

Employment Relations Amendment Bill (No 2)

(Divided from the Health and Safety Reform Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Health and Safety Reform Bill as reported from the Transport and Industrial Relations Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Health and Safety at Work Bill comprising clauses 1 and 2, Parts 1 to 5, and Schedules 1 to 3
- Accident Compensation Amendment Bill comprising subpart 1 of Part 6 and Schedule 4
- Hazardous Substances and New Organisms Amendment Bill comprising subpart 2 of Part 6 and Schedules 5 to 7
- this Bill comprising subpart 3 of Part 6
- WorkSafe New Zealand Amendment Bill comprising subpart 4 of Part 6 and Schedule 8.

Hon Michael Woodhouse

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations Amendment Act **2015**.

2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates and appointing different dates for different purposes. 5
- (2) Any provision that has not earlier been brought into force comes into force on **1 January 2018**.

295 Principal Act

This **Act** amends the Employment Relations Act 2000 (the **principal Act**). 10

296 Section 67B amended (Effect of trial provision under section 67A)

In section 67B(3), replace “section 103(1)(b) to (g)” with “**section 103(1)(b) to (h)**”.

297 Section 103 amended (Personal grievance)

After section 103(1)(g), insert: 15

- (h) that the employee’s employer has, in relation to the employee,—
- (i) engaged in adverse conduct for a prohibited health and safety reason; or
 - (ii) contravened **section 114** of the **Health and Safety Reform Act 2014** (which prohibits coercion or inducement). 20

298 Section 104 amended (Discrimination)

In section 104(1), delete “or by reason directly or indirectly of that employee’s refusal to do work under section 28A of the Health and Safety in Employment Act 1992,”.

299 Section 107 amended (Definition of involvement in activities of union for purposes of section 104) 25

Repeal section 107(2).

300 New section 110A inserted (Adverse conduct for prohibited health and safety reason)

After section 110, insert: 30

110A Adverse conduct for prohibited health and safety reason

- (1) For the purposes of this Part, an employer engages in **adverse conduct for a prohibited health and safety reason** if the employer or a representative of the employer, for a prohibited health and safety reason,—

- (a) dismisses an employee; or
 - (b) refuses or omits to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or 5
 - (c) subjects the employee to any detriment in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment; or
 - (d) retires the employee, or requires or causes the employee to retire or resign. 10
- (2) For the purposes of **subsection (1)**, conduct described in that section is engaged in for a prohibited health and safety reason if it is engaged in for a reason described in **section 111** of the **Health and Safety Reform Act 2014**.
- (3) An employer may be found to have engaged in adverse conduct for a prohibited health and safety reason only if the prohibited health and safety reason was a substantial reason for the conduct. 15
- (4) For the purposes of **subsection (3)**, a prohibited health and safety reason is presumed to be a substantial reason for the conduct unless the employer proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct. 20
- (5) It is a defence to an action for a personal grievance under **section 103(1)(h)(i)** if the employer proves that—
- (a) the conduct was reasonable in the circumstances; and
 - (b) a substantial reason for the conduct was to comply with the requirements of **Parts 1 to 5 of the Health and Safety Reform Act 2014** or other relevant health and safety legislation (as defined in **section 12** of that Act). 25
- (6) For the purposes of this section,—
- (a) an employer also engages in adverse conduct if the employer or a representative of the employer, in relation to the employee,—
 - (i) organises to take any action referred to in **subsection (1)** or threatens to organise or take that action; or
 - (ii) requests, instructs, induces, encourages, authorises, or assists another person to engage in adverse conduct for a prohibited health and safety reason: 35
 - (b) **detriment** includes anything that has a detrimental effect on the employee’s employment, job performance, or job satisfaction.

301 Section 111 amended (Definitions relating to personal grievances)

In section 111, replace “and **duress** have in any employment agreement the meanings given to those terms by sections 103, 104, 105, 106, 107, 108, 109, and 110” with “**duress**, and **adverse conduct for prohibited health and safety reason** have in any employment agreement the meanings given to those terms by sections 103, 104, 105, 106, 107, 108, 109, 110, and **110A**”.

302 Section 137 amended (Power of Authority to order compliance)

Repeal section 137(1)(a)(xi) and (4)(b).

303 Section 138 amended (Further provisions relating to compliance order by Authority)

Repeal section 138(1)(b)(ii).

304 Schedule 1A amended

In paragraph (f), replace “place of work (within the meaning of the Health and Safety in Employment Act 1992)” with “workplace”.

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Legislative history

25 August 2015

Divided from Health and Safety Reform Bill (Bill 192–2) as Bill 192–3D