MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Brooke van Velden	**Portfolio**	Workplace Relations and Safety
Title of Cabinet paper	Freedom of Choice and Cutting Red Tape at the Beginning of Employment	**Date to be published**	21 May 2025

List of documents that have been proactively released		
Date	**Title**	**Author**
April 2025	Freedom of Choice and Cutting Red Tape at the Beginning of Employment	Office of the Minister for Workplace Relations and Safety
27 April 2025	Freedom of Choice and Cutting Red Tape at the Beginning of Employment ECO-25-MIN-0046 Minute	Cabinet Office
25 March 2025	Regulatory Impact Statement: Removing the 30 day rule and reducing the related information disclosure and reporting requirements for employers	MBIE
30 January 2025	BRIEFING-REQ-0008194: Initial process options for considering changes to the 30 day rule	MBIE

Information redacted **YES / NO** *(please select)*

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Some information has been withheld for the reasons of privacy of natural persons and confidential advice to government.

In Confidence

Office of the Minister for Workplace Relations and Safety

Freedom of choice and cutting red tape at the beginning of employment

Proposal

1. This paper seeks agreement to proposals to increase freedom of choice and reduce compliance costs associated with obligations under the Employment Relations Act 2000 (the Act) when a new employee begins employment.

Relation to government priorities

2. This Cabinet paper aligns with the Government's commitment of cutting the red tape and regulations that may prevent businesses and employees from realising their full potential, and building a stronger, more productive economy that lifts real incomes and increases opportunities for all New Zealanders.

Executive Summary

3. I am concerned that several obligations under the Act that apply to new employees are limiting freedom of choice for employees and are adding to the compliance burden for employers.

4. Currently, if an employer has a collective employment agreement (CEA) in place that covers the work of a new employee, then for the first 30 days of their employment, the employee's individual employment agreement (IEA) must reflect the terms of the CEA. This obligation applies regardless of whether an employee chooses to join a union.

5. Additionally, employers must follow a set process for providing information about an employee and their decisions about membership to a union. These obligations are partly discharged through an active choice form.

6. The current obligations for employers, when a new employee begins employment, are the most extensive since the Act was enacted and add to the compliance burden for employers.

7. I propose to amend the Employment Relations Act 2000 (the Act) by removing:

    - the requirement that the terms of a new employee's employment agreement should reflect the terms of a CEA for the first 30 days of employment;

    - the employer's obligation to provide an active choice form to a new employee to indicate whether they intend to join a union;

    - the employer's obligation to convey the completed active choice form (if the employee returns it), or a notice that the employee did not complete and return the active choice form, to the union; and

- the ability for unions to specify information that an employer must provide to the employee about the union.

8. These changes are not novel, but repeal changes made by the previous Government – thus reverting to the requirements that applied between 2015 and 2019. I propose to make this change via the Employment Relations Amendment Bill to be passed by the end of 2025.

Background

9. Since the Act's inception, different Governments have taken contrasting approaches to regulating situations where a relevant CEA exists, and a new employee has a choice to be covered by it or an IEA. The two obligations that this paper addresses are the 30 day rule and information disclosure requirements.

10. The 30 day rule was first introduced in 2000. It specifies that the terms of a new employee's employment agreement should reflect the terms of a CEA for the first 30 days of employment. The employee and employer can also agree to additional terms that are no less favourable than the terms in the CEA. When the 30 days is over, the employer and employee can negotiate different terms if they wish.

11. Prior to 2015 (and continuing to the present day), the employer has had to inform the employee:

- that a CEA exists and covers the work to be done by the employee;
- that the employee can join a union that is a party to the CEA;
- about how to contact the union; and
- that, if the employee joins the union, the CEA will bind the employee.

12. The employer has consistently been required to give the employee a copy of the CEA; and if the employee agrees, inform the union as soon as practicable that the employee had entered into an IEA with the employer.

13. The 30 day rule was removed in 2015 to promote freedom of choice and allow employers and employees to negotiate the terms and conditions of employment at the start of employment. The related information disclosure requirements were amended to reflect the removal of the 30 day rule. The requirement to inform a union of the employee's decision about union membership remained.

14. In 2019, the 30 day rule was reintroduced and other employer obligations were strengthened. In addition to the requirements that existed between 2015 and 2019:

- employers must now pass on any information provided by a union about its role and function to the new employee; and
- the active choice form was introduced, with the requirement that employers must provide unions a copy of the completed active choice form, unless the employee specifically objects.

15. The current obligations for employers that are party to a CEA, when a new employee begins employment, are the most extensive since the Act was enacted.

