



Jersey

## EMPLOYMENT (AMENDMENT No. 8) (JERSEY) LAW 2014

### Arrangement

---

#### Article

1	Interpretation.....	3
2	Article 10 amended.....	3
3	New Part 3A inserted.....	4
4	Article 31 amended.....	8
5	Article 33 amended.....	8
6	New Part 5A inserted.....	8
7	Article 56 amended.....	25
8	Article 60C amended.....	25
9	Article 60CA amended.....	26
10	Article 67 substituted.....	26
11	Article 77B amended.....	27
12	Article 104 amended.....	27
13	Schedule 1 amended.....	27
14	Citation and commencement.....	28





Jersey

## EMPLOYMENT (AMENDMENT No. 8) (JERSEY) LAW 2014

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

*Adopted by the States*

*18th July 2014*

*Sanctioned by Order of Her Majesty in Council*

*5th November 2014*

*Registered by the Royal Court*

*14th November 2014*

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

### 1 Interpretation

In this Law the “principal Law” means the Employment (Jersey) Law 2003<sup>1</sup>.

### 2 Article 10 amended

In Article 10 of the principal Law –

(a) After paragraph (2) there shall be inserted the following paragraphs –

“(2A) For the purposes of paragraphs (1) and (2), a rest period shall be an uninterrupted rest period if the employer –

(a) does not require the employee to be available to the employer for the purpose of undertaking a work-related action; and

(b) does not require the employee to attend the employer’s workplace or be at or near that workplace.

(2B) Where an employee has taken a rest period which has been interrupted, the employer shall compensate the employee by making available to that employee an uninterrupted rest day within 14 days beginning on the day that the employee’s rest day was interrupted, in addition to any rest day to which the employee would normally be entitled in that 14 day period.”; and

(b) for paragraph (6) there shall be substituted the following paragraph –

“(6) The States may amend this Article by Regulations.”.

**3 New Part 3A inserted**

After Part 3 of the principal Law there shall be inserted the following Part –

**“PART 3A  
FLEXIBLE WORKING**

**15A Entitlement to request change in the terms and conditions of employment**

- (1) A qualifying employee may apply to his or her employer for a change in his or her terms and conditions of employment if the change relates to –
  - (a) the hours the employee is required to work;
  - (b) the times when the employee is required to work; or
  - (c) the place where the employee is required to work,and the reason for the change is to enable the employee to provide care for another person.
- (2) An application under this Article must –
  - (a) state that it is such an application;
  - (b) specify the change applied for and the date on which it is proposed the change should become effective;
  - (c) state whether the employee will be employed by the person in respect of whom he or she will provide care, or receive any remuneration in return for providing care to the person; and
  - (d) state the reason for making the application.
- (3) For the purpose of this Part ‘remuneration’ includes any payment or reward for services rendered except a payment made or benefit granted to the employee under the Social Security (Jersey) Law 1974<sup>2</sup> or Income Support (Jersey) Law 2007<sup>3</sup>.
- (4) For the purposes of this Article –
  - (a) an employee is a qualifying employee if he or she has been continuously employed by his or her employer for a period of not less than 15 months on the date that he or she makes the application; and
  - (b) the provisions of Article 57 shall not apply in computing the period of employment and instead the period of employment shall be computed in accordance with Article 60B(2) as if computing the period of employment for the purpose of determining whether a person has a right to a redundancy payment.
- (5) An employee may not make a further application under paragraph (1) where he or she has made such an application in the previous 12 months.

**15B Employer's duties in relation to application under Article 15A**

- (1) Subject to paragraphs (2) and (6), an employer to whom an application under Article 15A is made –
  - (a) shall hold a meeting, at a time convenient to the employer and employee, to discuss the application with the employee within 28 days after the day on which the application is made;
  - (b) may agree the change in the terms or conditions applied for under Article 15A or agree different terms and conditions of the employee's employment to those applied for; and
  - (c) shall give the employee notice of his or her decision on the application within 6 weeks after the day on which the application is made.
- (2) Paragraph (1) does not apply where the employer agrees to the application and gives notice of his or her decision to the employee within 28 days after the day on which the application is made.
- (3) Where the employer's decision is to agree to a change in the terms and conditions of the employee's employment, the notice shall specify the agreed change and state the date on which the change is to take effect.
- (4) Where the employer's decision is to refuse the application the notice shall –
  - (a) state which of the grounds for refusal specified in paragraph (5) are considered by the employer to apply;
  - (b) contain a sufficient explanation as to why those grounds apply in relation to the application; and
  - (c) set out the appeal procedure for which provision is made in Article 15C.
- (5) An employer may only refuse an application made under Article 15A if he or she considers that any of the following grounds are satisfied –
  - (a) the granting of the application would create a burden of additional costs;
  - (b) the application would have a detrimental effect on the employer's ability to meet customer demand;
  - (c) the employer would be unable to re-organize work among existing staff or recruit additional staff;
  - (d) the granting of the application would have a detrimental effect on the quality or performance of the employer's business;
  - (e) there would be insufficient work for the employee to do during the periods the employee proposes to work;
  - (f) the granting of the application would have a detrimental effect on the employer's planned staffing changes; or

(g) the employee receives, or would receive, remuneration for the care that he or she provides, or would provide, to care for another person.

- (6) Where the individual who would ordinarily consider an application is absent from work on the day on which the application is made, the periods referred to in paragraphs (1) and (2) shall not commence until the day on which the individual returns to work, or 28 days after the day on which the application is made, whichever is the sooner.

