

# **Employment Standards Legislation Bill**

Government Bill

As reported from the Transport and Industrial Relations Committee

## **Commentary**

### **Recommendation**

The Transport and Industrial Relations Committee has examined the Employment Standards Legislation Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

The Employment Standards Legislation Bill is an omnibus bill that would amend various pieces of legislation affecting employment relations and employment standards. The overarching policy goal is to make workplaces fairer and more productive, for both employers and employees. The bill seeks to achieve this goal through the following three distinct policy areas

- expanding eligibility for the parental leave scheme
- enhancing the enforcement of employment standards
- prohibiting certain unfair employment practices that lead employees to bear disproportionate obligations compared to their employer.

This commentary covers the major amendments that we recommend; it does not discuss minor or technical amendments.

### **Submissions received and the structure of this commentary**

We received 12,260 submissions on the bill. We determined that 1,921 contained unique material, and that the remaining 10,339 were form submissions.

Generally, each submission focused on one (rather than all) of the bill's three policy areas. Those who submitted on the proposed expansion of the parental leave scheme and on the enforcement of employment standards broadly supported these provisions.

Most of the submissions considered the bill's provisions that seek to prohibit certain unfair employment practices. Submitters particularly focused on how these provisions would affect the legality of so-called "zero-hour contracts". Although most submitters strongly supported the policy goal of prohibiting such employment practices, many questioned whether the bill as drafted could achieve this goal. Some were concerned that the bill may inadvertently legitimise these relationships by enshrining them in legislation.

This commentary addresses the bill's three policy areas in turn. We discuss our recommendations and any contentions raised by submitters as they arise.

Given submitters' interest in zero-hours contracts, the commentary divides the provisions that would prohibit certain unfair employment practices into two parts: those seeking to address zero-hours contracts and those aiming to address other employment practices.

## **Parental leave and payment entitlements**

Part 1 of the bill would amend the Parental Leave and Employment Protection Act 1987 (PLEPA) to extend parental leave and payment entitlements to more workers and increase the scheme's flexibility.

### **Provision outlining new approach to parental leave**

We recommend restructuring clause 5, which would insert new section 1B into the PLEPA. This provision seeks to provide an outline of the new approach to parental leave entitlements. The amendment would make the proposed section easier to read and understand by arranging it based on the different types of people who might use the Act, rather than simply going through the proposed Act part by part.

### **Definition of "primary carer"**

Clause 16 would create the umbrella term "primary carer" to define which individuals are entitled to parental leave and parental leave payment (if they meet the relevant tests). Under the current law, biological mothers, their spouses/partners, or formal adoptive parents may be eligible. The "primary carer" umbrella would broaden that eligibility to individuals who assume primary, non-temporary responsibility for raising a child.

We support broadening eligibility for parental leave entitlements to reflect today's family structures more closely and to recognise what are effectively permanent parenting arrangements, such as whāngai. However, we agree with several submitters that the phrase "primary responsibility for the day-to-day care of a child" is too broad; it could cover people providing daytime childcare or allow numerous carers for the same baby.

We recommend amending clause 16 to better communicate the intent to capture individuals with a permanent caring role, who are essentially raising the child. We recommend redefining a primary carer (other than the biological mother or her spouse/partner) as someone who takes "permanent primary responsibility for the care, develop-

ment, and upbringing” of a child. To avoid doubt, we recommend inserting examples of relationships that would and would not satisfy this description.

### **Parental leave payment threshold test**

For simplicity, we recommend setting out the eligibility criteria for a parental leave payment in new subsection 2BA(4), after the eligibility criteria for parental leave. We recommend replacing all instances of the full test in the bill with references to the “parental leave payment threshold test” (clauses 45, 46, 53, 57, and 76), and amending clause 6 so that the phrase would appear in the PLEPA’s interpretation section.

We note that amending new section 2BA by placing the proposed “parental leave payment threshold test” directly after the parental leave threshold tests has the added advantage of highlighting upfront that different tests apply for a person who wishes to take leave, and for a person who wishes to take leave and receive payment.

### **References to child’s age for the purposes of eligibility**

The bill would allow a person to become a primary carer of a child who is “not more than 5 years of age”, which is the current wording used in the Act for the adoptive provisions. This applies to individuals other than biological parents who become a child’s primary carer later in the child’s life—for example, through adoption. However, the wording is potentially confusing as to whether the cut-off point is the child’s fifth or sixth birthday. The bill’s intention is that the parental leave scheme would apply to people who assume primary care of a child who is not yet six. We propose rewording this phrase wherever it appears (clauses 5, 16, 49, and 56) to “under the age of 6 years”.

We also propose removing any reference to the child’s age in clauses 51 and 53. These clauses would define an “eligible employee” and an “eligible self-employed person” for the purposes of the parental leave scheme. Referring to the child’s age is unnecessary here because it already forms part of the definition of a “primary carer”.

### **Additional entitlements for primary carers of preterm babies**

Following the bill’s introduction, the Government announced its intention to provide additional parental leave payment entitlements for primary carers of premature babies (born before the end of the 36th week of gestation). In a press release, the Minister for Workplace Relations and Safety announced that this policy would be progressed through the current bill.

We support this proposal. Preterm babies are often at greatest risk, and it is appropriate that their families should receive extra assistance. Furthermore, the parental leave scheme aims to support primary carers to spend time at home with their baby to foster bonding and attachment. However, because preterm babies usually need to stay in hospital longer, primary carers often use up a portion of their leave before their baby comes home.

We recommend amending clause 56 to insert new section 71DA, with consequential amendments in clauses 5, 47, and 49, to allow primary carers one week of preterm

baby payment for each week that their child was born prematurely (to a maximum of 13 weeks). The payment would end when the primary carer returned to work, or at the end of the week that would have been the 36th week of gestation (whichever comes first).

We recommend some amendments in clauses 56, 63, 64, and 65 to insert provisions specifying that receiving a preterm baby payment would not affect a primary carer's entitlement to the regular parental leave payment. New subsection 71K(2) would stipulate that the regular parental leave payment would begin the day after the preterm baby payment ended. New section 71DB would establish that primary carers who returned to work during the preterm payment period would only forfeit their entitlement to preterm baby payment and not their regular parental leave payment entitlements. New subsections 71DA(5) and 71L(3), and subclause 63(2), would state that, if an employee was receiving a parental leave payment and then became entitled to a preterm baby payment, their parental leave payment would be temporarily suspended until their preterm baby payment ended.

We note that proposed subsection 71DA(6) would ensure that the biological mother of a preterm baby would continue to receive her preterm baby payment entitlement even if she stopped being the primary carer. This recognises that a biological mother needs time to recover from a birth, even if she is not caring for the child.

### **Keeping-in-touch (KIT) hours**

The bill seeks to increase the parental leave scheme's flexibility by allowing primary carers to stay in touch with their workplace during their time away—for example, by attending training sessions—without losing their parental leave entitlements. New section 71CE would allow primary carers to do up to 40 hours paid work during their parental leave payment period.

To preserve bonding and attachment with newborns, the provision would not permit primary carers to use KIT hours in the first 28 days of the child's life. However, we recommend inserting new subsection 71CE(4) to exempt people receiving a preterm baby payment from this stand-down period. Premature babies are generally unexpected, so the primary carer may not have completed a handover at work, and may appreciate the flexibility to complete such work before going on leave.

We also recommend inserting new section 71DB, which would create additional KIT hours for primary carers receiving a preterm baby payment. As with the proposed KIT hours for regular parental leave payment, a primary carer who exceeded the permitted number of KIT hours (up to three hours for each week of the preterm baby payment period) would forfeit their preterm baby payment entitlements.

We recommend amending proposed section 71CE(1) to state that KIT hours are available during an employee's parental leave "payment period". In the bill as introduced, the provision could be incorrectly interpreted to include the unpaid extended leave period.

**Average weekly income from work**

The PLEPA uses a person's "average weekly earnings" as one measure to determine their level of parental leave payment. This phrase is used in clauses 52 and 54 of the bill, which set out the calculations for a person's average weekly earnings. However, we note that the Holidays Act 2003 also refers to "average weekly earnings", but uses a different calculation. To avoid confusion, we recommend rewording clauses 52 and 54—and subsequent amendments to new section 1B(6), subclauses 45(4), 50(1) and (3), and subclauses 67(4A) and (7A)—to refer to "average weekly income from work" instead.

We also note that clause 54—which proposes a calculation for a self-employed person's average weekly income from work—would enable self-employed people to stack their earnings to maximise their parental leave payment. We propose amending clause 54 so that, rather than basing the calculation on a selection of the person's highest-earning weeks, it would be based on earnings in either the 6 months or 12 months directly before the date that they become the child's primary carer, as is currently the case under the Act.

**Extended periods of leave**

Under the current law, unpaid extended leave must be taken in one continuous block. To increase flexibility, clause 33 would insert new section 27. This new section would permit employees to take their extended leave entitlements over more than one period.

Several submitters noted that, although the provision allows employees the flexibility to take leave when they wish, it does not explicitly require the employers' agreement. They argued that employees coming and going at whim could create uncertainty for employers.

The bill intends to make taking extended leave more flexible, but not at the expense of employment relationships. We recommend inserting new subsection 27(1A) to clarify that the employer and employee must reach mutual agreement about the dates of any extended leave period.

**Mediation**

Clause 34 would enable an employee to challenge an employer who does not respond to their request for "negotiated carer leave" or who responds inadequately. Under proposed section 30H, the employee could seek the assistance of a Labour Inspector. If the employee is dissatisfied with the result, they could then refer the matter to mediation. Several submitters suggested that employees should be able to refer the matter directly to mediation if they wished. We agree that this would increase the legislation's flexibility without undermining the policy intent. We recommend inserting new paragraph 30H(2)(a) to this effect.

### **Succession to spouse's or partner's entitlements**

Section 72B of the PLEPA defines when a person may succeed to their spouse or partner's parental leave entitlements, including if they became the child's "sole guardian". We recommend inserting new subclauses into clause 76 to replace this reference to a "sole guardian" with terminology that reflects the bill's proposed "primary carer" definition.

We also recommend amending new subsection 7(3) to clarify that the limitation, contained in new subsection 7(2), on both partners receiving primary carer leave and parental leave payment does not override the bill's provisions about a spouse or partner's succession to entitlements. We recommend a similar amendment in new paragraph 71D(2)(b).

### **Enhancing the enforcement of employment standards**

The bill seeks to enhance the enforcement of employment standards. Proposed measures include tightening requirements for employers to keep records on matters such as the hours employees work and the pay they receive, increasing the powers of Labour Inspectors, a new regime to address serious breaches of minimum entitlements at the Employment Court, enhanced accountability for third parties who are involved in breaches of employment standards, and introducing an infringement notice regime for breaches of record keeping requirements.

The bill would achieve this intent through amendments to the Employment Relations Act 2000 (ERA), the Holidays Act 2003, the Minimum Wage Act 1983, and the Wages Protection Act 1983.

### **Tightening record-keeping requirements**

Clause 84 would amend the ERA to oblige employers to keep records that are detailed enough to demonstrate their compliance with minimum entitlement provisions. Submitters generally support this new record-keeping obligation. However, some argued that the obligation to record employees' daily hours and pay should not apply to salaried employees because this would be unnecessarily burdensome and could undermine the beneficial flexibility of salaries, which permits reasonable fluctuations in hours of work.

We do not support excluding salaried employees, who, like all employees, require protection. If low-salaried employees worked longer hours than contracted, they could effectively be paid below minimum wage. However, we agree that the record-keeping obligation should not be unnecessarily inflexible or time-consuming. We recommend inserting new subsection 130(1B) (amended by clause 89) stating that where an employee works their "usual hours" (those that are agreed), the record-keeping obligation is met if these hours are stated in the wages and time record, the employment agreement, or in a roster or other similar document.

We also recommend inserting new subsection 130(1C) to clarify that the employee's "usual hours" would include any reasonable additional hours worked under the employee's employment agreement. This would allow for variations in working hours

(for salaried employees or otherwise) that do not affect the employee's minimum entitlements.

We recommend amending clause 120 to insert equivalent provisions into the Holidays Act.

### **Sanctions for breaches of employment standards**

To support the policy intent of enforcing employment standards, the bill would amend the ERA to create a new sanctions regime at the Employment Court for serious breaches of employment standards (new sections 142B to 142U inserted by clause 95).

New section 142J would allow Labour Inspectors to apply for a compensation order against a person in breach, or involved in a breach, where the breach had led the aggrieved employee to suffer loss or damage. We consider that the employee should also be able to apply for a compensation order and recommend amending new section 142J(3) accordingly.

New section 142F would list various matters a court must consider when determining the level of pecuniary penalty for a person in breach or involved in a breach. One matter is whether the court has made any prior findings of similar conduct against the person. We propose also including any such findings by the Employment Relations Authority. For consistency, we recommend a similar amendment to new section 133A, to refer to findings of the Court as well as the Authority.

Under new section 142E a court could impose a pecuniary penalty for a serious breach of minimum entitlements. However, if the Court refuses an application for a pecuniary penalty (most likely because the breach was not found to be serious), the limitation period for a subsequent application for a penalty at the Authority may well have expired. We recommend inserting clause 90A and subclause 117(5)—which would amend section 135 of the ERA and section 76 of the Holidays Act, respectively—to allow an additional 3 months to commence a penalty action at the Authority in relation to the same matter.

### **Defences for breaches of employment standards**

Proposed new sections 142ZA and 142ZB of the ERA would create defences for findings of a minimum entitlement breach. We consider that, in the bill as introduced, it was not clear that the defences apply only to proceedings directly related to a breach of minimum entitlements. We recommend inserting new section 142ZAA to outline the exact proceedings where the defences would apply.

Under proposed section 142ZC, liability for an employee's entitlements would continue, even if a defence were made out. We support the intention to keep open avenues for employees to recover wages or other monies owed from their employer. However, we do not consider that a person involved in a breach should remain liable for wages or other monies owed if they can establish a defence.

To achieve this, we recommend deleting proposed new section 142ZC and replacing it with provisions that would simply not make defences available in cases where an

employee's entitlements are being sought from the employer. New subsection 142ZAA(a) makes it clear that defences against liability for wages and other monies owed in actions at the Authority are only available to persons involved in a breach. New subsection 142ZA(1A) clarifies that, to the extent that an application for a compensation order at the Court relates to wages and other monies owed, defences are not available to employers.

Proposed new subsection 142M(1)(b) would allow the Court to make a banning order against a person who had persistently breached employment standards. We recommend inserting new subsection 142M(3) to specify that if a person has been found in breach but successfully established a defence, then this breach could not be considered part of their breach history for the purposes of a banning order.

### **Mediation for disputes about employment standards**

The bill seeks to reverse the current law that all employment standards cases must first be referred to mediation for resolution (with some exceptions). Instead, clauses 98 and 101 would stipulate that the Employment Relations Authority or the Employment Court must deal with cases that principally relate to employment standards (unless certain criteria are met).

We recommend amending clauses 98 and 101 to broaden the criteria for a matter's referral to mediation. We believe that mediation could help resolve a matter efficiently in more circumstances than just fact clarification.

We also recommend changing the qualifier in clauses 98 and 101 so that a matter would have to "principally" relate to an alleged breach of employment standards before new section 159AA applies. We believe the word "substantially" would lead to a broader class of matters being caught by this provision than intended. This could unintentionally obstruct certain cases from going to mediation, such as those with a significant employment relations component.

### **Prohibiting certain unfair employment practices**

The central policy intent underlying the parts of the bill that seek to prohibit certain unfair employment practices is to uphold the principle of mutual obligation in employment relationships. The provisions seek to prohibit employment practices that lead to employees bearing disproportionate obligations compared to those of their employer. The bill aims to rebalance these relationships, while preserving the mutually beneficial flexibility that they can offer.

#### **Zero-hours contracts**

The provisions aimed at prohibiting certain employment practices attracted many submissions. Most focused on the provisions relating to contracts colloquially known as "zero-hours contracts". Such contracts contain no guaranteed hours, but include provisions that require employees to be available should their employer offer them work.

Many submitters shared their employment experiences on zero-hours contracts. They recounted facing financial strife because of unpredictable hours and told us that hav-



ing to maintain constant availability caused them to struggle to have a life outside work or to undertake additional employment.

#### *Recording agreed hours of work*

Clause 87 would insert new sections 67C to 67H in the ERA. New section 67D would require an employer to include “agreed hours of work” (as defined in new section 67C) in an individual’s employment agreement. Several submitters suggested that this obligation and the meaning of “agreed hours” could be clearer. Some requested more guidance on how the obligation would differ from the current requirement, under section 65 of the ERA, to include an “indication of the arrangements relating to the times the employee is to work” in employment agreements.

We recommend rewording new section 67C(1) to emphasise the policy intent that any agreement on hours of work must be stated in the employment agreement, and to provide better guidance on how this should be done in different kinds of employment agreements.

We also propose inserting new subsection 67C(2) to set out what “hours of work” means. This would make it clear that, if the employer and employee agree on any of the matters contained in proposed subsection 67C(2), they must be included in the employment agreement. To further aid readers’ understanding of “agreed hours of work”, we propose amending clause 85 to include this phrase in the ERA’s interpretation section.

We also recommend inserting clause 86A to amend section 65 of the ERA to distinguish the obligation in proposed section 67C from the obligations already in the Act.

We recommend deleting proposed section 67D because its contents would be adequately covered by our suggested amendments to proposed section 67C.

#### *Availability provisions*

Proposed new section 67E of the ERA seeks to address the negative effects of availability provisions. In the bill as introduced, availability provisions would be unenforceable unless the employment agreement provided for the employee to receive compensation for their availability. Otherwise, an employee would be entitled, under subsection 67E(4), to refuse offered work.

Many submitters argued that this provision did not go far enough. Most pointed to the lack of a minimum threshold for acceptable compensation. Others argued that, by proposing circumstances where availability provisions are acceptable, the bill would legitimise such provisions and cause their proliferation, rather than ring-fencing their use. Some argued that availability provisions should be banned.

We do not believe that availability provisions should be banned. Employment situations exist where these provisions are used appropriately and benefit both employer and employee. Maintaining flexibility in employment relationships is a legitimate policy goal. However, we agree with submitters that the bill could better express the policy intent of upholding mutual obligations in these relationships.

We therefore recommend amending proposed subsection 67E(3) to require genuine reasons, based on reasonable grounds, for including an availability provision in an employment agreement. We recommend inserting a non-exhaustive list of criteria for determining whether there are genuine reasons based on reasonable grounds in new subsection 67E(3B). We believe this change would dissuade employers from resorting to availability provisions rather than adequately planning for unpredictable work-flows. We also note that this test accords with the test required for using fixed-term agreements.

We agree that the bill should provide more guidance on how much employees should be compensated for their availability. We recommend amending proposed section 67E to state that availability provisions must allow for “reasonable” compensation. Many factors and circumstances could affect whether compensation was reasonable, so we recommend inserting new subsection 67E(3C), which would contain a non-exhaustive list of criteria to assist in determining the reasonableness of compensation.

We recommend inserting new subsection 67E(3A) to emphasise that, for an availability provision to be enforceable, there must be genuine and reasonable grounds for including it in an employment agreement, and reasonable compensation must be paid for the employee’s availability.

We also recommend deleting paragraph (b) from the proposed definition of an “availability provision” in new subsection 67E(1). The notion that an employer would have no obligation to make work available may undermine the bill’s aim to uphold mutual obligations in employment relationships. It also conflicts with the legal doctrine, developed by the courts, of mutual obligations in employment agreements. We consider that the deletion would not affect the integrity or operation of the legislation.

#### *Refusal to work*

We recommend replacing subsection 67E(4) with new section 67EA of the ERA. This new section would allow employees to refuse to perform “certain work” additional to any guaranteed hours in their employment agreement if the agreement did not contain an availability provision that provides for reasonable compensation for availability. We believe this provision is significant enough to warrant its own section.

Proposed section 67F would prohibit an employer from treating “adversely” an employee who refused to perform work under new section 67EA. We recommend amending the proposed section heading to refer to a refusal to perform “certain work”. This would avoid the possible misinterpretation that an employee was entitled to refuse any work under an availability provision. For clarity, we recommend condensing proposed subsections (1) and (2) into one subsection. We also recommend inserting new subsections 67F(2) and (3) to define “treat adversely”, based on the descriptions of discrimination in section 104 of the ERA.

### **Other employment practices**

The other unfair employment practices that the bill seeks to address are cancellation of shifts, restrictions on secondary employment, and unreasonable deductions from employees' wages.

