



# Employment Relations Amendment Act 2008

Public Act 2008 No 106  
Date of assent 15 December 2008  
Commencement see section 2

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**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Employment Relations Amendment Act 2008.

**2 Commencement**

- (1) This Act (except sections 6 and 7) comes into force on the day after the date on which it receives the Royal assent.
- (2) Sections 6 and 7 come into force on 1 March 2009.

**Part 1****Preliminary provisions****3 Principal Act amended**

This Act amends the Employment Relations Act 2000.

**4 Purpose**

The purpose of this Act is—

- (a) to provide when an employment agreement may specify a trial period of 90 days or less, during which an employee can be dismissed and cannot bring a personal grievance or other legal proceedings in respect of the dismissal, subject to certain exceptions; and
- (b) to repeal the amendments made by the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008 relating to employees' membership of a KiwiSaver scheme or complying superannuation fund.

**5 Application**

The amendments made by sections 6 and 7 apply to employment agreements entered into only after the commencement of those sections.

## Part 2

### Amendments to principal Act

#### 6 Probationary arrangements

Section 67 is amended by omitting “or trial” in each place where it appears.

#### 7 New sections 67A and 67B inserted

The following sections are inserted after section 67:

##### “67A When employment agreement may contain provision for trial period for 90 days or less

“(1) An employment agreement containing a trial provision, as defined in subsection (2), may be entered into by an employee, as defined in subsection (3), and an employer as defined in subsection (4).

“(2) **Trial provision** means a written provision in an employment agreement that states, or is to the effect, that—

“(a) for a specified period (not exceeding 90 days), starting at the beginning of the employee’s employment, the employee is to serve a trial period; and

“(b) during that period the employer may dismiss the employee; and

“(c) if the employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.

“(3) **Employee** means an employee who has not been previously employed by the employer.

“(4) **Employer** means an employer who, at the beginning of the day on which the employment agreement is entered into, employs fewer than 20 employees.

“(5) To avoid doubt, a trial provision may be included in an employment agreement under—

“(a) section 61(1)(a), but subject to section 61(1)(b):

“(b) section 63(2)(b).

##### “67B Effect of trial provision under section 67A

“(1) This section applies if an employer terminates an employment agreement containing a trial provision under section 67A by giving the employee notice of the termination before the end

of the trial period, whether the termination takes effect before, at, or after the end of the trial period.

- “(2) An employee whose employment agreement is terminated in accordance with subsection (1) may not bring a personal grievance or legal proceedings in respect of the dismissal.
- “(3) Neither this section nor a trial provision prevents an employee from bringing a personal grievance or legal proceedings on any of the grounds specified in section 103(1)(b) to (g).
- “(4) An employee whose employment agreement contains a trial provision is, in all other respects (including access to mediation services), to be treated no differently from an employee whose employment agreement contains no trial provision or contains a trial provision that has ceased to have effect.
- “(5) Subsection (4) applies subject to the following provisions:
- “(a) in observing the obligation in section 4 of dealing in good faith with the employee, the employer is not required to comply with section 4(1A)(c) in making a decision whether to terminate an employment agreement under this section; and
- “(b) the employer is not required to comply with a request under section 120 that relates to terminating an employment agreement under this section.”

**8 Personal grievance**

Section 103(1)(h) is repealed.

**9 Section 110A repealed**

Section 110A is repealed.

**10 Consequential amendment to KiwiSaver Act 2006**

Section 101B(5)(b) of the KiwiSaver Act 2006 is repealed.

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**Legislative history**

9 December 2008	Introduction (Bill 8-1)
9 December 2008	First reading
9 December 2008	Second reading
9 December 2008	Reported from committee of the whole House
9 December 2008	Third reading
15 December 2008	Royal assent

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This Act is administered by the Department of Labour.

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