

**Reprint
as at 12 December 2018**



Wages Protection Act 1983

Public Act 1983 No 143
Date of assent 16 December 1983
Commencement see section 1(2)

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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Schedule 11

**Application, savings, and transitional provisions relating to
amendments made to this Act on or after 1 April 2016**

An Act to consolidate and amend the law relating to the payment of wages and salaries

1 Short Title and commencement

- (1) This Act may be cited as the Wages Protection Act 1983.
- (2) This Act shall come into force on 1 February 1984.

2 Interpretation

In this Act, unless the context otherwise requires,—

employer has the same meaning as in section 5 of the Employment Relations Act 2000

employment agreement has the same meaning as in section 5 of the Employment Relations Act 2000

financial institution means a financial institution within the meaning of section 2 of the Reserve Bank of New Zealand Act 1989; and includes the Post Office Savings Bank and the Reserve Bank of New Zealand

local authority means a local authority within the meaning of the Local Government Act 2002

money, in relation to any wages, means any New Zealand coin or New Zealand banknotes, or combination of both, the tender of which in respect of the payment of those wages is legal tender

specified cheque, in relation to the payment of wages to any worker, means a cheque payable to, or to the order of, that worker

wages means salary or wages; and includes time and piece wages, and overtime, bonus, or other special payments agreed to be paid to a worker for the performance of service or work; and also includes any part of any wages

worker has the same meaning as that given to the term employee by section 6 of the Employment Relations Act 2000; and, in relation to any employer, means a worker employed by that employer.

Compare: 1964 No 58 ss 2, 4(4), 6(3)

Section 2 **employer**: replaced, on 1 April 2016, by section 4 of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 2 **employment agreement**: inserted, on 1 April 2016, by section 4 of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 2 **financial institution**: amended, on 1 February 1990, pursuant to section 186(1) of the Reserve Bank of New Zealand Act 1989 (1989 No 157).

Section 2 **local authority**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2 **worker**: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

2A Provisions affecting application of amendments to this Act

The Schedule contains application, savings, and transitional provisions relating to amendments made to this Act on or after 1 April 2016.

Section 2A: inserted, on 1 April 2016, by section 5 of the Wages Protection Amendment Act 2016 (2016 No 12).

3 Act to bind the Crown

This Act shall bind the Crown.

Compare: 1964 No 58 s 3

4 No deductions from wages except in accordance with Act

Subject to sections 5(1) and 6(2), an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.

Compare: 1964 No 58 s 4(1)

5 Deductions with worker's consent

- (1) An employer may, for a lawful purpose, make deductions from wages payable to a worker—
 - (a) with the written consent of the worker (including consent in a general deductions clause in the worker's employment agreement); or
 - (b) on the written request of the worker.
- (1A) An employer must not make a specific deduction in accordance with a general deductions clause in a worker's employment agreement without first consulting the worker.
- (2) A worker may vary or withdraw a consent given or request made by that worker for the making of deductions from that worker's wages, by giving the employer written notice to that effect; and in that case, that employer shall—
 - (a) within 2 weeks of receiving that notice, if practicable; and

(b) as soon as is practicable, in every other case,—
cease making or vary, as the case requires, the deductions concerned.

Compare: 1964 No 58 ss 7(1), 9

Section 5(1): replaced, on 1 April 2016, by section 6(1) of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 5(1A): inserted, on 1 April 2016, by section 6(2) of the Wages Protection Amendment Act 2016 (2016 No 12).

5A Unreasonable deductions

An employer must not make a deduction under section 5 from wages payable to a worker if the deduction is unreasonable.

Section 5A: inserted, on 1 April 2016, by section 7 of the Wages Protection Amendment Act 2016 (2016 No 12).

