



The Requirements of the Employment Protection (Guernsey) Law, 1998

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Overview

Introduction

The Law details the minimum periods of notice required to be given by either an employer or an employee to terminate a contract of employment. Provision is also made for an employee (subject to a one year qualifying period in most cases) to be given a written statement of reason(s) for dismissal and the right not to be unfairly dismissed.

The Law also provides protection to shop workers who may be required to work in a shop on a Sunday. For further information on this section of the Law, please see the publication entitled 'The Requirements of The Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001'.

Minimum Periods of Notice

Except in the case of a specific task not expected to last for more than three months, or a fixed term contract lasting for three months or less, the minimum periods of notice required to be given by either an employer or an employee to terminate a contract are:

Period of Employment	Notice Period to be Given
less than 2 years	1 week by either party
2 – 5 years	2 weeks by either party
5 years or more	4 weeks by either party

Where the contract of employment requires a period of notice greater than the minimum required by the Law, then the contractual period of notice will apply.

Written Statement of Reason(s) for Dismissal

All employees who have been employed continuously by the same employer for a period of one year or more on the 'effective date of termination' will, on request, be entitled to a written statement giving the reason(s) for dismissal. (See the definition of 'effective date of termination'.)

The employer must provide the statement within seven days of the employee's request.

An employee will be entitled (without making a request and irrespective of whether or not she has been continuously employed for any period) to be provided with a written statement giving the reason for dismissal, if she is dismissed:

- at any time while she is pregnant
- or
- after childbirth in circumstances in which any maternity leave period ends by reason of the dismissal

If an employer fails to provide a written statement giving the reason for dismissal (or, where provided, the reason given is inadequate or untrue), the employee may bring a complaint under this Law which could be brought before the Employment & Discrimination Tribunal (the Tribunal), which may make an award that the employer pay to the employee a sum equivalent to half a month's pay, or, for a weekly paid employee, one week's pay multiplied by two.

NOTE: 'effective date of termination' means:

- a) the date on which termination takes effect (where no notice has been given)
- b) the date on which the notice period expires (where notice has been given) or
- c) in the case of a fixed term contract, the date on which that term expires without being renewed under the same contract

Right Not to be Unfairly Dismissed

The Law also provides that every employee shall have a right not to be unfairly dismissed (this includes part-time employees and persons over the normal retirement age). The right not to be unfairly dismissed applies if the employee was continuously employed for a period of one year or more (the qualifying period) ending with the 'effective date of termination'.

However, there are exceptions to the one year qualifying period (see section entitled 'When is a Dismissal Automatically Unfair?').

What Is A Dismissal?

Employment may cease in a number of different ways. However, not all of these are considered to be a dismissal.

The dismissal of an employee occurs when the employment is terminated in one of the following ways:

- a) termination of the contract by the employer, with or without notice

- b) the expiry of a fixed term contract without being renewed under the same contract
- c) termination by the employee with or without notice by reason of the employer's conduct (constructive dismissal)

NOTE: In the case of a fixed term contract lasting one year or more, the employee can agree, in writing, to waive their rights to make a complaint of unfair dismissal, either as part of the original contract or before the contract expires.

When Is a Dismissal Automatically Unfair?

The **one year qualifying period does not apply**, and the dismissal is normally considered to be unfair if an employee is dismissed for one of the following reasons:

- pregnancy, or for any reason associated with the employee's pregnancy UNLESS the employee was, or would have become, incapable of doing the work she was employed to do because of her pregnancy or she is unable to continue without contravening a duty or restriction imposed by Guernsey law¹
- the employee had given birth after 24 weeks of pregnancy
- the employee had adopted a child within the meaning of the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016
- the employee who was entitled to take leave under the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 took or sought to take:
 - maternity leave
 - adoption leave
 - maternity or adoption support leave
 - time off for ante-natal appointments
- the employee's role was made redundant during maternity leave and, **where there was a suitable alternative vacancy**, the employee was not offered it
- the employee was involved in legitimate trade union activities, or in relation to trade union membership
- for a reason connected to Health and Safety e.g. the employee was dismissed because they were asked to perform an unsafe or unlawful task, and refused

¹N.B. Under section 8 of the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 the protection may be lost in certain **specific circumstances** where the employee is on additional maternity or adoption leave and fails to respond within 21 days to a written request from the employer for confirmation of date of childbirth / date of adoption and whether the employee intends to return to work at the end of the additional leave. The written request from the employer must explain how the employee can work out when the additional leave will end and warn of the consequences of a failure to respond.