### **15C Appeal against employer's decision**

- (1) An employee is entitled to appeal against his or her employer's decision to refuse an application under Article 15A, or the terms upon which the employer has granted the application, by giving notice of appeal to the employer within 14 days after the day on which notice of the decision is given, setting out the grounds of appeal.
- (2) Subject to paragraphs (3) and (5), within 14 days after the employee's notice under paragraph (1) is given, the employer shall hold a meeting with the employee, at a time convenient to the employer and employee and any person representing the employee, to discuss the appeal.
- (3) Paragraph (2) does not apply where, within 14 days after the day on which notice under paragraph (1) is given, the employer –
- (a) upholds the appeal; and
  - (b) notifies the employee in writing of his or her decision, specifying any change in the terms and conditions of the employee's employment agreed to and stating the date from which the change in the terms and conditions of the employee's employment is to take effect.
- (4) Where a meeting is held to discuss the appeal, the employer shall notify the employee of his or her decision on the appeal within 14 days after the day of the meeting.
- (5) Where the individual who would ordinarily consider the appeal is absent from work on the day on which the notice of appeal is given, the period referred to in paragraph (2) shall not commence until the day the individual returns to work, or 28 days after the day on which the notice of appeal is given, whichever is the sooner.
- (6) The rights conferred by Article 78A and 78B apply in respect of any meeting held under paragraph (2) as they do in respect of disciplinary and grievance hearings.

### **15D Applications, notices and appeals under Part 3A**

- (1) Unless the contrary is proved, an application under Article 15A is taken as having been made on the day the application is received by the employer.

- (2) An employer and an employee may agree to an extension of any of the periods referred to in this Part.
- (3) Every notice or agreement given under this Part shall be in writing.

#### **15E Complaints to Tribunal**

- (1) An employee who makes an application under Article 15A may present a complaint to the Tribunal –
  - (a) that his or her employer has failed in relation to the application to comply with any requirement in Article 15B, 15C or 15D(3); or
  - (b) that a decision by his or her employer to refuse the application was based on incorrect facts.
- (2) No complaint under this Article may be made in respect of an application which has been disposed of by agreement or withdrawn.
- (3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under this Article may be made unless or until the employer –
  - (a) notifies the employee of a decision under Article 15C(3)(b) to reject the application on appeal; or
  - (b) breaches any of the requirements of Articles 15B(1), 15C or 15D(3).
- (4) The Tribunal shall not consider a complaint under this Article unless the complaint is presented –
  - (a) before the end of the period of 8 weeks beginning with the relevant date; or
  - (b) within such further period as the Tribunal considers reasonable in a case where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.
- (5) In paragraph (4)(a), the reference to the relevant date is –
  - (a) in the case of a complaint under paragraph (3)(a), to the date on which the employee is notified of the decision on the appeal; and
  - (b) in the case of a complaint under paragraph (3)(b), to the date on which the breach concerned was committed.

#### **15F Remedies**

Where the Tribunal finds a complaint presented under Article 15E well-founded it shall make a declaration to that effect and may –

- (a) make an order for reconsideration of the application; and

- (b) order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay.”.

#### **4 Article 31 amended**

In Article 31 of the principal Law–

- (a) in paragraph (3)(a), the word “and” shall be deleted and after paragraph (3)(b) there shall be added the following sub-paragraph –

- “(c) any right conferred under Part 3A or 5A, and in particular any right connected with –

- (i) the pregnancy of the employee,
    - (ii) the birth or adoption of a child,
    - (iii) a change in the hours, times or place of work, or an application to make such a change, under Part 3A,
    - (iv) the taking of time off, or the seeking of time off, under Chapter 2, 3, 4 or 5 of Part 5A,
    - (v) the employee not carrying out work for her employer during her maternity leave period or during his or her adoption leave period, or making contact with his or her employer during such period, or
    - (vi) the employee seeking to take or avail himself or herself of any of the benefits of maternity leave, adoption leave or parental leave or the terms of his or her employment preserved under Part 5A.”;

- (b) after paragraph (3) there shall be added the following paragraph –

- “(4) This Article shall not apply where the detriment in question amounts to dismissal.”.

#### **5 Article 33 amended**

In Article 33(1)(b) after the word “complainant” there shall be inserted the words “of an amount not exceeding 4 weeks’ pay, or such amount as may be prescribed.”.

#### **6 New Part 5A inserted**

After Part 5 of the principal Law there shall be inserted the following Part –



**“PART 5A****MATERNITY, ADOPTION AND PARENTAL RIGHTS****CHAPTER 1****INTERPRETATION****55A Interpretation for the purposes of Part 5A**

(1) For the purposes of this Part –

‘adopter’, in relation to a child, means a person who has been matched with the child for adoption, or, in a case where 2 people have been matched jointly, whichever of them has elected to be the child’s adopter for the purposes of this Part;

‘approved adoption society’ has the meaning given in Article 1 of the Adoption (Jersey) Law 1961<sup>4</sup>;

‘child’ means a person under the age of 18;

‘childbirth’ means the birth of a living child or the birth of a child, whether living or dead, after 24 weeks of pregnancy;

‘compulsory maternity leave period’ means the period of 2 weeks beginning with the day on which childbirth by that employee occurs and ‘compulsory maternity leave’ is the leave taken by that employee during that period;

‘expected week of childbirth’ means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;

