



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Minister for Workplace Relations and Safety
Title of Cabinet paper	Employment Relations Amendment Bill 2025: Approval for Introduction	Date to be published	22 July 2025

List of documents that have been proactively released

Date	Title	Author
June 2025	Employment Relations Amendment Bill 2025: Approval for Introduction	Office of the Minister for Workplace Relations and Safety
9 June 2025	Employment Relations Amendment Bill 2025: Approval for Introduction CAB-25-MIN-0189 Minute	Cabinet Office

Information redacted

YES / NO

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Some information has been withheld for the reasons of international relations and legal professional privilege.

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Legislation Committee

Employment Relations Amendment Bill 2025: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Employment Relations Amendment Bill 2025.

Policy

- 2 The Employment Relations Amendment Bill 2025 (the Bill) amends the Employment Relations Act 2000 (the Act) to give effect to several ACT – National Coalition Agreement commitments, by:
 - 2.1 providing greater certainty for contracting parties [ECO-24-MIN-0179];
 - 2.2 strengthening consideration and accountability for the employee's behaviour in the personal grievance process [ECO-24-MIN-0268];
 - 2.3 introducing an income threshold for unjustified dismissal personal grievances [ECO-24-MIN-0265]; and
 - 2.4 removing the '30 day rule' and associated compliance and information requirements [ECO-25-MIN-0046], to support the expansion of 90 day trials and reduce red tape.
- 3 In finalising these commitments, I clarified three minor and technical matters in the Bill using my Cabinet delegated decision-making authority.
- 4 This Bill supports the Government's 'Going for Growth' agenda by helping to make New Zealand business settings more competitive. Together, these changes will enhance labour market flexibility, reduce compliance costs, and re-tilt the personal grievance system to better balance employer and employee interests and discourage poor behaviour. This will help businesses to grow, innovate, and ultimately hire more people and boost incomes.

Providing greater certainty for contracting parties

- 5 The Act currently enables a contractor to seek a determination that they are an employee, despite being a contractor. This creates uncertainty for businesses who use contractors, potentially discouraging innovative business models and disincentivising investment and job creation.

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- 6 To give greater weight to the intention of contracting parties, Cabinet agreed to a ‘gateway test’ [ECO-24-MIN-0179 refers], establishing an exclusion from the definition of “employee” in the Act. The gateway test is intended to give businesses more certainty to proceed with innovative business models involving contractors. The criteria for the test are:
 - 6.1 there is a written agreement that specifies the worker is an independent contractor; and
 - 6.2 the worker is not restricted from working for others; and
 - 6.3 the worker is:
 - 6.3.1 not required to be available to work certain times, days or for a minimum period; or
 - 6.3.2 able to sub-contract the work; and
 - 6.4 the business does not terminate the agreement for not accepting an additional task.
- 7 The hiring business has the option to undertake vetting of subcontractors, where due diligence is necessary to meet statutory obligations. I decided this element of the policy under my delegated Cabinet authority [ECO-24-MIN-0179 refers].
- 8 In addition, a hiring business must give workers a reasonable opportunity to seek advice on the written agreement before signing it.

Strengthening consideration and accountability for the employee’s behaviour in the personal grievance process

- 9 A personal grievance is a complaint that an employee can bring against a current or former employer (e.g. unjustified dismissal). If a personal grievance is established, the Employment Relations Authority (the Authority) and Employment Court (the Court) may award remedies, including reinstatement into a role, reimbursement for lost wages, and compensation for hurt and humiliation and loss of any benefit.
- 10 The Act allows for the Authority and Court to reduce remedies when the employee contributes to the situation which led to the personal grievance. However, the current remedy settings have created an imbalance, as these reductions have become smaller over time, and the dollar amounts awarded have increased. This has led to increased costs and uncertainty for businesses, and incentivised employees to ‘try their luck’ at raising a personal grievance, in the hope that they will get a financial pay out.
- 11 To address this imbalance, Cabinet agreed to a suite of changes to strengthen the consideration of, and accountability for, the employee’s behaviour in the personal grievance process [ECO-24-MIN-0268]. These were:
 - 11.1 removing eligibility for any remedies for employees whose behaviour amounts to serious misconduct;

