

A quick review of some of the proposed law changes affecting employers turned up five bills now before Parliament.

### **Employment Relations (Restraint of Trade) Amendment Bill**

- Prohibits restraints of trade for employees earning less than \$141,648.
- Above that level restraints will cost 6 months' pay as compensation.
- Restraints limited to 6 months.

This Bill, introduced on 22 September 2022, has had its first reading in Parliament. The Explanatory Note to the Bill sets out the details.

A restraint of trade in an employment agreement is a provision that stops an employee from working in their field, in their area, or for a competitor after the employment has ended. In some jurisdictions, a restraint of trade is known as a "non-compete clause".

Restraints of trade are common in employment agreements and are often used without much thought being given to whether they are reasonable in the circumstance or to the consequences for the employee, for the employee's family, or for competition.

When restraints of trade are challenged in a court, they may be found to be unreasonable and, as a consequence, unenforceable. Challenging provisions in the Employment Relations Authority or in a court can be expensive and uncertain and, as a consequence, many unreasonable restraints of trade have the effect of restraining an employee even though they are probably unenforceable.

This means many employees on modest incomes choose to stay in lower paid work or to abide by the restraint. This, in turn, depresses wages and stifles innovation. It is in the public interest that lower paid employees should be free to take a job with a competitor for more money or better conditions, or to use their skills to start their own business.

This Bill will prohibit the use of restraints of trade in employment agreements for lower- and middle-income employees. It will also require employers of higher income employees to carefully consider whether a restraint of trade is appropriate in relation to those employees and, if they insist on a restraint of trade, to compensate the employees for it.

In more detail, this Bill will—

- provide that restraints of trade have no effect wherever an employee earns less than 3 times the minimum wage:
- limit the use of restraints of trade to those situations where the employer has a proprietary interest to protect through the use of the provision:
- require employers to pay to employees who are subject to a restraint of trade provision an amount equal to half of the employee's weekly earnings for each week that the restraint of trade remains in effect:
- limit the duration of restraints of trade to no more than 6 months.

The Bill is not intended to limit or affect the common law duties of confidentiality and fidelity.

Source: [Legislation.govt.nz](https://legislation.govt.nz)

### **Crimes (Theft by Employer) Amendment Bill**

This Bill amends the Crimes Act 1961 to clarify that not paying an employee their wages is theft. This includes the unlawful withholding of wages, salaries, and other monetary entitlements within an employment relationship.

Currently, offences relating to theft by a person in a special relationship are insufficient to account for wage theft by employers. Existing processes are too complex and can be a deterrent for those that are victims of wage theft.

The new offence created by this Bill will capture employers who owe wages and intentionally do not pay them to the employee.

Source: [Legislation.govt.nz](https://legislation.govt.nz)

### **Parental Leave and Employment Protection (Shared Leave) Amendment Bill**

This Bill amends the Parental Leave and Employment Protection Act 1987 and will ensure that paid parental leave can be split between spouses or partners who are caring for the child and taken at the same time. The total paid parental leave taken by the couple must not exceed the maximum provided for a single primary carer.

It is important as part of building strong families that, where more than one parent or other carer will be involved in raising the child, both parents or carers should have an opportunity to bond with the child and support each other during the critical first few months, to improve short- and long-term child and societal outcomes.

The amendments in this Bill are designed to increase the flexibility of arrangements available to families and, as they do not increase the total paid parental leave available to a family unit, they will not increase the operating costs of providing paid parental leave.

Source: [Legislation.govt.nz](https://legislation.govt.nz)

### **Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Bill**

This bill would amend the Health and Safety at Work Act 2015. It seeks to reduce work-related harm by improving workers' access to health and safety representatives and committees.

Currently, a person conducting a business or undertaking (PCBU) can decline a request from its workers to initiate an election for a health and safety representative if it is not in a designated high-risk sector or industry and has fewer than 20 workers.

These PCBUs can also choose not to decide on a request to establish a health and safety committee. All PCBUs can decline a request for a health and safety committee if satisfied that existing practices sufficiently meet requirements.

The bill would require all PCBUs to initiate elections and establish committees, if requested by workers. The bill would also introduce a timeframe for PCBUs to establish a health and safety committee “as soon as practicable” after receiving a request.

The bill would remove provisions in the Act that enable regulations to prescribe what is considered to be a high-risk sector or industry. These provisions, and the distinction between high-risk and low-risk, would no longer be necessary because the bill would treat all businesses the same.

Source: [Legislation.govt.nz](https://legislation.govt.nz)

### **Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill**

The purpose of this bill is to extend the time available to raise a personal grievance that involves allegations of sexual harassment from 90 days to 12 months. The bill’s third reading was interrupted on 10 May 2023, but it is likely to pass into law.

Source: [Legislation.govt.nz](https://legislation.govt.nz)

***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.***