#### *Cancellation of shifts*

Proposed section 67G of the ERA, which would be inserted by clause 87, would introduce protections for employees in relation to shift cancellations. The new section would require employment agreements to state the necessary period of notice before a shift was cancelled and the compensation payable if a shift was cancelled without this period of notice.

We agree with submitters that the bill should include some guidance on the appropriate level of compensation. We recommend amending subsection 67G(3) in clause 87 to require the compensation to be "reasonable". We recommend inserting new subsection 67G(4A) to include a non-exhaustive list of criteria for determining reasonableness.

We accept that, if an employee's shift was cancelled and they are entitled to the remuneration that they would have received had they worked, this should be included in their entitlements under the Holidays Act. We recommend inserting new subsection 67G(5A) into the ERA to this effect.

We recommend amending the definition of "shift work" in new subsection 67G(6) to add more detail and narrative. The new definition would also clarify that shift work includes continuous and discontinuous work, the times of which may vary week by week. This would address concerns that the definition in the bill as introduced could allow an employer to divide one period of work into short separate blocks to avoid some of the protections the bill proposes.

#### *Secondary employment*

Proposed new section 67H of the ERA seeks to impose limitations on provisions in employment agreements that prohibit or restrict an employee's secondary employment. The policy intent is that employers must have genuine reasons, based on reasonable grounds, for including such a provision. To reinforce this intent, we recommend strengthening new subsection 67H(2) to state that a provision that does not fulfil these requirements "must not be included" in an employment agreement.

We are aware of concern that an employer might use a genuine reason for restricting secondary employment to justify a blanket ban on such employment, rather than tailoring the restriction to what was necessary in the circumstances. To address this concern, we recommend including new subsection 67H(3A) to underscore the policy intent that restrictions on secondary employment should be the minimum necessary to fulfil the reasons for their inclusion. Similarly, we recommend amending subsection 67H(3)(d) so that a secondary employment provision aimed at preventing a conflict of interest could be used only if necessary to manage the conflict.

*Deductions from employee's wages*

As part of the policy intention to prohibit non-mutual employment relations, Part 5 of the bill would amend the Wages Protection Act 1983 to limit an employer's ability to make deductions from an employee's wages. Specifically, clause 131 would bar "unreasonable" deductions.

We recommend inserting clause 130A(1) to amend section 5 of the Wages Protection Act—which outlines when an employer can make deductions from a worker's wages—to clarify that a general deductions clause in the worker's employment agreement would count as the worker's written consent to deductions (in section 5(1)(a)). However, we also recommend adding new subsection 5(1A) in subclause 130A(2) to specify that even when such a clause exists, deductions must not be made without first consulting the worker.

**Personal grievances in relation to certain employment practices**

Clause 88 seeks to amend section 103 of the ERA, so that an employee could make a claim for a personal grievance if their employer failed to comply with proposed sections 67C to 67H.

We recommend amending clause 88 to add more detail about when such a claim may be made in the various scenarios stipulated in those provisions. We recommend distinguishing between a claim that an employee has been disadvantaged because their employment agreement does not accord with the provisions, and a claim that an employer has contravened certain requirements contained within those provisions.

**Commencement date for provisions relating to certain employment practices**

We recommend amending clause 112 to allow an extra 12 months before proposed sections 67C to 67H would apply to individual employment agreements that had been entered into or that came into force before the commencement of this legislation. However, we recommend that the provisions would apply immediately to any collective or individual agreement that replaces a pre-existing collective agreement after the commencement of this legislation, regardless of whether they are replaced within 12 months of commencement or later.

**New Zealand Labour Party, Green Party of Aotearoa New Zealand, and New Zealand First Party minority view**

Labour, the Greens, and New Zealand First cannot support this bill as it is reported back from the Transport and Industrial Relations Select Committee because of a fundamental flaw. It fails to eliminate zero-hours contracts. During the first reading of this bill the Minister for Workplace Relations and Safety stated that the bill would "prohibit practices that undermine the mutuality of obligations in the employment relationship, such as the zero-hours contract." New Zealanders were expecting that to be the case and were repeatedly told by the Government that zero-hours contracts would cease under this legislation.

However, the exact opposite is the case. This legislation enshrines zero-hours contracts in the law by allowing availability clauses to be included in employment agreements that do not provide any guaranteed hours for the employee. This bill creates rules for how to use zero-hours contracts and removes any question about their legality.

Despite this being an omnibus bill, covering a range of disparate issues, and including some positive changes to paid parental leave and enforcement of employment standards, we cannot support what amounts to a broken promise to working New Zealanders.

### **Parental leave**

We are concerned that the introduction of “keeping in touch” provisions for those on parental leave for both full-term and pre term babies could be used to pressure caregivers into returning to work sooner than they would want to. While the provisions rely on “mutual agreement” between the employer and the employee it does not take into account the imbalance of power in the employment relationship and the fact that some primary caregivers may feel compelled to do some part time work if their employer suggests it. We agree with the concept of “keeping in touch” hours where it is instigated by the parent on leave as a way of ensuring they can participate in training opportunities or maintain a connection with their workplace.

### **Security of working hours**

We acknowledge the changes in the bill that attempt to address the concerns raised by over 10,000 submitters around the provisions in the bill that would enable zero-hours contracts in exchange for undefined compensation. We note that those changes include requiring compensation and notifications to be “reasonable”, clarification that hours of work should be stated in an employment agreement, factors for the Court to consider on whether availability clauses in an employment agreement is for a genuine reason and factors for the Court to consider when determining what is reasonable compensation. We maintain however that this does not address the fundamentally unfair employment practice of zero hours contracts. The definitions require an employee to take legal action in order for the Court to make their determination by which time their employment relationship may well be over.

We would prefer legislative solutions that require less reliance on the Employment Court—and that are less complicated and fairer— like the solutions suggested by some submitters of introducing a premium payment to be added to the hourly rate of pay for casual employees. This would produce a fairer system by encouraging employers to offer secure work.

### **Strengthening enforcement**

Generally Labour, the Green Party and New Zealand First support the provisions in the bill to strengthen enforcement of employment standards. While we note that changes include extending the ability to enforce regulations to the Ministry for Primary Industries we remain concerned about the resourcing of the labour inspectorate given the high rate of non-compliance with the existing employment standards.

## **Appendix**

### **Committee process**

The Employment Standards Legislation Bill was referred to the committee on 8 September 2015. The closing date for submissions was 6 October 2015. We received and considered 12,260 submissions from interested groups and individuals. Of these, 10,339 replicated content in a very similar way, and 1,921 were unique. We heard from 53 submitters in person, and held hearings in Auckland as well as in Wellington. We received advice from the Ministry of Business, Innovation and Employment.

### **Committee membership**

Jonathan Young (Chairperson)

Andrew Bayly

Sarah Dowie

Iain Lees-Galloway

Peeni Henare

Clayton Mitchell

Sue Moroney

Dr Parmjeet Parmar

Denise Roche

Alastair Scott

Hon Maurice Williamson

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

text inserted unanimously

~~text deleted by a majority~~

~~text deleted unanimously~~





*Hon Michael Woodhouse*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Employment Standards Legislation Act **2015**.

**2 Commencement**

- (1) **Sections 78 and 79 to 80** come into force on the day after the date on which this Act receives the royal assent. 5
- (2) The rest of this Act comes into force on **1 April 2016**.

**Part 1**

**Amendments to Parental Leave and Employment Protection Act 1987** 10

**3 Principal Act**

This **Part** amends the Parental Leave and Employment Protection Act 1987 (the **principal Act**).

**4 Section 1A amended (Purpose)**

- (1) In section 1A(c), delete “employees and self-employed”. 15
- (2) In section 1A(c), replace “paid parental leave” with “parental leave payments”.

**5 New section 1B inserted (Outline)**

After section 1A, insert:

**1B Outline**

- (1) This section is a guide to the overall scheme and effect of this Act, but does not affect the interpretation or application of the other provisions of this Act. 20
- (2) This Act sets out the circumstances in which a person who becomes responsible for the care of a child who is not more than 5 years of age may be entitled to—
- (a) leave from their employment: 25
- (b) parental leave payments.
- Entitlements to parental leave*
- (3) Parts 1 to 3 set out the types of parental leave that an employee may be entitled to take if the employee becomes responsible for the care of a child, as follows:

- (a) Part 1 provides for the primary carer in respect of a child to take primary carer leave. An employee may be entitled to up to 18 weeks' primary carer leave if he or she has been employed by the same employer for at least 6 months immediately preceding the date on which the employee becomes the primary carer in respect of a child: 5
- (b) Part 2 provides for the spouse or partner of the primary carer in respect of a child to take partner's leave. The amount of leave to which a spouse or partner may be entitled depends on the length of time that the person has been employed by the same employer. The spouse or partner may be entitled to— 10
- (i) 1 week of partner's leave, if he or she has been employed by the same employer for at least 6 months before assuming responsibility for the care of the child; or
- (ii) 2 weeks of partner's leave, if he or she has been employed by the same employer for at least 12 months before assuming responsibility for the care of the child: 15
- (c) Part 3 provides for the primary carer in respect of a child to take extended leave. Extended leave may be shared between the persons who are primarily responsible for caring for a child. The maximum amount of extended leave to which an employee may be entitled depends on the length of time that the person has been employed by the same employer. An employee may be entitled to— 20
- (i) 26 weeks of extended leave, if he or she has been employed by the same employer for at least 6 months before assuming responsibility for the care of the child; or 25
- (ii) 52 weeks of extended leave, if he or she has been employed by the same employer for at least 12 months before assuming responsibility for the care of the child.
- Negotiated carer leave*
- (4) **Part 3A** sets out a process for employees who are not entitled to take parental leave, but who would be eligible to receive parental leave payments if their employer allowed them to take leave from their employment, to request a period of negotiated carer leave. 30
- Other matters relating to parental leave*
- (5) Parts 4 to 7 set out further matters relating to the administration of parental leave entitlements, including notice requirements (*see* Part 4), rights and obligations after parental leave begins (*see* Part 5), protection of employment (*see* Part 6), and the remedies available to employees (*see* Part 7). 35
- Payment for parental leave*
- (6) Part 7A applies in certain circumstances to persons who have been employed or self-employed during the 12-month period immediately before they became 40

responsible for the care of a child and to members of the Armed Forces. It provides for an eligible person to receive up to 18 weeks of parental leave payments out of public money if the person stops working or takes leave to care for the child. The amount of the parental leave payment is the amount of the person's ordinary weekly pay or average weekly earnings, up to a specified maximum amount (*see* sections 71M to 71P). To qualify for parental leave payments a person must have been employed or self-employed for at least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding—

- (a) the expected date of delivery of the child (in the case of a child to be born to the person or to his or her spouse or partner); or
- (b) the first date on which either the person, or his or her spouse or partner, becomes the primary carer in respect of the child (in any other case).

*Miscellaneous matters*

- (7) Part 8 contains miscellaneous provisions relating to administration of parental leave and parental leave payment entitlements.

**1B Outline**

- (1) This section is a guide to the overall scheme and effect of this Act, but does not affect the interpretation or application of the other provisions of this Act.
- (2) This Act sets out the circumstances in which a biological mother or other person who takes permanent primary responsibility for the care, development, and upbringing of a child who is under the age of 6 may be entitled to—
  - (a) leave from their employment;
  - (b) parental leave payments.

*Primary carer entitlements*

- (3) The person who is the child's primary carer (*see* **section 7**) may be entitled to parental leave and parental leave payments as follows:
  - (a) for an employee who meets the 6-month employment test (*see* **section 2BA**),—
    - (i) up to 18 weeks of primary carer leave (*see* Part 1); and
    - (ii) an extension to 26 weeks (*see* Part 3 (extended leave)), which may need to be shared with the person's spouse or partner (*see* **section 28**); and
    - (iii) if the employee is eligible to receive parental leave payments (*see* section 71CA), up to 18 weeks of parental leave payments and up to 13 weeks of preterm baby payments (*see* **section 28**); and
  - (b) for an employee who meets the 12-month employment test (*see* **section 2BA**),—
    - (i) up to 18 weeks of primary carer leave (*see* Part 1); and

- (ii) an extension to 52 weeks (see Part 3 (extended leave)), which may need to be shared with the person's spouse or partner (see **section 28**); and
- (iii) if the employee is eligible to receive parental leave payments (see section 71CA), up to 18 weeks of parental leave payments and up to 13 weeks of preterm baby payments (see Part 7A); and 5
- (c) for an employee who does not meet the 6-month employment test but who meets the parental leave payment threshold test (see **section 2BA(4)**),—
- (i) if agreed to by the employee's employer, a period of negotiated carer leave (see **Part 3A**); and 10
- (ii) up to 18 weeks of parental leave payments and up to 13 weeks of preterm baby payments (see Part 7A); and
- (d) for a self-employed person,—
- (i) as much parental leave as the person wishes to take; and 15
- (ii) if the person meets the parental leave payment threshold test (see **section 2BA(4)**), up to 18 weeks of parental leave payments and up to 13 weeks of preterm baby payments (see Part 7A).
- Spouse/partner entitlements*
- (4) The spouse or partner of a child's primary carer may, if he or she assumes responsibility for the care of the child, be entitled to partner's leave as follows: 20
- (a) for an employee who meets the 6-month employment test (see **section 2BA**),—
- (i) up to 1 week of partner's leave (see Part 2); and
- (ii) an extension to 26 weeks (see Part 3 (extended leave)), which may need to be shared with the child's primary carer (see **section 28**); and 25
- (b) for an employee who meets the 12-month employment test (see **section 2BA**),—
- (i) up to 2 weeks of partner's leave (see Part 2); and 30
- (ii) an extension to 52 weeks (see Part 3 (extended leave)), which may need to be shared with the child's primary carer (see **section 28**); and
- (iii) for an employee who does not meet the 6-month employment test, there is no entitlement under this Act to partner's leave; and 35
- (iv) for a self-employed person, as much partner's leave as the person wishes to take.
- (5) It is also possible, in certain circumstances, for a primary carer to transfer their entitlements to their spouse or partner (see **section 71E**) or for the spouse or

partner of a primary carer to succeed to a primary carer’s entitlements (*see section 72B*).

*Administrative matters*

- (6) Parts 4 to 7 set out further matters relating to the administration of parental leave entitlements, including notice requirements (*see Part 4*), rights and obligations after parental leave begins (*see Part 5*), protection of employment (*see Part 6*), and the remedies available to employees (*see Part 7*). 5
- (7) Part 8 contains miscellaneous provisions that relate to the administration of parental leave and parental leave payment entitlements.

**6 Section 2 amended (Interpretation) 10**

- (1) In section 2(1), replace the definition of **employee** with:

**employee** means—

- (a) a person who is an employee within the meaning of section 6 of the Employment Relations Act 2000; and
- (b) in the context of provisions of this Act that relate to entitlements to parental leave payments in respect of a child, a person who will have been employed as an employee for any 26 of the 52 weeks immediately preceding—
  - (i) the expected date of delivery of the child (in the case of a child to be born to the employee or to the employee’s spouse or partner); 15  
or
  - (ii) the first date on which either the employee or the employee’s spouse or partner becomes the primary carer in respect of the child (in any other case) 20

- (2) In section 2(1), definition of **extended leave**, paragraph (b), after “7A”, insert “only”. 25

- (3) In section 2(1), repeal the definition of **maternity leave**.

- (4) In section 2(1), definition of **parental leave**, paragraph (a)(i), replace “maternity” with “primary carer”.

- (5) In section 2(1), definition of **parental leave**, paragraph (a)(ii), replace “partner’s/paternity” with “partner’s”. 30

- (6) In section 2(1), definition of **parental leave**, replace paragraph (b) with:

- (b) includes, for the purposes of Parts 6 to 7A only,—
  - (i) negotiated carer leave granted by an employer to an employee; and 35
  - (ii) rights and benefits in the nature of any of the kinds of leave described in paragraph (a) to which an employee is entitled by virtue of—
    - (A) any Act other than this Act; or

- (B) any employment agreement
- (7) In section 2(1), repeal the definition of **partner's/paternity leave**.
- (8) In section 2(1), replace the definition of **self-employed person** with:
- self-employed person** means—
- (a) means a person who is self-employed; and 5
- (b) in the context of provisions that relate to entitlements to parental leave payments in respect of a child, also means a person who will have been self-employed for any 26 of the 52 weeks immediately preceding—
- (i) the expected date of delivery of the child (in the case of a child to be born to the self-employed person or to the self-employed person's spouse or partner); or 10
- (ii) the first date on which either the self-employed person or the self-employed person's spouse or partner becomes the primary carer in respect of the child (in any other case)
- (9) In section 2(1), insert in their appropriate alphabetical order: 15
- 6-month employment test** has the meaning given in **section 2BA**
- 12-month employment test** has the meaning given in **section 2BA**
- Chief of Defence Force** means the officer appointed under section 8 of the Defence Act 1990
- keeping-in-touch day** means a day that would otherwise be a day of parental leave, but on which an employee performs paid work for an employer in accordance with **section 71GG(2) section 71CE(2) or 71DB(1)** 20
- member of the Armed Forces** has the meaning given in section 2(1) of the Armed Forces Discipline Act 1971
- negotiated carer leave** means a period of leave requested by an employee under **Part 3A** 25
- parental leave payment threshold test** has the meaning given in **section 2BA(4)**
- partner's leave**—
- (a) means partner's leave to which an employee is entitled in accordance with this Act; and 30
- (b) includes, for the purposes of Parts 6 to 7A only, rights and benefits in the nature of partner's leave to which an employee is entitled by virtue of—
- (i) any Act other than this Act; or
- (ii) any employment agreement 35
- primary carer** has the meaning given in **section 7**
- primary carer leave** means primary carer leave to which an employee is entitled in accordance with this Act



- (10) Repeal section 2(2) and (3).
- 7 Section 2A amended (Multiple employments generally)**  
 In section 2A, delete “and parental leave payment”.
- 8 Section 2AB amended (Multiple employments of certain medical practitioners)** 5  
 In section 2AB(2), delete “and parental leave payment”.
- 9 Section 2AC amended (Multiple employments of teachers)**  
 In section 2AC(1), delete “and parental leave payment”.
- 10 Section 2AD amended (Concurrent employment and self-employment)**  
 (1) In section 2AD(2), delete “and parental leave payment”. 10  
 (2) In section 2AD(3), replace “sections 2A and 71CC” with “section 2A”.
- 11 Section 2B amended (Multiple births or adoptions)**  
 (1) In the heading to section 2B, replace “**births or adoptions**” with “**children**”.  
 (2) In section 2B(1)(b), replace “employees and self-employed persons do” with “a person described in subsection (2) or **(3)** does”. 15  
 (3) Replace section 2B(3) with:  
 (3) A person who assumes primary responsibility for the care of becomes the primary carer in respect of 2 or more children within a 4-week period is treated as if the person had assumed primary responsibility for the care of become the primary carer in respect of only the youngest of those children within that period. 20
- 12 New section 2BA inserted (Thresholds for entitlements)**  
 After section 2B, insert:
- 2BA Thresholds for parental leave entitlements**  
Parental leave threshold tests
- (1) In this Act, the following tests are used to determine an employee’s entitlements to parental leave: 25
- (a) an employee meets the **6-month employment test** if the employee will have been employed by the same employer for at least an average of 10 hours a week in the 6 months immediately preceding the expected date of— 30
- (i) delivery of the child (in the case of a child to be born to the employee or to the employee’s spouse or partner); or
- (ii) assumption of responsibility for the care of the child (in any other case):

- (b) an employee meets the **12-month employment test** if the employee will have been employed by the same employer for at least an average of 10 hours a week in the 12 months immediately preceding the expected date of—
- (i) delivery of the child (in the case of a child to be born to the employee or to the employee’s spouse or partner); or
  - (ii) assumption of responsibility for the care of the child (in any other case).
- (2) The provisions of Schedule 1 apply if it is necessary to ascertain, in relation to any of the circumstances mentioned in clauses 1 to 5 of Schedule 1,—
- (a) whether ~~any~~ an employee has been employed by the same employer during any period of time; or
  - (b) whether ~~any~~ an employee has resumed service with the same employer.
- (3) Section 72A applies if it is necessary to ascertain whether an employee will have been employed by the same employer for at least an average of 10 hours a week during a 12-month period (or 6-month period, as the case may be).
- Parental leave payment threshold test*
- (4) In this Act the following test is used to determine a person’s entitlement to parental leave payments (the **parental leave payment threshold test**):
- (a) an employee meets the parental leave payment threshold test if he or she will have been employed as an employee for at least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding—
    - (i) the expected date of delivery of the child (in the case of a child to be born to the person or his or her spouse or partner); or
    - (ii) the first date on which the person, or his or her spouse or partner becomes the primary carer in respect of the child (in any other case):
  - (b) a self-employed person meets the parental leave payment threshold test if he or she will have been self-employed for at least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding—
    - (i) the expected date of delivery of the child (in the case of a child to be born to the self-employed person or his or her spouse or partner); or
    - (ii) the first date on which the self-employed person, or his or her spouse or partner becomes the primary carer in respect of the child (in any other case).