- because the employee, who is a protected shop worker, refused or proposed to refuse to work in a shop on a Sunday (of if they have suffered a detriment for refusing or proposing to refuse to work in a shop on a Sunday)
- because the employee's dismissal constituted an act of discrimination prohibited by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005
- because the employee asserted a relevant statutory right

What is a Dismissal on the Grounds of Asserting a Statutory Right?

This relates to a dismissal which is a direct result of an employee pursuing a 'relevant statutory right' under one of the following Laws:

- The Employment Protection (Guernsey) Law, 1998, (as amended): for example where an employee is dismissed for pursuing an unfair dismissal complaint
- The Conditions of Employment (Guernsey) Law, 1985, (as amended): for example where an employee is dismissed for requesting a written statement of employment or payslip
- The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993: for example where an employee is dismissed for pursuing an industrial dispute
- The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005: where an employee is dismissed for exercising his or her rights under this law
- The Minimum Wage (Guernsey) Law, 2009: where a worker is dismissed for exercising his or her rights under this law
- The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016: where an employee is dismissed for asserting his or her rights under the law

When Might The Dismissal Be Considered Fair?

A dismissal might be considered 'fair' if it falls within one of the following categories:

- the capability or qualification of the employee to perform the work
- the employee's conduct (see Code of Practice – 'Disciplinary Practice and Procedures in Employment')
- the employee was made redundant (see Code of Practice – 'Handling Redundancy')
- that the continuation of employment would contravene some other local law e.g. Housing regulations, Health & Safety regulations

- for some other substantial reason

Matters to Consider Before Deciding to Dismiss

The Law gives employees a legal right to be treated in a fair and reasonable manner. For example, for an employer to dismiss an employee fairly, he or she must:

- a) have a valid reason for dismissing the employee (see list of potentially 'fair' reasons listed previously)
- b) have acted reasonably in treating that reason as a sufficient reason to dismiss and
- c) have acted fairly and reasonably in all the circumstances of the case

Registering a Complaint

Before registering a complaint, an employee should ensure that the required time has been spent in that particular employment (normally one year, unless the dismissal was for one of the 'automatically unfair' reasons explained earlier).

Please note that any complaints have to be submitted within a prescribed time limit, see below.

Time Limits

1. An Applicant making a complaint of unfair dismissal or failure to be provided with a written reason for dismissal (or, where provided, a complaint that the reason given for dismissal is inadequate or untrue) under the Employment Protection (Guernsey) Law, 1998, as amended, must submit the complaint to the Secretary to the Tribunal **within three months** of the effective date of termination, or
2. In the case of complaints of detriments to shop workers, who refuse to work in a shop on a Sunday, **within three months** of the act or failure to act which caused the detriment, or
3. In the case of complaints of unfair dismissal, which the Applicant claims constitute an act of discrimination prohibited by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, a complaint must be submitted **within a period of three months** beginning on the day the discriminatory act complained of was done. An act extending over a period is treated as having been done at the end of the period and the three months time limit starts from the end of that period.

'Out of time' complaints

If the complaint is not received within the three-month time limit, it will be rejected.

If the Applicant wishes to apply for further time, on the basis that it was not reasonably practicable for the complaint to have been submitted within the time limit, he/she should make an Application to the Secretary to the Tribunal, who will transmit the Application form (ET1) to a Tribunal (constituted by a single member of the Panel) for consideration.

The decision of the Tribunal may be appealed, but only on a question of law.

Advice on making a complaint may be obtained from the Employment Relations Officers who will offer confidential and free advice on the Law, qualifying periods, time limits, conciliation and how to make the complaint. (See Publications 'Making a Complaint to the Employment & Discrimination Tribunal' and also 'Responding to a Complaint to the Employment & Discrimination Tribunal'.)

When a complaint is registered, the Law requires that conciliation is offered before the complaint is referred to a Tribunal.

What Is Conciliation?

