

# Update on the Employment Relations Amendment Act 2018

Changes in effect on 6 May 2019

## *90-day trials*

90-day trial periods will be restricted to businesses with fewer than 20 employees. Organisations with 20 or more employees can continue to use probationary periods to assess an employee's skills against the role's responsibilities. A probationary period lays out a process for managing performance issues and ending employment if the issues aren't resolved. However, probationary periods offer no protection to employers in the way that 90-day trial periods do.

## *Rest and meal breaks*

Rest and meal break rules have been tightened. Employers and employees will agree when to take their breaks. If there is no agreement, the law will require the breaks to be in the middle of the work period, so long as it's reasonable and practicable to do so. For example, an eight-hour work day must include two 10-minute rest breaks and one 30-minute meal break, while a four-hour work day must include one 10-minute rest break. Employers must pay for minimum rest breaks but don't have to pay for minimum meal breaks. Employers should consider how this could affect them, particularly where continuous operations is required. For instance, 24/7 businesses that need to keep machines running continuously may be required to shut down at the times specified in the Act if agreement on staggered meal breaks cannot be reached.

## *30-day rule*

The 30-day rule will come back. This means that for the first 30 days, new employees must be employed under terms consistent with the collective agreement. The employer and employee may agree more favourable terms than the collective.

## *Automatic information sharing with unions*

Employers will need to provide new employees with a form, approved by the Chief Executive of MBIE, within the first ten days of employment and return the form to the applicable union, unless the employee objects. The form will indicate whether new employees intend to join a union or remain on the individual employment agreement. This is an opt-out process, so employees who do not fill in or forget to submit the form will have their private details provided by default to the union.

## *Payment for union activities*

Employers will need to allow for reasonable paid time for union delegates to undertake their union activities, such as representing employees in collective bargaining. Employees will need to agree with their employer to do so or notify them in advance. An employer will only be able to deny the request if it will unreasonably disrupt the business or the performance of the employee's duties. "Reasonable time" is not defined in the Act and there is no current case law to guide employers.

### *Promotion of unions to employees*

Employers will need to pass on information about the role and function of unions to prospective employees. Unions must bear the costs if they want printed materials to be passed on.

### *Rates of pay in collectives*

Pay rates will need to be included in collective agreements, along with an indication of how the rate of wages or salary payable may increase over the agreement's term.

### *Duty to conclude collective bargaining*

The duty to conclude bargaining means parties must conclude collective bargaining, unless there are genuine reasons based reasonable grounds. For example, if there are significant differences between two employers – such as one operating in Auckland where prices and wages are higher, and the other in Invercargill – it could be reasonable for an employer to negotiate a single-employer collective agreement instead.

### *Vulnerable employees*

Employees in specified 'vulnerable industries' will be able to transfer on their current terms and conditions in their employment agreement if their work is restructured, regardless of the size of their employer. Changes also include a longer notice period for employees to elect to transfer to the new employer, this notice period is a minimum of 10 working days.

## **Changes in effect now**

### *Union access to enter workplaces*

Union representatives can now enter workplaces without consent, provided the employees are covered under, or bargaining towards, a collective agreement. They can only enter a workplace for certain purposes, must be respectful of normal operating hours, and follow health, safety and security procedures. Union representatives still need to seek consent before entering workplaces where no collective agreement or bargaining exists, and for workplaces that are also residences (such as farmhouses). Union representatives can also enter a workplace to assist a non-union employee with matters relating to health and safety if that employee has requested their assistance.

### *Partial strikes*

Employers can no longer make pay deductions for partial strikes as part of low-level industrial action by employees. Employers can respond to a partial strike action the same way as any other strike, which could include suspending employees without pay or a lockout.

### *Multi-employer collective agreements*

Businesses must now enter into bargaining for multi-employer collective agreements, if asked to join by a union. (See changes coming into effect on 6 May 2019 below in relation to the duty to conclude).

### *Protections against discrimination*

Employees will have extended protections against discrimination on the basis of their union membership status, including either being a union member or intending to be a union member. From now, an employer's behaviour can be seen as discriminatory if it occurs within 18 months of employees undertaking union activities. This is an extension of 6 months. It does not apply retrospectively.

### *Reinstatement by Employment Relations Authority*

An employee who the Employment Relations Authority finds to have been unfairly dismissed can request their previous job back as the first course of action. The Employment Relations Authority will still assess whether reinstatement is practicable and reasonable for both parties.

### *Unions can initiate collective bargaining earlier*

Earlier initiation timeframes mean a union can now initiate collective bargaining 20 days ahead of an employer.

### *Vulnerable employees*

New categories of employees may apply to receive the protections afforded to 'vulnerable employees' through an application process set out in the Act.

## **Further Information**

If you'd like to know more about these changes, or want some advice for your business, contact our free member adviceline on 0800 800 362.