

INSPIRATION



# EMPLOYING PEOPLE: THE HR TOOLKIT FOR SMALL BUSINESSES

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## About the Author

HR Now were delighted when we were invited to write the HR Toolkit Handbook for small businesses. We hope it will act as both a toolkit and a helpful resource for your business in Jersey.

People are your most important resource and you need to use effective targeted HR strategic planning to minimise human resource issues and to ensure that your HR processes align with your business vision.

HR Now are the leading provider in interim outsourced HR services in the Channel Islands. We support business leaders and HR managers and work alongside start-ups, small and medium-sized business' and corporations. We offer a suite of services to help your business add strategic value and help create practical tailored HR solutions. We work collaboratively with clients to assess their needs in an efficient and effective manner.

HR Now are a team of client-driven, professionally qualified HR consultants. We provide a complete range of HR advisory services on a project, co-sourced or fully outsourced basis.

## Outsourcing to HR Now means:

- YOU focus on your business and our trusted experts match and meet your HR needs
- YOU gain the freedom to concentrate on doing what you went into business to do
- YOU are one step towards the peace of mind that you are 'keeping it legal'

## Services

- Create practical tailored HR solutions
- Manage conflict through effective mediation
- Manage re-structures and redundancies
- Manage disciplinary, capability, absenteeism and grievance issues
- Create HR toolkits (contracts & handbooks)
- Provide interim cover from administration to Director level
- Update your team on Employment legislation changes through skills training
- Provide ad hoc HR Consultancy to you or your HR team
- Design and support your talent acquisition strategy

For more information see [www.hrnow.je](http://www.hrnow.je)



# INTRODUCTION

This booklet aims to give small business owners an overview of the different things to consider when employing staff in Jersey. Once a business starts to grow it inevitably gets to a point when it needs to take on employees and this can be a daunting prospect. However, if a business is to succeed it needs to get the most out of its employees and having appropriate policies and procedures in place can really help to manage staff effectively.

This guide provides a brief overview of the key legislation affecting employment and takes you through the main elements of HR and people management. Many of the topics included here can be highly complex and a guide such as this can only provide an outline of the key points involved in employing people.

Although comprehensive, this is not a substitute for the depth of knowledge and experience that a professional HR practitioner or lawyer can give you. It should, however, give you useful tips, help you to understand when you need to call in the professionals and suggest where to find additional information. It should also give you the necessary background so that you know what to ask your professional advisor and understand more fully the information and advice that you are given.

Good luck in your growth journey and remember; we are here to provide you with confidential advice and support as you increase your workforce and develop your business. Pop in or give us a call if there is anything we can do to help.

**The Jersey Business Team**





# LEGAL AND STATUTORY OBLIGATIONS

Running a small business and employing people involves compliance with a range of laws. The main ones are listed below and the rest of the toolkit explains key elements of these in more detail.

- Employment (Jersey) Law 2003
- Employment Relations (Jersey) Law 2007
- Rehabilitation of Offenders (Jersey) Law 2001
- Jersey Advisory and Conciliation (Jersey) Law 2003
- Discrimination (Jersey) Law 2013
- Control of Housing and Work (Jersey) Law 2012
- Employment and Discrimination Tribunal (Procedure) 2016
- Health and Safety at Work (Jersey) Law, 1989
- Data Protection (Jersey) Law 2018
- General Data Protection Regulation (GDPR)

Here is an outline of the key pieces of legislation:

## Employment (Jersey) Law 2003

The Employment (Jersey) Law 2003 covers many of your obligations as an employer towards your employees and includes:

- Written statement of employment
- Minimum rest periods and annual leave
- Minimum wage and payment of wages
- Termination of employment and notice periods
- Redundancy
- Fair and unfair dismissal
- Staff handbooks, internal policies and procedures
- Equal opportunities and discrimination
- Trade unions and staff associations
- Employment Tribunal

There have been several amendments to the Law which you need to be aware of and the most common issues to focus on are covered in this booklet.

## Criminal Offences

Jersey has rules to facilitate the rehabilitation of offenders under the Rehabilitation of Offenders (Jersey) Law 2001.

Once a specified period has elapsed after certain convictions they are considered 'spent' and the person is then treated in law as if they had not committed or been convicted of the offence. A spent conviction need not be disclosed when the individual or any other person is asked a question about past convictions and it is an offence for a person, in the course of their official duties, to disclose a spent conviction without the individual's consent.

In addition, a spent conviction or its non-disclosure is not a reasonable ground for turning someone down for employment, dismissing them during employment, or excluding the person from any office or profession, subject to certain exceptions.

There are however exceptions to the law where certain categories of individuals or businesses can apply an exception. For example, people working with children and vulnerable people must not have a criminal record that would put these people at risk.

Further details can be found within the Rehabilitation of Offenders (Jersey) Law 2001 and available online at

[https://www.jacs.org.je/legislation/guide-to-rehabilitation-of-offenders-\(jersey\)-law-2001/](https://www.jacs.org.je/legislation/guide-to-rehabilitation-of-offenders-(jersey)-law-2001/)



## JACS and The Jersey Advisory And Conciliation (Jersey) Law 2003

This law established JACS as an organisation to promote the improvement of employment relations and to assist in the resolution of employment disputes.

