

Out with the old, in with the old – Labour announces changes to employment legislation

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Labour has announced the first raft of changes to New Zealand's employment laws, most of which reverse changes made by the National Government over the past nine years. When introduced, the Employment Relations Amendment Bill (Bill) will aim to "level the playing field" by strengthening employees' rights at work.

One of the most significant changes will be the restriction of the application of 90-day trial periods to businesses with fewer than 20 employees. This is a change from Labour's pre-election manifesto, which planned to establish a separate referee service for trial period disputes, and is apparently the result of Labour's coalition agreement with NZ First. We anticipate that this change will have the most impact on New Zealand businesses given the current widespread use of trial periods.

The Bill is due to be introduced in early February 2018 so we do not have any confirmed details yet, but it is expected to also restore:

- Statutory rest and meal breaks, subject to limited exceptions. We expect that this will remove the current flexibility and prescribe two 10 minute rest breaks and a 30 minute unpaid meal for every 8 hours worked
- Reinstatement as the primary remedy for unjustified dismissal. This has been a political football and continues to receive attention despite employees' infrequent use of this remedy (as Labour recognises)
- Further protections for "vulnerable employees" in the sale or transfer of a business, and the removal of an exemption from these rules for employers with fewer than 20 employees. Further clarifications of these rules are always welcome but, in our experience, the exemption was not widely utilised.

Unions will also benefit from the reversal of several of National's changes, as the Bill plans to:

- Restore the duty to conclude bargaining unless there is a good reason not to. This has also been a political football despite not being widely relied upon, but nevertheless it is important to unions to ensure that employers cannot walk away from the bargaining table
- Restore the earlier initiation timeframes for unions in collective bargaining, which we expect will mean that unions will again have a head-start in initiating bargaining (although not an advantage practically in our view)
- Remove the multi-employer collective agreement (MECA) opt out, which will mean that employers can no longer refuse in the same way to bargain for a MECA, and will be bound by the usual good faith obligations. This means that employers may again have to sit at the same bargaining table as their competitors
- Restore the 30-day rule. New employees will again need to be employed under terms consistent with the collective agreement for the first 30 days of employment. This change is likely to have the most significant effect on employers if they have a collective agreement in place and will require changes to their recruitment processes
- Repeal partial strike pay deductions. These deductions have not been a widely-used initiative in our experience but do discourage partial strikes and will assist unions and employees in industrial disputes
- Restore union access without prior employer consent. We see this as more of a procedural change than a substantive one.

Also to the benefit of unions are several new proposals. Labour plans to promote union membership by:

- Requiring employers to pass on union information to prospective employees, including a form asking whether the employee would like to join
- Providing greater protection against discrimination for union members
- Requiring employers to pay union delegates a reasonable rate for their time spent representing other workers.

Lastly, Labour intends to require the inclusion of pay rates in collective agreements. This is a new initiative that comes on the back of recent case law about the issue. Many collective agreements contain pay rates already, but there are many also that do not – for good reason.

Once the Bill is introduced we will report further on its likely implications. At this stage, we would expect it to be passed and in force by the end of this year or early next year.

The Bill will progress alongside the proposed changes to equal pay legislation. The Government has also announced that the Joint Working Group on Pay Equity Principles has been reconvened and will report to Ministers by the end of February 2018. We expect that legislation will be introduced not long after that.

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