

EMPLOYMENT LAW BRIEFS

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On Saturday 26 November 2011 New Zealand will be heading to the polls to vote for our next Government. For many of you, a party's employment relations policy may be a major factor in deciding who you vote for. The article below provides a summary of the employment relations policies of the major parties. For further information please refer to the parties websites.

The National Party

On 28 October 2011 John Key and the National Party announced its employment relations policy. In their current term as Government they have introduced a number of new employment relations laws including the controversial 90 day trial period and controlling unions access to the workplace. If elected again, National has announced that they will introduce the policies below.

The "Starting-Out Wage"

In 2008 the Labour Government abolished the youth minimum wage. National is of the view that this destroyed up to 9000 jobs for 16 and 17 year olds. National plans to establish a starting-out wage which will be set at a minimum of 80% of the adult minimum wage. Three groups will be eligible for this wage:

- 16 and 17 year olds will be eligible to be hired on the starting-out wage until they have completed six months of work for the same employer (or they are responsible for training or supervising other workers).
- 18 and 19 year olds will be eligible for the starting-out wage if they have been on a benefit for more than six months. Again, they remain eligible until they have completed six months work for the same employer.
- 16 to 19 year olds will be eligible if they are training for 40 credits a year or more. After turning 20, the number of credits required will increase to 60 credits per year.

Improving Flexible Working Arrangements

National will extend the right to request flexible working hours to all workers, and will allow flexible working arrangements without invoking the formal request process.

Despite this, an employer can still decline a request for various reasons. These reasons include additional cost, detrimental effect to meet customer demands, detrimental impact on quality or performance and an inability to reorganise work among existing staff.

Collective Bargaining

The Employment Relations Act 2000 (**Act**) originally required collective bargaining to be undertaken in good faith. This was later changed so that once negotiations begin, a collective agreement must be reached unless there are genuine reasons not to.

National will return the Act to its original form, retaining the requirement to bargain in good faith, while removing the requirement to conclude a collective agreement.

A further proposed change to the collective bargaining laws is in the area of partial strikes. Where employees are refusing to do parts of their job as part of a strike action such as answering the phone or completing paperwork, their employer can seek to reduce their pay to a level that reflects the work being done.

This would involve making an application to a Department of Labour inspector, who would assess the circumstances and make a decision on what reduction in remuneration would be appropriate.

The Labour Party

Probably the most promoted Labour policy is their intention to raise the minimum wage to \$15.00 per hour in an attempt to close the income gap between New Zealand and Australia. However, the Party has a number of other employment relations policies that could affect New Zealand's employers and employees.

Industry Standards Agreement

Labour intend on amending the Act to implement an Industry Standards Framework. An Industry Standard Agreement (**ISA**) would be a new and different form of agreement under the Act. It would join the existing individual, collective and multi-employer collective agreements that the Act already provides for. ISAs would be built from the norms already developed in an industry negotiated or determined by a *Workplace Commission*.

Employers and employees will be free to negotiate terms and conditions that exceed those set out in the ISA, but they will not be able to agree to terms that are less than those in the applicable ISA.

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Labour also intends to:

- Repeal the National Government's 90 day trial period law.
- Repeal the laws that restrict access of Unions to the workplace.
- Restore reinstatement as the primary remedy when it is held an employee has been unjustifiably dismissed.
- Restore the Test of Justification to "*what a fair and reasonable employer could not would have done in all the circumstances*".
- Amend the Holidays Act 2003 so that if Waitangi Day and/or Anzac day fall on a Saturday or Sunday, the public holiday will be transferred to a Monday.
- Provide employees with the right to strike when a collective agreement is in force where the employer makes a significant proposal for restructuring or outsourcing.
- Ensure that workers/employees in less permanent forms of employment (labour hire, casual employment and contracting) are given similar rights to those in permanent employment.
- Investigate and implement minimum wage protection and other entitlements for independent contractors.
- Extend the right to organise and collectively bargain to independent contractors
- Extend flexible working arrangements.
- Develop legislation and policy that recognises the right to equal pay, requires a positive duty to advance equality and provide the mechanism to determine work of equal value.

The Green Party

The Green Party recognise that good industrial relations are essential in order to ensure healthy and sustainable work lives for New Zealanders. The Green Party's policy focuses on a living wage and job security. In brief, the Greens policies are:

- Legislate to provide for annual adjustments in the minimum wage to ensure that it equates to no less than 66% of the average wage.
- Support legislation that does not allow for youth rates.
- Ensure that the trainee wage rate is raised to the same as the minimum wage.
- Improve employment rights and increase protection for casual, seasonal, fixed term and temporary workers.

- Review part 6A of the Act in relation to "*vulnerable employees*". This will include adding caregivers in age-related residential care facilities in the schedule of vulnerable workers.
- Establish a minimum statutory entitlement to redundancy compensation (four weeks for first year of employment plus two weeks for each year thereafter).

The Greens are also of the view that unions and collective bargaining are effective ways of improving working conditions. Accordingly the Greens are pushing for access to designated space for union activities in workplaces, improved access rights for unions to worksites and strengthening the ability of unions to prevent passing on of terms and conditions reached through collective bargaining.

Unlike the other parties, many of the Greens policies place a focus on creating a work/life balance for New Zealand employees. As one of their initiatives they wish to investigate the economic and social effects of a 35-hour working week. They also wish to increase a number of leave entitlements:

- Extend paid parental leave to ensure parents are provided with a total of 13 months paid leave.
- Up to five days bereavement leave for each bereavement.
- Ten days sick leave per annum.
- Establish a separate domestic leave entitlement to provide up to 10 days leave where employees have to care for dependants who are sick.

Both ACT and the Maori Party do not have individual employment relations policies available through their websites.

What is clear is that the National Party have not achieved all of their employment relations policy aims in their first term in Government. It is also evident that the opposition parties do not just intend to repeal the current laws, that they do not like but they also intend to amend our main Acts and introduce significant new laws.

EMPLOYMENT RELATIONS TEAM

If you have any queries in respect of the above, or any other employment law issues, please contact a member of Lane Neave's Employment Relations Team: Andrew Shaw, Glenn Jones, David Caldwell, Julia Hurren and Fiona McMillan.