Employment Relations Act 2000

Summary of key points

General

- The Employment Relations Act came into effect on 2 October 2000 and replaced the Employment Contracts Act. The Act was subsequently amended in 2004, 2014 and 2018, and together the legislation introduced a range of new rules and heavy penalties for non-compliance.

- The law is based on **"good faith"** principles. All parties to an employment relationship are required to deal with one another actively, constructively, responsively and communicatively to promote and maintain productive relationships. Fair dealing and mutual trust and confidence are also required of all parties.

- The Act emphasizes and promotes collective bargaining and places particular responsibilities on employers where a collective agreement applies to the work being done or with whom collective bargaining has been initiated. Where a union seeks to negotiate a collective agreement, or to extend an existing collective agreement to cover an additional workplace, the employer is required to negotiate in good faith. All parties are also expected to conclude a collective agreement where they are party to bargaining for it, unless there are genuine reasons, based on reasonable grounds, not to.

- But the Act does not require that you conclude an individual agreement or agree to become a subsequent party to any collective agreement if the terms are unacceptable to you.

Unions and Collective Agreements

- Unions have an important role in the various processes included in the Act. Where employees choose to belong to a union, all parties are required to deal with one another in good faith and the employer is often expected to consult with the employee's union as well as the employee.

- Union membership is voluntary. An employee cannot be forced to join a union and equally an employer must not prevent an employee joining a union or take any other action that discriminates against an employee who is a union member.

- Unions have exclusive rights to negotiate collective agreements. There is no scope for employers and a group of employees to bargain together for a collective agreement.

- If there is no union involvement in the workplace and you and your employees prefer to negotiate common employment terms, you can meet together and agree on terms of employment to apply to everyone. That agreement cannot have legal force as a collective agreement. It can only operate as part of the individual employment agreement for each employee.

- The rules for collective bargaining are complex. Multi-employer and multi-union bargaining are permitted (The Primary Health Care Multi Employer Collective Agreement is an example of a multi-employer agreement). Strike action can be lawful in pursuit of a collective agreement within specified limits. Employers are allowed to communicate with employees during collective bargaining about matters relevant to bargaining for a collective agreement. Employers who wish to do this must ensure that the bargaining agreement allows for this. Note however, that the duty of good faith still prevails and any communications must be consistent with this.

- Once a collective agreement is in place, all union members undertaking the work covered by the agreement are automatically bound by the agreement. Any other employee doing work covered by the agreement can elect to join the union and be covered by the collective agreement at any time while the agreement remains in force. In that case, any individual terms that are inconsistent with those contained within the collective agreement are set aside.

- Where there is a collective agreement in place, a new employee who is not a union member (and is in the coverage clause of the collective) must be employed under the collective agreement for the first 30 days of their employment. After that time period, the employee can elect to be employed on an individual employment agreement, unless they choose to join the union.

- Union officials have wide powers of access to your workplace. Essentially, any union that has a membership rule covering any employee in your premises can ask the employer if it can access the workplace. Consent cannot be unreasonably withheld. If the employer fails to respond to the request within two working days the union's request will be treated as having been accepted. The union representative has to act reasonably, but so do you. Be aware, there are significant penalties for refusing access.

- You may have to allow union members time off on pay for union meetings. The law allows union members to attend two meetings of up to two hours' duration each year without loss of pay, provided the meeting is held in work time. The union is required to give not less than 14 days notice of a union meeting and is also required to make arrangements to ensure that the employer can continue business during the time the meeting is being held.

- You may also be required to allow employees who are union members to have paid time off for union education. There is a scale of entitlement in the Act based on the number of full time equivalent employees in the workplace.

Individual Agreements

- Where there is no collective agreement in place or your employee is not a union member, you are free to negotiate an individual agreement provided it meets the minimum legal requirements and the bargaining process is fair.

- Individual employment agreements must be in writing. You need to provide a written agreement for any new employee **before** they commence work. There is no set format, but as a minimum an individual agreement must contain:

  - The legal name of the employer and the employee's name
  - A description of the work to be performed
  - An indication of where the work is to be performed
  - An indication of the times the employee is to work
  - The wages or salary payable
  - A plain-language explanation of how to resolve employment relationship problems including reference to the 90-day period to raise a personal grievance.
  - An employee protection provision, detailing process and entitlements in situations of "restructuring" (i.e. sale or transfer or contracting out of all or part of the employer's business).

- You are required to retain a signed copy of the employee's individual employment agreement which must be made available to the employee on request. An electronic or hard copy will be sufficient. A copy must now be held regardless of whether the IEA was signed before this requirement came in on 1 April 2011.

- You are required to bargain with your employees in good faith, including considering and responding to their proposals, to advise them of their right to seek independent advice on the proposed terms of employment and to allow a reasonable opportunity for that to happen before the agreement is signed.

- You are entitled to include a trial or probation period in an agreement for a new appointee to assess their suitability for the position. You can also offer fixed term or temporary engagements if there is a genuine reason for the offer. Any such term of engagement has to be recorded in the employment agreement. Including a trial period does not relieve the employer of the need to follow a fair process before considering dismissal.

Contractors

- You need to take particular care when engaging contractors. They could be classed as employees if the relationship is not clearly established and properly recorded and managed.

Employment Relationship Problems - Personal Grievances and Disputes

- The Act includes procedures to resolve grievances and "employment relationship problems". They emphasise mediation, and settlement at the earliest stage with a minimum of formality.

- Access to the Mediation Service of the Ministry of Business, Innovation and Employment is free and mediators are usually available to assist before a matter gets deeply

entrenched. A mediated settlement is usually final and binding on the parties, and any breach of it leaves the party in breach liable to penalty action.

- If a problem is not resolved at mediation, it can be referred to the Employment Relations Authority for investigation and decision. An ERA decision can be appealed to the Employment Court and some issues can be further appealed to the Court of Appeal.

- Personal grievances should be raised within 90 days, but there are grounds to extend that limit.

- We recommend that any member who faces the likelihood of a personal grievance, dispute over the interpretation or operation of an employment agreement or any other industrial claim, seeks advice from their legal advisor or contacts the NZMA at the earliest possible time.

- See also NZMA Advisory Service resources on Problem Resolution and Managing Poor Performance.

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Source: Employment New Zealand website

Need more help?

Contact the NZMA:

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