‘official notification’ means written notification, issued by the Minister for Health and Social Services, that he or she is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and has sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been approved as being a suitable adoptive parent;

‘ordinary maternity leave’ shall be construed in accordance with Article 55E;

‘ordinary maternity leave period’ shall be construed in accordance with Article 55F;

‘overseas adoption’ means the adoption of a child who enters Jersey in connection with or for the purpose of adoption which does not involve the placement of the child for adoption under Jersey law;

‘parental responsibility’ has the meaning given by Article 1 of the Children (Jersey) Law 2002<sup>5</sup>;

‘partner’, in relation to a child’s mother or adopter, means a person (whether of a different sex or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not the mother’s or adopter’s parent, grandparent, sister, brother, aunt or uncle;

‘registered medical practitioner’ has the same meaning as given in the Medical Practitioners (Registration) (Jersey) Law 1960’;

‘registered midwife’ means a person registered as a midwife under the Health Care (Registration) (Jersey) Law 1995’;

‘registered nurse’ means a person registered under the Health Care (Registration) (Jersey) Law 1995 as a nurse;

‘week of childbirth’ means the week, beginning with midnight between Saturday and Sunday, in which childbirth occurs.

- (2) For the purposes of this Part, the provisions of Article 57 shall not apply in computing a period of employment and instead a period of employment shall be computed in accordance with Article 60B(2) as if computing the period of employment for the purpose of determining whether a person has a right to a redundancy payment.
- (3) The States may by Regulations –
  - (a) amend paragraph (1);
  - (b) amend any period referred to in this Part; or
  - (c) amend this Part to provide for a right described in this Part to apply with or without modification to other persons or classes of persons.

## CHAPTER 2

### ANTE-NATAL CARE

#### **55B Right to time off for ante-natal care**

- (1) An employee who –
  - (a) is pregnant; and
  - (b) on the advice of a registered medical practitioner, registered midwife or registered nurse, has made an appointment to attend at any place for the purpose of receiving ante-natal care,is entitled to be permitted by her employer to take time off during the employee’s normal working hours in order to enable her to keep the appointment.
- (2) An employee is not entitled to take time off under this Article to keep an appointment unless, if her employer requests her to do so, she produces for her employer’s inspection –

- (a) a certificate from a registered medical practitioner, registered midwife or registered nurse stating that the employee is pregnant; and
  - (b) an appointment card or some other document showing that the appointment has been made.
- (3) Paragraph (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with paragraph (1).
- (4) For the purposes of this Article the normal working hours of an employee shall be taken to be any time when, in accordance with her contract of employment, the employee is normally required to work.
- (5) In this Article ante-natal care does not include ante-natal classes to prepare the mother for motherhood.

#### **55C Right to remuneration during time off to receive ante-natal care**

- (1) An employee who is entitled to take time off under Article 55B is entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate, whether or not her employer has permitted her to take the time off.
- (2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay, calculated in accordance with Schedule 1, divided by the number of working hours in a week for that employee when employed under the contract of employment in force when the employee takes the time off.
- (3) Where the number of working hours differs from week to week or over a longer period, the amount of one week's pay, shall be divided instead by the average number of working hours, calculated by dividing by 12 the total number of the employee's working hours during the period of 12 weeks ending with the last complete week before the employee takes the time off.
- (4) The right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under that person's contract of employment.
- (5) Any remuneration paid to an employee under her contract of employment in respect of a period of time off under Article 55B goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay remuneration under the employee's contract of employment in respect of that period.

## CHAPTER 3

## MATERNITY LEAVE

**55D Compulsory maternity leave**

- (1) An employer shall not permit an employee to work during the employee's compulsory maternity leave period.
- (2) An employee who is not permitted to work under paragraph (1), but who would normally have been required to do so during that period under her contract of employment –
  - (a) is entitled to be paid remuneration by her employer amounting to 2 weeks' pay at the appropriate weekly rate;
  - (b) is entitled, during the compulsory maternity leave period, to the benefit of all of the terms and conditions of employment which would have applied if she had not been absent; and
  - (c) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exceptions in this Part.
- (3) The appropriate weekly rate, in relation to an employee to whom paragraph (1) applies is the amount of one week's pay, calculated in accordance with Schedule 1.
- (4) Any remuneration paid to an employee under her contract of employment in respect of a compulsory maternity leave period under paragraph (2) goes towards discharging any liability of the employer to pay remuneration under paragraph (2) in respect of that period; and, conversely, any payment of remuneration under paragraph (2) in respect of such a period goes towards discharging any liability of the employer to pay remuneration under the employee's contract of employment in respect of that period.
- (5) Any remuneration to be paid by an employer to an employee under paragraph (2) shall be reduced by any amount that the employee receives by way of short term incapacity allowance under Article 15 of the Social Security (Jersey) Law 1974<sup>8</sup>, or any maternity allowance under Article 22 of that Law, in respect of the compulsory maternity leave period.

**55E Entitlement to ordinary maternity leave**

- (1) An employee is entitled to ordinary maternity leave (in addition to compulsory maternity leave) provided that she satisfies the following conditions –
  - (a) no later than the end of the 15th week before her expected week of childbirth, or, if that is not reasonably practicable, as soon as is reasonably practicable, she notifies her employer of –
    - (i) her pregnancy,

- (ii) the expected week of childbirth, and
- (iii) the date on which she intends her ordinary maternity leave period to start,

and

- (b) if requested to do so by her employer, she produces for her employer's inspection a certificate from –
  - (i) a registered medical practitioner,
  - (ii) a registered midwife, or
  - (iii) a registered nurse,

stating the expected week of childbirth.

