

Equal Pay Amendment Bill

Member's Bill

Explanatory note

General policy statement

This Bill is an omnibus bill. It amends 2 Acts. The purpose is to remove discrimination in pay rates between men and women in the same jobs by making publicly available statistical information relating to their rates of remuneration. The 2 Acts are—

- the Equal Pay Act 1972. The amendment to this Act requires all employers to deliver the information that they collect under section 130(1) of the Employment Relations Act 2000 to the Ministry of Business, Innovation and Employment for publication in statistical form:
- the Employment Relations Act 2000. The amendment to this Act requires an employer to record the gender of the employee under section 130(1)(a).

The Equal Pay Act 1972 provides for the removal and prevention of discrimination, based on the sex of the employees, and the rates of remuneration of males and females in paid employment. However, nearly 40 years after its implementation, there is insufficient information in the public domain about rates of remuneration for men and women in the same jobs and sectors to be sure that this discrimination has truly been removed.

This Bill seeks to increase the amount of information publicly available so that cases where this discrimination persists can be clearly identified.

This Bill seeks to make that information available in 2 ways. Firstly, this Bill requires every employer to deliver annually the information they collect under section 130 of the Employment Relations Act 2000 to the Ministry of Business, Innovation and Employment for publication in statistical form. Second, any employee can demand their employer to provide the information.

Further, if an employer considers that the confidentiality of the information cannot be maintained the employer must give the information to an independent reviewer.

It is intended that making this information available will improve the likelihood of successful cases to be taken under the Equal Pay Act 1972 to seek remedies when such discrimination exists.

This Bill also provides that any employer who fails or refuses to modify or eliminate pay rates or practices in contravention of the Equal Pay Act 1972 would be in breach of the good faith requirement under section 4 of the Employment Relations Act 2000.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill is to come into force on the day after the date on which it receives the Royal assent.

Clause 3 provides for *Part 1* to amend the Equal Pay Act 1972.

Clause 4 replaces section 17 with *new section 17* that requires every employer to keep a record of the matters listed in section 130(1) of the Employment Relations Act 2000 and each year, no later than 1 June, to send those records in statistical form to the Ministry of Business, Innovation and Employment for publication.

Clause 5 inserts a *new section 17B* and *new section 17C*. Section 17B provides when there is a claim under section 18 and an employer has failed to keep or produce records as required under section 17 the department or employee may call evidence to show that the failure has prejudiced the ability to bring an accurate claim under section 18. In those circumstances, the Court must accept as proved all claims made by an employee or the department where there is evidence of a failure to keep or produce records as required by section 17 unless the defendant proves that the claims are incorrect. Section 17C provides a request for information under section 17 from an employer is to be handled in a confidential manner. If the employer reasonably considers that the information requested cannot be provided in a manner that maintains its confidentiality then it is to be handed to an independent reviewer appointed by mutual agreement between the employer and employee.

Clause 6 amends section 18 by increasing the maximum penalty for a breach of the Equal Pay Act 1972 from \$400 to \$5,000 for an individual or from \$1,000 to \$10,000 for a company or other corporation. This amendment aligns the penalties with the Employment Relations Act 2000.

Clause 7 provides for *Part 2* to amend the Employment Relations Act 2000.

Clause 8 replaces paragraph (a) of section 130(1) with a new paragraph that requires every employer to record the gender of each employee.

Jan Logie

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Equal Pay Amendment Act **2017**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1 Amendment to Equal Pay Act 1972

3 Principal Act

This Part amends the Equal Pay Act 1972 (the **principal Act**).

