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1. Introduction

The main source of employment law in Guernsey is local statute. As well as adhering to the requirements of statute, employers and employees can govern their employment relationship through individual employment contracts.

Employment disputes in Guernsey are dealt with in the Employment and Discrimination Tribunal (the Tribunal) or the Guernsey courts, depending on the nature of the claim.

Although the volume of statute and case law on employment law in Guernsey is gradually increasing, historically these sources have been minimal. The statutory regime is similar to that in England and Wales, and therefore the courts and tribunals in Guernsey will commonly look to English case law for guidance where such issues have not been decided on locally.

2. Legislation

The key legislation governing employment law in Guernsey is:

- The Conditions of Employment (Guernsey) Law 1985;
- The Employment Protection (Guernsey) Law 1998;
- The Sex Discrimination (Employment) (Guernsey) Ordinance 2005;
- The Minimum Wage (Guernsey) Law 2009;
- The Population Management (Guernsey) Law 2016;
- The Maternity Leave and Adoption Leave (Guernsey) Ordinance 2016; and
3. Terms of Employment

Under the Conditions of Employment (Guernsey) Law 1985, employers are obliged to provide employees with a written statement of the particulars of the terms of their employment within 4 weeks of them commencing work.

The written statement must include the following information:

- the identity of both parties;
- job title;
- the date of commencement of employment (and the expiry date of any fixed contract, if relevant);
- hours of work;
- details of pay, including overtime, shift pay and other benefits, and when remuneration will be paid;
- entitlement to holidays and holiday pay, sickness and sick pay and pension;
- maternity pay and leave, and
- notice periods.

An employee should be notified of any changes to the above terms in writing no more than four weeks after the change taking place.

If an employee has no contractual entitlement to any of the items above, for example sick pay, the statement should confirm that. It should be noted that there are no statutes in Guernsey compelling employers to provide employees with annual leave, paid sick leave, paid maternity leave, redundancy pay or access to a pension scheme. In practice, many employers do provide such benefits to employees pursuant to their employment contracts although this provision is very flexible as there is no formal statutory guidance on the amount of any such entitlements.
Notice

The Employment Protection (Guernsey) Law 1998 provides employees with minimum notice periods (with the exception of those employed for fixed term contracts for 3 months or less or contracts for specific tasks expected to last for no longer than 3 months), dependent on their length of continuous service:

<table>
<thead>
<tr>
<th>Length of employment</th>
<th>Minimum notice period</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than 1 month but less than 2 years</td>
<td>1 week</td>
</tr>
<tr>
<td>More than 2 years but less than 5 years</td>
<td>2 weeks</td>
</tr>
<tr>
<td>5 years or more</td>
<td>4 weeks</td>
</tr>
</tbody>
</table>

Of course, as with holiday and sickness pay etc., many employers choose to provide longer periods of notice.

Working hours

The European Working Time Directive does not apply in Guernsey and there are no statutory provisions in relation to minimum or maximum working periods or periods of risk. Having said that, employers should be careful to ensure that employees' working practices do not risk injury to their employees' health and safety in the workplace.

Pay

Employees in Guernsey are entitled to receive a written statement of their pay on or before the day on which they are paid setting out their gross pay, details of any deductions and the reason for those, net pay and the date on which they will be paid.

Employees in Guernsey aged 16 and over are entitled to receive a minimum wage:

- Employees aged 16 or 17 are entitled to receive a minimum rate of £7.50 per hour, and
- Employees aged 18 and over are entitled to receive a minimum rate of £8.10 per hour.

It is quite common in Guernsey, possibly due to the reasonably high cost of living, for employers to provide accommodation and food to employees. The cost of providing these benefits can be offset against wages. The maximum offset in relation to accommodation only is £78.00 per week, and for food and accommodation is £109.00 per week.

Collective bargaining

Although employees are protected against unfair dismissal on the basis of their involvement with a trade union, there is no statutory recognition for trade unions in Guernsey and minimal legislation in relation to collective bargaining and industrial disputes.

However, cooperation with trade unions or similar in Guernsey is encouraged for the sake of maintaining harmonious relationships between employers and employees. There are resources available in relation to this on the Employment Relations website: www.gov.gg/employmentrelations and disputes can be dealt with through conciliation, the Industrial Disputes Officer or the Tribunal.
4. Parental Leave

In 2016, Guernsey introduced a scheme for statutory maternity, maternity support and adoption leave under The Maternity Leave and Adoption Leave (Guernsey) Ordinance 2016.