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- 11.2 removing eligibility for reinstatement into a role and compensation for hurt and humiliation for employees who contribute to the situation that led to the personal grievance;
 - 11.3 clarifying that the Authority and Court have the full spectrum of remedy reductions (up to 100 percent) available to them;
 - 11.4 requiring the Authority and Court to consider if the employee's behaviour obstructed the employer's ability to meet their obligation to act as a fair and reasonable employer; and
 - 11.5 increasing the threshold for procedural error, to narrow the focus to solely being on whether any errors in the employer's process resulted in the employee being treated unfairly.
- 12 In addition, I decided under my delegated authority [ECO-24-MIN-0268] that the Authority and Court also cannot award the 'loss of any benefit' remedy¹ if an employee's behaviour had contributed to the situation which led to the personal grievance. Although the Authority rarely awards this remedy,² this mitigates the risk that it may be sought and granted more, in response to the removal of hurt and humiliation if there has been contributory behaviour.
- 13 These changes will ensure that remedies fairly reflect the level of employee contributory behaviour. It will also reassure employers that they can appropriately respond to employees who engage in misconduct, and disincentivise these employees from trying their luck at raising a personal grievance.

Introducing an income threshold for unjustified dismissal personal grievances

- 14 New Zealand's current unjustified dismissal settings constrain labour market flexibility. Unjustified dismissal requirements can incur significant costs for employers, which may be more difficult to justify in the case of high-income earning employees, who often have a major impact on organisational performance.
- 15 To address this issue, Cabinet agreed to provide greater flexibility and certainty in the dismissal process for high-income employees, by introducing a threshold above which a personal grievance for unjustified dismissal cannot be pursued [ECO-24-MIN-0265]. Cabinet agreed that the threshold will:
- 15.1 apply to unjustified dismissals and (in principle) to unjustified disadvantage where it relates to dismissal, but not to other personal grievance grounds;
 - 15.2 be initially set at \$180,000 per annum, then updated annually based on upward changes in average weekly earnings; and
 - 15.3 automatically exclude employees earning at or above the threshold from raising an unjustified dismissal, with the ability for employers and employees

¹ Section 123(1)(c)(ii) of the Act - such benefits include things such as lifestyle leave, vehicle allowance, lost KiwiSaver contributions, and training fees.

² Data available indicates that the Authority awards this remedy in approximately three percent of cases, almost always coupling it with compensation for hurt and humiliation.

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to contract back into unjustified dismissal protection, or to agree their own terms and conditions relating to dismissals.

- 16 Cabinet agreed in principle that the threshold will apply to unjustified disadvantage when the claim relates to a dismissal, and to replicate the same restriction to unjustified disadvantage to 90 day trial periods, if those changes proved possible in drafting. Cabinet delegated to me to make decisions on those matters [ECO-24-MIN-0265]. It has proven possible in drafting to apply the threshold to unjustified disadvantage, and thus I have confirmed those decisions.
- 17 Cabinet also agreed in principle that the threshold will apply to existing employment agreements between employers and high-income employees after 12 months, subject to me receiving further advice and taking decisions on Cabinet's delegated authority [ECO-24-MIN-0265]. I have decided to clarify that an employee is no longer on an 'existing employment agreement' (so the income threshold will apply to them) when they move to a new employer, or shift to a new role within the same employer. However, if an employee shifts to a new role with the same employer as a result of a restructure, or agree with their existing employer only to vary their terms and conditions, the full 12 month transitional period will apply to them.
- 18 These changes will provide greater labour market flexibility, enabling businesses to follow a simpler dismissal process for high-income employees to ensure they have the best fit of skills and abilities for the organisation.