4 Section 17 replaced (Records to be kept by employers) 5

Replace section 17 with:

17 Records to be kept by employers

- (1) Subject to any regulations made under this Act, every employer shall comply with the provisions of section 130(1) of the Employment Relations Act 2000 and shall keep the records required to be kept by that section for at least 6 years. 10
- (2) The records required to be kept by every employer pursuant to section 130(1) of the Employment Relations Act 2000 or, as the case may be, **subsection (1)** of this section shall include particulars of all equal pay determinations made by the employer (whether before or after the commencement of this subsection) for the purpose of implementing equal pay pursuant to this Act. 15
- (3) Where an employer has destroyed or failed to keep, in respect of any person who is an employee of that employer a record of the particulars referred to in **subsection (2)**, the obligation imposed by section 130 of the Employment Relations Act 2000 or, as the case may be, by **subsection (1)** of this section shall include an obligation to prepare forthwith and keep a record of those particulars. 20
- (4) Nothing in this section shall be construed as imposing an obligation on an employer to keep a record of the particulars referred to in **subsection (2)** in respect of any person who had ceased to be an employee of that employer before the commencement of this subsection, unless such a record is being kept by the employer at the commencement of this subsection. 25
- (5) A copy of the records kept pursuant to this section must be sent to the Ministry of Business, Innovation and Employment no later than 1 June each year.
- (6) An employer must, promptly, on request of an employee or an employee's representative (duly authorised in writing) disclose the aggregated data showing the pay and gender for all employees doing the same kind of work. 30

5 New sections 17B and 17C inserted

After section 17A, insert:

17B Failure to keep or produce records 35

- (1) Where any claim is brought before the court under section 18 to keep or produce records to the Ministry of Business, Innovation and Employment or to an employee, the department or the employee may call evidence to show that—

- (a) the defendant employer failed to keep or produce any record as required by this Act; and
 - (b) that failure prejudiced the ability to bring an accurate claim under section 18.
- (2) Where evidence of the type referred to in **subsection (1)** is given, the Court may, unless the defendant proves that those claims are incorrect, accept as proved all claims made by the employee in respect of any of the particulars to be kept and produced under section 17. 5
- (3) A defendant may not use as evidence any record that would be inadmissible under section 232(3) of the Employment Relations Act 2000. That provision will apply to this Act with any modifications that are necessary. 10
- 17C Information that needs to be treated as confidential**
- (1) This section applies for the purposes of section 4 of the Employment Relations Act 2000 and for the purposes of ensuring that information required from an employer is handled in a confidential manner. 15
- (2) A request by an employee or the employee’s representative to an employer for information under section 17 must—
- (a) be in writing; and
 - (b) specify that the information is requested pursuant to section 17(2) and (3). 20
 - (c) Specify a reasonable time within which the information is to be provided.
- (3) An employer must provide the information requested—
- (a) direct to the employee or the employee’s representative; or
 - (b) to an independent reviewer if the employer providing the information reasonably considers that it should be treated as confidential information. 25
- (4) A person must not act as an independent reviewer unless appointed by mutual agreement of the employee and employer.
- (5) As soon as practicable after receiving information under **subsection (3)**, an independent reviewer must— 30
- (a) decide whether and, if so, to what extent the information should be treated as confidential; and
 - (b) advise the employee and employer concerned of the decision.
- (6) If an independent reviewer decides that the information should be treated as confidential, the independent reviewer must— 35
- (a) decide whether and, if so, to what extent the information supports or substantiates the claim or the response to a claim in respect of which the information is requested; and

- (b) advise the union and employer concerned of the decision in a way that maintains the confidentiality of the information; and
- (c) answer any questions from the employee or employee's representative that requested the information, in a way that maintains the confidentiality of the information. 5
- (7) This section does not limit or affect the Privacy Act 1993.
- (8) Nothing in the Official Information Act 1982 (except section 6) enables an employer that is subject to that Act to withhold information.
- 6 Section 18 amended (Offences)**
- Replace section 18(2) with: 10
- (2) Every person who commits an offence against this Act is liable on summary conviction—
- (a) in the case of an offence committed by any person (not being a body corporate), to a fine not exceeding \$5,000:
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding \$10,000. 15

Part 2

Amendment to Employment Relations Act 2000

- 7 Principal Act**
- This Part amends the Employment Relations Act 2000 (the **principal Act**). 20
- 8 Section 130 amended (Wages and time record)**
- In section 130(1)(a) replace paragraph with:
- (a) the name and gender of the employee: