



DYHRBERG DRAYTON
EMPLOYMENT LAW

What's New Update: February 2018

This update covers:

- A summary of the Employment Relations Amendment Bill (**the Bill**).

Announced ERA Bill

The new Bill proposed by the Labour led Government has been introduced to Parliament and had its first reading on 1 February 2018. The proposed Bill will amend the Employment Relations Act 2000 to provide greater protections to workers and strengthen the role of collective bargaining in the workplace to ensure fair wages and conditions.

Rights for employees

Restoration of statutory rest and meal breaks

The proposed amendment will see a re-introduction of prescriptive meal and rest breaks to be provided over a work day or shift. These proposed changes will be based on the length of an employee's work period, for example an employee will be entitled to:

- One 10-minute paid rest break when the employee works between 2 and 4 hours;
- One 10-minute paid rest break and one 30-minute meal break when the employee works between 4 and 6 hours;
- Two 10-minute paid rest breaks and one 30-minute meal break when the employer works between 6 and 8 hours; and
- After an employee has worked 8 hours continuously, the provisions effectively start again. An employee is still entitled to two 10-minute paid rest breaks and one 30-minute break for the 8-hour period but will receive additional rest breaks based on any subsequent hours

worked e.g. a further 2 hours entitles an employee to another 10-minute rest break.

Restriction of 90-day trial periods to SMEs

The Bill proposes to restrict the use of the controversial 90-day trial period to small businesses. If you employ fewer than 20 people, there will not be any change. If you employ 20 people or more, you will lose the ability to use the 90-day trial period but can still use a probationary period. You will need to keep an eye on the number of employees and ensure you are not including a trial period in employment agreements if you have become ineligible.

The aim of this development is to balance the insecurity for employees against the desire to remove barriers to hiring for small businesses.

Reinstatement will be restored as the primary remedy to unfair dismissal

Reinstatement as the primary remedy means that if the Employment Relations Authority finds there has been an unjustified dismissal, reinstating the employee to their former role will be the first remedy considered. The Authority will be required to grant reinstatement whenever it is practicable and reasonable (provided the employee seeks reinstatement).

If this amendment goes ahead, it is unlikely we will see a large influx of reinstatement cases as in the three years preceding the law change there were only 29 reinstatements. The reality is many employees are not interested in reinstatement as the relationship has broken down or they have moved to a new role.

Other remedies for unjustified dismissal (such as reimbursement for lost wages and compensation for hurt and humiliation) will still be available where reinstatement is not practical.

Collective bargaining and union rights

Part 1 of the Bill focuses on strengthening collective bargaining and union rights in the workplace with the aim of improving terms and conditions for union members.

This will be achieved by:

Restoration of union access without prior employer consent

The Bill removes the need for union representatives to obtain an employer's consent before entering a workplace. However, access will still be subject to limitations such as access at reasonable times, business continuity, and health and safety.

Removal of the MECA opt out

The Bill proposes to remove the ability of employers to opt out of multi-employer collective bargaining at the outset of bargaining. Employers could still conclude a single-employer agreement after multi-employer bargaining, but the change will mean that they at least have to come to the table and discuss the merits of a possible multi-employer collective agreement.

Repeal of partial strike pay deductions

The current law allows employers to reduce the salary or wages of an employee who goes on a partial strike. In some instances, this has resulted in employees losing pay for low-level action such as wearing a T-shirt instead of wearing their uniform.

The Bill repeals this provision meaning that an employer will not be able to deduct wages of an employee who goes on partial strike.

A requirement for employers to provide reasonable paid time for union delegates

The Bill allows for employees who are appointed as union delegates to spend reasonable paid time undertaking union activities during the employee's hours of work, as long as the activities don't interrupt the employer's business or employee's duties.

A requirement for employers to pass on information about unions in the workplace to new employees

The Bill gives unions the power to request that an employer (whom the union has a collective agreement with) provide new employees with certain information about the role of the union e.g. how to become a member of the union. An employer can only refuse to provide the information if it is defamatory.

Summary

The Bill aims to restore key minimum standards and protections for employees, and to implement a suite of changes to promote and strengthen collective bargaining and union rights in the workplace. The changes are intended to introduce greater fairness in the workplace between employees and employers, in order promote productive employment relationships. The public can have their say on the Bill through the select committee process until 30 March 2018.