

## A Step Back in Time?

The Employment Relations Amendment Act 2018 received Royal Assent on 11 December 2018. The amendments to this legislation are relatively significant, with many of the changes reversing the various amendments made to the Act by the previous National government.

The majority of the changes to the legislation take effect in two distinct stages, some taking effect from 12 December 2018 (the day after the legislation was given Royal Assent) and the remainder on Monday 6 May 2019. The changes to discrimination on the basis of union membership come into effect 6 months after the date of Royal Assent (12 June 2019).

### Changes coming into effect 12 December 2018

- **Union Access** union representatives are now able to access workplaces without gaining consent in the following circumstances:
  1. If there is a collective agreement in force between the employer and the union and the coverage clause in the collective agreement covers the work done by the employees at the workplace; **or**
  2. The union or the employer has initiated bargaining for a collective agreement and the intended coverage clause covers the work done by the employees at the workplace.

Consent is required before union representatives enter workplaces where no collective agreement or bargaining exists.

Union representatives are still required to comply with a number of conditions in relation to access which largely remain unchanged.

- **Timing of Initiation of Bargaining** – the amendments to the Act restores the ability of the union to initiate bargaining 20 days before an employer can do so.

The union can now initiate 60 days before the expiry of the collective agreement and the employer 40 days before the expiry of the collective agreement.

- **Multi-Employer Bargaining** – The provisions allowing employers to “opt out” of multi-employer bargaining have been repealed.

The general good faith obligations to conclude a collective agreement ‘*unless there is a genuine reasons, based on reasonable grounds, not to*’ applies to multi-employer bargaining except that “*opposition to concluding a multi-employer collective agreement is a genuine reason not to conclude a collective agreement if that opposition is based on reasonable grounds.*”

- **Pay Deductions for Partial Strike** – The provisions which enable pay deductions to be made for partial strikes have been repealed.
- **Reinstatement to be the Primary Remedy** – In the event that an employee seeks reinstatement in a personal grievance claim, the Authority or Court “*must provide for reinstatement wherever practicable and reasonable . . .*”

### Changes coming in to effect 6 May 2019:

- **Paid Time for Union Delegates** – Union delegates are entitled to reasonable paid time (at the rate of pay they would have received if working) to represent employees. The union delegate must either:
  - reach agreement with an employer to represent employees; or
  - notify the employer when and how long the employee intends to undertake the activities.

An employer can refuse to allow the employee paid time only if the activities would unreasonably disrupt the employer’s business or the union delegate’s performance of employment activities.

## Christmas Shutdown

Our office will be unattended from 5 pm on Thursday 20 December until Wednesday 9 January 2019.

If you require assistance during this time please contact us on the following numbers:

Dean 027 279 1353

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## Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Raewyn Gibson, Peter Zwart** or **Dean Kilpatrick**.

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- **Duty to Conclude Bargaining (for single employer Collective Agreement)** – The Act reintroduces the good faith obligation to conclude a collective agreement unless there is a genuine reason based on reasonable grounds not to.

- **Rates of Wages/Salaries to be Included in Collective Agreement** – A collective agreement will be required to include:

- the rate of wages or salary payable; or
- the minimum rate of wages or salary; or
- 1 or more methods of calculating the rates or minimum rates of wages or salary

### **AND**

- how the wages or salary may increase during the term of the collective agreement.

- **Union May Provide Employers with Information about Role and Functions of the Union to pass on to the Prospective Employees** – A union that is party to a collective agreement may at any time **request** an employer to provide information about the role and functions of the union to prospective employees. An employer may refuse to comply with a union request to pass on this information in the following limited circumstances:

- when the information is confidential.
- when the information is about the employer, and would or is likely to *'mislead or deceive the prospective employee and would significantly undermine bargaining between the employer and the prospective employee'*.

- **Employer to Provide New Employees with "Active Choice Form"** – Where a new employee (who is not a union member) falls within the coverage clause of a collective agreement the employer must, within 10 days of that employee commencing employment, provide the new employee with a form which the new employee may choose to complete and return for the purpose of:

- notifying the employer whether they intend to join a union; or
- objecting to the employer providing information about the employee to the union/s.

The form must be accompanied by a notice that explains unless the employee objects, the employer will provide the following information to each union that is a party to a collective agreement that covers the work to be done by the employee:

- the name of the employee;
- whether the employee has notified the employer they intend to or do not intend to join the union;
- whether the employee did not complete and return the form.

The employee may complete and return the form within 30 days after they commence employment. The employer must, within 40 days after the employee commences employment, provide information to each union (who is a party to the collective agreement that covers the work to be carried out by the employee), unless the employee has objected in accordance with this provision, the name of the employee, the completed form (if the employee completes it) or if the employee does not complete the form, notice that the employee did not complete and return the form.

- **Trial Periods** – An employer may only engage a new employee on a trial period if they employ less than 20 employees at the commencement date of the employment agreement.

- **Vulnerable Employees – Restructuring** – The provisions for "exempt employers" has been repealed. 'Vulnerable' employees (as specified in the Act) will be able to elect to transfer to a new employer, regardless of the size of the employer.

- **Rest and Meal Breaks** – The specific provisions previously included in the Act covering rest and meal breaks have been reinstated so that employers must provide employees with rest and meal breaks as specified in the Act, with limited exceptions. Rest breaks must be paid however meal breaks can be unpaid. If the employer and employees cannot agree on the timing of the breaks, the amendments to the Act require the breaks to be taken in the middle of a work period.

- **30 Day Rule for New Employees where there is a Collective Agreement** – The Act reintroduces the requirement for new employees (who are not union members), whose work falls within the coverage clause of an applicable collective agreement, to be offered the terms and conditions of that collective agreement for the first 30 days of their employment.

### **Change coming into effect 12 June 2019:**

- **Discrimination on the Basis of Union Membership** – The definition of discrimination is extended to include union members (either being a union member or intending to be a union member) in addition to being "involved in union activities".

The timeframe within which an employer's behaviour may be viewed as discriminatory is extended from 12 to 18 months of an employee being a union member or being involved in union activities.

We have of course only provided a summary of the changes however we intend to hold briefing sessions in the New Year to detail the changes and the potential implications for employers.