JACS have provided a Code of Practice on Disciplinary and Grievance Procedures that is approved under the Employment (Jersey) Law 2003. The Employment Tribunal relies on this code when establishing whether an employer followed a fair procedure.

The Jersey Advisory and Conciliation website is [www.jacs.org.je](http://www.jacs.org.je) and offers further information.

## Data Protection

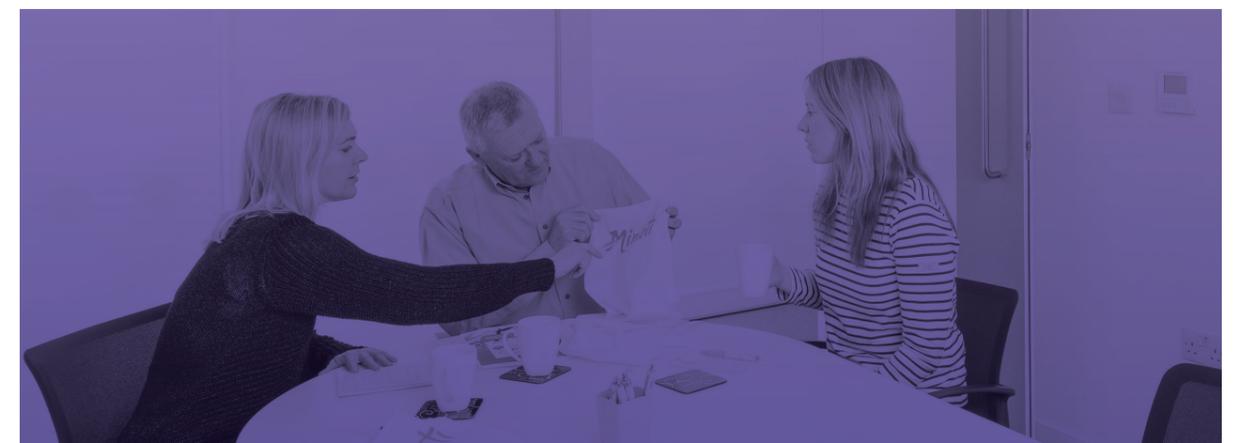
The Data Protection (Jersey) Law 2018 provides a framework for collecting and processing personal information about living people who are referred to as data subjects. The Law gives individuals specific rights in relation to their personal information and places obligations on the organisations responsible for controlling and processing it.

Employers naturally hold personal information about their employees. This information is classed as sensitive personal and/or special category data and includes both facts and opinions about an individual. As a result you must have appropriate processes and policies in place to collect and hold this information securely.

You must notify the Office of the Information Commissioner as soon as you start to hold sensitive data and registration can be completed online at [www.oicjersey.org](http://www.oicjersey.org).

You will be charged an annual fee for registering with the Data Commissioner.

For more information go to: The Office of the Information Commissioner [www.oicjersey.org](http://www.oicjersey.org)





# PRE-EMPLOYMENT

Before starting to recruit employees it is important to get the basic administration in place.

## Applying for a Business Licence

When you start up a business or 'undertaking', you need to obtain a business licence from the Government of Jersey's Population Office. If/when your application is approved, you will receive a business licence that allows you to trade and to employ people. You must not trade until you receive confirmation that your business licence has been granted.

## Staffing

Your business licence will indicate the number and status of people you can employ. You can employ an unlimited number of employees who are 'Entitled' or 'Entitled to Work' and the licence will specify how many 'Registered' or 'Licensed' employees you can employ. You must never exceed this allowance as it is against the law and you may incur penalties, including the licences being revoked. The Population Office will monitor your staffing levels from your submitted Manpower returns.

For further information on licences see: <https://www.gov.je/Working/Contributions/RegistrationCards/Pages/ResidentialStatus.aspx>

## Brexit

If/when the UK leaves the EU, EU residents will lose their automatic right to live in Jersey. An EU national who is resident in Jersey will need to apply for Settled Status in order to remain in Jersey.

For further information on Settled Status see: <https://www.gov.je/Government/Brexit/SettledStatus/Pages/SettlementScheme.aspx>

## Pre-Employment Checks

You should carry out pre-employment checks before taking on employees. You must check they

have a Registration card. This card shows their residential and employment status and will show if they are Entitled, Entitled to Work, Licenced or Registered. Making registration card and ID checks are statutory requirements.

It is advisable you obtain references, copies of certificates, qualifications, driving licences and any other documents relevant to the role. You might also require further industry specific requirements, such as JFSC approval and or police checks.

## Job Descriptions

Job descriptions allow the business to set out the main purpose of the position, key tasks, objectives, responsibilities and reporting lines for the role as well as allowing people to understand the expectations of the business. It is important to be familiar with the job description when interviewing or considering candidates for the role, carrying out appraisals, or managing poor performance.

Job descriptions should be updated periodically to ensure that the current business requirements are reflected. The important point is that your employees know what is expected of them before and during employment and the job description enables this.

## Contracts of Employment

Otherwise known as a Written Statement of Main Terms and Conditions of Employment ("Statement") this is a statutory document that needs to include specific information and must be issued within four weeks of commencement of work.

