

Version
as at 20 December 2023



Fair Pay Agreements Regulations 2022

(SL 2022/307)

Fair Pay Agreements Regulations 2022: revoked, on 20 December 2023, by section 6(b) of the Fair Pay Agreements Act Repeal Act 2023 (2023 No 65).

Cindy Kiro, Governor-General

Order in Council

At Wellington this 28th day of November 2022

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 283 of the Fair Pay Agreements Act 2022—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety made in accordance with sections 5(3) and 283 of that Act.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

1 Title

These regulations are the Fair Pay Agreements Regulations 2022.

2 Commencement

These regulations come into force on 1 December 2022.

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Fair Pay Agreements Act 2022

ANZSCO means the *Australian and New Zealand Standard Classification of Occupations 2006*, published by Statistics New Zealand

ANZSIC means the *Australian and New Zealand Standard Industrial Classification 2006*, published by Statistics New Zealand

collective agreement has the meaning given in section 5 of the Employment Relations Act 2000

fixed-term employment agreement means an employment agreement that ends—

- (a) at the close of a specified date or period; or
- (b) on the occurrence of a specified event; or
- (c) at the conclusion of a specified project

median wage means the median wage that is specified in the most recent Household Labour Force 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.

(2) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

Part 1

Applications to initiate bargaining

Part 1 heading: inserted, on 8 June 2023, by regulation 4 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Application to initiate bargaining: public interest initiation test

5 Application of regulations 6 to 9

Regulations 6 to 9 apply in relation to an application to initiate bargaining for a proposed agreement, if the application is made under section 27(1)(b)(ii) of the Act on the basis of meeting the public interest initiation test.

6 Public interest initiation test: portion of employees receive low pay

To meet the requirement in section 29(1)(a) of the Act that a prescribed portion of employees who would be within the coverage of the proposed agreement receive low pay for their work, the chief executive must be satisfied that—

- (a) approximately 60% or more of the employees receive a rate of pay that is equal to or close to the minimum adult rate of wages prescribed under section 4 of the Minimum Wage Act 1983; and
- (b) approximately 30% or less of the employees receive a rate of pay that is close to, equal to, or higher than the median wage.

7 Public interest initiation test: portion of employees have little bargaining power

To meet the requirement in section 29(1)(b)(i) of the Act that a prescribed portion of employees who would be within the coverage of the proposed agreement have little bargaining power in their employment, the chief executive must be satisfied that—

- (a) approximately 20% or less of the employees are union members; or
- (b) approximately 20% or less of the employees are employed under a collective agreement.

8 Public interest initiation test: portion of employees lack pay progression

- (1) To meet the requirement in section 29(1)(b)(ii) of the Act that a prescribed portion of employees who would be within the coverage of the proposed agreement have a lack of pay progression in their employment, the chief executive must be satisfied that the circumstances set out in subclause (2) exist.

- (2) The circumstances are that approximately 60% or more of the covered employees who have been employed in a role for a relatively long period receive a rate of wages that is, on average, no more than 20% above the rate of wages received by covered employees who have been recently appointed to the same role, despite—
 - (a) having completed relevant training; or
 - (b) having increased their relevant skills.
- (3) For the purposes of subclause (2), to determine whether an employee has been employed for a **relatively long period** the chief executive—
 - (a) must take into account the average time that a covered employee is employed in the relevant role; and
 - (b) may take into account the average turnover of employees employed in the relevant role.

9 Public interest initiation test: portion of employees inadequately paid

To meet the requirement in section 29(1)(b)(iii) of the Act that a prescribed portion of employees who would be within the coverage of the proposed agreement are not adequately paid for their employment, the chief executive must be satisfied that at least 60% of the employees are not adequately paid when taking into account whether the employees—

- (a) regularly work more than 40 hours per week, with the majority of the hours being worked in night shifts, in split shifts, or during weekends; or
- (b) regularly receive total wages that are not, for each employee, the same each week or each fortnight (as applicable); or
- (c) are employed under a casual or fixed-term employment agreement.

Application to initiate bargaining: specification of coverage

10 How to specify coverage of proposed agreement

- (1) In addition to meeting the requirements set out in the Act, an application to initiate bargaining must specify the coverage of a proposed agreement,—
 - (a) if the proposed agreement is an occupation-based agreement, using an ANZSCO code to specify the occupation covered by the proposed agreement; or
 - (b) if the proposed agreement is an industry-based agreement,—
 - (i) using an ANZSCO code to specify each occupation covered by the proposed agreement; and
 - (ii) using an ANZSIC code to specify the industry covered by the proposed agreement.

