

**Reprint
as at 1 April 2016**



Employment Relations Amendment Act 2015

Public Act 2015 No 73
Date of assent 4 September 2015
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

1 Title

This Act is the Employment Relations Amendment Act 2015.

2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates and appointing different dates for different purposes.
- (2) Any provision that has not earlier been brought into force comes into force on 1 January 2018.

3 Principal Act

This Act amends the Employment Relations Act 2000 (the **principal Act**).

4 Section 67B amended (Effect of trial provision under section 67A)

In section 67B(3), replace “section 103(1)(b) to (g)” with “section 103(1)(b) to (h)”.

5 Section 103 amended (Personal grievance)

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

- (j) that the employee’s employer has, in relation to the employee,—
 - (i) engaged in adverse conduct for a prohibited health and safety reason; or
 - (ii) contravened section 92 of the Health and Safety at Work Act 2015 (which prohibits coercion or inducement).

Section 5: amended, on 1 April 2016, by section 39 of the Employment Relations Amendment Act 2016 (2016 No 9).

6 Section 104 amended (Discrimination)

In section 104(1), delete “or by reason directly or indirectly of that employee’s refusal to do work under section 28A of the Health and Safety in Employment Act 1992,”.

7 Section 107 amended (Definition of involvement in activities of union for purposes of section 104)

Repeal section 107(2).

8 New section 110A inserted (Adverse conduct for prohibited health and safety reason)

After section 110, insert:

110A Adverse conduct for prohibited health and safety reason

- (1) For the purposes of this Part, an employer engages in **adverse conduct for a prohibited health and safety reason** if the employer or a representative of the employer, for a prohibited health and safety reason,—
 - (a) dismisses an employee; or
 - (b) refuses or omits to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or
 - (c) subjects the employee to any detriment in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment; or
 - (d) retires the employee, or requires or causes the employee to retire or resign.
- (2) For the purposes of subsection (1), conduct described in that section is engaged in for a prohibited health and safety reason if it is engaged in for a reason described in section 89 of the Health and Safety at Work Act 2015.
- (3) An employer may be found to have engaged in adverse conduct for a prohibited health and safety reason only if the prohibited health and safety reason was a substantial reason for the conduct.
- (4) For the purposes of subsection (3), a prohibited health and safety reason is presumed to be a substantial reason for the conduct unless the employer proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct.
- (5) It is a defence to an action for a personal grievance under section 103(1)(h)(i) if the employer proves that—
 - (a) the conduct was reasonable in the circumstances; and
 - (b) a substantial reason for the conduct was to comply with the requirements of the Health and Safety at Work Act 2015 or other relevant health and safety legislation (as defined in section 16 of that Act).
- (6) For the purposes of this section,—
 - (a) an employer also engages in adverse conduct if the employer or a representative of the employer, in relation to the employee,—
 - (i) organises to take any action referred to in subsection (1) or threatens to organise or take that action; or
 - (ii) requests, instructs, induces, encourages, authorises, or assists another person to engage in adverse conduct for a prohibited health and safety reason:

(b) **detriment** includes anything that has a detrimental effect on the employee's employment, job performance, or job satisfaction.

9 Section 111 amended (Definitions relating to personal grievances)

In section 111, replace “and **duress** have in any employment agreement the meanings given to those terms by sections 103, 104, 105, 106, 107, 108, 109, and 110” with “**duress**, and **adverse conduct for prohibited health and safety reason** have in any employment agreement the meanings given to those terms by sections 103, 104, 105, 106, 107, 108, 109, 110, and 110A”.

10 Section 137 amended (Power of Authority to order compliance)

Repeal section 137(1)(a)(xi) and (4)(b).

11 Section 138 amended (Further provisions relating to compliance order by Authority)

Repeal section 138(1)(b)(ii).

12 Schedule 1A amended

In paragraph (f), replace “place of work (within the meaning of the Health and Safety in Employment Act 1992)” with “workplace”.

Reprints notes

1 *General*

This is a reprint of the Employment Relations Amendment Act 2015 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Employment Relations Amendment Act 2016 (2016 No 9): section 39