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Special Issue - October 30, 2012

## EMA NEWS

### Changes to employment law imminent

Labour Minister Kate Wilkinson has announced the government's changes to employment law due to be introduced to Parliament this year.

#### ***The Minister's announcement:***

Cabinet has agreed to further improvements to the Employment Relations Act 2000, including changes to Part 6A that deals with the cleaning, catering, orderly and laundry industries, Labour Minister Kate Wilkinson said today.

The objective of Part 6A is to provide continuity of employment for employees in specific industries when a business is restructured or sold.

"A review of Part 6A found that there were significant operational issues around transferring employees' entitlements and information to the new employer," Ms Wilkinson says.

"Proposed amendments will fix these issues and provide more certainty and clarity for employers while at the same time protecting key benefits for affected employees.

In addition, the review found that while larger businesses had been able to adapt better to the requirements of Part 6A, small and medium sized businesses faced greater proportional costs.

"For example, a husband and wife cleaning team who tender and win a small contract may be currently required to take on any staff doing the work under the previous contract owner.

"That's why Cabinet has also agreed to exempt small and medium businesses - those with fewer than 20 employees - from the provisions of Part 6A where the SME is the incoming employer."

Employees in small and medium enterprises account for approximately a quarter of those in affected industries.

Other changes agreed by Cabinet include empowering the Employment Relations Authority to declare in certain circumstances that collective bargaining has ended.

The proposed changes - including those announced in May this year - will be reflected in a new Bill to amend the Employment Relations Act 2000 that is planned for introduction to Parliament later this year. Changes to Part 6A include:

- A requirement for the outgoing employer to forward employees' information to the incoming employer, such as employment agreements, PAYE, wage and time or leave records.
- A process to help the employers agree how to apportion liabilities for accrued service-related entitlements of employees who are transferring.
- A requirement that employees must decide to transfer to a new employer within five working days (or a longer timeframe if agreed between the outgoing and incoming employer).
- Small and medium businesses - those with fewer than 20 employees - will be exempt from the provisions of Part 6A if they are the incoming employer
- Additional penalties and compliance orders for non-compliance with Part 6A, and

provision for litigation in the District Court.

The proposed changes to Part 6A are part of a package of measures that will extend workers' rights to request flexible working hours and ensure a fair and flexible collective bargaining environment.

Other changes include:

- A return to the original position in the Employment Relations Act where the duty of good faith does not require the parties to conclude a collective agreement.
- Empowering the Employment Relations Authority to declare in certain circumstances that collective bargaining has ended.
- Allowing employers to opt out of multi-employer bargaining.
- Allowing for partial pay reductions in cases of partial strike action.
- Removing the 30-day rule that forces non-union members to take union terms and conditions.
- Changes around the disclosure of personal information following Employment Court judgments involving Massey University.

Click [here](#) for Q&A on the employment law changes

Click [here](#) for relevant Cabinet papers and *The Review of Part 6A: Continuity of Employment*

**EMA says:**

### **Employment changes will help businesses stay viable and stay in New Zealand**

Employment changes outlined today will go some way towards keeping businesses nimble in the current environment.

"The suite of changes announced today will help secure jobs and keep them in New Zealand," said EMA's chief executive Kim Campbell.

"Where unions and employers work constructively together for the mutual benefit of the business and its employees there will be little change," he said.

"But unfortunately, because of the rigidity of our labour laws, there are well known examples where businesses needed to adapt but found they could not.

"Today's adjustments will retain a robust bargaining process between employers and unions but, in the end, businesses will now be able to assure their viability by being able to conclude bargaining over work place conditions even if, after the robust process, they fail to agree.

"Also we have seen examples where changes needed in a workplace have been stymied with the same people who opposed the changes then complaining when their jobs disappeared offshore.

"Employers had been hoping for even more flexibility than has been announced today.

"Unions will still have a monopoly on collective bargaining. Giving workers a choice over who is to represent them would have been welcome, especially as that would address any questions over whether a union's stance is truly representative of their employees' views.

"The changes to Part 6A, while welcome, fall well short of what is required.

"Any law that guarantees employment to members of a union is flawed and should have been repealed in its entirety.

"For example a business owner who dispenses with a cleaning company's services for sub-standard work may still find themselves with the same people responsible for the sub-standard work."

### **Health and Safety Ministerial Review**

New Zealand's poor rate of work-related safety has led to a Ministerial Review of our health and safety framework. And the trends in our official rates of fatality and serious injury are not improving. You can have your say on the review but you need to be quick.

EMA needs your input by next week, by November 6th. To contribute go to

<http://EMAN.informz.net/survistapro/s.asp?id=1767>

Labour Minister Kate Wilkinson has formed a taskforce that to undertake the first wide-ranging strategic review of the workplace health and safety system in 20 years. Taskforce submissions close on the 16th November 2012.

EMA will be preparing a submission on behalf of employers: it is therefore imperative that employers have their concerns/ideas heard. Please follow the link below to have your say. This will be the only chance you have in the next 20 years.

Employers survey responses for the EMA submission close next week on the 6th November. To have your say go to <http://EMAN.informz.net/survistapro/s.asp?id=1767>