



**STATUTORY ANNUAL LEAVE
ENTITLEMENT AND WORKING DAY
REST BREAKS IN JERSEY**

**REPORT AND RECOMMENDATIONS
OF THE EMPLOYMENT FORUM TO
THE MINISTER FOR SOCIAL
SECURITY**

**Presented to the Minister for Social Security
March 2021**

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Introduction

1. In December 2019, the Employment Forum began a consultation on the current level of statutory annual leave entitlement, and the issue of rest breaks during the working day, in Jersey. The commission from the Minister for Social Security directed the Forum to publicly consult and consider the following terms:

Annual leave –

- I. Remove the provision relating to public and bank holidays to provide that employees are entitled to a specific 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/those days*
- II. Increase statutory annual leave from the current 10 days. Consultation should explore:*
 - (i) In what sectors employees are only entitled to the statutory 10-day minimum*
 - (ii) What might be an appropriate overall period of leave, which the Minister proposes should be in the range of 20 days to 28 days*
 - (iii) The possibility of a staged approach to the implementation of a longer period of statutory annual leave*

Rest breaks –

Consult on amending the Employment Law to provide that all employees in Jersey are entitled to take a 20-minute unpaid rest break in each six-hour period worked.

2. The public consultation period lasted from 5 December 2019 to 6 February 2020. The results of those consultations are set out later in this report.
3. The arrival of the Covid-19 pandemic in March 2020 delayed detailed consideration by the Forum of its conclusions and recommendations. With the agreement of the Minister for Social Security, the Forum's deliberations were put on hold, and recommenced in September 2020. In October 2020, the Chair of the Forum wrote to the Minister seeking a revision of the terms of reference, to remove the word "unpaid" from the commission in respect of rest breaks, and the Minister agreed. The reasons for the request are set out at paragraph 17 of this report.

Membership of the Employment Forum

4. The Employment Forum is a body independent of Government and has statutory functions under the Employment Law 2003.
5. The Members of the Employment Forum who have produced this Recommendation and Report are:
 - Carla Benest (Chair)
 - Helen Ruelle (immediate past Chair)
 - Malcolm Ferey (Deputy Chair)
 - Julie Fairclough
 - Barbara Ward (immediate past Member)
 - John Everett
 - Dougie Gray
 - Thomas Quinlan (immediate past Member)
 - Donna Abel
 - Graeme Stokes
 - Claire Kingham
 - Mark Richardson

PART 1 - EXECUTIVE SUMMARY - RECOMMENDATIONS

6. The Employment Forum **recommends** that the level of statutory annual leave entitlement, set out in Article 11 of the Employment Law 2003, be increased from a minimum of two weeks to a minimum of three weeks (see paragraphs 27 to 32 below for a more detailed assessment of the current entitlement to statutory annual leave).
7. The Forum further **recommends** that the current provision for public and bank holiday leave should be maintained separately from the statutory annual leave entitlement, giving a total minimum leave entitlement of three weeks and nine days in a normal year. The Forum decided that the “pooling” or “potting” of statutory annual leave and public and bank holidays should not be recommended (see paragraphs 25 and 26 below).
8. The Forum has recommended a statutory minimum annual leave entitlement of three weeks. It does not propose a staged approach in respect of this recommended increase in statutory annual leave entitlement from two to three weeks.
9. The Forum **recommends** that employees in Jersey should be entitled to a statutory **minimum** of an uninterrupted 15-minute rest break if they work six hours or more in any one work period.

10. The Forum **recommends** that the necessary changes to the Employment Law come into effect no later than 1 January 2022.

Consideration by the Employment Forum of views expressed in the consultation exercise: overarching conclusions

1. Annual leave

11. From the views expressed in the consultation exercise, the Forum noted a series of important principles that emerged, which have informed its conclusions.
12. Annual leave is a key component in both work-life balance and in the overall quality of Islanders' lives. Holidays give Islanders the opportunity to spend time with friends and family, to explore other interests, to gain new experiences and to relax. For example, in the survey, nearly 70% of respondents said increased annual leave entitlement would give them more time to spend with friends and family; 63% said it would increase their sense of health and well-being; and 59% said increased annual leave entitlement would make them feel refreshed and more motivated when they return to work (Q.17 of the consultation survey responses).
13. Those experiences are often the springboard to bring further useful skills into the workplace and enable employees and employers to balance the demands of the working day with the need for rest. In the Forum's view, taking into account the responses, achieving a positive work-life balance reduces stress levels and increases levels of staff retention, motivation and productivity, to the benefit of the organisation and the individual. In the survey, employers noted the positive benefits of staff being more productive and motivated and the level of reduced sickness absence (Q.21).
14. In this respect, the Forum notes the continuing pursuit of "family friendly" policies by the Minister for Social Security and the Government of Jersey more generally. The Forum considers that the issue of statutory annual leave entitlement is an important component in improving the quality of Islanders' lives and the findings of the consultation exercise bear this out.
15. The benefits to business of holiday periods are widely recognised and many organisations in Jersey already offer their staff more holiday than the statutory annual leave minimum as part of their employment packages. The employer survey response (Q.18) showed that more than 70% of staff are currently entitled to more than the statutory minimum annual leave entitlement. That rises to more than 85% in the employee response (Q.16).

2. Rest breaks during the working day

16. Apart from the health and safety aspect, the Forum considers that rest breaks form an important part of the working day and should be recognised formally as such in the Law. Nearly 80% of the employee respondents in the survey said that rest breaks are either allowed or required (Q.30). This rises to over 95% in employer respondents (Q.37).
17. The Forum notes the diverse arrangements that are in place as far as rest breaks in Jersey are concerned. The Forum takes the view that it is preferable, at this stage, not to legislate either for paid or unpaid working day rest breaks, but to leave such arrangements to the terms of individual contracts of employment between an employee and his/her employer, and to amend the Law generally. The survey indicated a 60/40 split, both in employee and employer responses, when it comes to either paid or unpaid rest breaks (Q.31 and Q.38).
18. Local agreement would also be preserved in respect of when in the working day a break can be taken. This is not always the case in some other jurisdictions, where legislation specifically requires that the break be taken during the working day and not either at the beginning or the end. The Forum wishes the Law to maintain a good measure of flexibility to reflect the needs of individual businesses and their employees.
19. In the survey, responses from both employees and employers indicated a two-thirds/one-third split when asked if rest breaks were required to be taken during the working day and not added either at the beginning or the end (Q.34 and Q.41).
20. The members of the Forum have decided to recommend a 15-minute rest break in a working period of six hours or more, rather than 20 minutes, because, after studying the responses to consultation, the former appears to be at the level most frequently operated by businesses in Jersey.
21. In the survey, 60% of respondents said that a rest break should apply to a working period of six hours or more (Q.24). The Forum recognises, however, that more generous terms are agreed at an individual level and encourages employers to maintain those terms going forward.
22. Current contractual arrangements appear, for the most part, to work well. However, the Forum observes that deciding not to recommend that the rest break should be either paid or unpaid does not mean that employers should engage in a “race to the bottom” in seeking to vary the terms of employment contracts to comply with the proposed bare statutory minimum of 15 minutes in a six-hour or more period. As a

matter of good employment relations, the Forum would be disappointed by such an outcome.

23. The Forum notes that recent amendments to the Employment Law provide the opportunity for mothers to request a variation in their terms and conditions of employment so that they may breastfeed their child. The Forum considers that this is an important aspect of the drive to modernise the existing Law and create a more family friendly environment in the Island, and that extending the right to a statutory rest break to the workforce more generally is important and appropriate.

24. The Forum understands that an amendment to the Law to introduce an entitlement to a statutory minimum period of rest break would also entail an amendment to entitle an employee to complain to the Jersey Employment and Discrimination Tribunal if their rights were not respected.

The issue of combining statutory annual leave with public and bank holidays

25. Within the responses to consultation the Forum notes a lack of demand from employees and employers to combine the amount of statutory annual leave with the statutory public and bank holidays in Jersey (known colloquially as “pooling” or “potting”). This is apparent from the responses in some of the face-to-face meetings between the Forum and respondents (see Part 4 below).

26. While the Forum understands that this is the practice in some other jurisdictions, it bears in mind the need, in a small island jurisdiction, to have as simplified and transparent a system as possible. The Forum considers that, currently, the present system appears to serve employees and employers well enough and recommends that “pooling” should not be adopted.

PART 2 - BACKGROUND

Existing Jersey legislation

Annual leave

27. Article 11 of the Employment Law provides that employees are entitled to:

- A period of leave of two weeks 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 employer, or as provided for in a relevant agreement) –a further nine days.

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

28. 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).
29. 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.
30. 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.
31. 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 10 days equates to an additional 4 per cent of pay for each hour worked.¹
32. 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 Jersey Employment and Discrimination 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.

¹ 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/)

Working day rest breaks

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

OTHER JURISDICTIONS – A COMPARISON OF ANNUAL LEAVE ENTITLEMENT

International Standards

34. The following international comparators were used for the consultation exercise and informed the Forum's consideration of the appropriate level of statutory annual leave entitlement.
35. The majority of jurisdictions worldwide have introduced a statutory minimum annual leave entitlement. In most jurisdictions 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.
36. 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.
37. Until the UK withdrew as a Member State of the European Union, the Working Time Directive was implemented by way of the UK Working Time Regulations 1998. Jersey has not implemented the provisions of the Working Time Directive in its domestic legislation.

UK practice

38. Statutory annual leave entitlement increased in stages (including public and bank holidays) –
- 1998 – 3 weeks
 - 1999 - increased to 4 weeks
 - 2007 - increased to 4.8 weeks (24 days)
 - 2009 - increased to 5.6 weeks (28 days)
39. 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.

40. 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.
41. The impact in the UK of increased holiday entitlement was expected to be greatest in sectors such as hotels and restaurants, and wholesale and retail, many of whose employees had less than the 28-day entitlement.

Guernsey

42. 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 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.²

Isle of Man

43. Workers in the Isle of Man are entitled to 4 weeks' statutory annual leave, inclusive of bank holidays (10 days).³ The entitlement was introduced in 2007 at a time when the UK entitlement was also 4 weeks.

Republic of Ireland

44. 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.⁴
45. Appendix 1 shows a chart describing statutory annual leave entitlement across a wide range of jurisdictions.

² <https://gov.gg/CHttpHandler.ashx?id=2287&p=0>

³ Annual Leave Regulations 2007

⁴ The Organisation of Working Time Act 1997

OTHER JURISDICTIONS – A COMPARISON OF REST BREAK ENTITLEMENT

46. Practice on the length of workday rest breaks, and whether they are legislated for, varies markedly across jurisdictions.
47. Within the EU and EEA countries, minimum durations vary from 10 minutes (Italy) to 60 minutes (Finland and Portugal). The vast majority of EU and EEA States legislate for between 15 and 30 minutes.⁵ The EU Working Time Directive does not specify the precise duration of rest breaks.
48. Some States operate a system of agreed rest break periods and payment for such breaks through collective bargaining arrangements and individual contracts of employment. Others are set out in national legislation.
49. Other jurisdiction examples include:

Guernsey

There is no legislation in Guernsey for rest breaks during the working day. Guidance notes state that it is important for both employees and employers that all terms and conditions relating to hours of work are clearly stated in writing.

Isle of Man

As in Jersey, the EU Working Time Directive does not apply, though some employers use it as an example of best practice. Only shop workers have specific legislation that states they cannot be required to work for more than 5 hours without a break of 30 minutes. There is no legislation covering other sectors of the economy, but employers must be aware of health and safety implications when requiring employees to work longer hours.

Northern Ireland

An employee has the right to a break of 20 minutes if he or she is required to work continuously for more than six hours. The break must be taken during the working period and not at either the beginning or the end. Breaks do not have to be paid unless the employment contract provides for it.

UK

Workers have the right to one uninterrupted 20-minute rest break during the working day if they work for more than six hours. This could take the form either of a tea break or a lunch break.

⁵ <https://euagenda.eu/upload/publications/untitled-218554-ea.pdf>

Conclusions on working day rest breaks in Jersey

50. In coming to its conclusions on the way forward in Jersey, the Employment Forum considers that a mixed approach best suits the needs of the Island – hence its recommendation that there be a minimum period for workday rest breaks, but that the issue of whether they be paid or unpaid be left to agreements between employees and employers.

PART 3 - THE CONSULTATION EXERCISE – RESPONSES

51. A total of 303 responses were received from individuals, businesses and organisations representing employees and employers. In addition, the Forum held a series of face-to-face meetings with individuals representing a range of organisations in Jersey.

52. Many of the written responses to the Forum included detailed comments and the Forum is grateful for the time that respondents have taken to provide considered reasons for their views. The Forum ensures that a range of comments are included in the Recommendation to represent the views expressed by respondents from different sectors and business sizes and not just the comments that support the Forum’s recommendations.

53. The consultation exercise posed 23 questions about statutory annual leave and 20 questions about working day rest breaks. The responses break down in this way:

			Response Percent	Response Total
1	Employer		42.06%	135
2	Employee		50.47%	162
3	Looking for work		1.25%	4
4	Employers’ association		0.31%	1
5	Trade union/staff association		0.31%	1
6	Other (please specify):		5.61%	18

The following sections provide an overview of some of the survey responses. Written comments have been included verbatim:

13. Do you anticipate any difficulties with certain working practices, such as shift patterns, annualised hours or flexible benefits, if the statutory annual leave entitlement is increased?			Response Percent	Response Total
1	Yes		29.13%	90
2	No		52.10%	161

13. Do you anticipate any difficulties with certain working practices, such as shift patterns, annualised hours or flexible benefits, if the statutory annual leave entitlement is increased?

			Response Percent	Response Total
3	Don't know		18.77%	58

“There will be problems as with any change but nothing that can't be solved.”

“I can appreciate that employers may feel that there would be difficulties if they have shift or flexible working hours however, they also offer zero-hour or temporary contracts, so additional days can be covered that way.”

“To a point, a lot of businesses have the flexibility to currently offer more holidays but pay the employee as long as they have taken their 2-week minimum and bank holiday for the rest that are unused. increasing the statutory may impact this and hinder the company's flexibility when recruitment has been challenging.”

14. If statutory annual leave is increased in Jersey, would any measures help to reduce the impact on businesses?

			Response Percent	Response Total
1	Yes		33.66%	102
2	No		30.03%	91
3	Don't know		36.30%	110

“Phased introduction.”

“This would be an additional cost on employers, and lead to reduction in funds available for pay increases to keep pace with inflation. and would also prevent employees choosing to work additional days for increased remuneration. The change could lead to some individuals losing their jobs if employers unable to afford the additional costs.”

“Again consider small business we are not all big finance employers. Also other initiatives like family friendly and parental leave. They all add up.”

“The increased cost should be offset by improved mental health, mindset and productivity of retained staff due to the additional leave. Reduced ‘sickness’/‘duvet days’ and stress levels combined with happier staff and improved productivity during working hours.”

“It will be another strain on small businesses and likely make even more people just give up.”

“Perhaps some incentive for small businesses could be achieved during the transition period to offset some of the extra expense this would cost them. Perhaps businesses would need to apply for the ‘assistance’ based on number of staff employed and annual turnover to ensure those who genuinely need assistance are supported during the transition period. After the transition period, businesses should be able to manage the requirements of the law going forward.”

17. What are the three most important benefits an increased annual leave entitlement would give you?

1	Opportunity to spend more time with my family and friends	
2	Reduce the amount of days off work due to ill health	
3	Improve my health and well-being	
4	Enable me to pursue other leisure interests	
5	Opportunity to earn more money in a second job/overtime	
6	Opportunity to earn more money by receiving money in lieu of taking holiday, if my employer allows it	
7	Enable me to take another holiday away from home	
8	More choice over when I take my holiday	
9	Help me feel refreshed and motivated when I'm back at work	
10	I already receive at least 28 days of annual leave	

18. Are your employees entitled to -

			Response Percent	Response Total
1	Statutory annual leave (2 weeks plus 9 days for public and bank holidays)		14.93%	20
2	More than the statutory minimum		70.90%	95
3	A mixture - some employees are entitled to the statutory minimum and others have a greater entitlement		14.18%	19

23. Do you have any other comments or suggestions in relation to the proposal to increase the period of statutory annual leave in Jersey?

