

The major parties: National's and Labour's employment relations policies

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Abstract

The policies of the two major parties – the National Party and the Labour Party – are overviewed, based on our reading of recent policy implementation and election promises. The overview highlights two very different approaches to employment relations and its context. The National Party is continuing its piecemeal dismantling of collective bargaining and individual employment rights while the Labour Party seeks to enhance collective bargaining and unionism as well as individual employment rights. With its tax policies and more state intervention, the Labour Party is also projecting a different path to the elusive high skill, high wage knowledge economy. It appears that the 2014 general election provides the electorate with a clear choice when it comes to the employment relations policies of the two main parties.

Introduction

Most commentators have emphasised that this has been a rather unusual election campaign with the fall-out from the Nicky Hager book, *Dirty Politics*, and the resignation of Minister of Justice, Judith Collins, hogging the headlines. Also, the nature of MMP elections and coalition governments has meant that the policies of the two main parties have sometimes been overshadowed by the policies and behaviours of minor parties (see Molineaux & Skilling (2014) article in this issue). Still, there has been considerable focus on the major parties' policy positions and announcements, and they have shown plenty of policy differences both in the context of and in the specifics of employment relations. We will highlight some of these differences below.

This election has been influenced by that the economy and labour market has changed considerably since 2011. There has been the positive influence of the highest terms of trade in 40 years in 2013-2014, and the positive impact of high dairy prices and the resulting pay-outs to farmers have flown through to regional economies. Construction industry employment has increased significantly due to re-building work in Christchurch getting close to its peak, and by the ongoing repair to many 'leaky buildings'. This upswing in construction industry employment is expected to continue for the foreseeable future. Unemployment has declined over the past election period and it is now at a five-year low at 5.6 per cent. Reports of skills shortages and labour market bottlenecks have begun to appear in the media, and the insufficient attention to increasing labour market mobility measures and investing in vocational training and education during the past election period is becoming common knowledge (Collins, 2012; Doesburg, 2014; Porter, 2014).

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“This is the second year in a row that over half of employers in New Zealand are struggling to fill roles despite having an unemployment rate of 6 per cent,’ said Lincoln Crawley, ManPower-Group’s New Zealand and Australia managing direction” (Doesburg, 2014: 14).

There has also been more public emphasis on income inequality, ‘working poor’ and children in poor households, and both major parties have tried to emphasise their policies in those areas (see Table 3 below). What appears to have changed is the underlying understanding of mainstream economists and commentators: higher statutory minimum wages, social welfare interventions and better school-to-jobs connections are now being projected in a more positive economic light (for example, Editorial, 2014; O’Neill, 2014; MBIE, 2014). It is also illustrated by the media attention given to the so-called ‘living wage’ campaign (see New Zealand Journal of Employment Relations, 38(3)).

It is plainly crazy – at a time when company profits take up a record share of national incomes – that wages have to be constantly topped up by the state to give the low-paid an acceptable standard of living (Warner, 2014: B10).

This has also influenced another significant employment relations topic – the so-called productivity ‘conundrum’ – where the spotlight has moved from unions and constraints on work practices to insufficient R&D spending, managerial skills and skill shortages (see de Serres, Yashiro & Boulhol, 2014; Fallow, 2014; Oram, 2014 a, b). This is also where the vision of the two major parties has grown apart over recent times (as outlined below).

While we have drawn on the available information about the two parties’ policy positions, this has been influenced by recent media reports. This is also our description and evaluation of their policies and will involve some personal biases and speculations. This is particularly the case regarding the National Party’s position, which has been interestingly short of policy details about its future employment relations policies – as it was in the last election (Rasmussen, 2011) – though we have had the advantage of being able to draw on the last six years’ policy announcements and implementations. While neither party has focused strongly on employment relations, it has surfaced in debates of inequality, poverty, low and ‘living’ wages, skill shortages and economic growth.

