

CONSULTATION PAPER

ANNUAL LEAVE

AND REST BREAKS



Issued by the Employment Forum on 5 December 2019

Deadline for responses – 6 February 2020

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SECTION 1 - Summary

The Minister for Social Security has directed the Employment Forum to consult on the current statutory annual leave entitlement under the Employment (Jersey) Law 2003 (the 'Law') and a proposal to introduce an entitlement to a rest break during the working day. This consultation paper seeks your comments. The following report provides background information that you may wish to consider in forming your response to the survey, including information relevant to Jersey and to other jurisdictions.

Any responses that are submitted will be combined with other relevant evidence to help the Forum to decide whether any changes should be recommended to the Law.

You can complete the survey online and find more information at www.gov.je/consult

Please submit your response no later than 6 February 2020:

- Via the online survey at www.gov.je/consult
- By email to E.Forum@gov.je
- By post to Employment Forum, 19-21 Broad Street, St Helier, JE2 3RR
- By requesting a meeting with the Forum; email E.Forum@gov.je

SECTION 2 – Background

In 2000, the States Assembly agreed that the first phase of employment legislation in Jersey should include proposals for paid annual leave based on the principle of establishing minimum standards in employment rights that would be easily

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understood and effective in implementation. Complex legislation such as that provided in the UK Working Time Regulations was not considered appropriate at that time and it was hoped that a simple framework of provisions could be created that did not become meaningless by virtue of the number of exceptions.

The Employment Forum consulted on holiday entitlement and rest days in 2001 and presented a recommendation to the former Employment and Social Security Committee (the 'former Committee') in 2002¹.

Based on the Forum's recommendation, it was proposed that two weeks' paid annual leave would become the minimum legal requirement and would act as a default standard if the parties did not agree better terms in the contract of employment. The Forum had recommended that employers should not be permitted to include leave on public and bank holidays as part of the two weeks of statutory leave. A decision was taken by the former Committee to ensure that public and bank holidays could not be included in the 2-week period by specifying in the Employment Law a statutory entitlement to paid leave on public and bank holidays (or substitution leave) in addition to the 2 weeks of paid annual leave.

The former Committee's intention was that employees should, as a moral standard, be entitled to paid holiday and rest days. However, health and safety considerations were also important on the basis that employees would not work well if breaks from work were not permitted and tiredness could lead to accidents. Although Jersey already has health and safety legislation which requires employers to take reasonable steps to ensure the health and safety of their employees, it was felt that greater emphasis should be placed on the issue of breaks from work through the introduction of legislation establishing minimum holiday and rest day entitlement. In addition, Jersey was introducing its own human rights law at that time, which could mean that individuals could seek redress for breach of their right to private and family life.

Existing Jersey legislation

Annual leave

Article 11 of the Employment Law provides that employees are entitled to –

- at least 2 weeks of leave in each leave year, and
- leave on Christmas Day, Good Friday and all public or bank holidays (or substitution leave, either at the discretion of the employee, or as provided in a relevant agreement).

For employees working a 5-day week, this gives effectively 19 days of annual leave.

¹<https://www.gov.je/SiteCollectionDocuments/Working%20in%20Jersey/R%20EmploymentForumsRecommendationHolidaysAndRestdays%2020091211%20EV.pdf>

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A week of leave means a period equivalent to the hours or days normally worked by the employee in a week. For example, an employee who works three days each week is entitled to 6 days paid annual leave and an employee who works six days each week is entitled to 12 days' paid annual leave (plus public and bank holidays where applicable).

Employers and employees can agree via a contract of employment or other relevant agreement matters including:

- when the leave year begins and ends
- rules on applying for, and giving notice of, leave
- any conditions as to when leave may, or may not, be taken.

Employees must be paid a week's pay in respect of each week of leave, reduced pro rata for shorter periods of leave. The Law sets out how to determine a week's pay. Where an employee is paid a regular wage for the hours normally worked, then a week (or a day) of paid holiday must be the same as they would have been paid had they been at work. If working hours vary so that the amount of pay varies, the average number of weekly hours is the average for the previous 52 weeks and the average hourly rate of pay is the average hourly rate for the previous 52 weeks.

