

## Moves are underway to strengthen rights for employees, collective bargaining and union rights in the workplace

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In February this year the Government introduced the Employment Relations Amendment Bill to Parliament. The Bill proposes a number of changes to employment law which will affect all employers to some degree, although those organisations involved in collective bargaining will likely be affected the most.

A summary of the proposed changes are as follows:

- Rights for employees
  - There are protections in the Employment Relations Act 2000 (the **ERA**) for what are called “*vulnerable employees*”. These provide that in the case of a business sale or transfer, certain categories of employees are entitled to transfer to the new employer. Currently these employees cannot elect to transfer if the new employer employs 19 or fewer employees. The proposed changes will strengthen these employees’ rights by removing this exemption for small to medium enterprises. Another proposed change is extending the time frame employers are required to provide notice of the right to make election to transfer to an incoming employer from 15 days to 20 days.
  - At the moment, any employer can utilise trial periods, which prohibit employees from taking a personal grievance provided a valid trial period of up to 90 days is entered into. The proposed changes will strengthen employees’ rights by limiting trial periods to employers with fewer than 20 employees.
  - Currently there is no hierarchy of remedies in relation to personal grievances that the Employment Relations Authority may order. The proposed changes will restore reinstatement as the primary remedy for unjustified dismissal.
  - The ERA does not now prescribe times for rest and meal breaks. The proposed changes will restore the right to prescribed time for rest and meal breaks, with limited exceptions.
- Collective bargaining and union rights
  - The proposed changes are intended to enable unions to more effectively carry out union activities and support members.
    - The current ERA requires representatives of unions to obtain consent to enter workplaces. The proposed changes will remove this requirement to gain consent from the employer.
    - The proposed changes will require employers to allow union delegates reasonable paid time during working hours to perform their duties in respect of the employee of that employer.

- The Bill will strengthen union's rights in the workplace and require successful collective bargaining
  - The duty of good faith in the ERA requires a union and an employer bargaining for a collective agreement to use their best endeavours to enter into an agreement. The proposed changes will require parties to conclude a collective agreement unless there is a genuine reason, based on reasonable grounds, not to.
  - Currently, a union and employer must not initiate bargaining earlier than 40 days before the date on which the collective agreement expires. The proposed changes will reinstate the ability of unions to initiate collective bargaining 20 days before an employer.
  - The current ERA allows employers to opt out of multi-employer collective bargaining once bargaining has been initiated. The proposed changes will remove this right to opt out.
  - There is no requirement for collective agreements to contain the rates of wages or salary payable to employees. The proposed changes will require a collective agreement to contain the rates of wages or salary payable to employees.
- The ERA now allows employers to make pay deductions in relation to partial strikes. The proposed changes will remove an employer's ability to deduct pay as a response to partial strikes.
- There are changes surrounding the employee's choice about whether to join a union.
  - The ERA requires employers to inform new employees who are not a member of a union about the collective agreement that covers the work to be done by the employee. The proposed changes would mean that new employees would be employed on terms and conditions of employment consistent with the collective agreement for the first 30 days of their employment. In other words, this is reinstatement of the "30-day rule".
  - The proposed changes will require employers to provide the applicable collective agreement and union contact details and the option to join the union at the same time as they provide an intended individual employment agreement to an employee.
  - The proposed changes also requires employers to share new employee information with the union unless the employee objects. This will be done by requiring employers to provide a new employee with a form that the employee may complete then return to the employer. Employers would have a duty to return the completed form to the union or, if the employee does not complete the form, to notify the union that the employee did not complete and return the form.

- The Bill would increase protections for union members from unfair treatment by an employer.
  - At the moment, the ERA only protects union members from unfair treatment on the ground of their involvement in a union. The proposed changes will extend this ground by adding unfair treatment on the ground of their union membership status.
  - If an employee wishes to complaint about alleged unfair treatment because they are a union member, currently the ERA requires them to have been involved in the activities of the union within 12 months before the alleged unfair treatment. The proposed changes would extend the time frame from 12 months to 18 months.

The Bill has passed its first reading in Parliament and is currently before the Education and Workforce Select Committee. The Committee is seeking submissions from people and organisations affected by this bill. All submissions must be submitted by 30 March 2018. If you are interested in making a submission, please let us know by Friday 16 March 2018.

If you would like more information regarding the above, or have any questions, please contact us.

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