Maternity Leave

An employee who is pregnant is entitled to 12 weeks of “basic maternity leave” regardless of length of service. A two-week period of the basic maternity leave from the date of childbirth is compulsory. Employers are forbidden from permitting employees to work during this period and a breach of this requirement is an offence.

Pregnant employees who have been continuously employed for a period of 15 months by the beginning of the 11th week before the baby’s due date are entitled to “additional maternity leave”. Additional maternity leave lasts for a period of 26 weeks from the date the basic maternity leave commenced.

In addition to the right to leave, pregnant employees are entitled to paid time off to attend ante-natal appointments and the right to return to the same job or a suitable alternative after maternity leave. Employees on maternity leave are entitled to work up to 10 “keeping in touch” days during their maternity leave.

Employers do not have any obligation to provide paid maternity leave to pregnant employees, however state benefits may be available to the individual depending on their contribution records.

Maternity Support Leave

Where an employee is entitled to basic maternity leave, their partner may also be entitled to unpaid maternity support leave of two weeks if they have been continuously employed for a period of 15 months by the beginning of the 11th week before the baby’s due date.

Adoption and Adoption Support leave

An employee (male or female) adopting a child is entitled to take adoption leave in the same way as maternity leave, and his or her partner is also entitled to that adoption support leave in the same way as maternity support leave. Employers do not have any obligation to provide paid adoption leave.
5. Employment Disputes

There are several different types of dispute in respect of which an employee can make a claim to the Tribunal. These are:

- Unfair dismissal (including constructive unfair dismissal);
- Failure to be provided with written reasons for dismissal (or where the reasons given are false or inadequate);
- Suffering detriment for refusing to work in a shop on a Sunday;
- Discrimination on the grounds of sex, gender reassignment, marital status, pregnancy and maternity or adoption leave; and
- Claims under the Minimum Wage (Guernsey) Law 2009.

The Tribunal does not have any jurisdiction over contractual claims, such as wrongful dismissal, which must be brought in the Guernsey courts. Claims for failure to pay the minimum wage can also be brought as a debt claim in the Guernsey courts.

Unfair Dismissal

Under the Employment Protection (Guernsey) Law 1998, qualifying employees in Guernsey have the right not to be unfairly dismissed. In order to qualify for this right an employee must have been employed for at least 1 year, unless the dismissal is one deemed to be automatically unfair.

The 5 fair reasons for dismissal permitted by law are:

- capability or qualifications;
- the conduct of the employee;
- redundancy;
- that the continuing employment of the employee in that position would involve the contravention of a duty or restriction under Guernsey law, or
- some other substantial reason.

If a dismissal is found to be made for a fair reason, the Tribunal will consider whether the dismissal procedure itself was fair by considering whether the employer acted reasonably in dismissing the employee having regard to all of the circumstances. An employee can also issue a claim for constructive unfair dismissal on the basis that the employer has breached the duty of trust and confidence implied into the relationship between the employer and employee.

Dismissals can be found to be automatically unfair if they are related to: pregnancy, maternity, adoption, membership or activity with a trade union, health and safety, refusal to work on a Sunday, an act of discrimination (on which, see below) or assertion of a statutory right. If the dismissal is on one of these bases the qualifying period of 1 year’s continuous employment does not apply.

The maximum award the Tribunal can make in a successful claim for unfair dismissal is 6 months’ pay (or for staff paid weekly, 1 week’s pay multiplied by 26). The Tribunal can reduce this award, for example by reason of the employee’s conduct or if an offer of reinstatement was unreasonably refused unless the reason was automatically unfair.

Wrongful Dismissal

Wrongful dismissal is a claim arising from the dismissal of an employee in breach of contract, for example, dismissing an employee without the notice period to which they would be entitled under their employment contract. The Tribunal does not have jurisdiction over contractual claims and any such claim must be brought in the Guernsey courts.
Discrimination

Discrimination on the grounds of sex, marital status, gender reassignment, pregnancy, maternity or adoption leave in the context of employment (which includes employees, ex-employees, job applicants, contract workers, trade unions and partners) is outlawed under the Sex Discrimination (Employment) (Guernsey) Ordinance 2005 (the Ordinance).

Complaints of discrimination must be made to the Tribunal. There are 3 different types of discrimination forbidden under the Ordinance:

- Direct discrimination;
- Indirect discrimination; and
- Victimisation.

Direct discrimination occurs when a person is treated less favourably than another on the grounds of e.g. their sex.

Indirect discrimination occurs in circumstances where an employer applies a practice, policy or rule to all employees, but which adversely effects certain people e.g. will have a detrimental effect on men. An employer has a defence to indirect discrimination if the practice, policy or rule can be justified as a proportionate means of achieving a legitimate aim.