In the next section, we overview the two parties’ recent public policy positions. With the National Party forming the government in the last two election periods, this provides a reasonably accurate picture of the main thrust of its employment relations policy platform even though it has not divulged much detail so far in the election campaign. It also aligns with the National Party’s aim to ‘run on its record’ and its claim of wanting to continue its current policies. However, there can always be changes as political alliances and debates unfold. With the Labour Party developing a number of new policy directions, it is more unclear how much its policy positions of the recent past will contribute, and instead the current election platform will probably provide a more precise picture of its policy approach in the coming election period.

Employment relations policies and positions 2008-2014

Since 2008 employment relations policies have been dominated by the changes made by the National-led governments (see Table 1). During the 2005-2008 period, the National Party moved from a repeal of the Employment Relation Act (ERA) to specific and limited changes. Its election platform had very few specifics about employment relations though it had a handful of targeted areas (Rasmussen & Walker, 2009: 166):

- “removing the union monopoly bargaining rights for collective agreements, to allow non-union workers to enter into agreements
- reviewing personal grievance procedures, which were seen as skewed in favour of the employee
- introducing an optional “probationary period”, where new employees would not have access to personal grievance provisions
- reducing compliance costs, particularly removing ACC’s monopoly over workplace injury insurance
- revisiting the Holidays Act”.

Likewise, the National Party did not produce a detailed policy document about employment relations in 2011, though it had just introduced the ER Amendment Act 2010 (see below) and a raft of other public policy changes (see Haworth, 2011), and it had foreshadowed further changes to employment rights and collective bargaining. While the ER Amendment Bill 2013 will probably be resurrected in some form if the National Party gain power, it is unclear whether there will be any further major changes. In particular, the policy wishes of employer associations have not been commented on by National Party politicians, including the suggestion of extending the 90-day trial period from Business NZ (2014: 3): “Small business would support the extension of this policy to 6 or 12 months, as in other countries.” There appears to be a pattern with the National Party downplaying its employment relations policy in the last three general elections and, thereby, avoiding a strongly ideological and political battleground.

Surprisingly, the Labour Party has yet to manage to position its employment relations policies as a central feature of the 2014 election campaign. For example, there has hardly been any debate about its proposed Commission of Inquiry into collective bargaining (see below). This is rather surprising since the Labour Party has a very detailed policy platform, it provides a clear distinction to the policy platform of the National Party, and it aligns well with its core union constituency and its possible future coalition partners the Greens and NZ First (see Molineaux & Skilling, 2014). Furthermore, many of the Labour Party’s core policies on poverty, skills shortages and fairness are compatible with its new direction in employment relations, including abolishing several of the changes implemented during the 2008-2014 National-led governments.

Table 1: Employment relations policy changes 2008-2014

Legislation	Legislative purpose and details
ER Amendment Act 2008	Introduce 90-day probation/trial period for small businesses (1-19 employees)
ER Amendment Act 2010	Extend 90-day trial period to all organisations, reduced union access rights, reinstatement is no longer primary remedy in dismissal cases, change dismissal test from what a reasonable employer 'would' instead of 'could' have done
Holidays Amendment Act 2010	Employers can require proof of sickness from the first day, allow employees to trade for cash their fourth week of annual leave
ER (Film Production Work) Amendment Act 2010	'Hobbit' legislation prescribes 'contracting' for film production workers
ER (Secret Ballots for Strikes) Amendment Act 2012	Before taking strike action, unions need to conduct secret ballots of members
ER Amendment Bill 2013 (not implemented)	Changes good faith duty to conclude collective bargaining, allow opting out of multi-employer agreement bargaining, meal and refreshment breaks can be removed, allow pay reduction for partial strikes, changes transfer regulation (Part 6A), strike notice requirements changed
Minimum Wage (Starting-out Wage) Amendment Act 2013	Reduce starting-out wages for 16-19 years employees to 80 per cent of adult statutory minimum wage (applies only to 18-19 years olds if they have been on benefit prior to starting job)
Health and Safety legislation	The Health and Safety Reform Bill in March 2014 extends the duty of care to all persons in control of a business or undertaking, worker participation is strengthened. New enforcement agency Worksafe NZ. The Accident Compensation Act underwent two amendments in 2008 and 2010. The amendments were primarily concerned with reducing the number of claims and associated costs. ¹

Source: Council of Trade Unions' website; EMA's (Employers & Manufacturers) website; New Zealand Journal of Employment Relations (various issues); Blumenfeld, Ryall & Keily, 2011-2014.

