal, redundancy or parental rights). This has created some confusion around employment rights for those working under zero-hour contracts in Jersey.

- **How do you train a temporary worker to cover a specialist role which normally takes years of training and experience in a matter of days or weeks? How do you qualify that temporary worker on specialist equipment which requires specific training and certification?**

Parents are already taking time off work following childbirth. Even without specific employment rights, pregnancy and childbirth bring administrative implications and costs for employers, both in terms of replacing staff (whether temporarily or permanently) and the potential loss of key skills. In a business that requires specialist skills and training, with concerns about finding qualified replacements, there are benefits to enabling staff to take a period of parental leave and return to the workplace in order that you can retain staff with appropriate skills.

To assist employers where replacement staff cannot be found locally, an Order under the Control of Housing and Work (CHW) Law provides that employees taken on to provide maternity cover for up to 9 months are disregarded in relation to the conditions for the maximum number of individuals with Licensed or Registered status who are permitted to work in a business. If the draft Employment

Law is approved by the States, the Chief Minister will amend the CHW Order in line with the proposed changes to parental leave to make it easier for business to employ staff to cover periods of parental leave for an appropriate period of time.

- **The UK Government provides funding. Is this available to Jersey businesses?**

As described above, any additional benefit costs would need to be funded, such as by increasing employer contributions. Employers may deduct the value of Maternity Allowance from any maternity pay.

Conclusion

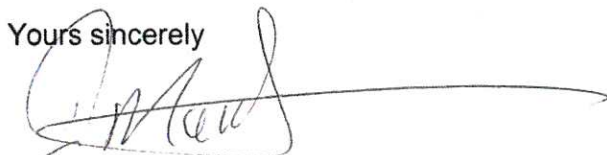
The changes that I am proposing to equalise parental leave for all parents would provide a bold step forward for Jersey. While this would bring an additional cost to employers, this is not an ongoing cost and not all parents will take the additional 4 weeks of paid leave. I hope that you support my intention to encourage a change in workplace attitudes and practices towards the involvement of fathers in childcare and to reduce discrimination against women in employment by encouraging greater equality. I appreciate that this will require a significant change for employers, as well as for working parents.

The Jersey Advisory and Conciliation Service provides a free service to help employers prepare for the changes, including guidance, advice on changing policies and procedures, template forms, and training sessions. I strongly recommend the JACS outreach service which provides tailored support for small businesses in your own place of work.

I appreciate that you have submitted your comments to me as a group. I have sent a copy of my response to the employers who supported your letter, where an email or postal address was available publicly. I would be grateful if, having considered my response, you could collectively advise me by 8 April if you still have concerns about the changes that I am proposing to the Employment Law, and specifically what impact you anticipate the changes having in your own businesses.

I have not been able to find contact details for the following employers and I would be very grateful if you could forward my letter to them.

Yours sincerely



**Deputy Judy Martin
Minister**

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