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Employment law changes following announcement of new government

The recent finalisation of the National – Act – New Zealand First coalition signals a number of key employment changes on the horizon.

Employment law changes

The Government has said it will repeal the Fair Pay Agreement regime by Christmas 2023. It is expected that not only will this prevent employees and unions from taking steps to commence bargaining for such agreements, but the six applications which are already in the process of bargaining, including in the hospitality industry, commercial cleaners, early childhood education, and the grocery supermarket industry, will also be unable to progress further.

The Government also plans to expand 90-day trials to all businesses. Currently, only businesses with fewer than 20 employees are able to use trial periods. Such expansion will enable all businesses to terminate the employment of any new employee within the first 90-days of their employment, providing there is a trial period in their agreement, without being at risk of an unjustified dismissal personal grievance. Care will still need to be taken to ensure the trial period clause is valid and can be relied upon, and that employers are not breaching good faith or other employment law requirements.

The Government has committed to preventing contractors who have explicitly signed up to a contracting arrangement from challenging their employment status. This will mean that those who do not have written agreements will remain able to pursue a claim they are an employee. However, where an individual has signed an independent contractor agreement, they will not be able to claim they are an employee. The coalition agreements don't specify how this will be achieved, however, ACT's policy indicates that an amendment to the Employment Relations Act 2000 could be expected.

The Government has said that it will consider simplifying personal grievances, including by removing the eligibility for remedies if the employee is at fault, and setting an income threshold above which a personal grievance cannot be pursued.

Currently employee remedies are reduced where an employee is deemed to have contributed to the grievance by their own conduct. The Government's plans would take this a step further to remove eligibility to remedies altogether, although it remains to be seen whether this will cover section 123 payments only (compensation for humiliation, loss of dignity, and injury to feelings) or if this will extend to remedies for lost wages in an unjustified dismissal claim.

Setting an income threshold above which a personal grievance cannot be pursued essentially means that well-remunerated employees who earn above a certain amount will effectively be contracted out of parts of the Employment Relations Act 2000. It is unclear what salary level the Government will consider high enough, although an unsuccessful private member's bill in 2017 which attempted to introduce similar law had proposed a salary of $150,000.

It is also worth highlighting that removing the eligibility for remedies if the employee is at fault, and setting an income threshold above which a personal grievance cannot be pursued, are things the Government has only committed to "consider". It remains to be seen to what extent it follows through on this and what draft legislation, if any, arises.

The Government has also set out that it will reform health and safety law and regulations, but no further detail has been provided. With comprehensive reform having taken place in 2015 with the introduction of the Health and Safety at Work Act 2015, it is difficult to anticipate what the Government's plans are here.

Finally, the Government has also committed to moderate increases to the minimum wage annually.

We will continue to keep you updated as policies are implemented.

Want to know more?

If you have any questions about the proposed changes, please contact our specialist Employment Team.

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