Table 1 sets out some of the major legislative changes though there have also been several private member bills (see Table in Molineaux & Skilling, 2014). As the ER Amendment Bill 2013 will probably set the future course of a National-led government post 2014, we are discussing below the details and the associated policy debate of that legislation. Overall, the 2008-2014 policy has undermined employee protection in several ways – be it in terms of statutory individual employee rights or in terms of unions' ability to conduct collective bargaining. The 'adjustments' to individual employee rights have been considerable. The so-called 90-day trial periods have become a standard feature in employment agreements for many new workers in key sectors, such as hospitality and retail, and recent figures indicate that employers are 'trying-before-buying' with many employees losing their jobs during the trial period (MBIE, 2012). The rather unusual 'Hobbit' intervention forced a change of

¹ The ACC changes included an introduction of experience rating and risk sharing for the Work and Motor Vehicle Accounts, setting a threshold for cover for hearing loss, and earnings-related compensation based on 52 weeks in a year.

employment status on film production workers and overruled traditional legal precedent (see a special issue of New Zealand Journal of Employment Relations, 36(3) on the 'Hobbit' interventions).

The ongoing changes to the legislative framework have clearly been controversial. The National-led government has argued that more flexibility for employers would be positive in terms of job creation and efficiency. With employers having more flexibility and less risk (in terms of personal grievances), this would reduce labour costs, transaction costs and increase predictability. Recent research has indicated that many employers concur with these arguments though it is debated to what degree this has increased employer willingness to employ and create extra jobs (see Business NZ, 2014; MBIE, 2012). Research has also highlighted that many employers are supportive of the legislative changes, even legislation they may not use in their own workplace (Foster, Rasmussen & Cotezee, 2013). In fact, some employers are interested in further changes to enhance their employment flexibility (Business NZ, 2014; Foster et al., 2013).

On the other hand, the Labour Party and its union allies have continuously argued against these changes, and portrayed them as undermining sustainable economic growth, increasing inequality and further embedding an underclass of 'working poor'. The ERA is seen as being undermined by a '1000 cuts' which constitute "some of the most radical changes in employment law in a generation" (Little, 2014). The Labour Party has continued its criticism of the 90-day trial periods, the inability to lift sufficiently statutory minimum wages and paid parental leave, and the attacks on union access and bargaining rights. As employment relations changes have gathered pace from 2010 onwards, the difference between the two parties' policy positions has increased and the Labour Party has promised to abolish most of the post-2008 changes.

Finally, it must be noted that the regulatory changes to health and safety does not appear to fit with the National-led governments' focus on creating more flexibility. The Pike River mining disaster and the inability to reduce fatalities and injuries have changed the political debate of health and safety since 2011. Following the Royal Commission of Inquiry into the Pike River Coal Mine explosions and the report issued by the Independent Taskforce on Workplace Health and Safety, the government implemented a stand-alone enforcement agency, Worksafe NZ, and introduced a new health and safety bill. This is a remarkable development since the National-led government's current OHS policy position contains a number of political U-turns on: employer responsibilities, employee participation, enforcement and penalties. According to the Minister's press release: "Specifically, the Health and Safety Reform Bill will:

Put more onus and legal requirements on managers and company directors to manage risks and keep their workers safe.

Require greater worker participation so workers are more involved in health and safety in their workplace.

Establish stronger penalties, enforcement tools, graduated offence categories and court powers (Press Release, Minister of Labour Simon Bridges, 10 March 2014).

The creation of a stand-alone enforcement agency also cuts across the previous creation of a super-ministry, the Ministry of Business, Innovation and Employment (see Lamm, Rasmussen & Anderson, 2013).

The ER Amendment Bill 2013 is of special interest as it can be seen as ‘unfinished business’ and, thereby, indicating the reform intentions of a future National-led government. It also highlights the narrow parliamentary foundation of the employment relations reforms in the last two periods. With John Banks’ absent vote, the government’s majority had evaporated as the Maori Party continued its traditional opposition to such reforms (see Molineaux & Skilling, 2014).

