

Crimes (Theft by Employer) Amendment Bill

Member's Bill

Explanatory note

General policy statement

This Bill amends the Crimes Act 1961 to clarify that not paying an employee their wages is theft. Currently, offences relating to theft by a person in a special relationship are insufficient to account for wage theft by employers. Existing processes are too complex, and can be a deterrent for those that are victims of wage theft. The new offence created by this Bill will capture employers who owe wages and intentionally do not pay them to the employee. This includes the unlawful withholding of wages, salaries, and other monetary entitlements within an employment relationship. Workers deserve the codification of their rights within the law. This small change will provide clear direction to employees that they have the right to be paid what they are due and that it is clearly set out in law.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for this Bill to come into force on the day after Royal assent.

Clause 3 identifies the Crimes Act 1961 as the Act being amended by the Bill (the **principal Act**).

Clause 4 inserts a new *section 220AA* to the principal Act. The new section provides that an employer's intentional failure to pay to an employee any money owed in relation to the employment is theft. If the employer is an individual, the maximum penalty is 1 year's imprisonment, a fine of \$5,000, or both. In any other case, the maximum penalty is a fine of \$30,000.

Clause 5 makes a consequential amendment.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crimes (Theft by Employer) Amendment Act **2022**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Crimes Act 1961.

4 New section 220AA inserted (Theft by employer)

Before section 220A, insert:

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220AA Theft by employer

- (1) This section applies to a person (A) who—
- (a) employs another person (B); and

- (b) is required to pay any money owed to B in relation to the employment, whether—
- (i) under an employment agreement between A and B (whether or not the agreement is in writing); or
 - (ii) as otherwise required under law (for example, under the Holidays Act 2003, Minimum Wage Act 1983, or the Wages Protection Act 1983). 5
- (2) If A intentionally fails to pay the money to B, A commits theft and is liable,—
- (a) if A is an individual, to imprisonment for a term not exceeding 1 year, a fine not exceeding \$5,000, or both: 10
 - (b) in any other case, to a fine not exceeding \$30,000.

5 Section 223 amended (Punishment of theft)

In section 223, before “220A”, insert “**220AA** or”.