Conciliation is the name given to the free, confidential and impartial service offered by a fully trained member of the Employment Relations staff on employment related disputes.

The role of the conciliation officer is to work with the parties to assist them in reaching a settlement that is mutually acceptable.

The process of conciliation is voluntary and may be refused by either party.

For more information on this process, please refer to the publication entitled 'Conciliation'.

A Conciliated Settlement

Settlements agreed between the parties will usually be made through the conciliation officer, on the prescribed form.

Where a settlement is reached through conciliation, it will not be possible for the applicant to pursue the complaint to the next stage, which is the Tribunal Hearing.

When Conciliation Does Not Reach a Settlement

If the process of conciliation fails to bring about a settlement, or either party does not wish to enter into conciliation, the Applicant's complaint will be submitted to a Tribunal for a decision and a possible award.

The Tribunal Hearing

A Tribunal will be appointed under the Law to hear and determine the complaint.

In order that both parties have an equal opportunity to put forward all the relevant matters in the dispute, it will be necessary to hold a Tribunal Hearing. Witnesses may be called by either party, or by the Tribunal, and may be put on oath in order to help establish the true facts of the case. The Hearing will be held in public.

The Tribunal will consider all the information provided by the parties to support their case, whether this is oral or written, before making a decision and/or award.

If either party fails to attend the Hearing, the Tribunal may still hear the case and make a decision and/or award.

The Award

Unfair Dismissal

When the Tribunal is satisfied that it has heard and seen all the relevant evidence submitted by the parties, it will consider the facts and the parties will be notified of the Tribunal's decision/award, in writing, usually within a few weeks of the Hearing.

The Tribunal's decision will be posted for seven days in the Royal Court and a copy of the full, reasoned decision may be obtained, on request, from the Secretary to the Tribunal.

When a complaint is upheld, an award will be made. Awards made by a Tribunal for unfair dismissal will be equal to six months' pay, or for weekly paid staff, one week's pay multiplied by 26.

Reduction of Award in Certain Cases

Before making an award for unfair dismissal, the Tribunal will take into account whether or not reinstatement was offered. If an offer was made and was unreasonably refused, the Tribunal may reduce the award.

Further, if a Tribunal considers that, by reason of any other circumstance, it would be just and equitable to reduce the amount of the award of compensation for unfair dismissal, it may reduce the award to whatever extent it sees fit.

However, the reduction in the award, as described above, does not apply² if it is shown that the reason for the dismissal, or in a redundancy case – the reason for selecting the Applicant for dismissal, was one of the following automatically unfair reasons:

- because the Applicant is pregnant, or for any reason connected with her pregnancy

² The award for unfair dismissal can only be reduced where the Tribunal finds the applicant unreasonably refused an offer of reinstatement by the employer. In the case of sex discrimination a reduction can only be made where an offer had been refused which, if accepted, would have put the applicant in the position in which he / she would have been had the act which initiated the complaint not occurred.

- for a reason connected to: giving birth after 24 weeks of pregnancy, adopting a child, taking or seeking to take maternity, adoption leave, maternity or adoption support leave or time off for ante-natal appointments (as defined in the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016)³
- the employee's role was made redundant during maternity leave and, where there was a suitable alternative vacancy, the employee was not offered it.
- because the Applicant was involved in legitimate trade union activities, or in relation to trade union membership
- for a reason connected to Health & Safety, e.g. the Applicant was dismissed because he/she was asked to perform an unsafe or unlawful task, and refused
- because the Applicant asserted a relevant statutory right (examples include: he/she asked for a written contract of employment or payslip or properly requested access to relevant records in order to establish whether or not he/she has been remunerated at a rate that is less than the minimum wage)
- because the Applicant refused or proposed to refuse to work in a shop on a Sunday (or if he/she has suffered a detriment for refusing or proposing to refuse to work in a shop on a Sunday) or
- because the Applicant's dismissal constituted an act of discrimination prohibited by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005

Complaints other than unfair dismissal:

The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005⁴

Where the Tribunal finds that a complaint under the Sex Discrimination Ordinance is founded, it will make an award of three months' pay, or where the applicant is weekly paid, one week's pay multiplied by 13.

