

Minimum Wage (Starting-out Wage) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Minimum Wage Act 1983 (the **principal Act**) to make a number of changes to the ways in which minimum rates of wages may be prescribed by Order in Council under the principal Act. These include introducing the ability to set 1 or more starting-out rates of wages (payable at not less than 80% of the minimum adult rate of wages) for eligible young people aged 16, 17, 18, or 19 years who are not supervising or training other workers, repealing the ability to set the current new entrant rate, and changing the criteria for setting the current training rate. If passed, the changes proposed by the Bill will come into effect on 1 April 2013.

Minimum starting-out rates of wages

Minimum starting-out rates of wages are designed to support young people entering the workforce, including those who have been on a benefit, and young people who are undertaking industry training for their work. Starting-out wages provide an incentive for employers to take on young workers at a reduced rate of pay while foundational work skills, experience on the job, or training is gained.

The Bill implements Government policy that is aimed at influencing employers' demand for young workers. The policy supports train-

ing opportunities for young people who are working, is intended to work alongside other measures aimed at improving the skills of young people in the workforce, and complements the Government's reform of the welfare system.

Orders in Council made under the Bill will set out the specific requirements for paying minimum starting-out wages and set the rate of payment. The Bill specifies the factors for defining the classes of workers to whom minimum starting-out rates of wages are payable. One of the factors is the length of time, being a period of not less than 6 months, that the worker has been continuously paid a benefit under the Social Security Act 1964. The Bill lists the benefits under that Act that are relevant to setting minimum starting-out rates of wages, which include benefits for which there is not an expectation that the recipient will be seeking paid work (for example, the invalid's benefit). This recognises that young people receiving these benefits may also be disadvantaged in the labour market in the same way as young people receiving benefits for which there is expectation of seeking paid work are. The Bill provides that where a minimum starting-out rate is prescribed by reference to the length of time workers have been paid 1 or more social security benefits or the length of time workers have been in continuous employment, an employer may only pay a starting-out rate to a worker for up to 6 months of continuous employment with that employer.

Young people transitioning into work

The Bill acknowledges the importance of young people entering the workforce. Those who remain out of work (particularly those who are not in education or training) are at risk of the scarring effects of long-term unemployment. Young people with a work history are seen as less risky for employers to take on. Therefore, requiring a period of continuous work experience of not more than 6 months with an employer in order to transition to the minimum adult rate of wages reinforces a focus on gaining work experience, commitment to the job, and becoming better equipped for future employment.

The Bill also recognises that young people who have been on a benefit, including those who cycle in and out of work and benefits, can find it difficult to gain employment. The ability to set minimum starting-out rates of wages that are lower than the minimum adult rate for

young people who have been on a benefit provides an incentive for employers to take them on.

Minimum training rate of wages

The Bill also aims to increase industry skills among young people aged 16 to 19 years old. Currently, to be eligible for the minimum training rate of wages, a trainee must undertake at least 60 credits per year in an industry training programme as prescribed in the Minimum Wage Order 2012.

The Bill changes the status quo by providing for young persons aged 16 to 19 years and employed under contracts of service that require them to undergo training to be paid at the minimum starting-out rates of wages rather than the minimum training rate of wages. This allows for different credit requirements to be specified for trainees aged 16 to 19 years and for trainees aged 20 years or older and is intended to support more young people into industry training by providing incentives for employers to invest more in training for young people (particularly vocationally based training).

Trainees who are 20 years or older

The Bill changes the current criteria for the minimum training rate of wages so that it applies to workers who are aged 20 years or older, who are not supervising or training other workers, and who are employed under contracts of service under which they are required to undergo training for the purpose of becoming qualified for the occupation to which their contract of service relates. As with minimum starting-out rates of wages, the Bill provides that the minimum training rate of wages must not be set at less than 80% of the minimum adult rate of wages.

Other amendments

The Bill re-enacts the ability to set the minimum adult rate of wages without change and repeals the current ability to set the minimum new entrant rate of wages.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 25 July 2012 to help inform the main

policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.dol.govt.nz/publications/general/gen-ris.asp>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on **1 April 2013**.

Clause 3 states that the Bill amends the Minimum Wage Act 1983 (the **principal Act**).

Part 1

Amendments to principal Act

Clause 4 replaces section 4 of the principal Act, which authorises the Governor-General, by Order in Council, to prescribe minimum rates of wages with *new sections 4 to 4B*.

In broad terms, *new sections 4 to 4B* maintain the status quo in relation to the criteria for setting the adult minimum rate of wages, modify the criteria for setting the minimum training rate of wages, do not carry over the ability to prescribe a minimum new entrant rate of wages, and introduce the ability to prescribe 1 or more minimum starting-out rates of wages.