**13 Section 4 amended (Application of this Act to employees who have non-statutory rights to parental leave)**

In section 4(4), replace “employees” with “persons”.

**14 Section 5 amended (Restriction on parental leave under this Act where employee or employee’s spouse or partner takes parental leave under any other provision)**

In section 5, replace “maternity leave, partner’s/paternity leave” with “primary carer leave, partner’s leave”. 5

**15 Part 1 heading amended**

In the Part 1 heading, replace “**Maternity**” with “**Primary carer**”.

**16 Sections 7 and 8 replaced**

Replace sections 7 and 8 with:

**7 Meaning of primary carer** 10

(1) In this Act, unless the context otherwise requires, **primary carer** means—

(a) a female (the **biological mother**) who is pregnant or has given birth to a child:

(b) the spouse or partner of the biological mother, only if—

(i) the spouse or partner has succeeded under section 72B to all or part of the biological mother’s entitlement to a parental leave payment; or 15

(ii) the biological mother has transferred all or part of her entitlement to a parental leave payment to that spouse or partner under **section 71E** (in which case the spouse or partner is the primary carer for the period of time in relation to which ~~those entitlements are the entitlement is transferred~~); or 20

~~(e) a person, other than the biological mother or her spouse or partner, who assumes primary responsibility for the day-to-day care of a child not more than 5 years of age other than as a foster carer or on any other temporary basis. 25~~

(c) a person, other than the biological mother or her spouse or partner, who takes permanent primary responsibility for the care, development, and upbringing of a child who is under the age of 6 years (and if there is more than 1 such person, the person nominated in accordance with **subsection (2)**). 30

**Examples**

If a child under the age of 6 years goes to live with their aunt, who intends to raise the child in place of the child’s biological parents, the aunt is the child’s primary carer. 35

If a couple formally adopt a child under the age of 6 years, or undertake to care for the child permanently, the member of the couple that is nominated under **subsection (2)** is the child’s primary carer.

	<u>If a child under the age of 6 is temporarily placed with a foster parent, that person is not a primary carer because the placement is not permanent.</u>	
	<u>If a child's grandmother minds the child every day while his or her parents are at work, the grandmother is not a primary carer, because the child's parents still have primary responsibility for the child's upbringing.</u>	5
(2)	If 2 or more persons meet the criterion in <b>subsection (1)(c)</b> ,—	
	(a) those persons must jointly nominate which one of them is to be the primary carer; and	
	(b) only the nominated person is entitled to <u>primary carer leave and parental leave payments</u> under this Act.	10
(3)	<b>Subsection (2)(b)</b> does not limit <b>sections 71E</b> and 71EA (both of which relate to the transfer of entitlements to parental leave payments to a spouse or partner) or <u>section 72B</u> (which relates to succession to entitlements by a spouse or partner).	
<b>8</b>	<b>Entitlement to primary carer leave</b>	15
(1)	An employee may take primary carer leave if the employee—	
	(a) is <u>at the primary carer in respect of a child</u> ; and	
	(b) meets the 6-month employment test or the 12-month employment test.	
(2)	No employee may take primary carer leave under <b>subsection (1)</b> in respect of a child if the employee has previously taken a period of leave in respect of that child, being—	20
	(a) parental leave under this Act; or	
	(b) a period of leave in the nature of parental leave under any Act other than this Act or under any employment agreement.	
<b>17</b>	<b>Section 9 amended (Duration of maternity leave)</b>	25
(1)	In the heading to section 9, replace “ <b>maternity</b> ” with “ <b>primary carer</b> ”.	
(2)	In section 9(1), replace “Maternity” with “Primary carer”.	
(3)	In section 9(2), replace “maternity” with “primary carer” in each place.	
(4)	In section 9(3), replace “maternity” with “primary carer” in each place.	
<b>18</b>	<b>Section 10 amended (Date of commencement of maternity leave)</b>	30
(1)	In the heading to section 10, replace “ <b>maternity</b> ” with “ <b>primary carer</b> ”.	
(2)	In section 10, replace “Maternity leave shall begin” with “Primary carer leave begins,”.	
(3)	Replace section 10(a) and (b) with:	
	(a) in the case of a child born to the employee, on the date of confinement;	35
	or	

- (b) in any other case, on the date on which the employee becomes the primary carer in respect of the child; or

**19 Section 11 amended (Right of employee to determine date of commencement of maternity leave)**

- (1) In the heading to section 11, replace “maternity” with “primary carer”. 5
- (2) In section 11, replace “Maternity” with “Primary carer”.
- (3) In section 11, delete “female”.
- (4) In section 11, replace “6 weeks” with “6 weeks than,”.
- (5) Replace section 11(a) and (b) with:
- (a) in the case of a child to be born to the employee, the expected date of delivery; or 10
- (b) in any other case, the date on which the employee intends to become the primary carer in respect of the child.

**20 Section 12 replaced (Right of employer and employee to determine date of commencement of maternity leave by agreement)** 15

Replace section 12 with:

**12 Right of employer and employee to determine date of commencement of primary carer leave by agreement**

Primary carer leave may, by agreement between the employee and his or her employer, begin on any date before,— 20

- (a) in the case of a child to be born to the employee, the expected date of delivery; or
- (b) in any other case, the date on which the employee intends to become the primary carer in respect of the child.

**21 New cross-heading above section 13 inserted** 25

Above section 13, insert:

*Provisions applicable to pregnant employees only*

**22 Section 13 amended (Right of medical practitioner or midwife to determine date of commencement of maternity leave)**

- (1) In the heading to section 13, replace “maternity” with “primary carer”. 30
- (2) In section 13(1) and (2), replace “maternity” with “primary carer” in each place.

**23 Section 14 amended (Right of employer to appoint date of commencement of maternity leave)**

- (1) In the heading to section 14, replace “maternity” with “primary carer”. 35

- (2) In section 14, replace “maternity” with “primary carer”.
- 24 Section 15 amended (Special leave)**  
In section 15(1) and (2), replace “maternity” with “primary carer”.
- 25 Part 2 heading amended**  
In the Part 2 heading, replace “**Partner’s/paternity**” with “**Partner’s**”. 5
- 26 Sections 17 and 18 replaced**  
Replace sections 17 and 18 with:
- 17 Entitlement of spouse or partner of primary carer to partner’s leave**
- (1) An employee may take partner’s leave if the employee—
- (a) is the spouse or partner of the primary carer in respect of a child; and 10
  - (b) assumes or intends to assume responsibility for the care of that child; and
  - (c) meets the 6-month employment test or the 12-month employment test.
- (2) Despite **subsection (1)**, an employee may not take partner’s leave in respect of a child under **subsection (1)** if— 15
- (a) the employee has previously taken, in respect of that child, a period of leave, being—
    - (i) partner’s leave under this Act; or
    - (ii) a period of leave in the nature of partner’s leave under any Act other than this Act or under any employment agreement; or 20
  - (b) the employee is the biological mother of the child and transferred her parental leave payment entitlements to her spouse or partner under **section 71E**.
- 27 Section 19 amended (Duration of partner’s/paternity leave)**
- (1) In the heading to section 19, replace “**Partner’s/paternity**” with “**Partner’s**”. 25
- (2) In section 19, replace “Partner’s/paternity” with “Partner’s”.
- (3) In section 19(a), replace “if section 17(c)(i) or section 18(1)(b)(i) applies to the employee” with “if the employee meets the 12-month employment test”.
- (4) In section 19(b), replace “if section 17(c)(ii) or section 18(1)(b)(ii) applies to the employee” with “if the employee meets the 6-month employment test”. 30
- 28 Sections 19A to 19B repealed**  
Repeal sections 19A to 19B.
- 29 Section 20 replaced (Date of commencement of partner’s/paternity leave)**  
Replace section 20 with:

<b>20</b>	<b>Date of commencement of partner’s leave</b>	
	Partner’s leave begins,—	
	(a) in the case of a child born to the employee’s spouse or partner, on the date of confinement; or	
	(b) in any other case, on the date on which the employee’s spouse or partner becomes the primary carer in respect of the child; or	5
	(c) on any earlier or later date determined in accordance with section <b>21</b> or <b>22</b> .	
<b>30</b>	<b>Section 21 replaced (Right of employee to determine date of commencement of partner’s/paternity leave)</b>	10
	Replace section 21 with:	
<b>21</b>	<b>Right of employee to determine date of commencement of partner’s leave</b>	
	Partner’s leave may, at the option of the employee, begin,—	
	(a) in the case of a child to be born to the employee’s spouse or partner, on any date in the period—	15
	(i) beginning on the 21st day before the expected date of delivery; and	
	(ii) ending with the close of the 21st day after the actual date of delivery or, if the child is discharged from a hospital or a similar establishment more than 21 days after the actual date of delivery, the close of the day on which the child is discharged from that hospital or establishment; or	20
	(b) in any other case, on any date in the period—	
	(i) beginning on the 21st day before the date on which the employee’s spouse or partner intends to become the primary carer in respect of the child; and	25
	(ii) ending with the close of the 21st day after the actual date on which the employee’s spouse or partner becomes the primary carer in respect of the child.	
<b>31</b>	<b>Section 22 amended (Right of employer and employee to determine date of commencement of partner’s/paternity leave by agreement)</b>	30
	(1) In the heading to section 22, replace “ <b>partner’s/paternity</b> ” with “ <b>partner’s</b> ”.	
	(2) In section 22, replace “Partner’s/paternity” with “Partner’s”.	
<b>32</b>	<b>Sections 23 and 24 replaced</b>	
	Replace sections 23 and 24 with:	35

**23 Entitlement of employee to extended leave**

- (1) Except as otherwise provided in this Act, an employee is entitled to extended leave if—
- (a) the employee—
    - (i) is the primary carer in respect of a child; or 5
    - (ii) is the spouse or partner of the primary carer in respect of a child and assumes or intends to assume responsibility for the care of that child; and
  - (b) the employee meets—
    - (i) the 6-month employment test (in which case the maximum duration of extended leave is 26 weeks, as set out in **section 26(1)(a)**); or 10
    - (ii) the 12-month employment test (in which case the maximum duration of extended leave is 52 weeks, as set out in **section 26(1)(b)**). 15
- (2) An employee is not entitled to extended leave in respect of a child under **subsection (1)** if that employee has previously taken, in respect of that child, 1 or more periods of leave that in total amount to the employee's maximum entitlement under **section 26(1)(a) or (b)**, whether that leave is—
- (a) extended leave under this Act; or 20
  - (b) a period of leave in the nature of extended leave under any Act other than this Act, or any employment agreement.

**33 Sections 26 to 30 replaced**

Replace sections 26 to 30 with:

**26 Duration of extended leave**

- (1) Subject to **subsections (2) and (3)**, the maximum amount of extended leave that an individual employee may take in respect of a child is—
- (a) 26 weeks, if the employee meets the 6-month employment test; or
  - (b) 52 weeks, if the employee meets the 12-month employment test.
- (2) If an employee and that employee's spouse or partner are each individually entitled to extended leave in respect of the same child, the maximum combined entitlement of the employee and his or her spouse or partner is—
- (a) 26 weeks, if both meet the 6-month employment test; or
  - (b) 52 weeks, if both meet the 12-month employment test; or
  - (c) 52 weeks, if one meets the 12-month employment test and the other meets the 6-month employment test (in which case the person who meets the 6-month employment test may not take more than 26 weeks of extended leave out of the combined total entitlement of 52 weeks). 35



- (3) If an employee takes primary carer leave in respect of a child, the period of extended leave to which the employee and his or her spouse or partner are entitled in respect of the child is the relevant period specified in **subsection (1) or (2)** reduced by the total period of primary carer leave taken, excluding any period of primary carer leave in excess of 18 weeks taken under section 9(2). 5
- (4) If a female employee takes special leave under section 15, the period of extended leave to which that female employee or her spouse or partner is entitled in accordance with this Act is not reduced.
- (5) If an employee takes a period of partner's leave, the period of extended leave to which the employee and his or her spouse or partner are entitled in accordance with this Act is not reduced. 10
- (6) The period of extended leave to which an employee and his or her spouse or partner are entitled is not increased by the number of hours worked by the employee or his or her spouse or partner on a keeping-in-touch day in accordance with ~~section 71GG(2)~~**section 71CE(2) or 71DB(2)**. 15
- (7) This section is subject to the other provisions of this Act.
- 27 Period during which extended leave may be taken**
- (1) An employee may take 1 or more periods of extended leave (up to the maximum amount to which the employee is entitled) at any time within the period beginning with the applicable start date and ending with the applicable end date. 20
- (1A) If an employee takes more than 1 period of extended leave within the period referred to in **subsection (1)**, each such period of extended leave must be taken on dates agreed between the employee and the employer.
- (2) In this section,— 25
- applicable start date** means,—
- (a) if the employee takes primary carer leave in respect of a child, the date of expiry or earlier termination of the employee's primary carer leave; or
- (b) if the employee takes partner's leave in respect of a child, the date of expiry or earlier termination of the employee's partner's leave; or 30
- (c) if the employee is entitled to take primary carer leave or partner's leave in respect of a child, and has not taken any such leave,—
- (i) in the case of a child born to the employee or to the employee's spouse or partner, the date of confinement; or
- (ii) in any other case, the first date on which either the employee or the employee's spouse or partner becomes the primary carer in respect of the child; or 35
- (d) any other date that is agreed on by the employee and that employee's employer

<b>applicable end date</b> means,—	
(a) if the employee, or the employee’s spouse or partner, qualifies for extended leave under <b>section 23(1)(b)(i)</b> (which applies to employees who meet the 6-month employment test),—	
(i) in the case of a child born to the employee, or to the employee’s spouse or partner, the date on which the child attains the age of 6 months; or	5
(ii) in any other case, the date that is 6 months after the first date on which either the employee, or the employee’s spouse or partner, becomes the primary carer in respect of the child; or	10
(b) if the employee, or the employee’s spouse or partner, qualifies for extended leave under <b>section 23(1)(b)(ii)</b> (which applies to employees who meet the 12-month employment test),—	
(i) in the case of a child born to the employee, or to the employee’s spouse or partner, the date on which the child attains the age of 12 months; or	15
(ii) in any other case, the date that is the first anniversary of the first date on which either the employee, or the employee’s spouse or partner, becomes the primary carer in respect of the child.	
(3) No employee is entitled to start or continue any period of extended leave under this Act after—	20
(a) the applicable end date; or	
(b) the date on which the employee ceases to have care of the child in respect of whom the extended leave is taken.	
(4) <b>Subsection (1)</b> is subject to <b>subsection (3)</b> and <b>section 28</b> .	25
(5) <b>Subsection (3)</b> prevails over all other provisions of this Act.	
<b>28 Sharing of extended leave</b>	
(1) The maximum combined period of extended leave provided by <b>section 26(2)</b> may be shared between an employee and that employee’s spouse or partner in any way set out in <b>subsection (2)</b> , or in any other manner that is agreed on by the employee and the employee’s spouse or partner and their respective employers, provided that—	30
(a) neither the employee nor the employee’s spouse or partner takes a period of extended leave that exceeds, or periods of extended leave that in total exceed, the amount of extended leave to which that person is individually entitled under <b>section 26(1)</b> ; and	35
(b) the total period formed by adding together all periods of extended leave taken by the employee and the employee’s spouse or partner does not exceed the maximum combined period of extended leave provided by <b>section 26(2)</b> .	40

- (2) The ways in which the maximum combined period of extended leave may be shared between an employee and that employee’s spouse or partner are:
- (a) the employee or the employee’s spouse or partner may take the full maximum combined period of extended leave, and the other not take any period of primary carer or extended leave under this Act: 5
  - (b) the employee and the employee’s spouse or partner may each take a period or periods of extended leave, and neither of them take any period of primary carer leave: 10
  - (c) either the employee or the employee’s spouse or partner (or both, in the case of a transfer of entitlements) may take a period of primary carer leave, and each of the employee and the employee’s spouse or partner may take 1 or more periods of extended leave. 10
- (3) **Subsection (2)** is subject to **subsection (1)**.

**29 Extended leave may be taken consecutively or concurrently with leave taken by partner** 15

Subject to the provisions of this Act, if an employee takes a period of extended leave in accordance with **section 28**, the period of leave so taken may be taken—

- (a) consecutively with any period of primary carer leave or partner’s leave taken by the employee; and 20
- (b) consecutively or concurrently with any period of primary carer leave, partner’s leave, or extended leave taken by the employee’s spouse or partner, or with any period for which the employee’s spouse or partner receives a parental leave payment, as the case may be.

**34 New Part 3A inserted** 25  
After section 30, insert:

**Part 3A**  
**Primary carers not eligible for primary carer leave may request negotiated carer leave**

**30A Object of this Part** 30

The object of this Part is to—

- (a) provide for certain employees who are not entitled to primary carer leave to request a period of leave from their employment to enable them to receive parental leave payments; and
- (b) require an employer to deal with a request as soon as possible, but not later than 1 month after receiving it; and 35

- (c) provide that an employer may refuse a request only if it cannot be accommodated on certain grounds.

*Employee's right to make request*

**30B Employee may make request**

- (1) This section applies to an employee who— 5
- (a) is not entitled to primary carer leave; but
- (b) is entitled to parental leave payments under **section 71D(1)** if the employee takes leave from the employee's employment for the period during which the employee intends to receive parental leave payments.
- (2) An employee to whom this section applies may make a request to his or her employer for negotiated carer leave. 10
- (3) The request must be made,—
- (a) in the case of an employee who wishes to take negotiated carer leave in respect of a child to be born to the employee or to the employee's spouse or partner, at least 3 months before the expected date of delivery; or 15
- (b) in any other case, at least 14 days prior to the date on which the employee intends to become the primary carer in respect of the child.

**30C Requirements relating to request**

A request for negotiated carer leave must be in writing and must—

- (a) state— 20
- (i) the employee's name; and
- (ii) the date on which the request is made; and
- (iii) that the request is made under this Part; and
- (b) specify the proposed date on which the employee wishes to begin negotiated carer leave and the proposed duration of the leave; and 25
- (c) include a statement that the employee—
- (i) will be the primary carer in respect of the child during the specified period; and
- (ii) will, if the request for a period of negotiated carer leave is approved, be entitled to receive parental leave payments under the Act for that period; and 30
- (d) explain, in the employee's view, what changes, if any, the employer may need to make to the employer's arrangements if the employee's request is approved.

*Duties of employer***30D Employer must notify decision as soon as possible**

An employer must deal with a request for negotiated carer leave as soon as possible, but not later than 1 month after receiving it, and—

- (a) notify the employee in writing as to whether the employee's request is approved or refused; and 5
- (b) if the request is refused,—
  - (i) notify the employee of the ground or grounds specified in **section 30E(2)** for refusal; and
  - (ii) provide an explanation of the reasons why the ground applies or the grounds apply. 10

**30E Grounds for refusal of request by employer**

- (1) An employer may refuse a request for negotiated carer leave only if the employer determines that the request cannot be accommodated on 1 or more of the grounds specified in **subsection (2)**. 15
- (2) The grounds are—
  - (a) inability to reorganise work among existing staff:
  - (b) inability to recruit additional staff:
  - (c) detrimental impact on quality:
  - (d) detrimental impact on performance: 20
  - (e) planned structural changes:
  - (f) burden of additional costs:
  - (g) detrimental effect on ability to meet customer demand.

