

Carey Olsen Starting Point Employment Law Guide

– Guernsey Employment Law

Service area / [Employment, Pensions and Incentives](#)

Location / [Guernsey](#)

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Introduction

Carey Olsen Starting Point Guides are intended as a general introduction and guide to different aspects of Guernsey law.

The Guides are a summary of the most important issues that we come across and as such are the edited highlights of those issues. If you would like legal advice in relation to any specific circumstances, please give us a call.

This Starting Point Guide addresses the fundamentals of employment law in Guernsey.

Introduction to Guernsey

Guernsey is the second largest of the Channel Islands and is a British Crown dependency. The Bailiwick of Guernsey also includes the islands of Alderney and Sark and smaller islands of Herm, Jethou and Lihou.

Guernsey has its own financial, legal and judicial systems, as do Alderney and Sark. Although it is not part of the UK, the Queen is head of state and the UK retains an oversight responsibility for the Channel Islands. Similarly, although not a member state of the European Union, the Channel Islands have a formal link with Europe through a formal treaty.

Sources of Guernsey Employment Law

The duties of Guernsey employers and employees derive from a number of sources which include:

- statute law
- customary/common law
- employment contracts

In comparison to other jurisdictions (such as the UK), Guernsey has traditionally been relatively “light touch” when it comes to employment regulation. However the volume of legislation is gradually increasing.

Guernsey has a dedicated tribunal which hears employment claims, the Guernsey Employment and Discrimination Tribunal (the Tribunal). The main claims which it can hear are claims for unfair dismissal, sex discrimination and breach of Guernsey’s minimum wage regime. The Tribunal does not have jurisdiction in respect of contractual matters arising under an employment contract. Those matters are reserved to the Magistrate’s Court or Royal Court of Guernsey, depending on their value.

Guernsey’s contract law is similar but not identical to English contract law. However, when it comes to employment contracts, the Guernsey courts and the Tribunal will generally (although not always and not exclusively) have regard to English law and principles, particularly where the legislative provisions concerned are similar and also when it comes to implied contractual duties.

In practice, therefore, employment law in Guernsey is heavily influenced by English case law. English employment cases will often be cited before the Tribunal or the Guernsey courts but although English law is influential, it is important to appreciate that there are also key differences. As such, employers should ensure that they get specific Guernsey advice on employment law issues affecting any employees working in or from Guernsey.

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Employment legislation in Guernsey

The list below sets out the key statutes in relation to employment law in Guernsey:

- The Conditions of Employment (Guernsey) Law, 1985
- The Employment Protection (Guernsey) Law, 1998
- The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005
- The Minimum Wage (Guernsey) Law, 2009
- The Population Management (Guernsey) Law, 2016
- The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016
- The Data Protection (Bailiwick of Guernsey) Law, 2017

This is a non-exhaustive list. There are a number of other statutes (particularly in relation to the financial services sector and other regulated industries) which may have an impact on the employment relationship.

Who is an employee?

The employment legislation referred to above covers individuals who have entered into or work under a contract of employment and who ordinarily work in Guernsey. There are some limited exceptions - for example, certain categories of seafarers employed on Guernsey registered ships are excluded from some provisions.

Notice periods

With very limited exceptions, the Employment Law provides that all employees employed for one month or more are entitled to the minimum statutory notice periods. The minimum period is determined by the length of their continuous service. A table setting out the minimum notice periods is set out below:

Length of continuous employment	Minimum period of notice
More than one month but less than two years	Not less than one week's notice
More than two years but less than five years	Not less than two weeks' notice
More than five years	Not less than four weeks' notice

Minimum statutory notice periods do not apply to contracts for a fixed term of three months or less, or to a contract for the performance of a specific task which is not expected to last for more than three months, unless in either case the employee has been continuously employed for more than three months.

These are the minimum statutory periods of notice and employers are free to provide for a longer period of notice (but not a shorter period) in their employment contracts. Also, the provisions do not prevent an employment contract being entered into for a fixed term.