(2) An employee who –

- (a) is entitled to ordinary maternity leave; and
- (b) has worked for her employer for a period of less than 15 months ending with the beginning of the expected week of childbirth,

shall be entitled to a total of 6 weeks' ordinary maternity leave (in addition to 2 weeks' compulsory maternity leave).

(3) An employee who –

- (a) is entitled to ordinary maternity leave; and
- (b) has worked for her employer for a period of 15 months or more ending with the beginning of the expected week of childbirth,

shall be entitled to a total of 16 weeks' ordinary maternity leave (in addition to 2 weeks' compulsory maternity leave).

(4) An employee who has notified her employer under paragraph (1)(a)(iii) of the date on which she intends her ordinary maternity leave period to start may subsequently vary that date, provided that she notifies her employer of the change at least –

- (a) 28 days before the date on which she originally intended her ordinary maternity leave to start; or
- (b) 28 days before the new date,

whichever is the earlier, or, if that is not reasonably practicable, as soon as is reasonably practicable.

(5) Notification under paragraph (1)(a)(iii) or (4) –

- (a) shall be given in writing;
- (b) shall not specify a date earlier than the beginning of the 11th week before the expected week of childbirth; and
- (c) in a case where the employee is entitled to a total of 6 weeks ordinary maternity leave, shall not specify a date that is earlier than the beginning of the 6th week before the expected week of childbirth.

- (6) An employee's entitlement to leave under this Article shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.

**55F Commencement of ordinary maternity leave**

- (1) An employee's ordinary maternity leave period shall commence –
- (a) with the day which she notifies to her employer, in accordance with Article 55E, as the day on which she intends her ordinary maternity leave period to start; or
  - (b) if by virtue of the provision for change in that Article she has notified more than one such day, the last day she notifies.
- (2) Where the employee's ordinary maternity leave period has not commenced by virtue of paragraph (1) when childbirth occurs, her ordinary maternity leave period commences on the day which follows the end of her compulsory maternity leave period.
- (3) The States may by Regulations –
- (a) specify when an employee's ordinary maternity leave period may or must commence in circumstances other than those described in paragraphs (1) and (2); or
  - (b) specify when a compulsory maternity leave period must or may be extended.
- (4) An employee's ordinary maternity leave period –
- (a) must be taken for a continuous period (except in so far as it may be broken by the taking of compulsory maternity leave) from its commencement; and
  - (b) may not cease earlier than the date that the employee's compulsory leave period commences.
- (5) Where the employee's employment terminates after the commencement of the ordinary maternity leave period but before the time when (apart from this paragraph) that period would end, the ordinary maternity leave period ends at the time of the termination of the employment.
- (6) An employer who is notified under any provision of Article 55E of the day on which an employee's ordinary maternity leave period will commence or has commenced shall notify the employee of the day on which her ordinary maternity leave period shall end.
- (7) The notification provided for in paragraph (6) shall be given to the employee –
- (a) where the employer is notified under Article 55E(1), within 28 days of the date on which her employer received the notification, and where the employee has notified the employer under Article 55E(4), within 28 days of the last date the employee notifies;

- (b) where the employer is notified under paragraph (2), within 28 days of the date on which the employee's compulsory maternity leave period commenced.
- (8) An employee may be absent from work at any time during her ordinary maternity leave period.

#### **55G Application of terms and conditions during ordinary maternity leave**

- (1) An employee who takes ordinary maternity leave –
- (a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment, except terms and conditions about remuneration, which would have applied if she had not been absent; and
  - (b) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exceptions in this Part.
- (2) For the purposes of paragraph (1) –
- (a) sums which would normally be payable to an employee by way of wages or salary which are attributable to a period during which the employee was on ordinary maternity leave are to be treated as remuneration; and
  - (b) any wages, salary or commission for work done by the employee, or any bonus for achievements of the employee, which are attributable to any period prior to the employee beginning her ordinary maternity leave are not to be treated as remuneration.

#### **55H Requirement to notify intention to return during ordinary maternity leave period**

- (1) An employee who intends to return to work earlier than the end of her ordinary maternity leave period shall give to her employer not less than 4 weeks' notice of the date on which she intends to return.
- (2) If an employee attempts to return to work earlier than the end of her ordinary maternity leave period without complying with paragraph (1), her employer is entitled to postpone her return to a date such as will secure, subject to paragraph (3), that the employer has 4 weeks' notice of her return.
- (3) An employee who complies with her obligations in paragraph (1) or whose employer has postponed her return in the circumstances described in paragraph (2), and who then decides to return to work –
- (a) earlier than the original return date, must give her employer not less than 4 weeks' notice of the date on which she now intends to return;

- (b) later than the original return date, must give her employer not less than 4 weeks' notice ending with the original return date.
- (4) In paragraph (3) the 'original return date' means the date which the employee notified to her employer as the date of her return to work under paragraph (1), or the date to which her return was postponed by her employer under paragraph (2).
- (5) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of the ordinary maternity leave period.
- (6) If an employee whose return to work has been postponed under paragraph (2) has been notified that she is not to return to work before the date to which her return was postponed, the employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.
- (7) This Article does not apply in a case where the employer did not notify the employee in accordance with Article 55F(6) of the date on which her ordinary maternity leave period would end.