Compare: 2000 No 24 s 69AAF(2)

*Resolving disputes***30F Limitation on challenging employer**

- (1) An employee may not challenge his or her employer's refusal of a request for negotiated carer leave.
- (2) An employee may challenge his or her employer's failure to respond to a request for negotiated carer leave, or failure to respond adequately to a request, if the employee believes his or her employer has not complied with **section 30D**. 30

**30G Role of Labour Inspector**

- (1) For the purposes of this Part, a Labour Inspector may provide to employees and employers such assistance as he or she considers appropriate in the circumstances. 35

- (2) This section applies subject to **section 30H(2)**.
- 30H Labour Inspectors and mediation**
- (1) This section applies if an employee believes that his or her employer has not complied with **section 30D**.
- (2) ~~The employee may refer the non-compliance with **section 30D** to a Labour Inspector, who must, to the extent practicable in the circumstances, assist the employee and employer to resolve the matter.~~ 5
- (2) The employee may refer the non-compliance with **section 30D**—
- (a) directly to mediation; or
- (b) to a Labour Inspector, who must, to the extent practicable in the circumstances, assist the employee and employer to resolve the matter. 10
- (3) If, after completion of the process under **subsection (2)(b)**, the employee is dissatisfied with the result, the employee may refer the matter to mediation.
- (4) For the purposes of **subsection (3)**, non-compliance with **section 30D** is an employment relationship problem. 15
- 30I Application to Employment Relations Authority**
- (1) This section applies if—
- (a) an employee believes that his or her employer has not complied with **section 30D**; and
- (b) mediation has not resolved the matter. 20
- (2) The employee may apply to the Employment Relations Authority for a determination as to whether the employer has complied with **section 30D**.
- (3) An application ~~under **subsection (2)**~~ must be made within 12 months after the relevant date.
- (4) In **subsection (3)**, **relevant date** means,— 25
- (a) if the employer notifies a refusal within 1 month after receiving a request, the date ~~on which the employer notifies the employee of the employer's refusal~~ of the notification;
- (b) in any other case, the date that is 1 month after the employer received the employee's request. 30
- 30J Penalty**
- (1) An employer who does not comply with **section 30D** is liable to a penalty not exceeding \$2,000, imposed by the Employment Relations Authority.
- (2) The penalty is payable to the employee concerned.

- 35 Section 31 amended (Obligation to notify employer)**  
 In section 31(3), replace “Except where the employee is proposing to adopt a child,” with “If the employee wishes to take parental leave in respect of a child to be born to the employee or to the employee’s spouse or partner,”.
- 36 Section 32 amended (Requirements where extended leave sought)** 5
- (1) In section 32(a), replace “maternity” with “primary carer”.
- (2) Replace section 32(d) with:
- (d) contain an assurance by the employee that the aggregate periods of leave of the kinds specified in **subsection (2)** that are proposed to be taken in respect of the child by the employee and the employee’s spouse or partner will not exceed the maximum combined entitlements of the employee and the employee’s spouse or partner set out in **section 26(2)**. 10
- (3) In section 32, insert as subsection (2):
- (2) The kinds of leave referred to in **subsection (1)(d)** are—
- (a) all primary carer leave (other than primary carer leave in excess of 18 weeks taken under section 9(2)); and 15
- (b) all extended leave under this Act; and
- (c) all leave (other than partner’s leave) to which the employee or the employee’s spouse or partner is entitled in respect of the child by or under any Act other than this Act or under any employment agreement. 20
- 37 Section 33 replaced (Requirements where child to be adopted)**  
 Replace section 33 with:
- 33 Requirements where primary carer is not biological mother or her spouse or partner**
- If an employee intends to be the primary carer in respect of a child to whom the employee or the employee’s spouse or partner did not give birth, the notice required to be given under section 31(1) must— 25
- (a) include a statement by the employee that the employee will be the primary carer in respect of the child; and
- (b) be given at least 14 days before the employee intends to become the primary carer in respect of the child; and 30
- (c) be accompanied by any evidence that is prescribed in regulations.
- 38 Section 37 replaced (Requirement where female employee wishes to commence maternity leave early)**  
 Replace section 37 with: 35

- 37 Requirement where employee wishes to begin primary carer leave early**
- (1) This section applies to an employee who—
- (a) has given notice that the employee wishes to take parental leave under this Act; and
- (b) intends to exercise the option conferred by section 11 by beginning his or her primary carer leave early. 5
- (2) The employee must give his or her employer not less than 21 days' notice in writing of the day on which the employee wishes his or her primary carer leave to begin. 10
- Compare: 1980 No 162 s 10(2)
- 39 Section 39 amended (Employee's notice in relation to return to work)**
- After section 39(2), insert:
- (3) Subsection (1) does not apply if the employee's employment agreement requires the employee to give a longer period of notice of resignation to the employer. 15
- 39A Section 42 amended (Employer's obligations in respect of remuneration and holiday pay)**
- In section 42(2), after "average weekly earnings", insert "(as defined in section 5(1) of the Holidays Act 2003)".
- 40 Section 45 amended (Early ending and extension of parental leave)** 20
- (1) Replace section 45(1)(c) and (d) with:
- (c) if the employee or the employee's spouse or partner fails to become or ceases to be the primary carer in respect of the child ~~in relation to whom the parental leave is taken~~; or
- (2) Replace section 45(2) with: 25
- (2) If a female employee is on primary carer leave under **section 8** in relation to a child to whom she gave birth, her employer may, in giving consent under subsection (1)(e), make it conditional on the employee giving to the employer, before the employee ends her primary carer leave under subsection (1)(f) or (1)(g), a certificate from a medical practitioner to the effect that she is fit to return to work. 30
- (3) In section 45(4)(a), replace "maternity" with "primary carer" in each place.
- (4) Replace section 45(4)(b) and (c) with:
- (b) in the case of a period of partner's leave, the duration of partner's leave exceeds— 35
- (i) 1 week if the employee meets the 6-month employment test:
- (ii) 2 weeks if the employee meets the 12-month employment test; or



	(c) in the case of a period of extended leave, the period of extended leave, when aggregated with all leave of the kinds specified in <b>section 32(2)</b> that is taken or proposed to be taken by the employee and the employee's spouse or partner in respect of the child, exceeds the maximum combined entitlements of the employee and the employee's spouse or partner set out in <b>section 26(2)</b> .	5
<b>41</b>	<b>Section 49 amended (Dismissal by reason of pregnancy or parental leave prohibited)</b>	
(1)	Replace section 49(1)(b)(ii) with:	
	(ii) the employee, or the employee's spouse or partner, becoming the primary carer in respect of a child; or	10
(2)	Replace section 49(2)(b)(ii) with:	
	(ii) the employee becoming the primary carer in respect of a child,—	
<b>42</b>	<b>Section 54 amended (Dismissal for cause not affected)</b>	
	Replace section 54(b) with:	15
	(b) the employee or the employee's spouse or partner becoming the primary carer in respect of a child; or	
<b>43</b>	<b>Section 55 amended (Interim order)</b>	
	Replace section 55(2)(b) with:	
	(b) a date not later than 26 weeks after—	20
	(i) the expected date of delivery of the child (in the case of a child born to the employee or to the employee's spouse or partner); or	
	(ii) the first date on which either the employee or the employee's spouse or partner becomes the primary carer in respect of the child (in any other case).	25
<b>44</b>	<b>Section 56 amended (Parental leave complaints)</b>	
	Replace section 56(2)(b) with:	
	(b) after the expiration of 26 weeks from—	
	(i) the expected date of delivery of the child (in the case of a child to be born to the employee or to the employee's spouse or partner); or	30
	(ii) the first date on which either the employee or the employee's spouse or partner became the primary carer in respect of the child (in any other case); or	
<b>45</b>	<b>Section 70A amended (Labour Inspectors may make determinations in respect of employees)</b>	35
(1)	In section 70A(1)(a), replace “in the employment of” with “employed by”.	

- (2) In section 70A(1)(a), replace “lesser” with “6-month”.
- (3) After section 70A(1)(a), insert:
- ~~(ab) determine, at the request of the department, for the purposes of eligibility for parental leave payments, whether a person was employed as an employee for at least an average of 10 hours a week over any 26 of the 52 weeks immediately preceding—~~
- ~~(i) the expected date of delivery of the child (in the case of a child to be born to the employee or to the employee’s spouse or partner); or~~
- ~~(ii) the first date on which either the employee or the employee’s spouse or partner became the primary carer in respect of the child (in any other case); or~~
- ~~(ab) determine, at the request of the department, whether an employee meets the parental leave payment threshold test; or~~
- (4) ~~In section 70A(1)(b), after “determine,” insert “at the request of the department or”.~~
- (4) Replace section 70A(1)(b) with:
- ~~(b) determine, at the request of the department or if the employee and employer fail to agree, an employee’s ordinary pay or average weekly income from work for the purpose of section 71M(1); or~~
- 46 Section 70G amended (Labour Inspectors may make determinations in respect of self-employed persons)**
- Replace section 70G(1)(a) with:
- ~~(a) determine, for the purposes of eligibility for parental leave payments, whether a person was self-employed for at least an average of 10 hours a week over any 26 of the 52 weeks immediately preceding—~~
- ~~(i) the expected date of delivery of the child (in the case of a child to be born to the self-employed person or to the self-employed person’s spouse or partner); or~~
- ~~(ii) the first date on which either the self-employed person or his or her spouse or partner became the primary carer in respect of the child (in any other case); and~~
- ~~(a) determine whether a self-employed person meets the parental leave payment threshold test; and~~
- 47 Section 71A replaced (Purpose)**
- Replace section 71A with:

**71A Purpose**

~~The purpose of this Part is to entitle certain persons to up to 18 weeks of parental leave payments out of public money if they become the primary carer in respect of a child and stop working or take a period of leave.~~

The purpose of this Part is to entitle certain persons who become the primary carer in respect of a child, and who stop working or take a period of leave, to— 5

- (a) up to 18 weeks of parental leave payments out of public money; and
- (b) additional preterm baby payments out of public money if the child is born before the end of the 36th week of gestation.

**48 New section 71AB inserted (Application to members of Armed Forces)** 10

After section 71A, insert:

**71AB Application to members of Armed Forces**

- (1) Except as provided in **subsection (3)**, this Part applies to a member of the Armed Forces, in New Zealand or otherwise, as if the member were an employee in the employment of the Chief of Defence Force. 15
- (2) In this Part,—
  - (a) references to an employee must be read as including a member of the Armed Forces; and
  - (b) references to an employer must be read as including, for the purposes of members of the Armed Forces, the Chief of Defence Force; and 20
  - (c) references to an employment agreement must be read as including, for the purposes of members of the Armed Forces, conditions of service set by the Chief of Defence Force in accordance with the Defence Act 1990.
- (3) Despite **subsection (1)**, sections 71P and 71T do not apply to a member of the Armed Forces. 25

**49 Section 71B amended (Overview)**

- (1) In section 71B(1), after “leave”, insert “payment”.
- (2) Replace section 71B(3) with:
- (3) **Section 71D** confers entitlements to parental leave payments on eligible persons who are the primary carers in respect of children ~~not more than 5 years of age~~ under the age of 6 years. 30
- (3A) **Sections 71DA and 71DB** confer entitlements to preterm baby payments on persons who are the primary carers of preterm babies and provide for extended keeping-in-touch hours in respect of those carers.
- (3) In section 71B(4), replace “employees and self-employed” with “eligible”. 35
- (4) In section 71B(4), replace “sections 71D and 71DA” with “section 71D”.

**50 Section 71C amended (Interpretation of this Part)**

- (1) In section 71C, replace the definition of **employee’s average weekly earnings** with:

**employee’s average weekly earningsincome from work** means an amount calculated in accordance with the method set out in **section 71CAA**

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- (2) In section 71C, definition of **ordinary weekly pay**, replace “from which the employee takes parental leave as an eligible employee” with “that in combination mean the employee is entitled to receive parental leave payments”.

- (3) In section 71C, replace the definition of **self-employed person’s average weekly earnings** with:

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**self-employed person’s average weekly earningsincome from work** means an amount calculated in accordance with the method set out in **section 71CBA**.

**51 Section 71CA amended (Definition of eligible employee)**

Replace section 71CA(1) with:

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- (1) In this Part, **eligible employee** means a person who—
- (a) is the primary carer in respect of a child ~~who is not more than 5 years of age~~; and
- (b) ~~will have been employed as an employee for at least an average of 10 hours per week over any 26 of the 52 weeks immediately preceding—~~
- (i) ~~the expected date of delivery of the child (in the case of a child to be born to the employee or to the employee’s spouse or partner);~~
- ~~or~~
- (ii) ~~the first date on which either the employee or the employee’s spouse or partner becomes the primary carer in respect of the child (in any other case).~~
- (b) meets the parental leave payment threshold test.

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**52 New section 71CAA inserted (Calculation of employee’s average weekly earningsincome from work)**

After section 71CA, insert:

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**71CAA Calculation of employee’s average weekly earningsincome from work**

- (1) An employee’s average weekly earningsincome from work must be determined by—
- (a) calculating the sum of the employee’s gross weekly earnings, from all employments, for the 26 weeks out of the relevant 52-week period in respect of which the highest amounts were earned by the employee (whether or not those weeks were consecutive); and

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- (b) dividing the amount calculated in accordance with **paragraph (a)** by 26.
- (2) In **subsection (1)**, **relevant 52-week period**, in respect of an eligible employee, means the 52 weeks immediately preceding—
  - (a) the expected date of delivery of the child (in the case of a child to be born to the employee or to the employee’s spouse or partner); or
  - (b) the first date on which either the employee or the employee’s spouse or partner becomes the primary carer in respect of the child (in any other case).

**53 Section 71CB amended (Definition of eligible self-employed person) 10**

- (1) Replace section 71CB(1) with:
  - (1) In this Part, **eligible self-employed person** means a self-employed person who—
    - (a) is the primary carer in respect of a child ~~who is not more than 5 years of age~~; and
    - (b) ~~will have been self-employed for at least an average of 10 hours a week over any 26 of the 52 weeks immediately preceding—~~
      - (i) ~~the expected date of delivery of the child (in the case of a child to be born to the self-employed person or to the self-employed person’s spouse or partner); or~~
      - (ii) ~~the first date on which either the self-employed person or the self-employed person’s spouse or partner becomes the primary carer in respect of the child (in any other case).~~
    - (b) meets the parental leave payment threshold test.
  - (2) In section 71CB(2), replace “71E(3) and (4)” with “**71E(2)**”.
  - (3) Repeal section 71CB(3).

**54 New section 71CBA inserted (Calculation of self-employed person’s average weekly earningsincome from work) 30**

After section 71CB, insert:

**71CBA Calculation of self-employed person’s average weekly earnings 30**

- (1) A self-employed person’s average weekly earnings must be determined by—
  - (a) ~~calculating the sum of the self-employed person’s net income, in respect of all the work that qualifies the self-employed person as an eligible self-employed person, for the 26 weeks out of the relevant 52-week period in respect of which the highest amounts were earned by the self-employed person (whether or not those weeks were consecutive); and~~
  - (b) ~~dividing the amount calculated in accordance with **paragraph (a)** by 26.~~

- (2) In ~~subsection (1), relevant 52-week period~~, in respect of an eligible self-employed person, means the 52 weeks immediately preceding—
- (a) ~~the expected date of delivery of the child (in the case of a child to be born to the self-employed person or to the self-employed person's spouse or partner); or~~
  - (b) ~~the first date on which either the self-employed person or the self-employed person's spouse or partner becomes the primary carer in respect of the child (in any other case).~~

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**71CBA Calculation of self-employed person's average weekly income from work**

- (1) An eligible self-employed person must elect whether to determine their average weekly income from work over a 12-month period or over a 6-month period.
- (2) An eligible self-employed person's average weekly income from work over a 12-month period is one fifty-second of that person's net income from self-employment over the 12 months immediately preceding—
- (a) the expected date of delivery of the child (in the case of a child to be born to the self-employed person or to the self-employed person's spouse or partner); or
  - (b) the first date on which either the self-employed person or the self-employed person's spouse or partner becomes the primary carer in respect of the child (in any other case).
- (3) An eligible self-employed person's average weekly income from work over a 6-month period is one twenty-sixth of that person's net income from self-employment over the 6 months immediately preceding—
- (a) the expected date of delivery of the child (in the case of a child to be born to the self-employed person or to the self-employed person's spouse or partner); or
  - (b) the first date on which either the self-employed person or the self-employed person's spouse or partner becomes the primary carer in respect of the child (in any other case).
- (4) The divisor of 52 in **subsection (2)** and the divisor of 26 in **subsection (3)** must be reduced by the number of complete weeks during which the eligible self-employed person was not working in a circumstance described in section 71CB(2).

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**54A Section 71CC repealed (Multiple self-employment)**

Section 71CC is repealed.

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**55 Section 71CC replaced (Multiple self-employment) New section 71CE inserted**

Replace section 71CC with: After section 71CD, insert:

*Keeping-in-touch days*

**71CC71CE Keeping-in-touch days**

- (1) An employee is not to be treated as having returned to work because he or she performs 40 hours or fewer of paid work for his or her employer during the employee's parental leave payment period, if that work is performed on keeping-in-touch days in accordance with **subsection (2)**. 5
- (2) An employee may perform 1 or more hours of paid work for his or her employer on a keeping-in-touch day if—
  - (a) both the employee and the employer consent to the employee performing work for the employer on that day; and 10
  - (b) the day is not within 28 days after the date on which the child in respect of whom the employee took parental leave was born.
- ~~(3) If an employee performs paid work for his or her employer within 28 days after the date of birth of the child, or performs more than a total of 40 hours of paid work for his or her employer during a period of parental leave, the employee is treated as having returned to work and all parental leave payments received by the employee in respect of a period after the date on which the employee is treated as having returned to work are recoverable under section 71X as an overpayment. 15~~
- (3) An employee is treated as having returned to work, and all parental leave payments received by the employee in respect of a period after the date on which the employee is treated as having returned to work are recoverable under section 71X as an overpayment, if the employee— 20
  - (a) performs paid work for his or her employer within 28 days after the date of birth of the child; or 25
  - (b) performs more than a total of 40 hours of paid work for his or her employer during a period of parental leave.
- (4) **Subsections (2)(b) and 3(a) do not apply to an employee who performs paid work during a period for which the employee is entitled to receive preterm baby payments under **section 71DA**.** 30

**56 Sections 71D and 71DA replaced**

Replace sections 71D and 71DA with:

**71D Entitlement to parental leave payments**

- (1) A person is entitled to a parental leave payment under this Part, if—
  - (a) the person is— 35
    - (i) an eligible employee or an eligible self-employed person; or
    - (ii) a person to whom all or part of an entitlement to a parental leave payment is transferred under **section 71E**; or

- (iii) a person who succeeds to all or part of an entitlement to a parental leave payment under section 72B; and
- (b) during the period in relation to which the person receives parental leave payments, the person—
- (i) is not employed or self-employed; or 5
- (ii) takes parental leave from their employment or self-employment.
- (2) Despite **subsection (1)** and ~~**sections 71CA(1) and 71CB(1)**~~, a person who becomes the primary carer in respect of a child who is ~~not more than 5 years of age~~under the age of 6 years is not entitled to parental leave payments in respect of that child if ~~the person has previously received parental leave payments in respect of that child.~~ 10
- (a) the person has previously received parental leave payments in respect of that child; or
- (b) the person's spouse or partner has previously received parental leave payments in respect of that child (unless the person's entitlement arises from a transfer under **section 71E** or by succession under section 72B). 15
- (3) This section is subject to **sections 71F to 71IA** (restrictions on parental leave payments and making an application for payment).

*Entitlement to preterm baby payments*

**71DA Entitlement to preterm baby payment** 20

- (1) A person is entitled to a preterm baby payment under this section if—
- (a) the person is entitled to a parental leave payment under **section 71D** in respect of a child; and
- (b) that child is born alive before the end of the 36th week of gestation.
- (2) A preterm baby payment is payable for 1 continuous period that corresponds to the number of weeks, up to a maximum of 13, between— 25
- (a) the date of birth of the child; and
- (b) the date on which the 36th week of gestation would have ended had the child not been born prematurely.
- (3) A preterm baby payment in respect of a child is payable for a period that begins,— 30
- (a) in the case of a child born to the person or to the person's spouse or partner, on the date of the child's birth; or
- (b) in the case of any other person who becomes the primary carer in respect of the child, on the date on which that person becomes the primary carer in respect of the child. 35
- (4) A preterm baby payment in respect of a child is payable for a period that ends on the earliest of—



- (a) the date on which the 36th week of gestation would have ended had the child not been born prematurely; and
- (b) the date on which the person returns to work as an employee or a self-employed person; and
- (c) the date on which the person ceases to be the primary carer in respect of the child. 5
- (5) If a person who is receiving a parental leave payment in respect of a child becomes entitled to a preterm baby payment in respect of that child,—
- (a) the person’s parental leave payment must be suspended for the period in relation to which a preterm baby payment is made to the person; and 10
- (b) the requirement in **section 71J(1)** that a parental leave payment be made for a continuous period does not apply; and
- (c) any week in relation to which a preterm baby payment is made must not be counted when determining the date on which the parental leave payment ends under **section 71L(1)(a)**. 15
- (6) **Subsection (4)(c)** does not apply to the biological mother of a preterm baby.
- (7) Sections **71E**, 71G to 71IA, 71M to 71S, 71U to 71ZB, and 72B apply to a preterm baby payment as if that payment were a parental leave payment.
- 71DB Additional keeping-in-touch hours for primary carers who receive preterm baby payments** 20
- (1) An employee who receives a preterm baby payment may, during the period in relation to which the employee receives that payment (the **payment period**), perform paid work for his or her employer as follows:
- (a) the employee may work up to a total of 3 hours multiplied by the number of weeks in the payment period (the **permitted number of hours**): 25
- (b) the employee may work on any day in the payment period, if both the employee and the employer consent to the employee working on that day.
- (2) The permitted number of hours of paid work under this section is in addition to the number of hours of paid work permitted under **section 71CE(1)**. 30
- (3) An employee is not to be treated as having returned to work because the employee performs up to the permitted number of hours of paid work for the employer.
- (4) If an employee performs more than the permitted number of hours of paid work for the employer during the payment period: 35
- (a) the employee is treated as having returned to work on the day after the date on which the permitted number of hours is exceeded; and

- (b) all preterm baby payments received by the employee in respect of a period after the date on which the permitted number of hours is exceeded are recoverable under section 71X as an overpayment; but
- (c) the employee's entitlement to a parental leave payment under this Part is not affected.

