

Employment Relations (Flexible Working Arrangements) Amendment Act 2007

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations (Flexible Working Arrangements) Amendment Act 2007.

2 Commencement

This Act comes into force on 1 July 2008.

3 Principal Act amended

This Act amends the Employment Relations Act 2000.

4 Purpose

The purpose of this Act is to insert a new Part 6AA into the principal Act to—

- (a) provide a statutory right to employees who meet specified criteria to request a variation of certain terms and conditions of their working arrangements because they provide care of any person; and
- (b) place certain duties on employers who receive those requests.

5 New Part 6AA inserted

The following Part is inserted after Part 6:

“Part 6AA
“Flexible working

“69AA Object of this Part

The object of this Part is to—

- “(a) provide certain employees with a statutory right to request a variation of their working arrangements if they have the care of any person; and
- “(b) require an employer to deal with a request as soon as possible but not later than 3 months after receiving it; and
- “(c) provide that an employer may refuse a request only if it cannot be accommodated on certain grounds; and
- “(d) if an employer does not deal with a request in accordance with the process specified in this Part, provide for reference of the matter to a Labour Inspector, then to mediation, and then to the Authority.

“69AAA Interpretation

In this Part, unless the context otherwise requires,—

“**mediation** means mediation provided under section 144

“**non-compliance with section 69AAE**, except in section 69AAJ, includes an employer’s wrong determination about an employee’s eligibility to make a request under section 69AAB

“**request** means a written request made—

- “(a) under this Part; and
- “(b) by an employee to his or her employer to vary the employee’s terms and conditions of employment relating to the employee’s working arrangements

“**working arrangements**, in relation to an employee, means 1 or more of the following

- “(a) hours of work;
- “(b) days of work;
- “(c) place of work (for example, at home or at the employee’s place of work).

“Employee’s statutory right to make request

“69AAB When employee may make request

- “(1) An employee may make a request—

- “(a) if the employee satisfies the criteria specified in subsection (2); and
 - “(b) subject to the limitation in section 69AAD.
- “(2) The criteria are that—
- “(a) the employee has the care of any person; and
 - “(b) the employee, as at the date the request is made, has been employed by his or her employer for the immediately preceding 6 months.

“69AAC Requirements relating to request

A request must be in writing and—

- “(a) state—
 - “(i) the employee’s name; and
 - “(ii) the date on which the request is made; and
 - “(iii) that the request is made under this Part; and
- “(b) specify the variation of the working arrangements requested and whether the variation is permanent or for a period of time; and
- “(c) specify the date on which the employee proposes that the variation take effect and, if the variation is for a period of time, the date on which the variation is to end; and
- “(d) explain, in the employee’s view, how the variation will enable the employee to provide better care for the person concerned; and
- “(e) explain, in the employee’s view, what changes, if any, the employer may need to make to the employer’s arrangements if the employee’s request is approved.

“69AAD Limitation on frequency of requests

- “(1) Subsection (2) applies if an employee has made a request under this Part and his or her employer has approved or refused the request.
- “(2) The employee is not entitled to make another request under this Part to his or her employer earlier than 12 months after the date on which the previous request was made.

*“Duties of employer***“69AAE Employer must notify decision as soon as possible**

An employer must deal with a request as soon as possible but not later than 3 months after receiving it and—

- “(a) notify the employee whether his or her request has been approved or refused; and
- “(b) if the request is refused, notify the employee that the request is refused because—
 - “(i) the employee is not eligible to make a request under section 69AAB; or
 - “(ii) of a ground specified in section 69AAF(2) or (3); or
 - “(iii) both; and
- “(c) if the request is refused because of a ground specified in section 69AAF(2) or (3),—
 - “(i) notify the employee of the ground for refusal; and
 - “(ii) provide an explanation of the reasons for that ground.

“69AAF Grounds for refusal of request by employer

- “(1) An employer may refuse a request only if the employer determines that—
 - “(a) the employee is not eligible to make a request under section 69AAB; or
 - “(b) the request cannot be accommodated on 1 or more of the grounds specified in subsection (2); or
 - “(c) both.
- “(2) The grounds are—
 - “(a) inability to reorganise work among existing staff:
 - “(b) inability to recruit additional staff:
 - “(c) detrimental impact on quality:
 - “(d) detrimental impact on performance:
 - “(e) insufficiency of work during the periods the employee proposes to work:
 - “(f) planned structural changes:
 - “(g) burden of additional costs:
 - “(h) detrimental effect on ability to meet customer demand.
- “(3) However, an employer must refuse a request if—

- “(a) the request is from an employee who is bound by a collective agreement; and
- “(b) the request relates to working arrangements to which the collective agreement applies; and
- “(c) the employee’s working arrangements would be inconsistent with the collective agreement if the employer were to approve the request.

