



## Discrimination in Employment

### Introduction

This guide gives an overview of the rights that currently exist under Jersey law. The Trust has produced a separate guide to the draft Discrimination (Jersey) Law, which contains extensive protection against discrimination both before and during employment. However, that law is yet to be approved or brought into force. Under the current state of the law there is very little protection against discrimination for employees or applicants for jobs.

### Recruitment

There is currently no legislation that protects against discrimination in the selection process. It is lawful for an employer to discriminate against candidates on any ground including sex, race, nationality, sexual orientation or disability.

There is also no legislation that prevents discriminatory advertising. As a result, it is lawful for newspapers and other media outlets to publish discriminatory adverts.

There is no legal obligation on employers to make a reasonable adjustment to a workplace or a work practice to accommodate the needs of a disabled person.

### Terms and Conditions of Employment

There is no legislation that prevents an employer discriminating against an employee on the basis of a particular attribute such as race or nationality. As a result, there is no obligation on employers to offer equal pay to men and women even where they are doing the same work. However, it is possible that an employee who discovers that he or she is treated less favourably because of sex, race, nationality, sexual orientation or some other personal attribute may be able to claim constructive dismissal (see below).

### Unfair Dismissal

Under the Employment (Jersey) Law 2003, an employee has a right not to be unfairly dismissed. A dismissal occurs when:

1. The employer terminates the contract either with or without notice;
2. The employee terminates the contract because of the unreasonable conduct of the employer (constructive dismissal); or
3. A fixed term contract expires without being renewed by the employer.

A dismissal is fair if the employer can show that the principal reason for the dismissal

comes within one of the following categories:

1. The capability or qualifications of the employee;
2. The conduct of the employee;
3. That the employee was redundant;
4. To continue to employ the person would contravene a duty or restriction imposed by law;
5. Some other substantial reason that would justify the dismissal of the employee.

Although the law does not expressly state that dismissal because of an attribute such as race, sex or sexual orientation would be unfair, it is likely that the Employment Tribunal would find this to be the case. Thus, a woman selected for redundancy because she is pregnant is likely to have a claim for unfair dismissal. Similarly, if the principal reason for a dismissal is that a man is gay the tribunal is likely to find that this is unfair.

### Harassment and Bullying

The unfair dismissal provisions in the Employment Law also offer some protection against harassment and bullying. If the harassment or bullying is severe or if the employer fails to deal with less serious, but repeated complaints of harassment or bullying the employee may be justified in terminating his or her employment either with or without notice and complaining of constructive dismissal.

### Remedies for Unfair Dismissal

Complaints of unfair dismissal must be made to the Employment Tribunal within eight weeks of the termination of employment.

The damages that can be awarded by the Tribunal are as follows:

- 6 – 12 months continuous service - 4 weeks' pay
- 12 – 24 months continuous service - 8 weeks' pay
- 24 – 36 months continuous service - 12 weeks' pay
- 36 – 48 months continuous service - 16 weeks' pay
- 48 – 60 months continuous service - 21 weeks' pay
- 60 + months continuous service - 26 weeks' pay

The right to claim unfair dismissal is lost when an employee reaches retirement age as long as the employer's retirement age is the same for men and women. If the employer imposes different retirement ages the higher of the two applies. In any event, the right is lost when a person reaches pensionable age as defined under the Social Security (Jersey) Law 1974.

Advice on your employment rights can be obtained from the Jersey Advisory and Conciliation Service (JACS). Their contact details are as follows:

Trinity House,  
West's Centre

Bath Street,  
St Helier, JE2 4ST.  
Telephone (01534) 730503  
Fax (01534) 733942  
Email [jacs@jacs.org.je](mailto:jacs@jacs.org.je)  
Web [www.jacs.org.je](http://www.jacs.org.je)

A copy of the Employment (Jersey) Law 2003 can be reviewed on the Jersey Legal Information Website at:

[http://www.jerseylaw.je/Law/lawsinforce/consolidated/05/05.255\\_EmploymentLaw2003\\_RevisedEdition\\_1February2008.pdf](http://www.jerseylaw.je/Law/lawsinforce/consolidated/05/05.255_EmploymentLaw2003_RevisedEdition_1February2008.pdf)