Employment Protection (Guernsey) Law, 1998, as amended

An award made for failure to provide a written statement of reason(s) for dismissal (or, where reasons are provided, these are found to be inadequate or untrue) will be equal to half a month's pay or, for weekly paid staff, one week's pay multiplied by two.

The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016

³ <http://www.guernseylegalresources.gg/article/151268/Maternity-Leave-and-Adoption-Leave-Guernsey-Ordinance-2016>

⁴ Amended by the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016. See employment guide 'Sex Discrimination in the Workplace'.

An employee has the right not to suffer a detriment on the grounds that he/she took, or sought to take maternity support leave or adoption support leave. An award by a Tribunal will be equal to one month's pay or for weekly paid staff, one week's pay multiplied by four.

The Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001

An award made by a Tribunal for suffering a detriment for refusing, or proposing to refuse, to work in a shop on Sundays, or on a particular Sunday, will be equal to one month's pay or for weekly paid staff, one week's pay multiplied by four.

The Minimum Wage (Guernsey) Law, 2009

1. In a complaint of 'failure to allow access to records' - the Tribunal can award 80 times the minimum wage per offence.
2. In a complaint of failure to be paid the Minimum Wage - the Tribunal can award the difference between the Minimum Wage and what has been paid to the worker during the period of underpayment.
3. In complaints brought under the Employment Protection Law, involving the minimum wage regulations - the Tribunal can award one month's pay in 'suffering a detriment' claims and six months' pay in 'unfair dismissal' claims.

The Tribunal's decision will be posted for seven days in the Royal Court and a copy of the full, reasoned decision may be obtained, on request, from the Secretary to the Tribunal.

The decision reached by the Tribunal will be final and legally binding upon both parties. An appeal may be made to the Royal Court only on a point of Law and within one month of the date of the decision/award of the Tribunal.

What Costs Will Be Involved?

The confidential advisory and conciliation service is free to both employers and employees. However, each party will normally be responsible for any legal costs incurred in preparing and presenting their case.

A Tribunal may, under the Law, award costs to either party (other than legal costs).

(Note: when an appeal is made to the Royal Court, the parties may be subject to any costs incurred under the Royal Court procedures.)

Compromise Agreements

Ordinarily, people cannot 'contract out' of the rights to claim unfair dismissal/sex discrimination etc.

An exception to the above rule is where settlement is reached through the Conciliation Service as part of the conciliation process, as referred to earlier in this publication.

Another exception is where the parties reach what is called a compromise agreement, making it possible for parties to reach an agreement without reference to the Tribunal or conciliation processes.

However, for a compromise agreement to be legally binding, it must meet certain prescribed conditions as follows:

- a) the agreement must be in writing
- b) the agreement must relate to the particular complaint
- c) the Applicant must have received advice from a fully insured, independent adviser as to the terms and effect of the proposed agreement, in particular, its effect on his/her ability to pursue their rights before the Tribunal
- d) the agreement must identify the adviser
- e) the agreement must state that the conditions regulating compromise agreements under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 or the Employment Protection (Guernsey) Law, 1998, as amended, are satisfied

Note: A person is an independent adviser if he is a lawyer, or an officer, official, employee or member of an independent trade union (certified in writing by the union as competent to give advice and authorised to do so). A person is not an independent adviser if he/she is employed by, or is acting in the matter for, the other party or a person connected with the other party.

For details of the conciliation process, see separate Publication 'Conciliation'.

Codes of Practice

Codes of Practice may be issued under the Law for the purpose of ensuring that employees are not unfairly dismissed and to ensure that employers act reasonably and not unfairly. It should be noted that employers do not commit an offence under the Law if they fail to follow the Codes of Practice but a Tribunal will take into consideration whether or not **any relevant Code** was followed when hearing a complaint.

Please refer to the Codes of Practice entitled 'Disciplinary Practice and Procedures in Employment' Employment and 'Handling Redundancy'.

Other Publications

Publications can be downloaded from the website on a wide range of employment relations matters including local employment legislation and best practice guidance on other employment related matters.

Contact Information

For further advice

- Check www.gov.gg/employmentrelations
- Email employmentrelations@gov.gg
- **Contact the Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey, GY1 3WH
- **Call us on** 01481 732583