



27 March 2018

PROPOSED LEGISLATION AFFECTING BUSINESS OWNERS

Four new Bills have been introduced in Parliament this year and another Bill (Domestic Violence – Victims’ Protection Bill, introduced last year) appear for the first time in the latest [Legislation Scan](#). If passed into law in their present form, they have **implications for all business owners who employ staff regardless of the sector**. These implications are set out in greater detail here than in the Legislation Scan, and have been drawn from the *Explanatory Note* in the proposed legislation. For Government Bills, further information can be obtained from the Departmental Disclosure Statement and Regulatory Impact Assessment and links (where available) have been provided.

Persons interested in following the progress of any Bill can sign up for updates by going to the Parliamentary website (<https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/>), selecting the Bill you wish to follow, click on “Get notifications” and follow the instructions.

Employment Relations Amendment Bill (Government Bill)

Bill Status

Currently before Education and Workforce Select Committee, **submissions due 30 March 2018**, Select Committee report due 1 August 2018.

Purpose of Bill

The purpose is to restore key minimum standards and protections for employees. It also has a suite of changes to promote and strengthen collective bargaining and union rights in the work place, but these are not summarised here as those provisions are not expected to apply to many private surveying and spatial firms.¹

Amendments of Interest

The proposed amendments to the **Employment Relations Act 2000** likely to have some implications include:

- limiting trial periods for new employees to employers with fewer than 20 employees
- reinstating the right to prescribed rest and meal breaks, with limited exceptions.
- restoring reinstatement as the primary remedy in unjustified dismissal cases, where the employee requests it and where reinstatement is practicable and reasonable
- removing the exemption for employers with fewer than 20 employees from the current rules about business transfers to a new owner, which will allow employees of these employers to elect to transfer to an incoming employer
- extending the time frame for employees to elect to transfer to an incoming employer and placing information and notification requirements on employers in respect of their employees’ personal information.

¹ See amendments in Part 1 of the Bill relating to Parts 4, 5, 8 and 9 of the Employment Relations Act 2000.

<http://www.legislation.govt.nz/bill/government/2018/0013/latest/d56e2.html>

<http://www.mbie.govt.nz/info-services/employment-skills/legislation-reviews/pdf-library/folder-employment-relations-amendment-bill/100-day-commitments.pdf>

<http://disclosure.legislation.govt.nz/bill/government/2018/13>

Domestic Violence – Victims’ Protection Bill (Member’s Bill)

Bill Status

Currently before the Justice Select Committee, Select Committee report due 29 March 2018.

Purpose of Bill

The purpose of this Bill is to enhance legal protections for victims of domestic violence and to support businesses to respond effectively by amending several pieces of legislation.

Amendments of Interest

The Bill proposes to:

- Replace the definition of “hazard” in the **Health and Safety at Work Act 2015** so that a person conducting a business or undertaking (PCBU) must address the hazard of a worker suffering domestic violence when taking all practicable steps to ensure that workers are not exposed to hazards. Further amendments to this Act will require PCBUs to have policies on handling situations arising from the hazard of a worker suffering domestic violence, and to take all practicable steps to ensure that health and safety representatives receive training in what is required to support workers who are victims of domestic violence.
- Make provision, in the **Employment Relations Act 2000**, for flexible working arrangements for employees who are victims of domestic violence and who have been employed by the employer for the six months immediately preceding the date of the request for flexible working arrangements. The employer will be required to deal with the request as soon as possible and to notify the employee. In the event that the employer refuses that request, the employee must be notified of the applicable ground and the reasons why the ground applies. Being a victim of domestic violence will be added as a prohibited ground for discrimination under that Act.
- Make provision, in the **Holidays Act 2003**, for victims of domestic violence to request domestic violence leave.
- Add, to the **Human Rights Act 1993**, being a victim of domestic violence as a prohibited ground of discrimination.

Consequently, there will be associated compliance costs with some of these provisions but as it is a Member’s Bill there is no requirement for a regulatory impact assessment or a departmental disclosure statement.

<http://www.legislation.govt.nz/bill/member/2016/0215/latest/whole.html#DLM7054302>

Privacy Bill (Government Bill)

Bill Status

Introduced – 20 March 2018, awaiting first reading.

Purpose of Bill

This Bill proposes to repeal and replace **the Privacy Act 1993** as recommended by the Law Commission's 2011 review of the Act.

The key purpose of reforming the Act is to promote people's confidence that their personal information collected and stored by agencies² is secure and will be treated properly. The reforms will help address privacy risks earlier and give the Privacy Commissioner a stronger role. Public confidence in the way personal information is used and handled will, in turn, support the innovative and effective use of personal information by public and private sector agencies.

The Bill updates and modernises the Act to reflect the impact of new technologies that enable large quantities of data to be stored, retrieved, disclosed and to be sent around the world. The Bill regulates the collection, use, and disclosure of information about individuals. It updates the information privacy principles to better protect information sent overseas and introduces additional ways to enforce these, and retains the complaints system.

