



Worker Protection (Migrant and Other Employees) Act 2023

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Date of assent 6 July 2023
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Worker Protection (Migrant and Other Employees) Act 2023.

2 Commencement

This Act comes into force on the day that is 6 months after the date of Royal assent.

Part 1
Amendments to Immigration Act 2009

3 Principal Act

This Part amends the Immigration Act 2009.

4 New section 275A and cross-heading inserted

After section 275, insert:

Power to access employment documents

275A Power to access employment documents

- (1) An immigration officer may exercise the power in subsection (2) for the following purposes:
- (a) determining whether a supporting employer is employing (or has employed) a supported employee in accordance with the work-related conditions of the supported employee's visa;
 - (b) determining whether a supporting employer is complying (or has complied) with the supporting employer's obligations (which, to avoid doubt, include the obligation not to commit an offence) under this Act.
- (2) An immigration officer may require a supporting employer to supply a document (or a copy of it) that is—
- (a) a wages and time record, or leave record kept in accordance with the provisions of any Act; or

- (b) any other document relating to the remuneration or employment conditions of a supported employee (for example, an employment agreement).
- (3) A supporting employer must comply with the requirement immediately after receiving it, or, if that is not practicable, within 10 working days of the date on which the requirement is received.
- (4) A supporting employer is not excused from complying with the requirement on the ground that complying might tend to incriminate them or expose them to a penalty.
- (5) In this section, **supporting employer** means an employer in relation to either of the following people (who is a **supported employee** of that employer):
 - (a) a person who was required by immigration instructions to have an offer of employment to be granted a visa and had an offer from that employer; or
 - (b) a person who has work-related conditions of their visa specifying that they may only work for that employer.
- (6) If an immigration officer obtains information from a supporting employer under this section, the immigration officer and the Department must not use that information for the purpose of taking adverse action under this Act against any person other than the supporting employer or another supporting employer.

5 New sections 294AAA and 294AAB inserted

After the cross-heading above section 294, insert:

294AAA Obligation of immigration officer and Department not to disclose information

An immigration officer who is provided with a document (or a copy of a document) under section 275A and the Department may not disclose any information obtained as a result, unless the disclosure is—

- (a) in accordance with section 294AAB; and
- (b) for the purposes of one of the following Acts:
 - (i) this Act;
 - (ii) the Employment Relations Act 2000;
 - (iii) the Equal Pay Act 1972;
 - (iv) the Holidays Act 2003;
 - (v) the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016;
 - (vi) the Minimum Wage Act 1983;
 - (vii) the Parental Leave and Employment Protection Act 1987;
 - (viii) the Support Workers (Pay Equity) Settlements Act 2017;
 - (ix) the Volunteers Employment Protection Act 1973;

(x) the Wages Protection Act 1983.

Compare: 2000 No 24 s 233A

294AAB Information sharing

- (1) An immigration officer and the Department may provide to a regulatory agency any information, or a copy of any document, described in section 294AAA that the officer or Department 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 listed in section 294AAA(b).
- (2) A regulatory agency may provide an immigration officer or the Department with any information, or a copy of any document, that the regulatory agency—
 - (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 officer or the Department in the performance or exercise of the officer's or the Department's functions, duties, or powers under or in relation to this Act.
- (3) An immigration officer who or the Department that 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.
- (4) This section applies subject to any other enactment, including the Privacy Act 2020.
- (5) This section overrides provisions in contracts, deeds, and other documents that are inconsistent with this section.
- (6) In this section, **regulatory agency** means—
 - (a) the department responsible for compliance and enforcement under the Residential Tenancies Act 1986:
 - (b) the Inland Revenue Department:
 - (c) a Labour Inspector under the Employment Relations Act 2000:
 - (d) the New Zealand Police:
 - (e) the Registrar of Companies:
 - (f) WorkSafe New Zealand and any agency designated under section 191 of the Health and Safety at Work Act 2015:
 - (g) any other department of State, person, or organisation defined in regulations as a regulatory agency for the purposes of this section.

Compare: 2000 No 24 s 233B

6 Section 350 amended (Offences by employers)

- (1) Replace section 350(1) with:

- (1) Every employer commits an offence against this Act who allows, or continues to allow, any person to work in that employer's service, knowing that the person is not entitled under this Act to do that work.
- (2) In section 350(2), delete "(a)".
- (3) Repeal section 350(3) and (4).

