

# House of Representatives

# Supplementary Order Paper

Thursday, 8 November 2018

## Employment Relations Amendment Bill

### *Proposed amendments*

Hon Iain Lees-Galloway, in Committee, to move the following amendments:

#### *Clause 2*

In *clause 2(a)* (page 5, lines 6 and 7), replace “4 months after the date of Royal assent” with “on 6 May 2019”.

#### *New clause 3B*

After the cross-heading above *clause 4* (page 6, after line 6), insert:

#### **3B Section 12 amended (Object of this Part)**

Replace section 12(d) with:

- (d) to provide representatives of registered unions with reasonable access to workplaces for purposes related to—
  - (i) the employment of the union’s members; and
  - (ii) the union’s business; and
  - (iii) the health and safety of employees who are not members of the union.

#### *Clause 5*

Replace *clause 5* (page 7, lines 1 and 2) with:

#### **5 Section 20 amended (Access to workplaces)**

Replace section 20(1) with:

- (1) A representative of a union is entitled, in accordance with this section and sections 20A and 21, to enter a workplace for 1 or more of the following purposes:

- (a) purposes related to the employment of the union's members:
- (b) purposes related to the union's business:
- (c) purposes related to the health and safety of any employee on the premises who is not a member of the union, if the employee requests the assistance of a representative of the union on those matters.

*Clause 6*

Replace *clause 6* (page 7, lines 3 to 5) with:

**6 Section 20A amended (Representative of union must obtain consent to enter workplace)**

After section 20A(1), insert:

- (1A) However, subsection (1) does not apply to a representative of a union if,—
- (a) at the time of the representative's entry into the workplace,—
    - (i) there is a collective agreement in force between the employer and the union; and
    - (ii) the coverage clause in the collective agreement covers the work done by employees at the workplace; or
  - (b) at the time of the representative's entry into the workplace,—
    - (i) the union or the employer has initiated bargaining for a collective agreement; and
    - (ii) the intended coverage of the collective agreement, as set out in the notice given in accordance with section 42, covers the work done by employees at the workplace.

*Clause 8*

Replace *clause 8* (page 7, lines 10 to 13) with:

**8 Section 25 amended (Penalty for certain acts in relation to entering workplace)**

After section 25(ab), insert:

- (ac) refuses to permit a representative of a union who is entitled to enter a workplace to enter the workplace; or

*Clause 11*

In *clause 11*, after *new section 33(2)* (page 9, after line 5), insert:

- (3) For the purposes of **subsection (1)**, opposition to concluding a multi-employer collective agreement is a genuine reason not to con-

clude a collective agreement if that opposition is based on reasonable grounds.

- (4) Clause 6 of Schedule 1B overrides **subsection (3)**.
- (5) In this section and in clause 6 of Schedule 1B, **multi-employer collective agreement** means a single collective agreement involving 2 or more employers.

*Clause 18*

In *clause 18*, replace *new section 62A(3)(b)(ii)(A) and (B)* (page 14, lines 14 to 17) with:

- (A) notified the employer that the employee intends to join the union; or
- (B) notified the employer that the employee does not intend to join the union; or

*Clause 35*

In *clause 35*, replace *new section 69ZEA* (page 29, line 12 to page 30, line 5) with:

- 69ZEA Exemption from requirement to provide rest breaks and meal breaks**
- (1) An employer is exempt from the requirement to provide rest breaks and meal breaks in accordance with **section 69ZD(1)** if **subsection (2) or (3)** applies.
  - (2) This subsection applies if—
    - (a) the employer is engaged in the protection of New Zealand’s national security; and
    - (b) continuity of service is critical to New Zealand’s national security; and
    - (c) the employer would incur unreasonable costs in replacing an employee, employed in the protection of New Zealand’s national security, during the rest breaks and meal breaks—
      - (i) with another person who has sufficient skills and experience; and
      - (ii) without compromising New Zealand’s national security.
  - (3) This subsection applies if—
    - (a) the employer is engaged in an essential service; and
    - (b) continuity of service or production in the essential service is critical to the public interest, including (without limitation) services affecting public safety; and

- (c) the employer would incur unreasonable costs in replacing an employee, employed in the essential service, during the rest breaks and meal breaks—
- (i) with another person who has sufficient skills and experience; and
- (ii) without compromising public safety.
- (4) If **subsection (2) or (3)** applies, the employer and employee may agree that any rest breaks and meal breaks are to be taken in a different manner (including the number and timing of breaks) than specified in this Part.

In *clause 35*, new *section 69ZEB(1)*, replace “**section 69ZEA(2)**” (page 30, lines 7 and 8) with “**section 69ZEA(4)**”.

In *clause 35*, replace *new section 69ZEB(3)(b)* (page 30, line 37 to page 31, line 11) with:

- (b) if the compensatory measure provided is financial compensation, that financial compensation, at a minimum, must relate to the amount of time that the employee was required to work but would otherwise have taken as a rest break or meal break, and must,—
- (i) in the case of an employee paid at variable rates during a work period, be calculated at the employee’s average rate of pay in the relevant work period; or
- (ii) in the case of any other employee, be calculated at the employee’s ordinary rate of pay:

In *clause 35*, after *new section 69ZEB(3)(c)* (page 31, after line 16), insert:

- (4) For the purposes of **subsection (3)(c)**, any financial compensation must,—
- (a) in the case of an employee paid at variable rates during a work period, be calculated at the employee’s average rate of pay in the relevant work period; or
- (b) in the case of any other employee, be calculated at the employee’s ordinary rate of pay.

### **Explanatory note**

This Supplementary Order Paper amends the Employment Relations Amendment Bill to—

- change the date of commencement for a number of provisions (*see clause 2(a)*) from 4 months after the date of Royal assent to a specific date: 6 May 2019; and

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- provide that a union representative is entitled to enter a workplace for the purposes of assisting, on request, any employee on the premises who is not a member of the union with matters relating to health and safety (*see clause 5* and also the consequential amendment made by *new clause 3B*); and
  - provide, under *new section 20A(1A)* (*see clause 6*), that a union representative is entitled to enter a workplace without an employer's consent if, at the time of the representative's entry into the workplace, there is a collective agreement between the employer and the union—
    - that is in force, and the coverage clause in the collective agreement covers the work done by employees at the workplace; or
    - that is being bargained for, and the intended coverage of the collective agreement covers the work done by employees at the workplace; and
  - provide for a penalty for refusing to permit a union representative who is entitled to enter a workplace to enter the workplace (*see clause 8*); and
  - provide that, for the purposes of *new section 33(1)* (*see clause 11*), opposition to concluding a multi-employer collective agreement is a genuine reason not to conclude a collective agreement if that opposition is based on reasonable grounds; and
  - correct 2 typographical errors (in *clause 18*); and
  - make some amendments for drafting clarity (in *clause 35*).