



Jersey

EMPLOYMENT (AMENDMENT No. 11) (JERSEY) LAW 2020

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A LAW to amend further the Employment (Jersey) Law 2003, and to make consequential amendments to the Discrimination (Jersey) Law 2013

<i>Adopted by the States</i>	<i>24th October 2019</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>12th February 2020</i>
<i>Registered by the Royal Court</i>	<i>21st February 2020</i>
<i>Coming into force</i>	<i>in accordance with Article 9</i>

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

1 Interpretation

In this Law, a reference to a Part or to an Article by number, and without any contrary indication, is to the Part or Article of the same number in the Employment (Jersey) Law 2003¹.

2 Article 1 (interpretation and application) amended

In Article 1(1) after the definition “affected employee” there is inserted –
| “breastfeeding” includes the act of expressing breast milk;”.

3 New Part 3B inserted

After Part 3A (flexible working) there is inserted –

“PART 3B**RIGHTS IN RESPECT OF PREGNANCY AND BREASTFEEDING****15G Entitlement to leave during pregnancy or breastfeeding**

- (1) This Article applies in respect of an employee who notifies her employer in writing that she is pregnant, has given birth within the previous 6 months, or is breastfeeding.
- (2) An employee in respect of whom this Article applies is entitled, subject to paragraph (8), to leave for any period during which it is not reasonably practicable –
 - (a) for the employee to continue to fulfil any usual requirement of her employment, according to an assessment of significant risks undertaken in accordance with Article 3 of the Health and Safety at Work (Jersey) Law 1989²; and
 - (b) for the employer to allocate the employee to other duties, alter her duties, or make appropriate changes to the working environment to enable her to continue working.
- (3) Entitlement to leave under this Article is in addition to, and does not derogate from, any other entitlement of the employee to rest periods or to leave under this Part or Parts 3 and 3A.
- (4) Subject to paragraph (9), an employee is entitled to be paid for any period of leave to which she is entitled under this Article, at the rate of a week’s pay determined in accordance with Schedule 1 and reduced pro rata.
- (5) The right to payment of remuneration under paragraph (4) does not affect a right of the employee to remuneration under her contract of employment.
- (6) Any remuneration paid to an employee under her contract of employment in respect of a period of leave under this Article goes towards discharging any liability of the employer, under paragraph (4), to pay remuneration in respect of that period, and conversely, any payment of remuneration under paragraph (4) in respect of that period goes towards discharging any liability of the employer to pay remuneration under the employee’s contract of employment in respect of that period.
- (7) Where during any period an employee is entitled to leave both under this Article and under a separate provision (including a provision of a relevant agreement) or another enactment, the employee may not exercise those rights separately but may, in taking leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.
- (8) An employer is not obliged to grant leave under this Article –
 - (a) where the employee has notified the employer that she is pregnant and the employee has failed, within a reasonable time of being requested in writing to do so, to provide a certificate of her pregnancy, from –
 - (i) a registered medical practitioner,

- (ii) a registered midwife, or
 - (iii) a registered nurse;
 - (b) where the employer knows that the employee is not, or is no longer, a new or expectant mother;
 - (c) where the employer cannot establish that the employee remains a new or expectant mother.
- (9) An employer is not obliged to make payment for any period of leave under this Article where –
- (a) the employer has offered the employee suitable alternative employment at the same rate of pay as her existing employment; and
 - (b) the employee has unreasonably refused that alternative employment.
- (10) Where the employee's employment terminates –
- (a) after the commencement of a period of leave under this Article; but
 - (b) before the time when (apart from this paragraph) that period would end,
- the period of leave ends on the date of the termination.

15H Entitlement to request temporary variation of terms and conditions of employment for the purposes of breastfeeding

- (1) An employee who is breastfeeding is entitled to apply to her employer for a variation of her terms and conditions of employment, if the variation relates to –
- (a) the hours during which 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 is solely for the purpose of enabling her to breastfeed.
- (2) An application under this Article must –
- (a) state the purpose for which the variation is sought; and
 - (b) specify the variation applied for and the period for which it is proposed to be effective.
- (3) Where an employee has any right, arising under her contract of employment or otherwise, which corresponds to the entitlement conferred by paragraph (1) to make an application for a variation in her terms and conditions of employment –
- (a) the employee may not exercise both the entitlement conferred by paragraph (1) and the corresponding right, but may, in requesting a variation, rely on whichever of the entitlement, or the right, is the more favourable; and
 - (b) if she relies, under sub-paragraph (a), on the corresponding right as more favourable, the provisions of Article 15I relating to an application under this Article apply, subject to such

modifications as may be necessary, in relation to that right as though the exercise of it were such an application.