Written terms and conditions of employment

Employers are under a duty to provide employees with a written statement of the terms and conditions of their employment within 4 weeks of the commencement of their employment. The key terms which must be provided include:

- Names of the employer and the employee
- Date the employment started
- Job title
- Period of notice
- Terms and conditions relating to:
 - a. Pay
 - b. Hours of work
 - c. Holidays, public holidays and holiday pay
 - d. Sickness and sick pay
 - e. Pension and pension schemes
 - f. Maternity leave

Although Guernsey employers are required to provide employees with information about these terms and conditions, it is worth noting that (as yet anyway) there is little or no statutory regulation about what those entitlements should consist of and as a result employers in Guernsey have considerable flexibility over the benefits they provide.

If there is a change in an employee's terms and conditions the employer must inform the employee of the change in a further written statement not more than four weeks after the change.

Annual leave and minimum rest periods

There is no statutory obligation on employers to provide employees with annual leave in Guernsey, although in practice most employers generally include some provision for annual leave in their employment contracts.

The UK Working Time Regulations 1998 (as amended) do not apply in Guernsey and there is no similar legislation setting out minimum rest periods. Nonetheless, Guernsey tends to follow UK best practice on health and safety matters. In practice, this means that employers in Guernsey need to be aware of UK guidance on minimum rest periods and ensure that their working practices do not risk injury to employees' health and welfare.

Minimum wage

Under The Minimum Wage (Guernsey) Law, 2009, employees are entitled to be paid a minimum wage as follows:

	With effect from 1.1.2018
Ordinary workers	£7.75
Young persons (16-18 inclusive i.e. under 19)	£7.05
Food and accomodation offset	£105
Accomodation offset	£75

Continued

Unfair dismissal

Qualifying employees have the right not to be unfairly dismissed. With some limited exceptions, all permanent employees generally will have unfair dismissal rights after one year (for permanent employment).

Where an employee has transferred from the UK to work for the Guernsey branch of the same employer, it is likely that the employee's continuous employment will be regarded as having commenced on the date that the employee began working for the UK employer.

However, an employee may claim that a dismissal was unfair at **any** stage of employment if it is for one of the reasons which the law recognises as being automatically unfair, including dismissalal:

- for membership or non-membership of a trade union
- in connection with pregnancy or childbirth
- constituting an act of discrimination against the employee prohibited by the Sex Discrimination Ordinance
- for asserting health and safety rights/regulations
- for refusing to do Sunday shop work
- for asserting statutory rights

Once it has been established that there has been a dismissal, the question is then whether or not the dismissal was fair or unfair. In that context it is for **the employer** to show that the reason for the dismissal falls within one of the five reasons recognised by the law as being potentially fair. These reasons are:

- a reason relating to the capability or qualifications of the employee for performing the work of the kind the employee was employed to do
- a reason which relates to the conduct of the employee
- by reason of redundancy
- by reason of the fact that the employee could not continue to work in the position which the employee held without contravention of a restriction or a duty imposed by statute
- some other substantial reason justifying dismissal

In assessing whether or not a dismissal is fair or not, the Tribunal will consider the circumstances of the case, including the size and administrative resources of the employer's undertaking. The Tribunal will assess whether or not the employer acted reasonably or unreasonably in treating the reason as sufficient to justify dismissing the employee.

Any employee who is found to have been unfairly dismissed is entitled to a compensatory award equal to six months' pay (where the employee is paid monthly) or one week's pay multiplied by 26 (where the employee is paid weekly). What constitutes 'pay' has been interpreted by the Tribunal as including all cash benefits received directly by the employee from the employer, including potentially bonuses. As a result, if an employer pays an employee a cash sum towards a pension arrangement, this cash sum would count as 'pay' but if the employer paid a pension contribution direct into an employee's personal pension scheme this would not count as 'pay'.

The Tribunal has the power to reduce the amount of compensation awarded to an employee where it considers that it is fair and just to do so. This could include where the employee is found to have unreasonably refused an offer of reinstatement from the employer or to have caused or contributed to the dismissal.