Rolled-up holiday pay is a system used by some employers where work is temporary, irregular or variable (e.g. temporary staff provided by agencies). Employees are paid an additional sum to account for paid annual leave, allowing staff to take a break from work, possibly at the end of their contract or assignment, having already been paid a sum for any holiday pay that is due to them. The minimum statutory annual holiday entitlement of 2 weeks equates to an additional 4 percent of pay for each hour worked.²

More information about paid annual leave in practice (e.g. calculating pay where pay varies depending on the amount of work done in normal working hours, or where there are no 'normal' hours) is available on the Jersey Advisory and Conciliation Service website³.

An employee who is denied entitlement to paid annual leave, or who is not paid any amount due under the Law, may take a complaint to the Employment and Discrimination Tribunal (the 'Tribunal'). An employee may also complain to the Tribunal if he or she is subjected to a detriment for asserting the right to annual leave, e.g. refusing to work when they were entitled to annual leave or refusing to forgo annual leave. The Tribunal may award compensation up to 4 weeks' pay. Dismissal of an employee on these grounds is treated as automatically unfair from day one of employment, with compensation of up to 26 weeks' pay. If the complaint is upheld, the Tribunal must make a declaration to that effect, and may award any compensation or outstanding pay to be paid by the employer.

² For more information, see the JACS guide [https://www.jacs.org.je/legislation/employment-\(jersey\)-law-2003/2017-rolled-up-holiday-pay/](https://www.jacs.org.je/legislation/employment-(jersey)-law-2003/2017-rolled-up-holiday-pay/)

³ [https://www.jacs.org.je/legislation/employment-\(jersey\)-law-2003/2-minimum-rest-periods-and-annual-leave/](https://www.jacs.org.je/legislation/employment-(jersey)-law-2003/2-minimum-rest-periods-and-annual-leave/)

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Rest breaks

The Law currently makes provision for annual leave and rest days (one uninterrupted rest period of 24 hours in each week). The Law makes no provision for rest breaks during the working day.

According to a JACS guide⁴, JACS often receives queries about working hours in Jersey. The JACS guide advises that while the Law does not currently require employers to provide statutory breaks during the working day, employers should act reasonably and with health and safety legislation, safe working practices and industry specific legislation or guidance in mind when considering appropriate breaks for employees.

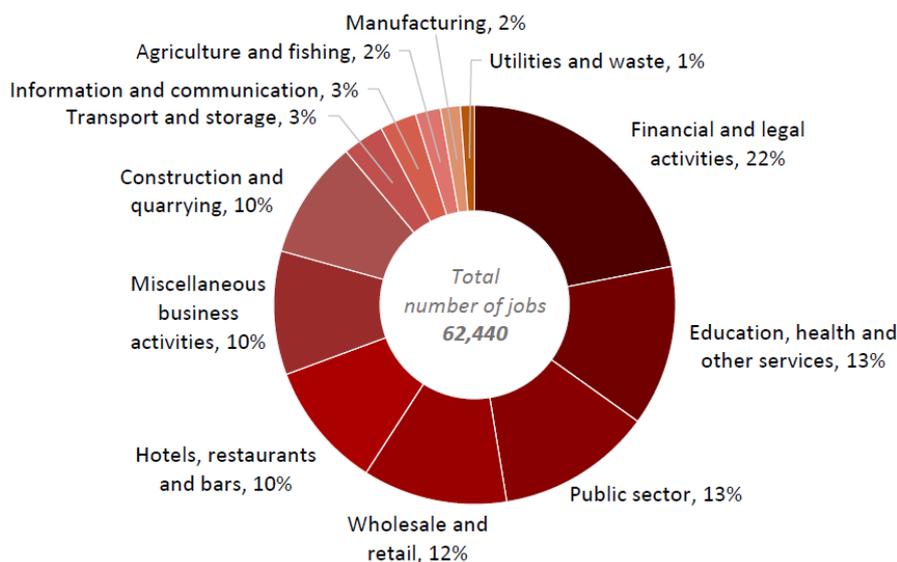
Statistics

Information is provided below which may be relevant to the matters for consideration in the Forum's survey. Statistics are not available relating to annual leave and rest breaks for employees in Jersey.

Labour market (June 2019)

In June 2019, total employment in Jersey was 62,440. Three-quarters (75%) of all jobs filled were full-time. Of all private sector undertakings, 88% had 10 or fewer employees. Chart 1 shows jobs by sector.

Chart 1 – Percentage of total jobs by sector, June 2019



⁴ <https://www.jacs.org.je/employment/contractual-matters/working-hours-and-breaks-faq/>

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Jersey Better Life Index 2018

- In 2018, over a sixth (18%) of employees in Jersey were working 50 hours or more in a typical week. The proportion of employees working such hours in 2018 was considerably greater than that recorded in 2013 (7% of employees)
- The table below shows the usual hours worked per week by employees (excluding self-employed hours) in Jersey (2018); *percentages*

Number of hours worked	<25	25 to 34.5	35 to 39.5	40to 49.5	>=50
Proportion of employees	9	8	25	40	18

Economic activity (JOLS 2019)

- The Economic activity rate was 90% (i.e. the proportion of people in employment or actively seeking employment as a percentage of all those of working age – 16-64 years for men, and 16-59 years for women, inclusive)
- People working for an employer reported being contracted to work a median average of 37.0 hours per week in their main job, but usually worked a median average of 40.0 hours per week
- The number of workers (i.e. employees and self-employed) who reported having at least one other job in addition to their main job was around one in fourteen (7%). The median average of hours worked in additional jobs was 8.0

Work-related health (JOLS 2016)

- Overall, 13% of workers (i.e. employees and self-employed) had taken some time off work in 2015 for either stress, injury or ill-health that was work-related.
- Work-related stress or anxiety - Around one in ten workers (i.e. employees and self-employed) had taken time off work for work-related stress or anxiety in 2015, more than half (53%) of whom reported taking at least six days off work. The proportion of employees in routine or manual occupations that had taken time off for work-related stress or anxiety was more than twice that for other occupations.

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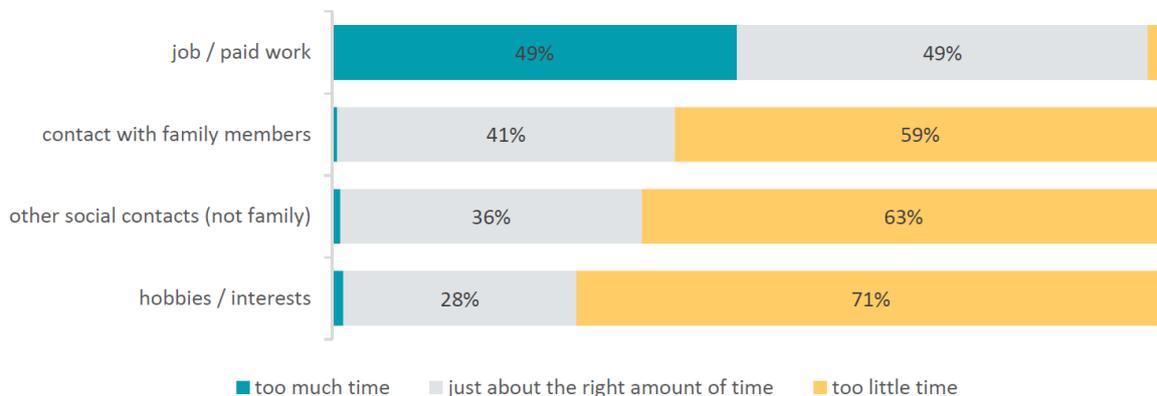


- Accidents at work - 3% of workers (i.e. employees and self-employed) said they had an accident at work which resulted in injury during 2015.
- Work-related ill-health - 5% of workers (i.e. employees and self-employed) said they had taken time off work as a result of other work-related ill-health. The most common reason was 'problems with muscles, bones or joints' (82%).