#### **55I Work during ordinary maternity leave period**

- (1) Subject to paragraph (5), an employee may carry out work for her employer during her ordinary maternity leave period without bringing her ordinary maternity leave to an end.
- (2) For the purposes of this Article, any work carried out on any day shall constitute a day's work.
- (3) Subject to paragraph (4), for the purposes of this Article, work means any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace.
- (4) Reasonable contact from time to time between an employee and her employer which either party is entitled to make during a compulsory maternity leave period or ordinary maternity leave period (for example to discuss an employee's return to work) –
  - (a) shall not constitute work; and
  - (b) shall not bring that period to an end.
- (5) Paragraph (1) shall not permit any work to be carried out by the employee at any time from childbirth to the end of the period of 2 weeks commencing with the day on which childbirth occurs.
- (6) This Article does not confer any right on an employer to require that any work be carried out during the employee's ordinary maternity leave period.
- (7) Any days' work carried out under this Article shall not have the effect of extending the total duration of the ordinary maternity leave period.



**55J Right to return after maternity leave**

- (1) An employee who returns to work immediately after a period of compulsory maternity leave or ordinary maternity leave is entitled to return to the job in which she was employed immediately before her absence.
- (2) An employee's right to return is a right to return –
  - (a) with her seniority, pension rights and similar rights as they would have been if she had not been absent; and
  - (b) on terms and conditions not less favourable than those which would have applied if she had not been absent.

## CHAPTER 4

## ADOPTION LEAVE

**55K Entitlement to adoption leave**

- (1) An employee is entitled to adoption leave in respect of a child provided the employee –
  - (a) is the child's adopter; and
  - (b) has either notified the approved adoption society that he or she agrees that the child should be placed with him or her and has agreed the date of placement or, in the case of an overseas adoption, has received an official notification; and
  - (c) has given his or her employer notice of his or her intention to take adoption leave in respect of a child, specifying –
    - (i) the date on which the child is expected to be placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child is expected to enter Jersey, and
    - (ii) the date on which the employee has chosen that his or her period of leave should begin.
- (2) The notice provided for in paragraph (1)(c) must be given to the employer –
  - (a) no more than 7 days after the date on which the employee receives official notification of having been matched with the child for the purposes of adoption or, in the case of an overseas adoption, no more than 7 days after the employee receives notice of the date the child is expected to enter Jersey; or
  - (b) in a case where it was not reasonably practicable for the employee to give notice in accordance with subparagraph (a), as soon as is reasonably practicable.

- (3) Where the employer so requests, an employee must also provide his or her employer with evidence of the information notified to his or her employee under paragraph (1)(c)(i).
- (4) An employee who –
- (a) is entitled to adoption leave; and
  - (b) has worked for his or her employer for a period of less than 15 months ending with the date on which the child is expected to be placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child is expected to enter Jersey,
- shall be entitled to total of 8 weeks' adoption leave.
- (5) An employee who –
- (a) is entitled to adoption leave; and
  - (b) has worked for his or her employer for a period of 15 months or more ending with the date on which the child is expected to be placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child is expected to enter Jersey,
- shall be entitled to total of 18 weeks' adoption leave.
- (6) An employee who has given notice under paragraph (1)(c) may vary the date he or she has chosen as the date on which his or her period of leave will begin, subject to paragraph (7) and provided that the employee gives his or her employer notice of the change –
- (a) where the change is to provide for the employee's period of leave to begin on the date on which the child is placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child will enter Jersey, at least 28 days before the date specified in his or her notice under paragraph (1) as the date on which the child is expected to be placed with him or her or expected to enter Jersey, as the case may be;
  - (b) where the change is to provide for the employee's period of leave to begin on a predetermined date (or a different predetermined date), at least 28 days before that date,
- or, if it is not reasonably practicable to give the notice 28 days before whichever date is relevant, as soon as is reasonably practicable.
- (7) In a case where paragraph (6) applies, an employee may only vary the date which he or she has chosen as the date on which his or her period of leave will begin by substituting a different predetermined date.
- (8) Notice under paragraph (1) or (6) shall be given in writing.
- (9) An employee's entitlement to leave under this Article shall not be affected by the placement for adoption of more than one child as part of the same arrangement or, in the case of an overseas

adoption, by more than one child being adopted as part of the same arrangement.

#### **55L Commencement of adoption leave**

- (1) An employee may choose to begin a period of adoption leave on –
  - (a) the date on which the child is placed with him or her for adoption or, in the case of an overseas adoption, the date on which the child enters Jersey; or
  - (b) a predetermined date, specified in a notice under Article 55K, which is –
    - (i) no more than 14 days before the date on which the child is expected to be placed with the employee, or
    - (ii) in the case of an overseas adoption, no more than 14 days before the child is expected to enter Jersey, and no later than the date the child is so placed or so enters.
- (2) Except in the case referred to in paragraph (3), an employee's adoption leave period begins on the date specified in his or her notice under Article 55K(1)(c), or, where he or she has varied his or her choice of date under Article 55K(6), on the date specified in his or her notice under that provision (or the last such date if he or she has varied his or her choice more than once).
- (3) In a case where –
  - (a) the employee has chosen to begin his or her adoption leave period on the date on which the child is placed with him or her or the date that the child enters Jersey, as the case may be; and
  - (b) he or she is at work on that date,the employee's adoption leave period begins on the day after that date.
- (4) An employer who is given notice under Article 55K(1) or (6) of the date on which an employee has chosen that his or her adoption leave period should begin shall notify the employee, within 28 days of his or her receipt of the notice, of the date on which the adoption leave period to which the employee will be entitled ends.
- (5) The notification provided for in paragraph (4) shall be given to the employee –
  - (a) where the employer is given notice under Article 55K(1)(c), within 28 days of the date on which he or she received that notice; and
  - (b) if, by virtue of Article 55K the employee has notified more than one such date, within 28 days of the last date the employee notifies.
- (6) An employee's adoption leave period must be taken for a continuous period from its commencement.

