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Employment Relations Act Amendments and Other Proposed Changes

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Damn good advice



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What are the main changes?



Key Changes

- Reinstating prescribed meal and rest breaks
- Strengthening collective bargaining and union rights
- Restoring protection for vulnerable workers (regardless of the size of their employer)
- Limiting 90-day trial periods to business with fewer than 20 employees
- Reinstatement primary remedy again



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Changes that have happened



From 12 December 2018

- Union Reps can enter workplaces without consent
 - provided employees are covered under, or bargaining towards, a collective agreement
- Pay deductions can no longer be made for partial strikes
- Employers must now enter into bargaining for multi-employer collective agreements
 - if asked to join by a union



From 12 December 2018

- Earlier initiation timeframes have been restored for unions in collective bargaining
 - enabling a union to initiate bargaining 20 days ahead of an employer
- Reinstatement will be the first course of action considered by the Authority
 - for unjustified dismissals and if sought by the employee
- New categories of employees may apply to receive the protections afforded to ‘vulnerable’ employees
 - through an application process set out in the Act



From 6 May 2019

- Set rest and meal breaks
 - Depending on the hours worked
- 90-day trial periods limited to <20 employees
- Employees in specified “*vulnerable industries*” will be able to transfer in a restructuring on current terms
- The duty to conclude bargaining will be restored



From 6 May 2019

- The 30-day rule will be restored
- Pay rates will need to be included in collective agreements
- Employers will need to provide new employees with an approved *active choice form* within the first ten days of employment and return forms to the applicable union



From 6 May 2019

- Employers will need to allow for reasonable paid time for union delegates to conduct union activities
- Employers will need to pass on information about the role and function of unions to prospective employees

From 12 June 2019 Employees will have extended protections against discrimination on the basis of their union membership status

- for union and intending union members



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What can you do to prepare?



Your To Do List

- Employment Agreements:
 - Correct meal and rest breaks?
 - Do you need to remove your 90 day trial period provision?
 - Are you going to replace it with a probationary period?
 - Collective Agreements: needs to have relevant pay rates



Your To Do List

- Do you have an 'active choice form' that outlines that new employees can join the Union and be on the CEA or an IEA?
 - Form needs to outline role and function of the Union
- How is the 30 day rule going to work for your business?
 - Fewer issues if the IEA mirrors the CEA
- Do you have a protocol with the Union as to access in the workplace?
 - Health and safety considerations



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Anything else in the pipeline?



Minimum wage

- Currently \$17.70 an hour
- Projected: \$18.90 an hour 1 April 2020 and \$20.00 1 April 2021
- Cascading effect



Domestic Violence – Victims Protection Act 2018

- Came in to effect 1 April 2019
- Up to 10 days/year paid domestic violence leave
- Employee can request a short term variation to working arrangements
- Employer can request employee to provide proof
- Protections from discrimination under Human Rights Act 1993 or PG Claim



Holidays Act (Bereavement for Miscarriage) Bill

- Addressing ambiguities of “*child*”: Holidays Act 2003
- 3 days bereavement leave “*for unplanned end of a confirmed pregnancy by way of death of the foetus*”
- Includes partner/spouse of employee



Privacy Bill

- Repeals and replaces current Privacy Act 1993
- Changes to Information Privacy Principles
- Access to personal information
- Strengthening Privacy Commissioner's powers
- Mandatory reporting of privacy breaches
- New criminal offences



Parental Leave and Employment Protection (Definition of Primary Carer) Amendment Bill

- Amend definition of “*Primary Carer*”
- Includes the surviving spouse/partner of a deceased mother who did not have entitlement



Employment Relations (Triangular Employment) Amendment Bill

- Triangular Employment Arrangements
 - Employer
 - Controlling Third Party (**CTP**)
 - Employees
- Primarily aimed at labour-hire employees
- Personal grievances
 - Notification to CTP
 - Joining of CTP
 - Apportionment of Responsibility

Equal Pay Amendment Bill

Equal Pay: *same pay, same job*

Pay Equity: *same pay, different job*

- Will lower bar for employees initiating a *pay equity* claim
- Existing *bargaining framework* within ERA to be used
- Parties to negotiate in good faith, just like *collective bargaining*
- *Mediation* services to assist if necessary
- *Authority/Court* last resort
- Includes claim for *back pay*

Fair Pay Working Group Recommendations

- Working group on *fair pay agreements* delivered report (December 2018)
- *Initiation*: either 10 per cent or 1000 workers in an occupation or sector - whichever is lower - enough to pass a representativeness trigger, kicking off the process
- *Bargaining*: with limited exemptions, employees/employers covered would be bound by the process, negotiated by unions and employee groups or industry organisations
- *Determination*: If agreement can't be reached, a deciding body - possibly the Employment Relations Authority - would have final say

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Q&A



Note:

The material contained in this workshop is necessarily in summary form. It is not intended to be a comprehensive statement on the law as it applies to the above topics. Accordingly, you must not rely solely on this information without first seeking detailed legal advice

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