Improving freedom of choice and cutting red tape at the beginning of employment

- 19 Currently, if an employer is party to a collective employment agreement (CEA) that covers the work of a new employee, an employee's individual employment agreement (IEA) terms must reflect the terms of the CEA for the first 30 days of their employment, together with any other terms that are no less favourable than the CEA. This is called the '30 day rule'.
- 20 In practice, the 30 day rule means that employers and employees cannot agree on mutually beneficial terms that do not meet the minimum terms specified in the CEA for the first 30 days. Furthermore, I have been made aware that some workplaces covered by collective agreements are prevented, because of this rule, from using the recently expanded 90 day trial provisions. Expanding 90 day trials was a key coalition commitment and I want to ensure all businesses have the option to use it, so that they have the confidence to hire people who may traditionally struggle to gain employment.
- 21 To address the compliance cost created by the 30 day rule and restore freedom of contract at the beginning of employment, Cabinet agreed to restore the settings that were in place between 2015 and 2019, by removing [ECO-25-MIN-0046]:
 - 21.1 the 30 day rule;
 - 21.2 the employer's obligation to provide the active choice form to a new employee (which asks the employee whether they want to join the union or not);

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- 21.3 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 form, to the union; and
- 21.4 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.
- 22 Cabinet decided to retain the minimum disclosure and related employer obligations that existed in between 2015 to 2019. This means that the employer still must give the employee a copy of the applicable CEA (alongside the IEA), inform the employee that they may join the union, tell them how to contact the union, and inform them that if they decide to join the union, the CEA will bind the employee.


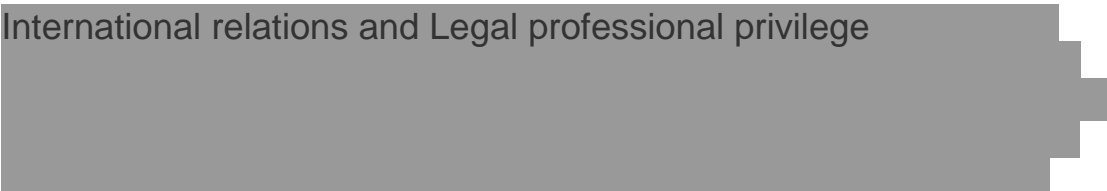
Impact analysis

- 23 Regulatory Impact Statements were prepared in accordance with the necessary requirements and were submitted at times where Cabinet approved the policy relating to this Bill.³

Compliance

- 24 I consider the Bill complies with:
 - 24.1 the principles of the Treaty of Waitangi;
 - 24.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993;
 - 24.3 the disclosure statement requirements;
 - 24.4 the principles and guidelines set out in the Privacy Act 2020; and
 - 24.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

International obligations

- 25 International relations

- 26 International relations and Legal professional privilege


³ Regulatory Impact Statements were prepared for all Cabinet policy decisions in the Bill [ECO-24-MIN-0179; ECO-24-MIN-0268; ECO-24-MIN-0265; and ECO-25-MIN-0046 refer].

27 International relations



Consultation

- 28 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.
- 29 Targeted consultation with employer representatives, unions, employment law practitioners and other technical experts was undertaken in the policy development process for contractors and personal grievance changes. All other stakeholders will have an opportunity to submit their views at Select Committee.
- 30 Cross-party Ministerial consultation has been undertaken on this paper.

Binding on the Crown

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

Creating new agencies or amending law relating to existing agencies

- 32 Not applicable.

Allocation of decision-making powers

- 33 Not applicable.

Associated regulations

- 34 Not applicable

Other instruments

- 35 Not applicable.

Definition of Minister/department

- 36 Not applicable.

Commencement of legislation

- 37 The Bill will come into force on the day after the date of Royal assent. The income threshold for unjustified dismissal personal grievances will apply to existing employment agreements 12 months after the commencement date.

Parliamentary stages

- 38 I intend to introduce the Bill in the week of 9 June 2025 and have it passed by December 2025.
- 39 I propose the Bill be referred to the Education and Workforce Committee for a four month Select Committee process.

Proactive Release

- 40 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 Legislative Committee:

- 1 **note** that the Employment Relations Amendment Bill 2025 holds a category three priority on the 2025 Legislation Programme – to be passed by December 2025;
- 2 **note** that the Bill will:
 - 2.1 establish an exclusion from the test of employment status in the Employment Relations Act 2000 via a gateway test [ECO-24-MIN-0179];
 - 2.2 implement a suite of changes to strengthen the Authority's consideration of the employee's behaviour in the personal grievance process, and in determining remedies [ECO-24-MIN-0268];
 - 2.3 introduce an income threshold for unjustified dismissal personal grievances, allowing parties to contract back in [ECO-24-MIN-0265]; and
 - 2.4 remove the '30 day rule' and associated compliance and information requirements, reverting to the settings in place between 2015 to 2019 [ECO-25-MIN-0046];
- 3 **note** that I used my delegated decision-making authority to:
 - 3.1 clarify the level of permissible vetting that would not result in a breach of the subcontracting criterion in the gateway test [ECO-24-MIN-0179];
 - 3.2 confirm, in line with Cabinet's in-principle decision, that the income threshold will also apply to unjustified disadvantage when the claim relates to a dismissal, and that the same restriction will apply to unjustified disadvantage claims for 90 day trial periods [ECO-24-MIN-0265];

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- 3.3 clarify, in line with Cabinet's in-principle decision for the income threshold 12 month transitional provision, that an employee is not on an 'existing employment agreement' if they move to a new employer or shift to a new role within the same employer [ECO-24-MIN-0265]; and
- 3.4 decide an employee will be ineligible for the 'loss of any benefit' remedy when there is any level of contributory behaviour, consistent with Cabinet's decision on the threshold of ineligibility to remedies for hurt and humiliation and reinstatement [ECO-24-MIN-0268].
- 4 **approve** the Employment Relations Amendment Bill 2025 for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 5 **agree** that the Bill be introduced in the week of 9 June 2025;
- 6 **agree** that the government propose that the Bill be:
 - 6.1 referred to the Education and Workforce Committee for consideration for four months;
 - 6.2 enacted by December 2025.

Authorised for lodgement

Hon Brooke van Velden

Minister for Workplace Relations and Safety

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Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Employment Relations Amendment Bill: Approval for Introduction

Portfolio **Workplace Relations and Safety**

On 9 June 2025, following reference from the Cabinet Legislation Committee, Cabinet:

- 1 **noted** that the Employment Relations Amendment Bill (the Bill) holds a category three priority on the 2025 Legislation Programme (a priority to be passed by the end of 2025);
- 2 **noted** that the Bill will:
 - 2.1 establish an exclusion from the test of employment status in the Employment Relations Act 2000 via a gateway test [ECO-24-MIN-0179];
 - 2.2 implement a suite of changes to strengthen the Employment Relations Authority's consideration of the employee's behaviour in the personal grievance process, and in determining remedies [ECO-24-MIN-0268];
 - 2.3 introduce an income threshold for unjustified dismissal personal grievances, allowing parties to contract back in [ECO-24-MIN-0265]; and
 - 2.4 remove the '30-day rule' and associated compliance and information requirements, reverting to the settings in place between 2015 to 2019 [ECO-25-MIN-0046];
- 3 **noted** that the Minister for Workplace Relations and Safety used her delegated decision-making authority [ECO-24-MIN-0179; ECO-24-MIN-0265; ECO-24-MIN-0268] to:
 - 3.1 clarify the level of permissible vetting that would not result in a breach of the subcontracting criterion in the gateway test;
 - 3.2 confirm, in line with Cabinet's in-principle decision, that the income threshold will also apply to unjustified disadvantage when the claim relates to a dismissal, and that the same restriction will apply to unjustified disadvantage claims for 90 day trial periods;
 - 3.3 clarify, in line with Cabinet's in-principle decision for the income threshold 12-month transitional provision, that an employee is not on an 'existing employment agreement' if they move to a new employer or shift to a new role within the same employer; and

- 3.4 decide an employee will be ineligible for the 'loss of any benefit' remedy when there is any level of contributory behaviour, consistent with Cabinet's decision on the threshold of ineligibility to remedies for hurt and humiliation and reinstatement;

4 Constitutional conventions

- 5 **approved** the Employment Relations Amendment Bill [PCO 24544/7.0] for introduction;

- 6 **agreed** that the Bill be introduced in the week of 9 June 2025;

- 7 **agreed** that the Government propose that the Bill be:

- 7.1 referred to the Education and Workforce Committee for consideration for four months;

- 7.2 enacted by December 2025.

Rachel Hayward
Secretary of the Cabinet

Secretary's note: Paragraph 4 was added following agreement between the Minister for Workplace Relations and Safety and the Prime Minister's office.