



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill: Approval for Introduction	Date to be published	16 December 2024

List of documents that have been proactively released		
Date	Title	Author
27 November 2024	Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill: Approval for Introduction	Office of the Minister for Workplace Relations and Safety
5 December 2024	Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill: Approval for Introduction LEG-24-MIN-0250	Cabinet Office

Information redacted

YES

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Some information has been withheld for the reasons of free and frank opinions and international relations.

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Legislation Committee

Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill.

Policy

- 2 This Bill gives effect to a 4 November 2024 Cabinet decision to reinsert provisions that would enable employers to make pay deductions in response to partial strikes. The Bill reverts the settings in these areas to those set out in the Employment Relations Amendment Act 2014 [CBC-24-MIN-0105; CAB-24-MIN-0419].
- 3 Partial strikes are industrial actions that fall short of a full withdrawal of labour (e.g. a go-slow order, partial discontinuance of work, or work-to-rule) where it results in a reduction in the normal output or rate of work or breach of the employee's employment agreement but does not include refusing to work overtime.
- 4 For partial strikes, the employer's options are to accept the partial strike action and the output loss, if any, that may result or to lock out or suspend the employees for the duration of the strike (removing their entitlement for wages). In many cases of a partial strike, the lockout or suspension option may be a disproportionate response and could inflict greater losses on the employer. In the public sector, the effect of a partial strike by frontline services is often borne by the public.
- 5 I consider that changes are needed to collective bargaining settings to provide a more effective and efficient bargaining environment, where rights and consequences are more balanced, and which minimises undue impacts on consumers and the public.
- 6 The Bill sets out two ways to calculate pay deductions in response to partial strikes: either by reducing an employee's pay by a proportionate amount (calculated in accordance with a specified method that is based on identifying the work the employee will not be performing due to the strike) or deducting a fixed percentage (10 percent) of their pay.
- 7 Including an ability to make a fixed deduction of 10 percent gives employers a choice in situations where it may be difficult to calculate a proportionate pay deduction, for example, for a large workforce. I consider the ability to make a 10 percent pay deduction also recognises that partial strike action can negatively impact employers in

a number of ways that are not directly linked to output, e.g. indirect impacts on the employer's brand, reputation, and profitability.

- 8 Without the option to make a fixed deduction, the administration costs of calculating the proportion of work impacted could mean that, for some employers, making a deduction would not be practical and they would continue to not have an accessible response to partial strike action.

A technical policy change is needed to the notice requirements for the recovery of overpayments

- 9 **Negotiations**
[Redacted]
Free and frank
[Redacted]

- 10 The previous provisions required the notice to be made within five days of the overpayment, be specific to the individual, and specify the amount of the overpayment. This is more stringent than the standard notice requirements that apply for overpayments in other situations (including in relation to a full strike). In those situations, the employer has a range of timeframes, starting from before the next pay day (i.e. ten days for a fortnightly payday), and they are not required to specify the amount of the overpayment in this notice.

- 11 The main rationale for these more stringent requirements is likely to have been to ensure the employee was aware of the financial impact (in terms of the exact amount of the deduction) of the partial strike action reasonably promptly. Compared to a full strike, the amount of the deduction can vary for a partial strike and if the deduction is made through the recovery of an overpayment, the employee may not know the amount that is being deducted for up to two and half months¹.

- 12 **Free and frank**
[Redacted]
[Redacted]
[Redacted]

- 13 I consider it is important that the partial strike provisions are workable for large employers with complicated payroll systems, such as the Ministry of Education. However, I also consider it is important that employees are informed of the financial implications of partial strike action promptly, as this may impact their decisions regarding further strike action.

- 14 Therefore, I requested that the Parliamentary Counsel Office amend the previous requirements that applied to overpayment notices where the employer is seeking to recover a specified pay deduction so that:

¹ As the employer generally has until the next pay day to issue an overpayment notice and then another two months from that date to recover the overpayment.

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- 14.1 employers have up to ten working days (rather than five) to issue the overpayment notice; and
- 14.2 the notice must specify whether the employer will be making a proportionate deduction (applying the calculation in section 95D(1) and (2) or a 10 percent deduction, applying provision 95D(3)) but does not need to specify the amount of the deduction.
- 15 As the notice is not specifying the amount of the deduction, it does not need to be specific to individual workers, so the standard requirements for overpayment notices would apply (which allow identical notices to be given to groups of workers).
- 16 This would enable the employees to estimate the deduction that will be made (by knowing which calculation is being applied) while allowing the employers more time to work out the specific deduction amount for all the employees involved in the strike.
Free and frank
- 17 This technical policy change is outside of my delegated decision-making authority; therefore, I seek Cabinet's approval for this change to the Bill for introduction.

