



EMPLOYMENT RELATIONS AMENDMENT ACT, 2004

Important changes have been made to the Employment Relations Act 2000, following the implementation of the **Employment Relations Amendment Act, 2004**.

The primary act remains the Employment Relations Act, 2000. The amendments to the Act came into force on December 1st, 2004 and makes changes to the Employment Relations Act, 2000 in the following areas:

1. Good faith;
2. Restructuring situations and Employee Protection Provisions;
3. Collective Bargaining;
4. Passing on of terms and conditions in a Collective Agreement;
5. Bargaining fees;
6. Individual Agreements;
7. Union Representative Discussions

WARNING

Please ensure that all your Employment Agreements are updated to reflect the amendments. These will have to be done by April 1st, 2005. We can provide you with assistance in updating Employment Agreements.

1. Good Faith

The duty of “Good Faith” has been extended and broadened by adding a new sub-section 4(1A) to the Employment Relations Act, 2000.

“The duty of good faith is now wider in scope than the implied mutual obligations of trust and confidence; and requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative”.

Good Faith also requires an Employer who is proposing to make a decision that is likely to have an adverse affect on the continued employment of one or more Employees to provide:

- The Employees access to information about the decision, insofar as it is relevant to their continued employment;
- Give the Employees the opportunity to comment to the Employer before the decision is made;
- The Employer will not be required to give Employees access to information if there is good reason to maintain confidentiality, protect someone’s privacy, or protect the Employer’s commercial operation from being unreasonably prejudiced.



Breaches of Good Faith can attract penalties of \$5,000.00 for an individual and \$10,000 for an organisation.

2. Employment Protection Provisions

This has been tightened up to ensure that parties must deal with each other in good faith in relation to any proposal by an Employer to contract out work or sell all or part of the business.

Employees are split into Vulnerable Employees and Other Employees

Vulnerable Employees

The Act gives extra employment protection to the following categories of Employees who are identified as being vulnerable to restructuring.

- Cleaning services in any type of industry
- Food catering services in any type of workplace
- Laundry services in the education, health and aged care sectors
- Caretaking in the education sector

Vulnerable Employees in a restructuring situation have the right to elect to transfer to the new Employer if their jobs are made redundant and the new Employer performs the same, or substantially similar, type of work.

Other Employees

All other Employees will have to have a clause in their individual or collective employment agreement on employment protection if the business is sold or work contracted out.

3. Collective Bargaining

The major change/amendment to this part of the Employment Relations Act, 2000 is that Unions or Employers engaged in collective bargaining must conclude a Collective Employment Agreement, unless there is a genuine reason, based on reasonable grounds to not do so. Being against in principal to Collective Agreements is not a genuine reason nor is disagreeing about including a bargaining fee clause in the Collective Agreement.

Essentially Collective bargaining will have to continue, even if a deadlock has been reached on any issue.

The Act now states that an Employer cannot induce an Employee not to join a Collective Agreement as this would be classified as a breach of good faith.



4. Passing on Terms and Conditions in a Collective Agreement

Changes have been made to reduce the incidence of Employers undermining Collective Agreements by passing on the terms and conditions from Collective Agreements to Individual Agreements.

It will be a breach of good faith if an Employer passes on a term or condition to an Individual Agreement, that is substantively similar to that contained in an existing Collective Agreement if the intent is to undermine the Collective Agreement.

The Act allows that the Employer and the Union can agree that terms and conditions in a Collective Agreement can be passed onto an Individual.

5. Bargaining Fees

This has been changed to allow a bargaining fee to be charged to non-union Employees to recognize the work that a Union has put into negotiating terms and conditions for a Collective Agreement.

The Employer will be able to deduct a union bargaining fee from a non-union Employee's wages (as long as certain requirements are met) so that the Employee is employed under the same terms and conditions of employment as that of an applicable Collective Agreement. The requirements are:

- Both the Union and the Employer agree to have a bargaining fee;
- Whilst negotiations are undertaken, a secret ballot of Employees whose work would be covered is held to decide whether the workplace should have a bargaining fee and the majority have voted that it should;
- Non-Union Employees are given the chance to 'opt' out of paying the bargaining fee (this must be confirmed in writing to the Employer). If a Non-Union Employee does not opt out then they are employed under the terms and conditions of the Collective Agreement and must pay the bargaining fee.

6. Individual Employment Agreements

The has changed to expressly apply the duty to act in good faith when bargaining for an Individual Employment Agreement. The Employer must when bargaining for a new individual employment or making amendments:

- Give the Employee a copy of the proposed agreement (or part to be changed)
- Tell the Employee that they are entitled to seek independent advice;
- Give the Employee the opportunity to seek such advice; and
- Consider any issues the Employee raises and respond to them (this is a new requirement).



7. Union Representative Discussions

The Act now specifies that 'discussions' that do not exceed a reasonable duration between an Employee and a Union Representative are not to be treated as a Union meeting and no wages may be deducted.

Contact [Dick Knapp](#) or [Katie Mitchell](#) at our office if you require any advice or assistance.