

Union membership and collective agreements

Employment Relations Act 2000 and amendments

Freedom of Choice

Union membership is an inalienable right of an employee under the Employment Relations Act (ERA) and its amendments. If an employee opts to join a union, the employer is required to deal with that union if the employee asks the union to represent them.

An employer is not allowed to discriminate against anyone who is a union member or wants to join a union, or to subject them to any duress in relation to membership or otherwise of a union. As a matter of law and practice, as an employer it is best not to enter into any discussion with an employee about union membership.

Unions have exclusive rights to negotiate collective agreements. Where an employee wants to be covered by a collective agreement, including the NZMA multi-employer agreements, they will have to join a union.

Relationship with Unions

Where unions are already a prominent feature in your workplace, relationships should be fostered or maintained to ensure that both employer and union representatives can work together under the ERA in good faith, and in the best interests of the organisation/practice and its employees.

In most cases in the medical profession, we expect relationships with union representatives to be managed on an appropriate professional basis and problems to be rare. Problems may arise when more than one union becomes involved. The ERA allows unions to compete for members.

Where the work is covered by a collective employment agreement, the employer will be required to collect union fees and remit these to the union. Members have rights under the law to attend union meetings on pay and to attend union training courses on pay, within the limits prescribed.

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.

Union Meetings

- Every union member is entitled to attend at least two union meetings in each year on ordinary pay, if the meeting is held when they would normally be working.
- The union must give 14 days' notice of such meetings.
- The union must also make arrangements with the employer so that business is maintained during the meeting.

Union meetings are entirely separate from workplace discussions, and an employee's meeting entitlement cannot be used by the employer to pay for time spent in workplace discussion.

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Source: Employment New Zealand website

Need more help?

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