"This has taken far too long to be even spoken about. Get it implemented ASAP."

"Increase annual leave - yes - but do not add statutory public holidays to the overall total as this has the potential to increase exploitation of workers."

"Excessive government pressure on employers reduces business confidence. Employees decide where and when they want to work - they have the choice."

"We are placing a greater emphasis on people's well-being which isn't really put into practice in reality. More time off would be more progressive for society as a whole and I would welcome a more level

playing field on paid holidays for everybody instead of the luck of the draw as to where you may work.”

“I think there are more pressing issues. As described, staff cover is an issue and people feel guilty for leaving colleagues to take annual leave. Investment needs to be considered first to make work forces sustainable and attractive to work for.”

Responses to rest break consultation

24. If the Employment Law is amended to require a 20-minute unpaid rest break during the working day, should it apply where an employee has worked for -			Response Percent	Response Total
1	6 hours or more in a day		60.40%	183
2	More than 6 hours in a day		14.19%	43
3	Neither, a 20 minute rest break should not be introduced		25.41%	77

“A rest period allows the employees to recharge especially in intense working situations e.g health.”

“I will often work without a break and if I took the time to rest I feel this would be beneficial to me.”

“Rest breaks should be a matter for agreement between employer and employee and not a matter for government interference. It may be necessary for an employee to work more than 6 hours on occasion without such a break . The fact that such break(s) were unpaid would extend the length of the working day.”

“A 15-minute break should be paid for ... You cannot expect staff to safely work without a paid breaktotally unacceptable in this day and age”

“Rest breaks are good and we want people to ensure that they have a good work/life balance. However, a number of employees do work through breaks in order to create flexibility around childcare. Typically, these people would not take the breaks anyway as wanting to get through all their work in the day so it just leads to unpaid work time.”

27. Would some employees lose pay where their work start and finish times remain the same, but the employer deducts 20 minutes from their pay each day to accommodate an unpaid break?			Response Percent	Response Total
1	Yes		54.37%	168
2	No		28.48%	88
3	Don't know		17.15%	53

“This is why it should be optional of either working through, starting earlier or finishing later. If they choose not to work unpaid to make up the time, the hours they are allocated should still meet their contractual hours.”

“The whole point of the rest is welfare. The legislation must ensure that no worker is penalised for taking it.”

“I'm not sure if there is another way to introduce the break, unless employers decide for the break to be paid and included within the 6 hours.”

“If you are insistent on a strict unbroken 20 min period, then we cannot accommodate that. 9 STAFF = 3hrs less productivity whether the staff are on break individually or collectively.”

30. Does your employer allow, or require, you to take one or more rest breaks during the working day (Question for employees)?				
			Response Percent	Response Total
1	Yes, rest breaks allowed		58.49%	93
2	Yes, rest breaks required		18.87%	30
3	No rest breaks		22.64%	36

31. Are your rest breaks paid or unpaid (Question for employees)?				
			Response Percent	Response Total
1	Paid		40.94%	52
2	Unpaid		59.06%	75

The response to this question and to Question 38 laid the basis for the Forum’s view that a statutory rest break should not be legislated for as either paid or unpaid (see paragraph 17 above).

34. Are you required to take your rest break around the middle of your work period? (I.e. your break may not be added to the start or end of your working day)				
			Response Percent	Response Total
1	Yes		68.55%	85
2	No		31.45%	39

In terms of general comments from employees relating to rest breaks, this is a selection:

“Employer is flexible with respect to breaks because they are not abused and assigned tasks are appropriately completed.”

“Rest breaks should be a commonsense thing and should not need to be policed in a respecting working environment.”

“Rest breaks are important, you get more out of your staff if they are rested and they will appreciate the employer more.”

“Just leave it alone we don't need more laws. Good firms let people have 10 minute toilet and tea break bad employers won't change anyway and people will just have to work longer to make up the unpaid break they don't want.”

37. Do you allow, or require, your employees to take one or more rest breaks during the working day?

			Response Percent	Response Total
1	Yes, rest breaks are allowed		61.65%	82
2	Yes, rest breaks are required		34.59%	46
3	No rest breaks		3.76%	5

38. Are rest breaks paid or unpaid (Question for employers)?

			Response Percent	Response Total
1	Paid		60.63%	77
2	Unpaid		39.37%	50

41. Are employees required to take their rest break around the middle of their work period? (I.e. breaks may not be added to the start or end of the working day)

			Response Percent	Response Total
1	Yes		62.99%	80
2	No		32.28%	41
3	Don't know		4.72%	6

In terms of general comments from employers relating to rest breaks, here is a selection:

“Breaks are insisted upon to support the company's wellness programme.”

“We have paid breaks for customer-facing employees in order that they can get a drink/food/go to the loo etc. so these are paid and they equate to 30 mins per day (typically 15 mins in morning and 15 minutes in afternoon). The same thing is detailed in the contracts of the office staff but as they can get drinks/got to loo/eat whenever needed, these are not taken so formally.”

“We are a small business, with a number of different working patterns and hours. Any employee working more than 6 hours per day is required to take a lunch break of between 30 minutes and 60 minutes, as agreed between both parties at the commencement of employment. Employees working 6 hours or less are not required to take a break.”

“It really is not relevant to our business. We operate flexible working hours. They have to be at their desks (or otherwise engaged in work for the company) during core hours which are between 10am and midday then between 2pm and 4pm. They have to complete 7.5 hours work per day. They can take rest breaks if required during that any time they are at work.”

“As a professional services firm we are perhaps dealing with a different culture where client service and delivery is the main driver. We are able to trust staff not to overstep flexibility when it comes to things like breaks, and delivery and performance is measured and managed in other ways.”

“I consider this to be another attempt to unnecessarily impose a one size fits all solution where this is not the case, rest breaks should be a matter between employer and employee and not a matter for government interference.”

PART 4 – THE CONSULTATION EXERCISE – FACE TO FACE MEETINGS

54. The Forum's consultation paper noted that, in addition to providing written responses, stakeholders were invited to request individual meetings with the Forum. Meetings were held during the period of the review with representatives of the following -

- Jersey Chamber of Commerce
- Jersey Retail Association
- Jersey Advisory and Conciliation Service
- Jersey Construction Council/HR Director, Garenne Group
- HR Now Ltd
- Director, Government of Jersey Health and Safety Inspectorate
- The Jersey Royal Company

55. The Forum is very grateful to those who took the opportunity to provide their views in person. While the discussions at those stakeholder meetings are not directly quoted in this report, the views expressed were extremely informative and have been taken into account by the Forum as part of this review.

56. In addition, Unite the Union and the Jersey Farmers' Union provided specific written comments, for which the Forum is also grateful.

Jersey Chamber of Commerce

The representatives of Chamber made the following points:

- There is a desire to maintain the separation between annual leave and public and bank holidays, for the sake of clarity. "Pooling" might result in businesses having to pay staff for days when, at present, they are not open
- A note of caution was expressed in relation to comparisons with the UK. Jersey's economy is of a wholly different size and make-up. The starting point for consideration should be to avoid, as much as possible, unnecessarily complex legislation
- Most employers are meeting expectations around annual leave within the current legislative framework
- A 10-day statutory minimum was not enough in a modern and progressive employment environment. An increase would allow employers to offer more leave entitlement beyond the minimum at their discretion, either as part of a loyalty/reward package or to attract staff
- Chamber urged that any changes should be made at the beginning of a calendar year
- In relation to rest breaks, Chamber noted that where certain arrangements suit an employee, it should be possible for that to continue, and any legislation should be suitably agile, to avoid penalising an employee or forcing them to take a pay cut

- Chamber made the point that it would probably be better to have some statutory basis for rest breaks rather than nothing at all, and there was a sense that legislation in Jersey was behind current working practices in this regard. Legislating for a rest break would reinforce what is already happening

Jersey Retail Association

The representative of the Jersey Retail Association made the following points:

- In respect of annual leave, a business survey undertaken in June 2019 confirmed that many businesses already provide at least 20 days' annual leave entitlement, excluding bank holidays
- There is general support for increasing the statutory minimum annual leave entitlement
- Larger retailers tend to follow UK practice for annual leave. As a consequence, other employers tend to follow suit so as not to suffer a competitive disadvantage
- The proposals in general would not impact the retail sector
- With regard to rest breaks, the Association has not received any representations from business. The Association is not aware of any retail businesses that don't already provide rest breaks for employees
- The nature of the retail industry required breaks to be provided to ensure a business can achieve the best performance from its employees
- Businesses are used to applying the principle of a rest break in the working day, so any legislation would not necessarily be a culture shock
- There are no concerns with the existing separation between annual leave and public and bank holidays. Indeed, the retail industry prefers the current arrangements
- Caution was expressed against the danger of unintended consequences, causing a disadvantage to employees. An example would be if an employee was unable to extend their hours at the beginning or the end of the working day, and required to take an unpaid break during the day, thus losing money. There was a need to balance any proposal for rest breaks with ensuring an employee's best interests could be protected

Jersey Advisory and Conciliation Service (JACS)

The Director of JACS made the following points:

- "Potting" or "Pooling" was a method used by some Jersey businesses, which had some advantages, including not negatively impacting those employees who routinely did not work on Mondays and who wouldn't otherwise benefit from having a public or bank holiday when it fell on a Monday
- "Potting" could be more cost effective, wouldn't be a significant change, and would permit more flexibility for those employees who did not work a standard Monday to Friday week
- Where businesses shut down seasonally there was an issue in terms of the shut-down period being longer than the current statutory minimum annual

leave allowance, meaning workers in that position were forced to take unpaid leave

- The current statutory amount of annual leave is not sufficient; JACS would recommend a total amount of 24 days leave, including public and bank holidays
- Questions around rest breaks were one of the most frequently asked at JACS. There were often challenges with taking rest breaks in some occupational roles: postal workers, health care staff, delivery drivers, and how a break would be monitored away from business premises
- JACS agreed that a minimum period for a break should be legislated for, providing clarity for employee and employer. But flexibility to stagger break times would be important

Jersey Construction Council/HR Director, Garenne Group

The Chair of the Jersey Construction Council and the HR Director of the Garenne Group made the following points:

- It is often difficult for the Construction Council to reach a consensus on these issues, given the diversity of the businesses represented and the various opinions. Over 1,000 businesses are registered with the Council, including many small businesses and sole traders
- Most construction businesses adhere to the current statutory minimum for annual leave. Efforts were being made to improve the employment “offer”, in an acknowledgement of the importance of family life and work-life balance
- A higher level of statutory annual leave could mean more unemployment in the sector and the greater use of zero-hours contracts
- The Garenne Group used loyalty bonuses for offering additional annual leave entitlement; this was a preferred approach for offering leave beyond the statutory minimum
- Most annual leave within the construction industry was taken over the Christmas period and more leave entitlement might mean sites had to stay open over Christmas
- The Council agreed in principle with the proposal regarding rest breaks, but unintended consequences might include an employee having to work an additional 20 minutes unpaid
- The Garenne Group pays for rest breaks and this is standard industry practice. A 10.00am break is well-known in the construction industry, reflecting the need to have regard to Health and Safety of employees
- There was a risk that the industry would default to the statutory minimum if rest breaks were provided for in legislation, but both were in agreement that a rest break should be paid, to ensure a level playing field
- As an example, each job in the construction industry is won by competitive tender, and it would be important not to allow rest breaks to become a way of forcing costs down

HR Now Ltd

- Very few employers offered only the statutory minimum annual leave entitlement. 25 days plus public and bank holidays was a normal offering in office-based and white collar jobs
- “Potting” or “pooling” of days might mean more administrative challenges for small businesses
- Increased annual leave entitlement might not make a significant difference in the agricultural sector, and the hospitality sector already offered more than the statutory minimum
- A small change in leave entitlement might make a big difference to some small businesses
- It is the industry norm to provide rest breaks and many businesses paid
- Any legislation might risk the loss of flexibility, particularly with part-time workers, to their detriment. It might also require employees and employers to compromise in a way that could lead to Tribunal challenges, particularly if an employee were to leave on bad terms

Director, Health and Safety Inspectorate, Government of Jersey

- Staff welfare dictated that employees should have at least some control over when annual leave is taken
- In her experience, most employees were receiving more than a 20-minute break in a six hour period
- The main query the Inspectorate receives is whether a rest break can be taken at the beginning or end of a shift. The advice given is that a rest break should not be used in this way. Most enquiries come from employees rather than employers
- There might need to be exemptions in law for certain groups, such as those employed to look after children or those working in the care sector

The Jersey Royal Company

The representatives of The Jersey Royal Company made the following points:

- The Company currently provides an annual total of 21 days’ holiday
- Employees tended to want to work as much as possible, including bank holidays – that was the principal reason for them being in the Island for a time-limited period. The Company takes its responsibility for staff welfare seriously, to ensure that an employee’s welfare is properly catered for
- This is a common theme throughout the agricultural sector
- There was a clear focus on training, monitoring and reporting
- The Company agreed that increased statutory annual leave would be a bonus for staff and could help with recruitment, but it would be necessary to ensure that Jersey is competitive with other jurisdictions where agriculture played a significant part in the economy
- The Company currently offers two paid 15-minute breaks (morning and afternoon) and a 30-minute unpaid break at lunchtime. Caution was

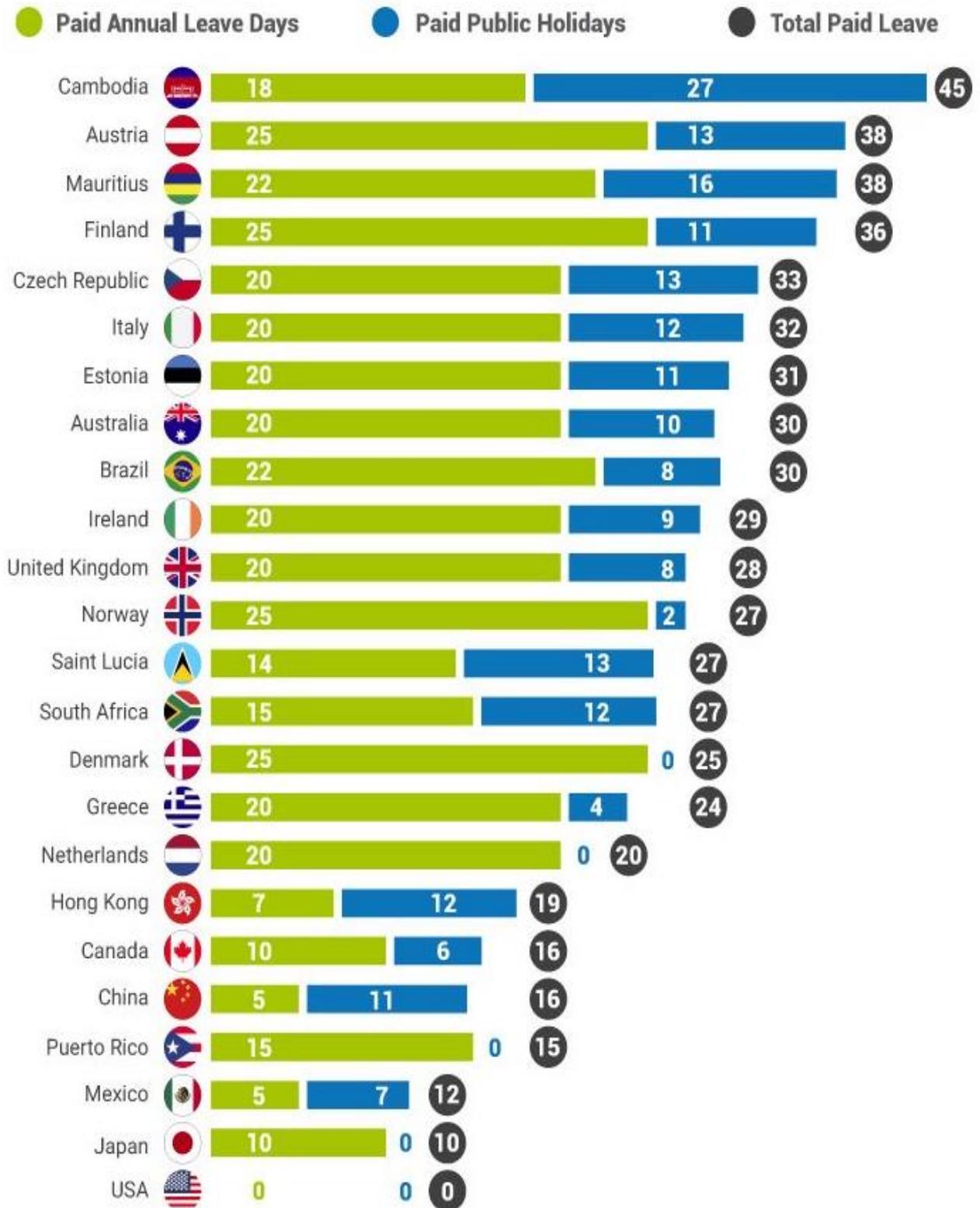
expressed about legislation that might result in either less time being available for breaks and/or fewer paid breaks being provided

