

27 October 2017

Employment Law Changes on the Horizon

With the announcement of the new government to be led by the Labour Party, and confirmation of the policies that have survived coalition negotiations, employers and employees will now be considering how the new policies are going to impact them. Labour campaigned on implementing many of its proposed changes within the first 100 days, meaning that it won't take long for the effects of change to be felt. In particular amendments to the law are planned regarding 90 day trial periods, paid parental leave, the application of employment law to contractors and foreign workers, union rights and immigration. The new Minister of Workplace Relations and Safety will be Iain Lees-Galloway.

90 Day Trial Periods

The current law gives employers the right to dismiss an employee within the first 90 days of their employment without facing unjustified dismissal proceedings. A trial period provision must be included in an employee's employment agreement and applies to new employees who have not worked for the employer previously.

Under Labour's proposed amendments, employers will be required to provide a reason for any dismissal within the first 90 days, and employees will once again be allowed to raise a dispute if their employment is terminated. However, although parties will be allowed representation in the dispute, lawyers will not be permitted. If resolution cannot be reached between the employer and employee, the referee hearing the dispute will make a final, binding decision which cannot be appealed. It is proposed that penalties will be capped so they will not be excessively punitive.

This change will provide workers with greater job security. However it will have a restrictive impact on employers who will need to ensure they have a justifiable reason for dismissing employees. Employers will need to factor this in when hiring new staff, and will no longer have the safety net of knowing they can dismiss them without cause within the first 90 days.

Paid Parental Leave

Under the current law, employees are entitled to 18 weeks of paid parental leave. This entitlement applies to the primary carer of a child, that is, their biological mother and in some cases their spouse or other person with primary responsibility for the child. This leave must be taken in one continuous period. Employers are obligated to keep the employee's job open for them when they return and dismissal by reason of pregnancy is prohibited. Under the new government, the period of paid parental leave is going to increase to 26 weeks and employers will need to factor this increased period in when an employee notifies them of the intention to take parental leave.

Greater Application of Employment Law

Under current legislation, employment laws generally apply to all employees, but not to contractors and many foreign workers. Under the proposed amendments, employment jurisdiction will be partly extended to contractors and to foreign workers undertaking work in New Zealand.

One of the rights to be extended to contractors is the right to organise and bargain collectively. Currently, negotiation with contractors is done on an individual level, between the parties

to the contract. Extending the right to bargain collectively (and take collective action in bringing proceedings) will potentially put contractors in a much stronger bargaining position in comparison to employees. Another proposed change is to extend all the statutory support and legal rights of employees (such as minimum wage and entitlement to holidays) to dependent contractors. This means that a contractor who only performs work for one client will be deemed the employee of that client. Employers who are heavily reliant on contracted staff, or are the only clients of their contracted staff, will need to be aware of this change.

The impact on employers of foreign workers is that new employment agreements will have to be drawn up when workers start work in New Zealand. This applies even to workers of foreign companies. These new employment agreements will need to provide employees with the minimum entitlements afforded to all other New Zealand employees, such as the minimum wage. Although this proposed change is targeted at foreign companies sending employees to New Zealand, businesses based in New Zealand who are employing foreign employees should also be aware of the requirement.

Collective Bargaining

Under the current law there is no duty for parties who are engaged in collective bargaining to reach an agreement. Labour plans to restore this duty. This means that if negotiations break down, the bargaining cannot end. It must continue until agreement is reached.

In addition, Labour plans to give unions the right to initiate collective bargaining before employers. This right has existed in the past but was removed in 2014. It will now be restored.

These policies shift the balance of power in favour of unions. Employers in industries with large union membership will need to be aware of these changes and the new rights and obligations regarding collective bargaining.

Immigration

Labour and New Zealand First have agreed to decrease the number of new migrants to New Zealand by approximately 20,000 to 30,000. While about a third of these cuts will be to student visas, two thirds will be to work related visas. Labour proposes to achieve these results by setting a higher skill threshold for migrants who are coming to New Zealand, and tightening the Labour Market Test, which ensures that migrants are only doing jobs that New Zealanders can't be employed to do.

As a result of these changes, employers will need to be sure that if they intend to employ a migrant to do a job, this job cannot be done by a New Zealander. While this is already a requirement under the current law, Labour has indicated that the new requirement will be stricter, and it will be more rigorously enforced. Employers will therefore need to ensure they have offered rates of pay and working conditions that are at least the market rate when they employ a new migrant.

Overall Impact on Employment Relations in New Zealand

Labour's policies are reflective of a change from a National led government to a Labour led government. The new policies are largely employee centric, reflected in the recent announcement to raise the minimum wage to \$20 by 2021. In order to comply with the new policies, employers will need to be aware of them, and have plans in place to ensure compliance.

Please do not hesitate to contact us if you have any queries about these new developments. Email laphorne@ktc.co.nz.