The relevant government department in Guernsey has issued a Code of Conduct relating to how employers should handle disciplinary processes. A failure to observe the Code does not of itself make an employer liable to proceedings, but the breach may be taken into account by the Tribunal in any proceedings before it.

Statement of reasons for dismissal

Where an employee with at least one year's continuous employment is dismissed or where a fixed term contract is not renewed, the employee is entitled upon request to a written statement giving particulars of the reasons for dismissal or non-renewal.

Where the employee was pregnant (or on any period of maternity or adoption leave, contractual or otherwise), the employee is entitled to receive a written statement confirming the reasons for dismissal, regardless of whether a request is made or the length of service.

Redundancy

Although Guernsey law recognises that redundancy can be a fair reason for dismissal, there is no statutory redundancy procedure or obligation to provide employees with redundancy pay. Therefore, provided an employer fairly selects employees for redundancy and observes a fair procedure in relation to a redundancy situation, employees can be made redundant in Guernsey without any additional payments being required of the employer.

A Code of Conduct in relation to redundancy processes has been issued by the relevant government department in Guernsey. As with unfair dismissal, a failure to observe the Code does not of itself a person liable to proceedings, but the breach may be taken into account by the Tribunal in any proceedings before it.

Employees on basic or additional maternity/adoption leave whose positions have been made redundant are entitled to be offered any suitable alternative vacancy available at the relevant time. The new contract must be suitable and appropriate and conditions must not be substantially less favourable than the previous contract.

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Other employment issues

Maternity and paternity leave and pay

The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 (the Maternity Ordinance) came into 1 April 2016. Key requirements are as follows:

- Maternity leave
 - a. An employee may take 12 weeks of basic maternity leave. The two weeks which commence on the date of birth are compulsory. Failure to comply with this requirement could result in an employer being fined up to £10,000.
 - b. An employee who has been continuously employed for a period of not less than 15 months at the beginning of the 11th week before her due date is entitled to take 26 weeks of maternity leave in total. This includes the 12 weeks of basic maternity leave together with up to 14 weeks of additional maternity leave.
 - c. An employee may work up to 10 keeping in touch days during her maternity leave.
 - d. An employee is entitled to return from maternity leave to the job in which she was employed before her absence or to another job, which is suitable and appropriate for her. This must be on terms and conditions no less favourable than those which would have applied had she not been absent from work.
- Ante natal appointments: an employee must be permitted to attend ante-natal appointments during working hours.
- Maternity support leave: the partner of an employee who is entitled to basic maternity leave is in turn entitled to maternity support leave provided that the partner has been continuously employed for a period of not less than 15 months at the beginning of the 11th week before the pregnant employee's due date. Maternity support leave lasts for a period of two weeks.

Adoption leave and adoption support leave

A man or a woman adopting a child is entitled to take adoption leave on the same basis as maternity leave and to return to work in the same manner. They are also entitled to keeping in touch days. His or her partner is entitled to Adoption Support Leave in the same manner as for maternity leave.

Maternity pay

There are no provisions for employers to provide paid periods of statutory maternity or adoption leave. However, employees may be able to claim certain statutory parental benefits. Currently, those benefits may be paid for a 26 week period.

Redundancy during maternity/adoption leave

Employees on basic or additional maternity/adoption leave whose positions have been made redundant are entitled to be offered any suitable alternative vacancy. The new contract must be suitable and appropriate and conditions must not be substantially less favourable than the previous contract.

Sick pay

There is no requirement under Guernsey law for employers to provide paid sick leave to their employees. Notwithstanding this, employers generally do provide contractual sick pay. However, employees may be entitled to claim statutory sickness benefit from the States of Guernsey Employment and Social Security Department.

Where an employee has been off sick for longer than 26 weeks, they may then be entitled to receive incapacity benefit.

Income tax and social security

Guernsey has a similar system to collect income tax as the PAYE system in the UK. This is known as the Employee's Tax Instalment Scheme (ETI) and is collected by the Revenue Service.