People are also protected against victimisation in the work environment, meaning that they should not be treated unfavourably on the basis that they have brought or intended to bring a discrimination complaint or have supported another employee’s complaint.

The maximum award the Tribunal can make in a successful claim for sex discrimination is 3 months’ pay (or for staff paid weekly, 1 week’s pay multiplied by 13).

Minimum Wage

Pursuant to the Minimum Wage (Guernsey) Law 2009, employees can bring a complaint to the Tribunal against their current employer if they believe they have been paid less than the minimum wage. They can also bring a complaint where they believe they have been denied access to the relevant information required in order to establish whether or not they have been paid at the minimum wage. Finally, circumstances when an employee considers that they have suffered a detriment as a result of exercising their rights under the Minimum Wage (Guernsey) Law 2009 may also form the basis of a complaint.

Sunday shop workers

Under The Employment Protection (Guernsey) Law 1998, shop workers are protected from suffering any form of detriment, including unfair dismissal and redundancy, for refusing to work on a Sunday. These rights do not apply to employees who only work on Sundays.

Complaints to the Tribunal

A complaint must be made to the Tribunal within 3 months of the “effective date of termination” (for unfair dismissal complaints) or 3 months of the act complained of (for other claims). An employee commences a claim by filing form ET1. It is possible to seek permission to submit a complaint outside of the time limit but that will only be permitted in exceptional circumstances.

The employer responds to the complaint using form ET2. Form ET2 must be submitted within 2 weeks of receiving form ET1.

Once forms ET1 and ET2 have been submitted, the parties are invited to engage in the free, voluntary conciliation service offered by Employment Relations.

If a claim is settled in conciliation, this is normally recorded in a compromise agreement between the employer and the employee. Compromise agreements can also be made between employers and employees before any complaint has been made to the Tribunal. Such agreements are legally binding on certain conditions, and the employee should have received independent legal advice on the terms of the agreement. It is common for employers to make a contribution towards the cost of the employee’s legal advice in those circumstances.
6. Codes of Practice

The States of Guernsey Employment Relations Service has issued a number of codes of practice and guidance notes, for example the Code of Practice on Disciplinary Practices and Procedures in Employment. These are available on the Employment Relations website (details above). Although these codes of practice and guidance notes do not have any statutory effect, they are something to which the Tribunal will have regard in the relevant circumstances.

Redundancy

There is no statutory redundancy procedure in Guernsey, and employers have no obligation to provide employees with redundancy pay. Redundancy is recognised as a fair reason for dismissal under the Employment Protection (Guernsey) Law 1998.

The Employment Relations Service has issued a Code of Practice for Employers on handling redundancy. Although this has no statutory force, the Code of Practice should assist employers with applying a fair and reasonable process in redundancy situations.

If an employee is on maternity or adoption leave at a time when their position is made redundant, they are entitled to be offered any available suitable vacancy on terms which are no less favourable.

7. Employment Permits and Population Management

Guernsey has strict controls on its population and those who are permitted to work on the island. Employers must obtain work permits for employees without residential qualifications in Guernsey and must normally be able to demonstrate that there are no suitable candidates available locally. In particular industries, such as finance or medicine, where there are recognised shortages of workers there are arrangements in place for these employees to be granted permits. The permits are available on a short, medium or long term basis depending on the availability of employees on the island with the relevant skills and qualifications. The States of Guernsey Population Management website (www.gov.gg/populationmanagement) has a list of positions for which employment permits will be available.

Guernsey also has population management controls in place under The Population Management (Guernsey) Law 2016. This law requires people living and/or working in Guernsey to have a certificate or permit which demonstrates their right to live and/or work in Guernsey. Guernsey’s housing market is split into 2 sectors and there are controls over who can live in each sector. The “local market” is restricted to those who are considered “local” or who hold a certificate or permit to allow them to live there. The “open market” is open to most people, but some employees are only permitted to live on the open market and not the local market.

8. Anticipated Developments

At the time of writing, the States of Guernsey have launched a public consultation into introducing new legislation to protect against discrimination on multiple grounds (the current legislation only covers the grounds of sex, gender reassignment, marital status, pregnancy and maternity or adoption leave in the context of employment). The proposed additional grounds of protection include age, disability, race, religious belief, sexual orientation and carer status.

If approved, the new law is expected to come into force in 2021 at the earliest.
9. About the Authors

Partner Martin Jones and Associate Alison Antill of Ferbrache & Farrell LLP regularly advise both employers and employees on all aspects of Guernsey employment law.

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