

GUIDE TO AGENCY, TEMPORARY AND CONTRACT WORKERS AND THE EMPLOYMENT (JERSEY) LAW 2003

CONTENTS

PREFACE	1
1. What Agency, Temporary and Contract Workers will be Protected by the Employment Law?	2
2. Written Statement of Terms	2
3. Minimum Rest Period and Paid Leave	3
4. Minimum Wage	3
5. Minimum Periods of Notice	3
6. Unfair Dismissal	3
7. Redundancy Rights	4
8. Miscellaneous	4
9. Conclusions	4

PREFACE

The Employment (Jersey) Law 2003 (the **Employment Law**) came into force on 1 July 2005. Its main provisions cover:

- written statements of employment terms;
- minimum rest periods and annual leave;
- minimum wages;
- minimum notice periods for termination of employment;
- unfair dismissal;
- redundancy rights;
- payment of wages and provision of pay statements;
- establishment of an employment tribunal.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

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1. WHAT AGENCY, TEMPORARY AND CONTRACT WORKERS WILL BE PROTECTED BY THE EMPLOYMENT LAW?

The Employment Law is generally designed to protect “employees”, that is, a person who is employed by an employer and is working under a contract of service or apprenticeship with the employer. A person is also employed by an employer if the employee undertakes to do, or to perform personally, work or services for employer; and the status of the employer is not that of a client or customer of any profession or trade or business undertaking that is carried on by the employee.

This definition is not simple to apply and means that, unless a particular working relationship is clearly different from that of employer and employee, the Employment Law will apply. Thus, it is important in practice to differentiate between workers who act genuinely as “self-employed contractors” providing professional trade or business services to customers and clients, and “employees” regardless of the labels attached to the relationship by the parties themselves. Fairly complex case law on this distinction has evolved over the years in other jurisdictions (such as the United Kingdom). Legal advice should be taken before reliance is placed on the distinction by employers.

However, under Article 1(2) of the Employment Law, separate provisions in relation to “agency workers” are set out. Where an individual (the **Agency Worker**):

- “(a) is supplied by a person (the **Agent**) to do work for another (the **Principal**) under a contract or other arrangements made between the Agent and the Principal; but
- (b) is not, as respects that work, an employee, because of the absence of a contract of employment between the individual and the Agent or the Principal; and
- (c) is not a party to a contract under which he or she undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual”,

the Agency Worker is treated as if there were a contract of employment between the Agency Worker and either the Agent or the Principal, depending on who is responsible for paying the Agency Worker.

The final limb of the Agency Worker definition again makes the distinction between Agency Workers and self-employed contractors in the true sense. Thus, if an individual contractor is running his/her own professional or business undertaking, he or she will not be entitled to the protection that the Employment Law provides to employees.

Agency Workers will be entitled to all the protection of the Employment Law (if they are not otherwise disqualified or excepted). Depending on payment arrangements, either the Agency or the Principal will be responsible for compliance with the Employment Law.

2. WRITTEN STATEMENT OF TERMS

Thus, Agency Workers will be entitled to a written statement of the terms of his/her employment within four weeks of commencing employment. It is important, however, to note that, under Article 3(7) of the Employment Law, an Agency Worker will be entitled to a written statement of terms even if his/her period of employment is for less than four weeks.

There are no relevant exceptions under Part 2 of the Employment Law for agency, temporary or contract workers unless they work less than eight hours a week (Article 6). Furthermore, there is no power within Part 2 of the Employment Law to allow the States by regulation to create any further exceptions to the right to a statement of terms. The Agent will be required to provide the terms if it pays the Agency Worker. The Principal will be responsible for providing the terms if it pays the Agency Worker.

3. **MINIMUM REST PERIOD AND PAID LEAVE**

Similarly, an Agency Worker will be entitled to minimum weekly or fortnightly rest periods and paid annual leave as set out in Part 3 of the Employment Law. The method of calculation of the pay to which the worker is entitled is set out in Schedule 1 of the Employment Law.

