



PEOPLE
BUSINESS
EMPLOYMENT LAW

EQUAL PAY AMENDMENT BILL

Parliament has passed the Equal Pay Amendment Bill, which lays out a new process to raise and consider claims of systemic sex-based pay discrimination in female-dominated industries. The changes in the Bill will take effect in late October.

In certain occupations where the work is, or was predominately performed by females, wages have been kept lower than occupations where the work has been performed predominately by men. Today's "going market rate" for employing people in those traditionally female dominated occupations may not be a fair or equal rate, but the result of historical pay discrimination.

New Zealand's equal pay law requires that women and men be paid the same for jobs of equal value (that is, jobs that require similar degrees of skills, responsibility, effort and experience, and conditions), even if the jobs are different. This is called pay equity.

Until now, women have only been able to make claims for pay equity through the courts. The Equal Pay Amendment Bill will allow employees or unions to make a pay equity claim directly with their employer by using a framework that is similar to New Zealand's existing employment relations bargaining framework.

By making court a last-resort, the proposed approach will make it easier for employees or unions to raise a pay equity claim, and use a collaborative process that is more familiar to those involved. Under the Bill, employers, employees and unions will negotiate in good faith, with access to mediation and resolution services available if they are unable to agree.

Employment New Zealand will be developing online tools and resources, with the support of its pay equity partners – the Ministry for Women and the State Services Commission. MBIE has insightful background information on the development of the Bill at [Equal Pay Amendment Bill](#).

Components of the proposed pay equity framework

MBI's website also provides an [overview](#) of pay equity and the new framework. The overview includes two flow charts demonstrating the processes, and the following is an extract describing the components of the framework.

An arguable claim

Claims raised must be arguable, and on receiving a claim an employer must decide whether they agree that the claim is arguable. Accepting that a claim is arguable does not mean an employer agrees there is pay inequity or guarantees that there will be a pay equity settlement. It is simply an acknowledgement that the claim is arguable, and that it should be analysed together in good faith, with a view to settling the matter by agreement.

Assessing the work of the claimants and comparators to determine level of pay inequity.

The first step is an assessment whether the work of the employees is undervalued, on the basis of sex. This involves assessing the work of the claimants and comparing it to the work of suitable comparator occupations not subject to gender-based undervaluation.

Parties will be able to choose comparators that they consider most relevant and appropriate from the outset, which should create a more efficient process. These could include comparators performing work that is the same or substantially similar, or different work that involves similar skills and experience, responsibilities, working conditions or degrees of effort. Comparators serve as a basis for negotiation and do not need to be agreed between employers and employees. Several comparators can be used during negotiations.

Multi-employer bargaining

Unions can raise a pay equity claim on behalf of their members with multiple employers. If an employer believes they have genuine reasons based on reasonable grounds for not being part of the multi-employer process, they need to provide those reasons in writing to the union. If the union and the employer don't agree, they can use the dispute resolution process.

Multi-union claims

Where different unions represent employees of one employer, they can raise a claim together. If a union has already raised a claim, and a second union raises a claim for the same occupation with the same employer, this must be consolidated with the other union claim. It can be consolidated at any stage in the process.

The dispute resolution process

The dispute resolution process for pay equity bargaining is similar to that for other employment relations matters. Employment Mediation Services can assist in pay equity bargaining between employers and unions. Their support includes assisting parties to unravel difficult issues and develop options, steering parties back into negotiations, and providing coaching and feedback on behaviour. When a matter has not been resolved through mediation or other processes, an employee, a union, or employer may apply to have the matter considered by the Employment Relations Authority or the Employment Court.

Addressing claims for back pay

The Bill recognises that pay equity is an issue stemming from structural discrimination, and the issue of pay inequity cannot be attributed to the actions of a single employer. A balanced approach is therefore required. If parties wish, they will be able to discuss back pay as part of their pay equity bargaining. In other words, backpay is not automatic, and requires agreement.

Support

Online tools and resources are being developed by the Ministry of Business, Innovation & Employment (MBIE) to help employees, businesses and unions understand the process. Support will also be available from MBIE's Employment Services during the process to help resolve disputes, and make sure enduring agreements are reached.

CANNABIS LEGISLATION AND CONTROL REFERENDUM

In this year's General Election, voters can also vote in a referendum on whether the recreational use of cannabis should become legal. The proposed [Cannabis Legalisation and Control Bill](#) has been developed to help give an idea of how such a law might work.

The Bill's main purpose is to reduce cannabis-related harm to individuals, families/whānau and communities. It sets out a way for the Government to control and regulate cannabis to achieve this goal. This regulatory model proposes how people can produce, supply, or consume cannabis legally.

The matter is of serious concern for employers, mainly due to uncertainty about how their duties and obligations under health and safety law, particularly the Health and Safety at Work Act, will be affected. The fact that the proposed Bill does not cover workplace health and safety issues (because these are already regulated), does not seem to have given much comfort.

If a majority of voters support the campaign, recreational cannabis wouldn't become legal right away. After the election, the incoming Government will be able to introduce a Bill to Parliament that would legalise and control cannabis. This process would include public consultation.

Medicinal cannabis and hemp will not be affected by the outcome of the referendum. Medicinal use of cannabis will still be allowed if prescribed by a doctor, and hemp will still be legal.

Holidays (Bereavement Leave for Miscarriage) Amendment Bill (No 2)

This bill makes it clear that the unplanned end of a pregnancy by miscarriage or still-birth constitutes grounds for bereavement leave for the mother and her partner or spouse, and that the duration of the bereavement leave should be up to 3 days.

The Bill is still to have its third reading but expected to pass into law after the election.

Privacy Act 2020

This Act replaces the 1993 Act with effect from 1 December 2020. It provides for –

- Mandatory reporting of privacy breaches
- New powers for the Commissioner: to issue compliance notices, make binding decisions on access requests, and to gather information
- Stronger cross-border data flow protections
- New criminal offences and penalties

A more detailed discussion of the changes will be included in the newsletter later this year.

HEAVY INVESTMENT TO FIGHT MIGRANT WORKER EXPLOITATION

The [Government has announced](#) a \$50 million investment over the next four years to address temporary migrant worker exploitation in the New Zealand workplace.

The changes will reduce the risk of exploitation occurring in the workplace, remove barriers to report exploitation, and improve response systems for helping migrant workers. Employment New Zealand has seen an increase in reports of exploitation occurring during COVID-19.

Changes include establishing a new visa to support migrants to leave exploitative work situations and increasing the number of labour inspectors and immigration investigators to strengthen the enforcement response.

A free-phone number and reporting service will be set up to receive and handle complaints about exploitative work situations. This will ensure there is a dedicated focus on dealing with complaints of migrant worker exploitation and help build a better understanding of the nature and scale of the problem, which will inform enforcement action.

Future changes will also raise the standards for business models that can often permit exploitative practices to occur.

To support these changes an employment-focused campaign will be developed aimed at raising awareness among migrant workers about their rights, employers of migrant workers and their obligations under New Zealand's employment laws and informing the public about migrant worker exploitation.

These changes are part of an [MBIE-led Review](#) into temporary migrant worker exploitation. The Review aims to prevent migrant exploitation at work, protect migrants in the workplace, and enforce immigration and employment law.

Source MBIE

This article is brought to you by the Window and Glass Association's free employment helpline 0800 692 384. If you have any questions or would like to discuss the article above, please call Philip or Anthony on the helpline.