- (4) Entitlement to request a variation of terms and conditions of employment under this Article is in addition to, and does not derogate from, an employee's right to request a change in those terms and conditions under Article 15A.

15I Employer's duties in relation to variation under Article 15H

- (1) Subject to paragraph (2), an employer to whom an application under Article 15H is made –
 - (a) must hold a meeting, at a time convenient to the employer and employee, to discuss the application within the period of 7 days beginning with the day on which the application is made;
 - (b) may agree to the variation as requested by the application, or vary the employee's terms and conditions in such other reasonable manner as may be agreed between the employer and the employee; and
 - (c) must give the employee notice of his or her decision on the application, within the period of 14 days beginning with the day on which the application is made.
- (2) Paragraph (1) does not apply where the employer –
 - (a) agrees to the variation as requested by the application; and
 - (b) gives notice of his or her decision to the employee, within the period of 7 days beginning with the day on which the application is made.
- (3) Where the employer's decision is to agree to a variation in the terms and conditions of the employee's employment, the notice under paragraph (1)(c) or (2)(b), as the case may be, must specify the agreed variation and the period for which it is to be effective.
- (4) Where the employer's decision is to refuse the application, a notice under paragraph (1)(c) must –
 - (a) specify the grounds for the refusal; and
 - (b) set out the appeal procedure for which provision is made by Article 15J.
- (5) If the period of the variation falls within the period of 52 weeks beginning with the birth of the child, paragraphs (1), (2), (4) and (5) of Article 55C (right to remuneration during time off to receive ante-natal care) apply in relation to an employee taking time off for breastfeeding in the same way as they would apply if the employee were taking time off for the purpose permitted by that Article.

15J Appeal against refusal of variation

- (1) An employee is entitled to appeal to her employer against –
 - (a) her employer's decision to refuse an application under Article 15H; or

- (b) a failure by her employer to reach agreement as to a variation requested by such an application.
- (2) An appeal under this Article is made by giving notice of appeal to the employer –
 - (a) within the period of 7 days beginning with the day on which notice of the decision is given, or the failure occurs; and
 - (b) setting out the grounds of appeal.
 - (3) Subject to paragraph (4), within the period of 7 days beginning with the date on which notice of appeal is given, the employer must 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.
 - (4) Paragraph (3) does not apply where, within the period of 7 days beginning with the date on which notice of appeal is given, the employer –
 - (a) having considered the appeal, grants the application (whether unconditionally or by way of an agreed variation of the employee's terms and conditions); and
 - (b) notifies the employee of the decision on the appeal, specifying any agreed variation and the period for which it is to be effective.
 - (5) Where a meeting is held under paragraph (3), the employer must give the employee notice of his or her decision within the period of 7 days beginning with the date of the meeting.
 - (6) The rights conferred by Article 78A and 78B (rights to be represented, and to complain to the Tribunal) apply in respect of any meeting under paragraph (3) as they do in respect of disciplinary and grievance hearings.

15K Employer's duty to provide facilities for breastfeeding

- (1) Paragraph (2) applies to an employer of an employee who –
 - (a) continues to breastfeed, following her return to work; and
 - (b) gives notice to her employer that she requires facilities to be provided in the workplace for that purpose.
- (2) The employer must take all reasonable steps to provide facilities for breastfeeding in the employee's workplace, and in determining what steps are reasonable in the circumstances, the matters to be considered include (but are not limited to) –
 - (a) the extent to which any steps are, or would be if taken, effective to provide suitable facilities;
 - (b) the extent to which any steps are, or would be if taken, practical;
 - (c) the cost of any steps which could be taken;
 - (d) the extent of the financial, administrative and other resources available to the employer, including any provided by a third party, for the purpose of taking such steps;

- (e) the characteristics of the employer such as the nature and size of the employer's business.

15L Applications, notices and appeals under Part 3B

- (1) Unless the contrary is proved, an application under Article 15H or an appeal under Article 15J is taken as having been made on the day the application, or (as the case may be) the notice of appeal, 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) A notice or agreement under this Part must be in writing.