In general, the ER Amendment Bill 2013 continued the move of previous public policy changes towards more employer-determined flexibility and further constraining collective bargaining and union activity (Haworth, 2011), though probably with a stronger focus on collective bargaining and unionism. There are several changes to employment rights by removing automatic entitlement to meal and refreshment breaks, by removing transfer protections (as stipulated in Part 6A of the ERA), and by removing the 30-day rule for new employees which prescribes that new employees will be covered by an existing collective employment agreement², and employers are allowed to withhold information in dismissal cases. The Bill’s changes to collective bargaining are comprehensive: it abolishes the duty to conclude collective bargaining and allows opting out of multi-employer bargaining; union and employers will have same time period for initiating bargaining, a 60-day period after negotiation is deemed over where employers can offer individual employment agreements, it curtails strike action. The latter happens through two changes where more strict notice requirements will be required and where pay deductions for partial strikes are allowed. It is difficult to see how these changes align with the ERA’s objective of promoting collective bargaining.

Overview of current policies and election promises

While most of the policy differences in Table 2 are rather self-explanatory, there are at least three areas which appear less clear-cut and could facilitate considerable public policy change. First, the Commission Inquiry into wages and collective bargaining proposed by the Labour Party could have far-reaching implications. The Labour Party’s website indicates some of the scope by specifically mentioning redundancy, vulnerable workers and rights for dependent contractors, and it opens for considerable change to collective bargaining: “A Commission of Inquiry will be charged with investigating wage setting and other workplace practices and reporting on how to implement industry standard agreements, tailored as needed to meet New Zealand conditions.” The notion of fairness and anti-discrimination also features strongly and some move towards pay equity could also feature in the Commission of Inquiry.

Second, the Labour Party’s pledge to abolish the ‘Hobbit’ legislation brings into focus the issues surrounding independent contracting in New Zealand. This is an issue that the Labour Party has campaigned on for a while (see Fenton, 2011) and legislative intervention could be

² While it is unclear how much the 30-day rule has impacted on collective bargaining and conditions of new employees during 2000-2014, the Council of Trade Unions (2014: 3) is clearly worried about potential employer reactions: “This will also make it easier for employers to undermine the collective agreement and employ casuals on lower rates. The Cabinet Paper specifically mentioned that this will permit wages lower than the collective agreement.”

expected (as part of the Commission of Inquiry mentioned above). There are several types of problems associated with independent contracting. There are situations where ‘sham contracting’ occur (that is, when employees are being reclassified as contractors – see Rasmussen & Anderson, 2010). The lack of statutory minima coupled with dependency of contractors on a single ‘employer’ can often led to inferior pay and working conditions (Fenton, 2011). This can be further aggravated when sub-contracting occurs. A fluctuating and sometimes unpredictable work flow can also have dire consequences for workers (Walker, 2011). Finally, contracting has received a lot of media and academic attention recently because of the OHS problems – fatalities and injuries – in industries with a high number of independent contractors (Lamm, Lamare & McDonnell, 2014).

Third, the positions around health and safety are also interesting. There is no doubt that the reactive approach to ‘policing’ workplace standards has been undermined by the Pike River disaster and continuous high levels of fatalities and injuries. This has prompted the Health and Safety Reform Bill 2014 and a stand-alone Worksafe NZ agency to implement and ‘police’ regulations. Still, the stand-alone status of Worksafe NZ, the new legislation’s punitive approach to senior management responsibilities and a stronger, more powerful inspectorate appear to sit uneasy with the general thrust of the National Party’s employment relations approach. This is clearly an area where there appears – at least at the surface – to be some commonality between the two parties, though the Labour Party clearly wants to go much further, especially in high-risk industries where the use of contractors is common.