New section 4 re-enacts the authority to set a minimum adult rate of wages by Order in Council that is payable to workers—

- who are aged 16 years or older; and
- to whom any other minimum rate of wages prescribed under *new section 4A or 4B* does not apply.

The Bill provides that the minimum adult rate must be prescribed as a monetary amount (*new section 4(2)*).

New section 4A introduces the ability to prescribe 1 or more minimum starting-out rates by Order in Council. These new rates are payable to 1 or more classes of workers who are aged 16, 17, 18, or 19 years, who are not involved in supervising or training other work-

ers, and who are defined in the order by reference to the age (or range of ages) of the workers and to 1 or more of the following:

- the length of time, being a period of not less than 6 months, that the workers have been continuously paid 1 or more specified social security benefits:
- the length of time, being a period of not more than 6 months, that the workers have been in continuous employment with 1 employer:
- whether or not the workers are employed under contracts of service that require the workers to undergo training, instruction, or examination for the purpose of becoming qualified for the occupation to which their contracts of service relate.

Minimum starting-out rates must not be set at less than 80% of the minimum adult rate and may be prescribed either as a monetary amount or as a percentage of the adult rate (*new section 4A(2)*).

The Bill provides that where a minimum starting-out rate is prescribed by reference to the length of time that workers have been continuously paid 1 or more specified social security benefits or the length of time workers have been in continuous employment with 1 employer, an employer of a worker to whom the rate applies may pay the worker in accordance with that rate only until the worker has completed 6 months' continuous employment or the worker ceases to satisfy the other criteria for the payment of the starting-out rate, whichever is earlier (*new section 4A(3)*).

In addition, the Bill clarifies that if more than 1 starting-out rate applies to a worker, then the worker is to be paid at the higher or highest rate (*new section 4A(4)*). It also clarifies when a worker is to be treated as having been continuously paid a specified social security benefit, defines the term continuous employment, and lists the specified social security benefits for the purposes of prescribing minimum starting-out rates (*new section 4A(5) and (6)*).

New section 4B re-enacts, with some modification, the ability to prescribe a minimum training rate by Order in Council. As at present, a minimum training rate is payable to 1 or more classes of workers who are employed under contracts of service under which they are required to undergo training, instruction, or examination for the purpose of becoming qualified for the occupation to which their contract of service relates.

The main changes from the status quo under the principal Act are that *new section 4B*—

- alters the class of workers to whom the rate is payable from workers who are 16 years or older (as specified in the Minimum Wage Order 2012) to workers who are aged 20 years or older and who are not involved in supervising or training other workers; and
- provides that the minimum training rate must not be set at less than 80% of the minimum adult rate.

Clause 5 consequentially amends section 5(1), which requires the Minister of Labour to review minimum wages annually, to refer to *new sections 4, 4A, and 4B*.

Part 2

Miscellaneous provisions

Clause 6 consequentially amends the Accident Compensation Act 2001 to update the cross-references in clause 42(3)(a)(i) and (b)(i) of Part 2 of Schedule 1 of that Act (which relates to weekly compensation entitlements) to the minimum adult rate of wages as prescribed under *new section 4*.

Clause 7 is a transitional and savings provision that preserves the status quo for workers who, immediately before the commencement of the Bill, were being paid wages by their employers at the new entrant rate (which is not re-enacted by the Bill) in accordance with clause 5 of the Minimum Wage Order 2012. It provides that on and after the commencement of the Bill, a worker—

- is entitled to continue to be paid at the minimum new entrant rate as if the Bill had not been passed or at the highest starting-out rate prescribed under *new section 4A* for workers aged 16 or 17 years (whichever rate is the higher); and
 - after fulfilling the present conditions for the new entrant rate (which relate to completing 3 months or 200 hours of employment, whichever is completed first) transitions to the minimum adult rate.
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Hon Kate Wilkinson

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Minimum Wage (Starting-out Wage) Amendment Act **2012**.

2 Commencement

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This Act comes into force on **1 April 2013**.

3 Principal Act

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

Part 1

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Amendments to principal Act**4 Section 4 replaced (Prescription of minimum wages)**

Replace section 4 with:

“4 Prescribed minimum adult rate of wages

“(1) The Governor-General may, by Order in Council, prescribe a minimum adult rate of wages payable to workers— 15

“(a) who are aged 16 years or older; and

“(b) to whom any other minimum rate of wages prescribed under **section 4A or 4B** does not apply.