Be mindful that once an offer of employment has been made and accepted, a contract of employment exists, regardless of whether the offer or acceptance are made in writing or verbally.



## Types of contract

There are various types of contract and it is important to consider which is most appropriate for the role.

- Permanent: when the work is consistent and regular for a certain number of hours, for example, full-time Monday to Friday 9am-5pm, or part-time such as a 25 hour week.
- Fixed term: for a set period, for example, six months to cover maternity leave or three months for a busy business period.
- Variable: where there is a mutual commitment to be offered work and accept work, such as four days on and three days off or term-time only employees, but there is acknowledgement that the hours may vary.
- Zero hours: when there is no mutual requirement to offer work or accept it. It is an "Agreement" or arrangement, not an employment contract.

## Core terms

Some of the particulars that should be included in the Statement are terms and conditions relating to:

- Name and address of the employer and employee
- Date employment started
- Hours of work
- Holiday entitlement
- Pay/salary and frequency
- Sick pay provision
- Termination notice
- Whether a pension is offered
- If there are any collective agreements affecting employment
- And many more.

All employees have employment rights in relation to annual leave, notice periods, disciplinary and grievance processes, maternity and paternity leave amongst others. There is more information about these rights in the next section of this toolkit and more detailed information is available through JACS.

As your employment contract regulates your relationship with your employees it is really important to clearly state what the terms are and make sure these are understood and accepted by both parties. Getting proper HR advice when developing an employment contract will help you get this right from the start.

## Zero hours

A zero hours contract is an agreement between a business and a worker where the business is not obliged to provide work and the worker is not obliged to accept any work offered. Workers on zero

hour arrangements can support your business for example with temporary cover or additional seasonal business needs or a project.

You cannot stop a zero hours worker from working elsewhere. They are also entitled to annual leave but you can explain if this is part of or on top of their salary.

Workers on zero hours arrangements are not considered to be employees and such arrangements do not constitute a contract of employment.

It is important that you monitor your zero hour workers. If a zero hours worker starts to regularly work the same hours, same days etc. they effectively become entitled to be considered an employee and you may have to convert the zero hours arrangement to a contract of employment.

## Employers Liability Insurance

The Employers' Liability (Compulsory Insurance) (Jersey) Law 1973 requires an employer to have Employers' Liability Insurance with an authorised Insurance provider as soon as anyone is employed in the business. The Certificate of Insurance must be displayed in the office. The insurance provider will advise you in terms of minimum cover limits to cover any claims arising.

Any independent contractors or suppliers that you engage to provide services are not included under this cover as they are not employed by you. However, it is wise to obtain a copy of their own insurance for your reference.

You should also consider Directors and Officers Insurance to protect your business in the event that claims are made against you as a Director and Professional Indemnity Insurance if you provide professional advice.



# DURING EMPLOYMENT

The employment policies and benefits that you offer can make a difference to whether people want to work for your company or not.

## Benefits

Do consider providing benefits to your staff as these can be used to differentiate you from other employers. Benefits can be monetary or non-monetary so consider what fits with your type of business and company culture. As your business grows, evaluate any benefits you offer to ensure you remain competitive in the market.

There are certain benefits in kind you may provide to employees that are tax deductible and for details of allowances or deductions on these benefits please see the Taxes Office [www.gov.je](http://www.gov.je).

## Communication and Engagement

Building a culture of open, honest and clear communication is important in the workplace to ensure the smooth running of any business.

Positive, open communication and feedback promotes strong teams, improves productivity and mitigates the risk against tribunal claims or lawsuits.

## Changes to your business

Changes you make will have an impact on your people. In law you must advise your employees of the legal entity they are employed by. If the business name is changed without any further changes to the terms of employment you can simply provide a letter or a new Statement of Terms with the updated new name.

Changing any terms of employment or changing contractual terms will likely involve:

- Issuing a new Statement of Terms and new Handbook detailing the changes;
- Consultation with the employees, giving them reasonable opportunity to consider and comment on the proposed changes.

## Discrimination

Under the Discrimination (Jersey) Law 2013 it is unlawful to discriminate or treat someone less favourably than you would another because of a protected characteristic. Discrimination can be direct or indirect and includes harassment and victimisation.

The protected characteristics are:

- Race: nationality, national origins, colour or ethnicity
- Sex: gender, gender reassignment, sexual orientation, pregnancy, maternity, paternity and the right to request flexible working
- Age
- Disability

Discrimination can occur prior to employment, for example, during advertising, interviewing, selection and recruitment. It can also occur in pay, benefits and in access to career opportunities such as promotion and training.

Employers are also liable for the actions of their employees if they discriminate against anyone. It is advisable therefore to provide discrimination training to ensure your people are aware of what is and isn't acceptable.

## Employer Returns

The Government of Jersey has a secure Employers Combined Returns website that allows businesses to submit:

- ITIS returns: which must be paid no later than 15 days after the end of each month;
- Social Security returns: contribution schedules must be received on or before the 15th day of the month following the end of a quarter. E.g. 15 April for the months January, February and March.

- Manpower returns: which must be submitted by 31 January and 31 July each year and contain the information about the business as at 31 December and 30 June of the previous period.
- Any information that is entered is stored and available for future returns and will pre-populate when you return to the site.

