

Departmental Disclosure Statement

Employment Relations Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below

27 May 2025

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Part One: General Policy Statement

Introduction

The purpose of the Employment Relations Amendment Bill (the Bill) is to implement the Government's employment relations commitments and support the Government's 'Going for Growth' agenda, by helping to make New Zealand's business settings more competitive. Together, these changes will enhance labour market flexibility, reduce compliance costs, and re-tilt the personal grievance system to better balance employer and employee interests and discourage poor behaviour.

The *Employment Relations Act 2000* (the Act) is the principal piece of employment legislation that regulates employment relationships. While some of the Act's settings provide the flexibility that employers need to grow and innovate, other settings have, over time, constrained flexibility, and created unintended costs and risks for employers.

In addressing some of the above shortcomings, this Bill introduces changes to the Act to –

- provide greater certainty for contracting parties;
- strengthen the consideration of and accountability for the employee's behaviour in the personal grievance process;
- introduce a wage and salary threshold for unjustified dismissal personal grievances; and
- remove the '30 day rule' and associated compliance and information requirements, to support the expansion of 90 day trials and reduce red tape at the start of employment.

The intent is that those changes will provide businesses with the confidence and support to grow, hire, innovate, and increase incomes. This is especially the case for small-to-medium sized businesses, which may not have the support or resources to navigate some of the current settings that this Bill aims to simplify or remove.

Providing greater certainty for contracting parties

The amendments in subpart 1 of the Bill give greater weight to the intention of contracting parties and provides greater certainty to businesses and workers who use certain forms of contracting arrangements, thereby supporting greater labour market flexibility.

Subpart 1 amends the definition of 'employee' in the Act to exclude a 'specified contractor' from the test of employment. A worker is classified as a 'specified contractor' when –

- there is a written agreement that specifies the worker is an independent contractor; and
- the worker is not restricted from working for others; and
- the worker is:
 - not required to be available to work certain times or days, or for a minimum period; or
 - able to sub-contract the work; and
- the business does not terminate the arrangement for not accepting an additional task.

The hiring business has the option to undertake vetting of subcontractors, where due diligence is necessary to meet statutory obligations. The hiring business must give

workers a reasonable opportunity to seek advice on the written agreement before signing it.

Strengthening consideration and accountability for the employee's behaviour in the personal grievance process

The amendments in subpart 2 and 5 of Part 1 of the Bill are intended to re-tilt the personal grievance system to better balance employer and employee interests, and ensure that the behaviour of employees is more strongly accounted for in the setting of remedies.

The amendments strengthen the consideration of and accountability for employee's behaviour in the personal grievance process by –

- removing eligibility for any remedies for employees whose behaviour amounts to serious misconduct;
- removing eligibility for reinstatement into a role, and compensation for hurt and humiliation and loss of any benefit, for employees who contribute to the situation that led to the personal grievance;
- clarifying that the Employment Relations Authority (the Authority) and the Employment Court (the court) have the full spectrum of remedy reductions (up to 100 per cent) available to them;
- requiring the Authority and the court to consider whether the employee's behaviour obstructed the employer's ability to meet their obligation to act as a fair and reasonable employer; and
- increasing the threshold for procedural error, to narrow the focus to solely being on whether any errors in the employer's process resulted in the employee being treated unfairly.

Wages and salary threshold for unjustified dismissal personal grievances

The amendments in subpart 3 and 5 of Part 1 of the Bill are intended to provide greater flexibility and certainty in the dismissal process for high-income employees, by introducing a wages and salary threshold above which a personal grievance for unjustified dismissal could not be pursued. The threshold will –

- apply to personal grievances for unjustified dismissal and unjustified disadvantage where the unjustified disadvantage relates to dismissal but not to other personal grievance grounds;
- initially be set at \$180,000 per annum and then updated annually based on upward changes in average weekly earnings; and
- automatically exclude employees above the threshold from raising an unjustified dismissal personal grievance, with the ability for employers and employees to contract back into unjustified dismissal protection or to agree their own terms and conditions relating to dismissals.

The threshold for unjustified dismissal personal grievances will apply to employees on new employment agreements when the legislation comes into force.

There will be a 12 month transitional period for employees on existing employment agreements, which is set out in the Bill's Schedule. During the transitional period, employees on existing employment agreements will retain the ability to raise an unjustified dismissal personal grievance, unless they agree with their employer to vary their employment agreement and have the wages and salary threshold apply early.