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**57 Section 71E replaced (Entitlement may be transferred to spouse or partner)**

Replace section 71E with:

**71E Entitlement may be transferred to spouse or partner**

- (1) An eligible employee or an eligible self-employed person (the **transferor**) may transfer all or part of his or her entitlement to a parental leave payment in respect of a child to his or her spouse or partner if **subsection (2)** applies to the spouse or partner. 10
- (2) This subsection applies if the spouse or partner is a person who—
  - (a) has or intends to have primary responsibility for the day-to-day care of the child; and 15
  - (b) ~~has been or will have been employed or self-employed for at least an average of 10 hours a week over any 26 of the 52 weeks immediately preceding—~~
    - (i) ~~the expected date of delivery of the child (in the case of a child to be born to the transferor); or~~ 20
    - (ii) ~~the date on which the transferor became the primary carer in respect of the child (in any other case); and~~
  - (b) meets the parental leave payment threshold test; and
  - (c) stops working as an employee or a self-employed person, including by taking a period of parental leave, for the period in relation to which the entitlements are transferred. 25

**58 Section 71F replaced (Subsequent parental leave payments)**

Replace section 71F with:

**71F Subsequent parental leave payments**

- A person is not entitled to a parental leave payment in respect of a child if—
- (a) fewer than 6 months have elapsed after the end of the period for which the person received a parental leave payment for another child; or
  - (b) **section 71D(2)** applies (which prevents a person receiving parental leave payments more than once in respect of the same child). 35

- 59 Section 71G amended (Parental tax credit)**
- (1) In section 71G(1), replace “an employee or a self-employed person” with “a person”.
- (2) Replace section 71G(2) with:
- (2) A person loses his or her entitlement to a parental leave payment under this Part if the person or his or her spouse or partner has received, or both the person and his or her spouse or partner have received, any payment of parental tax credit in respect of the child. 5
- 60 Section 71H repealed (Joint adoptions)**
- Repeal section 71H. 10
- 61 Section 71I amended (Applications for payment)**
- (1) Replace section 71I(1) with:
- (1) A person is not entitled to a parental leave payment unless he or she makes an application for payment in accordance with this section.
- (2) Replace section 71I(2)(a) with: 15
- (a) be made by the employee or self-employed person before the earliest of the following:
- (i) the date on which the person returns to work:
- (ii) the date on which the child attains the age of 12 months (in the case of a child born to the person or to the person’s spouse or partner): 20
- (iii) the date that is the first anniversary of the first date on which either the person or the person’s spouse or partner became the primary carer in respect of the child (in any other case).
- (3) In section 71I(2)(d), delete “employee or self-employed”. 25
- 62 Section 71IA amended (Discretion to approve irregular applications)**
- (1) In section 71IA(1), replace “an employee or a self-employed person” with “a person”.
- (2) In section 71IA(2)(b), delete “employee or self-employed”.
- (3) In section 71IA(5)(d), replace “employee” with “person”. 30
- 63 Section 71J amended (Duration of parental leave payment)**
- (1) In section 71J(b), delete “employee or self-employed”.
- (2) In section 71J, insert as subsection (2):
- (2) This section is subject to **section 71DA(5)(b)** (which applies to a person who becomes entitled to a preterm baby payment while receiving a parental leave payment). 35

**64 Section 71K replaced (Start of parental leave payment)**

Replace section 71K with:

**71K Start of parental leave payment**

- (1) ~~Parental leave payments to a person in respect of a child begin.~~ A parental leave payment in respect of a child is payable for a period that begins— 5
- (a) in the case of a child born to the person or to the person's spouse or partner, on the earlier of—
- (i) the date the person commences parental leave; and
- (ii) the date of confinement; and
- (b) in any other case, on the date on which the person becomes the primary carer in respect of the child. 10
- (2) ~~Despite **subsection (1)**, if a preterm baby payment is payable in respect of a child, and if no parental leave payment has been made in respect of that child, the period in relation to which a parental leave payment is payable does not begin until the day after the date on which the preterm baby payment period ends.~~ 15

**65 Section 71L amendedreplaced (End of parental leave payment for employees)**

Replace section 71L with:

**71L End of parental leave payment**

- (1) A parental leave payment is payable to a person in respect of a child for a period that ends on the earlier of— 20
- (a) 18 weeks after the date on which parental leave payments began in accordance with **section 71K**; or
- (b) the date on which ~~he or she~~the person returns to work as an employee or a self-employed person; or 25
- (c) the date on which the person ceases to ~~have care of~~be the primary carer in respect of the child in respect of whom the parental leave payments are payable.
- (2) **Subsections (1)(b) and (c)** do not apply, and parental leave payments continue to be payable until the date specified in **subsection (1)(a)**, if the person receiving the parental leave payments is the biological mother of the child to whom the payments relate and— 30
- (a) she has a miscarriage or ceases to ~~have the care~~be the primary carer in respect of the child; or
- (b) the child dies. 35
- (3) This section is subject to section 71EA (effect of transfer of entitlement to spouse or partner) and **section 71DA(5)(c)** (entitlement to preterm baby payment).

**66 Section 71LA repealed (End of parental leave payment for self-employed persons)**

Repeal section 71LA.

**67 Section 71M amended (Amount of parental leave payment)**

- (1) In section 71M(1), before “employee”, insert “eligible”. 5
- (2) In section 71M(1)(a), replace “\$325” with “\$516.85”.
- (3) In section 71M(1)(a), replace “section 71N” with “**section 71N(1)**”.
- (4) In section 71M(1)(b)(i), after “parental leave”, insert “payments”.
- (4A) In section 71M(1)(b)(ii), replace “average weekly earnings” with “average weekly income from work”. 10
- (5) In section ~~71M(1)(a)~~71M(1A) (a), replace “\$357.30” with “\$516.85”.
- (6) In section 71M(1A), before “self-employed”, insert “eligible”.
- (7) In section 71M(1A)(a), replace “section 71N” with “**section 71N(1)**”.
- (7A) In section 71M(1A)(b)(i), replace “average weekly earnings” with “average weekly income from work”. 15
- (8) In section 71M(1A)(b)(ii), replace “section 71OA” with “**section 71N(4)**”.
- (9) In section 71M(1B), replace “\$357.30” with “\$516.85”.
- (10) In section 71M(1B), replace “section 71N” with “**section 71N(1)**”.

**68 Section 71N replaced (Annual adjustment of maximum rates of parental leave paymentspayment)** 20

Replace section 71N with:

**71N Annual adjustment of parental leave payment rates**

- (1) The rates of parental leave payment that apply to eligible employees under section 71M(1)(a) and eligible self-employed persons under section 71M(1A)(a) must be adjusted as at 1 July each year by any percentage movement upward in average ordinary time weekly earnings using the method specified in **subsection (2)**. 25
- (2) The adjustment required by **subsection (1)** must be made as follows:
- (a) the percentage movement on which the adjustment is based must be the annual percentage movement in the February average ordinary time weekly earnings (employees) immediately before the 1 July date on which the adjustment is to take effect, as published in the Quarterly Employment Survey; and 30
- (b) if, in that 12-month period, there is a downward percentage movement in average ordinary time weekly earnings (employees), as published in that survey,— 35

- (i) no adjustment takes effect under **subsection (1)** on the following 1 July; and
- (ii) an adjustment on any succeeding 1 July must be based on the percentage movement in the February average ordinary time weekly earnings (employees) between the February series before the date of the last adjustment and the February series before the 1 July on which the next adjustment is to take effect; and 5
- (c) any correction to the Quarterly Employment Survey that is published after 15 May in the current year must be disregarded until the adjustment that takes effect on 1 July in the following year. 10
- (3) In **subsection (2)**, **Quarterly Employment Survey** means the Quarterly Employment Survey published by Statistics New Zealand or, if that survey ceases to be published, any measure certified by the Government Statistician as being equivalent to that survey.
- (4) The minimum rate of parental leave payment that applies to self-employed persons under section 71M(1A)(b)(ii) must be set as at 1 July each year as a weekly amount that is equivalent to 10 hours' work at the highest rate of the minimum wage that applies under the Minimum Wage Act 1983 at that date. 15
- (5) The Minister must publish the adjusted rates for employees and the rates set for self-employed persons on an Internet site maintained by or on behalf of the department. 20
- 69 Section 71OA repealed (Annual adjustment of minimum rates of parental leave payment for self-employed persons)**  
Repeal section 71OA.
- 70 Section 71P amended (Amount of payment not affected by other non-statutory entitlements)** 25  
In section 71P(1), replace “the employee” with “an employee”.
- 71 Section 71U amended (Obligation to notify early return to work, etc)**  
Replace section 71U(1) and (1A) with:
- (1) A person must give notice to the department if, during the period for which the person is receiving a parental leave payment under this Part, the person returns to work as an employee or as a self-employed person. 30
- 72 Section 71V repealed (Non-return to work does not affect payment)**  
Repeal section 71V.
- 73 Section 71Z amended (Offence to mislead department)** 35  
In section 71Z(3), replace “\$5,000” with “\$15,000”.

- 74 Section 71ZB amended (Review of department’s decisions about parental leave payment)**
- In section 71ZB(4), delete “employee or self-employed”.
- 75 Section 72A amended (Eligibility criteria based on average hours of work and allowing for periods of authorised leave)** 5
- (1) Repeal section 72A(1).
- (2) In section 72A(2)(e), replace “on maternity leave” with “a pregnant employee who is on primary carer leave”.
- 76 Section 72B amended (Succession to spouse’s or partner’s entitlements)**
- (1AA) Replace section 72B(1)(b) with: 10
- (b) the spouse or partner becomes the person who has permanent primary responsibility for the care, development, and upbringing of the child, to the exclusion of the employee.
- (1AB) Replace section 72B(2)(b) with:
- (b) the spouse or partner becomes the person who has permanent primary responsibility for the care, development, and upbringing of the child, to the exclusion of the self-employed person. 15
- (1) Replace section 72B(3) with:
- (3) The spouse or partner (**the successor**) may succeed to the employee’s parental leave entitlements if, and only if, ~~he or she~~the successor is an employee and— 20
- (a) meets the criteria for parental leave under any of **section 8, 17, or 23**; and
- (b) gives reasonable notice to his or her employer of his or her wish to succeed under this section.
- (3A) The spouse or partner (**the successor**) may succeed to the employee’s or self-employed person’s parental leave payment entitlements if, and only if, the successor— 25
- (a) ~~will have primary responsibility for the day-to-day care of the child; and~~
- (b) ~~has been or will have been employed or self-employed for at least an average of 10 hours per week over any 26 of the 52 weeks immediately preceding—~~ 30
- (i) ~~the expected date of delivery of the child (in the case of a child born to the successor’s spouse or partner); or~~
- (ii) ~~the date on which the successor’s spouse or partner became the primary carer in respect of the child (in any other case); and~~ 35
- (b) meets the parental leave payment threshold test; and

- (c) stops working as an employee or a self-employed person, including by taking a period of parental leave, for the period in relation to which the parental leave payments are made; and
- (d) gives reasonable notice to the department of his or her wish to succeed to a parental leave payment under this section. 5
- (2) After section 72B(4), insert:
- (5) **Subsections (1) and (2)** are subject to **subsections (3) and (3A)**.
- (6) This section applies to a member of the Armed Forces as if the member of the Armed Forces were an employee of the Chief of Defence Force, except that a member of the Armed Forces may not succeed to the member's spouse's or partner's entitlement to parental leave. 10
- 77 Section 72C amended (Date of succession to spouse's or partner's entitlements)**
- In section 72C(2), replace "section 72B(3)" with "**section 72B(3A)**".
- 78 Section 73 amended (Regulations)** 15
- (1) Replace section 73(1)(ab) with:
- (ab) prescribing the information that must be given in, or the documents that must be attached to, an application for, or other notice relating to, a parental leave payment:
- (2) After section 73(1)(aba), insert: 20
- (abb) prescribing the evidence that must be provided to an employer by an employee who requests parental leave in respect of a child to whom the employee, or the employee's spouse or partner, does not give birth:
- (abc) prescribing the information that must be given in, or the documents that must be attached to, an application for, or other notice relating to, a pre-term baby payment: 25
- (3) Repeal section 73(1)(ac) and (ada).
- 79 Schedule 1AA amended**
- In Schedule 1AA, after Part 2, insert the **Part 3** set out in **Schedule 1** of this Act. 30
- 80 Consequential amendments to Parental Leave and Employment Protection Amendment Act 2014**
- (1) This section amends the Parental Leave and Employment Protection Amendment Act 2014.
- (2) Repeal sections 21, 22, 23, 24, 25, 27, 29 and 30. 35
- (3) In section 26, delete "and (c)(i)".



<b>81</b>	<b>Consequential amendments to other enactments</b> Amend the enactments specified in <b>Schedule 2</b> as set out in that schedule.	
<b>Part 2</b> <b>Amendments to Employment Relations Act 2000</b>		
<b>82</b>	<b>Principal Act</b> This <b>Part</b> amends the Employment Relations Act 2000 (the <b>principal Act</b> ).	5
<b>83</b>	<b>Section 3 amended (Object of this Act)</b>	
(1)	Replace section 3(a)(v) with: (v) by promoting mediation as the primary problem-solving mechanism other than for enforcing employment standards; and	10
(2)	After section 3(a), insert: (ab) to promote the effective enforcement of employment standards, in particular by conferring <del>additional</del> enforcement powers on Labour Inspectors, the Authority, and the court; and	
<b>84</b>	<b>New section 4B and cross-heading inserted</b> After section 4A, insert:  <i>Records relating to minimum entitlement provisions</i>  <b>4B Employer's general obligation to keep records relating to minimum entitlement provisions</b>	15
(1)	An employer must keep records in sufficient detail to demonstrate that the employer has complied with minimum entitlement provisions.	20
(2)	The obligation in <b>subsection (1)</b> is in addition to the requirements in the other provisions of this Act or any other enactment relating to the keeping of records.	
<b>85</b>	<b>Section 5 amended (Interpretation)</b>	25
(1)	In section 5, insert in its appropriate alphabetical order: <b><u>agreed hours of work</u></b> means the hours of work specified in accordance with <b>section 67C(1)</b> <b>employment standards</b> means any of the following:	
(a)	the requirements of any of sections 64, 69Y, 69ZD, 69ZE, and 130:	30
(b)	the provisions of the Equal Pay Act 1972:	
(c)	the minimum entitlements and payment for those under the Holidays Act 2003:	
(d)	the requirements of sections 81 and 82 of the Holidays Act 2003:	

- (e) the minimum entitlements under the Minimum Wage Act 1983:
- (f) the provisions of the Wages Protection Act 1983
- (2) In section 5, replace the definition of **minimum entitlements** with:
- minimum entitlement provisions** means—
- (a) the minimum entitlements and payment for those under the Holidays Act 2003; and
- (b) the minimum entitlements under the Minimum Wage Act 1983; and
- (c) the provisions of the Wages Protection Act 1983
- 86 Section 64 amended (Employer must retain copy of individual employment agreement or individual terms and conditions of employment)** 10
- In section 64(4), after “Labour Inspector”, insert “or the employee concerned”.
- 86A Section 65 amended (Form and content of individual employment agreement)**
- In section 65(2)(a)(iv), before “an indication”, insert “any agreed hours of work specified in accordance with **section 67C** or, if no hours of work are agreed.”. 15
- 87 New sections 67C to 67H inserted**
- After section 67B, insert:
- 67C Agreed hours of work**
- (1) ~~For the purposes of **sections 67D and 67E(2)(b)**, **agreed hours of work** means,~~ Hours of work agreed by an employer and employee must be specified as follows: 20
- (a) in the case of an employee covered by a collective agreement,—
- (i) ~~any applicable hours of work specified in the collective agreement; and~~ 25
- (ii) ~~if **subparagraph (i)** does not apply, any agreed hours of work included under any additional terms and conditions included if **section 61** applies,~~ in the employee’s additional terms and conditions of employment under **section 61** included under that section; or
- (b) in the case of an employee covered by an individual employment agreement, in the employee’s individual employment agreement ~~any hours of work agreed under **section 65(2)(a)(iv)**.~~ 30
- (2) In **subsection (1)**, **hours of work** includes any or all of the following:
- (a) the number of guaranteed hours of work;
- (b) the days of the week on which work is to be performed; 35
- (c) the start and finish times of work;

(d) any flexibility in the matters referred to in **paragraph (b) or (c).**

**~~67D~~ Employer’s obligations in relation to agreed hours of work**

(1) ~~This section applies if an employee’s agreed hours of work are covered by **section 67C(1)(a)(ii) or (b).**~~

(2) ~~The employee’s employer must ensure that the employee’s agreed hours of work are specified in—~~ 5

(a) ~~the employee’s intended individual employment agreement or the individual terms and conditions of employment for the purposes of section 63A; and~~

(b) ~~the individual employment agreement and the copy of it or individual terms and conditions of employment and the copy of them for the purposes of sections 64 and 65.~~ 10

**67E Availability provision ~~unenforceable unless agreed compensation payable~~**

(1) In this section and **section 67F67EA**, an **availability provision** means a provision in an employment agreement under which— 15

(a) the employee’s performance of work is conditional on the employer making work available to the employee; and

(b) ~~there is no obligation on the employer to make work available to the employee; but~~

(c) the employee is required to be available to accept any work that the employer makes available. 20

(2) To avoid doubt, an availability provision may relate to—

(a) all work performed under the employment agreement; or

(b) ~~to~~ work performed during hours of work that are additional to any agreed hours of work. 25

(3) ~~An availability provision is unenforceable against an employee unless the employee’s employment agreement provides for the payment of compensation to the employee for making himself or herself available to perform work under the availability provision.~~

(3) An availability provision must not be included in an employment agreement unless— 30

(a) the employer has genuine reasons based on reasonable grounds for including the availability provision; and

(b) the availability provision provides for the payment of reasonable compensation to the employee for making himself or herself available to perform work under the provision. 35

(3A) An availability provision that is not included in an employment agreement in accordance with **subsection (3)** is not enforceable against the employee.