Work-life balance (JOLS 2019)

- Half (49%) of working adults reported that they spent *too much time* working
- More than half of working adults said they spend *too little time* with their *families* (59%) or other *social contacts* (63%).
- Almost three-quarters (71%) of working adults said that they spent *too little time* on *hobbies / interests*
- A similar percentage of working adults with children in the household said they spent *just about the right amount time* at work as those without

Chart 2 – How much time spent in different areas of life



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SECTION 3 – Scope of consultation

Ministerial direction

Having considered its priorities for the next four years, the Ministerial team for Social Security decided that a priority would be to undertake a review in respect of annual leave entitlement and rest breaks under the Employment (Jersey) Law 2003.

The Minister directed the Forum to consult on the following proposals and specifically directed the Forum to keep the scope of this consultation narrow.

Annual leave –

1. Remove the provision relating to public and bank holidays to provide that employees are entitled to a specified number of weeks of statutory annual leave, which may include public and bank holidays. Consultation should explore in what sectors employees are currently missing out on paid bank and public holidays when they do not normally work on that day.

Minister's objectives – Following discussions with JACS, the Minister understands that a difficulty arises from the inclusion of public and bank holidays as leave days within the Law. If an employee does not normally work on that public or bank holiday then they are not entitled to paid leave on that day. An employee who normally works Tuesday to Saturday, for example, loses out on all bank holidays that fall on a Monday. JACS has found that some employers misuse this, for example by ensuring that shift workers are not scheduled to work on bank and public holidays and therefore not entitled to a paid day off in lieu.

2. Increase statutory annual leave from the current 2 weeks. Consultation should explore –
 - i. in what sectors employees are currently only entitled to the statutory 2-week minimum
 - ii. what might be an appropriate period of leave, which the Minister proposes should be in the range of 4 weeks (20 days) to 5.6 weeks (28 days)
 - iii. the possibility of a staged approach to the implementation of a longer period of statutory annual leave.

Minister's objectives – Jersey's statutory annual leave provision has remained at 2 weeks plus public and bank holidays since the Law was introduced in 2005, while other jurisdictions have increased their annual leave entitlement. For example, in the UK, annual leave entitlement increased from 3 weeks in 1998 to 5.6 weeks by 2009. The Minister is conscious that the former Committee had proposed that Jersey might

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wish to review the minimum annual leave entitlement with a view to increasing it in the future.

Rest breaks – consult on amending the Law to provide that all employees in Jersey are entitled to take a 20-minute unpaid rest break in each 6 hour period worked.

Minister's objectives – The Minister's proposals for further improvements to family friendly employment rights (based on the Forum's December 2017 recommendation) include provision for women to request breaks from work for the purpose of breastfeeding. This provision has highlighted the lack of any general provision for rest breaks during the working day for other employees. The Minister considers this to be a significant gap in protection that should be progressed as quickly as possible.

SECTION 4 - Other jurisdictions

This section provides a summary of the main provisions in some relevant jurisdictions that you may wish to consider when you respond to the survey. In presenting this information, the Forum is not advocating any particular system or approach and it may not make a recommendation for the same system as any other jurisdiction, or any change to the legislation, depending on the outcome of the consultation.

ANNUAL LEAVE

International standards

The majority of nations worldwide have introduced a statutory minimum annual leave entitlement. In most countries, employees are entitled to at least 20 working days per year. Taking into account public holidays, this means that workers in many OECD countries, particularly in Europe, are entitled to at least 30-35 days of leave each year.

Within the European Union, all Member States are required, as a minimum, to have laws that adhere to the 1993 EC Working Time Directive (the 'Directive') which sets down minimum standards including annual leave entitlement. The Directive was introduced as a health and safety measure, aimed at protecting employees against adverse effects on their health and safety caused by long working hours or working without adequate rest. As well as ensuring a period of paid annual leave of at least four weeks for all employees, it set down minimum standards relating to maximum weekly working hours, night work, shift work, rest breaks and rest periods.

