

## New active intent forms and guidance from MBIE to help with '30 day rule' processes

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6 May 2019

### Introduction

With the reinstatement of the 30 day rule from 6 May 2019, where it applies, employers are required to provide new employees with a statutory form where they can indicate if they intend to join a union or not. The form also enables employees to indicate if they're not comfortable for the employer to share their information with the relevant union(s).

MBIE has recently produced a [form](#) and [guidance](#) about it for employers. This update summarises these requirements and what employers need to do subsequently, whether or not they get the form back. (If you're in a workplace without any collective agreements in place, this update won't apply to you.)

### 30 day rule and process requirements

The '30 day rule' means that for the first 30 days, new employees who are not union members must be employed under the terms of the applicable collective agreement that would bind them if they were a union member. (If there are multiple collective agreements in the workplace, the terms that apply are from the collective agreement that binds the greatest number of employees for the new employee's work.)

Together with reinstating the 30 day rule, changes introduced by the Employment Relations Amendment Act 2018 require employers to provide certain information to prospective and new employees, and subsequently to the relevant union(s). Some of these requirements differ from the 30 day rule applied under the previous Labour Government. We have created a [flow chart](#) [outlining these steps and statutory timeframes](#).

### Providing the form at the start of employment

Where the 30 day rule applies, employers must provide those new employees with a statutory form and notice about it within 10 calendar days of them starting work. An easy way to do this would be to include it with a welcome letter, email or any induction pack employees receive on day-one.

The form sets out the union(s) with applicable collective agreements in the workplace. It enables employees to indicate if they intend to join the union or not (and if there are multiple choices, which one). Employees can also opt out of their information being shared with the relevant union(s).

As set out on the form, completing and returning the form is optional for employees. If an employee does not return it within 30 days of starting work, then the employer is required to tell the relevant union(s) the employee's name and that the form wasn't returned. If the employee completes and returns the form within this timeframe, the employer is required to pass on the form to the union(s) that cover the employee's work, unless the employee objected to that on the form. Employers must provide this information to the union(s) within 10 **working** days of the expiry of the 30 day period after the employee's start date. (Note that this timeframe contrasts with the 10 **calendar** days employers have to provide the form to employees after they start work).

In some instances, employers may need to clarify information with the employee if it is not clear from the form. In other instances it is not clear from the legislation what should occur, for example if the employer receives the form back after the 30 day deadline but ahead of going back to the union(s). Similarly, if an employee indicates they are a union member after they receive the form (and so don't complete it) - it is not clear what the employer is obligated to tell another applicable union(s). In these instances, employers should be guided by common-sense and good faith, and it would be sensible to discuss the intended action with the employee.

### The accompanying notice

The relevant legislation provides that the form must be accompanied by a notice that:

- Specifies the period in which the employee may complete and return the form (ie within the 30 days after the employee starts

work)

- Explains that unless the employee objects on the form, the employer will provide the relevant union(s) with the employee's name and whether they notified that they intend or do not intend to join the union, or have not completed and returned the form.

While this appears to duplicate information provided on the form, and the MBIE employer guidance is silent about this notice, we recommend that employers meet this requirement by accompanying the statutory form with a brief written explanation that meets these requirements (ie an email or letter). That correspondence could also indicate how and to whom the form should be returned, and (if dated) could serve as an appropriate record of the employer having complied with this statutory requirement.

Depending on the organisation, the employer may wish to include other information with the notice, for example, reiterating that completing the form is optional. Employers could also reiterate that indicating an intention to join a union on the form is not sufficient to join the union (this is stated on the form itself), or that nothing in this process limits or affects the employee's right at any time to become or not become a member of a union (this is stated in the legislation).

Employers may also wish to provide a copy of the employer's standard individual employment agreement (IEA) and the different collective agreements if there is more than one option.

More generally, we understand there can be situations where employees join a union but the employer is not advised, and that employers in this situation may be unclear about whether and how these new requirements apply. Employers may consider working with applicable unions to ensure good processes and accurate information, so they have greater certainty of what is required of them. We also recommend employers consider any existing contractual obligations they may have (for example to advise a union about new employees starting), and what that might mean in the context of these new provisions.

Finally, employers should ensure they have appropriate systems and processes in place, and keep accurate records that demonstrate compliance to avoid the risk of financial penalties.

If you have any questions about these new requirements or your systems and processes, please contact a member of Buddle Findlay's national [employment](#) team.

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