Key Changes made in the Bill

The Bill implements most of the Law Commission's recommendations, and some recommendations from the Privacy Commissioner's Necessary and Desirable reports. Key changes include:

- Mandatory reporting of privacy breaches: privacy breaches (unauthorised or accidental access to, or disclosure of, personal information) that pose a risk of harm to people must be notified to the Privacy Commissioner and to affected individuals.
- Provision for the Privacy Commissioner to issue compliance notices that require an agency to do something, or stop doing something, in order to comply with privacy law. The Human Rights Review Tribunal will be able to enforce compliance notices and hear appeals.
- New criminal offences such as misleading an agency in a way that affects someone else's information and to knowingly destroy documents containing personal information where a request has been made for it. The penalty is a fine not exceeding \$10,000.
- Enabling the Privacy Commissioner to make binding decisions on complaints relating to access to information, rather than the Human Rights Review Tribunal. The Commissioner's decisions will be able to be appealed to the Tribunal.
- Strengthening the Privacy Commissioner's information gathering power to allow shortening of the time frame within which an agency must comply, and increasing the penalty for non-compliance.
- Strengthening cross-border data flow protections whereby New Zealand agencies will be required to take reasonable steps to ensure that personal information disclosed overseas

² Agency is defined as any person or body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector (but see full definition for exclusions) and will therefore encompass any surveying or spatial businesses that collects and stores information on individuals.

will be subject to acceptable privacy standards. The Bill also clarifies the application of our law when a New Zealand agency engages an overseas service provider.

- Updating authorisations for sharing listed law enforcement information, including some court information. It preserves existing Information Matching Agreements but, in the future, information matching programmes will be able to be authorised using Approved Information Sharing Agreements.

The changes will better align New Zealand's privacy law with international developments, such as the 2013 OECD Privacy Guidelines and the European Union's forthcoming General Data Protection Regulation.

<http://www.legislation.govt.nz/bill/government/2018/0034/latest/whole.html#whole>

<https://www.justice.govt.nz/assets/Documents/Publications/20160204-RIS-Privacy-Bill-further-Cabinet-decisions-final.pdf>

<http://disclosure.legislation.govt.nz/bill/government/2018/34>

Employment (Pay Equity and Equal Pay) Bill (Member's Bill)

Bill Status

Introduced – 22 February 2018, awaiting first reading.

Purpose of Bill

The purpose of this bill is to eliminate and prevent discrimination, on the basis of sex, in the remuneration and other terms and conditions of employment, and in doing so, promote enduring settlement of claims relating to sex discrimination on pay equity grounds.

Key Provisions of the Bill

The Bill seeks to amend the **Employment Relations Act 2000**, repeal and replace the **Equal Pay Act 1972** and the **Government Service Equal Pay Act 1960** in order to achieve its purpose.

The key provisions:

- prohibit an employer from discriminating, on the basis of sex, in remuneration and other terms and conditions
- enable employees to make claims relating to sex discrimination in employment
- distinguish between 3 types of claims (equal pay, unlawful discrimination on matters other than remuneration, and pay equity)
- set out the processes for resolving the different types of claims
- re-enact, in an up-to-date and accessible form, the relevant provisions of the Equal Pay Act 1972.

Equal pay or unlawful discrimination (non-remuneration) claims are probably of greater interest to the surveying and spatial sector than other claims. An equal pay claim is to be treated as a claim for the recovery of wages under the Employment Relations Act 2000. An unlawful discrimination (non-remuneration) claim is to be treated as a personal grievance claim of sex discrimination under section 103 of that Act. There is a 6-year limitation period for equal pay claims which means that remuneration that relates to a period more than 6 years before a claim is filed cannot be recovered.

Employment Relations (Triangular Employment) Amendment Bill (Member's Bill)

Bill Status

Currently before Education and Workforce Select Committee, Select Committee report due 21 September 2018.

Purpose of Bill

This Bill seeks to amend the **Employment Relations Act 2000** and has 2 purposes, to ensure that:

- Employees employed by one employer, but working under the control and direction of another business or organisation, are not deprived of the right to coverage of a collective agreement covering the work being performed for that other business or organisation.
- Such employees are not subjected to a detriment in their right to allege a personal grievance by providing that where an employee is employed by one employer, but working under the control and direction of another business or organisation, that employee may join the other business or organisation that is party to any personal grievance action.

Key Changes made in the Bill

The key changes made in the Bill include:

- Amending the definition of applicable collective agreement to include any collective agreement binding an employee and a primary employer and inserting two new definitions of primary employer and secondary employer.
- Making provision, in certain circumstances, for employees of a primary employer to be bound by a collective agreement to which the secondary employer is a party.
- Making provision that in certain circumstances an employee of a primary employer may, with the leave of the Authority or court, join a secondary employer to a personal grievance.