- The introduction of a statutory rest break would impact the Company, given its current employment practices

PART 5 – SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

57. The Employment Forum, a statutory body independent of the Jersey Government, is grateful to all those who took the time to respond to the consultation exercise, both in written form and in person. The Forum received a wide range of views on the subject of the minimum statutory annual leave level and legislating for statutory working day rest breaks, some of which it has endeavoured to highlight in this Report.
58. The Forum notes that, currently, Jersey lags behind other jurisdictions in the amount of statutory annual leave entitlement that is currently provided.
59. Evidence submitted to the Forum shows that, in many areas of the economy, good provision is made for employees' annual leave entitlement, which is encouraging. As noted in its overarching conclusions in paragraphs 11 to 15 of this Report, the benefits of annual leave take many forms. The Forum considers it important that employers and employees appreciate the wider picture of the benefits to society as a whole.
60. Both paid and unpaid rest breaks have significant application in contracts of employment in Jersey. The Forum welcomes the fact that such provision is made. It considers that, as a matter of fairness, those employees who are required to work over a set number of hours, and who have no contractual entitlement to a rest break, should have the benefit of it for a statutory minimum period.
61. The Forum makes no recommendation about the time during the working day that a rest break or breaks should be taken. It notes that, in many other jurisdictions, the rest break is required to be part of the working day, and not added at either the beginning or the end.
62. The Forum recognises that employment practices in a relatively small jurisdiction like Jersey will sometimes require a more flexible approach, enabling working agreements between employee and employer, for the benefit of both. The Forum makes its recommendations in that spirit.

APPENDIX 1 - Annual leave entitlement across 24 jurisdictions⁶



⁶ <https://www.silverdoorapartments.com/blog/annual-leave-entitlement/>

APPENDIX 2

Annual Leave and Rest Breaks Consultation

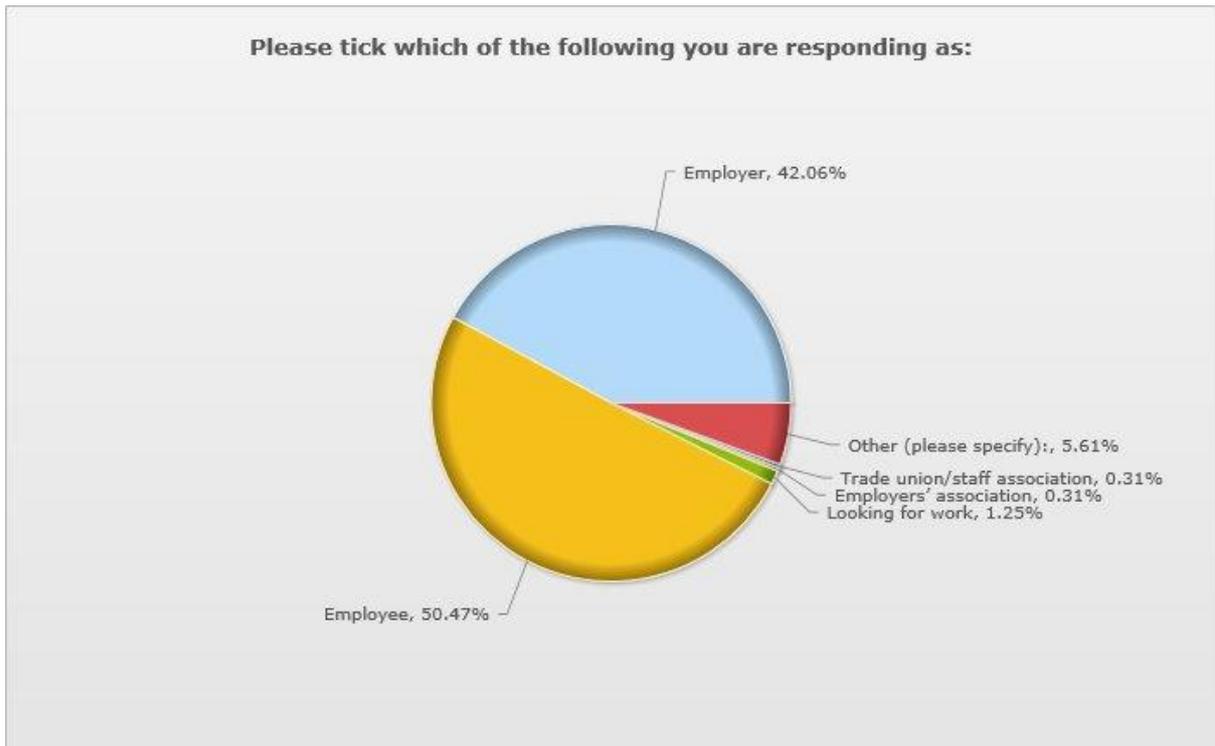
Online Survey results from completed submissions in pie and bar chart form

Annual Leave Questions

Q1. Please tick which of the following you are responding as:

Answered: 321

Skipped: 0



Employer: 42.06% (135)

Employee: 50.47% (162)

Looking for work: 1.25% (4)

Employers' Association: 0.31% (1)

Trade Union/staff association: 0.31% (1)

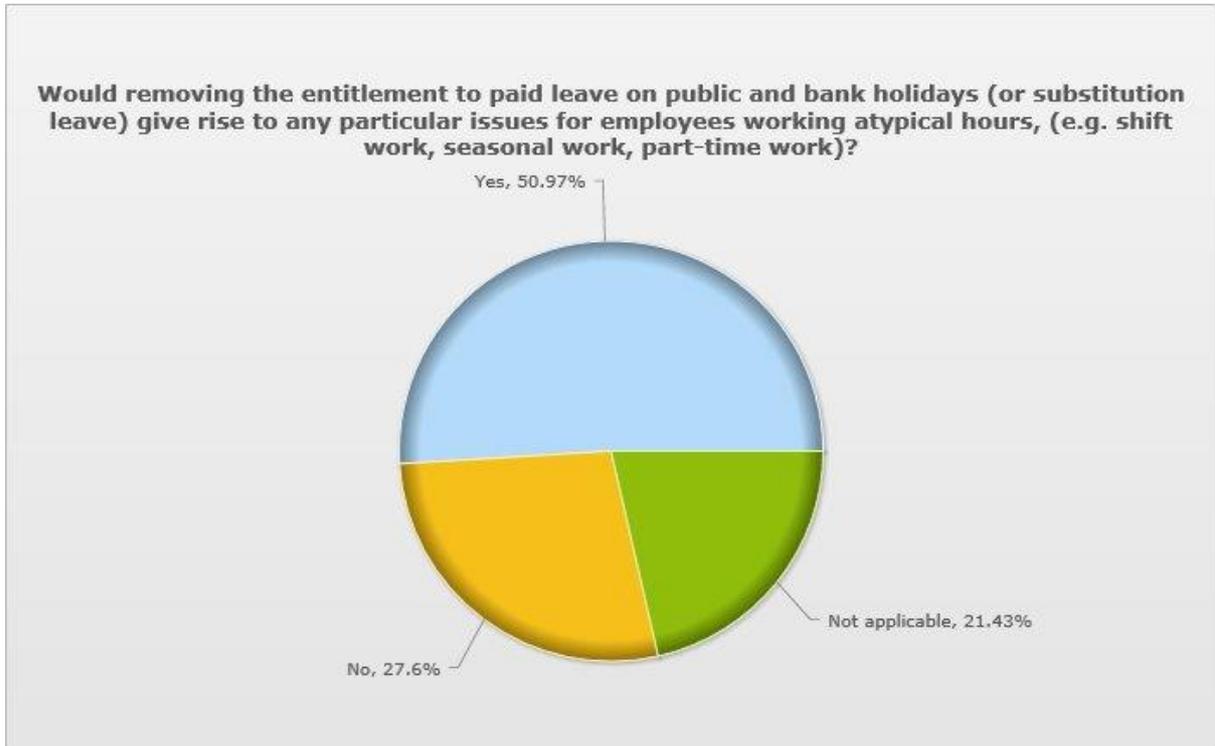
Other: 5.61% (18)

Q4. Would removing the entitlement to paid leave on public and bank holidays (or substitution leave) give rise to any particular issues for employees working atypical hours, (e.g. shift work, seasonal work, part-time work)?

Answered: 308

Skipped: 13

Of those who answered this question:



Yes: 50.97% (157)

No: 27.6% (85)

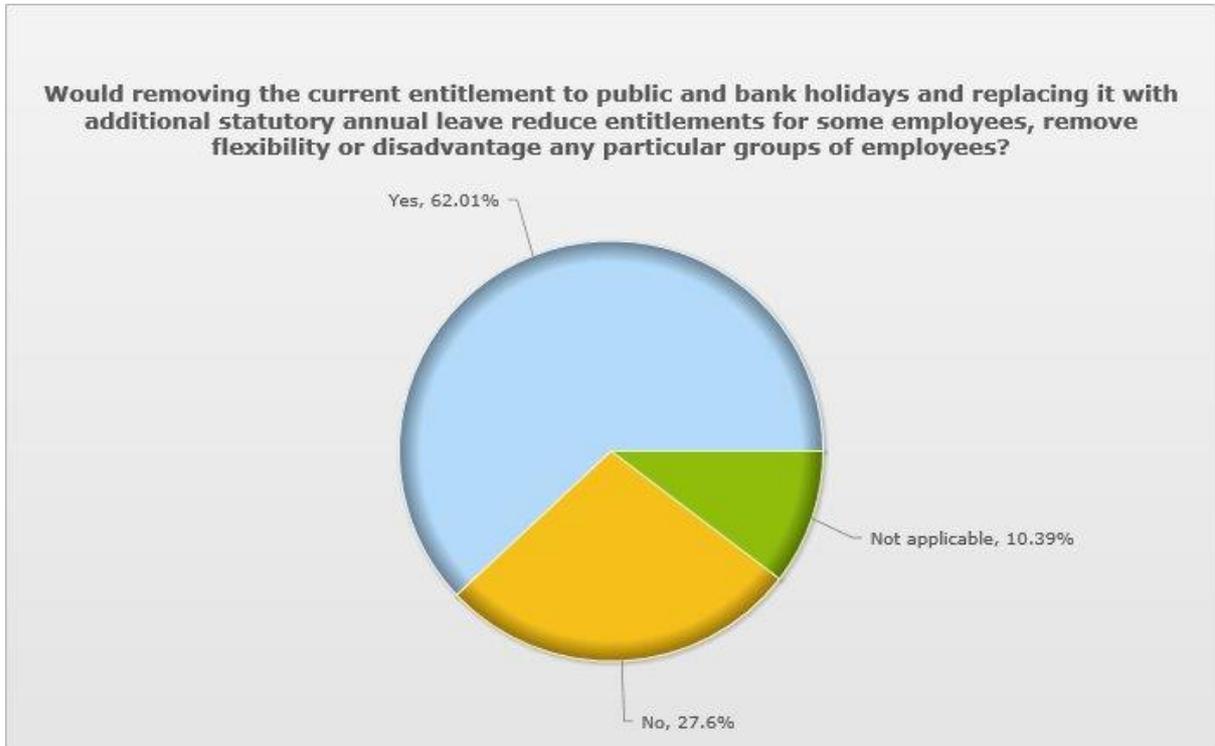
Not applicable: 21.43% (66)

Q6. Would removing the current entitlement to public and bank holidays and replacing it with additional statutory annual leave reduce entitlements for some employees, remove flexibility or disadvantage any particular groups of employees?

Answered: 308

Skipped: 13

Of those who answered this question:



Yes: 62.01% (191)

No: 27.6% (85)

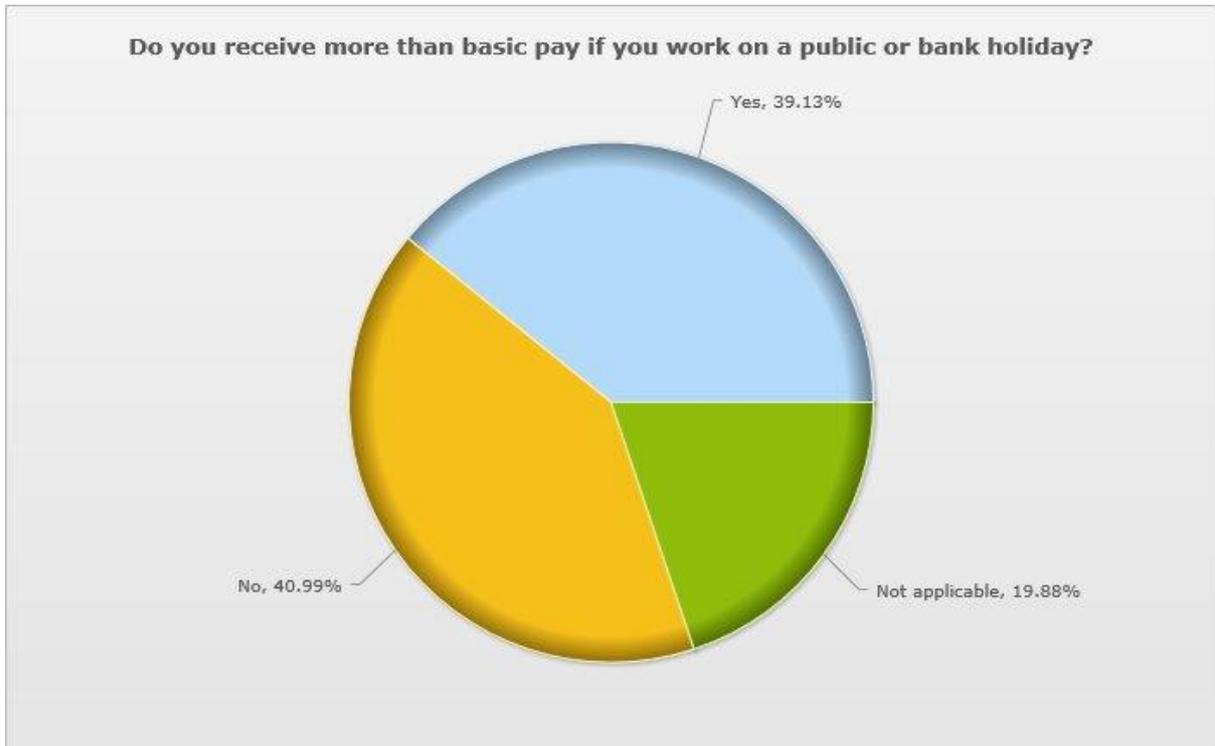
Not applicable: 10.39% (32)

Q7. Do you receive more than basic pay if you work on a public or bank holiday?
(Question for employees)

Answered: 161

Skipped: 160

Of those who answered this question:



Yes: 39.13% (63)

No: 40.99% (66)

