

Departmental Disclosure Statement

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| Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill |
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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 particular 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.

26 November 2024

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Part One: General Policy Statement

This Bill introduces the ability for employers to make pay deductions in response to partial strikes. It does so by largely returning the settings around partial strikes to those that were in the Employment Relations Amendment Act 2000 in 2018, before the Employment Relations Amendment Act 2018 removed those settings. This Bill implements Government policy aimed at incentivising parties engaged in industrial action to reach agreement sooner, by providing employers with a specific response to partial strikes.

Partial strikes are industrial actions that fall short of a full withdrawal of labour. Currently, the main options for employers to respond to a partial strike are to accept it, or to suspend or lock out employees and deduct all pay for that period as if it is a full strike.

The Bill sets out 2 ways to calculate pay deductions in response to partial strikes. An employer can either reduce an employee's pay by a proportionate amount (calculated in accordance with a specified method that is based on identifying the work that the employee will not be performing due to the strike) or by deducting a fixed percentage of their pay.

An employer does not have to make deductions in response to partial strikes. If they decide to do so, the Bill requires the employer to provide written notification about the deduction to employees before the deduction is made. The Bill also specifies the dispute resolution process that applies in relation to partial strike deductions.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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| 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>Select Committee Departmental Reports from when provisions first introduced (2013) and repealed (2018):</p> <p><i>Employment Relations Amendment Bill: Departmental Report for the Transport and Industrial Relations Committee</i>, 2013. 2b5c7e80b51ec8331603ecfd77f5129fd4c8a87c</p> <p><i>Employment Relations Amendment Bill: Departmental Report to the Education and Workforce Committee</i>, 2018. 4e8ba21974efb6d004db979b76b371508dea790a</p> | |

Relevant international treaties

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| 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

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| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | YES |
| <p>Regulatory Impact Statement: Partial strikes authorised by the Ministry of Business, Innovation and Employment, signed 24 October 2024.</p> <p>https://www.mbie.govt.nz/dmsdocument/29892-regulatory-impact-statement-partial-strikes-pdf</p> <p>https://www.regulation.govt.nz/mfr-what-we-do/regulatory-impact-analysis-ria/regulatory-impact-statements-riss</p> | |

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| 2.3.1. If so, did the RIA Team in the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements? | NO |
| <p>The impact assessment identified above did not meet the threshold for receiving an independent opinion on the quality of the impact statements from the Regulatory Impact Analysis Team based in the Ministry for Regulation. MBIE's Regulatory Impact Analysis Review Panel reviewed the Regulatory Impact Statement (RIS) and considered it partially met the quality assurance standard for regulatory impact analysis.</p> | |

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| 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? | NO |
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Extent of impact analysis available

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| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | NO |
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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 |
| The RIS set out the potential costs and benefits but was unable to quantify them. This is because the impact of these changes is difficult to estimate given the inability to predict what collective bargaining may be affected and how outcomes may differ from those that otherwise may have occurred. | |

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| 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? | NO |
| The legislation enables employers to make a specified pay deduction in response to partial strikes; however, it is up to the employers whether they choose to do so. If an employer does make a specified pay deduction, they need to comply with the notice and calculation requirements specified in the Bill. If the employer does not comply with those requirements, then they may be unable to benefit from the policy. | |

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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| 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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The policy was 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. This included an assessment against relevant previous decisions and comments from the ILO supervisory bodies, particularly the *ILO Committee on Freedom of Association* and *Committee on the Application of Conventions and Recommendations*.

Consistency with the government's Treaty of Waitangi obligations

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| 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? |
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An internal analysis was completed, concluding that the policy change 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.

Consistency with the New Zealand Bill of Rights Act 1990

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| 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: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

Offences, penalties and court jurisdictions

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| 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)? | YES |
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The jurisdiction of the Employment Relations Court (and the Employment Court on a challenge) have been amended in relation to disputes relating to specified pay deductions for partial strikes.

The jurisdiction of the Employment Court in relation to injunctions has been amended to include injunctions in relation to specified pay deductions for partial strikes.

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| 3.4.1. Was the Ministry of Justice consulted about these provisions? | YES |
| The Ministry of Justice were consulted on a draft version of the Bill, which included these provisions. | |

Privacy issues

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| 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? | NO |
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External consultation

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| 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? | NO |
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Other testing of proposals

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| 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 |
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

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| 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

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| 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

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| 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

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| 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

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| 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

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| 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

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| 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

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| 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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