15M Complaints to Tribunal for breach of requirement under Part 3B

- (1) An employee may present a complaint to the Tribunal that her employer has contravened a requirement under this Part.
- (2) No complaint under this Article may be made –
 - (a) in respect of an application which has been disposed of by agreement or withdrawn; or
 - (b) unless or until the employer –
 - (i) notifies the employee of a decision under Article 15J(4)(b) to reject the application on appeal, or
 - (ii) contravenes any of the requirements of Articles 15G, 15I, 15J, 15K or 15L.
- (3) The Tribunal must 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.
- (4) In paragraph (3)(a), reference to the “relevant date” is –
 - (a) in the case of a failure to pay remuneration in respect of leave in accordance with Article 15G(4), or in respect of time off for breastfeeding in accordance with Article 15I(5), the date which is 28 days after the date on which the employee would normally expect to receive remuneration for the period of leave in question;
 - (b) in the case of a refusal to grant leave, or to make appropriate changes to the employee's work or working environment, under and in accordance with Article 15G, the date of the refusal;
 - (c) in the case of a failure to give notice of a decision, under or in accordance with Article 15I(1)(c) or 15J(5), the date by which such notice should have been given;

- (d) in the case of a failure to provide facilities for breastfeeding in accordance with Article 15K, the date on which notice was given under paragraph (1)(b) of that Article;
- (e) in any other case, the date of the contravention complained of.

15N Remedies for breach of Part 3B

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

- (a) make an order requiring the employer to reconsider an application under Article 15H, or a notice under Article 15K;
- (b) order the employer to pay remuneration due to the employee under Article 15G(4) or 15I(5); and
- (c) order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay at the appropriate weekly rate, calculated in accordance with Schedule 1.”.

4 Part 5A amended

- (1) In the heading to Part 5A, “MATERNITY, ADOPTION AND” is deleted.
- (2) The sub-headings “CHAPTER 1” and “INTERPRETATION” are deleted.
- (3) In Article 55A (interpretation), in paragraph (1) –
 - (a) in the definition “adopter” for “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” there is substituted “and in a case where 2 people have been matched jointly, includes each of those people”;
 - (b) after the definition “adopter” there is inserted –

“ “adoption date” means the date on which a child is placed with an adopter or, in the case of overseas adoption, the date on which a child who is to be adopted by a person in Jersey enters Jersey;”;
 - (c) for the definition “childbirth” there is substituted –

“ “childbirth” includes, except where the context otherwise requires –

 - (a) the birth of a living child at the full term of pregnancy; and
 - (b) the birth of a child, whether living or dead, at any time after 24 weeks of pregnancy,

and for the purposes of this Part it is irrelevant whether the child is or is to be placed with a surrogate parent or not;”;
 - (d) the definition “compulsory maternity leave period” is deleted, and after the definition “childbirth” there is inserted –

“ “entitlement period” has the meaning given by Article 55D(6);

“expected week of adoption” means the week, beginning with midnight between Saturday and Sunday, during which it is expected that the adoption date will occur;”;

- (e) the definitions “ordinary maternity leave” and “ordinary maternity leave period” are deleted;
 - (f) after the definition “overseas adoption” there is inserted –
“ “paid parental leave period” has the meaning given by Article 55E; “parental leave” means the leave to which a person is entitled under Article 55D;”;
 - (g) after the definition “registered nurse” there is inserted –
“ “surrogate parent” means a person on whose application, under section 54 or 54A of the Human Fertilisation and Embryology Act 2008 of the United Kingdom, an order of court has been made providing for a child to be treated in law as a child of that person, or a person who is a potential applicant for such an order (and for the purposes of this definition a person is a potential applicant if, at the time an application is made by the person under either section 54 or section 54A of that Act, the requirements in subsections (1)(a) and (b) of the relevant section are met, and the requirements in subsection (1)(c) of the relevant section can reasonably be expected to be met, in relation to that person);”;
 - (h) the definition “week of childbirth” is deleted.
- (4) After Article 55A the sub-headings “CHAPTER 2” and “ANTE-NATAL CARE” are deleted.
- (5) In Article 55B –
- (a) for the heading there is substituted –

“Right to time off for ante-natal or pre-adoption appointments”;

- (b) for paragraph (1) there is substituted –
“(1) An employee in relation to whom this Article applies as provided by paragraph (1A)(a), (1B)(a) or (1C)(a) is entitled to be permitted by his or her employer to take time off during the employee’s normal working hours, for the purpose stated in whichever of paragraphs (1A)(b), (1B)(b) or (1C)(b) is applicable in the employee’s case.”;
- (c) in each of paragraphs (1A) and (1B) for “This Article applies –” there is substituted “This Article applies, subject to paragraph (2) –”;
- (d) after paragraph (1B) there is inserted –
“(1C) This Article applies, subject to paragraphs (2) and (2A) –
 - (a) in relation to an employee who has been notified by an approved adoption society that –
 - (i) a child is to be, or is expected to be, placed for adoption with the employee, and
 - (ii) the society has arranged an appointment in Jersey to enable the employee to have contact with the child or for another purpose connected with the adoption;
 - (b) for the purpose of enabling the employee to keep that appointment.”;