Revocation of the 30 day rule and reinstatement of the related information requirements from 2015–2019 period

The amendments in subpart 4 of Part 1 are intended to reduce red tape for employers and increase freedom of choice for employees at the beginning of employment, as well as support the Government's intention for 90 day trials to be available to all employers.

Those changes will remove –

- the requirement that the terms of a new employee's employment agreement reflect the terms of a collective agreement for the first 30 days of employment;
- the employer's obligation to provide an active choice form to a new employee to indicate whether they intend to join a union;
- the employer's obligation to convey the completed active choice form (if the employee returns it), or a notice that the employee did not complete and return the active choice form, to the union; and
- the ability for unions to specify information that an employer must provide to the employee about the union.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>For the income threshold for unjustified dismissal personal grievances, there is a Select Committee Departmental Report which includes public feedback on a similar proposal from a Member's Bill that was introduced in 2017 but did not pass into law.</p> <ul style="list-style-type: none">• <i>Employment Relations (Allowing Higher Earners to Contract Out of Personal Grievance Provisions) Amendment Bill: Departmental Report for the Transport and Industrial Relations Committee</i>, 2017, Ministry of Business, Innovation and Employment. Employment Relations (Allowing Higher Earners to Contract Out of Personal Grievance Provisions) Amendment Bill (225-2) <p>For the revocation of the 30-day rule and reversion of related information and disclosure requirements back to their 2015-2019 status, there are two Select Committee Departmental Reports that outlines the public feedback received when it was repealed in 2013/14 and re-introduced in 2018/19:</p> <ul style="list-style-type: none">• <i>Employment Relations Amendment Bill: Departmental Report for the Transport and Industrial Relations Committee</i>, 2013, Ministry of Business, Innovation and Employment. 2b5c7e80b51ec8331603ecfd77f5129fd4c8a87c• <i>Employment Relations Amendment Bill: Departmental Report to the Education and Workforce Committee</i>, 2018, Ministry of Business, Innovation and Employment. 4e8ba21974efb6d004db979b76b371508dea790a	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The following Regulatory Impact Statements were prepared for each of the four key policy proposals contained in the Bill.</p> <ul style="list-style-type: none"> • <i>Regulatory Impact Statement: Contractors – Providing greater certainty for contracting parties</i> – authorised by the Ministry of Business, Innovation and Employment, signed 15 August 2024. https://www.mbie.govt.nz/dmsdocument/29647-regulatory-impact-statement-contractorsproviding-greater-certainty-for-contracting-parties-proactiverelase-pdf • <i>Regulatory Impact Statement: Strengthening consideration and accountability for the employee's behaviour in personal grievance process</i> – authorised by the Ministry of Business, Innovation and Employment, signed 7 November 2024. https://www.mbie.govt.nz/dmsdocument/30309-regulatory-impact-statement-strengthening-consideration-accountability-employees-behaviour-personal-grievance-process-pdf • <i>Regulatory Impact Statement: Personal grievances: Introducing an income threshold for unjustified dismissal</i> - authorised by the Ministry of Business, Innovation and Employment, signed 12 November 2024. https://www.mbie.govt.nz/dmsdocument/30306-regulatory-impact-statement-introducing-an-income-threshold-for-unjustified-dismissal-pdf • <i>Regulatory Impact Statement: Removing the 30 day rule and reducing the related information disclosure and reporting requirements for employers</i> – authorised by the Ministry of Business, Innovation and Employment, signed 25 March 2025. https://www.mbie.govt.nz/dmsdocument/30742-regulatory-impact-statement-removing-the-30-day-rule-and-reducing-the-related-information-disclosure-and-reporting-requirements-for-employers-proactiverelase-pdf 	
2.3.1. If so, did the RIA Team in the Treasury/Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The above impact assessments did not meet the threshold for receiving independent opinions on the quality of impact statements from the Regulatory Impact Analysis Team, which was based in the Treasury then subsequently shifted to the Ministry for Regulation, after the function shifted). MBIE's Regulatory Impact Analysis Review Panel reviewed each Regulatory Impact Statement and provided the following ratings, in relation to the quality assurance standard:</p> <ul style="list-style-type: none"> • <i>Regulatory Impact Statement: Contractors – Providing greater certainty for contracting parties</i> – partially meets • <i>Regulatory Impact Statement: Strengthening consideration and accountability for the employee's behaviour in personal grievance process</i> – meets • <i>Regulatory Impact Statement: Personal grievances: Introducing an income threshold for unjustified dismissal</i> – meets • <i>Regulatory Impact Statement: Removing the 30 day rule and reducing the related information disclosure and reporting requirements for employers</i> – partially meets. 	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	Yes

The Regulatory Impact Statement for introducing an income threshold for unjustified dismissals considered the following options:

- An income threshold of \$150,000, \$200,000, and \$250,000.
- For transitional provisions, including applying the threshold to all existing employment agreements, or only applying the threshold to new or varied employment agreements.