7 Sections 359 and 360 and cross-heading replaced

Replace sections 359 and 360 and the cross-heading above section 359 with:

Infringement offences

359 Interpretation

In this Act,—

commercial craft infringement offence means—

- (a) an offence against section 349(1) or (2)(a):
- (b) an offence prescribed as a commercial craft infringement offence for the purposes of this Act by regulations made under section 400

employment infringement offence means—

- (a) an offence described in section 359A:
- (b) an offence prescribed as an employment infringement offence for the purposes of this Act by regulations made under section 400

infringement fee, in relation to an infringement offence, means the infringement fee for that offence—

- (a) specified in section 359A(2) (for an employment infringement offence under that section); or
- (b) set in regulations made under section 400 (for other employment infringement offences); or
- (c) set in regulations made under section 400 (for commercial craft infringement offences)

infringement offence means an employment infringement offence or a commercial craft infringement offence.

359A Employment infringement offence

- (1) An employer must not—
 - (a) allow a person who is not entitled under this Act to work in the employer's service to do that work;
 - (b) employ a person in a manner that is inconsistent with a work-related condition of that person's visa;
 - (c) fail to comply with a requirement made under section 275A within the time period required by that section.

- (2) A person who contravenes subsection (1)(a) or (b) commits an infringement offence and is liable to,—
- (a) in the case of an employer who is an individual,—
 - (i) an infringement fee of \$1,000 for each employee in respect of whom an employment infringement offence is being, or has been, committed; or
 - (ii) a fine imposed by a court not exceeding double the amount of the total infringement fees payable:
 - (b) in the case of an employer that is a body corporate or another entity,—
 - (i) \$3,000 for each employee in respect of whom an employment infringement offence is being, or was, committed; or
 - (ii) a fine imposed by a court not exceeding double the total amount of the infringement fees payable.
- (3) A person who contravenes subsection (1)(c) commits an infringement offence and is liable to—
- (a) an infringement fee of \$1,000; or
 - (b) a fine imposed by a court not exceeding \$2,000.

360 Infringement offences

- (1) A person who is alleged to have committed an infringement offence may—
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be issued with an infringement notice under section 362.
- (2) Proceedings commenced in the way described in subsection (1)(a) do not require the leave of a District Court Judge or a Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

8 Section 361 amended (Immigration officer may require information)

- (1) In section 361, after “infringement notice”, insert “for a commercial craft infringement offence”.
- (2) In section 361, insert as subsection (2):
- (2) When considering whether to issue an infringement notice for an employment infringement offence, an immigration officer may require the employer to provide all or any of the following information:
- (a) if the employer is an individual, the employer’s—
 - (i) full name:
 - (ii) date of birth:

- (iii) full residential and postal address:
- (iv) title or position:
- (b) if the employer is a body corporate or another entity, the employer's—
 - (i) legal name:
 - (ii) business starting or registration date:
 - (iii) address for service.

9 Sections 362 to 365A replaced

Replace sections 362 to 365A with:

362 When infringement notice may be issued

An immigration officer may issue an infringement notice to a person if the officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

362A What infringement notice must contain

An infringement notice must be in the form prescribed in regulations made under section 400 and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence:
- (b) the amount of the infringement fee:
- (c) the address of the Department:
- (d) how the infringement fee may be paid:
- (e) the time within which the infringement fee must be paid:
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:
- (g) a statement that the person served with the notice has a right to request a hearing:
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:
- (i) any other matters prescribed in regulations made under section 400.

363 Reminder notices

A reminder notice must be in the form prescribed in regulations made under section 400, and must include the same particulars, or substantially the same particulars, as the infringement notice.

364 Payment of infringement fees

All infringement fees paid for infringement offences must be paid to the chief executive, and the chief executive must pay all infringement fees received into a Crown Bank Account.

364A Maximum fees for infringement offences

- (1) An infringement fee prescribed under this Act for a commercial craft infringement offence may not exceed,—
 - (a) in the case of a person in charge of a craft, \$2,500; and
 - (b) in the case of a carrier of a craft, \$5,000.
- (2) An infringement fee prescribed under this Act for an employment infringement offence may not exceed,—
 - (a) in the case of an employer who is an individual, an infringement fee of \$1,000 for each employee in respect of whom an employment infringement offence is being, or has been, committed; or
 - (b) in the case of an employer that is a body corporate or another entity, \$3,000 for each employee in respect of whom an employment infringement offence is being, or was, committed.

364B Infringement fine for prescribed employment infringement offences

The maximum fine that can be imposed by the court in relation to an employment infringement offence prescribed in regulations is double the amount of the infringement fee.

365 Revocation of infringement notice before payment made

- (1) An immigration officer may, by written notice served on the person to whom an infringement notice was issued, revoke the infringement notice before—
 - (a) the infringement fee is paid; or
 - (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) The revocation of an infringement notice before the infringement fee is paid is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter.