- (e) in paragraph (2)(a) for “(1A)” there is substituted “(1A)(a)”;
- (f) in paragraph (2)(b) for “(1B)” there is substituted “(1B)(a)”;
- (g) at the end of paragraph (2)(b) for the full stop there is substituted a semi-colon and there is inserted –
 - “(c) in the case of an employee to whom this Article applies by virtue of paragraph (1C)(a), a document showing –
 - (i) the date and time of the appointment, and
 - (ii) that the appointment has been arranged by or at the request of the same adoption society which gave the notification described in paragraph (1C)(a).”;
- (h) after paragraph (2) there is inserted –
 - “(2A) An employee to whom this Article applies by virtue of paragraph (1C) is not entitled to take time off on or after the date of the child’s placement for adoption with the employee.”;
- (i) in paragraph (4)(c) –
 - (i) at the end of clause (i) the word “or” is deleted, and
 - (ii) at the end of clause (ii) for the full stop there is substituted a semi-colon and there is inserted –
 - “(iii) a potential applicant for a parental order, under section 54 or 54A of the Human Fertilisation and Embryology Act 2008 of the United Kingdom, in respect of the expected child.”;
- (j) after paragraph (4) there is inserted –
 - “(5) In a case where this Article applies by virtue of paragraph (1C)(a) and more than one child is to be, or is expected to be, placed for adoption with an employee as part of the same arrangement, this Article has effect as if –
 - (a) the purpose specified in paragraph (1C)(b) were the purpose of having contact with any one or more of the children and any other purpose connected with any adoption which is part of the same arrangement; and
 - (b) the reference in paragraph (2A) to the date of the child’s placement for adoption were a reference to the date of placement of the first child to be so placed as part of the arrangement.
- (6) In a case where 2 people have been matched jointly with a child for adoption, this Article may apply by virtue of paragraph (1C)(a) to each of those people.”.
- (6) In Article 55C (right to remuneration during time off) –
 - (a) in paragraph (1) for “(1A)” there is substituted “(1A)(a)”;
 - (b) in paragraph (1A) for “(1B)” there is substituted “(1B)(a) or (1C)(a)”;
 - (c) in paragraph (2) for “Schedule 1,” there is substituted “Schedule 1 as applied by paragraph 9 of that Schedule, and”;
 - (d) paragraph (3) is deleted.

- (7) After Article 55C the sub-headings “CHAPTER 3” and “MATERNITY LEAVE” are deleted, and for Chapters 3 to 5 there is substituted –

“55D Entitlement to parental leave

- (1) An employee to whom paragraph (2) applies is entitled to parental leave amounting to a maximum of 52 weeks in total.
- (2) This paragraph applies to any employee who –
 - (a) is the mother of a child and, subject to paragraph (4), fulfils the requirements in Article 55F;
 - (b) is a person who –
 - (i) has a qualifying relationship with the mother or adopter of a child,
 - (ii) fulfils the requirements in Article 55F, and
 - (iii) has, or expects to have, responsibility for the upbringing of the child, or the main responsibility (apart from any responsibility of the mother) for the upbringing of the child; or
 - (c) is the adopter of a child, and fulfils the requirements in Article 55G.
- (3) The total amount of parental leave –
 - (a) includes; and
 - (b) except in the case for which Article 55E(2) provides, must begin with,
a period of 6 weeks of paid parental leave under Article 55E.
- (4) In the case for which Article 55E(2) provides, and for the purposes only of the entitlement to 6 weeks of paid parental leave under that provision, no regard is to be had as to whether or not the employee has fulfilled the requirements of Article 55F.
- (5) Any period of unpaid parental leave –
 - (a) is additional to the entitlement to paid parental leave under paragraph (3); and
 - (b) must be taken in accordance with this Part at any time during, but not after the end of, the entitlement period.
- (6) The “entitlement period” means the period which –
 - (a) begins no earlier than the beginning of the 11th week before the week in which childbirth, or placement for adoption, is expected to occur; and
 - (b) ends on –
 - (i) the date which is 2 years from the date of childbirth or placement for adoption, or
 - (ii) the date on which the employment terminates,
whichever is the sooner.
- (7) For the purposes of this Article, a person has a “qualifying relationship” with a child or its mother if the person is –

