"A fair day's pay for a fair day's work" – the Government announces the first instalment of proposed employment law changes

Workplace Relations and Safety Minister, Iain Lees-Galloway has announced the start of changes to workplace relations legislation. The Employment Relations Amendment Bill has been introduced to parliament.

The Government will start undoing some of the changes made to employment law by the previous Government if the Bill becomes law. While the first draft of the bill will be subject to select committee scrutiny, it gives a flavour of the direction the Government intends to take with respect to employment law.

The key areas of proposed reform include:

- Collective bargaining and unions;
- 90 day trial periods;
- Rules around restructuring; and
- Employment protections for vulnerable workers.

Collective bargaining and unions

Proposed changes to collective bargaining are intended to level the playing field between employers and employees by increasing the power unions will have to demand higher wages.

Pay for union activities

A new section 18A will see union delegates entitled to "reasonable paid time" for undertaking union activities, provided the activities relate to representation of employees and will not unreasonably disrupt the employer's business.

While guidance is given in relation to (limited) circumstances in which an employer can refuse to allow paid union activities, there is no guidance as to what a "reasonable" amount of paid time is.

Union access to the workplace

The Bill removes the obligation on union representatives to seek an employer's consent before entering the workplace.

Refusing to allow access to a union representative exposes an employer to penalties.

Changes to collective bargaining

 Parties to collective bargaining will be obliged to continue and conclude bargaining, even if they have reached a deadlock or standstill unless there is a genuine reason, based on reasonable grounds not to do so.

Unions will be able to initiate bargaining earlier than an employer and different timeframes will apply depending on whether there is more than one collective agreement in place.

The recent powers given to the Employment Relations Authority to determine that bargaining has concluded will be revoked.

It will be mandatory for collective agreements to specify agreed rates of pay. The method must be described in the collective agreement and does not give discretion to the employer to determine the rate itself.

Multiple Employer Collective Agreements (MECA)

It is proposed that MECA opt-out provisions for employers be removed.

Collective agreements and new employees

Unions will be able to request employers to provide information to new employees about the role and function of the union. The employer will not be able to refuse unless the information is defamatory or confidential.

The ‘30 day rule’ will be reintroduced and will apply to new employees whose work is covered by a collective agreement. The new employee will need to be employed on the same terms as the collective agreement (without having to pay union/bargaining fees). After 30 days, if the
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employee has not become a party to the collective agreement, the employee and employer can bargain for new individual employment terms.

Strikes and lockouts

The Bill will repeal provisions relating to partial strike action and specified pay deductions removing the ability for employers to deduct pay for 'low level' strike action.

Discrimination for union involvement

Timeframes in relation to claims against employer discrimination because of union involvement are to be extended.

90 day trial periods

The original restriction on trial periods only being available to employers with fewer than 20 employees will be reinstated.

Restructuring and vulnerable employees

The exemption for smaller employers from being required to accept a transfer of a protected employee in a restructuring scenario will be scrapped. Timeframes will be extended to all employees to make an election about transferring to the new employer.

There are also new provisions around the information to be provided to the new employer about transferring employees.

There are no proposed changes to the categories of protected employees.

Reinstatement as a primary remedy

Controversially, reinstatement will be restored as the primary remedy. Reinstatement will need to be requested by the employee, but must be granted unless it is not "practicable or reasonable."

Rest and meal breaks restored

In another reversion to previous rules, the Bill will see employers being required to recognise meal and rest breaks stringently and prescriptively.

Other changes on the horizon

Although the Bill is not as far-reaching as Labour's pre-election promises, this is only the first instalment. There are other changes on the horizon.

Minimum wage increases

From 1 April 2018 the minimum wage will rise a significant 75 cents to $16.50 per hour. The Government promises to increase this to $20 by 2021 and to ensure core public service employees are paid a living wage.

Hobbit law working group announced

The Government recently appointed Linda Clarke to head the working group tasked with determining whether the "Hobbit" law should be repealed or modified.

Film workers are often independent contractors. The Government is concerned that they are not afforded the same protection as employees. It will be interesting to see how the independence of a contractor is balanced against the protection of employment law.

Equal pay

The Government has promised to release draft legislation by mid-2018 to improve unequal pay for women performing similar roles to men.

It was announced last week that the Joint Working Group on Pay Equity Principles has been reconvened to explore and report on pay equity, including appropriate parameters for a 'pay equity claim' and guidance on how that might be determined in relation to comparing male roles and female roles.
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Parental leave
From 1 July 2018 the primary caregiver of a child is entitled to 22 weeks, an increase from the current 18 weeks. The Government intends to increase the entitlement further, making 26 weeks available for parents in July 2020.

Want to know more?
Anderson Lloyd has a team of employment experts to guide you through the employment law changes or even to make submissions on your behalf during the legislative process.

Please contact our specialist employment law team for more information.