In 1994, the UK Government brought proceedings before the European Court of Justice challenging the legal basis of the Directive, arguing that the regulation of working time is primarily a social policy measure, not a health and safety issue. However, in 1996 the Court dismissed the UK's case ruling that health and safety was the appropriate legal basis for the objective. This has significantly influenced

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courts and tribunals in their interpretation and application of the right to annual leave⁵. Despite this, it is clear that entitlement to annual leave is also regarded as a fundamental principle of EC social law. Unlike the requirements of daily and weekly rest periods, the Directive does not allow any exemption from the requirement for an annual rest period.

UK

To implement the Directive in the UK, the Working Time Regulations were brought into effect in 1998. Paid annual leave in the UK was initially subject to 13 weeks' continuous service, but that was removed after the ECJ ruled against it. There are no exceptions to the annual leave entitlement.

Statutory annual leave entitlement increased in stages –

- 1998 – 3 weeks
- 1999 - increased to 4 weeks
- 2007 - increased to 4.8 weeks (24 days)
- 2009 - increased to 5.6 weeks (28 days)

For an employee who works 5 days each week, 5.6 weeks equates to 28 days. For an employee who works 6 days each week, 5.6 weeks equates to 34 days (33.6 days rounded up). However, statutory leave in the UK is capped at a maximum of 28 days each year, irrespective of the number of days worked each week.

The increases in 2007 and 2009 followed public consultation in 2006. In addition to the importance of taking holiday as essential to individual well-being and work-life balance, the UK government was concerned about unfairness around bank holidays. Some employees, particularly the lowest paid, had to include time taken off on bank holidays against their annual holiday entitlement. The Government extended paid leave by the number of bank holidays (8) in two stages. Following consultation, the second stage of the increase was delayed by six months in view of cost pressures for businesses, particularly for the health and social care sector.

The government stated that the increased holiday entitlement would benefit almost six million workers - around 19 percent of the workforce - who were entitled to less than 28 days of annual leave at that time. The impact was expected to be greatest in sectors such as hotels and restaurants, and wholesale and retail.

Guernsey

There is no statutory entitlement to paid leave in Guernsey. Neither is there a legal requirement to give employees time off with pay, an enhanced rate of pay, or time off

⁵ E.g. 2005 Court of Appeal ruling that workers could not take sick leave and annual leave at the same time because it would serve no health and safety purpose.

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in lieu in respect of public holidays. Any rights to paid time off for holidays and public holidays depend on the terms of the employment contract.⁶

Isle of Man

Workers in the Isle of Man are entitled to 4 weeks' statutory annual leave, inclusive of bank holidays (10 days).⁷ The entitlement was introduced in 2007 at a time when the UK entitlement was also 4 weeks.

Northern Ireland

Statutory annual leave started at 4 weeks in 1998 and increased to 4.8 weeks from 1 October 2007 and to 5.6 weeks from 1 April 2009. This is inclusive of bank holidays (10 days).⁸

Ireland

Employees in Ireland are entitled to 4 weeks' statutory annual leave. Most employees are also entitled to paid leave on public holidays (9 days), except for part-time employees who have not worked for their employer at least 40 hours in total in the 5 weeks before the public holiday.⁹

REST BREAKS

International provision

The EC Working Time Directive requires that workers are given a rest break where the working day is longer than 6 hours. The Directive allows collective agreements to establish the duration and terms of the break. Many Member States set out provisions for the minimum length and timing of a rest break during the working day.

The main purpose of the Directive is to lay down minimum health and safety requirements for organising working time on the basis that long working hours and insufficient rest (particularly over prolonged periods) can have damaging effects, including higher rates of accidents and mistakes, increased stress and fatigue, as well as short-term and long-term health risks.

The Directive allows for derogations from the provisions on rest breaks, such as where activities involve a need for continuity and in seasonal activities where there is a surge of activity. However, the rules do not allow minimum periods of rest to be missed altogether; compensatory rest should be provided promptly, in the period immediately following that in which the rest was missed.