6 Employer may recover overpayments in certain circumstances

(1) In this section,—

next pay day, in relation to any overpayment, means the day next following the day on which that overpayment was made upon which the worker to whom it was made would, in the normal course of events, be paid

overpayment means any wages paid to a worker in respect of a recoverable period

recoverable period, in respect of any employer and any worker, means a period in respect of which that employer is not required by law to pay any wages to that worker, by virtue of that worker's having—

- (a) been absent from work without that employer's authority; or
- (b) been on strike (within the meaning of section 81 of the Employment Relations Act 2000); or
- (c) been locked out (within the meaning of that subsection); or
- (d) been suspended.

(2) Notwithstanding anything to the contrary in any collective agreement within the meaning of the Employment Relations Act 2000 but subject to subsection (3), an employer who has made an overpayment to any worker may recover the amount of that overpayment from any wages to the payment of which by that employer that worker subsequently becomes entitled.

(3) No employer shall recover an overpayment under subsection (2) unless—

- (a) by virtue of the methods or equipment normally used by that employer in arranging the payment of, or paying, wages to the worker concerned, it was not reasonably practicable for that employer to avoid making that overpayment; and
- (b) before recovering that overpayment, that employer gives that worker notice of that employer's intention to recover it; and

- (ba) *[Repealed]*
- (c) in the case of any other overpayment, that notice is given—
 - (i) not later than 10 days after the next pay day, in the case of a worker who has no fixed workplace:
 - (ii) not later than the first day upon which that worker attends that worker's workplace after the next pay day during normal working hours, in the case of a worker with one fixed workplace who did not attend that workplace during normal working hours on the next pay day:
 - (iii) not later than the first day upon which that worker attends one of that worker's workplaces after the next pay day during normal working hours, in the case of a worker with 2 or more fixed workplaces who did not attend any of them during normal working hours on the next pay day:
 - (iv) not later than the next pay day, in every other case; and
- (d) that overpayment is recovered not later than 2 months after that notice is given.
- (4) The validity of a notice purportedly given under subsection (3)(b) shall not be affected by the fact that—
 - (a) it does not specify the amount of the overpayment concerned but specifies only the day on which that overpayment was made and the actions that led to its being an overpayment:
 - (b) it is one of a number of identical notices given to a group of workers to only some of whom an overpayment has been made, and provides that it applies to the worker to whom it has been given only if an overpayment has been made to that worker.

(5) *[Repealed]*

Section 6(1) **recoverable period**: amended, on 12 December 2018, by section 50(2) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 6(1) **recoverable period** paragraph (b): substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 6(2): substituted, on 15 May 1991, by section 2(2) of the Wages Protection Amendment Act 1991 (1991 No 33).

Section 6(2): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 6(3)(ba): repealed, on 12 December 2018, by section 50(3) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 6(3)(c): amended, on 6 March 2015, by section 78 of the Employment Relations Amendment Act 2014 (2014 No 61).

Section 6(5): repealed, on 12 December 2018, by section 50(3) of the Employment Relations Amendment Act 2018 (2018 No 53).

7 Wages to be payable in money

Subject to sections 8 to 10, an employer shall pay the wages of every worker in money only.

Compare: 1964 No 58 s 4(1)

8 Workers employed by the Crown or local authorities

The Crown, or a local authority, may pay to a worker by specified cheque any wages that have become payable to that worker.

Compare: 1964 No 58 s 4(3)

9 Agreement as to manner of payment of wages

(1) An employer may,—

- (a) with the written consent of a worker; or
- (b) on the written request of a worker,—

pay to that worker by postal order, money order, specified cheque, or lodgement at a financial institution to the credit of an account standing in the name of that worker or in the name of that worker and some other person or persons jointly, any wages that have become payable to that worker.

(2) A worker may vary or withdraw a consent given or request made by that worker under subsection (1) by giving the employer written notice to that effect; and in that case, that employer shall—

- (a) within 2 weeks of receiving that notice, if practicable; and
- (b) as soon as is practicable, in every other case,—

commence paying that worker in money, or in some other manner in accordance with subsection (1).

Compare: 1964 No 58 ss 6, 9

10 Payment where worker absent

Where any wages become payable to a worker who is for the time being absent from the proper or usual place for their payment, that worker's employer may pay them to that worker by postal order, money order, or specified cheque.

