

Employment Relations Amendment Act 2018

Summary of key points

The Employment Relations Amendment Act 2018 gives more protections for employees, especially vulnerable workers, and strengthens collective bargaining and union rights in the workplace. Many of the changes are familiar to employers, as they roll the law back to how it was as recently as 2015.

Set rest and meal breaks

Employees must be given set rest and meal breaks based on the number of hours worked, to help them work safely and productively. Employers must pay for minimum rest breaks but don't have to pay for minimum meal breaks. Employers and employees can agree when the breaks can be taken. If they cannot agree, the law will require the breaks to be taken at set times, so long as it's reasonable and practicable to do so.

Some limited exemptions may apply for some workers in specified essential services or national security services.

Trial periods

90-day trial periods are restricted to businesses with 19 or fewer employees, to restore protections from unjustified dismissal for most employees when they start a new job.

Businesses 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 fair process for managing performance issues and ending employment if the issues aren't resolved.

Reinstatement for unfairly dismissed employees

If requested, reinstatement must be the first course of action considered by the [Employment Relations Authority \(external link\)](#) for employees who have found to be unfairly dismissed. Reinstatement means the employee gets their previous job back.

The Employment Relations Authority will still assess whether reinstatement is practicable and reasonable for both parties.

Vulnerable industry employees

Employees in the specified vulnerable industries such as cleaning and catering services will be able to transfer their current contract terms and conditions, regardless of the size of their employer. Changes also include a longer notice period for employees to choose to transfer to the new employer.

New categories of employees may apply to receive the protections under the specified 'vulnerable workers'. Instead of a full legislative process, these categories can be amended through a recommendation by the Minister for Workplace Relations and Safety. An applicant must make a request to amend to the Minister.

Changes for collective bargaining, collective agreement and unions

Duty to conclude bargaining

Parties must conclude collective bargaining, unless there are genuine reasons based on reasonable grounds not to. This ensures that parties genuinely attempt to reach an agreement.

Parties will not have to settle a multi-employer collective agreement (MECA) if their reason for not wanting to settle is based on reasonable grounds. For example, if there are significant differences between two employers – such as one operating in an area where costs and wages are higher – it could be reasonable for an employer to negotiate a single-employer collective agreement instead.

Removal of the multi-employer collective agreement opt-out

Employers can no longer opt out of bargaining for multi-employer collective agreement. They must enter into multi-employer bargaining when they are asked to join by a union.

Earlier initiation timeframes for unions in collective bargaining

Where an applicable collective agreement is already in force and before the collective agreement expires, unions can initiate bargaining 20 days ahead of employers.

Restoration of the 30-day rule

New employees must be employed under terms consistent with the collective agreement for the first 30 days. The employer and employee may agree more favourable terms than the collective.

Employers cannot deduct pay for partial strikes

Employers can no longer deduct pay in response to partial strikes, such as wearing t-shirts instead of uniforms as part of low-level industrial disputes. Employers can still respond to a partial strike action the same way as any other strike, which could include suspending employees without pay or a lockout.

Union representatives can enter workplaces without consent in some circumstances

Union representatives can enter workplaces without consent, provided the employees are covered under or bargaining towards a collective agreement. Representatives can still 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.

Pay rates must be included in collective agreements

This must include an indication of how the rate of wages or salary may increase over the agreement's term.

A form for employees to indicate if they intend to join a union

Employers must provide new employees with the prescribed form within the employee's first ten days of employment and return the form to the applicable union(s), unless the employee objects. The form gives employees time to talk to their union representatives before considering and indicating whether they intend to join a union or remain on the individual employment agreement.

Form for employees to indicate if they intend to join a union

<https://www.employment.govt.nz/assets/Uploads/c3173a524a/form-to-indicate-intention-to-join-union.pdf>

Guidance for employers in providing the form to new employees

<https://www.employment.govt.nz/assets/Uploads/13d74dbe3a/guidance-for-employers-in-providing-the-form.pdf>

Employers must 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.

Reasonable paid time for union delegates

Employers must allow for reasonable paid time for union delegates to carry out their union activities, such as representing employees in collective bargaining. Employees will need to agree with their employer to do so or, at a minimum, notify them in advance. An employer will be able to deny the request if it will unreasonably disrupt the business or the performance of the employee's duties.

Employee protections against discrimination for union membership

Employees have more protections against discrimination on the basis of their union membership status, including either being a union member or intending to be a union member. An employer's behaviour can be seen as discriminatory if it occurs within 18 months of employees carrying out union activities. This is an extension of 6 months.

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Source: New Zealand Employment website

Need more help?

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