- (2) If a bargaining party considers that no ANZSCO code accurately describes a relevant occupation, or no ANZSIC code accurately describes a relevant industry, the bargaining party's application must—
 - (a) clearly explain the nature of the occupation or industry (as applicable); and
 - (b) clearly explain why the bargaining party considers that the relevant occupation or industry is not accurately described by an ANZSCO or ANZSIC code; and
 - (c) include any ANZSCO or ANZSIC code that the bargaining party considers to be close to describing the relevant occupation or industry.

Application to initiate bargaining: verification of information

11 Further information that chief executive may require initiating union to provide

- (1) Subclause (2) applies when the chief executive considers whether to approve an application to initiate bargaining for a proposed agreement that relies on the representation test described in section 28(1) or 205(2)(a) (as applicable) of the Act.
- (2) For the purpose of section 35(3) of the Act, the chief executive may verify information that the applicant has provided under section 31(1)(a)(ii) or 203(3) (as applicable) of the Act by requiring the applicant to provide the information specified in subclause (3).
- (3) The information is, for each employee in a sample of the employees who the applicant claims support the application for the proposed agreement,—
 - (a) if the applicant has been provided with an email address for the employee, that email address; and
 - (b) if the applicant has been provided with a phone number for the employee, that phone number.

12 Further information that chief executive may require employer association or specified employer bargaining party to provide

- (1) Subclause (2) applies when the chief executive considers whether to approve an application to initiate bargaining to renew or replace a fair pay agreement that relies on the representation test described in section 205(2)(b) of the Act.
- (2) For the purpose of section 35(3) of the Act, the chief executive may verify information that the applicant has provided under section 203(2) or 204 (as applicable) of the Act by requiring the applicant to provide the information specified in subclause (3).
- (3) The information is, for each employer who the applicant claims supports the proposed renewal or the proposed replacement, or for a sample of those employers,—

- (a) an email address for the employer or a representative of the employer;
and
- (b) a phone number for the employer or a representative of the employer.

Part 2

Mandatory content

Part 2 heading: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Default bargaining parties

[Revoked]

Heading: revoked, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

13 Application

This Part applies to certain aspects of the mandatory content of each fair pay agreement (*see* section 123 of the Act).

Regulation 13: replaced, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

14 Agreement must specify mandatory content as it applies to each class of employees

- (1) If the mandatory content of a fair pay agreement is the same for all covered employees, the agreement need specify the mandatory content only once.
- (2) If the mandatory content of a fair pay agreement applies differently to a specified class of employees in accordance with sections 130 to 137 of the Act, the agreement must specify the mandatory content (in accordance with these regulations) separately for each such class of employees.

Regulation 14: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Class of covered employees

Heading: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

15 Specification of class of covered employees

- (1) Subclause (2) applies if a fair pay agreement includes terms that apply to a class of covered employees that are different from the terms that apply to another class of covered employees under the same fair pay agreement, and the terms relate to 1 or more of the following matters:
 - (a) minimum base wage rates (*see* regulation 16):
 - (b) overtime rates (*see* regulation 19):
 - (c) penalty rates (*see* regulation 20):

- (d) adjustments to any of the rates listed in paragraphs (a) to (c) (*see* regulations 17 and 21):
 - (e) standard hours of work (*see* regulation 18):
 - (f) leave entitlements of a type that is covered in Part 2 of the Holidays Act 2003 (*see* regulation 22).
- (2) The fair pay agreement must—
- (a) describe each class of covered employees, by specifying 1 or more of the following:
 - (i) the occupation or occupations of the covered employees within the class:
 - (ii) the role or roles within each specified occupation:
 - (iii) the district or districts in which the employees work (*see* section 136 of the Act); and
 - (b) comply with regulations 16 to 22 in relation to each class of covered employees.
- (3) If a fair pay agreement provides the same entitlements for the matters listed in subclause (1) for all covered employees—
- (a) in all occupations covered by the agreement, the agreement may specify that those entitlements apply to all occupations within the coverage of the agreement:
 - (b) in all roles within a specified occupation, the agreement may specify that those entitlements apply to all roles within the specified occupation:
 - (c) in all districts of New Zealand, the agreement may specify that those entitlements apply nationally.

Regulation 15: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Minimum base wage rates

Heading: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

16 Minimum base wage rates

- (1) For the purpose of section 123(1)(d)(i) of the Act, a fair pay agreement must specify the minimum base wage rate, other than a starting-out rate of wages or a training rate of wages, by either or both of the following methods:
- (a) specifying the minimum base wage rate as an amount, in which case the agreement must specify, for each type of work covered by the agreement and for each class of covered employees,—
 - (i) the amount that an employee is paid per hour; or
 - (ii) that an employee is to be paid the hourly amount prescribed under section 4 of the Minimum Wage Act 1983:

- (b) specifying a method of calculating the minimum base wage rate, in which case the agreement must specify, for each type of work covered by the agreement and for each class of covered employees,—
 - (i) a percentage of the amount prescribed under section 4 of the Minimum Wage Act 1983; or
 - (ii) a formula to calculate the minimum base wage rate (for example, by reference to data published by Statistics New Zealand).
- (2) For the purposes of sections 131 to 133 of the Act, a fair pay agreement must—
 - (a) specify a starting-out rate of wages or specify that a starting-out rate of wages is not payable under the fair pay agreement; and
 - (b) specify a training rate of wages or specify that a training rate of wages is not payable under the fair pay agreement.
- (3) If a fair pay agreement specifies a starting-out rate of wages or a training rate of wages, it must be expressed as being 1 or more of the following:
 - (a) a percentage of the applicable minimum base wage rate specified in the fair pay agreement under subclause (1):
 - (b) a percentage of the amount prescribed under section 4 of the Minimum Wage Act 1983:
 - (c) an hourly amount:
 - (d) in the case of the starting-out rate of wages, a percentage of the amount prescribed under section 4A of the Minimum Wage Act 1983:
 - (e) in the case of the training rate of wages, a percentage of the amount prescribed under section 4B of the Minimum Wage Act 1983.

Regulation 16: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

17 Adjustments to minimum base wage rates

For the purpose of section 123(1)(d)(iv) of the Act, a fair pay agreement must specify that the minimum base wage rate, including any starting-out rate of wages and any training rate of wages, is adjusted by 1 or more of the following methods:

- (a) increasing it to a new rate on a specified date:
- (b) applying a specified percentage to the rate on a specified date:
- (c) applying a percentage to the rate, which is determined by reference to data published by Statistics New Zealand, on a specified date:
- (d) applying a specified formula to the rate on a specified date or after a specified event.

Regulation 17: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Standard hours, overtime rates, and penalty rates

Heading: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

18 Standard hours

For the purpose of section 123(1)(c) of the Act, a fair pay agreement must specify the standard hours for each type of work covered by the agreement and for each class of covered employees under the agreement by specifying—

- (a) the days of the week on which standard hours occur; and
- (b) the hours on those days that are standard hours.

Regulation 18: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

19 Overtime rates

- (1) For the purpose of section 123(1)(d)(ii) of the Act, a fair pay agreement must specify an overtime rate for each type of work covered by the agreement and for each class of covered employee under the agreement by specifying 1 or more of the following:

- (a) an hourly rate:
- (b) a percentage of the applicable minimum base wage rate that is payable (which percentage must not be less than 100%):
- (c) a formula to calculate the overtime rate (for example, by reference to data published by Statistics New Zealand).

- (2) The fair pay agreement must specify when overtime rates are payable by reference to 1 or both of the following (but *see* section 124 of the Act):

- (a) the total hours that the employee has worked in a week before they are entitled to be paid the overtime rate:
- (b) the total hours that the employee has worked on a specified day before they are entitled to be paid the overtime rate.

Regulation 19: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

20 Penalty rates

- (1) For the purpose of section 123(1)(d)(iii) of the Act, a fair pay agreement must specify penalty rates for each type of work covered by the agreement and for each class of covered employees under the agreement by specifying 1 or more of the following:

- (a) an hourly rate:
- (b) a percentage of the applicable minimum base wage rate that is payable (which percentage must not be less than 100%):
- (c) a formula to calculate the penalty rate (for example, by reference to data published by Statistics New Zealand).

- (2) The fair pay agreement must specify when the penalty rates are payable by specifying (but *see* section 124 of the Act)—
- (a) the hours (which must not include any of the standard hours specified under regulation 18) or days on which penalty rates are payable; or
 - (b) that all hours worked, other than the standard hours, are hours for which penalty rates are payable.