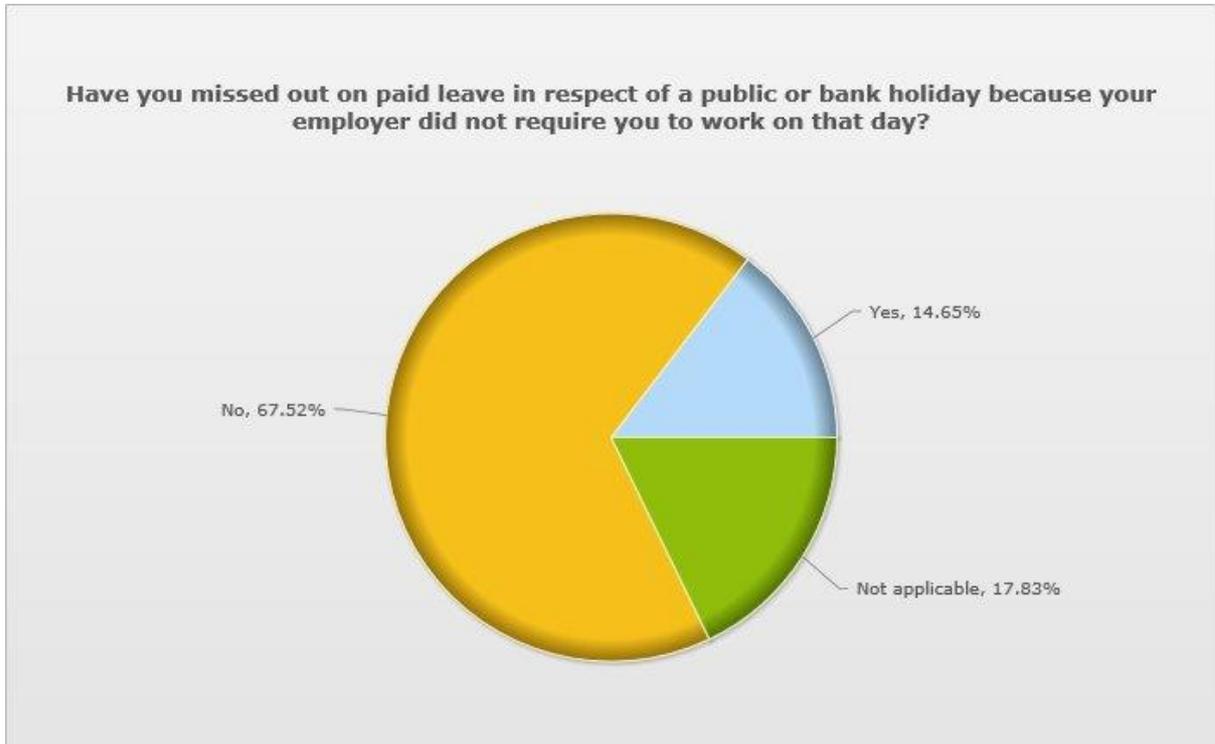
Not applicable: 19.88% (32)

Q8. Have you missed out on paid leave in respect of a public or bank holiday because your employer did not require you to work on that day? (Question for employees)

Answered: 157

Skipped: 164

Of those who answered this question:



Yes: 14.65% (23)

No: 67.52% (106)

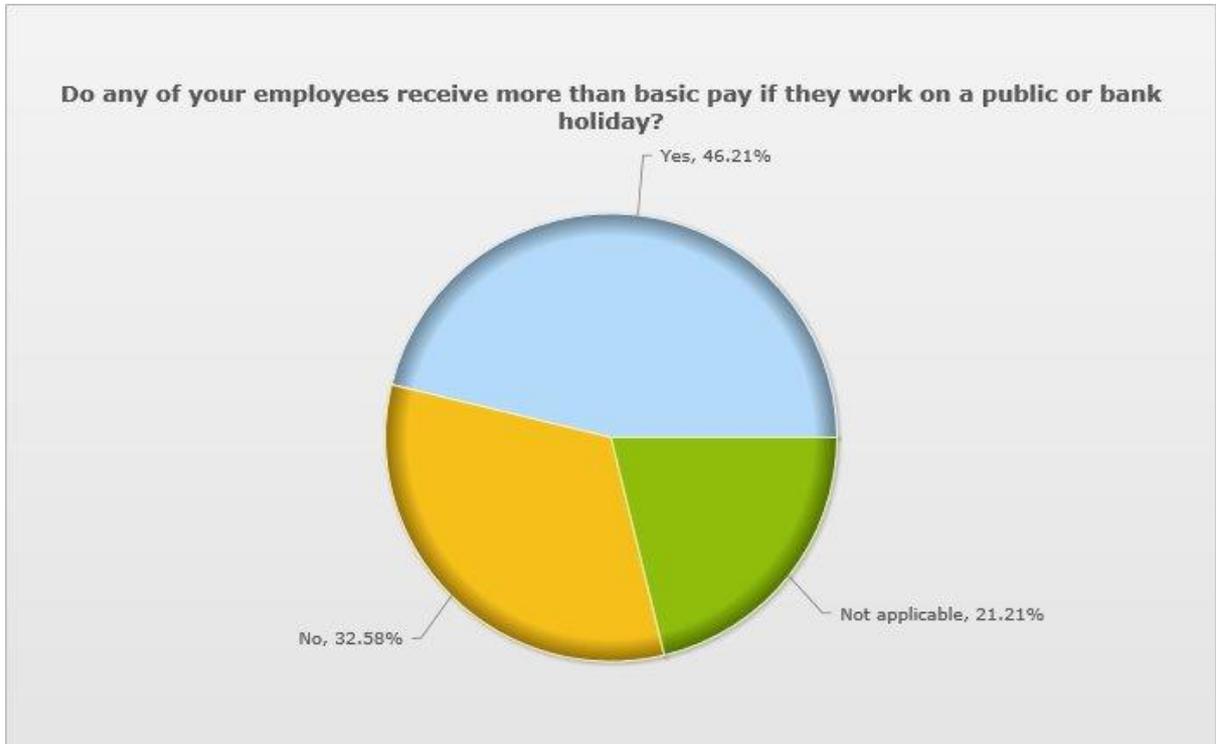
Not applicable: 17.83% (28)

Q9. Do any of your employees receive more than basic pay if they work on a public or bank holiday? (Question for employers)

Answered: 132

Skipped: 189

Of those who answered this question:



Yes: 46.21% (61)

No: 32.58% (43)

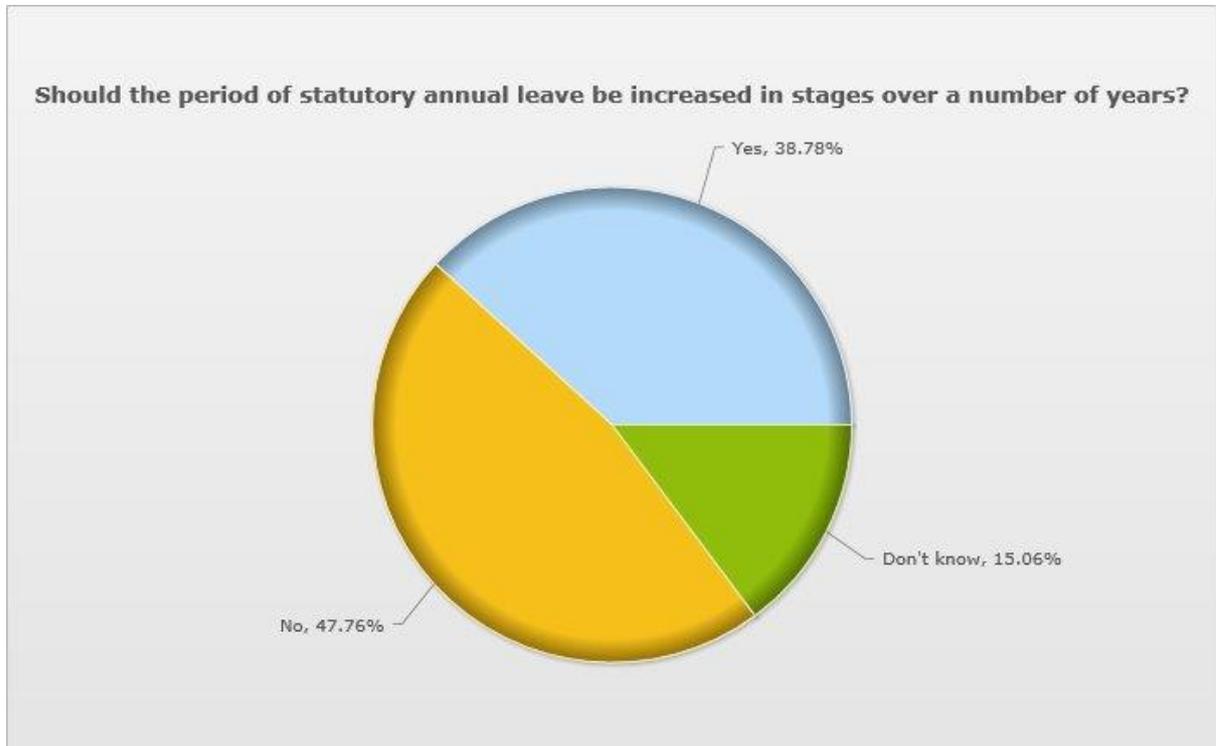
Not applicable: 21.21% (28)

Q12. Should the period of statutory annual leave be increased in stages over a number of years?

Answered: 312

Skipped: 9

Of those who answered this question:



Yes: 38.78% (121)

No: 47.76% (149)

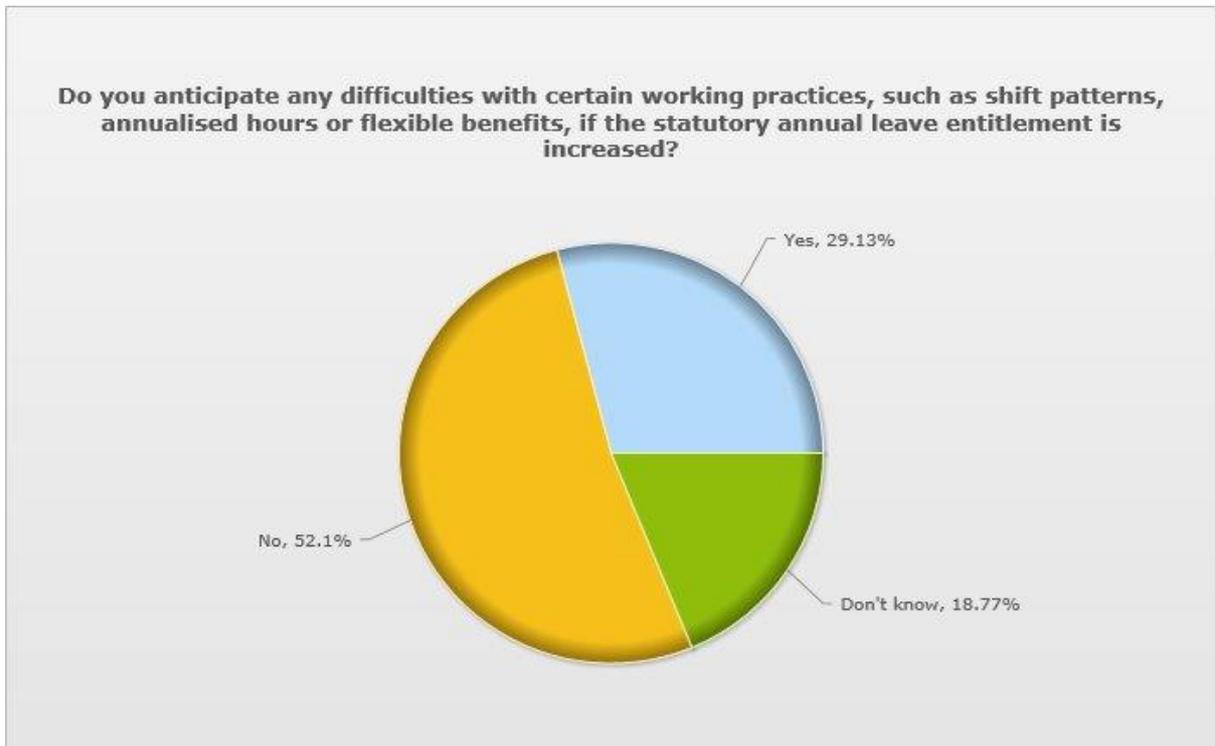
Don't know: 15.06% (47)

Q13. Do you anticipate any difficulties with certain working practices, such as shift patterns, annualised hours or flexible benefits, if the statutory annual leave entitlement is increased?

Answered: 309

Skipped: 12

Of those who answered this question:



Yes: 29.13% (90)

No: 52.1% (161)

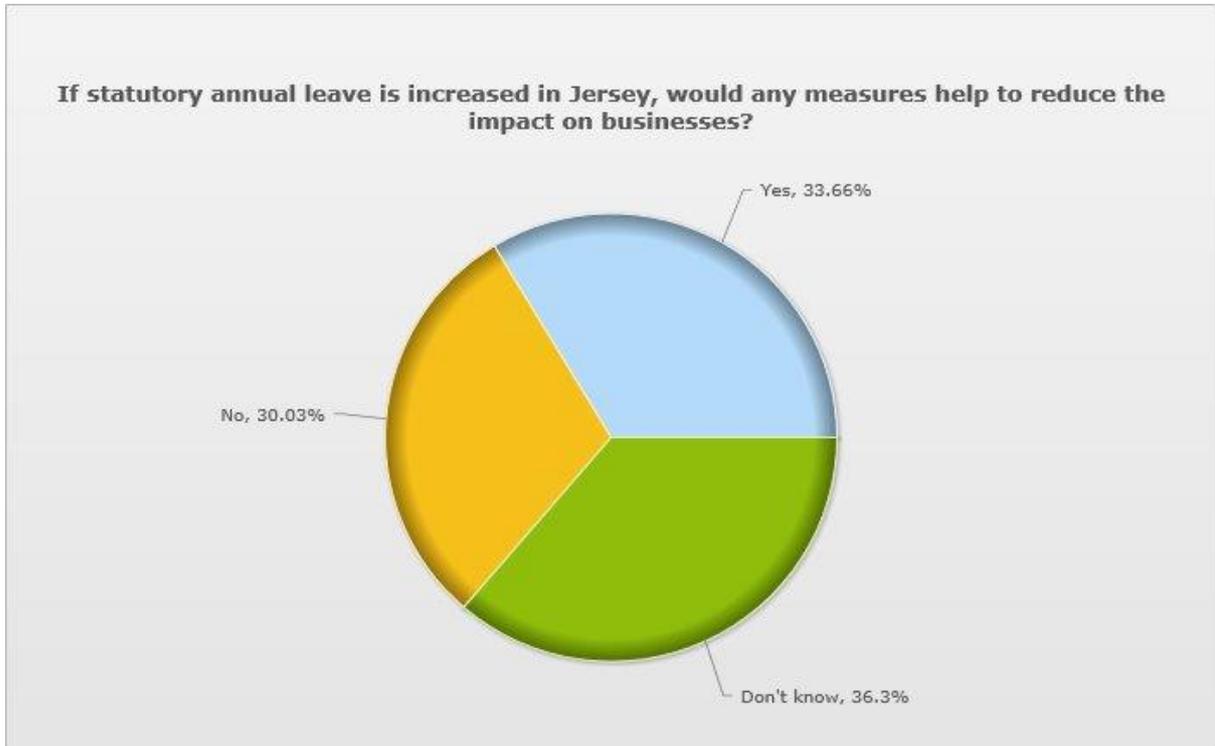
Don't know: 18.77% (58)

Q14. If statutory annual leave is increased in Jersey, would any measures help to reduce the impact on businesses?