The Revenue Service issues employees with a tax number and coding reference which is the rate at which their income will be taxed, taking into account any benefits or allowances to which they are entitled. Officially the rate of income tax is 20%, but most employees' rate under ETI is usually less than this due to tax allowances which they are able to claim (unless they are in arrears).

Social Security contributions are paid by both the employer and employee in a similar way to National Insurance contributions in the UK.

Data protection and monitoring

The Data Protection (Bailiwick of Guernsey) Law 2017 imposes a similar framework to the EU General Data Protection Regulation and Guernsey is regarded as "adequate" jurisdiction for the purposes of the GDPR.

Employers should notify an employee of the types of data and the purposes for which it will process data and should be registered with the Data Protection Commissioner's Office as a data controller.

The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003 (similar in scope and content to its UK equivalent) imposes restrictions on employee monitoring and the interception of communications.

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Anti-discrimination legislation

Guernsey has enabling legislation that permits the making of ordinances in respect of a number of protected characteristics. To date, the only anti-discrimination legislation which has been introduced is the Sex Discrimination (Employment) (Guernsey) Ordinance 2005. The Ordinance outlaws discrimination on grounds of sex, gender reassignment, marital status, pregnancy, maternity or adoption leave in the employment context.

The Ordinance also provides a procedure for complaints of discrimination to be made to the Tribunal and defines the three types of sex-based dissemination, which are:

- direct discrimination
- indirect discrimination
- victimisation

Harassment is not specifically dealt with under the Ordinance but will generally constitute direct discrimination.

If the Tribunal finds that an employer has been directly or indirectly discriminating against an employee (even if vicariously through another member of staff) the employee will be awarded a sum equal to three months' pay (including benefits) or where the employee is employed on a weekly basis, 13 weeks' pay (again including benefits payable in cash).

There are currently no other anti-discrimination laws in Guernsey, although Guernsey has decided in principle to introduce further legislation in disability.

Flexible working

There are currently no provisions requiring employers to permit flexible working in Guernsey. However, caution should be exercised when considering a request for this because a refusal may in some circumstances constitute indirect discrimination on the grounds of sex.

Sunday workers

The Employment Protection (Guernsey) Law 1998 protects employees from dismissal, redundancy and generally for suffering any form of detriment for refusing to work on Sundays. There are different rules for those employed to only work Sundays.

Collective issues

There is no statutory regime for trade union recognition in Guernsey and there is limited legislative provision in respect of trade unions and/or collective bargaining. This means that there are no specific requirements, for example, to inform or consult with employees in relation to business transfers or redundancies.

Good industrial relations are, however, encouraged within the Island. If negotiations between employer and employee representatives fail, the dispute can be referred to the Industrial Disputes Officer or ultimately the Tribunal. In addition, employees are protected from dismissal for trade union related reasons.

Right to work/population management

Immigration – work permits

Employees from the following list are permitted to enter and stay in Guernsey without requiring specific permission from the Immigration Department:

- British citizens
- Nationals of member states of the European Economic Area (EEA)
- Family members of EEA nationals may also work without permits but must in possession of an 'EEA Family Permit' to enter the Bailiwick of Guernsey
- Swiss nationals
- Young persons admitted under the Youth Mobility Scheme
- Commonwealth citizens admitted as working holiday makers
- Commonwealth citizens admitted on the grounds of UK ancestry
- Other foreign nationals who have no restrictions attached to their stay – for example, long term residents

Employees from other countries will require specific permission to enter and to remain in Guernsey and employers will need to apply for a work permit.

To obtain a work permit, employers generally need to be able to show that there are no suitable local candidates available. However, special arrangements are in place in relation to particular industries where there are recognised shortages of workers, primarily in relation to the finance industry.

Population permits and certificates

By way of background, it is important to note that Guernsey's housing market is split into two- the local and the open market. The local market is by far the biggest and in broad terms is limited to local people or people holding the requisite certificate or permit. The open market is much smaller but is generally open to most people.

A person's ability to live and work in Guernsey is determined by a system of population management. The Population Management (Guernsey) Law 2016 came into force on 3 April 2017 (the Population Law) and replaced the previous "Right to Work" system.