For more information go to Government of Jersey: Employer Returns Platform: <https://empret.jsytax.je/EMPWEB>

## Equal Opportunities

Equal opportunities within the workplace are important for fairness as well as justice. Everyone deserves to be treated equally with a fair approach across recruitment, selection, promotion and general working conditions.

Simply put, you need to treat everyone equally and ensure employees know what is expected of them and what is not acceptable.

Diversity and equality has many benefits. Statistics show that diversity supports your business' products and services and enhances customer support. Employee turnover reduces if employees are comfortable, valued and happy in a workplace with an ethical culture.

## Flexible Working

All employees have the right to request a change in their working arrangements, including a change in their hours, times or location of work.

Flexible working arrangements include:

- Part-time working
- Job sharing
- Working from home
- Term-time working
- Shift working

- Flexi-time
- Staggered hours (start and finishing times)
- Shifts
- Compressed working hours (e.g. a five day week in four days)

You will need to arrange a meeting to discuss an employee's application and make a decision within 28 days of the request. Any agreement to the request is at the sole discretion of the business, provided it has given due consideration to the request.

In considering the request you are entitled to consider the needs of the business and decline the request. Any change is deemed permanent, unless you expressly confirm it is not.

See the flexible working flow chart in the Appendix.

## Handbook, Policies, Procedures and Rules

Staff Handbooks set out the employer's policies, procedures and rules according to statutory, contractual and non-contractual terms. They are required to ensure transparency, fairness and compliance and are your opportunity to explain 'how it works around here'.

Contractual terms are legally enforceable involving obligations on the part of both parties.

Non-contractual policies and procedures are not legally enforceable but should be clear and understood so that employees know what is expected of them.

As legislation and best practice change your Handbook should be reviewed and updated to reflect the changes.

It is important to follow the policies and procedures and to give staff and managers training so they are able to implement them properly.



## Health and Wellbeing

Your responsibilities include a duty of care to employees. Consider how sickness or absence is managed, the working practices and systems, hours of work and volumes of work for people. Determine how you will know if you are looking after your employee's health and wellbeing.

You will have many responsibilities under the Health and Safety at Work (Jersey) Law 1989 and other health and safety Approved Codes of Practice (ACoP). Consider your policies for things like fire, first aid, food hygiene, manual handling for example and tailor your policies to suit the nature of your business

When workplace accidents, near-misses, injuries and illnesses occur, you need to know how these will be reported, to whom and how they are investigated. You should have a process for promptly reporting incidents, suggesting ways of reducing or eliminating risks and ways in which the business follows this up.

As soon as you have five or more employees you will need to prepare a health and safety policy statement and make this accessible to your staff.

## Holidays

All employees are entitled to a minimum of two 'working weeks' annual leave, plus paid leave on Christmas Day, Boxing Day and Good Friday and on Public and Bank Holidays, or Time Off in Lieu (TOIL) if they are required to work on any of those days.

The annual leave year can begin on any date specified in the Statement, for example, 1 January through to 31 December or 1 April through to 31 March. If an employee commences or leaves employment part way through the annual leave year their annual leave is prorated, for example, if the annual leave year is 1 January to 31 December and an employee starts or ends employment on 1 July with an annual entitlement of 20 days, they would be entitled to 6/12's of the annual leave entitlement which is 10 days.

You can specify periods when employees are unable to take annual leave, for example, during December due to the demands of Christmas on the business, or alternatively you can require employees to retain some annual leave for a period when the business will close, for example, between Christmas and New Year. Just be clear about this in the Statement.

## Induction

A planned and structured induction process positively helps a new employee feel welcomed and builds a positive attitude toward the organisation. Consistency and planning to ensure all new employees are treated equally and fairly will also increase long-term employee retention.

## Maternity, Parental, Adoption and Surrogacy

Jersey's family-friendly employment rights are enshrined in the Employment (Jersey) Law and include;

- Maternity, parental, adoption and surrogacy leave;
- Ante-natal rights for the father/partner or the intended surrogate parents;
- Adoption appointments;
- Flexible working;
- Breast-feeding rights and
- Paid absence on health and safety grounds.

It is important to include your policies in relation to these rights in your Staff Handbook or Statement of Terms.

## Pay and Deductions

### Minimum wage

Employers have a legal requirement to pay at least the current minimum wage which applies to everyone above compulsory educational age, normally aged 16. Different rates apply for trainees who are doing approved training in a new job.

It is possible for employers to off-set the cost of accommodation, or accommodation and meals but tips and gratuities are not allowed to be included in the calculations for minimum wage.

Current minimum wage rates are published on the Government of Jersey's website here: <https://www.gov.je/WorkingEmploymentRelations/Pages/MinimumWage.aspx>

### Itemised pay statements

You are required by law to provide itemised pay statements either before or at the time of payment which should contain several elements, as follows:

- Gross amount of wages/salary;
- Details of variable deductions and fixed deductions;
- Details of variable payments such as overtime, commission or bonus payments and fixed payments such as shift pay;



- Net amount of wages/salary payable;
- Breakdown of payments if paid by different methods, for example, part cash and part cheque.

In addition, you need to keep a record of the actual number of hours worked by each individual.

Also see: Record Retention.