Cabinet agreed to an income threshold of \$180,000 and that the following transitional provisions would apply:

- the income threshold for unjustified dismissal personal grievances will apply to new employment agreements when the legislation comes into force.
- there will be a 12-month transitional period for employees on existing employment agreements. During the transitional period, employees on existing employment agreements will retain the ability to raise an unjustified dismissal personal grievance.

The provisions in the Bill for providing greater certainty for contracting parties is substantively the same as that those analysed in the Regulatory Impact Statement. However, the “*is allowed to sub-contract*” criterion has been further developed to clarify that vetting of subcontractors may occur to ensure compliance with any relevant statutory requirements.

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>All the Regulatory Impact Statements set out the potential costs and benefits to their respective proposals but were unable to quantify them. This is because the impacts of these changes were difficult to estimate, given the inability to accurately predict:</p> <ul style="list-style-type: none"> • the size of the costs that may be removed from employers/businesses (relative to what would have occurred under the status quo); and • how employees may change behaviours, and/or how employers may change practices, in response to the changes. 	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
Please refer to Appendix One for further details.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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All the proposals being introduced in the Bill have been assessed by the Ministry of Business, Innovation and Employment and the Ministry of Foreign Affairs and Trade respectively against New Zealand's International Labour Organization (ILO) and international trade obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Internal analysis was completed, concluding that the policy changes will not affect any obligations for parties to act in good faith in relation to collective bargaining processes, or the ability to undertake collective bargaining in line with a tikanga Māori approach.

We have not identified any special rights or interests that Māori would have in this policy issue, and do not consider the Crown has any specific Treaty responsibilities relating to the issue.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Ministry of Justice has undertaken an assessment of whether the Bill is consistent with the Bill of Rights Act 1990 and has provided advice to the Attorney-General. Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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Ministry of Justice was consulted on the policy proposals on changes being introduced during the departmental consultation phases, prior to Cabinet agreement.
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
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For the revocation of the 30 day rule and reinstatement of related information requirements from 2015-2019, this represents is a change to the way that personal information of employees is collected and transferred to the applicable union.

Instead of the employer having to provide the 'active choice' form to the employee, to forward to the applicable union (see [Form to indicate intention to join union](#)), the employer instead will only have to inform the union as soon as practicable that the employee has entered into an Individual Employment Agreement with the employer.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

YES

The Office of the Privacy Commissioner was informed of the revocation of the 30 day rule and return back to the 2015-2019 settings while the Bill was being developed. The Office was consulted on the Cabinet Legislation Paper and had no comments.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?

YES

As part of the policy development process, targeted external consultation was undertaken on the changes to provide better certainty for contracting parties, income threshold for unjustified dismissal personal grievances, and strengthening consideration and accountability for employees' behaviour in the personal grievance process. On these proposals, officials sought views from employer representatives, unions, subject matter experts, and legal experts, to inform policy options and advice. This assisted in developing the design parameters for the proposals.

Due to time and commissioning constraints, officials were not able to undertake external consultation on the revocation of the 30 day rule.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?

NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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Appendix One: Further Information Relating to Part Two

Further response to Question 2.6

For the changes that strengthen consideration and accountability for employees' behaviour in the personal grievance process:

- [Question a] The potential costs and benefits could be impacted by changes in employer and employee behaviour. For example, employers may be less incentivised to comply with following a fair and reasonable process before dismissing an employee, which transfers risks and costs to employees. On the other hand, if employees are still willing to make low merit claims, it may mitigate some of the expected benefits for employers, as they will still have to go through the dispute resolution process.
- [Question b] The implementation of appropriate guidance, communications, and training of MBIE employment services staff (including mediators, call centre, early resolutions services) can assist in mitigating these risks and ensure that employers and employees are informed of their rights and obligations.

For the change to introduce an income threshold for unjustified dismissal:

- [Question a] The potential costs and benefits will be impacted by the number of employees and employers who agree to opt back into unjustified dismissal protections, and/or negotiate bespoke procedural protections into employment agreements.
- [Question b] MBIE will put out guidance to ensure that parties understand their rights and obligations.