- (3B) In considering whether there are genuine reasons based on reasonable grounds for including an availability provision, an employer must have regard to all relevant matters, including the following:
- (a) whether it is practicable for the employer to meet business demands for the work to be performed by the employee without including an availability provision: 5
  - (b) the number of hours for which the employee would be required to be available:
  - (c) the proportion of the hours referred to in **paragraph (b)** to the agreed hours of work. 10
- (3C) Compensation payable under an availability provision must be determined having regard to all relevant matters, including the following:
- (a) the number of hours for which the employee is required to be available:
  - (b) the proportion of the hours referred to in **paragraph (a)** to the agreed hours of work: 15
  - (c) the nature of any restrictions resulting from the availability provision:
  - (d) the rate of payment under the employment agreement for the work for which the employee is available:
  - (e) if the employee is remunerated by way of salary, the amount of the salary. 20
- ~~(4) An employee is entitled to refuse to perform work under an availability provision if the employee's employment agreement does not provide for the payment of compensation to the employee for making himself or herself available to perform work under the availability provision.~~
- (5) For the purposes of **subsection (3)(b)**, an employer and employee may agree that the employee's remuneration includes compensation for the employee making himself or herself available for work if— 25
- (a) the employee's employment agreement contains an availability provision of the type referred in **subsection (2)(b)**; and
  - (b) the employee is remunerated for the agreed hours of work by way of salary. 30
- 67EA Employee may refuse to perform certain work**
- An employee is entitled to refuse to perform work in addition to any guaranteed hours specified in the employee's employment agreement if the agreement does not contain an availability provision that provides for the payment of reasonable compensation to the employee for making himself or herself available to perform work under the availability provision. 35

<b>67F</b>	<b>Employee not to be treated adversely because of refusal to <del>accept</del> perform certain work <del>under availability provision</del></b>	
(1)	<del>This section applies in relation to an employee who refuses, and is entitled to refuse, to perform work under <b>section 67E</b>.</del>	
(2)	<del>The employee's employer must not treat the employee adversely because the employee refused to perform the work.</del>	5
(1)	<u>An employer must not treat adversely an employee who refuses to perform work under <b>section 67EA</b>.</u>	
(2)	<u>In this section, an employer <b>treats an employee adversely</b> if the employer—</u>	
	(a) <u>refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially the same qualifications, experience, or skills employed in the same or substantially similar circumstances; or</u>	10
	(b) <u>dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or</u>	15
	(c) <u>retires that employee, or requires or causes that employee to retire or resign.</u>	20
(3)	<u>For the purposes of <b>subsection (2)(b)</b>, <b>detriment</b> includes anything that has a detrimental effect on that employee's employment, job performance, or job satisfaction.</u>	
<b>67G</b>	<b>Cancellation of shifts</b>	
(1)	This section applies in relation to an employee who is required <u>under the employee's employment agreement</u> to undertake shift work.	25
(2)	The employer must ensure that the employee's employment agreement specifies—	
	(a) the period of notice required <u>before the employer cancels a shift of the employee</u> <del>for cancellation of the employee's shift work if the employer proposes to cancel an employee's shift</del> ; and	30
	(b) the compensation payable to the employee if <u>the employer cancels a shift</u> <del>any shift work</del> of the employee <del>is cancelled</del> without giving the employee notice in accordance with <b>paragraph (a)</b> <u>the employment agreement</u> .	35
(3)	For the purposes of <b>subsection (2)(a)</b> , the period of notice <u>and the compensation</u> must be reasonable.	
(4)	The employer must not cancel the employee's shift without—	

- (a) giving the employee notice in accordance with a ~~provision~~ requirement in the employee's employment agreement specified under **subsection (2)(a)**; or
- (b) providing the employee with the compensation ~~in accordance with a provision~~ specified in the employee's employment agreement under **subsection (2)(b)**. 5
- (4A)** Compensation payable for cancellation of shifts must be determined having regard to all relevant matters, including the following:
- (a) the period of notice given before cancelling the shift;
- (b) the remuneration that the employee would have received for working the shift; 10
- (c) whether the nature of the work requires the employee to incur any costs in preparing for the shift.
- (5) ~~An~~ Without limiting **subsection (4A)**, an employee is entitled to what he or she would have earned for working a shift if— 15
- (a) the shift is cancelled and the employee's employment agreement does not comply with ~~**subsection (2)**~~ this section; or
- (b) the shift is cancelled, but the employee has not been notified of the cancellation until the commencement of the shift; or
- (c) the remainder of a shift is cancelled after the shift ~~has begun, but the employee has not been notified of the cancellation before the commencement of the shift.~~ 20
- (5A)** If an employee whose shift is cancelled is entitled, under his or her employment agreement or under **subsection (5)**, to the remuneration that he or she would have earned for working the shift, that remuneration is a part of the employee's ordinary weekly pay and relevant daily pay for the purposes of sections 8 and 9 of the Holidays Act 2003. 25
- ~~(6) In this section, **shift work** means any period of work that an employer has agreed to make available to an employee.~~
- (6)** In this section, **shift work** means work performed in a system of work in which employees succeed each other according to a pattern, including a rotating pattern, which may— 30
- (a) be continuous or discontinuous; and
- (b) involve working at different times on different days of the week.
- 67H** ~~Provisions prohibiting or restricting~~ Secondary employment provisions 35
- (1) ~~This section applies to a provision in an employee's employment agreement~~ In this section, a **secondary employment provision** is a provision in an employee's employment agreement that—

- (a) prohibits or restricts the employee from performing work for another person; or
- (b) prohibits or restricts the employee from performing work for another person without the employer’s consent.
- (2) ~~A provision to which **subsection (1)(a) or (b)** applies is unenforceable against an employee except to the extent that—~~ 5
  - ~~(a) there is a genuine reason for the provision; and~~
  - ~~(b) the reason is based on reasonable grounds; and~~
  - ~~(c) the reason is stated in the employee’s employment agreement.~~
- (2) A secondary employment provision must not be included in an employee’s employment agreement unless— 10
  - (a) the employer has genuine reasons based on reasonable grounds for including the provision; and
  - (b) the reasons are stated in the employee’s employment agreement.
- (3) For the purposes of **subsection (2)(a)** and without limiting that provision, a ~~genuine reason~~ **genuine reason** may relate to— 15
  - (a) protecting an employer’s commercially sensitive information; or
  - (b) protecting an employer’s intellectual property rights; or
  - (c) protecting an employer’s commercial reputation; or
  - (d) preventing a real conflict of interest that cannot be managed without including a secondary employment provision. 20
- (3A) A secondary employment provision in an employee’s employment agreement must not—
  - (a) prohibit the employee from performing work for another person unless it is necessary having regard to the reasons for which the provision is included; or 25
  - (b) restrict the employee from performing work for another person for a greater extent than is necessary having regard to the reasons for which the provision is included.
- (4) This section does not limit or affect the law relating to restraint of trade provisions. 30

**88 Section 103 amended (Personal grievance)**

After section 103(1)(g), insert:

- ~~(h) that the employee’s employer has failed to comply with **sections 67G to 67H.**~~ 35
- (h) that the employee has been disadvantaged by the employee’s employment agreement not being in accordance with **sections 67C, 67E, 67G, and 67H;** or

(i) that the employee's employer has contravened **section 67F or 67G(4)**.

**89 Section 130 amended (Wages and time record)**

(1) Replace section 130(1)(g) with:

(g) the number of hours worked each day in a pay period and the pay for those hours:

5

(2) After section 130(1), insert:

(1A) The wages and time record must be kept—

(a) in written form; or

(b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.

10

(1B) If an employee's hours of work and pay are agreed and the employee works those hours (the **usual hours**), it is sufficient compliance with **subsection (1)(g)** if those usual hours and pay are stated in—

(a) the wages and time record; or

(b) the employment agreement; or

(c) a roster or any other document or record used in the normal course of the employee's employment.

15

(1C) In **subsection (1B)**, an employee's **usual hours** include any reasonable additional hours worked in accordance with the employee's employment agreement.

20

(3) Repeal section 130(3).

(4) After section 130(4), insert:

(5) An action to recover a penalty under subsection (4) may also be brought by a Labour Inspector.

**90 New section 133A inserted (Matters Authority and court to have regard to in determining amount of penalty)**

25

After section 133, insert:

**133A Matters Authority and court to have regard to in determining amount of penalty**

In determining an appropriate penalty for a breach referred to in section 133, the Authority or court (as the case may be) must have regard to all relevant matters, including—

30

(a) the object stated in section 3; and

(b) the nature and extent of the breach or involvement in the breach; and

(c) whether the breach was intentional, inadvertent, or negligent; and

35

(d) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person in-



	volved in the breach, because of the breach or involvement in the breach; and	
(e)	whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and	5
(f)	the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee; and	
(g)	whether the person in breach or the person involved in the breach has previously been found by the Authority <u>or the court</u> in proceedings under this Act, or any other enactment, to have engaged in any similar conduct.	10

**90A Section 135 amended (Recovery of penalties)**

After section 135(5), insert:

(6)	<u>Despite subsection (5), if a court refuses to make a pecuniary penalty order under <b>section 142E</b>, an action for the recovery of a penalty under this Act in relation to the same matter must be commenced within 3 months after the refusal.</u>	15
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**91 New section 135A inserted (Chief executive or Labour Inspector may enforce payment of penalty)** 20

After section 135, insert:

<b>135A Chief executive or Labour Inspector may enforce payment of penalty</b>	
The chief executive or a Labour Inspector may recover in a District Court as a debt due to the Crown any penalty ordered by the Authority or the court under section 135 <u>to be paid to the Crown.</u>	25

**92 Section 139 amended (Power of court to order compliance)**

(1)	After section 139(1), insert:	
(1A)	This section also applies to a person in relation to whom the court has made a declaration of breach under <b>section 142B</b> .	
(2)	In section 139(2), replace “or requirement” with “requirement, or (in the case of a declaration of breach) the provision that the declaration relates to”.	30

**93 New section 140AA inserted (Sanctions for breaches without compliance order)**

After section 140, insert:

<b>140AA Sanctions for breaches without compliance order</b>		35
(1)	This section applies in relation to an order, determination, direction, or requirement referred to in section 137(1)(b) or 139(1)(b).	

- (2) If, after the order, determination, direction, or requirement is made or given, there has been non-observance of or non-compliance with the order, determination, direction, or requirement, the court may, on the application of a Labour Inspector, do 1 or more of the things specified in section 140(6)(a) to (e) without first making a compliance order. 5
- (3) However, the court must not do any of the things specified in section 140(6)(a) to (e) unless the court—
- (a) has provided the person in default with the opportunity to make submissions to the court; and
- (b) is satisfied that— 10
- (i) the matter arises from a breach of employment standards and relates to the payment of wages or other money owed, or penalties ordered, as a result of the breach; and
- (ii) the matter involves a breach that was not minor or inadvertent; and 15
- (iii) there was no reasonable excuse for the breach; and
- (iv) there are reasonable grounds for believing that, if a compliance order were made, the person in default would not comply with it.

**93A Section 140 amended (Further provisions relating to compliance order by court)** 20

After section 140(6), insert:

- (7) An order under subsection (6)(d) may direct that the whole or any part of the fine must be paid to the employee concerned.

**94 Section 141 amended (Enforcement of order)**

- (1) In section 141, replace “this Act” with “any of the Acts referred to in section 223(1)”. 25
- (2) In section 141, insert as ~~subsections (2) and (3)~~ subsection (2):
- (2) To avoid doubt, an order imposing a fine is enforceable under Part 3 of the Summary Proceedings Act 1957.
- (3) ~~In an order imposing a fine under section 140(6), the order may direct that the whole or any part of the fine must be paid to the employee concerned.~~ 30

**95 New Part 9A inserted**

After section 142, insert:

## Part 9A

### Additional provisions relating to enforcement of employment standards

#### 142A Object of this Part

- (1) The object of this Part is to provide additional enforcement measures to promote the more effective enforcement of employment standards (especially minimum entitlement provisions) by— 5
- (a) providing for a Labour Inspector to apply to the court for—
    - (i) declarations of breach in relation to breaches of minimum entitlement provisions that are serious: 10
    - (ii) pecuniary penalty orders for breaches of minimum entitlement provisions that are serious:
    - (iii) compensation orders for serious breaches of minimum entitlement provisions to compensate employees who have suffered or are likely to suffer loss or damage as a result: 15
    - (iv) banning orders based on certain grounds, including persistent breach of employment standards; and
  - (b) making insurance for pecuniary penalties unlawful; and
  - (c) providing for—
    - (i) what is meant by being involved in a breach of employment standards; and 20
    - (ii) when states of mind or conduct by certain persons are to be attributed to bodies corporate and principals; and
  - (d) providing certain defences to breaches of minimum entitlement provisions. 25
- (2) The provisions in this Part are in addition to the provisions in—
- (a) sections 133 to 142; and
  - (b) sections 223 ~~and~~ to 235.

#### *Declarations of breach*

#### 142B Court may make declarations of breach 30

- (1) A Labour Inspector (but no other person) may apply to the court for a declaration of breach.
- (2) The court may make a declaration of breach if the court is satisfied that—
- (a) a person has—
    - (i) breached a minimum entitlement provision; or 35

- (ii) been involved in a breach of a minimum entitlement provision; and
- (b) the breach of the minimum entitlement provision is serious.
- (3) Whether a breach of a minimum entitlement provision is serious is a question of fact. 5
- (4) In determining whether a breach of a minimum entitlement provision is serious, the court ~~must~~ may take into account—
  - (a) the amount of money involved:
  - (b) whether the breach comprises a single instance or a series of instances:
  - (c) if the breach comprises a series of instances,— 10
    - (i) how many instances it comprises; and
    - (ii) the period over which they occurred:
  - (d) whether the breach was intentional:
  - (e) whether the employer concerned has complied with any relevant record-keeping obligations imposed by any Act: 15
  - (f) any other relevant matter.

#### **142C Purpose and effect of declarations of breach**

- (1) The purpose of a declaration of breach is to enable an applicant for an order against a person under this Part to rely on the declaration of breach made against the person in the proceedings for that order and not be required to prove the breach or involvement in the breach. 20
- (2) Accordingly, a declaration of breach made against a person is conclusive evidence in relation to the person of the matters that must be stated in it under **section 142D**.

#### **142D What declaration of breach must state**

 25

A declaration of breach must state the following:

- (a) the minimum entitlement provision that the breach or involvement in the breach relates to; and
- (b) the person the declaration applies to; and
- (c) the conduct that constituted the breach or the involvement in the breach. 30

#### *Pecuniary penalty orders*

#### **142E Pecuniary penalty orders**

- (1) The court may make a pecuniary penalty order against a person in respect of whom the court has made a declaration of breach.
- (2) An application for a pecuniary penalty order may be made— 35
  - (a) only by a Labour Inspector; and

- (b) at the following times:
  - (i) ~~the same time as the application~~ when application is made for a declaration of breach; or
  - (ii) subsequently, whether before or after the application for a declaration of breach is determined.

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**142F Matters court to have regard to in determining amount of pecuniary penalty**

In determining an appropriate pecuniary penalty under **section 142E**, the court must have regard to all relevant matters, including—

- (a) the object stated in section 3; and
- (b) the nature and extent of the breach or involvement in the breach; and
- (c) whether the breach was intentional, inadvertent, or negligent; and
- (d) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person involved in the breach, because of the breach or involvement in the breach; and
- (e) whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and
- (f) the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee; and
- (g) whether the person in breach or the person involved in the breach has previously been found by the Authority or the court in proceedings under this Act; or any other enactment to have engaged in any similar conduct.

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**142G Maximum amount of pecuniary penalty**

If the court determines that it should make a pecuniary penalty order, the maximum amount it may specify in the order is,—

- (a) in the case of an individual, \$50,000;
- (b) in the case of a body corporate, the greater of—
  - (i) \$100,000; or
  - (ii) 3 times the amount of the financial gain made by the body corporate from the breach.

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**142H Chief executive or Labour Inspector may enforce payment of pecuniary penalty**

The chief executive or a Labour Inspector may recover in a District Court as a debt due to the Crown any pecuniary penalty ordered by the court under **section 142E**.

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**142I Limitation period for actions for pecuniary penalty orders**

An application for a pecuniary penalty order under this Part must be made within 12 months after the earlier of—

- (a) the date when the breach first became known to a Labour Inspector; ~~or~~ and
- (b) the date when the breach should reasonably have become known to a Labour Inspector.

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*Compensation orders***142J Court may make compensation orders**

- (1) The court may make a compensation order against a person if—
  - (a) the court has made a declaration of breach in respect of the person; and
  - (b) the court is satisfied that the employee concerned (the **aggrieved employee**) has suffered, or is likely to suffer, loss or damage because of the breach.
- (2) The court may not make a compensation order against a person involved in a breach for wages or other money payable to an employee except to the extent that the employee's employer is unable to pay the wages or other money.
- (3) An application for a compensation order may be made—
  - (a) only by a Labour Inspector or the aggrieved employee; and
  - (b) at one of the following times:
    - (i) the same time as the application for a declaration of breach; or
    - (ii) subsequently, whether before or after the application for a declaration of breach is determined.

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**142K Application of section 132 of this Act and section 83 of the Holidays Act 2003**

Section 132 of this Act and section 83 of the Holidays Act 2003 apply for the purposes of **section 142J** to the extent that they are relevant to the breach in respect of which the compensation order is being sought.

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**142L Terms of compensation orders**

- (1) If **section 142J** applies, the court may make any order it thinks just to compensate an aggrieved employee in whole or in part for the loss or damage, or to prevent or reduce the loss or damage, referred to in that section.
- (2) An order under this section may include an order to direct a relevant person to pay to the aggrieved employee the amount of the loss or damage (in whole or in part). 5
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) In this section, **relevant person** means—
- (a) any person in breach; or 10
  - (b) any person involved in the breach.

*Banning orders***142M Banning orders**

- (1) The court may make a banning order against a person if—
- (a) the court has made a declaration of breach in respect of the person; or 15
  - (b) the court is satisfied that the person has persistently breached, or persistently been involved in the breach of, 1 or more employment standards; or
  - (c) the person has been convicted of an offence under section 351 of the Immigration Act 2009. 20
- (2) The persons who may apply for a banning order are—
- (a) a Labour Inspector;
  - (b) an immigration officer under the Immigration Act 2009.
- (3) For the purposes of **subsection (1)(b)**, a past breach is not evidence that a person has persistently breached, or persistently been involved in the breach of, 1 or more employment standards if the person concerned established a defence under **section 142ZA or 142ZB** (as the case may be) in relation to that past breach. 25

**142N Terms of banning order**

- (1) If the court makes a banning order, the order must prohibit the person from doing 1 or more of the following: 30
- (a) entering into an employment agreement as an employer;
  - (b) being an officer of an employer;
  - (c) being involved in the hiring or employment of employees.
- (2) A person who is subject to a banning order may do something prohibited by the order if the person first obtains the leave of the court to do so. 35

(3)	In this section, <b>officer</b> means—	
	(a) a person occupying the position of a director of a company if the employer is a company:	
	(b) a partner if the employer is a partnership:	
	(c) a general partner if the employer is a limited partnership:	5
	(d) a person occupying a position comparable with that of a director of a company if the employer is not a company, partnership, or limited partnership:	
	(e) any other person occupying a position in the employer if the person is in a position to exercise significant influence over the management or administration of the employer.	10
<b>142O</b>	<b>Duration of banning order</b>	
	A banning order under <b>section 142M</b> has effect for—	
	(a) 10 years; or	
	(b) any shorter period specified in the order.	15
<b>142P</b>	<b>Variation of banning order</b>	
	A banning order may be—	
	(a) made subject to the terms and conditions that the court thinks fit; and	
	(b) cancelled or varied at any time by the court.	
<b>142PA</b>	<b>General provisions for banning orders</b>	20
(1)	<u>A Registrar of the court must, as soon as practicable after making a banning order,—</u>	
	(a) <u>give notice to the chief executive that the order has been made; and</u>	
	(b) <u>publish a notice in the <i>Gazette</i> stating—</u>	
	(i) <u>the name of the person against whom the banning order has been made; and</u>	25
	(ii) <u>the terms of the order; and</u>	
	(iii) <u>the period or dates for which the order applies.</u>	
(2)	<u>A person intending to apply for the leave of the court under <b>section 142N(2)</b> must give the chief executive at least 10 working days' written notice of that intention.</u>	30
(3)	<u>The department, and any other person the court thinks fit, may attend and be heard at the hearing of an application for leave.</u>	



**142Q Offence to breach banning order**

A person who breaches a banning order commits an offence and is liable on conviction by a District Court or the High Court to a fine not exceeding \$200,000, ~~or~~ a term of imprisonment not exceeding 3 years, or both.

*Standard of proof*

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**142R Standard of proof**

To avoid doubt, in proceedings under this Part for a declaration of breach, pecuniary penalty order, compensation order, or banning order, the standard of proof is the standard of proof that applies in civil proceedings.

*Interrelationship of orders*

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**142S More than one kind of order may be made for same breach**

- (1) The court may make one kind of order under this Part against a person even though the court has made another kind of order, whether under this Part or another Part, against the person in relation to the same breach.
- (2) Without limiting **subsection (1)** and by way of example,—
  - (a) a pecuniary penalty order and a compliance order may be made against a person for the same breach:
  - (b) a compensation order and a banning order may be made against a person for the same breach.

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**142T No pecuniary penalty and criminal sanction or other penalty for same conduct**

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- (1) A person cannot be ordered to pay a pecuniary penalty and be liable to a fine or term of imprisonment under this Act or the Immigration Act 2009 for the same conduct.
- (2) A person cannot be ordered to pay a pecuniary penalty and be liable to another penalty under this Act for the same breach of employment standards.