I have made a technical change to ensure the Public Service Commissioner's powers in relation to collective bargaining cover partial strikes

- 18 Cabinet delegated me the authority to make decisions consistent with the policy in this paper, on any issues that may arise during the parliamentary process, including transitional provisions [CBC-24-MIN-0105]. I have used this delegated decision-making authority to make a technical change.
- 19 Section 587 of the Education and Training Act 2020 provides the Public Service Commissioner with the power to act as the 'employer' during collective bargaining. This provision specifies that this power includes the ability to lock out and suspend employees and make any notices or directions that relate to that ability.
- 20 I considered that consequential amendments were required to the Education and Training Act 2020 to ensure it is clear that the Public Service Commissioner's powers include the ability to make specified pay deductions, including any notices or directions in relation to specified pay deductions and the recovery of partial strike-related overpayments.

Impact analysis

- 21 A regulatory impact statement was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet approved the policy relating to the Bill [CBC-MIN-0105].

Compliance

- 22 I consider the Bill complies with:
- 22.1 the principles of the Treaty of Waitangi;

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- 22.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993. The proposal is currently being assessed by the Ministry of Justice for consistency with NZBORA. I consider that the ability to deduct pay for partial strike action is a proportionate response to addressing the current imbalance in collective bargaining in this area, i.e. the ability for employees to undertake partial strike action with no proportionate consequence. Therefore, to the extent there is any limitation on the right protected under section 17 of the NZBORA (right to the freedom of association), I consider it is justified;
- 22.3 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper as an Appendix);
- 22.4 the principles and guidelines set out in the Privacy Act 2020;
- 22.5 relevant international standards and obligations **International relations**; and
- 22.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 23 The ILO Committee on Freedom of Association (CFA) has determined that salaries can be deducted for strikes, provided the amount of the deduction is commensurate with the period of the strike. **International relations**

Consultation

- 24 The following agencies have been consulted on this Cabinet paper: Ministry of Justice, Department of the Prime Minister and Cabinet, Ministry of Defence, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Department of Internal Affairs, Oranga Tamariki, Ministry for Regulation, Ministry of Social Development, Te Kawa Mataaho Public Service Commission, Ministry of Transport, The Treasury, Ministry for Women, and Te Whatu Ora Health New Zealand.
- 25 Employers, employees, and their representative organisations, will have an opportunity to submit their views at Select Committee.
- 26 Cross-party Ministerial consultation has been undertaken on this paper.

Binding on the Crown

- 27 This Bill amends the Employment Relations Act 2000 which binds the Crown.

Creating new agencies or amending law relating to existing agencies

- 28 Not applicable.

IN CONFIDENCE

Allocation of decision-making powers

29 Not applicable.

Associated regulations

30 Not applicable.

Other instruments

31 Not applicable.

Definition of Minister/department

32 Not applicable.

Commencement of legislation

33 The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

34 I intend to introduce the Bill in the week of 9 December 2024 and have it passed by June 2025.

35 I propose the Bill be referred to the Education and Workforce Committee for a four month Select Committee process.

Proactive Release

36 This paper will be proactively released (subject to redactions in line with the Official Information Act 1982) within 30 business days of final Cabinet decisions.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill holds a category five priority on the 2024 Legislation Programme – to proceed to Select Committee by the end of 2024;
- 2 **note** that the Bill will reverse the 2018 repeal of the rules relating to partial strikes and revert the settings in those areas to those set out in the Employment Relations Amendment Act 2014;
- 3 **agree** to amend the notice requirements for the recovery of overpayments in the Wages Protection Act 1983 that previously applied when the overpayment was in relation to a specified pay deduction so that the notice:
 - 3.1 must be made within 10 working days of the pay day of overpayment;
 - 3.2 must specify whether the deduction will be based on the proportionate calculation or a flat rate of 10 percent; and

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- 3.3 does not need to relate to an individual worker;
- 4 **note** that I utilised my delegated decision-making authority to make consequential amendments to the Education and Training Act 2020 to clarify the powers of the Public Service Commissioner in relation to specified pay deductions in response to partial strikes;
- 5 **approve** the Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 6 **agree** that the Bill be introduced in the week of 9 December 2024;
- 7 **agree** that the Government propose that the Bill be:
 - 7.1 referred to the Education and Workforce Committee for consideration;
 - 7.2 enacted by June 2025.

Authorised for lodgement

Hon Brooke van Velden

Minister for Workplace Relations and Safety

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