365A How infringement notice may be served: carriers, and persons in charge, of craft

- (1) This section applies to infringement notices, reminder notices, and revocation notices relating to commercial craft infringement offences.
- (2) A notice may be served on the carrier, or person in charge, of a craft who the immigration officer believes is committing or has committed an infringement offence by—

- (a) sending the notice to the electronic address for service of the recipient, in which case it is deemed to be received by the recipient on the date on which it was sent; or
 - (b) personal service on the recipient; or
 - (c) sending it by registered post to the recipient's last known place of residence or business, in which case it is deemed to be received by the recipient on the date on which it was posted.
- (3) Subsection (2) applies despite anything in section 24 of the Summary Proceedings Act 1957, and,—
- (a) if service is effected in accordance with subsection (2), the recipient is deemed to have consented to service in that way (despite sections 220 and 224(1)(b) of the Contract and Commercial Law Act 2017); and
 - (b) in any case, for the purpose of sections 387 and 389 of the Companies Act 1993, the service is deemed to have been service by way of leaving the notice at the recipient's address for service.

365B How infringement notice may be served: employers

- (1) This section applies to infringement notices, reminder notices, and revocation notices relating to employment infringement offences.
- (2) A notice may be served on a person who the immigration officer believes is committing or has committed an infringement offence by—
 - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
 - (c) leaving it for the person at the person's place of business or work with another person; or
 - (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
 - (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.
- (3) Unless the contrary is shown,—
 - (a) a notice (or a copy of it) sent by prepaid post to a person under subsection (2)(d) is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and
 - (b) a notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the Department.

10 New section 383A inserted (Publication of names and information in respect of immigration offences)

After section 383, insert:

383A Publication of names and information in respect of immigration offences

- (1) The chief executive may, in order to promote the objects of this Act, publish the information specified in subsection (2) in relation to an employer who has been—
 - (a) convicted of an offence against this Act; or
 - (b) issued with an infringement notice in respect of an infringement offence against this Act.
- (2) The information that may be published is the following:
 - (a) the name of the employer;
 - (b) the employer’s trading name (if any);
 - (c) the fact that the employer has been convicted of an offence against this Act, or issued with an infringement notice in respect of an offence against this Act (as applicable);
 - (d) a reference number for the conviction or infringement notice;
 - (e) a description of any restrictions imposed on the employer as a consequence of being convicted or being issued with the infringement notice;
 - (f) the period during which those restrictions apply.
- (3) However, despite subsections (1) and (2), information that relates to an employer having been issued with an infringement notice may not be published under this section until at least 28 days after the date on which the infringement notice was issued.

11 Section 388 amended (Designation of immigration officers)

In section 388(3)(c), replace “the powers under sections 279,” with “the powers under sections 275A, 279,”.

12 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 1 of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Consequential amendments to principal Act

13 Consequential amendments to principal Act

Amend the principal Act as set out in Schedule 2.

*Consequential amendment to Summary Proceedings Act 1957***14 Principal Act**

Section 15 amends the Summary Proceedings Act 1957.

15 Section 2 amended (Interpretation)

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

(jk) section 362 of the Immigration Act 2009; or

Part 2**Amendments to Employment Relations Act 2000****16 Principal Act**

This Part amends the Employment Relations Act 2000.

17 Section 229 amended (Powers of Labour Inspectors)

- (1) Replace section 229(2) with:
- (2) An employer must comply with a requirement under subsection (1)(c) while the Labour Inspector is with the employer, or, if that is not practicable, within 10 working days.
- (2A) An employer must comply with a requirement under subsection (1)(d) immediately after receiving it, or, if that is not practicable, within 10 working days of the date on which the requirement is received.
- (2) In section 229(3), replace “subsection (1)(c) or subsection (1)(d)” with “subsection (1)(c) or (d) within the period required by subsection (2) or (2A)”.
- (3) In section 229(5), replace “on examination or enquiry” with “during an interview or in answer to a question”.

18 Section 233A amended (Obligation of Labour Inspector and department not to disclose information)

In section 233A(1), after “section 223(1)”, insert “or the Immigration Act 2009”.

19 Section 235A amended (Interpretation)

- (1) In section 235A, delete “**infringement offence** means”.
- (2) In section 235A (as amended by subsection (1) of this section), after “235F,—”, insert:

infringement fee in relation to an infringement offence, means the infringement fee for the offence specified in section 235E

infringement offence means—

- (3) In section 235A, definition of **infringement offence**, after paragraph (b), insert:

(c) a failure by an employer to comply with a requirement made under section 229(1)(d) within the time period required by section 229(2A).

20 Section 235B amended (Infringement offences)

- (1) Replace section 235B(1)(b) with:

(b) be issued with an infringement notice under section 235C.

- (2) In section 235B(2), replace “require” with “do not require”.

- (3) After section 235B(2), insert:

- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

21 Sections 235C to 235E replaced

Replace sections 235C to 235E with:

235C When infringement notice may be issued

A Labour Inspector may issue an infringement notice to a person if the Labour Inspector believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

235D Revocation of infringement notice before payment made

- (1) A Labour Inspector may revoke an infringement notice before—

- (a) the infringement fee is paid; or
(b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.

- (2) The Labour Inspector must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.

- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter.

235DA What infringement notice must contain

An infringement notice must be in the form prescribed in regulations made under section 237 and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence;
(b) the amount of the infringement fee;
(c) the address of the department;
(d) how the infringement fee may be paid:

- (e) the time within which the infringement fee must be paid:
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:
- (g) a statement that the person served with the notice has a right to request a hearing:
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:
- (i) any other matters prescribed in the regulations.

235DB How infringement notice may be served

- (1) An infringement notice may be served on a person who the Labour Inspector believes is committing or has committed an infringement offence by—
 - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
 - (c) leaving it for the person at the person's place of business or work with another person; or
 - (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
 - (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.
- (2) Unless the contrary is shown,—
 - (a) an infringement notice (or a copy of it) sent by prepaid post to a person under subsection (1) is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and
 - (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the department.

235DC Reminder notices

A reminder notice must be in the form prescribed in regulations made under section 237 and must include the same particulars, or substantially the same particulars, as the infringement notice.

235E Infringement fees

- (1) The infringement fee,—
 - (a) for an infringement offence specified in paragraph (a) or (c) of the definition of that term in section 235A, is \$1,000:

- (b) for an infringement offence prescribed by regulations under paragraph (b) of the definition of that term in section 235A, is the infringement fee specified in regulations.
- (2) However, the maximum aggregate infringement fees that an employer is liable to pay in a 3-month period for infringement offences specified in paragraph (a) or (b) of the definition of infringement offence in section 235A is \$20,000 (whether for breaches of the same provision or breaches of different provisions).

235EA Infringement fine

The maximum fine that can be imposed by the court in relation to an infringement offence is double the amount of the infringement fee.

22 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 3 of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Part 3

Amendment to Companies Act 1993

23 Principal Act

This Part amends the Companies Act 1993.

24 Section 383 amended (Court may disqualify directors)

After section 383(1)(bb), insert:

- (bc) a person has been convicted of an offence under section 351 of the Immigration Act 2009 (exploitation of unlawful employees and temporary workers) and the offence was enabled by, or otherwise related to, the use of a company; or
- (bd) a person has been convicted of an offence under section 98D of the Crimes Act 1961 (trafficking in persons) and the offence was enabled by, or otherwise related to, the use of a company; or

Schedule 1
New Part 2 inserted in Schedule 1AA of Immigration Act 2009

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Part 2
**Provision relating to Worker Protection (Migrant and Other
Employees) Act 2023**

4 Power to access employment documents

The power in section 275A to require a document applies on and from the commencement of that section, even if the document was created before that commencement.

Schedule 2

Consequential amendments to Immigration Act 2009

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Section 4

In section 4, replace the definition of **infringement fee** with:

infringement fee has the meaning given to it by section 359

In section 4, insert in their appropriate alphabetical order:

commercial craft infringement offence has the meaning given to it by section 359

employment infringement offence has the meaning given to it by section 359

Section 161

In section 161(1)(d), replace “section 350(1)(a)” with “section 350(1)”.

Section 357

In section 357(1), replace “section 350(1)(a)” with “section 350(1)”.

Repeal section 357(2).

Section 400

Replace section 400(1)(g) with:

(g) specifying the offences in this Act that are commercial craft infringement offences:

(ga) specifying the offences in this Act that are employment infringement offences:

Repeal section 400(1)(h)(iii) and (iv).

Section 456

In section 456(2), replace “section 350(1)(b)” with “section 350(1)”.

Schedule 3
**New Part 5 inserted in Schedule 1AA of Employment Relations Act
2000**

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Part 5
**Provision relating to Worker Protection (Migrant and Other
Employees) Act 2023**

19 Transitional provision relating to section 229 of this Act

Section 229 (as amended by the Worker Protection (Migrant and Other Employees) Act 2023) applies to documents and employment information created before or after that amendment.

Legislative history

29 September 2022	Introduction (Bill 174–1)
18 October 2022	First reading and referral to Education and Workforce Committee
20 March 2023	Reported from Education and Workforce Committee (Bill 174–2)
11 May 2023	Second reading
20 June 2023	Committee of the whole House (Bill 174–3)
29 June 2023	Third reading
6 July 2023	Royal assent

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