Compare: 1964 No 58 s 6(4)

11 Recovery of wages

(1) Subject to subsections (2) and (3), a worker, or a Labour Inspector on behalf of a worker, may recover from that worker's employer, by action in the Employment Relations Authority, established by the Employment Relations Act 2000, in the prescribed manner,—

- (a) any deduction made (otherwise than pursuant to section 6) by that employer from wages that have been paid, or but for that deduction would have been paid, by that employer to that worker, if—

- (i) that deduction was not consented to, or requested by, that worker in writing; or
 - (ii) the making of that deduction was consented to, or requested by, that worker in writing; but the consent or request concerned was obtained by threat of dismissal, or otherwise by duress:
 - (b) an amount equal to any wages required by section 7 to be paid to that worker in money, if that employer paid those wages to that worker otherwise than in money.
- (2) No action under subsection (1) shall be brought after the expiration of 6 years from the date on which the cause of action concerned arose.
- (3) No such action shall be brought in respect of any cause of action that arose more than 2 years before the commencement of this Act.

Compare: 1964 No 58 ss 4(2), 7(2), 8

Section 11 heading: replaced, on 1 April 2016, by section 8(1) of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 11(1): amended, on 1 April 2016, by section 8(2) of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 11(1): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

11A Proceedings by Labour Inspector or worker to recover arrears of wages from person involved in failure to comply

- (1) A Labour Inspector or a worker may recover from a person who is not the worker's employer any arrears of wages that the worker is entitled to if—
- (a) the worker is entitled to the wages under this Act; and
 - (b) the wages are unpaid due to non-compliance with this Act; and
 - (c) the person from whom the wages are sought to be recovered is a person involved in the non-compliance.
- (2) However, unpaid wages may be recovered under subsection (1) only,—
- (a) in the case of recovery by a worker, with the prior leave of the Authority or court; and
 - (b) to the extent that the worker's employer is unable to pay the wages.
- (3) A Labour Inspector, worker, or person concerned may recover from a person involved in non-compliance with section 12A any premium paid in breach of that section.
- (4) However, a premium may be recovered under subsection (3) only,—
- (a) in the case of recovery by a worker or person concerned, with the prior leave of the Authority or court; and
 - (b) to the extent that the employer concerned is unable to pay the premium.

- (5) For the purposes of subsections (1) and (3), a person is **involved in the non-compliance** if the person would be treated as a person involved in a breach within the meaning of section 142W of the Employment Relations Act 2000.

Section 11A: inserted, on 1 April 2016, by section 9 of the Wages Protection Amendment Act 2016 (2016 No 12).

12 Employer not to stipulate as to mode of spending wages

No employer shall impose any requirement on any worker as to any place or manner in which or any person with whom that worker shall expend wages received by that worker, or dismiss any worker on account of any place or manner in which or any person with whom that worker expends those wages.

Compare: 1964 No 58 s 5

12A No premium to be charged for employment

- (1) No employer or person engaged on behalf of the employer shall seek or receive any premium in respect of the employment of any person, whether the premium is sought or received from the person employed or proposed to be employed or from any other person.
- (2) Where an employer receives any amount of money in contravention of subsection (1), whether by way of deduction from wages or otherwise, then, irrespective of any penalty to which the employer thereby becomes liable, the person by whom the money was paid or, as the case may be, from whose wages it was deducted, may recover that amount from the employer as a debt due to the person; and civil proceedings for the recovery of the amount may be instituted in the Employment Relations Authority by the person or, notwithstanding any disability to which the person is subject, by a Labour Inspector designated under section 223 of the Employment Relations Act 2000 on behalf of the person.
- (3) Any such proceedings instituted by any Labour Inspector may be continued or conducted by the same or any other Labour Inspector.

Section 12A: inserted, on 1 April 1993, by section 62(2) of the Health and Safety in Employment Act 1992 (1992 No 96).