### Making payments

Unless a specific exception applies, wages should be paid at regular intervals of no more than one month. Wage payments can be made by cash, cheque or normally direct to their bank account. You should stipulate when and how you will pay your employee in the Statement of Terms.

A deduction from salary means an itemised amount removed or subtracted from pay and can only be made if allowed and required by:

- The authority of any Law, Regulation or other Enactment containing such a requirement e.g. deduction of Social Security Contributions;
- A judgement or order of the Royal Court of Petty Debts Court; or
- With permission of the employee or by a specific clause in the contract of employment.

### Income tax

Once you start employing people, you will need to deduct income tax (ITIS) from their gross pay and pay this over to the taxes office monthly. To do this, you need to register as an employer with the Taxes Office within one month of taking on your first employees as failure to do so is a criminal offence and can lead to prosecution and fines.

In order to deduct the right amount of income tax you will need the current Effective Rate Notice from your employee(s) which will detail their ITIS rate and tax reference number.

For more information go to: Government of Jersey: Creating an employer tax record: <https://www.gov.je/TaxesMoney/IncomeTax/Employers>Returns/Pages/Information.aspx>

Also see: Employer Returns and Record Retention.

### Social Security

As soon as you employ someone you will have to make Social Security payments and complete a contribution schedule every quarter detailing who is employed and how much the person has been paid each month. This is done monthly if you employ more than 75 employees.

Employers are responsible for the payment of both employer and employee contributions. Employee contributions are deducted directly from the employees' gross pay up to a Standard Earnings Limit (SEL) which applies to any employee aged between 16 and 65 working more than eight hours per week.

Employer contributions, which are an additional cost to the business, are calculated based on the employees gross salary up to the Standard Earning Limit. An additional 2% is charged for employees whose gross earnings are between the monthly Standard Earnings Limit and the monthly Upper Earnings Limit.

The Government of Jersey's website has a contributions calculator that you can use to calculate the employee and employer payments. You can find it here: <https://www.gov.je/working/contributions/employers/pages/tables.aspx>

When someone reaches pensionable age their card becomes a red registration card and they no longer pay Social Security. However, employers must continue to pay their contribution.

Social Security schedules, tax and pension records, and itemised pay statements must be retained for 10 years.

Also see: Employer Returns and Record Retention

## Performance Reviews and Appraisals

It is good practice to regularly review performance and engagement of employees at every level in the organisation and throughout their employment. You should think of this as a continuous process that integrates the individuals skills and achievements with the organisation's objectives and goals.

A wide range of review and appraisal tools of varying complexity are available to help you manage performance and appraisals, but perhaps the most effective method is to ensure managers have the skills to manage the performance within their team.

## Probation

A probationary period is a period after the recruitment stage when both parties can assess the suitability of the job. A relatively short period of generally three to six months is set out in the employment contract and can be extended if necessary. Once the probationary period has been satisfactorily completed the employee can then be confirmed, in writing, as a member of staff and so it is important for the business to monitor, and record progress made by employees during this time.



### Record Retention

As a business you will hold personal information for people, and you need to ensure that the information held within their personnel file is accurate and current and justify the reason why the business is keeping it. Care needs to be taken in relation to how long data is held and where you store the information after employment. Statutory retention periods exist for some records such as Social Security schedules, tax and pension records and itemised pay statements which must be retained for 10 years.

Also see: Data Protection.

### Redundancy

A redundancy occurs when a business ceases trading either completely or at a specific site or when there is a reduced requirement for employees to carry out work of a particular kind.

In the case of redundancy, the employer must follow the statutory requirements and procedures set out in the Employment (Jersey) Law 2003 relating to redundancy.

When the number of redundancy dismissals is less than 12, and prior to any decisions being made the employer should ensure it carries out a fair process by following four ordinary principles of fairness:

- The duty to consult with the employee;
  - The duty to warn of redundancy;
  - The duty to establish fair criteria for selection of employees for redundancy;
  - The duty to explore alternatives to redundancy.
- Where there are more than 12 employees being dismissed as redundant, the law is much more complex, especially if your company recognises a Trade Union. Expert advice should always be sought in these circumstances.

An employee with a minimum of two years qualifying service who is dismissed by reason of redundancy has a right to:

- Receive a redundancy payment;
- Take paid time off to seek work or arrange training for future employment;
- Individual consultation and in certain circumstances collective consultation;
- Enforce these provisions through a claim to the Tribunal.

### Retirement and Pensions

Jersey no longer has a default or normal retirement age (NRA), therefore people cannot be forced to retire when they reach a certain age.

They can choose to retire voluntarily, provided they give you the appropriate period of notice of terminating employment. It is important that you discuss with your employees what their intentions are as they approach retirement so that mutual expectations can be met.

Jersey's State Pension Age is currently 65 and this will increase by two months each year up to 2031 by which time it will be 67.

Employers are not currently obliged to offer employees access to a pension scheme but many do and it can be a valuable benefit for most employees. You should seek professional advice on the type of pension that you could offer as any scheme will have financial consequences for the business.

### Sick Leave, Absence and Lateness

There are many reasons why people take time off work including short-term or long-term sickness, unauthorised absence or persistent lateness.

There is no legal requirement in Jersey for employers to pay sick pay in addition to what the individual receives from the Social Security Department, but many employers offer an element of sick pay. Zero hours workers are not entitled to receive sick pay.

Your policy should include the process to explain how employees notify their absence, sick pay allowances, return to work procedure and where applicable, what might trigger dismissal. You also need to consider how to manage medical appointments such as dentist, doctors and hospital visits and the business should measure and record absence levels as part of the policy.

### Social Media

Social media sites, such as LinkedIn, Twitter and Facebook are fantastic for promoting and building a company's brand, knowing customer opinion and possibly recruiting.

However, it is very easy for companies to fall foul of data protection and employment laws when vetting potential recruits. You need to



ensure that social media is used appropriately to successfully protect your business details from being shared or stolen online.

The business also needs to consider the actions of its employees. Derogatory or inappropriate comments being posted can have a damaging effect on a business, especially if the employee has the business linked as their place of employment.

The business should have rules about employee's social media content and use.

### Training, Learning and Development

As a business you need to consider the training you require someone to undertake either prior to employment in order to be competent in the position, or during employment to bring their skills up to the required level for current and future roles. Some professions have requirements for ongoing Continual Professional Development (CPD) which some company's fund, or part fund.

When putting together a learning and development strategy think about all the different ways people can gain skills. Develop a strategy that includes a budget, people and skills requirement and a method for evaluating the effectiveness of the activities and outcomes.

### Working Hours and Statutory Breaks

The European Union Working Time Directive does not apply to Jersey so there are no limits on the number of hours someone can work nor are you required to provide statutory breaks, for example, tea, smoking or meal breaks. However, asking someone to work a full-time day without a break would likely be deemed unreasonable and poor working practice. You should always clarify if a break is paid or unpaid.

That said, employers need to be mindful not only to be reasonable, but also to consider health and safety legislation, safe working practices and any business specific legislation applicable to your industry.

Although you do not need to provide work breaks, the Employment Law provides an entitlement to a minimum uninterrupted rest periods of not less than:

- 24 consecutive hours in each seven day period;
- Two periods of 24 hours in each 14 day period; or
- One period of not less than 48 hours in each such 14 day period.

Also see: Holidays and Flexible Working.





# WHEN THINGS GO WRONG

It is important to follow your procedures properly when things go wrong.

## Disciplinary

The need to invoke a disciplinary procedure often arises from poor conduct or following a failing capability or attendance procedure that becomes a conduct issue.

You must always do a thorough investigation before formally invoking the disciplinary procedure.

You may consider it necessary to suspend the employee during the investigation. Suspension is normally a neutral act so whilst someone is suspended they are not required to work for the business and may be contacted for reasons of the investigation or business queries. You can suspend someone with or without pay depending your policy.

Formal disciplinary procedures require a disciplinary hearing. The employee will need to be invited with sufficient notice and be advised of their right to representation.

The penalties given, if any, must be fair and appropriate to the severity of the conduct or breach. Previous breaches, file notes or sanctions may be considered in reaching a decision.

Employees have the right to appeal against any sanction given to them and a claim can be made to the Jersey Employment and Discrimination Tribunal. See the appendix for a disciplinary flow chart.

## Dismissal

If you get to a situation where you need to dismiss an employee you must have a fair reason to dismiss them and follow a fair process.

For a fair dismissal you must be able to demonstrate that the main reason for the dismissal was:

- The capability or qualifications of the person in relation to the role; or
- The conduct of the person; or
- They were redundant; or
- Continuing to employ the person would not be possible due to a restriction imposed by law; or
- Another substantial reason to justify the dismissal.

Normally, an employee must accrue 52 weeks of continuous service in order to qualify for the right to claim unfair dismissal. However, there are some 'automatic unfair dismissal' categories in the legislation for which no specific length of service is required. It is recommended to take expert advice before dismissing an employee.

## Employment and Discrimination Tribunal

The Jersey Employment and Discrimination Tribunal ('Tribunal') deal with cases relating to the Jersey Employment Law, the Discrimination Law and the Employment Relations (Jersey) Law 2007, and handles employment disputes and discrimination claims, both in the workplace and otherwise.

The Tribunal service is a free service to all parties and consists of a legally qualified lawyer sitting alone or on a panel with two independent lay people.

Parties are encouraged to present their cases themselves as it is not necessary to be represented by a lawyer, however you need to be mindful that many employees do use a lawyer for legal support.

Further information can be found at [www.jerseyemploymenttribunal.org](http://www.jerseyemploymenttribunal.org)

## Garden Leave

There may be occasions, including during a notice period, when the business might place their employee on garden leave.



The business is not obliged to provide any work to the employee during garden leave and the employee is not required to attend work.

## Grievance

Employees may encounter periods during their employment in which they feel they have been unfairly or unreasonably treated and wish to raise their concerns.

A grievance procedure aims to deal with these matters and should do so quickly and fairly. Grievances are ideally handled informally, however there are occasions where the matter cannot be resolved informally, and a formal procedure should be followed.

If the employee feels that the grievance has not been resolved to their satisfaction they can appeal and the company will need to have a policy and process in place which includes an appeal process.

See the appendix for the grievance process flow chart.

## Managing Poor Performance (Capability)

Where performance is unacceptable, an informal discussion is always positive if it can resolve matters at the earliest opportunity. Where this is not possible, a formal process needs to commence.