16. While only about 1% of employers are party to a CEA and thus face these obligations, they tend to be larger employers, which frequently have new employees starting. About 15% of employees are party to a CEA.

The 30 day rule limits freedom of choice for both employees and employers

17. The 30 day rule applies regardless of whether an employee joins a union. In practice, the 30 day rule means that employers and employees cannot agree on mutually beneficial terms that are inconsistent with the CEA for the first 30 days.

18. I have been made aware that one of the implications of the 30 day rule is that workplaces covered by collective agreements are likely to struggle to utilise 90 day trial provisions.

19. In practice, the 30 day rule means that it is difficult to include bespoke terms and conditions (such as the inclusion of a 90 day trial) for new employees, if they are less favourable than the terms and conditions of the collective agreement.

20. I believe this situation is untenable, as it undermines the freedom to contract. If a new employee chooses to be on an IEA and negotiate the terms and conditions that suit their personal preferences or situation, they should have the choice realised from day one of employment.

21. Therefore, I propose to remove the requirement that the terms of a new employee's employment agreement should reflect the terms of a CEA for the first 30 days of employment. The benefits of removing this provision are that it expands opportunities for employees and employers to agree on a wider range of employment terms at the start of employment.

22. This change will also help support the Government's intention of expanding the availability of 90 day trials, which was an ACT-National coalition commitment. Expanding the availability of 90 day trials will particularly support workers that may traditionally struggle to gain employment, and will give employers greater confidence around hiring.

23. I do not believe there are any notable risks to removing this provision, as it does not undermine a worker's ability to join a union if they choose to. The change also does not undermine incentives to join a union or to offer favourable conditions to those on IEAs, because if the terms and conditions of an IEA are genuinely unfavourable compared with the CEA, workers would simply opt to join the CEA.

Information disclosure requirements introduced by the previous Government increase the compliance burden for employers

24. The active choice form is a legislated requirement. Currently, employers and employees are required to follow the following process when on-boarding a new employee:

    - Employers must give the employee an active choice form within 10 days after the employee commences employment.

- The active choice form invites the employee to indicate whether they intend to join a union. It must be accompanied by a notice that specifies the 30 day period during which the employee may complete and return the form, and explains that, unless the employee objects, the employer will provide the employee's name and decision regarding union membership to each union which has a CEA that covers the employee's work.

- The employer must, within 10 working days after the 30 day period, provide the employee's name and the completed active choice form (if the employee returns a form), or a notice that the employee did not complete and return the Form, to the union/s.

25. Following feedback from businesses, I consider the burden of the 30 day rule and related employer obligations to be unjustified. Not only is the status quo convoluted and confusing, the process can add administrative costs that cumulatively impact the productivity of the workplace.

26. There are lower cost ways of ensuring new employees have information about the relevant CEA and union (see the minimum information disclosure requirements section below), without imposing an overly prescriptive and onerous process. There is a need to lower compliance burden for businesses and strike the right balance between promoting collective bargaining and protecting the integrity of personal choice for workers.

27. More broadly, in my conversations with employers, the compliance burden associated with meeting current employment obligations has been a consistent theme. Businesses face costs that make it more expensive to hire people. Policies that were meant to benefit workers have only added to business uncertainty and the costs of doing business.

28. Therefore, I propose to remove:

- the employer's obligation to provide an active choice form to a new employee to indicate whether they intend to join a union;

- the employer's obligation to convey the completed active choice form (if the employee returns it), or a notice that the employee did not complete and return the active choice form, to the union; and

- the ability for unions to specify information that an employer must provide to the employee about the union.

29. As with removing the 30 day rule, I do not believe there are any notable risks to this change.

I propose retaining minimum information disclosure requirements

30. I propose retaining the minimum disclosure and related employer obligations that have existed since the Employment Relations Act was created, meaning the employer would still need to inform an employee:

- that a CEA exists and covers the work to be done by the employee;

- that the employee may join a union that is a party to the CEA;
- about how to contact the union; and
- that, if the employee joins the union, the CEA will bind the employee.

31. The employer will continue to be required to give the employee a copy of the CEA; and if the employee agrees, inform the union as soon as practicable that the employee has entered into an IEA with the employer.

32. Retaining these provisions achieves the optimal balance between supporting freedom of choice and access to information to inform that choice for workers; and reducing the compliance burden for employers.

Cost-of-living Implications

33. There are no direct cost-of-living implications associated with the proposals in this paper.

Financial Implications

34. The proposals have no financial implications.

Legislative Implications

35. The Act will need to be amended to give effect to the proposals outlined in this paper. The amendment to the Act will bind the Crown.