- (7) Where the employee's employment terminates after the commencement of the adoption leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the termination of the employment.
- (8) An employee may be absent from work at any time during his or her adoption leave period.

#### **55M Arrangements during adoption leave**

Articles 55G, 55H, 55I(1), (2), (3), (4), (6) and (7) and 55J shall apply to an employee who takes adoption leave in the same way as if the employee had taken ordinary maternity leave.

### CHAPTER 5

#### PARENTAL LEAVE UPON BIRTH OR ADOPTION

#### **55N Entitlement to parental leave upon birth or adoption**

- (1) An employee is entitled to a total of 2 weeks' unpaid parental leave for the purpose of caring for a child or supporting the child's mother or adopter if the employee –
  - (a) satisfies the conditions specified in paragraph (2); and
  - (b) has complied with the notice requirements in Article 55P and, where applicable, the evidential requirements in that Article.
- (2) The conditions referred to in paragraph (1) are that the employee –
  - (a) is either –
    - (i) the father of the child, or
    - (ii) married to, the civil partner of, or the partner of, the child's mother or adopter, but not the child's father or adopter; and
  - (b) has, or expects to have responsibility for the upbringing of the child, or the main responsibility (apart from any responsibility of the mother or adopter) for the upbringing of the child.
- (3) An employee shall be treated as having satisfied the condition in paragraph (2)(a)(ii) if the employee would have satisfied it but for the fact that the child's mother or adopter has died.
- (4) An employee shall be treated as having satisfied the condition in paragraph (2)(b) if the employee would have satisfied it but for the fact that the child was stillborn after 24 weeks of pregnancy or has died.

- (5) An employee's entitlement to parental leave under this Article shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.
- (6) An employee's entitlement to parental leave under this Article shall not be affected by the placement for adoption of more than one child as part of the same arrangement or, in the case of an overseas adoption, by more than one child being adopted by the same arrangement.

#### **55O Options in respect of parental leave upon birth or adoption**

- (1) In the absence of any relevant agreement between the employer and employee, an employee may choose to take the 2 weeks' unpaid parental leave to which he or she is entitled under Article 55N either as 2 separate weeks leave or 2 consecutive weeks' leave in respect of a child.
- (2) The parental leave may only be taken during the period which begins with the day on which the child is born or placed for adoption, or in the case of an overseas adoption, the date on which the child enters Jersey, and ends –
  - (a) except in the case referred to in sub-paragraph (b), 8 weeks after that day; or
  - (b) in a case where the child is born or adopted before the first day of the expected week of its birth or adoption, 8 weeks after that day.
- (3) Subject to paragraph (2), an employee may choose to begin his or her period of parental leave on –
  - (a) the day on which the child is born or adopted;
  - (b) the day falling such number of days after the date on which the child is born or adopted as the employee may specify in a notice under Article 55P; or
  - (c) a predetermined date, specified in a notice under Article 55P, which is later than the first day of the expected week of childbirth or adoption.

#### **55P Notice and evidential requirements for parental leave upon birth or adoption**

- (1) An employee must give his or her employer notice of his or her intention to take parental leave in respect of a child, specifying –
  - (a) the expected week of childbirth or adoption;
  - (b) the period of leave that, in accordance with Article 55O(1), the employee has chosen to take; and
  - (c) the date on which, in accordance with Article 55O(3), the employee has chosen that his or her period or periods of leave should begin.

- (2) The notice provided for in paragraph (1) must be given to the employer –
- (a) in the case where the employee is taking parental leave following the birth of a child, no later than the end of the 15th week before the expected week of childbirth;
  - (b) in the case where the employee is taking parental leave following the adoption of a child, no more than 7 days after the date on which the adopter receives official notification of the adopter having been matched with the child for the purposes of adoption or, in the case of an overseas adoption, no more than 7 days after the employee receives notice of the date that the child is expected to enter Jersey; or
  - (c) in a case where it was not reasonably practicable for the employee to give the notice in accordance with subparagraph (a) or (b), as the case may be, as soon as is reasonably practicable.
- (3) Where the employer so requests, an employee must –
- (a) give his or her employer a declaration, signed by the employee, to the effect that the purpose of his or her absence from work will be that specified in Article 55N(1) and that he or she satisfies the conditions of entitlement in Article 55N(2)(a) and (b);
  - (b) give his or her employer evidence of the information notified to his or her employer under paragraph (1)(a).
- (4) An employee who has given notice under paragraph (1) may vary the date he or she has chosen as the date on which his or her period of parental leave will begin, subject to paragraph (5) and provided that the employee gives his or her employer notice of the change –
- (a) where the change is to provide for the employee's period of leave to begin on the date on which the child is born or adopted, at least 28 days before the first day of the expected week of childbirth or adoption;
  - (b) where the change is to provide for the employee's period of leave to begin on a date that is a specified number of days (or a different specified number of days) after the date on which the child is born or adopted, at least 28 days before the date falling that specified number of days after the first day of the expected week of childbirth or adoption;
  - (c) where the change is to provide for the employee's period of leave to begin on a predetermined date (or a different predetermined date), at least 28 days before that date,
- or, if it is not reasonably practicable to give the notice at least 28 days before whichever day or date is relevant, as soon as is reasonably practicable.
- (5) In a case where –
- (a) the employee has chosen to begin his or her period of parental leave on a predetermined date; and

