



Jersey

EMPLOYMENT (AMENDMENT No. 4) (JERSEY) LAW 2009

Arrangement

Article

PART 1	135
<hr/>	
INTERPRETATION	135
1 Interpretation.....	135
PART 2	135
<hr/>	
REMEDIES FOR UNFAIR DISMISSAL	135
2 Amendment of Part 7 of the Employment (Jersey) Law 2003	135
PART 3	141
<hr/>	
MISCELLANEOUS AND CLOSING	141
3 Repeal of Article 36	141
4 Citation and commencement.....	141



Jersey

EMPLOYMENT (AMENDMENT No. 4) (JERSEY) LAW 2009

A LAW to amend further the Employment (Jersey) Law 2003

<i>Adopted by the States</i>	<i>22nd October 2008</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>18th March 2009</i>
<i>Registered by the Royal Court</i>	<i>27th March 2009</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Interpretation

In this Law, “principal Law” means the Employment (Jersey) Law 2003¹.

PART 2

REMEDIES FOR UNFAIR DISMISSAL

2 Amendment of Part 7 of the Employment (Jersey) Law 2003

For Article 77 of the principal Law there shall be substituted the following Articles –

“77 Remedies

- (1) Where, on a complaint under Article 76, the Tribunal finds that the grounds of complaint are well-founded it shall, if the complainant

wishes, consider whether to make a direction for continued employment under Article 77A.

- (2) If no direction is made under Article 77A, the Tribunal shall make an award of compensation calculated in accordance with Article 77F.

77A Direction for continued employment

The Tribunal may make a direction for continued employment as follows –

- (a) a direction that the employer reinstate the complainant in accordance with Article 77B; or
- (b) a direction that the employer re-engage the complainant in other employment in accordance with Article 77C.

77B Direction for reinstatement

- (1) A direction for reinstatement is a direction that the employer shall treat the complainant in all respects as if the dismissal had not taken place, subject to paragraphs (3) and (6).
- (2) On making a direction for reinstatement, the Tribunal shall specify –
 - (a) any rights and privileges (including seniority and pension rights) which must be restored to the complainant upon reinstatement; and
 - (b) the date by which the direction must be complied with.
- (3) A direction shall include any amount payable by the employer in respect of any benefit the complainant might reasonably be expected to have had but for the dismissal, excluding arrears of pay, during the period between the effective date of termination and the date of reinstatement.
- (4) For the purposes of paragraph (3), ‘pay’ excludes –
 - (a) any contributions payable by the employer in respect of the complainant to any superannuation scheme or any bona fide pension scheme or any other scheme for the benefit of employees or for the benefit of any wife or widow of such employees or of employees’ children or other dependents;
 - (b) any bonus the complaint might reasonably be expected to receive during his or her employment by way of remuneration.
- (5) For the purposes of paragraph (4)(b), ‘bonus’ does not include tips, commission or similar payments.
- (6) If the complainant would have benefited from an improvement in the terms and conditions of employment had the dismissal not taken place, a direction for reinstatement shall require the complainant to benefit from that improvement as if the

improvement were included in the terms and conditions of employment from the date on which the complainant is reinstated.

77C Direction for re-engagement

- (1) A direction for re-engagement is a direction, on such terms as the Tribunal thinks fit, that the complainant be engaged by the employer, or by a successor of the employer, or by an associated employer as defined in Article 79(7), in employment comparable to that from which the dismissal took place or other suitable employment.
- (2) On making a direction for re-engagement, the Tribunal shall specify the terms on which the re-engagement is to take place, including –
 - (a) the identity of the employer;
 - (b) the nature of the employment;
 - (c) the remuneration for the employment;
 - (d) any amount payable by the employer in respect of any benefit the complainant might reasonably be expected to have had but for the dismissal, excluding arrears of pay, for the period between the effective date of termination and the date of reinstatement.
 - (e) any rights and privileges (including seniority and pension rights) which must be restored to the complainant upon reinstatement; and
 - (f) the date by which the direction must be complied with.
- (3) For the purposes of paragraph (2)(d), ‘pay’ excludes –
 - (a) any contributions payable by the employer in respect of the complainant to any superannuation scheme or any bona fide pension scheme or any other scheme for the benefit of employees or for the benefit of any wife or widow of such employees or of employees’ children or other dependents; and
 - (b) any bonus the complaint might reasonably be expected to receive during his or her employment by way of remuneration.
- (4) For the purposes of paragraph (3)(b), ‘bonus’ does not include tips, commission or similar payments.

77D Choice of direction

- (1) If the complainant wishes the Tribunal to consider whether to make a direction for continued employment under Article 77A, the Tribunal shall consider first whether to make a direction for reinstatement.