“Resolving disputes

“69AAG Role of Labour Inspector

- “(1) For the purposes of this Part, a Labour Inspector may provide to employees and employers such assistance as he or she considers appropriate in the circumstances.
- “(2) This section applies subject to section 69AAH(2).

“69AAH Labour Inspectors and mediation

- “(1) This section applies if an employee believes that his or her employer has not complied with section 69AAE.
- “(2) The employee may refer the non-compliance with section 69AAE to a Labour Inspector who must, to the extent practicable in the circumstances, assist the employee and employer to resolve the matter.
- “(3) If, after completion of the process under subsection (2), the employee is dissatisfied with the result, the employee may refer the matter to mediation.
- “(4) For the purposes of subsection (3), non-compliance with section 69AAE is an employment relationship problem.

“69AAI Application to Authority

- “(1) This section applies if—
 - “(a) an employee believes that his or her employer has not complied with section 69AAE; and
 - “(b) mediation has not resolved the matter.
- “(2) The employee may apply to the Authority for a determination as to whether the employer has complied with section 69AAE.
- “(3) An application under subsection (2) must be made within 12 months after the relevant date.

- “(4) If the Authority determines that the employer has made a wrong determination about an employee’s eligibility to make a request under section 69AAB, the employer must comply with section 69AAE as soon as practicable.
- “(5) In subsection (3), **relevant date** means,—
- “(a) if the employer notifies a refusal within 3 months after receiving a request, the date on which the employer notifies the employee of the employer’s refusal:
 - “(b) in any other case, the date 3 months after the employer received the employee’s request.

“69AAJ Penalty

- “(1) An employer who does not comply with section 69AAE is liable to a penalty not exceeding \$2,000, imposed by the Authority.
- “(2) The penalty is payable to the employee concerned.

“69AAK Limitation on challenging employer

An employee may not challenge his or her employer’s refusal of a request, or failure to respond to a request, except—

- “(a) if the employee believes his or her employer has not complied with section 69AAE; and
- “(b) to the extent provided by sections 69AAH to 69AAJ.

“Review of Part

“69AAL Review of operation of Part after 2 years

- “(1) The Minister must, as soon as is practicable, 2 years after the commencement of the Employment Relations (Flexible Working Arrangements) Amendment Act 2007, require a report to be prepared on the operation and effects of this Part.
- “(2) The Minister must ensure that the persons and organisations (including representatives of employees and employers), that the Minister thinks appropriate, are consulted during the preparation of the report about the matters to be considered in the report.
- “(3) The report will include recommendations in relation to whether the provisions of this Part should extend to all employees.

“(4) The Minister must present a copy of the report to the House of Representatives.”

6 Jurisdiction

Section 161(1) is amended by inserting the following paragraph after paragraph (cb):

“(cc) determining whether an employer has complied with section 69AAE.”.

7 New section 179B inserted

The following section is inserted after section 179A:

“179B Limitations on consideration by Employment Court of matters arising under Part 6AA

“(1) This section applies to an investigation by, or determination of, the Authority under Part 6AA.

“(2) The Authority may not refer a question of law to the Court under section 177 if the question of law arises during an investigation of the Authority under Part 6AA.

“(3) No matter, or part of a matter, may be removed to the Court under section 178 if the matter, or the part of the matter, arises under Part 6AA.

“(4) No party who is dissatisfied with a determination, or any part of a determination, of the Authority under Part 6AA may elect, under section 179, to have the matter heard by the Court.”

Legislative history

17 March 2005	Introduction (Bill 253-1)
7 April 2005	First reading and referral to Transport and Industrial Relations Committee
30 July 2007	Reported from Transport and Industrial Relations Committee (Bill 253-2)
5 September 2007	Second reading
19 September, 17 October, 7 November 2007	Committee of the whole House (Bill 253-3)
21 November 2007	Third reading
