

### **Fair Pay Agreements Act 2022 passed**

This Act passed its Third Reading in Parliament on 26 October 2022 and comes into effect on 1 December 2022, except for the power to make Regulations and approve forms, which took effect on 27 October 2022.

According to MBIE's [website](#) "More detailed guidance for employers, employees and bargaining parties will be made available when the FPA system comes into effect on 1 December." Watch out for those details in the first Association newsletter after that date.

Meanwhile, here's MBIE's [summary of the FPA](#), as a refresher –

### **Initiating Fair Pay Agreement bargaining**

#### **Mandate**

Unions initiate the Fair Pay Agreement (FPA) process, by meeting a representation threshold of support from 10% or 1000 workers in coverage, or a public interest test. If the coverage substantially expands during bargaining, the public interest or 10% representation test will need to be retested.

#### **Coverage**

The initiating union/s must decide which work they want covered. Parties can later agree to change the coverage. FPAs can be an occupational FPA or an industry FPA. If there is an overlap in coverage between two FPAs, the second one only applies if the workers would be better off overall. Contractors are not currently included, but the government plans to begin work soon to incorporate contractors into the Fair Pay Agreements Act later. Penalties will be applied to employers who try to avoid FPA coverage by misclassifying employees as contractors.

#### **Notification**

Employers, unions, business representatives and government will each have a role in notification, to reach as many affected parties as possible.

### **The bargaining process**

#### **Bargaining Parties**

Unions will represent employees. Employers will choose representatives who meet specified requirements. The bargaining sides must use best endeavours to represent all those in coverage, including non-members, and to ensure Māori interests and views are effectively represented.

#### **Scope of Agreements**

All FPAs must include certain topics like base wage rates, ordinary hours, overtime and penalty rates. Some other topics must be discussed but don't have to be agreed, like redundancy, leave, and health and safety. Other employment terms can be included if the bargaining sides agree.

#### **Flexibility**

An FPA can allow for exemptions for businesses if they are in significant financial hardship. An FPA can set regional differences, and other differential terms if they comply with the Human Rights Act and minimum employment entitlements. An FPA can set a preferential payment for union members, up to a maximum value of their union membership fees.

### **Support for Fair Pay Agreements**

#### **Active Support**

Bargaining sides will be supported by training and a government provided bargaining support person. The government will also contribute up to \$50,000 per bargaining side, with additional funds if the side has low rates of

membership of a union or industry group. Funding for this support is based on 4 FPAs per year. If more than 4 FPAs are initiated, support may be rationed and prioritised. The New Zealand Council of Trade Unions and Business New Zealand will each be offered \$250,000 per year to support their coordination roles in the FPA system.

#### Communication

Employees will receive direct updates from unions, unless they opt out of communications. Employers must allow employees to attend two 2-hour paid meetings during FPA bargaining. Unions can visit workplaces on FPA business without needing the employer's consent.

#### Dispute Resolution

If bargaining parties encounter difficulties, mediation will help to resolve them. The Employment Relations Authority can also make recommendations. If bargaining parties reach a stalemate, the Employment Relations Authority will set the FPA's terms by determination.

#### **Finalising a Fair Pay Agreement**

##### Vetting

The Employment Relations Authority will vet an agreed FPA to ensure the terms are lawful, before it goes to a vote.

##### Ratification

If bargaining parties reach an agreement, their proposed FPA will need support from a simple majority of both employee and employer voters to be ratified. Employers have 1 vote per employee in coverage, with slightly higher vote weighting for employers with fewer than 20 employees in coverage. If a first ratification vote fails, parties go back to bargaining. If a second vote fails, the FPA goes to the Employment Relations Authority for determination.

##### Enactment and Enforcement

Once finalised, MBIE will make secondary legislation to bring the FPA into force, so it will apply to everyone within coverage. People within coverage can enforce their rights through the standard employment dispute resolution system. In addition, the Labour Inspectorate can enforce certain terms of the FPA.

***This article is brought to you by AdviceWise People, who provide WGANZ's free employment helpline 0800 692 384. If you have any questions or would like to discuss the article, please call Philip or Anthony.***