36. I propose that the change to the 30 day rule and the interrelated provisions be made through the Employment Relations Amendment Bill. A bid to include the Employment Relations Amendment Bill on the 2025 Legislation Programme has been made, with a proposed priority of Category three (to be passed by the end of 2025).

Impact Analysis

Regulatory Impact Statement

37. The Regulatory Impact Analysis requirements apply to the proposals in this Cabinet Paper. A Regulatory Impact Statement (RIS) is attached.

38. An independent Quality Assurance panel has reviewed the RIS for proposal to remove the 30 day rule and reduce the related information disclosure and reporting requirements for employers in the Employment Relations Act 2000. The panel has determined that it **partially meets** the quality assurance criteria and expectations for regulatory impact analysis.

39. MBIE's Quality Assurance Panel states that: The proposal implements the Government policy, and subsequently imposes serious constraints on the Regulatory Impact Assessment, which have been well documented. There are limitations and deficiencies in the problem definition, the identification of feasible options (including non-regulatory options), and no consultation about the proposal with stakeholders. It will therefore be important that there are on-going monitoring and evaluation reports on the impacts of the change.

40. *Minister's response:* This is a deregulatory proposal that reverts to requirements that applied between 2015-2019. I believe the problems with the current regulations are clear and well-canvased in this paper, and I do not see how non-regulatory options would be appropriate to respond to regulatory red tape. While MBIE has not consulted with stakeholders, I have heard from a number of employers who have confirmed this regulation is an issue, and stakeholders' views have been canvassed in previous parliamentary processes.

Climate Implications of Policy Assessment

41. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

42. The impact of these changes on particular population groups is difficult to estimate given the inability to estimate or predict how many employees have been affected by the 30 day rule. Additionally, this policy change only affects those employers who have a CEA in place and any new employees that they hire (current employees or new employees already in a union are not affected).

Human Rights

43. I do not consider that these proposals engage the New Zealand Bill of Rights Act 1990 (NZBORA). The Employment Relations Amendment Bill will be assessed by the Ministry of Justice for consistency with NZBORA before introduction.

Use of external Resources

44. No external resources were used in the development of these policy proposals.

Consultation

45. The following departments were consulted: Department of the Prime Minister and Cabinet, Ministry for Regulation, Public Service Commission, the Treasury, Department of Internal Affairs, Ministry of Education, Ministry of Health, Ministry of Transport, Ministry of Justice, Department of Corrections, Oranga Tamariki, Ministry of Social Development, Ministry of Defence, Ministry of Foreign Affairs and Trade, Ministry for Women, Ministry of Disabled People – Whaikaha, Ministry for Ethnic Communities, Ministry for Pacific Peoples and Te Puni Kōkiri.

Communications

46. Subject to Cabinet's approval of the proposals in this paper, I intend to announce that the Act will be amended to repeal the 30-day rule, which applies to new employees whose work could be covered by a collective agreement.

Proactive Release

47. 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

48. The Minister for Workplace Relations and Safety recommends that the Committee:

1. **note** that the '30 day rule' refers to the current requirement that if an employer is party to a collective employment agreement that covers the work of a new employee, an employee's individual employment agreement terms must reflect the terms of the collective employment agreement for the first 30 days of their employment (as if the employee were a member of the union);

2. **agree** to amend the Employment Relations Act 2000 by removing:

    a. the 30 day rule;

    b. the employer's obligation to provide an active choice form to a new employee;

    c. the employer's obligation to covey the the completed active choice form (if the employee returns it), or a notice that the employee did not complete and return the form to the union; and

    d. the ability for unions to specify to an employer the information that is provided to the employee and the form in which it is provided;

3. **note** that minimum disclosure and related employer obligations (those that existed between 2015-2019) are to remain, meaning the employer would still need to inform a new employee, where relevant:

    a. that a collective employment agreement exists and covers the work to be done by the employee;

    b. that the employee may join a union that is a party to the collective employment agreement;

    c. about how to contact the union; and

    d. that, if the employee joins the union, the collective employment agreement will bind the employee;

4. **note** the employer must also give the employee a copy of the collective employment agreement, and if the employee agrees, inform the union as soon as practicable that the employee has entered into an individual employment agreement with the employer;

5. **agree** that the policy changes be given effect through the Employment Relations Amendment Bill, which holds a category three priority;

6. **invite** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendation 2, above;

7. **authorise** the Minister for Workplace Relations and Safety to make decisions, consistent with the policy in this paper, on any issues that may arise during the drafting and parliamentary process.

Authorised for lodgement

Hon Brooke van Velden
Minister for Workplace Relations and Safety