

The status of employment law in Guernsey in 2007

Last year was a busy one for Guernsey in the arena of employment law.

The island's select armoury of employment protection legislation was strengthened in March 2006 by significant changes being made to its existing employment protection law, and the introduction of a sex discrimination law.

At the same time, in order to hear complaints of unfair dismissal and sex discrimination, a further piece of legislation was introduced that establishes Guernsey's Employment and Discrimination Tribunal and its associated machinery, and supplementary laws were brought in providing for matters such as appeals, recoverable costs and summoning of witnesses in respect of Tribunal hearings.

The island additionally brought in other pieces of legislation during the course of 2006 that have an impact in the employment field, namely a rehabilitation of offenders law, a protection from harassment law, and a law prohibiting smoking in public places and workplaces.

The Employment Protection Law

The Employment Protection (Guernsey) Law, 1998 as amended is Guernsey's principal employment protection statute providing three key rights: the right to a minimum notice period, the right to a written statement of reasons for dismissal and the right not to be unfairly dismissed.

The notable modifications to the Employment Protection Law that came into force last year included reducing the continuous service required for making a complaint of unfair dismissal from two years to one year; increasing the time limit for making a complaint from one month to three months; increasing the maximum unfair dismissal award from three months' pay to six months' pay; switching the adjudication of complaints from a single lay adjudicator to the Tribunal (which consists of three lay members); conferring a discretion on the Tribunal to reduce an award as it considers "just and equitable"; and the provision of compromise agreements.

By virtue of the combined factors of the reduction in the qualifying period, increased time limit and doubling of the award, it might have been expected that employees would take advantage of this so that there would be a corresponding rise in the number of unfair dismissal complaints since March 2006.

The Department of Commerce and Employment in Guernsey does not publish official figures in this respect. However, it is understood that four complaints were submitted between 1 January 2006 and 28 February 2006, 48 complaints were submitted from 1 March 2006 to 31 December 2006, and 35 complaints have been submitted this year up to 1 October 2007 (note though that as from 1 March 2006 these figures include sex discrimination complaints as well as all other forms of complaint, the separate figures not being available). It is further understood that before the modifications were brought in, an average of 50 unfair dismissal complaints per year were submitted to the Department.

In terms of the number of complaints that have proceeded to be heard by the Tribunal and in respect of which decisions have been made, there were fourteen cases between 1 March 2006 and 31 December 2006 (seven of which were against the same employer and arose out of the same circumstances), and six cases up to 1 October this year. The rough average number of cases prior to the modifications were made was twelve per year.

It is still too early to draw any meaningful conclusions from these figures. However, it is apparent that the modifications have not made a great impact do far in respect of the number of complaints being submitted and the number proceeding to the Tribunal.

Sex Discrimination Ordinance

Guernsey's sex discrimination legislation was enacted in the form of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, the provisions of which essentially mirror those contained in the Sex Discrimination Act in England and Wales.

Although the number of complaints of sex discrimination that have been submitted since the inception of the Sex Discrimination Ordinance is not available, it is understood that there have been very few. Furthermore, up to 1 October 2007 no sex discrimination complaints have proceeded to a Tribunal hearing such that there have been no sex discrimination cases to date.

These are interesting statistics, as they beg the question whether Guernsey really had a pressing need to introduce sex discrimination legislation in the first place, or whether it was a just a knee jerk reaction to political correctness crossing the English Channel from Europe and tainting Guernsey waters.

The future

Are there any new employment laws in the pipeline for Guernsey?

Following a consultation process, the Department of Commerce and Employment has proposed in a recent report that minimum wage legislation should be implemented in Guernsey in the interests of furthering employee protection by eliminating the worst cases of financial exploitation in the workplace.

The legislation being recommended would create a statutory minimum hourly wage for adults aged 19 and over, with provision to set different rates if required for young persons and apprentices. The minimum wage would be reviewed annually following consultation with employer and employee groups. Employers would be required to maintain sufficient records of hours worked and wages paid to enable compliance to be checked and breaches investigated, and would allow an employee to bring a claim under the legislation to the Employment and Discrimination Tribunal.

Although the Department's report does not recommend a rate for the minimum wage, its expectation is that a rate would be set which is similar to the rates in the United Kingdom, Isle of Man and Jersey.

Apart from the prospect of minimum wage legislation, no other employment legislation is on the cards at the moment. However, following representation in the States of Deliberation in September 2007, the States are looking at the implications of introducing legislation that would enable the Convention of the Elimination of All Forms of Discrimination Against Women to be ratified. This could therefore impact on the island's employment laws in the future.

The number and extent of employment laws in Guernsey pale in comparison to those in the United Kingdom, but this is no bad thing. It is clear is that the island is indeed fortunate to be in a position where its employees benefit from a sufficient level of protection (although this is of course arguable) while its employers are not being suffocated by rafts of employment laws and regulations that can upset and interfere with the balance in the employment relationship and damage business.

The island is therefore a good place to do business for employers and comprises a favourable working environment for employees.