- (a) married to, or the civil partner or partner of –
 - (i) the child’s mother, or
 - (ii) where one person only is matched with the child, the child’s adopter;
 - (b) the father of the child; or
 - (c) a surrogate parent of the child.
- (8) For the purposes of this Article, an employee is treated –
- (a) as having responsibility or the main responsibility for the upbringing of a child, if the employee would have had such a responsibility but for the fact that the child was stillborn after 24 weeks of pregnancy, or has died;
 - (b) as married to, or the civil partner or partner of, a child’s mother or adopter, even if the child’s mother or adopter has died.
- (9) An employee’s entitlement to parental leave under this Article is not affected –
- (a) by the birth of more than one child as a result of the same pregnancy; or
 - (b) in the case of –
 - (i) an adoption, by the placement for adoption of more than one child, or
 - (ii) an overseas adoption, by more than one child being adopted,as part of the same arrangement.

55E Paid parental leave

- (1) An employer must not require an employee to work during any period which the employee is entitled to take, and does take, as paid parental leave (a “paid parental leave period”).
- (2) In the case of an employee who is pregnant or has given birth, the paid parental leave period must begin with the day on which childbirth occurs.
- (3) An employee who would normally have been required, under his or her contract of employment, to work during a paid parental leave period –
 - (a) is entitled to be paid remuneration by his or her employer not exceeding, in total, 6 weeks’ pay at the appropriate weekly rate;
 - (b) is entitled, during that period, to the benefit of all terms and conditions of employment which would have applied had he or she been at work during that period; and
 - (c) is bound, during that period, by any obligations arising under those terms and conditions, except as provided by paragraph (1) and (2).

- (4) For the purposes of paragraph (3)(a) the appropriate weekly rate is the amount of one week's pay, calculated in accordance with Schedule 1.
- (5) Any remuneration paid to an employee under a contract of employment in respect of a paid parental leave period goes towards discharging any liability of the employer, under paragraph (3), to pay remuneration in respect of that period, and conversely, any payment of remuneration under paragraph (3) 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.
- (6) Any remuneration to be paid by an employer to an employee under paragraph (3) is to be reduced by any amount received by the employee by way of short term incapacity allowance under Article 15 of the Social Security (Jersey) Law 1974³, or by way of maternity allowance under Article 22 of that Law, in respect of the paid parental leave period.

55F Notification of intention to take parental leave in relation to childbirth

- (1) The requirements mentioned in Article 55D(2)(a) and (b)(ii) are that –
 - (a) no later than the end of the 15th week before the expected week of childbirth, or if it is not reasonably practicable to do so by that time, as soon afterwards as is reasonably practicable, the employee notifies the employer in writing of –
 - (i) the pregnancy,
 - (ii) the expected week of childbirth,
 - (iii) the date on which, subject to paragraphs (2) and (4), the employee intends each parental leave period to start, and
 - (iv) the duration of each period of leave which, in accordance with Article 55H, the employee intends to take;and
 - (b) if requested by the employer to do so, the employee provides 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 has notified a date (the “original date”) under paragraph (1)(a)(iii) may vary the original date if the employee notifies the employer in writing of a new date, by whichever is the earlier of –

- (a) 42 days before the original date; or
 - (b) 42 days before the new date,
- or, if neither is reasonably practicable, as soon as reasonably practicable.
- (3) Notification under paragraph (1)(a)(iii) or (2) must not specify a date earlier than the beginning of the 11th week before the expected week of childbirth.
 - (4) Where notification of a new date is given under paragraph (2), the employer must take all reasonable steps to accommodate an employee's intended second and third parental leave periods, and in determining what steps are reasonable, the matters to be considered include –
 - (a) the extent of the financial, administrative and other resources available to the employer, including any resources provided by a third party, for the purpose of taking such steps;
 - (b) the characteristics of the employer such as the nature and size of the employer's business;
 - (c) the implications in relation to other employees of the employer; and
 - (d) the requirement under Article 55D(5)(b) that the intended second and third parental leave periods must take place within the entitlement period.

55G Notification of intention to take parental leave in relation to adoption

- (1) The requirements mentioned in Article 55D(2)(c) are that the employee –
 - (a) has notified the approved adoption society of his or her consent to the placement of a child or, in the case of overseas adoption, has received official notification of that adoption;
 - (b) notifies the employer in writing of –
 - (i) the intended adoption,
 - (ii) the expected week of adoption,
 - (iii) the date on which, subject to paragraphs (2) and (5), the employee intends each parental leave period to start, and
 - (iv) the duration of each period of leave which, in accordance with Article 55H, the employee intends to take;and
 - (c) if requested by the employer to do so, provides evidence in writing of the expected week of adoption notified to the employer under paragraph (1)(b)(ii).
- (2) An employee who has notified a date (the "original date") under paragraph (1)(b)(iii) may vary the original date if the employee

notifies the employer in writing of a new date, by whichever is the earlier of –

- (a) 42 days before the original date; or
- (b) 42 days before the new date,

or, if neither is reasonably practicable, as soon as reasonably practicable.