Answered: 303

Skipped: 18

Of those who answered this question:



Yes: 33.66% (102)

No: 30.03% (91)

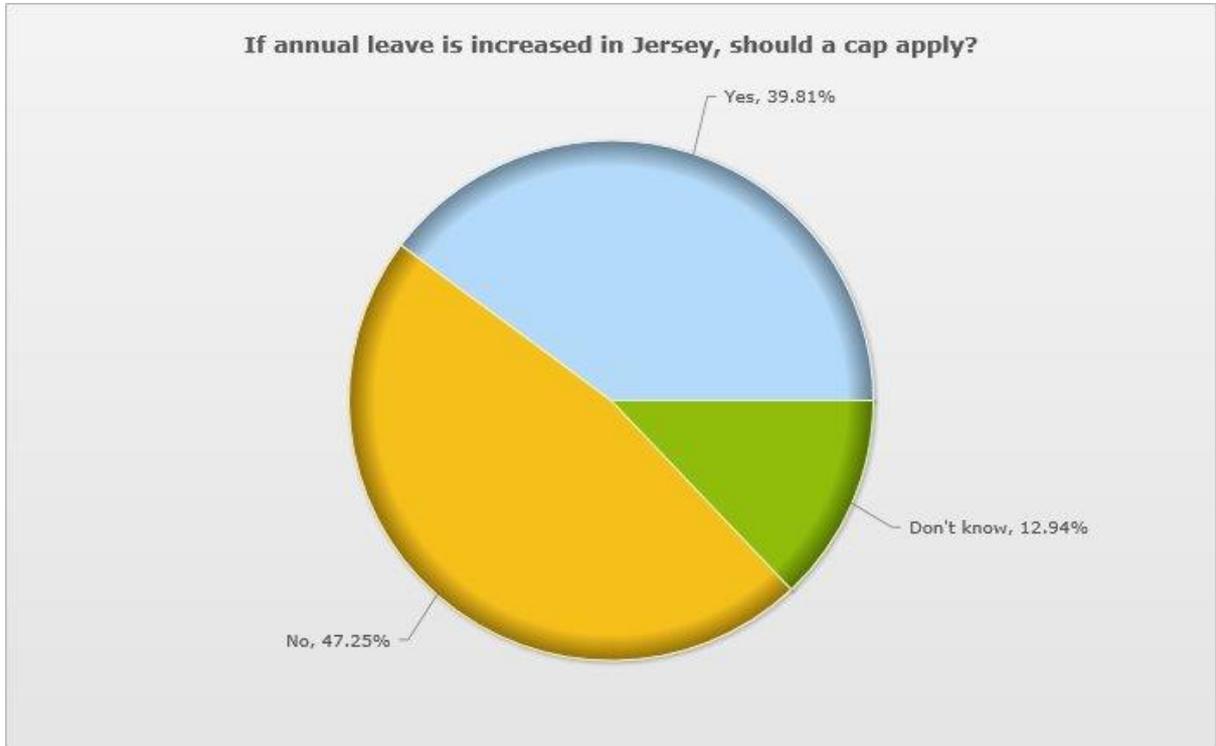
Don't know: 36.3% (110)

Q15. If annual leave is increased in Jersey, should a cap apply?

Answered: 309

Skipped: 12

Of those who answered this question:



Yes: 39.81% (123)

No: 47.25% (146)

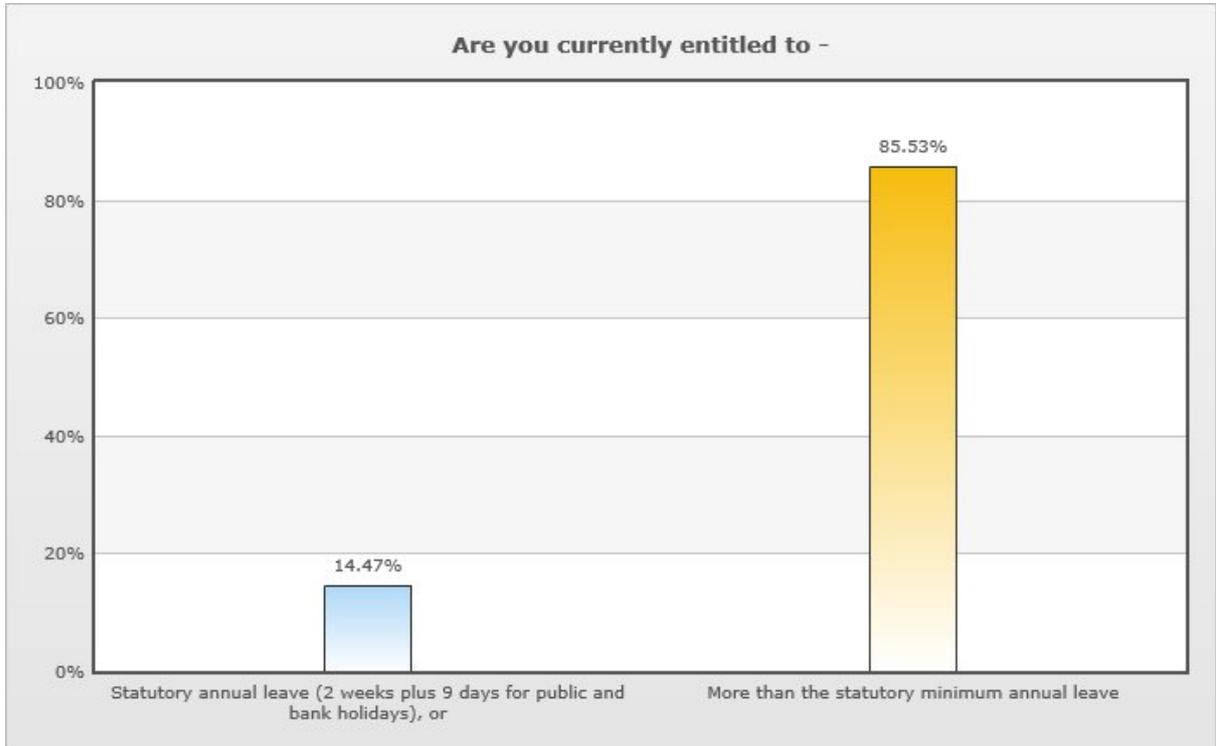
Don't know: 12.94% (40)

Q16. Are you currently entitled to – (Question for employees)

Answered: 159

Skipped: 162

Of those who answered this question:



Statutory annual leave (2 weeks plus 9 days for public and bank holidays): 14.47% (23)

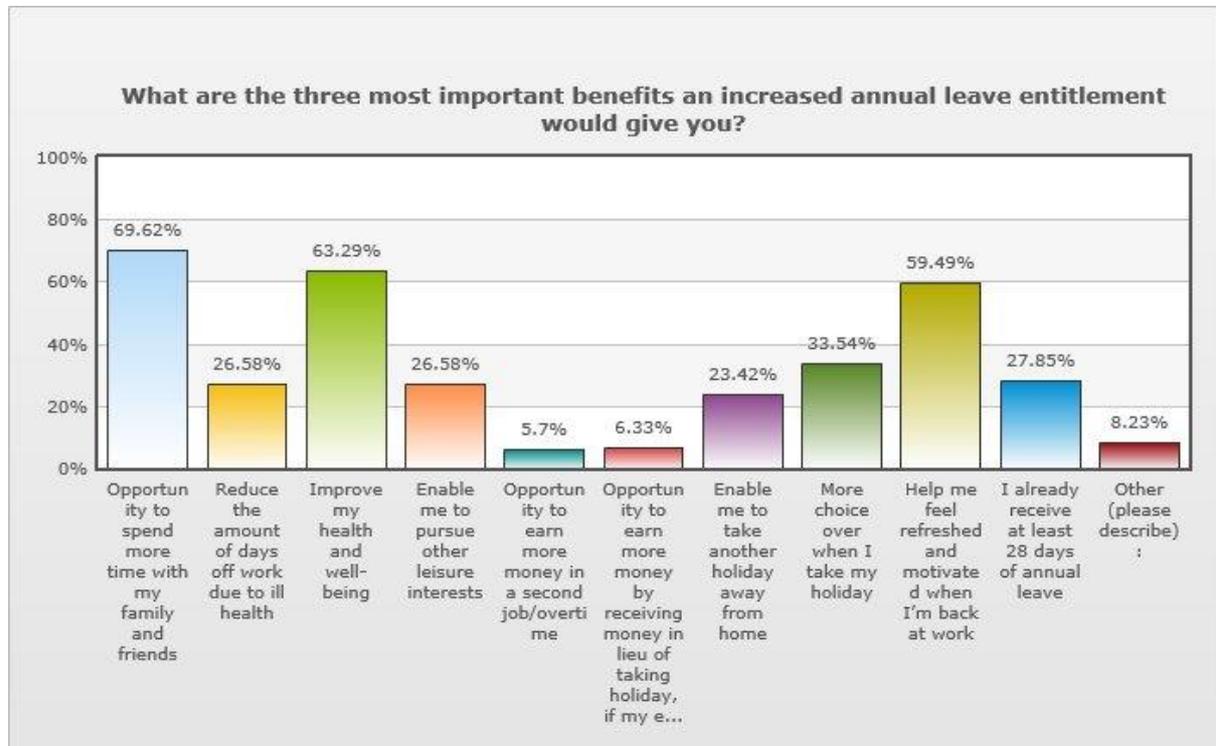
More than the statutory minimum annual leave: 85.53% (136)

Q17. What are the three most important benefits an increased annual leave entitlement would give you? (Question for employees)

Answered: 158

Skipped: 163

Of those who answered this question:



Opportunity to spend more time with my family and friends: 69.62% (110)

Reduce the amount of days off work due to ill health: 26.58% (42)

Improve my health and well-being: 63.29% (100)

Enable me to pursue other leisure interests: 26.58% (42)

Opportunity to earn more money in a second job/overtime: 5.7% (9)

Opportunity to earn more money by receiving money in lieu of taking holiday, if my employer allows it: 6.33% (10)

Enable me to take another holiday away from home: 23.42% (37)

More choice over when I take my holiday: 33.54% (53)

Help me feel refreshed and motivated when I'm back at work: 59.49% (94)

I already receive at least 28 days of annual leave: 27.85% (44)

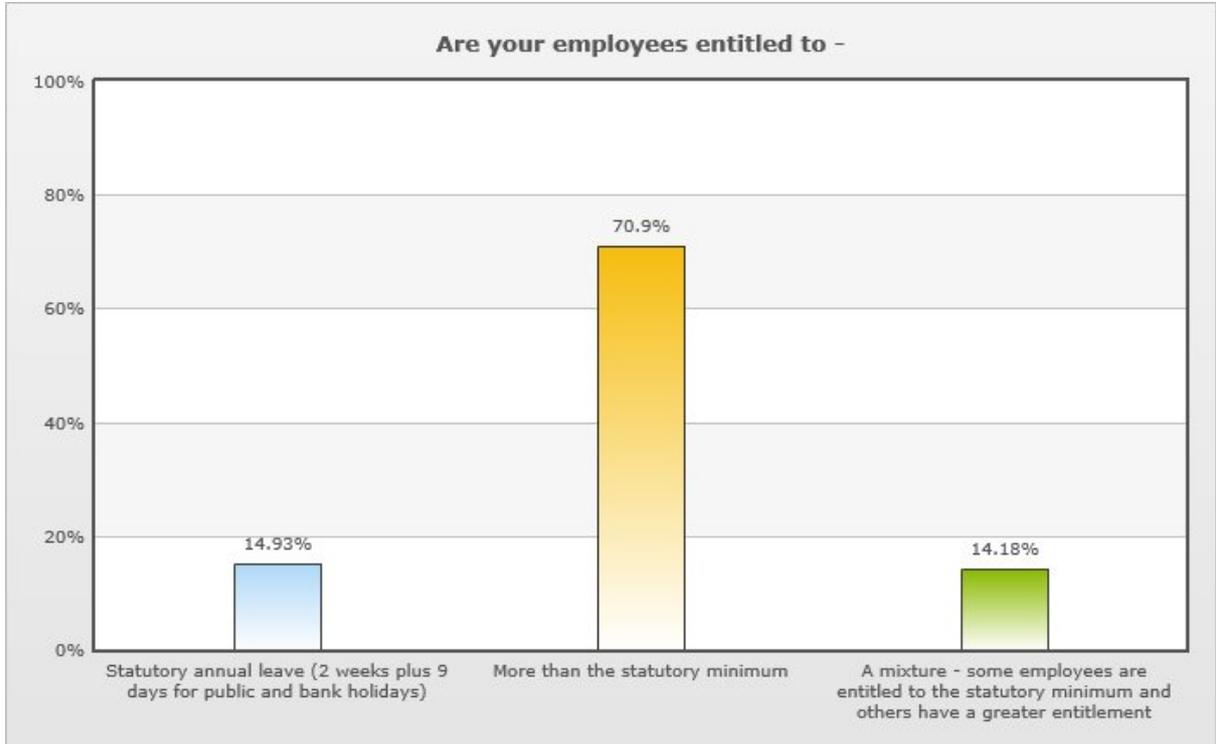
Other: 8.23% (13)

Q18. Are your employees entitled to – (Question for employers)

Answered: 134

Skipped: 187

Of those who answered this question:



Statutory annual leave (2 weeks plus 9 days for public and bank holidays): 14.93% (20)

More than the statutory minimum: 70.9% (95)

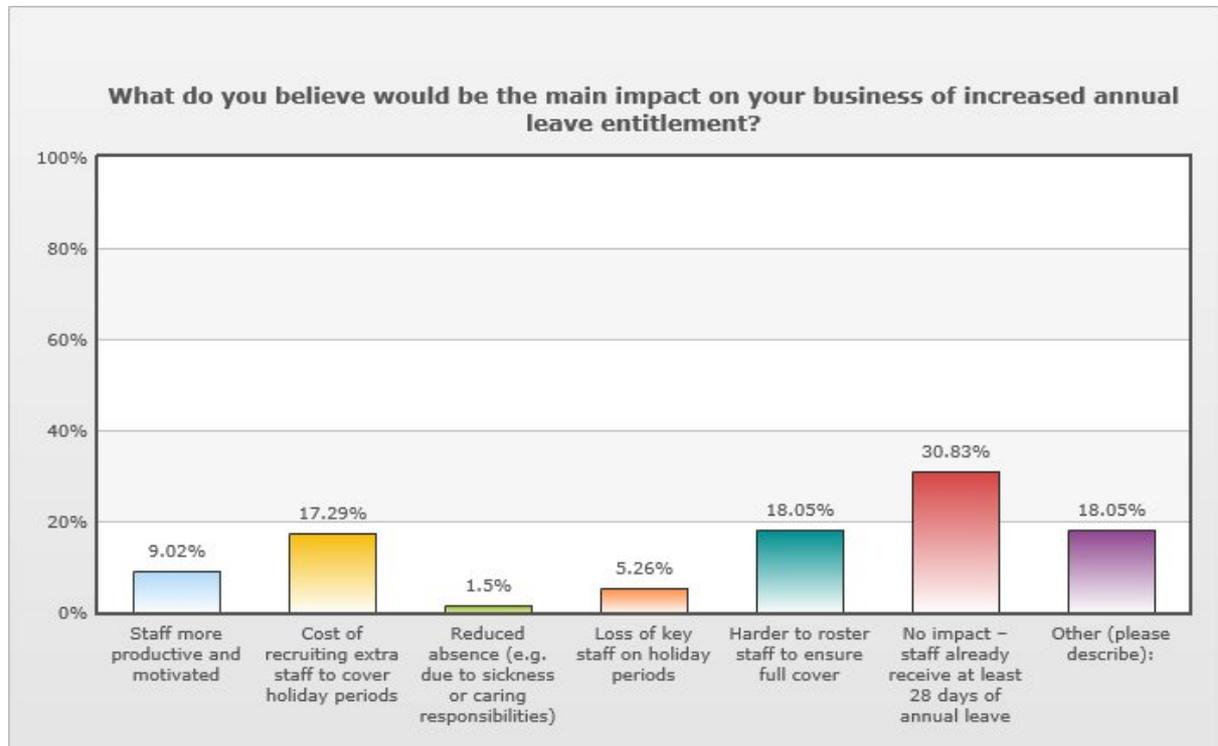
A mixture - some employees are entitled to the statutory minimum and others have a greater entitlement: 14.18% (19)

Q21. What do you believe would be the main impact on your business of increased annual leave entitlement? (Question for employers)

Answered: 133

Skipped: 188

Of those who answered this question:



Staff more productive and motivated: 9.02% (12)

Cost of recruiting extra staff to cover holiday periods: 17.29% (23)

Reduced absence (e.g. due to sickness or caring responsibilities): 1.5% (2)

Loss of key staff on holiday periods: 5.26% (7)

Harder to roster staff to ensure full cover: 18.05% (24)

No impact – staff already receive at least 28 days of annual leave: 30.83% (41)

Other: 18.05% (24)

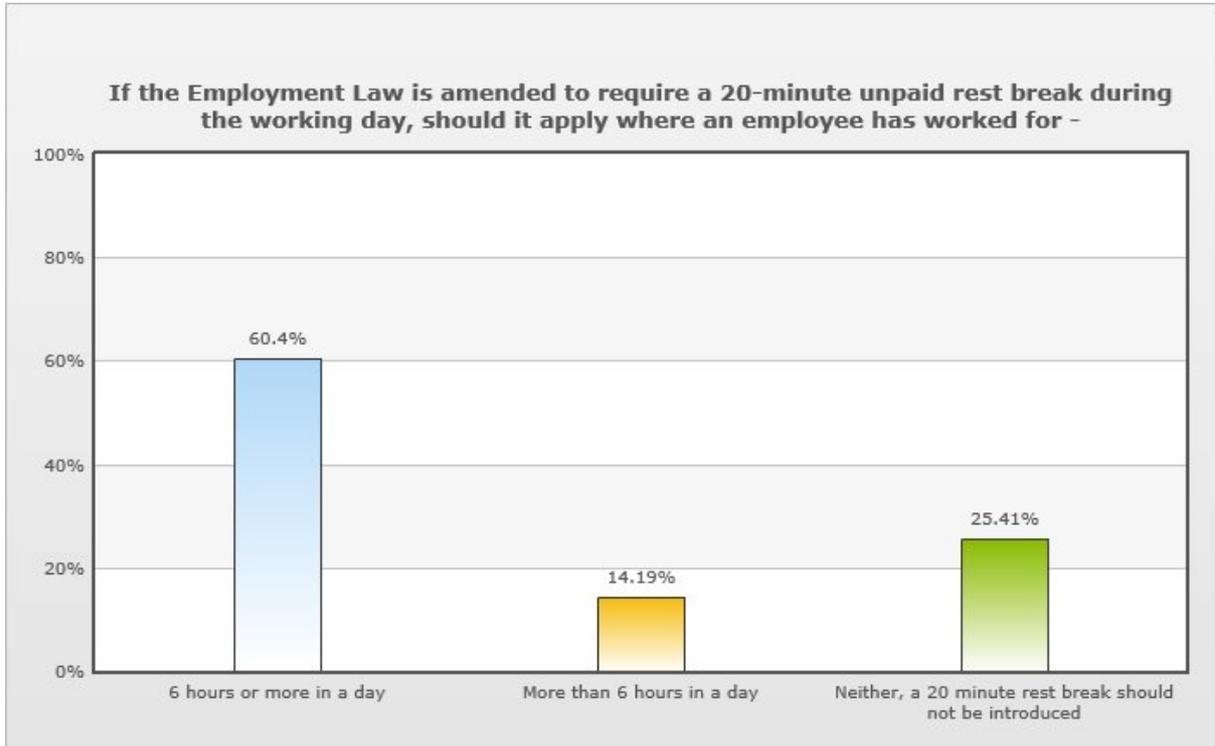
Rest Breaks Questions

Q24. If the Employment Law is amended to require a 20-minute unpaid rest break during the working day, should it apply where an employee has worked for -

Answered: 303

Skipped: 18

Of those who answered this question:



6 hours or more in a day: 60.4% (183)

More than 6 hours in a day: 14.19% (43)

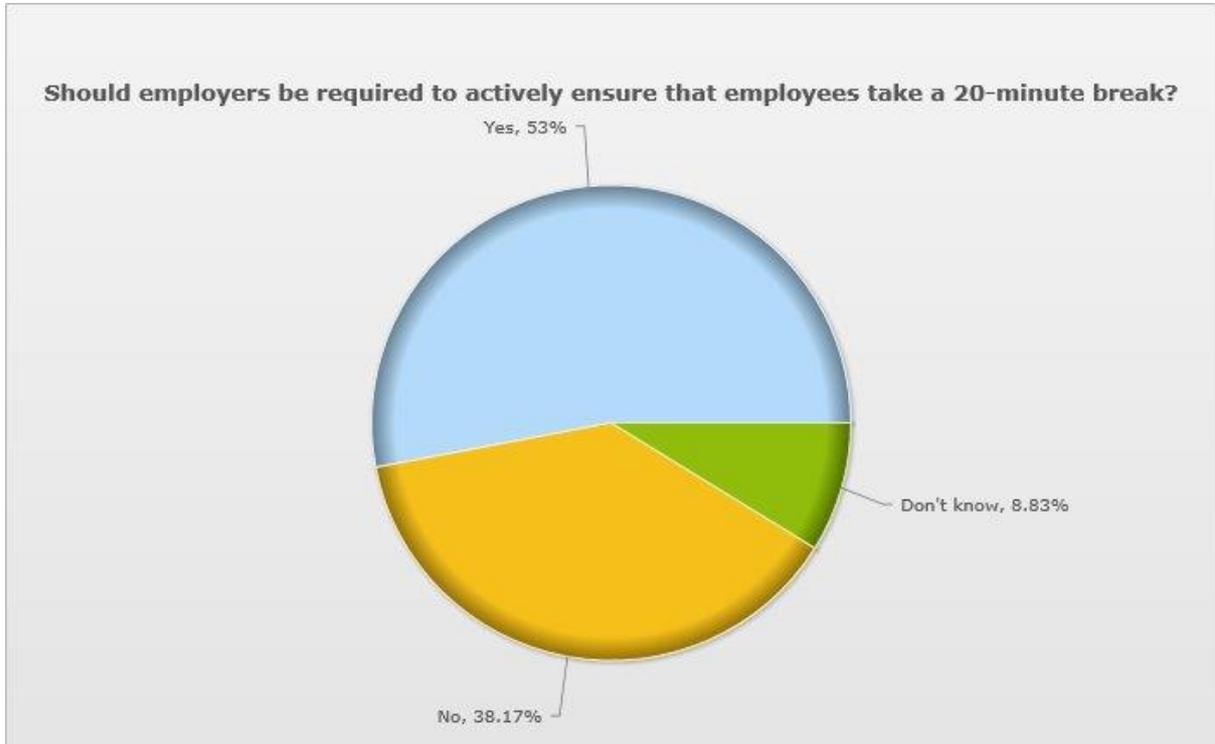
Neither, a 20-minute rest break should not be introduced: 25.41% (77)

Q25. Should employers be required to actively ensure that employees take a 20-minute break?

Answered: 317

Skipped: 4

Of those who answered this question:



Yes: 53% (168)

No: 38.17% (121)

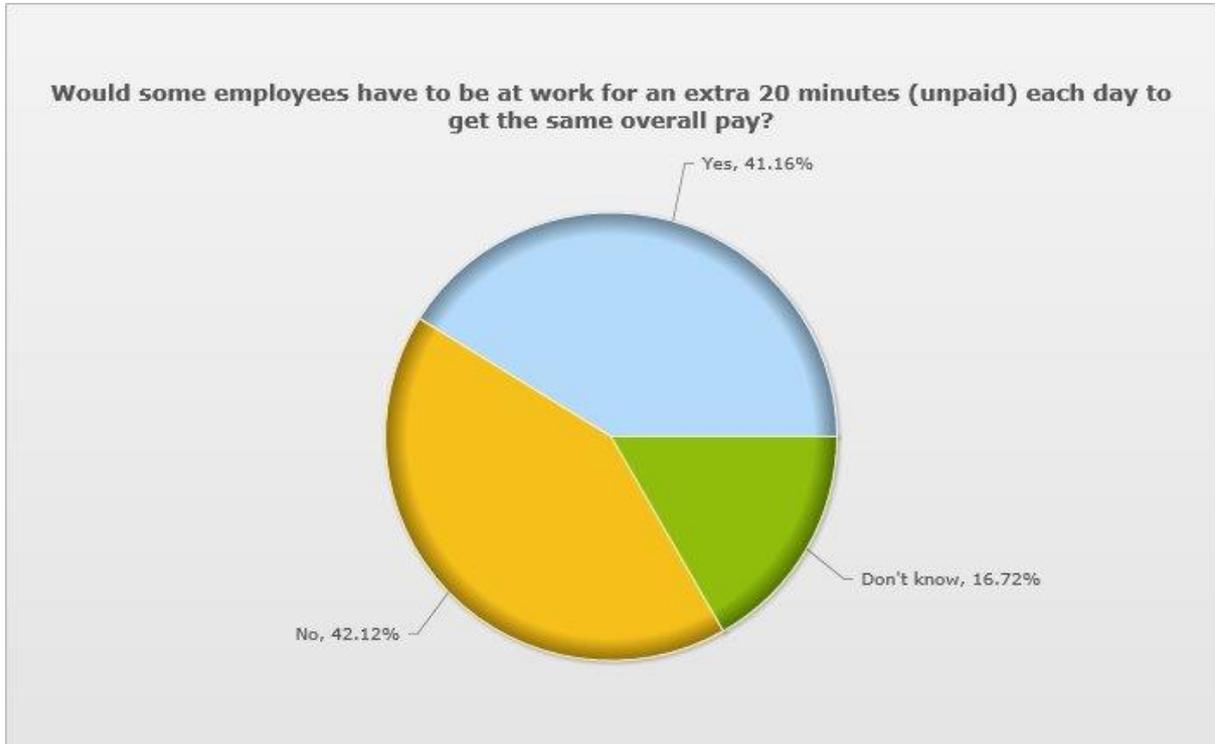
Don't know: 8.83% (28)

Q26. Would some employees have to be at work for an extra 20 minutes (unpaid) each day to get the same overall pay?

Answered: 311

Skipped: 10

Of those who answered this question:



Yes: 41.16% (128)

No: 42.12% (131)

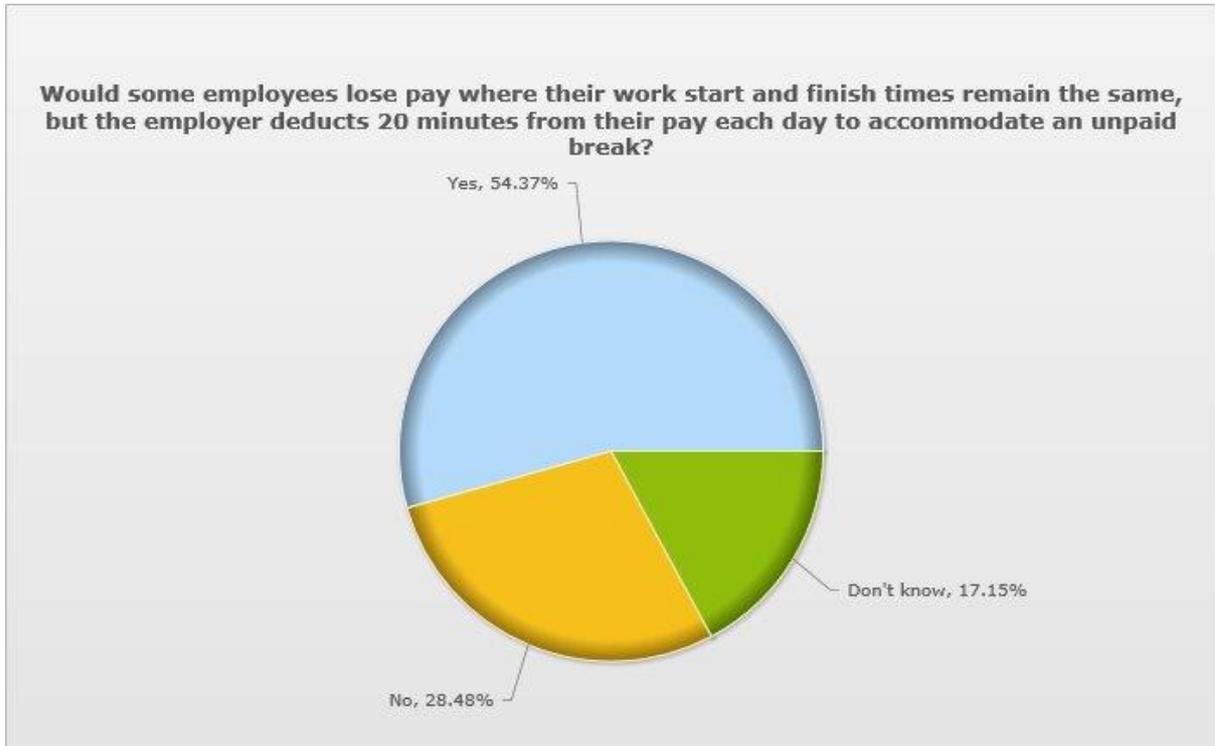
Don't know: 16.72% (52)

Q27. Would some employees lose pay where their work start and finish times remain the same, but the employer deducts 20 minutes from their pay each day to accommodate an unpaid break?

Answered: 309

Skipped: 12

Of those who answered this question:



Yes: 54.37% (168)

No: 28.48% (88)

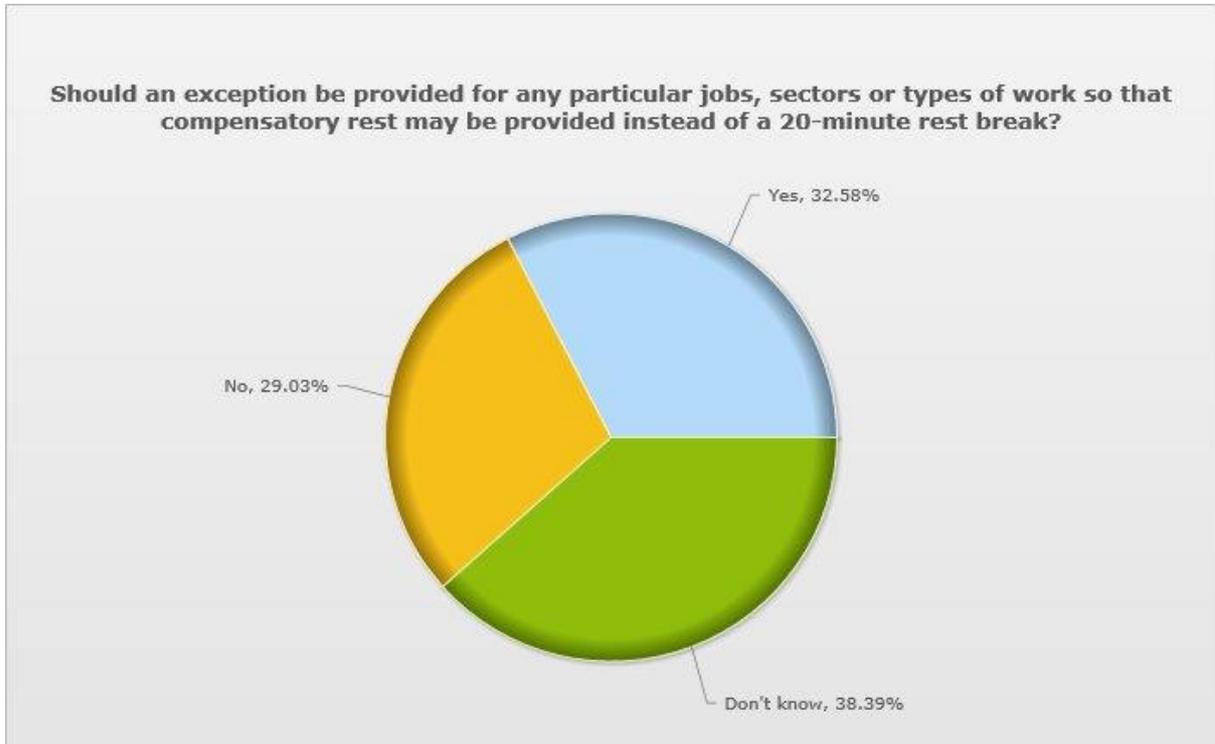
Don't know: 17.15% (53)

Q28. Should an exception be provided for any particular jobs, sectors or types of work so that compensatory rest may be provided instead of a 20-minute rest break?