- (2) In exercising its discretion under Article 77A(a), the Tribunal shall take into account –
 - (a) whether the complainant wishes to be reinstated;
 - (b) whether it is practicable for the employer to comply with a direction for reinstatement; and
 - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to direct the reinstatement.
- (3) If the Tribunal decides not to make a direction for reinstatement it shall then consider whether to make a direction for re-engagement.
- (4) In exercising its discretion under Article 77A(b) the Tribunal shall take into account –
 - (a) any wish expressed by the complainant as to the nature of the direction to be made;
 - (b) whether it is practicable for the employer or a successor of the employer or an associated employer within the meaning of Article 79(7) (as the case requires) to comply with a direction for re-engagement; and
 - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to direct that person's re-engagement and (if so) on what terms.
- (5) Except in a case where the Tribunal takes into account contributory fault under paragraph (4)(c) it shall, if it directs re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as a direction for reinstatement.
- (6) Where in any case an employer has engaged a permanent replacement for the complainant, the Tribunal shall not take that fact into account in determining, for the purposes of paragraph (2)(b) or (4)(b), whether it is practicable for the employer to comply with a direction for reinstatement or re-engagement.
- (7) Paragraph (6) does not apply where the employer shows –
 - (a) that it was not practicable for the employer to arrange for the complainant's work to be done without engaging a permanent replacement; or
 - (b) that –
 - (i) the employer engaged the permanent replacement after the lapse of a reasonable period without having heard from the complainant whether the complainant wished to be reinstated or re-engaged, and
 - (ii) when the employer engaged the permanent replacement it was no longer reasonable for the employer to arrange for the complainant's work to be done except by a permanent replacement.

77E Enforcement of direction

- (1) The Tribunal shall make an award of compensation, to be paid by the employer to the complainant, if –
 - (a) a direction under Article 77A is made and the complainant is reinstated or re-engaged; but
 - (b) the terms of the direction are not fully complied with.
- (2) The amount of the compensation shall be such as the Tribunal thinks fit of an amount up to 26 weeks' pay.
- (3) If a direction under Article 77A is made but the complainant is not reinstated or re-engaged, the Tribunal shall make –
 - (a) an award of compensation for unfair dismissal calculated in accordance with Article 77F; and
 - (b) an additional award of compensation of an amount up to 26 weeks' pay,
to be paid by the employer to the complainant.
- (4) Paragraph (3)(b) does not apply where the employer satisfies the Tribunal that it was not practicable to comply with the direction.
- (5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the Tribunal shall not take that fact into account in determining for the purposes of paragraph (4) whether it was practicable to comply with the direction for reinstatement or re-engagement unless the employer shows that it was not practicable to arrange for the dismissed employee's work to be done without engaging a permanent replacement.
- (6) Where in any case the Tribunal finds that the complainant has unreasonably prevented a direction under Article 77A from being complied with, in making an award of compensation for unfair dismissal the Tribunal shall take that conduct into account as a failure on the part of the complainant to mitigate loss.

77F Compensation awards

- (1) Subject to paragraph (3), an award under Article 77(2) or Article 77E(3)(a) shall be calculated in accordance with an Order made under paragraph (2).
- (2) The Minister shall by Order specify a scale of compensation which may be awarded by the Tribunal under Article 77(2) or Article 77E(3)(a).
- (3) An award under Article 77(2) or Article 77E(3)(a) may be reduced by such amount as the Tribunal considers just and equitable having regard to any of the circumstances described in paragraphs (4), (5), (7), (8), (9) and (10).
- (4) The Tribunal finds the complainant has either –

- (a) unreasonably refused an offer by the employer which, if accepted, would have had the effect of reinstating the complainant in the complainant's former employment; or
 - (b) accepted such offer as is described in sub-paragraph (a) in circumstances where the Tribunal may reasonably conclude that at the time the offer was accepted the complainant intended to terminate the employment as soon as reasonably practicable.
- (5) The Tribunal considers that any conduct of the complainant before dismissal (or, where the dismissal was with notice, before the notice was given) that contributed directly to the dismissal was such that reduction of the award is just and equitable.
 - (6) For the purposes of paragraph (5), the Tribunal may take into account conduct committed whilst in employment which came to light after notice was given or the act of dismissal occurred.
 - (7) The complainant has agreed to receive a payment by way of settlement of the complaint (whether or not the dismissal is related to redundancy).
 - (8) The complainant has been awarded a redundancy payment under any enactment or is entitled to a redundancy payment under his or her contract of employment.
 - (9) The complainant has refused an offer by the employer made before commencement of proceedings before the Tribunal for an amount equal to the maximum award that the Tribunal could award in respect of the complainant under Article 77(2) or Article 77E(3)(a) (as the case requires).
 - (10) Any circumstances that the Tribunal considers would be just and equitable to take into account.

77G Continuity of employment

If, following a direction under Article 77A, a complainant is reinstated or re-engaged by his or her employer or by a successor or associated employer as defined in Article 79(7) (as the case requires), the period beginning with the effective date of termination and ending with the date of reinstatement or re-engagement –

- (a) does not break the continuity of the period of employment; and
- (b) counts in computing the period of employment.

77H Transitional provision

- (1) In this Article, 'the specified date' means the date the Employment (Amendment No. 4) (Jersey) Law 2009 comes into force.
- (2) If, before the specified date, a complaint has been presented to the Tribunal under Article 76 and has not been finally determined, the Tribunal shall deal with that complaint on or after the specified

date as if the Employment (Amendment No. 4) (Jersey) Law 2009 had not come into force.”.

PART 3

MISCELLANEOUS AND CLOSING

3 Repeal of Article 36

Article 36 of the principal Law shall be repealed.

4 Citation and commencement

- (1) This Law may be cited as the Employment (Amendment No. 4) (Jersey) Law 2009.
- (2) This Law shall come into force on such day as the States may by Act appoint.

M.N. DE LA HAYE

Greffier of the States

¹ *chapter 05.255*