Regulation 20: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

21 Adjustments to overtime rates and penalty rates

For the purpose of section 123(1)(d)(iv) of the Act, a fair pay agreement must specify that each overtime rate and each penalty rate is adjusted by 1 or more of the following methods:

- (a) increasing it to a new rate on a specified date:
- (b) applying a specified percentage to the rate on a specified date:
- (c) applying a percentage to the rate, which percentage is determined by reference to data published by Statistics New Zealand, on a specified date:
- (d) applying a specified formula to the rate on a specified date or after a specified event.

Regulation 21: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Leave entitlements

Heading: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

22 Leave entitlements

- (1) For the purpose of section 123(1)(f) of the Act, a fair pay agreement must specify each leave entitlement for each type of work covered by the agreement, and for each class of covered employees, by specifying,—
- (a) if the leave entitlement is of a type that is covered in Part 2 of the Holidays Act 2003, that the relevant leave entitlement is the same as, or greater than, the entitlement provided in that Act; or
 - (b) in all other cases, the information required by regulation 23.

Example

In relation to annual holidays provided under subpart 1 of Part 2 of the Holidays Act 2003, a fair pay agreement may specify 1 or more of the following:

- (a) that a class of covered employees is entitled to a specified amount more than the minimum annual holidays provided under section 16(1) of that Act:
 - (b) that the annual holiday pay for a class of covered employees is paid at a higher rate than the rate specified in section 22(2)(b) of that Act.
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- (2) For the purpose of section 128 of the Act, if a leave entitlement is expressed as a specified amount, it must be expressed using the same unit of time as that used in the Holidays Act 2003 for the corresponding type of leave.

Regulation 22: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

23 Additional types of leave

If a fair pay agreement provides employees performing a type of work covered by the agreement, or a class of covered employees, with a leave entitlement other than leave of a type provided by Part 2 of the Holidays Act 2003, the agreement must specify—

- (a) the name of the leave; and
- (b) a description of the leave; and
- (c) the circumstances in which an employee is entitled to the leave (which may include, for example, how long an employee must work for an employer to be entitled to take the leave and when the employee may take the leave); and
- (d) the extent of the leave (for example, the maximum number of days of the leave that an employee may take in a specified period); and
- (e) the rate of pay that the employee must be paid when taking the leave; and
- (f) whether any remaining leave balance must be paid out on the termination of the employee's employment.

Regulation 23: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Part 3 Miscellaneous

Part 3: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Default bargaining parties

Heading: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

24 Default bargaining parties

- (1) The employee default bargaining party is New Zealand Council of Trade Unions Te Kauae Kaimahi Incorporated.
- (2) The employer default bargaining party is Business New Zealand Incorporated.

Regulation 24: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Form of fair pay agreement notice if notice amends coverage of fair pay agreement

Heading: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

25 Form of fair pay agreement notice if notice amends coverage of fair pay agreement

- (1) A fair pay agreement notice issued by the chief executive under section 168(1)(b) of the Act to amend the coverage of a fair pay agreement must contain the following information:
- (a) a statement that the chief executive has amended the coverage of the fair pay agreement in accordance with the requirements of section 150 or 166 of the Act, as relevant:
 - (b) identification of the proposed agreement and the fair pay agreement that had a coverage overlap:
 - (c) the FPA reference number of the proposed agreement and the fair pay agreement:
 - (d) the amended coverage of the fair pay agreement, described in accordance with the requirements of regulation 10:
 - (e) any other information the chief executive considers relevant.
- (2) In this regulation,—

department means the department, departmental agency, or interdepartmental venture (as named in Part 1, 2, or 4 of Schedule 2 of the Public Service Act 2020) that, with the authority of the Prime Minister, is responsible for the administration of this legislation

FPA reference number means, in relation to a proposed agreement or a fair pay agreement, the reference number issued by the department when the chief executive received the application for approval to initiate bargaining for the proposed agreement.

Regulation 25: inserted, on 8 June 2023, by regulation 5 of the Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68).

Schedule 1
Transitional, savings, and related provisions

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Part 1
Provisions relating to these regulations as made

There are no transitional, savings, or related provisions in these regulations as made.

Rachel Hayward,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 29 November 2022.

Notes

1 *General*

This is a consolidation of the Fair Pay Agreements Regulations 2022 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Fair Pay Agreements Act Repeal Act 2023 (2023 No 65): section 6(b)

Fair Pay Agreements Amendment Regulations 2023 (SL 2023/68)