Answered: 310

Skipped: 11

Of those who answered this question:



Yes: 32.58% (101)

No: 29.03% (90)

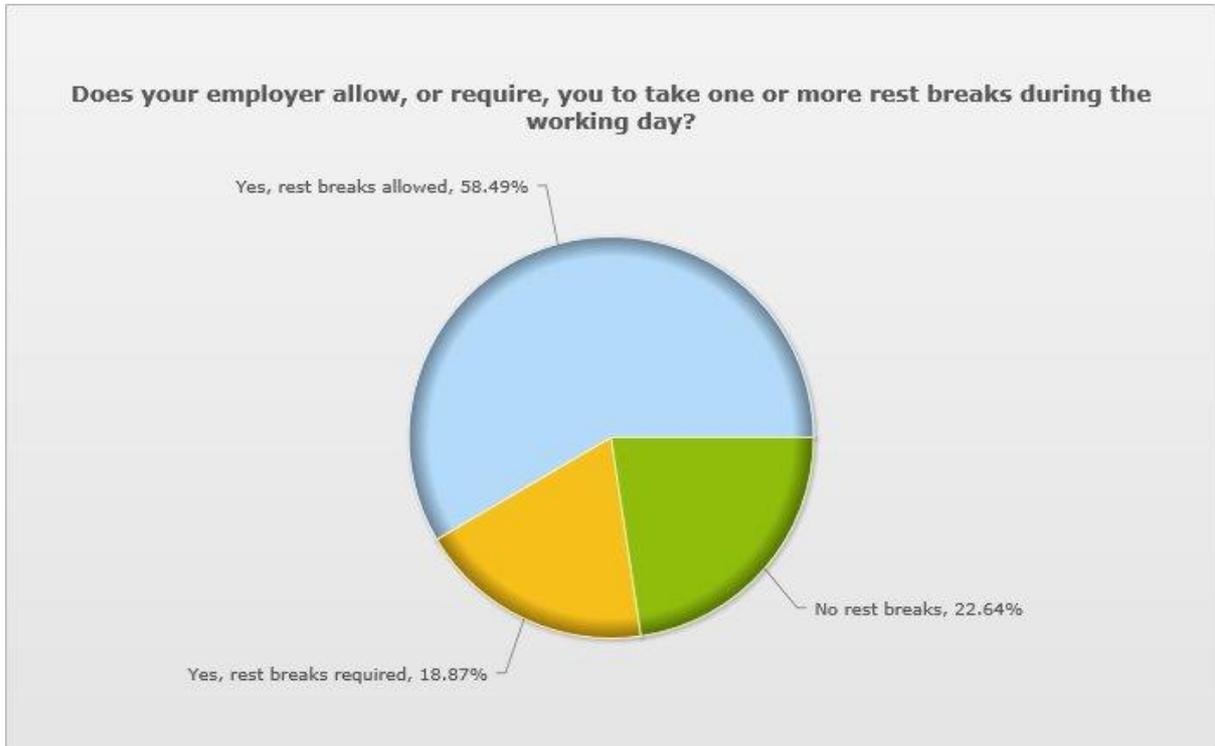
Don't know: 38.39% (119)

Q30. Does your employer allow, or require, you to take one or more rest breaks during the working day? (Question for employees)

Answered: 159

Skipped: 162

Of those who answered this question:



Yes, rest breaks allowed: 58.49% (93)

Yes, rest breaks required: 18.87% (30)

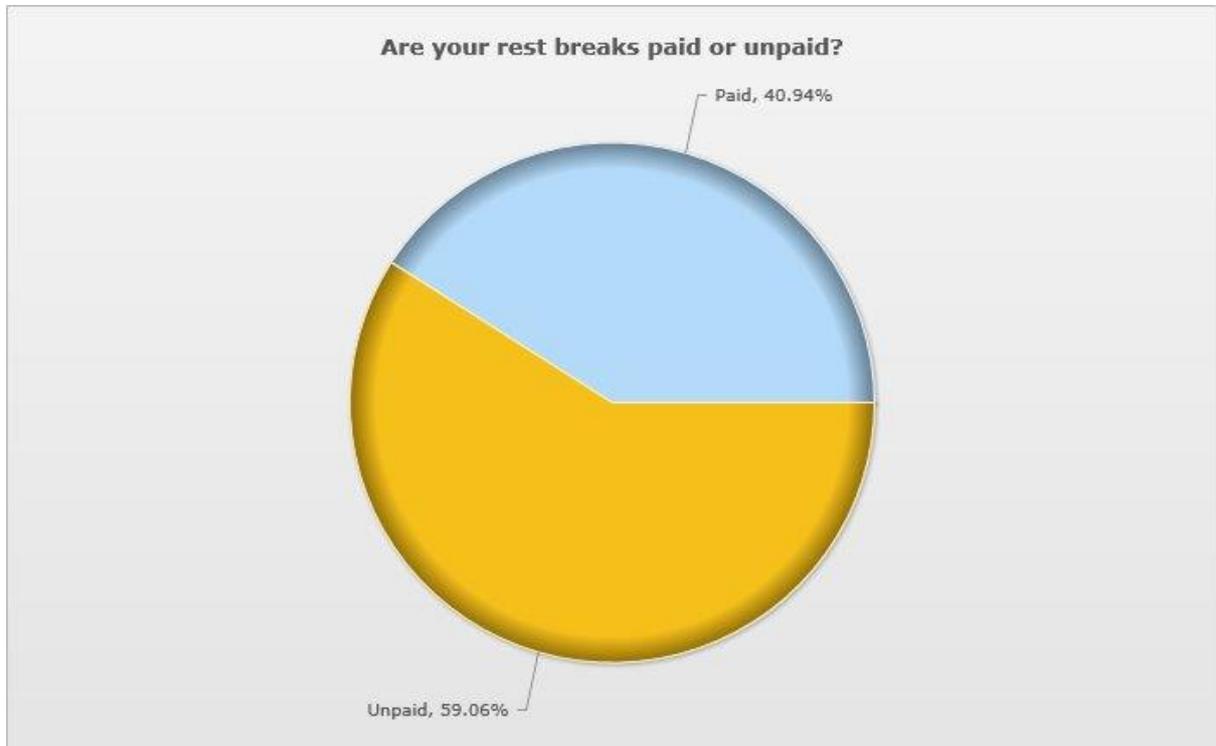
No rest breaks: 22.64% (36)

Q31. Are your rest breaks paid or unpaid? (Question for employees)

Answered: 127

Skipped: 194

Of those who answered this question:



Paid: 40.94% (52)

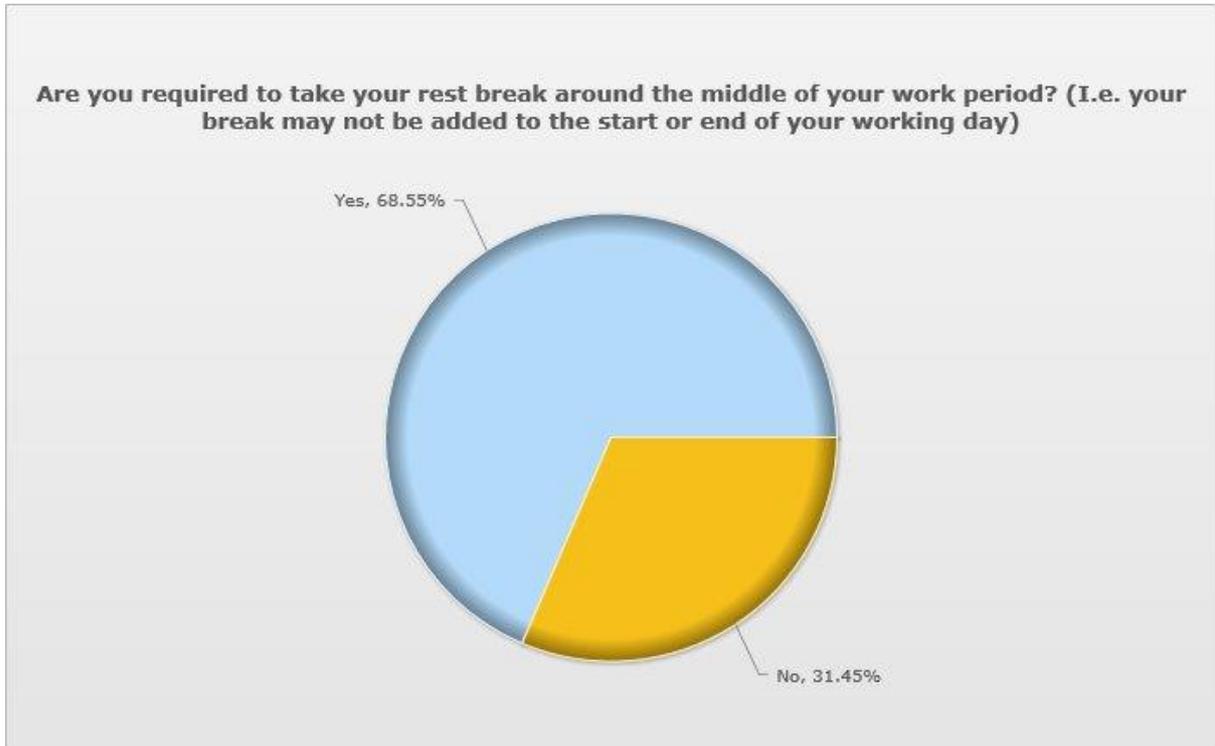
Unpaid: 59.06% (75)

Q34. Are you required to take your rest break around the middle of your work period? (I.e. your break may not be added to the start or end of your working day) (Question for employees)

Answered: 124

Skipped: 197

Of those who answered this question:



Yes: 68.55% (85)

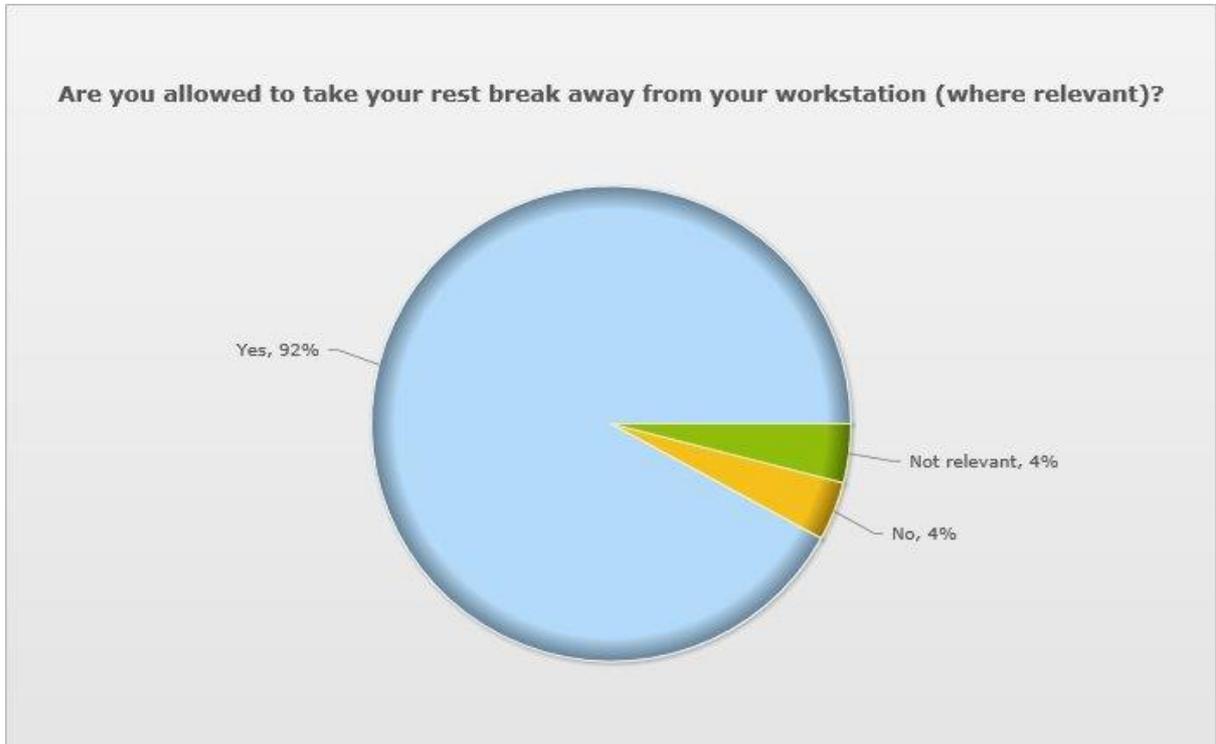
No: 31.45% (39)

Q35. Are you allowed to take your rest break away from your workstation (where relevant)? (Question for employees)

Answered: 125

Skipped: 196

Of those who answered this question:



Yes: 92% (115)

No: 4% (5)

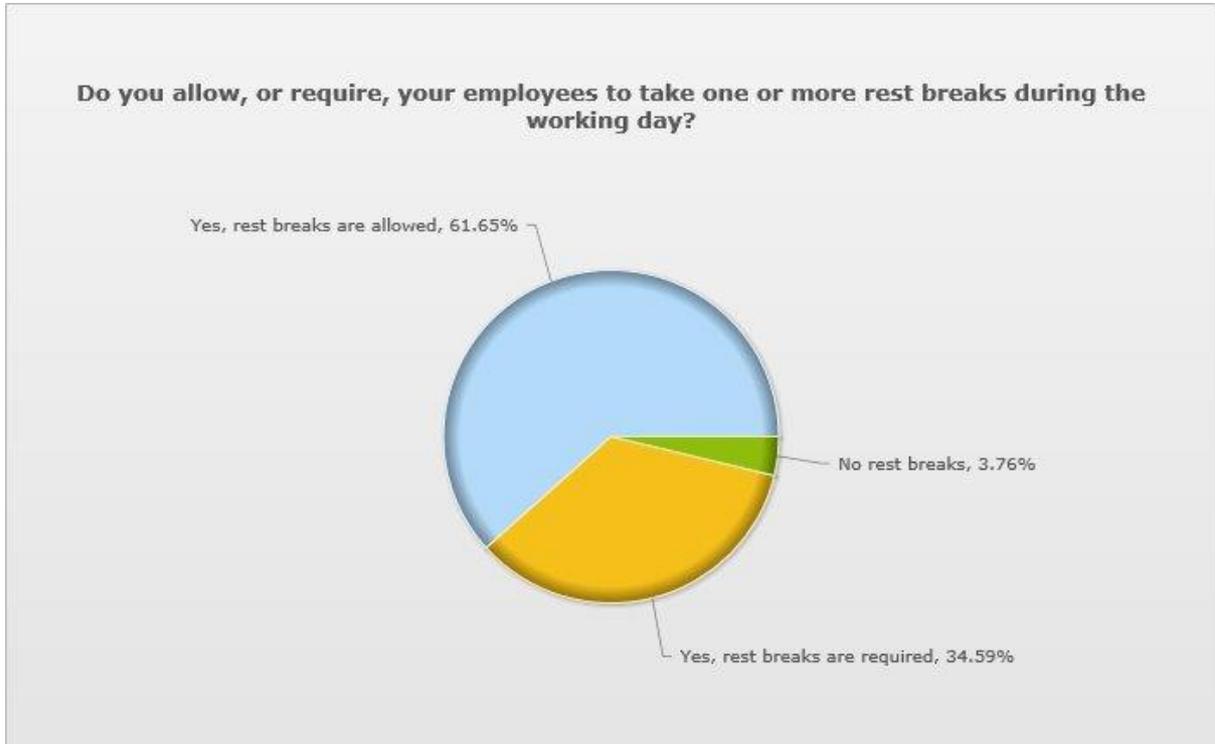
Not relevant: 4% (5)

Q37. Do you allow, or require, your employees to take one or more rest breaks during the working day? (Question for employers)

