

Fundamental Employee Rights in Jersey



John Borg
Advocate



Ashley Quenault
English Solicitor

This note aims to set out in one place, in a clear and readily understandable way, the most important basic rights enjoyed by employees in Jersey under the Employment (Jersey) Law 2003 (the “Law”) and other legislation.

General Rights

Under the Law, an employee has, amongst other things, the right to:

- 1) **A Contract of Employment:** the Law requires every employee to be provided with a written statement of the principal terms of their employment no later than four weeks after they start work.
- 2) **Rest Periods:** every employee must be provided with an uninterrupted rest period of no less than 24 hours in each seven day period. In addition they are entitled to an uninterrupted rest period of no less than 20 minutes in each 6 hour period of continuous work.
- 3) **Annual Leave:** the minimum amount is three weeks’ paid holiday a year in addition to paid leave on Christmas Day, Good Friday and all public or bank holidays (or time off in lieu if required to work those days).
- 4) **Minimum Wage:** employees are entitled to be paid at least the statutory minimum wage (provided they are older than 16). This amount is fixed annually and can be accessed [here](#).
- 5) **An Itemised Pay Statement:** this must be provided on each payment cycle (whether that is weekly or monthly) and must detail amongst other things: (1) gross pay; (2) any deductions made; and (3) net wages payable. Failure to provide an itemised pay statement can result in the employer being fined and/or being order to pay the employee damages of up to four weeks’ pay.

6) **Parental and Adoption Leave:** regardless of length of service, all employees are entitled upon becoming a parent (whether for the first time or not) to 52 weeks leave, of which a minimum of six weeks must be fully paid by the employer. This leave can be taken in up to three blocks during a two-year period after the employee becomes a parent.

7) **Flexible Working:** regardless of length service (unless the contract of employment states otherwise) an employee can make a request for flexible working arrangements in relation to their hours of work, the time at which these hours are worked or their place of work. A request must be properly considered by an employer, but can be refused on certain grounds specified in the Law (such as additional costs to the employer in granting the request, or a detrimental impact on the quality or performance of the business).

8) **Notice Periods:** The Law provides minimum notice periods for employees based on their length of service. This is currently one week’s notice for every complete year of service that an employee has worked for an employer. However, this is capped at 12 weeks’ notice for 12 plus years. In reality, many employment contracts stipulate a contractual notice period which will apply if it is greater than the statutory notice period.

Sick Pay

The Law does not place any requirement on an employer to pay any sick pay to employees. Employees in Jersey are entitled to claim from the States of Jersey for Short Term Incapacity Allowance and Long Term Incapacity Allowance. Many employers do, in fact, offer contractual sick pay but employees should clarify this with their employer.

Unfair Dismissal

An employee has the right not to be unfairly dismissed. The Law makes clear that a dismissal will normally be considered fair if the employer can show that the principal reason for the dismissal related to:

- 1) the capability or qualifications of the employee (in other words, the employee was not able to do the job)
- 2) the conduct of the employee

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3) the employee was required to retire

4) that the employee was redundant (in other words, the role no longer existed)

5) the continuation of the employee's employment would contravene a duty or restriction imposed by law (whether on the part of the employee or the employer) or

6) some other substantial reason that would justify the dismissal (and that the employer had acted reasonably in doing so).

If the reason for dismissal does not fall within one of the above categories, the dismissal may well be considered unfair. An employee has the right for a fair process to be followed, regardless of the reason for dismissal.

There are certain situations where an employee is dismissed for a specific reason which will be deemed as an 'automatic' unfair dismissal under the Law. These situations include where an employee has been dismissed because they:

- 1) undertake trade union activities
- 2) assert a statutory right (such as demanding to be given appropriate rest periods, for example)
- 3) ask to be paid the minimum wage (which is basically asserting a statutory right)
- 4) are the victim of an act of discrimination under the Discrimination (Jersey) Law 2013
- 5) have been dismissed because they were pregnant or for family reasons.

If an employment tribunal finds a dismissal to be automatically unfair then an employer will be unable to defend the claim and the employee will automatically succeed in their claim. A successful claim for unfair dismissal may result in the employer having to: (1) reinstate the employee; (2) re-engage the employee; or (3) pay the employee compensation (or a combination of these).

An employee who believes that they have been unfairly dismissed must lodge their claim with the Employment Tribunal within 8 weeks minus one day from the date of termination of their employment.

Unfair dismissal protection only applies if the employee has worked for 52 weeks for the employer at the date of dismissal, unless it is an automatic unfair dismissal (see above) when no qualifying period applies.

In terms of an award of compensation for unfair dismissal, an employee can potentially be awarded (based on their length of continuous service) the following (in addition to any contractual sums they may be entitled to, such as notice pay, accrued holiday pay and so on):

- Less than 26 weeks service- 4 weeks' pay;
- More than 26 weeks but not more than 1 year service
- 4 weeks' pay;
- More than 1 year but not more than 2 years' service - 8 weeks' pay;
- More than 2 years' service but not more than 3 years' service - 12 weeks' pay;
- More than 3 years' service but less than 4 years' service - 16 weeks' pay;
- More than 4 years' service but less than 5 years' service - 21 weeks' pay; and
- More than 5 years' service - 26 weeks' pay.

The Tribunal can reduce this award if it considers it 'just and equitable' (fair) to do so. This usually only happens if the conduct of the employee has contributed to the dismissal or if the employee has conducted themselves unreasonably during the course of the claim (such as by refusing an offer of settlement from the employer which was equal to the maximum award the Tribunal could make).

Redundancy

Where an employer is considering making an employee or employees redundant, the Law requires that an employee be provided with:

- 1) Individual consultation as well as collective consultation (where relevant).
- 2) Statutory redundancy pay (provided they have the required minimum length of service).
- 3) Paid time off to seek, or arrange, training for future employment. This is limited to a total of 40% of one normal working week (so, for those working a normal 5 day week, a total of two days' paid time off is the employee's entitlement).
- 4) Accrued and untaken annual leave entitlement.

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Provided an employee has been employed with the same employer for 2 years or more at the date their role is terminated, they will be entitled to statutory redundancy pay. This is calculated on the number of years of continuous employment at the rate of a week's pay (up to a capped amount, currently £860.00 per week) per year of service. The capped weekly amount is reviewed on an annual basis in line with cost of living.

Health and Safety

1) Employees also have rights in relation to their health and safety whilst at work. **The Health and Safety (Jersey) Law 1989** contains provisions to protect employees' health and safety, and welfare whilst at work. There is a general duty on employers to ensure, so far as is reasonably practical, the health, safety and welfare at work of all the employer's employees.

It is important to remember that employees also owe duties under the **Health and Safety (Jersey) Law 1989**. Employees must take reasonable care for their own health and safety and the health and safety of others. Employees must also cooperate with their employer to enable the employer to fulfil their duties under the law.

Discrimination

An employee has the following statutory rights under the Discrimination (Jersey) Law 2013:

- 1) Not to be discriminated because of a 'protected characteristic': these are race, disability, sex, sexual orientation, age, transgender status or pregnancy.
- 2) Not to be victimised: this is where an employee is treated less favourably than others because they have (amongst other things):
 - a. made a complaint
 - b. instigated proceedings against their employer
 - c. given evidence or information in proceedings brought by another person against their employer

Not to be harassed: this is where a person engages in unwanted conduct that relates to a protected characteristics which has the purpose or effect of violating the victim's dignity or creating an intimidated, hostile, degrading, humiliating or offensive environment for the victim.

3) An employer must make reasonable adjustments to a workplace to cater for an employee's disability: this is much more than ensuring a workplace is accessible as not every disability is visible and can extend to the provision of equipment to help employees fulfil their duties.

Contact

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the details below.

John Borg, Advocate
+44 (0) 1534 760 865
john.borg@bcrlawllp.com

Ashley Quenault, English Solicitor
+44 (0) 1534 760 856
ashley.quenault@bcrlawllp.com