

New Redundancy Legislation in Jersey

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For the first time Jersey will be introducing legislation which makes provision for the protection of employees in redundancy situations.

Draft Employment (Amendment No.5) (Jersey) Law 200- (“Amendment No.5”) will achieve this goal by inserting the redundancy protection provisions into the **Employment (Jersey) Law 2003** (the “Employment Law”).

Currently, the Employment Law only protects employees from being unfairly dismissed in a redundancy situation without compensation for the redundancy itself.

WHEN WILL AMENDMENT NO.5 COME INTO EFFECT?

Subject to the States adopting Amendment No.5, it is anticipated that the amendment will come into force towards the end of 2009, or early 2010. The passage of the draft legislation through Privy Council may take six to nine months, but this

period should give employers sufficient notice to prepare for the introduction of the legislation.

QUALIFYING FOR A REDUNDANCY PAYMENT

Under Amendment No.5, employees who have at least two years’ continuous employment will be entitled to a redundancy payment of one week’s pay for every year of employment with that employer.

CALCULATING THE REDUNDANCY PAYMENT

Amendment No.5 provides that a redundancy payment is calculated in accordance with the definition of a week’s pay, as set out in Schedule 1 of the Employment Law. It is also subject to a maximum weekly amount.

The maximum amount of one week’s pay is the reported weekly average earnings (for full-time equivalent employees), as quoted in the Statistics Unit’s June Average Earnings Report (released in

August each year). The relevant figure for each redundancy will be the most recent figure published at least one month before the effective date of termination of employment. Currently, this figure is £600.

The amendment also provides that the Minister may make an Order setting a different maximum weekly amount. However it is intended this provision would only be used if necessary in future, and with sufficient notice to employers of any proposed change in the maximum weekly figure.

The **Employment (Awards) (Jersey) Order 2005** will be amended at the appropriate time to enable the Employment Tribunal (the “Tribunal”) to award the redundancy payment.

TRIBUNAL TIME LIMITS

No time limit applies with respect to an employee’s right to claim a redundancy payment, provided that at least one of the following four events has occurred in the six months following the effective date of termination of employment:

- the payment is agreed and paid;
- the employee makes a written claim for the payment to the employer;
- the employee refers the claim to the Tribunal; or
- the employee makes a claim of unfair dismissal to the Tribunal.

If an employee has made a claim in writing to the employer within six months and subsequently the amount is disputed, the employee can present a claim to the Tribunal at any time – there is no time limit.

If an employee fails to make a written claim, or apply to the Tribunal within six months, they may lose the right to a payment. However, if during a further period of six months, the employee makes a written claim to the employer, refers a redundancy claim to the Tribunal, or presents an unfair dismissal complaint to the Tribunal, the

Tribunal has the discretion to award a redundancy payment, if it considers it just and equitable to do so.

ALTERNATIVE WORK

This right to a redundancy payment does not apply if the employee has unreasonably refused an offer of the same or other suitable employment to start within four weeks of termination of employment, or the employee has unreasonably terminated such new employment within four weeks of starting work (or such longer period as agreed). Such reasonableness and suitability will be determined by the Tribunal.

CONSULTATION REQUIREMENTS

Good practice requires employers to consult with employees regarding redundancies at the earliest opportunity. It is vital that the employer uses a fair system of redundancy selection to avoid complaints of unfair dismissal. Case law shows that the Tribunal will take the matter of individual consultation into account as one of the four ordinary principles of fairness.

Further to this, the amendment will require employers to consult with employees collectively where 21 or more redundancies are proposed in a 90 day period, and that consultation must begin at least 30 days before the first dismissal is due to take effect.

Where an employer has failed to engage in meaningful consultation, the Tribunal may order the employer to pay each affected employee one week’s pay (as defined in Schedule 1 of the Employment Law) for each week of the protected period, up to 13 weeks. When considering making a protective award to employees, the Tribunal may take into account whether that employer took such steps as were reasonably practicable in the particular circumstances, including the seriousness and deliberateness of the employer’s failure to consult. The purpose of the award is to provide a sanction, not compensation for losses suffered.

TIME OFF TO LOOK FOR WORK

An employee who is under notice of redundancy will have the right to a reasonable period of paid time off work, equivalent to at least two normal working days. As in the UK, this time may also be used to arrange re-training to improve future employment prospects.

NOTIFYING THE MINISTER

Where an employer proposes to make at least 21 employees redundant, the Minister for Social Security must be notified. This is to ensure that relevant government agencies, such as those providing employment services, are alerted and prepared to take any appropriate measures to assist or retrain the redundant employees.

REMOVAL OF UPPER AGE LIMIT

Redundancy payments, as drafted, are calculated including all years of service, including years beyond age 65. The Employment Law currently provides that an employee over 65 years (or the normal retirement age for the job) is not protected against unfair dismissal. However, Amendment No.5 removes the upper age limit from the unfair dismissal provisions, giving employees the right to protection against unfair dismissal beyond the normal retirement age.

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice.

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NOTICE PERIODS ON TERMINATION OF EMPLOYMENT

Article three of Amendment No.5 reduces the minimum notice periods to those required in the UK, as the existing generous notice provided in the Employment Law was only intended to compensate employees for the lack of redundancy legislation at that time.

Should you have any questions or requests for further information, please contact:

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