- (b) the child is not born or adopted on or before that date, the employee must vary his or her choice of date, by substituting a later predetermined date exercising an option under paragraph (4), and give his or her employer notice of the change as soon as is reasonably practicable.
- (6) An employee must give his or her employer a further notice, as soon as is reasonably practicable after childbirth or adoption, of the date on which the child was born or adopted.
- (7) Notice under paragraph (1), (4), (5) or (6) shall be given in writing.

### **55Q Commencement of parental leave for birth or adoption**

- (1) Except in the case referred to in paragraph (2), an employee's period of parental leave under Article 55O begins on the date specified in his or her notice under Article 55P(1), or, where the employee has varied his or her choice of date under Article 55P(4) or (5), on the date specified in his or her notice under that provision (or the last such notice if he or she has varied his or her choice more than once).
- (2) In a case where –
- (a) the employee has chosen to begin his or her period of parental leave on the date on which the child is born or adopted; and
- (b) he or she is at work on that date,
- the employee's period of parental leave begins on the day after that date.
- (3) Where the employee's employment terminates after the commencement of the parental leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the termination of the employment.
- (4) An employee may be absent from work at any time during his or her parental leave period.

## CHAPTER 6

### CONTRACTUAL RIGHTS AND ACCESS TO TRIBUNAL

### **55R Contractual rights to ante-natal care, maternity leave, adoption leave or parental leave**

- (1) This Article applies where an employee –
- (a) is entitled to time off under this Part for the purpose of being given ante-natal care, or to maternity leave, adoption leave or parental leave; and

(b) has a right which corresponds to that entitlement and which arises under the employee's contract of employment or otherwise.

(2) In a case where this Article applies –

(a) the employee may not exercise both the entitlement under this Part and the corresponding right under the employee's contract of employment but may, in taking the leave for which the right and entitlement provide, take advantage of whichever provision is, in any particular respect, the more favourable; and

(b) the provisions relating to the entitlements under this Part apply, subject to any modifications necessary to give effect to any more favourable contractual terms or any more favourable rights to be exercised by the employee as a result of the advantage taken under sub-paragraph (a).

### **55S Complaints to Tribunal for breach of requirement under Part 5A**

(1) An employee may present a complaint to the Tribunal that his or her employer has contravened any requirement under Part 5A.

(2) No complaint under this Article may be made in respect of a matter which has been settled by agreement or withdrawn.

(3) The Tribunal shall not consider a complaint under this Article unless it is presented –

(a) before the end of the period of 8 weeks beginning with the relevant date; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.

(4) In paragraph (3)(a), the reference to the relevant date is –

(a) in the case of an alleged contravention of Article 55B(1), the date of the ante-natal appointment;

(b) in the case of an alleged contravention of Article 55C(1) or 55D(2) or (3), the date that is 28 days after the date that the employee would normally expect to receive her remuneration for the period during which she was absent;

(c) in the case of an alleged contravention of Article 55D(1), the date that is the day after the end of the employee's compulsory maternity leave period;

(d) in the case of an alleged contravention of Article 55E(1), (2) or (3), 55F(1), (4) or (6), 55G, 55I or 55J, the date that is the day after the end of the employee's ordinary maternity leave period; or

(e) in the case of an alleged contravention of Article 55G, 55I, 55J or 55K(1), (2), (3), (4), (5) or (6), where an employee is complaining of a contravention of those rights connected



- with his or her adoption of a child, the date that is the day after the end of the employee's adoption leave period;
- (f) in the case of an alleged contravention of Article 55N(1), 55O, 55P or 55Q, the date that is the day after the period of 8 weeks immediately following the birth of the child or the date of adoption, as the case may be.
- (5) The right to present a complaint under this Article is without prejudice to any other right conferred on an employee under this Law.
- (6) The States may amend this Article by Regulations.

#### **55T Remedies for breach of Part 5A**

- (1) Where the Tribunal finds a complaint under Article 55S well-founded it shall make a declaration to that effect and may –
- (a) order the employer to pay the whole or any part of any amount to which the employee is entitled under Article 55C or 55D(2) or (3); and
- (b) order the employer to pay compensation to the employee in respect of each contravention, of an amount not exceeding 4 weeks' pay.
- (2) The States may amend paragraph (1) by Regulations.”.

#### **7 Article 56 amended**

In Article 56 of the principal Law –

- (a) in paragraph (1)(e), after the words “5 years or” there shall be inserted the word “more”;
- (b) for paragraph (2) there shall be substituted the following paragraph –
- “(2) The notice required to be given by an employee who has been continuously employed for one week or more shall be not less than –
- (a) 1 week's notice if his or her period of continuous employment is more than 1 week but less than 26 weeks;
- (b) 2 weeks' notice if his or her period of continuous employment is 26 weeks or more but less than 5 years; or
- (c) 4 weeks' notice if his or her period of continuous employment is 5 years or more.”.