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*Insurance against pecuniary penalties unlawful and of no effect***142U Insurance against pecuniary penalties unlawful**

- (1) To the extent that an insurance policy or a contract of insurance indemnifies or purports to indemnify a person for the person's liability to pay a pecuniary penalty under this Act,—
  - (a) the policy or contract is of no effect; and
  - (b) no court or tribunal has jurisdiction to grant relief in respect of the policy or contract, whether under section 7 of the Illegal Contracts Act 1970 or otherwise.
- (2) A person must not—

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- (a) enter into, or offer to enter into, a policy or contract described in **subsection (1)**; or
- (b) indemnify, or offer to indemnify, another person for the other person's liability to pay a pecuniary penalty under this Act; or
- (c) be indemnified, or agree to be indemnified, by another person for that person's liability to pay a pecuniary penalty under this Act; or
- (d) pay to another person, or receive from another person, an indemnity for a pecuniary penalty under this Act.

*Liability of persons involved in breach, bodies corporate, and principals*

**142V Involvement in breaches**

- (1) In this Act, a person is **involved in a breach** if the breach is a breach of employment standards and the person—
  - (a) has aided, abetted, counselled, or procured the breach; or
  - (b) has induced, whether by threats or promises or otherwise, the breach; or
  - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the breach; or
  - (d) has conspired with others to effect the breach.
- (2) However, if the person in breach is a company, partnership, limited partnership, or sole trader, a person holding a position in relation to the person in breach may be treated as a person involved in a breach only if the person is an officer of the person in breach.
- (3) For the purposes of **subsection (2)**, the following persons are to be treated as officers of a person in breach:
  - (a) a person occupying the position of a director of a company if the person in breach is a company;
  - (b) a partner if the person in breach is a partnership;
  - (c) a general partner if the person in breach is a limited partnership;
  - (d) a person occupying a position comparable with that of a director of a company if the person in breach is not a company, partnership, or limited partnership;
  - (e) any other person occupying a position in relation to the person in breach if the person is in a position to exercise significant influence over the management or administration of the person in breach.
- (4) This section does not apply to proceedings for offences ~~(but see Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences).~~

**142W Person involved in breach liable to penalty**

- (1) A person involved in a breach is liable to a penalty under this Act if—

- (a) the person is involved in the breach within the meaning of **section 142V**; and
- (b) this Act provides a penalty for the breach.
- (2) An application for a penalty against a person involved in a breach may be made only by a Labour Inspector. 5
- 142X When person involved in breach liable for default in payment of wages or other money due to employee**
- (1) A Labour Inspector or an employee may recover from a person who is not the employee's employer any wages or other money payable to the employee if—
- (a) there has been a default in the payment of wages or other money payable to the employee; and 10
- (b) the default is due to a breach of employment standards; and
- (c) the person is a person involved in the breach within the meaning of **section 142V**.
- (2) However, arrears in wages or other money may be recovered under **subsection (1)** only,— 15
- (a) in the case of recovery by an employee, with the prior leave of the Authority or the court; and
- (b) to the extent that the employee's employer is unable to pay the arrears in wages or other money. 20
- 142Y State of mind of directors, employees, or agents attributed to body corporate or other principal**
- (1) If, in a proceeding under this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of his or her actual or apparent authority, had that state of mind. 25
- (2) If, in a proceeding (other than a proceeding for an offence) under this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, acting within the scope of his or her actual or apparent authority, had that state of mind. 30
- (3) In this Act, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose. 35

**142Z Conduct of directors, employees, or agents attributed to body corporate or other principal**

- (1) Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having been engaged in also by the body corporate: 5
- (a) a director, an employee, or an agent of the body corporate who is acting within the scope of his, her, or its actual or apparent authority:
  - (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, an employee, or an agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee, or agent. 10
- (2) Conduct engaged in on behalf of a person other than a body corporate (A) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by A:
- (a) an employee or an agent of A who is acting within the scope of his, her, or its actual or apparent authority: 15
  - (b) any other person who is acting at the direction or with the consent or agreement (whether express or implied) either of A or of an employee or an agent of A, given within the scope of the actual or apparent authority of the employee or agent. 20

*Defences ~~for person in~~ relating to breach of minimum entitlement provisions*

**142ZAA Proceedings in which defences apply**

The defences described in **sections 142ZA and 142ZB** apply to the following proceedings in relation to a breach of a minimum entitlement provision:

- (a) an action to recover wages or other money under **section 142X** of this Act, **section 77A** of the Holidays Act 2003, **section 11AA** of the Minimum Wage Act 1983, or **section 11A** of the Wages Protection Act 1983: 25
- (b) an action to recover a penalty under section 135 of this Act, section 76 of the Holidays Act 2003, section 10 of the Minimum Wage Act 1983, or section 13 of the Wages Protection Act 1983: 30
- (c) an application under **section 142E** for a pecuniary penalty order:
- (d) an application under **section 142J** for a compensation order:
- (e) an application under **section 142M(1)(a)** for a banning order.

**142ZA General defences Defences for person in breach** 35

- (1) In a proceeding referred to in **section 142ZAA** ~~any proceeding under this Act~~ against a person (A) for a breach of a minimum entitlement provision, it is a defence if A proves that—

- (a) A's breach was due to reasonable reliance on information supplied by another person; or
- (b) both of the following apply:
- (i) A's breach was due to the act or default of another person, or to an accident or to some other cause beyond A's control; and 5
- (ii) A took reasonable precautions and exercised due diligence to avoid the breach.
- (1A)** In a proceeding referred to in **section 142ZAA(1)(d)**, a defence under **subsection (1)** does not apply to the extent that the compensation is in relation to wages or other money owed as a result of a breach of a minimum entitlement provision. 10
- (2) For the purposes of **subsection (1)(a) and (b)**, **another person** does not include a director, an employee, or an agent of A.
- ~~*Defences for person involved in breach of minimum entitlement provisions*~~
- 142ZB** ~~General defences~~ Defences for person involved in breach 15
- (1) This section applies if—
- (a) a person (A) breaches a minimum entitlement provision; and
- (b) another person (B) is involved in the breach.
- (2) ~~In a proceeding referred to in **section 142ZAA** any proceeding under this Act~~ against B for involvement in the breach of a minimum entitlement provision, it is a defence if B proves that— 20
- (a) B's involvement in the breach was due to reasonable reliance on information supplied by another person; or
- (b) B took all reasonable and proper steps to ensure that A complied with the provision. 25
- (3) For the purposes of **subsection (2)(a)**, **another person** does not include a director, an employee, or an agent of B.
- ~~**142ZC** Availability of defence does not cancel employee's entitlement to wages and other money~~
- ~~To avoid doubt, the availability of a defence under **section 142ZA or 142ZB** in relation to a breach of a minimum entitlement provision does not affect or limit an employee's entitlement under the provision.~~ 30
- 96** **Section 148A amended (Minimum entitlements)**
- (1) Replace the heading to section 148A with "**Certain entitlements may be subject to mediation and agreed terms of settlement**". 35
- (2) In section 148A(1), replace "Minimum entitlements" with "The entitlements specified in **subsection (3)**".

- (3) In section 148A(2), replace “minimum entitlements” with “entitlements specified in **subsection (3)**”.
- (4) After section 148A(2), insert:
- (3) ~~Subsection (1)~~ This section applies to wages or holiday pay or other money payable by the employer to the employee under the Minimum Wage Act 1983 or the Holidays Act 2003. 5
- 97 Section 159 amended (Duty of Authority to consider mediation)**
- (1) Repeal section 159(1A).
- (2) After section 159(2), insert:
- (3) This section applies subject to **section 159AA**. 10
- 98 New section 159AA inserted (When mediation in relation to breach of employment standards is appropriate)**
- After section 159, insert:
- 159AA When mediation in relation to breach of employment standards is appropriate** 15
- If a matter before the Authority relates ~~substantially~~ principally to an alleged breach of employment standards relating to an employee, the Authority must not give a direction that the parties use mediation or further mediation unless—
- (a) ~~the facts of the alleged breach are in dispute and~~ the Authority is satisfied that mediation will be a cheaper and quicker way to clarify ~~the disputed~~ facts or otherwise assist the Authority in considering the matter; or 20
- (b) the alleged breach appears to be minor and inadvertent; or
- (c) both parties agree; or
- (d) the Authority is satisfied that, in the circumstances and having regard to **section 3(ab)**, mediation is appropriate. 25
- 99 Section 187 amended (Jurisdiction of court)**
- After section 187(1)(g), insert:
- (ga) to hear and determine proceedings for a declaration of breach, pecuniary penalty order, compensation order, or banning order under **Part 9A**:
- 100 Section 188 amended (Role in relation to jurisdiction)** 30
- After section 188(4), insert:
- (5) This section applies subject to **section 188A**.
- 101 New section 188A inserted (When mediation in relation to breach of employment standards is appropriate)**
- After section 188, insert: 35

**188A When mediation in relation to breach of employment standards is appropriate**

- (1) If an application is made for a declaration or an order under **section 142B, 142E, 142J, or 142M**, the court must not give a direction that the parties use mediation or further mediation. 5
- (2) However, if the matter relates principally to an alleged breach of employment standards relating to an employee (other than an application under **section 142B, 142E, 142J, or 142M**), the court may give a direction to use mediation or further mediation, but only if—
- (a) ~~the facts of the alleged breach are in dispute and~~ the court is satisfied that mediation will be a cheaper and quicker way to clarify ~~the disputed~~ facts or otherwise assist the court in considering the application; or 10
- (b) the alleged breach appears to be minor and inadvertent; or
- (c) both parties agree; or
- (d) the court is satisfied that, in the circumstances and having regard to **section 3(ab)**, mediation is appropriate. 15

**102 Section 212 amended (Court may make rules)**

~~After section 212(2)(b), insert:~~

~~(ba) **Part 9A**; and~~

After section 212(2), insert: 20

- (3) To the extent that the court does not make rules under subsection (1) regulating the practice and procedure of the court under—
- (a) **section 142B** (declarations of breach); and
- (b) **section 142E** (pecuniary penalty orders); and
- (c) **section 142J** (compensation orders); and 25
- (d) **section 142M** (banning orders),—
- proceedings in the court under those sections are to be regulated by the rules applicable to civil proceedings in the High Court, as far as they are applicable and with all necessary modifications.

**103 New section 214AA inserted (Appeals against decisions under Part 9A)** 30

After section 214, insert:

**214AA Appeals against decisions under Part 9A**

- (1) A party to a proceeding for a declaration of breach, pecuniary penalty order, compensation order, or banning order under **Part 9A** who is dissatisfied with the decision of the court may appeal to the Court of Appeal against the decision on a question of fact or law, or both. 35

- (2) An appeal under **subsection (1)** does not require the leave of the Court of Appeal.
- (3) Section 66 of the Judicature Act 1908 applies to an appeal under **subsection (1)**.
- (4) In determining an appeal, the Court of Appeal may confirm, modify, or reverse the decision, or any part of the decision, appealed against. 5
- (5) An appeal under **subsection (1)** does not operate as a stay of proceedings to which the appeal relates unless the Court of Appeal orders otherwise.

**103A Section 217 amended (Appeal to Court of Appeal against conviction or order or sentence in respect of contempt of court)** 10

- (1) In section 217, delete “of this Act or section 11A(7) of the Minimum Wage Act 1983”.
- (2) At the end of section 217, insert—
- (2) Subsection (1) does not apply to an offence under **section 142Q**, but the Criminal Procedure Act 2011 applies to that offence. 15

**104 New section 223AAA and cross-heading inserted**

After the Part 11 heading, insert:

*Chief executive*

**223AAA Functions of chief executive**

- The functions of the chief executive under this Act are— 20
- (a) to promote the objects of this Act by, among other things,—
- (i) providing information and advice about employment relationships, including the rights and obligations of employees, employers, and other interested parties; and
- (ii) promoting the effective resolution of employment relationship problems by providing problem and dispute resolution services; and 25
- (iii) publishing information, reports, and guidelines about employment relationships; and
- (iv) publishing comments about employment relationship matters in relation to particular persons; and 30
- (b) to maintain a strategy for promoting compliance with, and enforcement of, the Acts specified in section 223(1); and
- (c) to perform any other functions and duties conferred on the chief executive by or under the Acts specified in section 223(1). 35



**105 Section 223A amended (Functions of Labour Inspector)**

Replace section 223A(c) to (e) with:

- (c) monitoring and enforcing compliance with employment standards; and
- (d) performing any other functions conferred by or under the relevant Acts.

**105A Section 228 amended (Actions by Labour Inspector)**

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In section 228(1), delete “in the name and”.

**106 Section 229 amended (Powers of Labour Inspectors)**

(1) After section 229(1)(c)(ii), insert:

- (iii) any other document that the Labour Inspector reasonably believes may assist in determining whether the requirements of the Acts referred to in section 223(1) have been complied with:

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(2) After section 229(5), insert:

(5A) A person is not excused from answering a Labour Inspector’s questions under **subsection (1)** on the grounds that doing so might expose the person to a pecuniary penalty under **Part 9A**, but any answers given are not admissible in criminal proceedings or in proceedings under that Part for pecuniary penalties.

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**107 Section 233 amended (Obligations of Labour Inspectors)**

Repeal section 233(5).

**108 New sections 233A and 233B inserted**

After section 233, insert:

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**233A Obligation of Labour Inspector and department not to disclose information**

- (1) Neither a Labour Inspector who inspects, or is supplied with a copy of, a document under section 229 nor the department may disclose to any person any information obtained as a result of the inspection of the document or the supply of the copy.
- (2) This section applies subject to **section 233B**.

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**233B Information sharing**

- (1) A Labour Inspector and the department may provide to a regulatory agency any information, or a copy of any document, that the Labour Inspector or department—
  - (a) holds in relation to the performance or exercise of its functions, duties, or powers under or in relation to the Acts specified in section 223(1); and

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- (b) considers may assist the regulatory agency in the performance or exercise of the regulatory agency's functions, duties, or powers under or in relation to any enactment.
- (2) A regulatory agency may provide a Labour Inspector or the department with any information, or a copy of any document, that the regulatory agency— 5
- (a) holds in relation to the performance or exercise of its functions, duties, or powers under or in relation to any enactment; and
- (b) considers may assist the Labour Inspector or department in the performance or exercise of its functions, duties, or powers under or in relation to any of the Acts specified in section 223(1). 10
- (3) A Labour Inspector, the department, or a regulatory agency who provides information or a copy of a document under this section may impose conditions relating to the provision of the information, including conditions relating to—
- (a) the storage and use of, or access to, anything provided:
- (b) the copying, returning, or disposing of any documents provided. 15
- (4) This section applies subject to any other enactment, including the Privacy Act 1993.
- (5) This section overrides provisions in contracts, deeds, and other documents that are inconsistent with this section.
- (6) In this section, **regulatory agency** means— 20
- (a) an immigration officer under the Immigration Act 2009:
- (b) the Inland Revenue Department:
- (c) the Ministry of Social Development:
- (ca) the Ministry for Primary Industries:
- (d) the New Zealand Police: 25
- (e) the Registrar of Companies:
- (f) WorkSafe New Zealand and any agency designated under section 28B of the Health and Safety in Employment Act 1992:
- (g) any other department of State, person, or organisation defined in regulations as a regulatory agency for the purposes of this section. 30

**109 Section 234 repealed (Circumstances in which officers, directors, or agents of company liable for minimum wages and holiday pay)**

Repeal section 234.

**110 New sections 235A to 235G and cross-heading inserted**

After section 235, insert:

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*Infringement offences*

**235A Interpretation**

In **sections 235B to 235F**, **infringement offence** means—

- (a) a failure by an employer to comply with the requirements of section 64(1), (2), or 130(1) of this Act or section 81(2) of the Holidays Act 2003: 5
- (b) breaches of this Act that are prescribed by regulations as infringement offences.

**235B Infringement offences**

- (1) If a person is alleged to have committed an infringement offence, the person may:— 10
  - (a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
  - (b) be served with an infringement notice as provided in **section 235D**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957. 15

**235C Infringement notices**

- (1) An infringement notice may be issued to a person if there are reasonable grounds for believing that the person is committing, or has committed, an infringement offence. 20
- (2) Only a Labour Inspector may issue an infringement notice.

**235D Procedural requirements for infringement notices**

- (1) An infringement notice may be served on a person whom the Labour Inspector believes has committed the infringement offence— 25
  - (a) by delivering it, or a copy of it, personally to the person; or
  - (b) by sending it, or a copy of it, by post, addressed to the person at the person's last known place of residence or business.
- (2) An infringement notice sent under **subsection (1)(b)** must be treated as having been served on the person on the date it was posted. 30
- (3) An infringement notice must be in the prescribed form and must contain—
  - (a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged offence; and
  - (b) the amount of the infringement fee; and
  - (c) an address at which the infringement fee may be paid; and 35
  - (d) the time within which the infringement fee must be paid; and

<ul style="list-style-type: none"> <li>(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and</li> <li>(f) a statement that the person served with the notice has a right to request a hearing; and</li> <li>(g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and</li> <li>(h) any other prescribed matters.</li> </ul>	5
<p>(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,—</p> <ul style="list-style-type: none"> <li>(a) reminder notices may be prescribed; and</li> <li>(b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.</li> </ul>	10
<p>(5) Reminder notices must contain the prescribed information.</p>	15
<b>235E Infringement fees</b>	
<p>(1) The infringement fee payable for an infringement offence is—</p> <ul style="list-style-type: none"> <li>(a) \$1,000 for an infringement offence specified in <b>section 235A(a)</b>;</li> <li>(b) the infringement fee specified in regulations for an infringement offence prescribed by regulations under <b>section 235A(b)</b>.</li> </ul>	20
<p>(2) However, the maximum aggregate infringement fees an employer is liable to pay in a 3-month period is \$20,000, whether for breaches of the same provision or breaches of different provisions.</p>	
<b>235F Payment of infringement fee</b>	
<p>All infringement fees received must be paid into a Crown Bank Account.</p>	25
<b>235G Infringement fee and penalty not payable for the same conduct</b>	
<p>A person is not liable to pay an infringement fee and penalty under this Act for the same conduct.</p>	
<b>111 Section 237 amended (Regulations)</b>	
<p><del>In section 237, after paragraph (f)</del> After section 237(f), insert:</p>	30
<p><u>(fa)</u> prescribing regulatory agencies for the purposes of <b>section 233B(6)</b>;</p>	
<p><del>(fa-fb)</del> prescribing infringement offences for the purposes of <b>section 235A(b)</b>;</p>	
<p><del>(fb-fc)</del> prescribing infringement fees (not exceeding \$1,000) for the purposes of <b>section 235E(1)(b)</b>;</p>	35

**112 Schedule 1AA amended**

- (1) In Schedule 1AA, replace clause 1 with:

**1 Interpretation**

In this schedule,—

**2014 Act** means the Employment Relations Amendment Act 2014

5

**2015 Act** means **Part 2 of the Employment Standards Legislation Act 2015**.

- (2) In Schedule 1AA, after clause 2, insert:

**3 Application, savings, and transitional provisions arising from 2015 Act**

- (1) The amendments made by the 2015 Act~~2015 Act~~ do not apply to ~~breaches~~conduct that occurred before the commencement of that Act. 10

- (2) ~~Sections 67G to 67H~~ (as inserted by ~~section 87 of the 2015 Act~~) apply ~~on and from 1 October 2016 in relation to employment agreements entered into before the commencement of that Act.~~

- (2A) If a collective agreement (the **previous agreement**) is in force immediately before the commencement of the **2015 Act** (whether or not bargaining has been initiated under section 41(3) or (4)), **sections 67C to 67H** (as inserted by **section 87** of that Act) apply to— 15

(a) any collective agreement that replaces the previous agreement, on the commencement of the replacement agreement; and 20

(b) an individual employment agreement that comes into force under section 61(2)(a), based on the previous agreement and any additional terms and conditions agreed under section 61(1), on the commencement of the individual employment agreement.

- (2B) If an individual employment agreement has been entered into, or has come into force under section 61(2)(a), before the commencement of the **2015 Act**, **sections 67C to 67H** (as inserted by **section 87** of that Act) apply to the agreement from 1 April 2017. 25

- (3) **Subclause (1)** applies subject to **subclauses (4) to (6)**.