(3) Notification under paragraph (1)(b) must be given to the employer –

- (a) no later 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 overseas adoption, after the employee receives notice of the date on which the child is expected to enter Jersey; or
- (b) in a case where it is not reasonably practicable to comply with sub-paragraph (a), as soon as is reasonably practicable.

(4) Notification under paragraph (1)(b)(iii) or (2) must not specify a date earlier than the beginning of the 11th week before the expected week of adoption.

(5) Where notification of a new date is given under paragraph (2), the employer must take all reasonable steps to accommodate an employee's intended second and third parental leave periods, and in determining what steps are reasonable, the matters to be considered include –

- (a) the extent of the financial, administrative and other resources available to the employer, including any resources provided by a third party, for the purpose of taking such steps;
- (b) the characteristics of the employer such as the nature and size of the employer's business; and
- (c) the requirement under Article 55D(5)(b) that the intended second and third parental leave periods must take place within the entitlement period.

55H Periods of parental leave

(1) In the absence of any relevant agreement to more favourable effect between the employer and the employee, an employee may choose to take the parental leave (including, except in the case for which Article 55E(2) provides, paid parental leave) to which he or she is entitled under this Part –

- (a) in no more than 3 separate periods during the entitlement period; and
- (b) for no less than 2 weeks in the case of each such period.

(2) Subject to paragraph (3), the calculation of a period of parental leave begins on –

- (a) the date notified under Article 55F(1)(a)(iii) or Article 55G(1)(b)(iii), as the case may be; or

(b) where the employee has notified a new date under Article 55F(2) or 55G(2), on that new date (or if a new date has been notified more than once, on the last such date).

(3) In a case where –

(a) an employee has chosen to begin a 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 period of parental leave begins on the day after that date.

(4) Where the employee's employment terminates –

(a) after the commencement of a period of parental leave; but

(b) before the time when (apart from this paragraph) that period would end,

the period of parental leave ends on the date of the termination.

55I Application of terms and conditions during unpaid parental leave

(1) This Article applies in respect of any period of parental leave other than paid parental leave under Article 55E.

(2) An employer must not require an employee to work during any period which the employee is entitled to take, and does take, as parental leave.

(3) An employee who takes parental leave –

(a) is entitled, during the period of that leave, to the benefit of all terms and conditions of employment, except those as to remuneration, which would have applied had he or she been at work during that period; and

(b) is bound during that period by any obligations arising under those terms and conditions except as provided by paragraph (2).

(4) For the purposes of paragraph (3)(a), any wages or salary payable to, or bonus or commission for work done by, the employee which are attributable –

(a) to a period during which the employee is on parental leave, are to be treated as remuneration; and

(b) to a period (other than a parental leave period) before the beginning of any period of the employee's parental leave, are not to be treated as remuneration.

55J Work during period of parental leave

(1) An employee may carry out work for his or her employer without bringing a period of parental leave, or the entitlement period, to an end.

(2) For the purposes of this Article, and subject to paragraph (3) –

(a) any work carried out on any day constitutes a day's work; and

- (b) work means any work done under the employee's contract of employment and may include any training or other activity undertaken for the purposes of his or her employment.
- (3) Reasonable contact from time to time between an employee and his or her employer, for such purposes as discussing the employee's return to work –
 - (a) does not constitute work; and
 - (b) does not bring a period of parental leave, or the entitlement period, to an end.
- (4) This Article does not confer any right, on an employer, to require any work to be carried out during an employee's parental leave.
- (5) Any day's work carried out under this Article does not have the effect of extending the total duration of a period of parental leave or of the entitlement period.

