Employment Relations Act 2000

Information for Employees

What is the Employment Relations Act?

The Employment Relations Act ("the Act") came into effect on 2 October 2000 and replaced the Employment Contracts Act. The Act was subsequently amended in 2004 and 2014 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 emphasises 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 specifically required 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 any party to 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

How do unions fit within the Act?

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.

Most of my colleagues are union members. Do I have to join too?

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

Who can negotiate a collective agreement?

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 employer 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.

What is collective bargaining?

The rules for collective bargaining are complex. Multi-employer and multi-union bargaining is permitted. (The NZ DHBs Senior Medical and Dental Officers 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.

I am a new employee but my employer says that I need to be on the collective agreement to begin with. Is this correct?

No. This used to be the case up until 6 March 2015, but the legislation was changed. If you are not a union member you will need an individual employment agreement (IEA). You need to negotiate the terms and conditions of this IEA. It is acceptable for the terms and conditions negotiated to be similar to the terms and conditions of the collective agreement, providing there was genuine negotiation.

If there is a collective agreement that covers your work, you should be provided with a copy of that agreement as well as the IEA before you start work. This will allow you to make an informed decision about union membership.

I would like to meet with a union official but my employer says they are not allowed on the premises. Is this correct?

No. Union officials have wide powers of access to the workplace. Essentially, any union that has a membership rule covering any employee in the premises can ask the employer if it can access the workplace. Consent cannot be unreasonably withheld by the employer. If your employer fails to respond to the request within two working days the union's request will be treated as having been accepted. There are significant penalties for an employer refusing access.

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.

The employer 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.

What is an Individual Employment Agreement?

Where there is no collective agreement in place, your employer is free to negotiate an individual employment agreement (IEA) with you, provided it meets the minimum legal requirements and the bargaining process is fair.

IEAs must be in writing. The employer must provide a written agreement for any new employee **before** they commence work. There is no set format, but as a minimum an IEA 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)

As of 1 April 2011 the employer is 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 or after 1 April 2011

The employer is required to bargain with employees in good faith, including considering and responding to proposals, advising them of their right to seek independent advice on the proposed terms of employment and allowing a reasonable opportunity for that to happen before the agreement is signed.

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

How does the Act deal with 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.

- See also NZMA Advisory Service resources on Performance Management – Information for Employees.

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Need more help?

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