Table 2: Employment relations policy positions, September 2014

Policies	National Party	Labour Party
90-day trial periods	No change	Abolish 90-day trial periods
Collective bargaining	Expected to follow position in ER Amendment Bill 2013	Will support collective bargaining, including MECAs or industry collective norms. Commission Inquiry into wages and collective bargaining
Union access and information	Expected to follow position in ER Amendment Bill 2013	Restore union access, better information about unions, protect against ‘undue influence’ and anti-union discrimination
Protection of new workers	Continue 90-day trial periods. ER Amendment Bill 2013 would repeal 30-day rule for new employees.	Abolish 90-day trial periods and starting-out wages, lift statutory minimum wage, protecting contractors
Statutory minimum wage	Continue ‘responsible’ rises in statutory minimum wage. Has target of a \$62,000 average wage by 2018	Lift to \$16.25 per hour by April 2015, abolish youth rates and starting-out wages, living wage for core civil servants
Health & safety	Implement Health and Safety Reform Bill with stand-alone Worksafe NZ agency	Review OHS legislation, implement all Pike River Royal Commission recommendations
Equity & discrimination	No change.	Abolish ‘Hobbit’ legislation to provide film production workers with employee option and collective bargaining rights

Source: websites of the National Party and Labour Party; media reports; press releases of party policy announcements.

While the devil is always in the detail and in the actual policy implementation, it is our distinct impression that the general policy gap between the two parties have increased significantly recently. The Labour Party will generally continue the main thrust of the ERA whose objectives explicitly support collective bargaining and unionism – collectivism is seen as ‘good’ for productive employment relationships. The National Party clearly has not the same position and while the ERA’s objectives have not been changed, they probably will be difficult to align with the party’s understanding of how to promote productive employment relationships. Importantly, the new policy positions of the Labour Party indicate that the limited positive impact of the ERA on collectivism prior to 2008 – especially the lack of multi-employer collective agreements and limited union density growth – has been taken on board. The current Labour Party platform has a much stronger support of collective bargaining and unionism and generally raises the prospect of a more interventionist government.

There are also more differences when the employment relations context is considered. As can be seen from Table 3, there are several areas where the two parties’ policy position is trying to both claim the policy centre ground and present a particular ideological position. This is, for example, the case with school education where both parties respond to concerns about education outcomes, but have different approaches to lift education quality. National’s focus is on initiatives targeting teacher quality; Labour’s is on reducing class sizes (Woulfe, 2014). The growing concerns about disengaged young people (so-called NEET – not in employment, education or training – persons, see Pacheco & Dye, 2013) and young people have been targeted by the parties’ policy positions. Again, there are similarities but also considerable differences in the proposed policy interventions. National’s primary focus has been on intensive case management support through its Youth Service programme aimed at getting disengaged young people back into education and training. Labour would keep a version of this programme but has a stronger emphasis of apprenticeships for youth and would also reinstate Training Incentive Allowance assistance for sole parent beneficiaries to undertake higher levels of tertiary education. The parties’ response to the prospect of growing skill shortages has been to increase funding for apprenticeships – National via a qualifications target for 25-34 year olds, Labour through identified additional funding places plus development of Employment and Skills and Careers Strategies.

Both parties have picked up on ‘middle New Zealand’ concerns for better support for parents with new-borns and young children, although Labour has gone rather further than National in its proposals. Labour would extend paid parental leave (PPL) to 26 weeks, introduce a new ‘Best Start’ payment for under-twos and extend free early childhood education (ECE) from 20 to 25 hours per week. National proposes a smaller four week extension to PPL, plus an increase in the Parental Tax Credit (available to non-beneficiaries who do not qualify for PPL) and an increase in ECE expenditure. Both parties propose free primary healthcare (GP consultations and prescriptions) for children under 13 years.

Table 3: Employment relations context: policy positions

Policies	National Party	Labour Party
Social welfare benefits, employment assistance and assistance for Youth (including Youth NEET – Not in Employment, Education and Training)	Continue ‘investment approach’ begun as part of welfare reforms. Re-write Social Security Act and embed investment approach into it Continue focus on at-risk youth/young parents. Extend income management to more young parents (and some others).	Raise abatement-free threshold to \$150pw to encourage part-time work. Youth employment package and young people pathways, subsidies for employers for new apprenticeships for 18-19 year old beneficiaries. Restore Training Incentive Allowance for Sole Parent Beneficiaries for Level 4 and above qualifications
Family assistance, child poverty	Extend Paid Parental Leave by four weeks to 16 weeks. Raise Parental Tax Credit. Extend free-GP visits to under-13 year olds. Increase ECE funding. Continue with phased in reduction in tax credit abatement threshold and increase in abatement rate.	Best Start package for pre-school-aged children. Extend Paid Parental Leave to 26 weeks. Increase free-ECE hours to 25 per week. Extend free-GP visits to under-13 year olds.
Vocational training	Continue recent support to apprentices and employers, with target of 60 per cent of 25-34 years old persons with trade qualifications.	Employment and Skills Strategy. Careers Strategy, with increased funds for vocational guidance. Lift apprenticeship funding, with payments to employers (12,000 over four years). Additional Maori & Pasifika Trades Training places.
Education & teachers	Reward the best teachers. Build nine new Auckland schools and 130 more classrooms. Four more partnership schools.	Employ more teachers and reduce class sizes, extra teachers for special needs and raise teachers entry standards, supply tablets to students
Immigration	Review Investor Plus scheme for wealthy immigrants Lift number of Pacific Islanders in Recognised Seasonal Employer scheme from 8,000 to 9,000 annually	Review Investor Plus scheme, change points systems to incentivise immigrants to settle in regions, implement ‘counter cyclical’ controls to smooth flow of migrants
Research & development (R&D)	Invest in ICT graduates, grow Callaghan Innovation grants, invest in Maori-led science and innovation	Invest in secondary teachers, re-instate post-doctoral fellowships, R&D tax credit (12.5 per cent), better career advice
Taxation	Possible income tax cuts in 2017 targeted at ‘low-to middle-income’ earners (approximately \$1 billion per year in total).	Introduce 15 per cent Capital Gains tax (excluding primary residence). New top income tax rate of 36 per cent on income over \$150,000 (and Trust tax rate of 36 per cent).

Source: media reports, press releases and the parties’ websites: <https://www.national.org.nz/policies> & http://campaign.labour.org.nz/all_our_announced_policies

What are the likely implications?

Well, that of course depends on who forms the next government. In case of a National-led government, the election campaign has promised ‘more of the same’. The blueprint will probably be the ER Amendment Bill 2013, which will continue the ‘adjustments’ to collective bargaining and unionism. However, it will not just be ‘more of the same’ as current economic activity could put more pressure on vocational training and the overall education system if skill shortages become more embedded. There have also been growing concerns about inequality and poverty which can no longer be placarded with references to the Great Financial Crisis. The election promises of tax cuts to lower and middle incomes indicate how the National Party will try to lift the ‘rewards of working’. It has also signalled a continuation of its efforts to move people from benefits to jobs by, for example, targeting the Jobseeker Support numbers and individualised job search support. On the other hand, it is unclear whether there will be much movement on statutory minima beyond the already announced increases to statutory minimum wages, and paid parental leave. Whether further employer demands for increased flexibility will be accommodated are also unclear.

A government led by the Labour Party will lead to significant public policy changes based on their current platform. The issue is, though, that on the current poll results, such a government will probably need collaboration with both the Green Party and NZ First (and maybe also the Mana-Internet parties). There are some policy overlaps, as highlighted by Molineaux and Skilling (2014), but there are also some interesting differences. Additionally, there will be pressure from trade unions to ensure that a stronger backing of collective bargaining – including multi-employer collective bargaining – will occur. This, as well as the foreshadowed rolling back of reduction in individual employee rights, is bound to rise employer animosity, bringing back memories of 1999-2000 and 2003-4 where employer organisations attacked the announced public policy changes furiously.

While “it is difficult to predict, especially the future”, the 2014 election campaign has raised some thorny issues, such as productivity and economic growth, inequality and ‘working poor’, skills shortages, and health and safety improvements. These are difficult issues to grapple with but regardless of party political colours, the next government is likely to be judged on improvements in the outcomes associated with these fundamental employment relations issues.

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