“(2) A rate prescribed under **subsection (1)** must be prescribed as a monetary amount. 20

“4A Prescribed minimum starting-out rates of wages

“(1) The Governor-General may, by Order in Council, prescribe 1 or more minimum starting-out rates of wages payable to 1 or more classes of workers who— 25

“(a) are aged 16, 17, 18, or 19 years; and

“(b) are not involved in supervising or training other workers; and

“(c) are defined in the order by reference to the age (or range of ages) of the workers and 1 or more of the following: 30

“(i) the length of time, being a period of not less than 6 months, that the workers have been con-

- tinuously paid 1 or more specified social security benefits:
- “(ii) the length of time, being a period of not more than 6 months, that the workers have been in continuous employment with 1 employer: 5
 - “(iii) whether or not the workers are employed under contracts of service that require the workers to undergo training, instruction, or examination (as specified in the order) for the purpose of becoming qualified for the occupation to which their contracts of service relate. 10
- “(2) A rate prescribed under **subsection (1)** must not be less than 80% of the minimum adult rate prescribed under **section 4** and may be prescribed as—
- “(a) a monetary amount; or 15
 - “(b) a percentage of the minimum adult rate.
- “(3) If a minimum starting-out rate is prescribed under **subsection (1)** by reference to a factor specified in **subsection (1)(c)(i) or (ii)** (or both), an employer of a worker to whom that rate applies— 20
- “(a) may pay the worker in accordance with that rate only until the earlier of—
 - “(i) the date on which the worker has completed 6 months’ continuous employment with that employer: 25
 - “(ii) the date on which the worker ceases to satisfy 1 or more of the criteria in **subsection (1)(a) or (b)**; and
 - “(b) then must pay the worker no less than the minimum adult rate prescribed under **section 4**. 30
- “(4) To avoid doubt, if more than 1 minimum starting-out rate prescribed under **subsection (1)** applies to a worker, only the higher or the highest rate applies.
- “(5) For the purposes of **subsection (1)(c)(i)**, a worker is to be treated as having been continuously paid a specified social security benefit— 35
- “(a) whether or not the benefit has been reduced due to any sanction imposed under the Social Security Act 1964 or for any other reason:

- “(b) during any period when the benefit was suspended under the Social Security Act 1964 for any reason.
- “(6) In this section,—
- “**continuous employment** includes any employment undertaken by the worker before— 5
- “(a) the worker turns 16:
- “(b) the commencement of the Minimum Wage (Starting-out Wage) Amendment Act **2012**
- “**specified social security benefit** means any of the following benefits paid or payable under the Social Security Act 1964: 10
- “(a) domestic purposes benefit:
- “(b) emergency benefit:
- “(c) independent youth benefit:
- “(d) invalid’s benefit:
- “(e) sickness benefit: 15
- “(f) unemployment benefit:
- “(g) widow’s benefit:
- “(h) young parent payment:
- “(i) youth payment.
- “**4B Prescribed minimum training rate of wages** 20
- “(1) The Governor-General may, by Order in Council, prescribe a minimum training rate payable to 1 or more classes of workers who—
- “(a) are aged 20 years or older; and
- “(b) are not involved in supervising or training other workers; and 25
- “(c) are employed under contracts of service under which they are required to undergo training, instruction, or examination (as specified in the order) for the purpose of becoming qualified for the occupation to which their contract of service relates. 30
- “(2) A rate prescribed under **subsection (1)** must not be less than 80% of the minimum adult rate prescribed under **section 4** and may be prescribed as—
- “(a) a monetary amount; or 35
- “(b) a percentage of the minimum adult rate.”

- 5 Section 5 amended (Annual review of minimum wages)**
In section 5(1), replace “section 4” with “**section 4, 4A, or 4B**”.

Part 2
Miscellaneous provisions

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6 Consequential amendments to Accident Compensation Act 2001

- (1) This section amends the Accident Compensation Act 2001.
- (2) In Schedule 1, Part 2, replace clause 42(3)(a)(i) with:
- “(i) the minimum weekly adult rate prescribed under **section 4** of the Minimum Wage Act 1983; or”.
- (3) In Schedule 1, Part 2, replace clause 42(3)(b)(i) with:
- “(i) the minimum weekly adult rate prescribed under **section 4** of the Minimum Wage Act 1983; or”.

7 Transitional and savings provision relating to minimum new entrant rate

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- (1) This section applies to a worker who, immediately before the commencement of this Act, was entitled to be paid wages by his or her employer in accordance with the minimum new entrant rate prescribed in clause 5 of the Minimum Wage Order 2012. 20
- (2) On and after the commencement of this Act,—
- (a) the worker is entitled to be paid the higher of—
- (i) the minimum new entrant rate as if this Act had not been passed: 25
- (ii) the highest minimum starting-out rate prescribed under **section 4A** for workers aged 16 or 17 years; and
- (b) after completing 3 months or 200 hours of employment (whichever is completed first), the worker is entitled to be paid at the minimum adult rate prescribed under **section 4** of the principal Act (as replaced by this Act). 30
- (3) In **subsection (2), employment** includes employment undertaken by the worker—
- (a) before or after the commencement of this Act: 35

- (b) with more than 1 employer.
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