

Questions and answers

Part 6A

What does Part 6A of the Employment Relations Act 2000 do?

Part 6A of the Act provides special protection for specified groups of employees (for example cleaners) when an employer's business undergoes restructuring and the employee(s)' work is assigned to a new employer.

This usually happens as a result of a contract going from one service provider to a new service provider.

Under Part 6A these employees have a right to transfer to the new employer on the same terms and conditions of employment.

Part 6A also provides protection for all other employees, by requiring employment agreements to contain employee protection provisions.

Who does Part 6A apply to?

Schedule 1A of the ERA sets out in detail which employees are covered and in what circumstances but in general they are employees in the catering, cleaning, orderly and laundry industries.

Small to medium sized businesses with fewer than 20 staff will be exempt from Part 6A of the Act once the amendments are passed by Parliament.

What did the review of Part 6A find?

Overall, the review concludes that despite its complexity, employers have found ways of making Part 6A of the Act work but improvements could be made. The net costs and benefits of Part 6A are low in national economic terms.

What are the details of the changes to Part 6A?

The main changes fix issues that were identified as needing improvement after the formal review into how Part 6A was operating. They include:

Time periods in which employees elect to transfer.

This change will require employees to notify their new employer, in writing, within five working days of their decision to transfer.

The transfer of detailed information on individual employees.

This change will require that the outgoing employer provide the incoming employer with individual information on transferring employees, most of which employers are already required by law to keep.

Apportionment of financial liabilities for employee entitlements between employers.

This change will allow employers to negotiate apportionment of liability for employee entitlements, and if employers are unable to agree, then a default apportionment formula would apply.

Concerns about behaviour by the outgoing employer

This change will address concerns about actions by an outgoing employer that might damage the business of the new employer - such as unreasonably increasing employee entitlements before the employees transfer over.

The new Part 6A will require the outgoing employer to provide an “implied warranty” that they had not engaged in this type of behaviour.

Breaches of the implied warranty will be subject to civil legal action and may be assessed for damages in the District Court.

How will the proposed exemption to Part 6A for Small to Medium-Sized Enterprises (SMEs) work?

If the new service provider is a business with fewer than 20 staff they will be exempt from Part 6A. The exemption means if an SME was an incoming employer, then:

- they would not be required to employ employees affected by the restructuring, or meet their entitlements.
- they would not be able to make requests for employee transfer costs information, as there would be no obligation for SMEs to employ affected employees.
- in line with current practice, they would not be required to include “employment protection provisions” in employment agreements.

When will the changes to the Employment Relations Act 2000 become law?

The proposed changes will be reflected in a bill amending the Act. This will go through a select committee process, including public submissions before it is passed into law.

It is planned for these changes to take effect in the second half of 2013.

What are the other changes being made to the Employment Relations Act 2000?

Some of the changes outlined below were announced earlier this year.

Collective bargaining

- A return to the original position in the Employment Relations Act where the duty of good faith does not require the parties to conclude a collective agreement. Employers will still be required to bargain in good faith with the intention of reaching an agreement. The change will mean that parties will find it easier to cease fruitless bargaining where it is clear an agreement is not going to be reached.
- Providing for a process where parties can apply to the Employment Relations Authority for a declaration that collective bargaining has concluded.
- Allowing employers to opt out of multi-employer bargaining.
- Allowing for partial pay reductions in cases of partial strike action.
- Removing the 30-day rule that forces non-union members to take union terms and conditions.
- Parties will be required to provide notice of a strike or lock-out.

Good faith provisions following Massey University employment cases

The amendments to the Act will also address an issue that has arisen from two Employment Court judgments involving restructuring at Massey University.

The Court rulings highlighted conflicting obligations around the disclosure of personal information under the Act and the Privacy Act and Official Information Act particularly, which has created uncertainty for employers.

The duty of good faith in section 4 of the Act will be amended to clarify that it does not require employers to provide an employee with access to confidential personal information about another person, or evaluative material about the employee concerned, where an employer is proposing to make a decision that will, or is likely to, affect an employee's continued employment.

This will align the good faith requirement to provide access to relevant information more closely with the privacy principles in the Privacy Act.

The changes will also provide clarity and certainty about which types of personal information may be disclosed to third parties.

Rest and meal breaks

The Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill will also be incorporated into this Amendment Bill.

The bill has already gone before the select committee process.

This change will provide employees and employers more flexibility in determining rest and meal breaks.

Flexible work arrangements

The right to request flexible working arrangements will be extended to all workers, right from their first day on the job – currently only caregivers are eligible and only after six months of employment.

There will be no limit on the number of requests an employee may make for flexible working arrangements over a 12-month period.