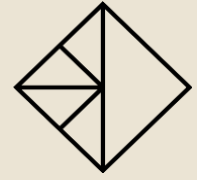


# Factsheet: Fair Pay Agreements - Overview of Process



Fair Pay Agreements (**FPA**) are sector wide agreements that contain minimum employment terms for all employees covered in an industry or occupation. Once an FPA is finalised, all employers covered by the FPA must make sure that their relevant employees have terms and conditions of employment that are the *same as or better than* the terms of the FPA.

Employer Associations and unions within a sector will meet to discuss and agree on minimum employment terms within an industry or occupation.

The Fair Pay Agreements Act 2022 (**Act**) and Fair Pay Agreements Regulations 2022 (**Regulations**) set out the process for initiating, bargaining for, voting on and finalising an FPA. If a majority on both sides agree to the terms, the FPA will be finalised and set as law.

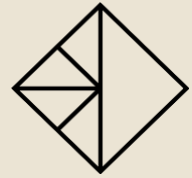
## Initiation:

1. To begin bargaining for an FPA, an eligible union must first apply to the Chief Executive of the Ministry of Business, Innovation and Employment (**MBIE**). The union must gather the required evidence and provide specific information to MBIE for it to consider whether it will grant approval for bargaining to start. Among other things, the union's application must:
  - a. Specify if they are applying to initiate bargaining for an industry-based agreement or an occupation-based agreement (coverage must be detailed clearly so employers and employees know whether they will be covered); and
  - b. Which "test" the application relies upon (these tests are outlined at point 2 below).

Once the Chief Executive approves the application, it must be publicly notified, and the union may begin the bargaining process.

2. There are two "tests" outlined in the Act that the union must meet, but only one must be met for approval for bargaining for an FPA to be granted:
  - a. The **representation test** requires that the union can show that either 1,000 employees or 10% of the employees within the industry support the application to initiate bargaining; or
  - b. The **public interest test** which is that the employees covered by proposed FPA are "low paid" and:
    - i. have little bargaining power at work; or
    - ii. have little pay progression at work; or
    - iii. they are not adequately paid for their role considering a number of circumstances.

3. Within 15 working days of receiving approval to begin bargaining, initiating unions must do their best to **notify**:
  - a. their members;



- b. other unions whose members may be covered by the proposed FPA; and
- c. employers whose employees may be covered by proposed FPA.

Initiating unions must also **publish a notice** on their internet site and in the daily newspapers in Auckland, Hamilton, Tauranga, Wellington, Christchurch, and Dunedin.

4. Within **15 working days of a notification from an initiating union, employers and other unions must** do their best to **notify their employees and members of unions who will be covered by the proposed FPA.**

#### **Bargaining:**

5. There will be bargaining parties representing employers and employees when working towards an FPA.
  - a. Unions will generally act as the bargaining party for employees.
  - b. The bargaining party for employers will be an **Employer Association**, or, if no Employer Association exists or steps forward, a 'default bargaining party' may take its place. The Minister must consider it to be the most representative organisation of employers in New Zealand.
  - c. The Regulations make the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU) the default bargaining party for employees and Business New Zealand the default bargaining party for employers.
6. If there is no default bargaining party on one side, the other bargaining party can apply to the **Employment Relations Authority** for them to set the terms of the FPA.
7. Bargaining parties must each come **to an inter-party side agreement and appoint a lead advocate** within 20 working days of the bargaining side being formed. This agreement is essentially about the process the side will follow when making decisions about an FPA.
8. There are several pieces of **mandatory content** that must be included in a FPA such as who is covered by the FPA; standard hours; minimum pay rates, including overtime and penalty rates; training and development; how much leave an employee can have; and how long the FPA will apply for.

#### **Voting (also known as ratification)**

9. When both bargaining sides agree on a proposed FPA, they must submit the agreement to the Employment Relations Authority for a **compliance assessment.**



10. If approved by the Employment Relations Authority, the voting to determine whether the agreement should be ratified should take place as soon as practically possible.
  - a. Each covered employee will receive 1 vote.
  - b. Employers with less than 21 employees are entitled to a certain number of votes set out in Schedule 2 of the Act.
  - c. Employers who have more than 21 employees are entitled to 1 vote per employee.

The ratification process **requires a 50% majority on each side for an FPA to be ratified.**

11. If the proposed FPA fails ratification twice, the Employment Relations Authority may fix the terms of the proposed agreement.

#### **Finalising an FPA:**

12. If the majority on both sides are in favour of the FPA, they will jointly submit the proposed agreement to the MBIE Chief Executive for verification. Each bargaining side must provide evidence of the process used for the ratification vote and the results to the MBIE Chief Executive.
13. The MBIE will verify whether those who voted were in fact in support of the FPA and whether there is any overlapping coverage of the proposed FPA with an existing FPA.
14. Once the verification steps have been completed and MBIE is satisfied the FPA complies with the Act, the MBIE Chief Executive may validate the agreement by issuing a FPA Notice.
15. An FPA Notice issued by the Chief Executive of MBIE is secondary legislation – this means that employers who are covered by the FPA must provide *at least the same or better terms* of employment to their employees which are covered by the FPA.