#### **8 Article 60C amended**

For Article 60C(3) and (4) of the principal Law there shall be substituted the following paragraphs –

- “(3) For the purposes of paragraph (1), the amount of one week's pay shall be calculated in accordance with Schedule 1 but shall not

exceed the most recent figure for the mean average weekly earnings published by the Statistics Unit of the States of Jersey at least one month before the effective date of termination (disregarding any more recent figure published less than a month before the effective date of termination).

- (4) The Minister may, by Order, amend paragraph (3) to specify the amount or a different formula for calculating one week's pay."

## 9 Article 60CA amended

In Article 60CA(2) of the principal Law –

- (a) in sub-paragraph (a) the word "or" shall be deleted;
- (b) in sub-paragraph (b) for the words "that part." there shall be substituted the words –
- "that part; or
- (c) the employee was entitled to receive the redundancy pay component of insolvency benefit under Article 26C of the Social Security (Jersey) Law 1974<sup>9</sup> relating to his or her employment (whether or not the employee received any redundancy pay to which he or she was entitled)."

## 10 Article 67 substituted

For Article 67 of the principal Law there shall be substituted the following Article –

### "67 Dismissal for family or other reasons

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason is connected with –
- (a) the pregnancy of the employee;
- (b) the fact that the employee has given birth to or adopted a child;
- (c) the fact that an employee changed or sought to change his or her hours, times or place of work under Part 3A;
- (d) the fact that the employee took, or sought to take, time off under Chapter 2, 3, 4 or 5 of Part 5A;
- (e) the fact that the employee has not carried out work for her employer during her maternity leave period or during his or her adoption leave period, or made contact with his or her employer during that period; or
- (f) the fact that the employee sought to take or avail himself or herself of any of the benefits of maternity leave, adoption leave or parental leave or the terms of his or her employment preserved under Part 5A.
- (2) An employee who is dismissed shall also be regarded for the purposes of this Part as unfairly dismissed if –

- 
- (a) the reason (or, if more than one, the principal reason) is that the employee was redundant;
  - (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the employee and who have not been dismissed by the employer; and
  - (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason connected with any of the reasons referred to in paragraph (1)(a), (b), (c), (d), (e) or (f).
- (3) Paragraph (2) does not apply in relation to an employee if –
- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit the employee to return to a job which is both suitable for the employee and appropriate for him or her to do in the circumstances;
  - (b) an associated employer offers the employee a job of that kind; and
  - (c) the employee accepts or unreasonably refuses that offer.
- (4) Where, on a complaint of unfair dismissal, any question arises as to whether the operation of paragraph (2) is excluded by the provisions of paragraph (3), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.
- (5) The States may by Regulations amend the reasons, or circumstances, in which an employee shall be regarded for the purposes of this Part as unfairly dismissed.”.

#### **11 Article 77B amended**

In Article 77B(4)(b) for the word “complaint” there shall be substituted the word “complainant”.

#### **12 Article 104 amended**

After Article 104(3) there shall be inserted the following paragraphs –

- “(3A) The States may by Regulations amend Part 3A.
- (3B) The States may by Regulations amend Articles 6, 57(2) or 73(4).”.

#### **13 Schedule 1 amended**

- (1) In the sub-heading to Schedule 1 to the principal Law, for the words “Article 13” there shall be substituted the words “Articles 13, 55C, 55D, 60C, 60I, 60K, 60L, 60P and 60R”.
- (2) In Schedule 1 to the principal Law –

- (a) for paragraph 5 there shall be substituted the following paragraph –

**“5 The calculation date**

For the purposes of this Schedule –

- (a) in the case of payment in respect of periods of leave to which an employee is entitled under Article 11, the calculation date shall be the first day of the period of leave in question;
- (b) in the case of an employee making an application for flexible working arrangements under Article 15A, the calculation date shall be the day on which the application was made;
- (c) in the case of an employee taking time off under Article 55C, the calculation date shall be the day of the appointment;
- (d) in the case of an employee who is required to take time off under Article 55D, the calculation date shall be the day before the commencement of that employee’s compulsory leave period;
- (e) in all other cases under Part 5A, the calculation date shall be the day before the first day of the period of leave in question;
- (f) in the case of a redundancy payment under Article 60C, the calculation date shall be the effective date of termination; and
- (g) in the case of a claim for a breach of Article 60O or 78A, the calculation date shall be the date of the complaint to the Tribunal.”;

- (b) after paragraph (8) there shall be added the following paragraph –

**“9 Time off for ante-natal care or compulsory maternity leave**

- (1) This paragraph applies in the case of an employee who is –
  - (a) entitled to take time off under Article 55B; or
  - (b) required to take compulsory maternity leave under Article 55D.
- (2) This Schedule applies to an employee in respect of whom paragraph (1) applies with the following modifications –
  - (a) for the period of 52 weeks mentioned in paragraphs 1, 2, 3 and 4 there shall be substituted the period of 12 weeks;
  - (b) paragraphs 3(2), 4(3) and 8 shall be deleted.”.

**14 Citation and commencement**

This Law may be cited as the Employment (Amendment No. 8) (Jersey) Law 2014 and shall come into force on such day or days as the States may by Act appoint.

**L.-M. HART**

*Deputy Greffier of the States*



- 
- 1 *chapter 05.255*
  - 2 *chapter 26.900*
  - 3 *chapter 26.550*
  - 4 *chapter 12.050*
  - 5 *chapter 12.200*
  - 6 *chapter 20.600*
  - 7 *chapter 20.300*
  - 8 *chapter 26.900*
  - 9 *chapter 26.900*