



ISSUE

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a regular newsletter for clients of
mcphail gibson & zwart ltd

New Fair Pay Agreements Bill

Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
- Training
- Monthly newsletter

Following on from its announcements last year, on 29 March 2022 the Government introduced a new Fair Pay Agreements Bill ("the *Bill*") to Parliament. The Bill has passed its First Reading and is now at the Select Committee Stage.

The Bill proposes that Fair Pay Agreements ("FPAs") are occupation or industry based and set out minimum terms of employment for the industry/occupation covered. This means that multiple employers across an occupation or industry may be covered by an FPA. As a simple example, an FPA may cover hospitality workers, i.e. wait staff and café servers, kitchen staff, chefs etc. This could then mean that all cafés, restaurants, hotels and potentially catering venues would be required to engage workers on the applicable FPA and the terms provided in it. Additional terms agreed pursuant to a Collective and/or Individual Employment Agreement would then sit on top of the FPA.

Both employees and employers will be represented; employees represented by Unions and employers (usually) by incorporated societies, such as employer representative organisations. It is important to note that employers are not required to be members of such organisations in order to have their representation.

Unions will initiate bargaining on behalf of employees (they must apply to MBIE for approval first). The Bill requires that either 10% or 1,000 covered employees support initiating bargaining for an FPA. The Union must also provide evidence that the employees support initiating bargaining for an FPA. However, the initiating union need only have one union member within the coverage.

There is also a public interest test. This requires evidence that covered employees:

- 1 receive low pay for their work; or
- 2 have little bargaining power in their employment; or
- 3 have a lack of pay progression in their employment (for example, pay rates only increase to comply with minimum wage requirements); or
- 4 are not adequately paid, taking into account factors such as:
 - (a) working long or unsocial hours (for example, working weekends, night shifts, or split shifts);
 - (b) contractual uncertainty, including performing short-term seasonal work or working on an intermittent or irregular basis.

Applications under the public interest test may include evidence that:

- 1 the coverage of the proposed FPA includes a high proportion of migrant employees; or
- 2 there is systemic exploitation of migrant workers who are or would be covered employees; or
- 3 most of the covered employees are employed on a temporary basis; or
- 4 there is systemic failure to comply with minimum employment standards for the covered employees; or
- 5 a high proportion of the covered employees are employed by small-to-medium-sized employers; or
- 6 there is systemic health and safety issues for the covered employees.

2022 ER Seminar Dates

New dates have been set for 31 May/1 June 2022 and also 1/2 November 2022. Details can be found on our website www.mgz.co.nz/training/

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 **Dean Kilpatrick, Jane Taylor or Deborah Hendry**.

Contact Details:

Level 2
71 Cambridge Terrace
PO Box 892, Christchurch
Tel (03) 365 2345
Fax (03) 365 2347
www.mgz.co.nz

Dean Kilpatrick
E: dean@mgz.co.nz
M: 027 279 1353

Jane Taylor
E: jane@mgz.co.nz
M: 021 1539 147

Deborah Hendry
E: deborah@mgz.co.nz
M: 027 247 4274

In each case, MBIE will then assess the application for initiation and may call for submissions as needed.

In the same way that unions will represent employees, employers will require representation. Unlike most collective bargaining now, which is generally one employer and a union, multiple employers will have an interest.

Once bargaining is initiated, there will be a number of obligations on employers to pass on details about employees (unless they opt out) and to provide paid time off to employees to attend meetings, and unions will be able to access workplaces without consent. All parties, even parties on the same bargaining side, owe each other a duty of good faith. Each bargaining side will be required to enter into an inter-party side agreement.

The Bill provides that there will be mandatory content for each FPA, including:

- Dates the agreement comes into force and expires (they must be in force for 3-5 years);
- Coverage;
- Normal hours of work required of each class of covered employees; and
- Wage details, including minimum wage rates, overtime rates, penalty rates etc.

The Bill also provides that bargaining sides must discuss a number of topics, including:

- Health and safety requirements;
- Arrangements relating to training and development;
- Arrangements relating to flexible working;
- Leave entitlements; and
- Redundancy arrangements.

Once bargaining has concluded then the FPA must be assessed by the Employment Relations Authority (“Authority”) for compliance. The FPA must then go through a process of ratification by covered employees and employers, verification and then notification through secondary legislation.

Disputes on initiation and about bargaining will be heard in the Authority. Bargaining sides can apply for the Authority to set FPA terms where:

- the bargaining sides have exhausted all other reasonable alternatives for reaching agreement; or
- the bargaining sides have, for a reasonable period, used their best endeavours to identify and use reasonable alternatives to agree the terms of the proposed FPA; or
- the proposed FPA has been the subject of 2 ratification processes, without having been ratified.

The Authority can then make a determination and set the terms of the FPA.

BusinessNZ has already spoken out against the Bill, arguing that the scheme is out of touch and out of date, particularly in light of the current covid environment. Likewise, BusinessNZ has also confirmed it will not be the default employer bargaining party as initially proposed by the Government. There are likely to be many submissions on the Bill and it may be amended before it becomes legislation.

If you wish to make submissions on the Bill, we are happy to assist you with this. The team at MGZ has extensive experience representing employers in collective bargaining across multiple industries, with Dean Kilpatrick alone having more than 20 years’ experience in collective bargaining.

Reminder: Minimum Wage Increase

From 1 April 2022 the minimum wage increased to \$21.20 per hour.

The starting-out and training minimum wage also increased from \$16 to \$16.96 per hour from 1 April 2022.