Any capability procedure needs to be fair and reasonable and designed to help the individual reach an acceptable level of performance, or if no improvement occurs, enable a fair dismissal.

Where an employee believes that they have been treated unfairly under the capability procedure, they can use the grievance procedure to press their case, so it is important your business has robust procedures.

Alternatively, if the capability procedure does not produce the requirement improvement, it may result in the dismissal of the employee.

It is worth remembering that a thorough recruitment procedure plays an important part in ensuring the capability of employees.

## Termination of Contract and Notice Periods

A contract may be ended for various reasons including by mutual agreement, redundancy or by dismissal through misconduct or incapability.

The Employment (Jersey) Law 2003 details minimum notice periods. Contractual notice may

be different but can never be less than those set within the law and notice must be given in writing by either party.

At the time of writing, notice given by an employer shall not be less than:

- One weeks' notice if continuous employment is less than two years;
- Two weeks' notice if continuous employment is two years or more but less than three years;
- Then an additional one weeks' notice for each year of continuous service up to a maximum of 12 weeks.

An employee is required to give not less than:

- One weeks' notice if continuous employment is less than 26 weeks;
- Two weeks' notice if continuous employment is 26 weeks or more, but less than five years;
- Four weeks' notice if continuous employment is five years or more.

The business may consider providing a Payment In Lieu of Notice (PILON), allowing termination of employment early by paying the salary and any additional contractual benefits upfront.

## Trade Unions

A Trade Union represents employees, protecting the interests of its members by negotiating agreements with employers on pay and conditions of work. The Union's principle purpose is the regulation of relations between employees and employers and it may also provide legal advice, financial assistance, sickness benefits and educational facilities to its members.

All employees are free to join a Trade Union and when an employer 'recognises' a Trade Union it agrees to negotiate with that union on employment matters.

Businesses may establish a Staff Association as a means of communicating and negotiating with employees which would usually include both employee and employer representatives.

An employee has the right to have an authorised Trade Union official, or a fellow colleague, representing them at a grievance, disciplinary or capability proceeding.

**Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.**



## USEFUL LINKS

Jersey Business  
Telephone: 01534 610300  
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HR Now  
Telephone: 01534 747559  
Email: [becky@hrnow.je](mailto:becky@hrnow.je)  
[www.hrnow.je](http://www.hrnow.je)

Population Office  
Telephone: 01534 445505  
Email: [populationoffice@gov.je](mailto:populationoffice@gov.je)  
[www.gov.je/pages/contacts](http://www.gov.je/pages/contacts)

Income Tax Office  
Telephone: 01534 440300  
Email: [jerseytax@gov.je](mailto:jerseytax@gov.je)  
[www.gov.je/taxesmoney/incometax](http://www.gov.je/taxesmoney/incometax)

Social Security Office  
Telephone: 01534 445505  
Email: [customerservice@gov.je](mailto:customerservice@gov.je)  
[www.gov.je/working/contributions](http://www.gov.je/working/contributions)

Office of the Information Commissioner  
Telephone: 01534 716530  
Email: [enquiries@oicjersey.org](mailto:enquiries@oicjersey.org)  
[www.oicjersey.org](http://www.oicjersey.org)

Jersey Advisory and Conciliation Service  
Telephone: 01534 730503  
Email: [jacs@jacs.org.je](mailto:jacs@jacs.org.je)  
[www.jacs.org.je](http://www.jacs.org.je)

Jersey Employment and Discrimination Tribunal  
Telephone: 01534 441380  
Email: [admintribunalservice@gov.je](mailto:admintribunalservice@gov.je)  
[www.jerseyemploymenttribunal.org](http://www.jerseyemploymenttribunal.org)



## APPENDIX

### Flexible Working Flowchart

When dealing with a request for flexible working, it is important to follow a clear and proper process to ensure consistency, transparency, fairness and compliance with the law and Codes of Practice.

The stages are outlined here:

### Flexible Working

#### Key points:

A request for a change can include changes to;

- Hours of work
- Times of work
- Place of work

The Employee needs to describe or explain their request for Flexible Working in writing, including:

- The reason(s) for the request
- The desired commencement and if appropriate, end date of the requested change(s)

Unless the request is approved, the employer must meet with the employee within 28 days to discuss the request and either agree to the request (potentially on a trial basis) and confirm any impact on terms and conditions or refuse the request, identifying fair, reasonable and legal grounds for that decision.

The employee is entitled to appeal the decision in writing within 14 days with any appeal being dealt with within 14 days of receipt of the appeal.

Any agreement to a flexible working request is at the company's sole discretion and be based on the needs of and impact on the business.

No further application can be made for 12 months.

#### 1. Initial request and agreement

Must be in writing and explain the reasons for the request. The request should be considered fairly and reasonably in line with business requirements and if agreed this should be confirmed in writing with details of any changes to terms and conditions.



#### 2. If request not agreed within 28 days

A meeting should be held before Day 28 to discuss the request and to either agree, agree with a trial period or to decline. Reasons for any decision and any impact on terms and conditions should be confirmed in writing, together with confirmation of any right to appeal



#### 3. Trial Period

During and at the end of any trial period, the Employer should review and decide if the trial be made permanent. If so, the change and any impact on T&C should be confirmed in writing.

