
CHANGE IS THE ONLY CONSTANT: EMPLOYMENT LAW REVISION FOR 2019

In December 2018, the much talked about Employment Relations Amendment Bill was passed by the coalition government. The government has further employment law changes progressing through the parliamentary process in 2019. What do you need to know to keep abreast of the changes?

Employment Relations Amendment Act 2018

The purpose of the Amendment Act is to restore key minimum standards and protections for employees and implements a suite of changes to promote and strengthen collective bargaining and union rights in the workplace. The changes are divided into two groups: general amendments affecting all employees, and amendments affecting collective bargaining.

For brevity, this article focuses on the key general changes, but this does not detract from the importance of the collective bargaining amendments. Our Employment Team partners, Jim Roberts and Alison Maelzer, have a wealth of experience in union-related matters. If you have a union presence in your workplace, we can provide specific advice about issues of union access, the duty to conclude bargaining and the '30 day rule' and other collective bargaining amendments.

The general amendments, applicable to all employers, include:

- In force 12 December 2018: Reinstatement was restored as the "primary remedy" for unjustified dismissal. Between 2011 and 2018, where an employee alleged that an unjustified dismissal had occurred, the Employment Relations Authority had discretion to order the employee's reinstatement to his/her role where it was "practicable and reasonable to do so". This placed the onus of proof on the employee (allowing for the employer to put forward evidence to the contrary).

The amendments now *require* that the Authority provide for reinstatement wherever practicable and reasonable. This has the effect of changing the onus and requiring an employer to provide evidence that reinstatement is impracticable and unreasonable if it wishes to resist reinstatement.

The Ministry of Business Innovation and Employment's (MBIE) statistics indicate that frequency of reinstatement orders since the Employment Relations Act 2000 was passed has been minimal, and so it is not anticipated that this trend will change dramatically. The issue (or threat) of reinstatement may, however, feature more in settlement discussions or at mediation.

- In force 6 May 2019: 90 day trial periods are restricted to employers with fewer than 20 employees. Valid trial periods entered into prior to 6 May 2019 will continue to remain in force.

From 6 May 2019, only businesses employing 19 or fewer employees – commonly referred to as small medium enterprises or SMEs – will be able to use 90 day trial periods. Statistics New Zealand's February 2016 figures showed that 97% of all New Zealand businesses are SMEs, and so for many businesses the use of trial periods will continue as usual (remembering that trial period clauses must strictly comply with the legislative requirements to be valid).

- In force 6 May 2019: Prescribed rest and meal breaks are restored (with limited exception for workers in "essential services" and national security). The Amendment Act provides for minimum entitlements to paid rest breaks and unpaid meal breaks which are dependant on the duration of the work period. An employer and employee can agree on timing and length of breaks, but the minimum prescribed breaks must be provided.

Domestic Violence – Victims 'Protection Act 2018

This Act amends existing legislation to enhance protection in the workplace for persons affected by domestic/family violence, and comes into force on 1 April 2019. The amendments allow for an employee to request flexible working arrangements for two months or less and requires employers to provide up to ten days paid domestic violence leave each year.

The Human Rights Commission, together with several well-known NZ employers, has developed a model family violence policy, available at businessworkingtoendfamilyviolence.co.nz.

Sam Houliston

Senior Associate

sam.houliston@heskethhenry.co.nz



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But wait, there' s more!

- Minimum wage rates increase from 1 April 2019. Adult minimum wage will be \$17.70 per hour, with a further increase (yet to be confirmed) to \$18.90 from April 2020.
- The Government established a taskforce to review the Holidays Act 2003, and report is expected in mid-2019. Watch this space!
- The Equal Pay Amendment Bill aims to improve the process for raising and progressing pay equity claims, with a goal of deterring or eliminating discrimination on the basis of sex for work done within female-dominated jobs. The Select Committee report is due on 16 April 2019.
- The Employment Relations (Triangular Employment) Amendment Bill seeks to ensure that employees employed by one employer, but working under the control and direction of another business or organisation, are able to raise a personal grievance against both the employers.
- The Holidays (Bereavement Leave for Miscarriage) Amendment Bill seeks to make it clear that the unplanned death of a foetus constitutes grounds for bereavement leave for the mother and her partner or spouse, and that the duration of the bereavement leave should be up to three days.

While the changes that have been passed into law represent some of Labour' s 2017 election manifesto, it remains to be seen if there will be further employment law changes introduced in 2019. In the meanwhile, if you require assistance reviewing employment agreements or policies, we would be pleased to assist.

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Sam Houliston | Senior Associate

Tel: +64 9 375 8762 **Fax:** +64 9 365 5262 **Mobile:** +64 21 608 811

Level 14, PwC Tower, 188 Quay Street, Auckland 1010

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Henry** The Art of Law