Whilst leave entitlements are calculated on a pro-rata basis under Articles 11(3), 13(1) and 14, again there are no general exceptions for agency, temporary or contract staff. Thus, once more, either the Agency or the Principal will be responsible for compliance depending on payment arrangements.

4. **MINIMUM WAGE**

Under the Employment Law, Agency Workers will be entitled to minimum wages provided they meet certain criteria. No special exceptions are currently made for agency, temporary or contract workers. Details of minimum wage rates may be found at <http://www.gov.je/Working/Pages/default.aspx> (Certain other provisions relating to the payment of wages and provision of itemised pay statements will also apply to Agency Workers under Part 5 of the Employment Law.)

5. **MINIMUM PERIODS OF NOTICE**

Under Part 6 of the Employment Law, the minimum periods of notice are also prescribed for Agency Workers provided they work for eight or more hours per week. However, if “continuously employed” for less than two years, the employer need only give one week’s notice to terminate under Article 56(1). However, the Employment Law allows the employer to give less than one week’s notice during the first four weeks of employment, if the employment contract so provides. (The minimum notice period increases gradually depending on the length of continuous employment reaching a maximum of 12 weeks’ notice if continuously employed for 12 years or more.)

The calculation of minimum periods of notice is complicated with certain periods of “non -work” counting in the computation, for example, absence from work due to temporary cessation of work. Also, certain changes of employer will not break continuity (for example, associated companies) nor will the entering of successive periods of fixed term contracts with the same employer entered within 26 weeks of the expired contracts.

Whilst no express provision is made for Agency Workers, generally there is no need to give notice to workers on fixed term contracts under Article 56(9). (However, Article 56(4) contains protection for those employed on short-term fixed contracts of four weeks or less which roll over.)

Employees are also obliged to give notice to employers but need not do so if employed for less than 26 weeks, unless contractually obliged to do so.

6. **UNFAIR DISMISSAL**

Agency Workers also have the right not to be unfairly dismissed under Part 7 of the Employment Law by either the Agency or the Principal, depending on who pays the Agency Workers’ wages, provided that they meet certain qualifying criteria. These criteria generally include working eight hours or more per week and being continuously employed for 26 weeks (or such other period as may be prescribed by regulation). There is, however, no qualifying period of employment where the reason for dismissal was a special one specified in the Employment Law such as trade union membership.

Separate provision is made for fixed term workers who must have worked for at least two-thirds of a fixed term contract (subject to a minimum of 13 weeks of a fixed term contract) of 26 weeks to have unfair dismissal rights. For further details about unfair dismissal, please see our general Guide to Employment Law in Jersey.

7. REDUNDANCY RIGHTS

Employees made redundant are entitled to redundancy payments if they have been continuously employed for not less than two years. Redundancy payments are calculated in accordance with Schedule 1 of the Employment Law on the basis of one week's pay for each year of continuous employment, subject to maximum amounts specified by regulation.

Employees made redundant are also entitled to time off to look for work or to arrange training. Other than in specific circumstances, fixed term workers who have been employed under a contract of employment for a term of one year or less are not entitled to time off to look for work or to arrange training.

8. MISCELLANEOUS

Part 8 of the Employment Law prevents the use of blanket exclusion of employment rights in contracts. However, compromise agreements settling disputes are permitted and enforceable in certain circumstances.

Part 9 of the Employment Law deals with the establishment and operation of tribunals.

9. CONCLUSIONS

Agents and Principals may be able to structure their relationships with some agency, temporary or contract workers to alleviate the burden of the Employment Law upon them, particularly through the use of genuine consulting arrangements/contracts for services, the careful consideration of the method and source of payments, and monitoring relevant hours and periods of service. However, much care will need to be taken by Agents and Principals when effecting contractual arrangements with agency, temporary and contract workers.

For more specific advice on Employment Law in Jersey, we invite you to contact one of the following:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).