If the trial is not successful the employee should have this and any reasons confirmed in writing and given a right of appeal



#### 4. Appeal

The employees letter must be submitted within 14 days of the notice of outcome. Any **appeal meeting** should occur within 14 days after receipt of the **appeal request**.

The appeal should be considered by an independent and appropriately senior manager with any outcome confirmed in writing within 14 days of the hearing, No further application can be made for 12 months.



# APPENDIX

## Disciplinary Process Flowchart

When dealing with disciplinary matters the importance of following a clear and proper process is essential in order to ensure that objectivity, consistency and fairness is maintained. Depending on the issue and circumstances the process may be implemented at either an informal or formal stage. For full details, please refer to the full Disciplinary Procedures.

The stages are outlined here:

### Disciplinary Process

#### Key points:

A minimum of **72 working hours' notice** will be given of a formal disciplinary meeting.

The employee has **the right to be represented** at the formal stages of the process.

They are to be **notified in writing** of any decisions made.

**Verbal warnings** will be held on file for **six months**.

**Written warnings** will normally be held on file for **12 months**.

**Dismissal** may occur if there is a failure to improve or in the event of serious misconduct or repeated warnings.

They will have a **right of appeal** against any decision made.

Appeals must be made in writing to a named person within **five working days** of receipt by the employee of the original disciplinary letter.

In cases of **Gross Misconduct** the disciplinary stages may not apply and, if after full investigation and a disciplinary hearing the case is proven summary dismissal may result.

#### 1. Informal Stage (remember this is not a disciplinary hearing)

Where conduct or performance falls short of expected standards, an informal discussion will be held to raise the issue with the aim of seeking a resolution to the matter by encouraging improvement and highlighting steps that will follow if improvement is not made. An informal verbal warning as a file note may be retained or a file note of the discussion retained.



#### 2. Formal Stage

Depending on the circumstances it may be necessary to invoke formal disciplinary procedures. No disciplinary action will be taken until the matter is **fully investigated**. The employee will be **advised of the nature of the complaint** and be given a **full opportunity to state their case** before any decisions are made.



#### 3. Disciplinary Hearing

If required to attend a disciplinary hearing (after the investigation meeting) the employee has the right to be represented by either a work colleague or trade union official.

They are to be provided with full details of the allegations of misconduct, investigation notes, reports and witness statements in order to prepare their case.

The hearing will adjourn before any decision is made. Decisions will be made **in writing**.

They have a right of appeal against any decision made. Appeals will be heard by someone not directly involved in the original hearing.



#### 4. Sanctions

- Stage 1 – Verbal Warning
- Stage 2 – Written Warning
- Stage 3 – Dismissal

**Gross Misconduct** may result in summary dismissal.



# APPENDIX

## Grievance Process Flowchart

When dealing with grievances it is essential to follow a clear and proper process to ensure that objectivity, consistency, fairness and compliance with employment law is maintained. Depending on the issues and circumstances the process may be implemented at either an informal or formal stage.

The stages are outlined here:

### Grievance Process

#### Key points:

Issues that may cause a grievance;

- Terms and conditions of employment
- Health and safety
- Work relations
- Bullying and harassment
- New working practices
- Working environment
- Organisational change
- Discrimination

A **written procedure** should be in place to ensure consistency, transparency, fairness and compliance with the law and any relevant Codes of Practice

It is essential that the desired outcome of any grievance is clearly stated at the outset AND is actually achievable/deliverable.

Normally every party should be strongly encouraged to resolve matters informally where possible.

Mediation should be considered at every stage where appropriate.

Employees have the right to be **accompanied/represented** at formal grievance meetings.

Copies of meeting records should be given to the employee.

Grievances and appeals should be lodged in writing to a named appropriate manager/director.

The policy should have recommended time limits for the implementation of each step and required action (e.g. five working days).

#### 1. Informal Stage

Where an employee makes a complaint relating to a workplace or employment issue it is normally advisable to attempt to resolve this through informal discussion with an appropriate level of management to attempt to find a workable resolution.

Where appropriate it may be useful to engage in mediation, which can be considered at **any** stage of the process.



#### 2. Formal Stage

Where an informal approach is unsuccessful or an issue is so grave that an informal approach is inappropriate, the matter should be raised formally, in writing, setting out the nature of the grievance, and the desired outcome.

Employers should arrange for a formal meeting/hearing within a timeframe identified in their policy.



#### 3. Grievance Hearing and Appeal

The employee has a right to be accompanied/represented by a colleague or Trade Union officer.

The hearing should be chaired by an appropriate senior manager, empowered to deliver the stated desired outcome if necessary. The hearing will adjourn before any decision is made with such decisions being in writing. The employee will have the right of appeal. Any appeal hearing should be arranged as per the original hearing but chaired by a different manager with no previous involvement **and** the authority to vary the original decision.

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WHETHER YOU ARE THINKING OF STARTING A COMPANY, WANT TO IMPROVE OR GROW YOUR EXISTING BUSINESS OR NEED TO MANAGE YOUR EXIT PLAN, JERSEY BUSINESS IS HERE TO HELP YOU ACHIEVE YOUR GOALS.

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