

Quick guide: What the Employment Relations Law Reform Bill will do

Summary: The Bill aims to enforce collective bargaining. It introduces 24 new offences connected with 'breaching good faith' – most are for actions that might threaten collective agreements. So good faith is reinterpreted to mean "good for collective agreements". 'Good faith' itself isn't defined, apart from saying it means being "communicative, responsive and supportive". The outcome: lots of court cases arguing over what this means and how much communication, responsiveness, supportiveness is enough for "good faith".

Lots more collective agreements

- The Employment Relations Act already gives unions a monopoly over collective agreements and compels employers to negotiate for a collective agreement if a union wants one. (ERA Part 2 section 5 'collective agreement' and Part 5 section 32 (a) (b) and (c))
- The Employment Relations Law Reform Bill takes it further. Employers will have to negotiate *and conclude* a collective agreement. A company must settle; it can't walk away unless it has a "genuine reason" (undefined) not to. (Part 1 clause 12)
- Companies must keep bargaining even if deadlocked. (Part 1 clause 11)
- Companies must meet at least once to discuss any claim for a multi-employer collective agreement (meca). Note: "meeting once" begins the compulsory bargaining process. (Part 1 clause 14)
- Companies must conclude any meca - a company must settle, it can't walk away. (Part 1 clause 12)

In other words employers will be forced into bargaining, forced to keep bargaining and forced to settle a collective agreement or a meca.

Making it harder to sell a business

- If a business employs staff who provide *food or cleaning* services (or others on the Government's expandable list of 'vulnerable employees') and if the business is sold or contracted out, those staff have to be transferred to the new employer on their existing pay if that's what they want. They must also get redundancy pay from the new employer if they are made redundant "for reasons associated with the transfer". If relevant employment agreements don't mention redundancy and no agreement can be reached, the Employment Relations Authority can impose entitlements. (Part 1 clause 30)

This will prevent many businesses being sold as going concerns – they are more likely to close instead. A large contingent liability will be imposed on small businesses, destroying much of their equity.

- Businesses that do not employ people in the 'vulnerable' category will also get restrictions on their ability to sell a company or contract out services. Employers will have to specify in advance how they'll look after employees in those situations – not always easy, as the business environment is not always benign or easy to predict. (Part 1 clause 30)

Employee rights harmed

- **Non-union members will lose the freedom to negotiate what they're worth.** The Bill requires employers to have a complete bargaining 'to-and-fro' process for each individual employment agreement. For firms with many employees on individual agreements, this will be a logistical nightmare – they won't have the time to do it. Some will decide to offer collective agreements only, meaning you will not have the option of going on an individual agreement. The Bill puts obstacles in the way of individual agreements while smoothing the way for collective agreements. So there is likely to be pressure in many workplaces for people to be employed on the collective, not on individual agreements. (Part 1 clause 23)
- **Companies will not be able to pay non-union staff the same as union staff.** They will be able to pay the same only if the union agrees (unlikely since the union movement views this as 'freeloading' and 'undermining the collective'. (Part 1 clause 19)
- **Non-union staff can't get bonuses.** The Bill allows bonuses to be paid for joining the union but non-union staff can't get a bonus for choosing individual agreements without being accused of undermining the collective. (Part 1 clause 8)

Employer rights harmed

- **The Bill limits employers' ability to offer a job on their own terms.** The Bill forces employers to bargain over any individual agreement (they can't say this is the job take it or leave it). (Part 1 clause 23)

- **The Bill can impose permanent agreements.** If a fixed term agreement is not in writing (and does not specify how it will end) it can turn into a permanent employment agreement. (Part 1 clause 27)
- **The Bill forces employers to disclose confidential business information.** Employees will have to be consulted prior to business decisions, making commercial confidentiality hard to maintain. (Part 1 clause 6)
- **The Bill limits employers' ability to manage staff time.** Union reps can engage in lengthy discussion with staff during work time and the employer may not dock the wages for that time, no matter how long. (Part 1 clause 9)
- **The Bill limits employers' freedom of speech.** An employer will face a good faith fine up to \$10,000 for advising an employee against joining a collective agreement. (Part 1 clause 6)
- **The Bill limits managerial action** (e.g. dismissals) taken in the company's best interests. The Bill requires the employer to *balance the legitimate interests of both employer and employee in being fair and reasonable to both employer and employee*. It's not clear what this balancing would involve. The result is likely to be more claims of unjustified dismissal with the court being asked to decide on "balance" and "fairness" – i.e. more court cases over dismissals. Effectively, this will undermine a business owner's right to make managerial decisions and will give that right to the courts. (Part 1 clause 37)

The Employment Relations Law Reform Bill, taking us back to the 1970s and '80s...

The Employment Relations Law Reform Bill will deliver an industrial system like that of the '70s and '80s – the worst period for strikes in NZ's history. Here's what the Bill and the ERA give us:

1) Union monopoly Unions already have a monopoly on collective agreements – a collective agreement can only be negotiated by a union (ERA Part 2 section 5 'collective agreement')

2) Compulsory negotiation An employer has no choice but to negotiate if a union wants to bargain for a collective agreement. (ERA Part 5 section 32 (a) (b) and (c))

3) Forced to keep bargaining An employer is required to keep bargaining, even if the issue is deadlocked. (Employment Relations Law Reform Bill Part 1 clause 11)

4) Forced to settle Once negotiating, an employer is required by law to settle (conclude) a collective agreement unless there is a "genuine" (undefined) reason not to. (Employment Relations Law Reform Bill Part 1 clause 12)

5) Imposed settlements The Employment Relations Authority can impose a settlement if it believes an employer has breached good faith in a serious way in avoiding one. (Employment Relations Law Reform Bill Part 1 clause 15)

6) Forced mecas If a union makes a claim for a multi-employer agreement, the employer will be required to meet at least once to discuss the claim, or face a fine for breaching good faith. As meeting once means entering into an arrangement for bargaining, this, in combination with the requirement to settle (see number 4. above) could mean employers forced into mecas against their will. 'Subsequent parties' clauses to mecas could result in industry-wide collective agreements – these would be like national awards. (Employment Relations Law Reform Bill Part 1 clauses 14 and 12)

This combination of provisions **1) to 6)** will give NZ a highly undesirable industrial relations framework.

1), 2), 3), and 4) Give us compulsory collective bargaining

5) Gives us compulsory arbitration

6) Gives us a system similar to national awards.

Compulsory bargaining, compulsory arbitration and national awards are very similar to the conditions responsible for NZ's period of extreme industrial unrest in the 1970s and 1980s.

Strikes and work stoppages during these two decades averaged 345 a year – nearly five times higher than annual stoppage figures before or since (Statistics NZ) – with major damage done to the economy and to large projects e.g. Clyde dam, Huntly power plant, Kawerau, Marsden Point, BNZ building, Mangere Bridge and others.

The Employment Relations Law Reform Bill does nothing to tackle the real problems holding back economic growth and will add to the already excessive compliance costs faced by NZ businesses.