- (4) The amendment to section ~~141~~140 (made by **section 9493A of the 2015 Act**) (which relates to compliance orders made by the court~~the enforcement of orders or judgments of the Authority or court~~) apply to an order imposing a fine whether the breach that the fine relates to occurred before, on, or after the commencement of the **2015 Act**. 30

- (5) **Sections 159AA** (inserted by **section 98 of the 2015 Act**) and **188A** (inserted by **section 101 of the 2015 Act**) (both relating to when mediation in relation to breaches of employment standards is appropriate)— 35

(a) apply only to proceedings filed after the commencement of the **2015 Act**; but

- (b) may apply to ~~breaches whether they~~ conduct whether it occurred before, on, or after the commencement of the **2015 Act**.
- (6) Section 234 (which relates to the circumstances in which officers, directors, or agents of a company are liable for minimum wages and holiday pay) continues to apply (despite its repeal by **section 109 of the 2015 Act**) to proceedings brought ~~under it~~ in relation to conduct that occurred before the commencement of the **2015 Act**, whether or not the proceedings were brought before that commencement. 5
- 113 Consequential amendments**
- Amend the enactments specified in **Schedule 3** as set out in that schedule. 10

### Part 3 Amendments to Holidays Act 2003

- 114 Principal Act**
- This **Part** amends the Holidays Act 2003 (the **principal Act**).
- 115 New section 5A inserted (Provisions affecting application of amendments to this Act)** 15
- After section 5, insert:
- 5A Provisions affecting application of amendments to this Act**
- Schedule 1AA** contains application, savings, and transitional provisions relating to amendments made to this Act on or after **1 April 2016**. 20
- 116 Section 75 amended (Penalty for non-compliance)**
- (1) In section 75(1), after “subsection (2)”, insert “, and every person who is involved in the failure to comply”.
- (1A) Replace section 75(2)(e) with:
- (e) section 81 (which relates to an employer’s obligation to keep a holiday and leave record): 25
- (f) section 82 (which relates to requests for access to a holiday and leave record).
- (2) After section 75(2), insert:
- (3) For the purposes of subsection (1), a person is **involved in a failure to comply** if the person would be treated as a person involved in a breach within the meaning of **section 142V** of the Employment Relations Act 2000. 30
- 117 Section 76 amended (Proceedings by Labour Inspector for penalty)**
- (1) In the heading to section 76, after “**Labour Inspector**”, insert “**or employee concerned**”. 35

- (2) In section 76(1), replace “is the only person” with “and the employee concerned are the only persons”.
- (3) After section 76(1), insert:
- (1A) However, only a Labour Inspector may bring an action in the Authority against a person involved in a failure to comply in order to recover a penalty under section 75. 5
- (4) In section 76(5), after “Labour Inspector”, insert “or employee concerned”.
- (5) After section 76(5), insert:
- (5A) Despite subsection (5), if a court refuses to make a pecuniary penalty order under **section 142E** of the Employment Relations Act 2000, an action for the recovery of a penalty in relation to the same matter must be commenced within 3 months after the refusal. 10
- 118 ~~New section 76A inserted (Matters Authority to have regard to in determining amount of penalty)~~ New sections 76A and 76B inserted**
- After section 76, insert: 15
- 76A Matters Authority to have regard to in determining amount of penalty**
- In determining an appropriate penalty under section 76, the Authority must have regard to all relevant matters, including—
- (a) the purpose stated in section 3 and, to the extent relevant, the object stated in section 3 of the Employment Relations Act 2000; and 20
- (b) the matters referred to in **section 133A(b) to (g)** of the Employment Relations Act 2000.
- 76B Chief executive or Labour Inspector may enforce payment of penalty**
- The chief executive or a Labour Inspector may recover in a District Court as a debt due to the Crown any penalty ordered by the Authority or the court under section 76 to be paid to the Crown. 25
- 119 New section 77A inserted (Proceedings by Labour Inspector or employee to recover arrears of pay from person involved in failure to comply)**
- After section 77, insert:
- 77A Proceedings by Labour Inspector or employee to recover arrears of pay from person involved in failure to comply** 30
- (1) A Labour Inspector or an employee may recover from a person who is not the employee’s employer any unpaid holiday pay or leave pay that the employee is entitled to if—
- (a) the employee is entitled to unpaid holiday pay or leave pay under this Act; and 35

- (b) the holiday pay or leave pay is unpaid due to non-compliance with this Act; and
- (c) the person from whom the pay is sought to be recovered is a person involved in the non-compliance.
- (2) However, unpaid holiday pay or leave pay may be recovered under **subsection (1)** only,—
- (a) in the case of recovery by an employee, with the prior leave of the Authority or court; and
- (b) to the extent that the employee’s employer is unable to pay the holiday pay or leave pay.
- (3) For the purposes of **subsection (1)**, a person is **involved in the non-compliance** if the person would be treated as a person involved in a breach within the meaning of **section 142V** of the Employment Relations Act 2000.
- 120 Section 81 amended (Holiday and leave record)**
- (1) Repeal section 81(1).
- (2) In section 81(2), replace “The holiday and leave record must contain the following information for each employee:” with “An employer must at all times keep a holiday and leave record showing, in the case of each employee employed by the employer, the following information:”.
- (3) Replace section 81(2)(c) with:
- (c) the number of hours worked each day in a pay period and the pay for those hours:
- (4) After section 81(3), insert:
- (3A) If an employee’s hours of work are agreed and the employee works those hours (the usual hours), it is sufficient compliance with subsection (2)(c) if those usual hours are stated in—
- (a) the employee’s wages and time record kept under section 130 of the Employment Relations Act 2000; or
- (b) the employee’s employment agreement; or
- (c) a roster or any other document or record used in the normal course of the employee’s employment.
- (3B) In **subsection (3A)**, an employee’s usual hours include any reasonable additional hours worked in accordance with the employee’s employment agreement.
- 121 New Schedule 1AA inserted**
- After section 91, insert the **Schedule 1AA** set out in **Schedule 4** of this Act.



## Part 4

### Amendments to Minimum Wage Act 1983

#### 122 Principal Act

This **Part** amends the Minimum Wage Act 1983 (the **principal Act**).

#### 123 New section 2A inserted (Provisions affecting application of amendments to this Act) 5

After section 2, insert:

##### **5A2A Provisions affecting application of amendments to this Act**

**Schedule 1AA** contains application, savings, and transitional provisions relating to amendments made to this Act on or after **1 April 2016**. 10

#### 124 Section 8A repealed (Wage and time records)

Repeal section 8A.

#### 125 Section 10 replaced (Penalties and jurisdiction)

Replace section 10 with:

##### **10 Penalties** 15

(1) The persons specified in **subsection (2)** are liable to a penalty imposed by the Employment Relations Authority under the Employment Relations Act 2000.

(2) The persons are—

- (a) every person who makes default in the full payment of any wages payable by that person under this Act: 20
- (b) every person who is involved in that default:
- (c) every person who fails otherwise to comply with the requirements of this Act.

(3) A worker or a Labour Inspector may recover a penalty under **subsection (1)**, but the worker may recover a penalty only in relation to his or her employer. 25

(4) For the purposes of **subsection (2)**, a person is **involved in a default** if the person would be treated as a person involved in a breach within the meaning of **section 142V** of the Employment Relations Act 2000.

#### 125A Section 11 replaced (Recovery of wages)

Replace section 11 with: 30

##### 11 Recovery of wages

(1) This section applies where, in relation to wages or other money payable by an employer to a worker whose wages are prescribed under this Act,—

- (a) there has been a default in payment; or

- (b) payment has been made at a lower rate than that prescribed under this Act or otherwise legally payable to the worker.
- (2) The whole or any part of wages or other money referred to in **subsection (1)(a) or (b)** may be recovered by the worker or by a Labour Inspector on behalf of the worker by action commenced in the Employment Relations Authority in the same manner as an action under section 131 of the Employment Relations Act 2000, and subsection (2) of that section applies accordingly. 5
- (3) **Subsection (2)** applies despite—
- (a) acceptance by the worker of payment at the lower rate; or
- (b) any express or implied agreement to the contrary. 10
- (4) This section does not affect any other remedies for the recovery of wages or other money payable by an employer to any worker whose wages are prescribed under this Act.

**126 New section 11AA inserted (Proceedings by Labour Inspector or worker to recover arrears of wages from person involved in failure to comply)** 15

After section 11, insert:

**11AA Proceedings by Labour Inspector or worker to recover arrears of wages from person involved in failure to comply**

- (1) A Labour Inspector or a worker may recover from a person who is not the worker's employer any unpaid wages that the worker is entitled to if— 20
- (a) the worker is entitled to the wages under this Act; and
- (b) the wages are unpaid due to non-compliance with this Act; and
- (c) the person from whom the wages are sought to be recovered is a person involved in the non-compliance.
- (2) However, unpaid wages may be recovered under **subsection (1)** only,— 25
- (a) in the case of recovery by a worker, with the prior leave of the Authority or court; and
- (b) to the extent that the worker's employer is unable to pay the wages.
- (3) For the purposes of **subsection (1)**, a person is **involved in the non-compliance** if the person would be treated as a person involved in a breach within the meaning of **section 142V** of the Employment Relations Act 2000. 30

**127 New Schedule 1AA inserted**

After section 14, insert the **Schedule 1AA** set out in the **Schedule 5** of this Act.

## Part 5

### Amendments to Wages Protection Act 1983

- 128 Principal Act**  
This **Part** amends the Wages Protection Act 1983 (the **principal Act**).
- 129 Section 2 amended (Interpretation)** 5  
In section 2, replace the definition of **employer** with:  
**employer** has the same meaning as in section 5 of the Employment Relations Act 2000  
In section 2, replace the definition of **employer** with:  
**employer** has the same meaning as in section 5 of the Employment Relations Act 2000 10  
**employment agreement** has the same meaning as in section 5 of the Employment Relations Act 2000
- 130 New section 2A inserted (Provisions affecting application of amendments to this Act)** 15  
After section 2, insert:
- 2A Provisions affecting application of amendments to this Act**  
The **Schedule** contains application, savings, and transitional provisions relating to amendments made to this Act on or after **1 April 2016**.
- 130A Section 5 amended (Deductions with worker's consent)** 20  
(1) Replace section 5(1) with:  
(1) An employer may, for a lawful purpose, make deductions from wages payable to a worker—  
(a) with the written consent of the worker (including consent in a general deductions clause in the worker's employment agreement); or 25  
(b) on the written request of the worker.  
(2) After section 5(1), insert:  
(1A) An employer must not make a specific deduction in accordance with a general deductions clause in a worker's employment agreement without first consulting the worker. 30
- 131 New section 5A inserted (Unreasonable deductions)**  
After section 5, insert:

**5A Unreasonable deductions**

An employer must not make a deduction under section 5 from wages payable to a worker if the deduction is unreasonable.

**132 Section 11 amended (Worker may recover wages)**

- (1) Replace the heading to section 11 with “**Recovery of wages**”. 5
- (2) In section 11(1), replace “a worker may recover” with “a worker, or a Labour Inspector on behalf of a worker, may recover”.

**133 New section 11A inserted (Proceedings by Labour Inspector or worker to recover arrears of wages from person involved in failure to comply)**

After section 11, insert: 10

**11A Proceedings by Labour Inspector or worker to recover arrears of wages from person involved in failure to comply**

- (1) A Labour Inspector or a worker may recover from a person who is not the worker’s employer any arrears of wages that the worker is entitled to if— 15
- (a) the worker is entitled to the wages under this Act; and
  - (b) the wages are unpaid due to non-compliance with this Act; and
  - (c) the person from whom the wages are sought to be recovered is a person involved in the non-compliance.
- (2) However, unpaid wages may be recovered under **subsection (1)** only,— 20
- (a) in the case of recovery by a worker, with the prior leave of the Authority or court; and
  - (b) to the extent that the worker’s employer is unable to pay the wages.
- (3) A Labour Inspector, worker, or person concerned may recover from a person involved in non-compliance with section 12A any premium paid in breach of that section. 25
- (4) However, a premium may be recovered under **subsection (3)** only,—
- (a) in the case of recovery by a worker or person concerned, with the prior leave of the Authority or court; and
  - (b) to the extent that the employer concerned is unable to pay the premium.
- (5) For the purposes of **subsections (1) and (3)**, a person is **involved in the non-compliance** if the person would be treated as a person involved in a breach within the meaning of **section 142V** of the Employment Relations Act 2000. 30

**134 Section 12A amended (No premium to be charged for employment)**

In section 12A(1), after “employer”, insert “or person engaged on behalf of the employer”. 35

**135 Section 13 amended (Penalties)**

- (1) In section 13,—
- (a) after “that employer”, insert “, and every person involved in the contravention or failure,”; and
  - (b) delete “, at the suit of the worker or of a Labour Inspector designated under section 223 of the Employment Relations Act 2000,”; and 5
  - (c) replace “that Act” with “the Employment Relations Act 2000”.
- (2) In section 13, insert as subsections (2) and (3):
- (2) A worker or a Labour Inspector may recover a penalty under subsection (1), but the worker may recover a penalty only in relation to the employer. 10
  - (3) For the purposes of subsection (1), a person is involved in the contravention or failure if the person would be treated as a person involved in a breach within the meaning of **section 142V** of the Employment Relations Act 2000.

**136 New Schedule inserted**

- After section 19, insert the **Schedule** set out in **Schedule 6** of this Act. 15

## Schedule 1 Amendments to Schedule 1AA

s 79

### Part 3

#### Transitional provisions relating to amendments to this Act made by **Part 1 of the Employment Standards Legislation Act 2015** 5

- 3 Application of Part 1 of the Employment Standards Legislation Act 2015**
- (1) The amendments made by **Part 1 of the Employment Standards Legislation Act 2015** apply to a person who takes parental leave or applies for a parental leave payment in respect of a child if,— 10
- (a) in the case of a child born to the person or to the person's spouse or partner,—
- (i) the expected date of delivery of the child is on or after **1 April 2016**; or 15
- (ii) the child is born on or after **1 April 2016**; or
- (b) in any other case, the person or his or her spouse or partner becomes the primary carer in respect of a child on or after **1 April 2016**.
- (2) A person to whom the amendments referred to in **subclause (1)** apply may, before **1 April 2016**,— 20
- (a) give notice of a request to take parental leave, in which case the person may begin his or her parental leave before **1 April 2016** as if those amendments were already in force; and
- (b) apply for a parental leave payment under Part 7A as if those amendments were already in force. 25

## Schedule 2

### Consequential amendments

s 81

**Employment Relations Act 2000 (2000 No 24)**

After section 161(1)(qb), insert:

5

- (qc) determining whether an employer has complied with **section 30D** of the Parental Leave and Employment Protection Act 1987:

After section 179B, insert:

**179C Limitations on consideration by Employment Court of matters arising under section 30D Parental Leave and Employment Protection Act 1987**

10

- (1) This section applies to a reference to the Authority under **section 30I** of the Parental Leave and Employment Protection Act 1987 for a determination as to whether the employer has complied with **section 30D** of that Act.
- (2) The Authority may not refer a question of law to the court under section 177 if the question of law arises during an investigation of the Authority into a reference referred to in **subsection (1)**. 15
- (3) No matter, or part of a matter, may be removed to the court under section 178 if the matter, or the part of the matter, arises during an investigation of the Authority into a reference referred to in **subsection (1)**.
- (4) No party who is dissatisfied with a determination, or any part of a determination, of the Authority of a reference referred to in **subsection (1)** may elect, under section 179, to have the matter heard by the court. 20

**Income Tax Act 2007 (2007 No 97)**

Replace section MA 7(2)(e) with:

- (e) ~~a person is treated as employed in any week in relation to which the person receives parental leave payments under Part 7A of the Parental Leave and Employment Protection Act 1987 for the number of hours that the person would have worked in a week that the person normally worked in their last period of employment before that week.~~ 25

**Income Tax Act 2007 (2007 No 97)**

30

In section CF 1(f), after “parental leave payment”, insert “or preterm baby payment”.

Replace section MA 7(2)(c) with:

- (c) a person is treated as employed in any week in relation to which the person receives parental leave payments or preterm baby payments under Part 7A of the Parental Leave and Employment Protection Act 1987 for the number of hours that the person would have worked in a week that 35

**Income Tax Act 2007 (2007 No 97)—continued**

the person normally worked in their last period of employment before that week:

In section MD 9(3)(b), after “parental leave payment”, insert “or preterm baby payment”.

Replace section MD 11(5)(b) with:

5

(b) becomes the primary carer (as defined in the Parental Leave and Employment Protection Act 1987) in respect of 2 or more children within a 4-week period.

In section MD 11(1)(b)(ii), after “parental leave payment”, insert “or preterm baby payment”.

In section RD 5, replace the heading above subsection (7) with:

10

*Parental leave and preterm baby payments*

In section RD 5(7), after “parental leave payment”, insert “or preterm baby payment”.

**Tax Administration Act 1994 (1994 No 166)**

Repeal section 24D.

**Tax Administration Act 1994 (1994 No 166)**

15

Repeal section 24D.

In section 85H(1)(a) and (b), after “parental leave payments”, insert “or preterm baby payments”, in each place.

In section 85H(2), after “parental leave payment”, insert “or preterm baby payment”.

In section 85H(3), after “paid parental leave”, insert “or for preterm baby payments”.

20

In section 85H(5), definition of **applicant**, after “parental leave payment”, insert “or preterm baby payment”.

In section 85H(5), definition of **applicant information**, in paragraph (a), after “parental leave payments”, insert “or preterm baby payments”.

In section 85I(1), after “parental leave payments”, insert “or preterm baby payments”.

25

In section 85I(1)(b), after “payment of parental leave”, insert “or for preterm baby payments”.

In section 85I(3), after “parental leave payment”, insert “or preterm baby payment”.



## Schedule 3

### Consequential amendments

s 113

#### **Companies Act 1993 (1993 No 105)**

After section 151(2)(ea), insert:

5

**(eab)** in the case of a company that is an employer, a person who is prohibited from being an officer of an employer under **sections 142M and 142N(1)(b)** of the Employment Relations Act 2000:

#### **Employment Relations Amendment Act 2015 (2015 No 73)**

In section 5, replace “103(1)(g)” with “103(1)(i)”.

10

In section 5, new section 103(1)(h) of the Employment Relations Act 2000, replace “(h)” with “(j)”.

#### **Sleepover Wages (Settlement) Act 2011 (2011 No 98)**

In section 30(4), replace “has the same meaning as in section 5 of the Employment Relations Act 2000” with “means wages or holiday pay or other money payable by the employer to the employee under the Holidays Act 2003 or the Minimum Wage Act 1983”.

15

In section 32, insert as subsections (2) and (3):

(2) To avoid doubt, an order imposing a fine is enforceable under Part 3 of the Summary Proceedings Act 1957.

20

(3) In an order imposing a fine under section 140(6) of the Employment Relations Act 2000, the order may direct that the whole or any part of the fine must be paid to the employee concerned.

In section 33(2)(a), after “penalties”, insert “and **section 135A** (which relates to the Chief Executive or a Labour Inspector enforcing payment of a penalty)”.

25

#### **Summary Proceedings Act 1957 (1957 No 87)**

In section 2(1), definition of **infringement notice**, after paragraph (j), insert:

(ja) **section 235A of the Employment Relations Act 2000**; or

**Schedule 4**  
**New Schedule 1AA inserted**

**s 121**

**Schedule 1AA**  
**Application, savings, and transitional provisions relating to**  
**amendments made to this Act on or after 1 April 2016**

5

**s 5A**

**1 Interpretation**

In this schedule, **2015 Act** means **Part 3 of the Employment Standards Legislation Act 2015**.

10

**2 Application, savings, and transitional provisions arising from 2015 Act**

The amendments made by the **2015 Act** do not apply to breaches of this Act that occurred before the commencement of that Act.

**Schedule 5**  
**New Schedule 1AA inserted**

**s 127**

**Schedule 1AA**

**Application, savings, and transitional provisions relating to  
amendments made to this Act on or after 1 April 2016**

5

**s 2A**

**1 Interpretation**

In this schedule, **2015 Act** means **Part 4 of the Employment Standards Legislation Act 2015**.

10

**2 Application, savings, and transitional provisions arising from 2015 Act**

The amendments made by the **2015 Act** do not apply to breaches of this Act that occurred before the commencement of that Act.

**Schedule 6**  
**New Schedule 1 inserted**

s 136

**Schedule 1**  
**Application, savings, and transitional provisions relating to** 5  
**amendments made to this Act on or after 1 April 2016**

s 2A

**1 Interpretation**

In this schedule, **2015 Act** means **Part 5 of the Employment Standards Legislation Act 2015**. 10

**2 Application, savings, and transitional provisions arising from 2015 Act**

(1) **Section 5A** (as inserted by **section 131 of the 2015 Act**) applies only to 15  
deductions made ~~only~~ after the commencement of that Act and, ~~in relation to~~  
deductions made under an employment agreement, applies whether the em-  
ployment agreement was made before, on, or after the commencement of that  
Act.

(2) The amendments made by the **2015 Act** do not apply to breaches of this Act  
that occurred before the commencement of that Act.

**Legislative history**

13 August 2015  
8 September 2015

Introduction (Bill 53–1)  
First reading and referral to Transport and Industrial Relations  
Committee