55K Notification of intention to return to work

- (1) An employee who intends to return to work earlier than the end of a particular period of parental leave must give his or her employer not less than 42 days' notice in writing of the intended date of such return.
- (2) The employer must take all reasonable steps to accommodate an employee's intended early return to work, and in determining what steps are reasonable, the matters to be considered include –
 - (a) the extent of the financial, administrative and other resources available to the employer, including any resources provided by a third party, for the purpose of taking such steps;
 - (b) the characteristics of the employer such as the nature and size of the employer's business; and
 - (c) the requirement under Article 55D(5)(b) that the intended second and third parental leave periods must take place within the entitlement period.
- (3) If an employee attempts to return to work earlier than the end of that period without complying with paragraph (1), the employer may, subject to paragraph (4), postpone the employee's return to such a date as will secure that the employer has 42 days' notice of the employee's return to work and, if the employer does so, the employer must notify the employee in writing of that date.
- (4) An employer may not, under paragraph (3), postpone an employee's return to work to a date occurring after the end of the particular period of parental leave in question.
- (5) Where an employee is notified of a postponed date for return to work under paragraph (3), the employer is under no obligation to pay remuneration to the employee until that postponed date (even if the employee returns to work before that date).

55L Right to return to work after parental leave

- (1) An employee returning to work immediately after a period of parental leave is entitled to return to the job in which he or she was employed immediately before that period.
- (2) The right conferred by paragraph (1) is a right to return –
 - (a) with such seniority, pension rights and all other rights in relation to the employee’s job as he or she would have had if he or she had not been absent on such leave; and
 - (b) on terms and conditions no less favourable than those which would have applied if he or she had not been so absent.

55M Offence of making false statements etc.

- (1) If, for purposes connected with the provisions of this Part, a person –
 - (a) makes, or knowingly causes or allows to be made, a statement; or
 - (b) produces or furnishes, or knowingly causes or allows to be produced or furnished, a document, record or information, which the person knows to be false in a material particular, the person is guilty of an offence.
- (2) A person guilty of an offence under this Article is liable to imprisonment for a term of 12 months and to a fine.”.
- (8) Before Article 55R the sub-headings “CHAPTER 6” and “CONTRACTUAL RIGHTS AND ACCESS TO TRIBUNAL” are deleted.
- (9) In Article 55R –
 - (a) for the heading there is substituted –

“Contractual rights to time off for ante-natal and pre-adoption appointments and for parental leave”;

- (b) for paragraph (1)(a) there is substituted –
 - “(a) is entitled to time off under this Part –
 - (i) for the purpose of attending an ante-natal or pre-adoption appointment, or
 - (ii) by way of parental leave; and”.
- (10) In Article 55S (complaints to Tribunal), for paragraph (4)(a) to (g) there is substituted –
 - “(a) in the case of an alleged contravention of Article 55B(1), the date of the ante-natal appointment referred to in either Article 55B(1A) or 55B(1B), or of the appointment referred to in Article 55B(1C), whichever is the provision by virtue of which Article 55B(1) applies in the particular case;
 - (b) in the case of an alleged contravention of Article 55C(1) or (1A) or Article 55E(3)(a), the date which is 28 days after the date on which the employee concerned would expect

- normally to receive remuneration for the period of time off under Article 55C or parental leave under Article 55E;
- (c) in the case of an alleged contravention of rights connected with parental leave conferred by any of Articles 55D, 55E, 55F(2), or 55H to 55L, the date of the day immediately following the day on which the particular period of parental leave in question ends;
 - (d) in any other case, the date of the contravention complained of.”.
- (11) In Article 55T (remedies for breach of Part 5A), in paragraph (1)(a) for “55D(2) or (3)” there is substituted “Article 55E(3)(a)”.

5 Schedule 1 amended

- (1) In this Article, references to a paragraph by number are to the paragraph of the same number in Schedule 1 to the Employment (Jersey) Law 2003⁴.
- (2) In the sub-heading to Schedule 1 for “Articles 13, 55C, 55D,” there is substituted “Articles 13, 15N, 55C, 55E,”.
- (3) In paragraph 5 –
 - (a) for sub-paragraph (b) there is substituted –
 - “(b) in the case of an employee making an application –
 - (i) under Article 15A, for flexible working arrangements, or
 - (ii) under Article 15H, to vary terms and conditions of employment for the purpose of breastfeeding,
 the calculation date shall be the day on which the application was made;
 - “(ba) in the case of an employee taking time off under Article 15G, the calculation date shall be –
 - (i) where the day before the day on which the time off begins falls within a parental leave period, the day before the beginning of that period, or
 - (ii) otherwise, the day before the day on which the time off begins;
 - (bb) in the case of an employee requiring facilities to be provided for the purpose of breastfeeding under Article 15K, the calculation date shall be the day before the day on which the employee gave notice of the requirement to the employer;”;
 - (d) for sub-paragraph (d) there is substituted –
 - “(d) in the case for which Article 55E(2) provides, the calculation date shall be the day before the commencement of the employee’s paid parental leave period;”.
- (4) In paragraph 9 –
 - (a) in the heading for “**or compulsory maternity leave**” there is substituted “**or paid parental leave**”;
 - (b) for sub-paragraph (1)(b) there is substituted –

“(b) entitled to take paid parental leave under Article 55E.”.