Answered: 133

Skipped: 188

Of those who answered this question:



Yes, rest breaks are allowed: 61.65% (82)

Yes, rest breaks are required: 34.59% (46)

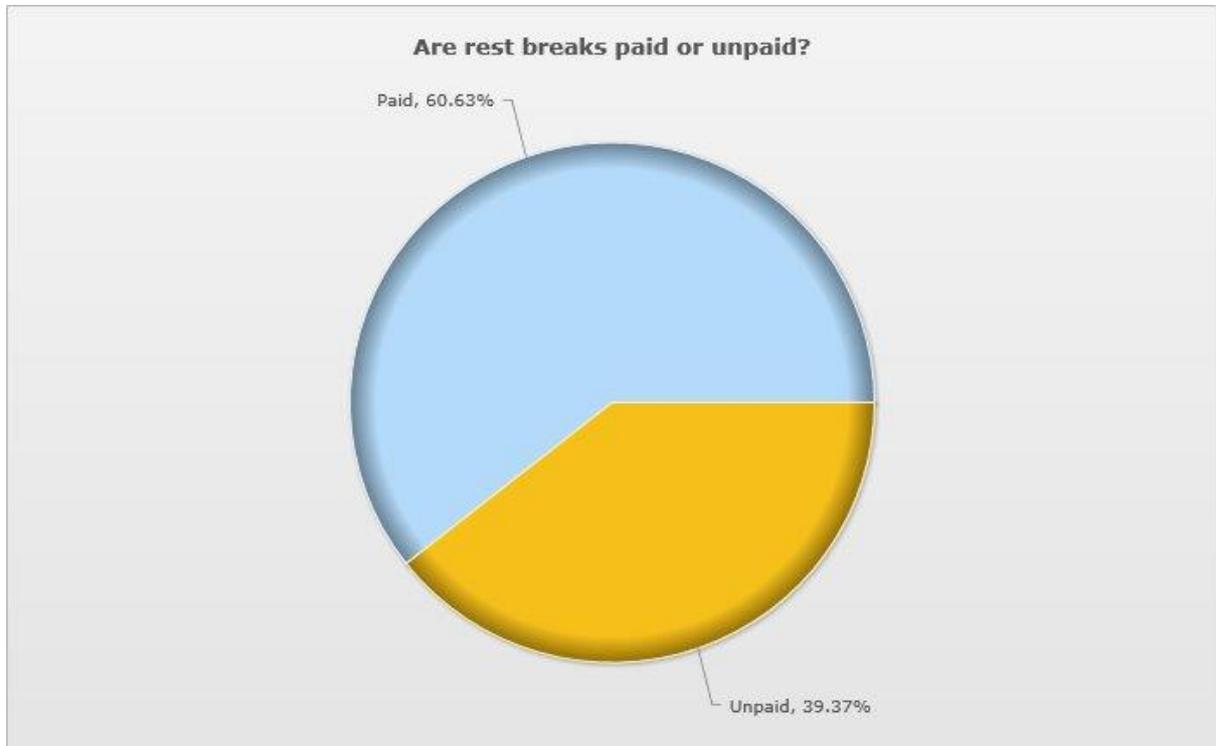
No rest breaks: 3.76% (5)

Q38. Are rest breaks paid or unpaid? (Question for employers)

Answered: 127

Skipped: 194

Of those who answered this question:



Paid: 60.63% (77)

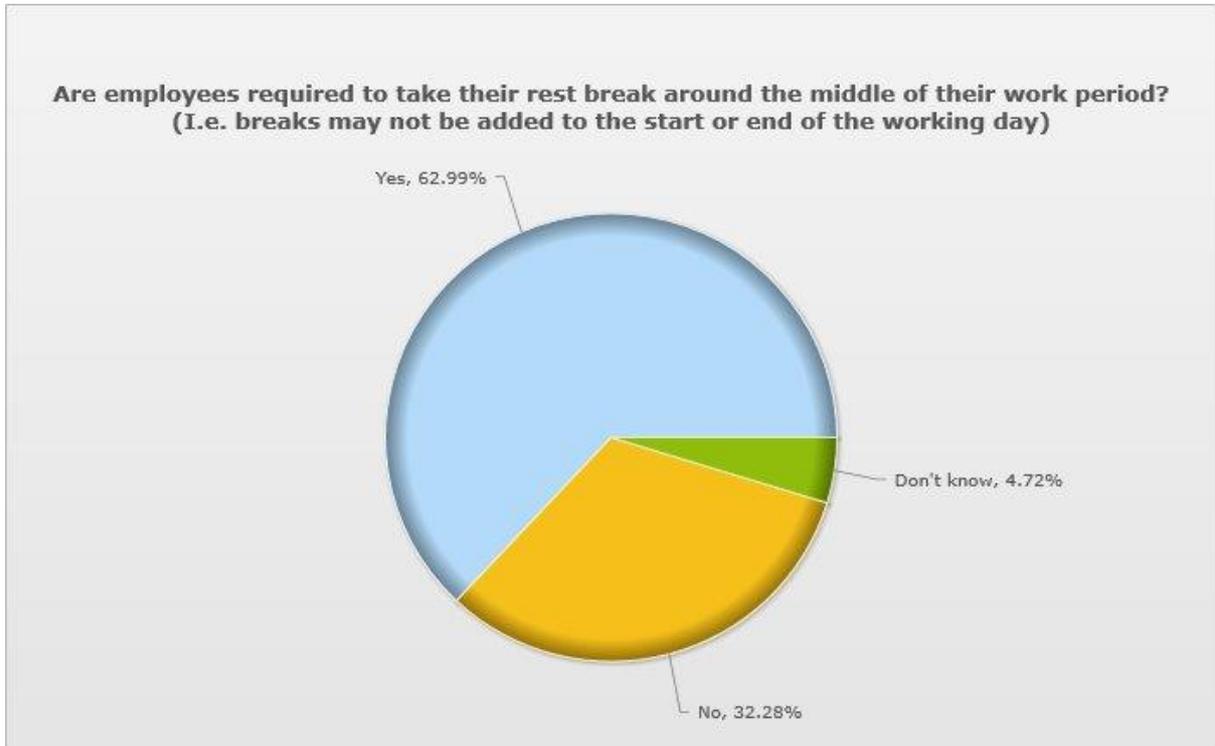
Unpaid: 39.37% (50)

Q41. Are employees required to take their rest break around the middle of their work period? (I.e. breaks may not be added to the start or end of the working day)
(Question for employers)

Answered: 127

Skipped: 194

Of those who answered this question:



Yes: 62.99% (80)

No: 32.28% (41)

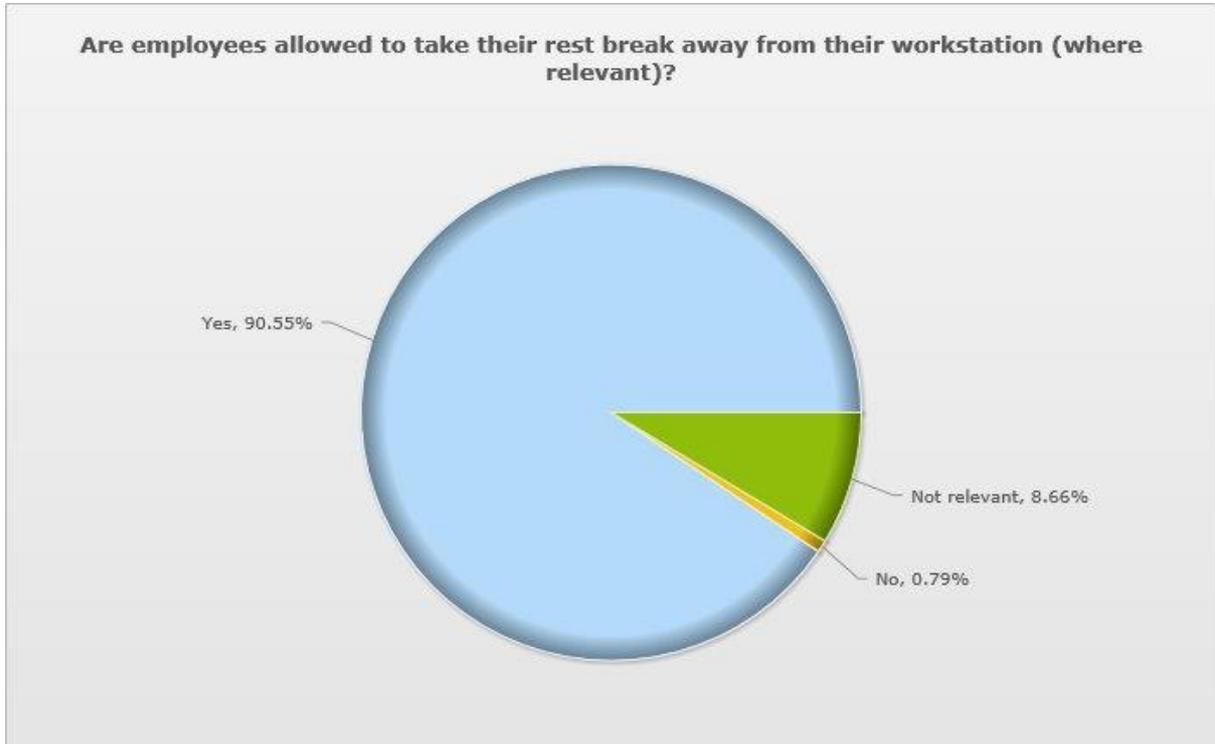
Don't know: 4.72% (6)

Q42. Are employees allowed to take their rest break away from their workstation (where relevant)? (Question for employers)

Answered: 127

Skipped: 194

Of those who answered this question:



Yes: 90.55% (115)

No: 0.79% (1)

Not relevant: 8.66% (11)

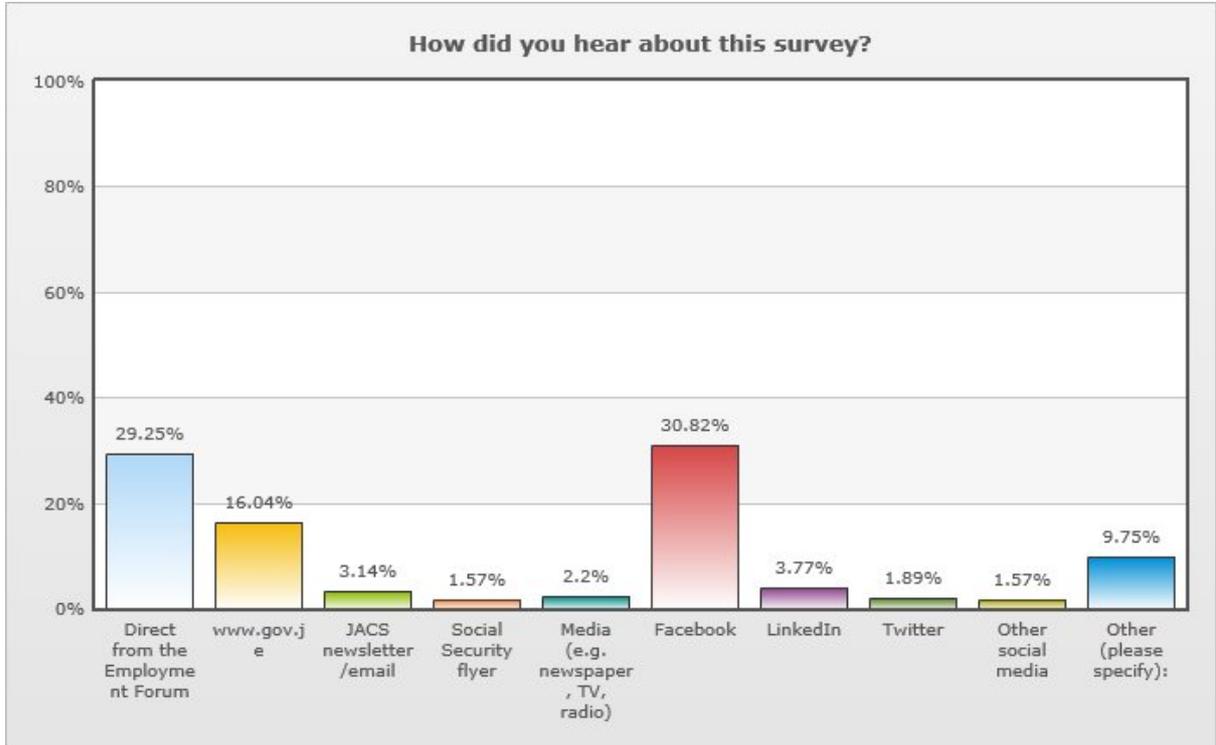
Questions about respondents

Q46. How did you hear about this survey?

Answered: 318

Skipped: 3

Of those who answered this question:

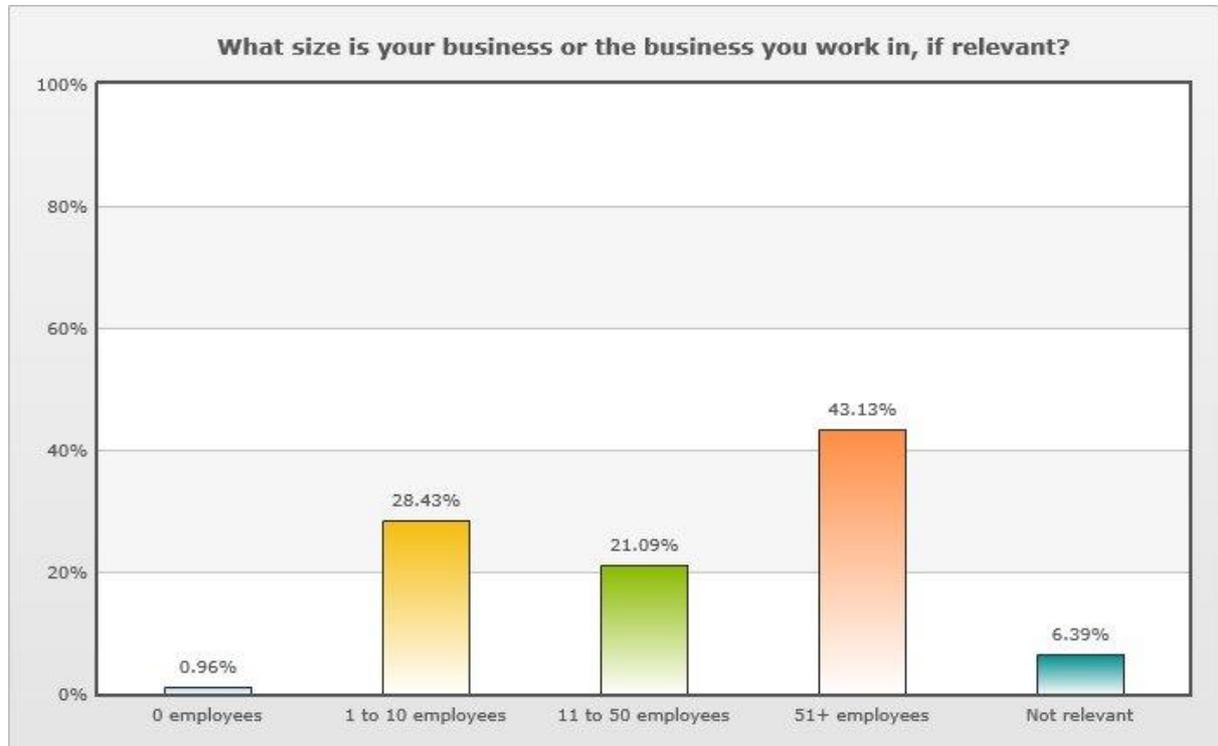


Q47. What size is your business or the business you work in, if relevant?

Answered: 313

Skipped: 8

Of those who answered this question:



0 employees: 0.96% (3)

1 to 10 employees: 28.43% (89)

11 to 50 employees: 21.09% (66)

51+ employees: 43.13% (135)

Not relevant: 6.39% (20)

Q48. Please specify your employment sector, if relevant.

Answered: 317

Skipped: 4

Of those who answered this question:

