

3. THE EMPLOYMENT RELATIONS ACT 2000

The Employment Relations Act 2000 is the main piece of legislation relating to employment. The Act applies to every employee and employer, so any organisation with paid staff must comply with it. Under the Act, an employer may be an individual, a company, partnership, trust or incorporated society. An employee is any person employed by an employer to do any work for hire or reward (e.g. wages, salary or commission). In contrast to the Human Rights Act, volunteers and independent contractors are not classed as employees under the Employment Relations Act.

The ultimate goal of the Employment Relations Act is to build productive employment relations. It recognises that parties to employment relationships - employers, employees and unions - will always seek to change employment relationships as needs and conditions change, and that new issues will always arise. Yet while employers and employees may have a range of different interests, they also have a common interest in the viability and success of the organisation

The aim of the Act therefore is for employers, employees and unions to make changes and work through issues themselves, by dealing with one another in good faith.

Specifically, the Act:

- Promotes good employment relations and good faith behaviour, which includes mutual obligations of trust and confidence between employers, employees and unions
- Sets the environment for individual and collective employment relationships
- Sets out requirements for the negotiation and content of collective and individual employment agreements
- Provides prompt and flexible options for resolving problems in employment relationships, promoting mediation as the primary problem-solving mechanism
- There are also some specific provisions for good faith in collective bargaining.

THE CONCEPT OF GOOD FAITH

The concept of good faith behaviour underlies the Act, requiring all parties to an employment relationship to be active and constructive in establishing and maintaining productive employment relationships.

At the most basic level, good faith is about telling the truth. It means employers, employees and unions are not allowed to do anything that misleads or deceives one another.

Good faith obliges employers:

- To give information that is not misleading
- To provide employees with access to information that may affect their continued employment, and an opportunity to comment on the information before a decision is made - for instance, when employers consider proposals that may affect employees or make them redundant.

It also means employers should:

- Offer an opportunity for a support person, advocate or representative to attend, and respect the role of that person
- Allow people time to prepare and consult.

EMPLOYMENT RELATIONSHIP PROBLEMS

An “employment relationship problem” can be anything that harms or may harm an employment relationship, other than problems relating to negotiating the terms and conditions of employment.

This includes a personal grievance, a dispute, and any other problem relating to or arising out of an employment relationship.

NEW EMPLOYEES

When a new employee starts work, they need to be given time to seek advice before signing an employment agreement. That agreement must be given to them in writing.

FIXED TERM AGREEMENTS

Employers can't use fixed-term agreements simply to get around employing permanent staff (see Guide to Employment Agreements). There has to be a genuine reason for the fixed term, it must be consistent with the Employment Relations Act, and the reason for the fixed term needs to be included in the written employment agreement.

PROBATIONARY OR TRIAL PERIODS

Employers and employees may sometimes agree to an initial probationary or trial period. Both the employer and the employee need to make efforts to make the probation period successful so that the employment becomes permanent.

UNION RIGHTS

If employees decide to join a union or set one up, the employer must treat their union representatives with respect.

An employer must not advise an employee or seek to persuade them against being covered by collective bargaining or a collective agreement.

When union representatives want to visit a workplace for reasons allowed under the Act, the employer shouldn't give unreasonable excuses why this is an inconvenient time or try to deduct pay from employees who have discussions with union representatives. At the same time, the union should be reasonable about not interfering in the normal operations of the business and should restrict discussions to a reasonable duration.

COLLECTIVE BARGAINING

At all times, the benefits of collective bargaining - as well as the right to individual choice - should be respected.

When bargaining for a collective agreement, employers and unions must meet and seriously consider each other's proposals and respond to those proposals.

Where possible, information should be provided to back up claims. At the same time, neither party should keep raising the same issues over and over again even though they have already been considered and rejected by the other side.

Good faith does not stop the parties from expressing facts or reasonable opinions about the other side or from seeking to bargain for terms that suit them. But it does require the parties to keep bargaining on other issues even if they are deadlocked on one matter and to conclude a collective agreement unless there is a genuine reason based on reasonable grounds not to.

A genuine reason does not include a party's opposition or objection in principle to collective bargaining or being covered by a collective agreement, nor is a dispute over whether the collective agreement should include a bargaining fee clause a genuine reason.

FLEXIBLE WORK

On 1 July 2008, the Employment Relations (Flexible Working Arrangements) Amendment Act came into effect. The Act gives employees with caring responsibilities the right to ask their employers for flexible working arrangements - arrangements such as flexi-time, home-working, career breaks, term-time working, altered hours or job sharing.

REST BREAKS AND BREASTFEEDING

From 1 April 2009, the Act also requires employers to provide regular rest and meal breaks, as well as appropriate facilities and breaks for employees who wish to breastfeed or express.

Information

- www.ers.dol.govt.nz - The Department of Labour Employment Relations Service has an extensive range of fact sheets and booklets on the Employment Relations Act, good faith, employment agreements, minimum rights, resolving employment relationship problems, and much more.
- The Department of Labour Employment Relations Service, Community Law Centres, Trade Union Centres, employers' associations and the Human Resources Institute are all able to assist with queries from employees or employers about the Employment Relations Act.

Resources

- Guide 2: Guide to Employment Law
- Guide 4: Employment Agreements
- Guide 5: Minimum Employment Rights
- Guide 7: The Human Rights Act 1993
- Guide 14: Managing Employment Relationship Problems
- Guide 15: Mediation
- Guide 16: Unions and Collective Bargaining