6 Minor and consequential amendments to Employment Law

- (1) In Article 31 (the right not to suffer detriment), in paragraph (3)(c) –
 - (a) for “Part 3A, 5A or 5B” there is substituted “Part 3A, 3B, 5A or 5B”;
 - (b) in clause (iii) after “Part 3A” there is inserted “or 3B”;
 - (c) in clause (iv) “Chapter 2, 3, 4 or 5 of” is deleted;
 - (d) in clause (v) for “during her maternity leave period or during his or her adoption leave period” there is substituted “during his or her parental leave period”;
 - (e) in clause (vi) “maternity leave, adoption leave or” is deleted.
- (2) In Article 58 (change of employer) at the end there is inserted –

“(7) Nothing in this Article derogates from Regulation 14 of the Companies (Demerger) (Jersey) Regulations 2018⁵ (which has effect to provide that, among other matters, a period of employment with a demerging company is to be treated as a period of employment with the demerged company, and the demerger is not to be treated as interrupting the continuity of that period).”.
- (3) In Article 67 (dismissal for family or other reasons), in paragraph (1) –
 - (a) in sub-paragraph (c) after “Part 3A” there is inserted “or 3B”;
 - (b) in sub-paragraph (d) “Chapter 2, 3, 4 or 5 of” is deleted;
 - (c) in sub-paragraph (e) for “during her maternity leave period or during his or her adoption leave period” there is substituted “during his or her parental leave period”;
 - (d) in sub-paragraph (f) “maternity leave, adoption leave or” is deleted.
- (4) In Article 71 (replacements), in paragraph (2) for “maternity leave (whether compulsory or ordinary, as defined in Article 55A(1)), adoption leave under Chapter 4 of Part 5A, or parental leave under Chapter 5 of that Part” there is substituted “parental leave under Part 5A”.
- (5) In Article 104 (Regulations and Orders) paragraph (3B) is deleted.

7 Consequential amendments to Discrimination Law

In the Discrimination (Jersey) Law 2013⁶ –

- (a) in Article 6 (what constitutes direct discrimination) –
 - (i) for sub-paragraphs (6)(b) and (c) there is substituted –

“(b) her exercising or seeking to exercise the right to parental leave.”;
 - (ii) for sub-paragraph (7)(a) there is substituted –

“(a) if she has the right to parental leave –

 - (i) at the end of her entitlement period, or
 - (ii) if earlier, when she returns to work after the pregnancy or (as the case may be) the end of her final period of parental leave.”;

- (iii) in sub-paragraph (7)(b) for “2 weeks” there is substituted “18 weeks”;
- (iv) in sub-paragraph (8) for “protected characteristics of pregnancy and maternity,” there is substituted “protected characteristics of pregnancy, maternity and sex,”;
- (v) in sub-paragraph (9), “who has given birth within the previous 26 weeks” is deleted;
- (vi) for paragraph (10) there is substituted –
 - “(10) In this Article “entitlement period” and “parental leave” have the same meanings as are given to those expressions by Part 5A of the Employment (Jersey) Law 2003⁷.”;
- (b) in Schedule 2 –
 - (i) paragraph 22 is deleted;
 - (ii) in paragraph 23, in sub-paragraph (b) for “maternity leave” there is substituted “parental leave”; and
 - (iii) in the heading to paragraph 24 for “maternity pay” there is substituted “paid parental leave”.

8 Transitional provision

The amendments made to the Employment (Jersey) Law 2003⁸ by Articles 4, 5 and 6, in so far as these relate to parental leave, have effect only in relation to employees whose expected week of childbirth or, as the case may be, of adoption begins on or after the first Sunday following the date on which this Law comes into force.

9 Citation and commencement

This Law may be cited as the Employment (Amendment No. 11) (Jersey) Law 2020 and comes into force on such day or days as the States may by Act appoint.

L.-M. HART

Deputy Greffier of the States

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 05.255</i>
<i>2</i>	<i>chapter 05.300</i>
<i>3</i>	<i>chapter 26.900</i>
<i>4</i>	<i>chapter 05.255</i>
<i>5</i>	<i>chapter 13.125.10</i>
<i>6</i>	<i>chapter 15.260</i>
<i>7</i>	<i>chapter 05.255</i>
<i>8</i>	<i>chapter 05.255</i>