⁶ <https://gov.gg/CHttpHandler.ashx?id=2287&p=0>

⁷ Annual Leave Regulations 2007

⁸ Working Time Regulations 1998 (as amended)

⁹ The Organisation of Working Time Act 1997

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UK

Workers have the right to a 20-minute rest break if they work more than 6 hours a day. This could be a tea or lunch break. The break does not have to be paid - it depends on the employment contract.

Employers can determine when staff take rest breaks as long as the break is uninterrupted, and it must be taken somewhere in the middle of the day (not at the beginning or end) and staff are allowed to spend it away from their desk or workstation.

There are separate special rules for mobile workers in air, sea and road transport. The armed forces, emergency services and police are excluded in some circumstances (e.g. they are dealing with an exceptional catastrophe or disaster).

Industries in which compensatory rest may be required include security and health care. In these cases, equivalent periods of 'compensatory rest' must be offered wherever possible. Examples of when it may be necessary include where:

- the worker's activities involve the need for continuity of service or production
- there is a foreseeable surge of activity
- an unforeseen circumstance which is outside of the employer's control requires it.

Guernsey

There is no legislation in Guernsey providing for rest breaks during the working day.

Isle of Man

Shop workers in the Isle of Man cannot be required to work for more than 5 hours without a 30-minute break. There is no legislation specifying working hours in respect of other employees, but an employer has to be aware of any health or safety implications when requesting employees to work longer hours. If an accident or incident was to arise, which was attributable to long hours of working, the Health and Safety Inspector may make enquiries as to whether there had been a risk assessment in respect of the hours worked.¹⁰

Northern Ireland

Workers in Northern Ireland have the right to a 20-minute break if they are required to work continuously for more than six-hours. The break should be taken in one block during the six-hour period and not at the beginning or the end of it. The break does not have to be paid - it depends on the employment contract.¹¹

¹⁰ <https://www.mirs.org.im/faqs/>

¹¹ <https://www.lra.org.uk/a-to-z/r/rest-breaks> <http://www.legislation.gov.uk/nisr/2016/49/regulation/24/made>

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The right to breaks applies differently to workers who:

- travel a long distance from home to get to work, or work in different places
- do security or surveillance-based work
- work in an industry with busy peak periods, e.g. agriculture, retail or tourism
- where there's an emergency or risk of an accident
- the job needs round-the-clock staffing, like hospital work for example
- work in the rail industry and on board trains

Workers are entitled to 'compensatory rest' taken later, ideally during the same day or following working day. There are separate special rules for mobile workers in air, sea and road transport. The armed forces, emergency services and police are excluded in some circumstances.

Ireland

In general, employees are entitled to a 15-minute break after 4 and a half hours of work. If an employee works more than 6 hours, they are entitled to a 30-minute break, which can include the first 15-minute break. There is no entitlement to be paid for breaks and they are not considered working time. Special rules apply to shop employees who work more than 6 hours and whose hours of work include the period 11.30am–2.30pm. These employees are entitled to a one-hour consecutive break which must occur between 11.30am–2.30pm. A break at the end of the working day does not comply with the Act.¹²

¹² Organisation of Working Time Act 1997

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SECTION 5 – How to submit comments

The Forum welcomes your comments. You can complete the survey online and find further information about the review at www.gov.je/consult.

Copies of the papers can be obtained from the Forum Secretary; E.Forum@gov.je, or T.440684.

In addition to completing the survey, you may request a meeting with the Forum to discuss your views. Meetings are available on 13th, 20th and 27th January 2020 from 4pm-6pm. Please contact the Forum Secretary if you wish to attend.

Please submit your written response no later than 6 February 2020:

- Via the online survey at www.gov.je/minimumwagereview.
- By email to E.Forum@gov.je
- By post to Employment Forum, 19-21 Broad Street, St Helier, JE2 3RR
- By requesting a meeting with the Forum (E.Forum@gov.je, or T. 440684).

How we will use your information

Please refer to the Forum's [privacy policy](#).