The Population Law requires everybody who lives and/or works in Guernsey (and who is aged 16 or over) to hold either a Certificate or Permit to show that they are allowed to live and/or work in Guernsey.

- A Certificate is issued to a person who is entitled to live in Guernsey. A holder of a Certificate is able to undertake any employment in the Island. Some Certificates will restrict the holder to living in only open market accommodation.

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- A Permit is issued to a person whose ability to live and/or work in Guernsey is conditional. The Permit will explain what the conditions of residence apply, which may include:
 - a. working in a specific job
 - b. living with a specific person
 - c. any other appropriate conditions

If the conditions of a Permit are broken, it becomes invalid. Other than a Permanent Resident Certificate, Permits become invalid if the holder leaves Guernsey.

Employers must ensure that everyone they employ has an Employment Permit or Certificate or a Residence Permit enabling them to undertake the relevant work. They must also keep records (which must be produced on request) which demonstrate compliance.

Employment Permits fall into two categories, which have a number of sub-categories:

- Open market employment permits
 - Part A (Residence/employment in a private family home)
 - Part B (living and working in an Open Market Hotel)
 - Part C (living and working in a nursing/residential home)
- Local market employment permits
 - a. Short term employment permits: these permits are granted because of a local manpower shortage and are issued for up to 1 year. These permits are generally renewable for an aggregate period of up to 5 years. Holders must live in shared Local Market accommodation. Family members are not permitted.
 - b. Medium term employment permits: these permits are issued where there is a local shortage of employees with particular skills or qualifications. Holders may live in Local Market accommodation of their choice and may bring immediate family members to Guernsey with them as long as they live with the permit holder. Medium Term Employment Permits are valid for up to 5 years.
 - c. Long term employment permits: these permits are issued where there is a shortage of skilled workers on a long term basis. Holders are able to live in Guernsey in Local Market accommodation of their choice and may bring immediate family members to Guernsey with them as long as they live with the permit holder. Long Term Employment Permits are valid for up to 8 years. Once a Long Term Permit Holder has lived lawfully in Local Market accommodation for 8 consecutive years they become an Established Resident. Thereafter, such employees can remain in Local Market accommodation indefinitely and can be employed in any job.

Employers must apply for Employment Permits (unless the individual is self-employed, in which case the individual must apply) and where the employee is moving to Guernsey, such application should generally be made prior to the individual who will hold the Permit relocating. The States of Guernsey have published a [policy document](#) setting out which roles will benefit more easily from Permit applications.

Applications for Employment Permits are made on-line via the [Employer Portal](#) through the States of Guernsey website.

When making an application for an Employment Permit for the first time, an employer will be requested to complete an [Employer Assessment](#). Employers will need to undertake the assessment process once every 3 years.

Employing people – summary of initial requirements

Employers' Duties

Employers must generally do the following for every employee:

- Ensure that they understand the residential status of the individual they wish to employ and where necessary apply for an appropriate Employment Permit
- Undertake any necessary background screening, having regard to the provisions of the Data Protection Law
- Obtain a Certificate or Employment Permit for every new employee
- Provide a written statement of terms for each employee, setting out the terms and conditions of employment. This must be done within 4 weeks of the employee's start date
- Pay each member of staff at or above the minimum wage
- Obtain Employer's Liability Insurance and display the certificate
- Keep a record of the wages paid and deductions made for at least 6 years – in practice, employers should consider retaining records for the lifetime of the employment relationship plus at least 6 years
- Make the correct deductions from the employee's wages.
- Account to the Revenue Service for the income tax and social security contributions due in respect of each employee
- Provide each employee with an itemised payslip each time that wages are paid.

Continued

Useful information

General tax and business links:

[Revenue Service](#)

Useful links for employment:

[Population Management](#)

[Immigration](#)

[Employment Relations](#)

[Minimum Wage](#)

[Data Protection Commission](#)

[Employment Tribunal](#)



FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272

E guernsey@careyolsen.com



FOLLOW US

Visit our employment, pensions
and incentives team at
[careyolsen.com](https://www.careyolsen.com)

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