Section 12A(1): amended, on 1 April 2016, by section 10 of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 12A(2): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

13 Penalties

- (1) Where—
- (a) any payment is made by or on behalf of any employer in contravention of this Act; or
 - (b) any employer or any person on that employer's behalf contravenes or fails to comply with any of the provisions of this Act,—

that employer, and every person involved in the contravention or failure, is liable to a penalty imposed under the Employment Relations Act 2000 by the Employment Relations Authority.

- (2) A worker or a Labour Inspector may recover a penalty under subsection (1), but the worker may recover a penalty only in relation to the employer.
- (3) For the purposes of subsection (1), a person is involved in the contravention or failure if the person would be treated as a person involved in a breach within the meaning of section 142W of the Employment Relations Act 2000.

Section 13: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 13(1): amended, on 1 April 2016, by section 11(1)(a) of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 13(1): amended, on 1 April 2016, by section 11(1)(b) of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 13(1): amended, on 1 April 2016, by section 11(1)(c) of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 13(2): inserted, on 1 April 2016, by section 11(2) of the Wages Protection Amendment Act 2016 (2016 No 12).

Section 13(3): inserted, on 1 April 2016, by section 11(2) of the Wages Protection Amendment Act 2016 (2016 No 12).

14 Employer may have actual offender charged

[Repealed]

Section 14: repealed, on 15 May 1991, by section 4 of the Wages Protection Amendment Act 1991 (1991 No 33).

15 Act subject to other enactments

Subject to sections 6(2) and 16, this Act shall be read subject to the provisions of any other Act.

Compare: 1964 No 58 s 11

16 Provisions in collective agreements

Subject to section 6(2), nothing in this Act derogates from or makes it unlawful to comply with—

- (a) any provision of any collective agreement within the meaning of the Employment Relations Act 2000; or
- (b) any provision of any order of the Employment Court or the Employment Relations Authority established by the Employment Relations Act 2000.

Section 16: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

17 Saving

Any contract for the payment of wages by cheque, draft, or order in writing for the payment of money to the bearer on demand drawn on any bank, made

before 17 November 1964 shall continue to have effect according to its tenor notwithstanding the provisions of this Act.

Compare: 1964 No 58 s 6(5)

18 Act to be administered in Department of Labour

(1) This Act shall be administered in the Department of Labour.

(2) *[Repealed]*

Compare: 1964 No 58 s 12

Section 18(2): repealed, on 16 October 1989, by section 2(2) of the Labour Department Act Repeal Act 1989 (1989 No 82).

19 Consequential repeals

The Wages Protection Act 1964 and the Wages Protection Amendment Act 1983 are hereby consequentially repealed.

Schedule
Application, savings, and transitional provisions relating to
amendments made to this Act on or after 1 April 2016

s 2A

Schedule: inserted, on 1 April 2016, by section 12 of the Wages Protection Amendment Act 2016 (2016 No 12).

1 Interpretation

In this schedule, 2016 Act means the Wages Protection Amendment Act 2016.

2 Application, savings, and transitional provisions arising from 2016 Act

- (1) Section 5A (as inserted by section 7 of the 2016 Act) applies only to deductions made after the commencement of that Act and, in relation to deductions made under an employment agreement, applies whether the employment agreement was made before, on, or after the commencement of that Act.
- (2) The amendments made by the 2016 Act do not apply to conduct that occurred before the commencement of that Act.

Reprints notes

1 *General*

This is a reprint of the Wages Protection Act 1983 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Employment Relations Amendment Act 2018 (2018 No 53): section 50

Wages Protection Amendment Act 2016 (2016 No 12)

Employment Relations Amendment Act 2014 (2014 No 61): section 78

Local Government Act 2002 (2002 No 84): section 262

Employment Relations Act 2000 (2000 No 24): section 240

Health and Safety in Employment Act 1992 (1992 No 96): section 62(2)

Wages Protection Amendment Act 1991 (1991 No 33)

Reserve Bank of New Zealand Act 1989 (1989 No 157): section 186(1)

Labour Department Act Repeal Act 1989 (1989 No 82): section 2(2)