

Employment Relations (Termination of Employment by Agreement) Amendment Bill

Member's Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Employment Relations (Termination of Employment by Agreement) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

About the bill as introduced

The Employment Relations (Termination of Employment by Agreement) Amendment Bill is a Member's bill in the name of Laura McClure MP.

The bill seeks to facilitate protected conversations between employers and employees to allow them to come to mutual agreement to terminate employment.

The bill would do so by amending the Employment Relations Act 2000. It would introduce “pre-termination negotiations”—protected conversations between employers and employees for the purpose of terminating the employment, regardless of whether there is an existing employment relationship problem. It would establish the framework for a termination agreement, following successful pre-termination negotiations. The bill seeks to prevent employees from making a legal complaint against their employer once a settlement has been agreed to.

Workability issues and additional safeguards

We were advised that the bill as introduced contains several issues that could reduce its workability. They could risk future legal challenges, undermine certainty, and make employee protections less clear. Some of the issues are technical matters; others involve misalignment between the provisions and the policy intent. We consider that

the bill should be more closely aligned with the existing legislative framework, to ensure consistency.

We also consider that additional safeguards could be incorporated, to ensure legal protections for employers and employees.

Our proposed changes to the bill are in line with the advice we received on these issues. We consider that they would improve how the bill would operate in practice, and would ensure that it fits within the Act's regime and includes safeguards.

Proposed amendments

The bill as introduced sets out the basic framework for pre-termination negotiations and termination agreements. These are set out in clause 4, which would insert new sections 101A and 101B into the Act.

To improve the bill's workability, we recommend replacing clause 4. Our proposed new clause 4 would insert new Part 8B into the Act (new sections 100H to 100R). These new sections would align the bill more closely with the principal Act and strengthen the bill's overall framework. We also recommend introducing additional safeguards to protect both the employer and the employee in the case of unfair negotiations or procedural error.

The rest of this commentary covers the main amendments we recommend to the bill as introduced, as set out in proposed new Part 8B. As our amendments insert an entirely new Part into the Act, we discuss them in the form of a section-by-section analysis.

Section-by-section analysis of proposed new Part 8B

Section 100H sets out the objective of new Part 8B, namely, to enable an employer and an employee to:

- (a) begin pre-termination negotiations with a view to terminating the employment relationship; and
- (b) enter into an agreement terminating the employment relationship.

Section 100I is the interpretation section to guide reading of new Part 8B.

Request to begin pre-termination negotiations

Section 100J sets out the conditions under which an employer could ask an employee to begin pre-termination negotiations. It describes how and when a request to begin these processes must be made, and requirements for the employer to make a record of the request and the employee's response. Subsection (5) states that a request could be made regardless of whether there is an existing employment relationship problem. It also states that a request would not by itself be grounds for an employee to raise a personal grievance for unjustified dismissal or unjustified disadvantage. Subsections (5) and (6) provide that a request could not be made more than once in any 6-month period (unless there are genuine reasons based on reasonable grounds), and that a

reminder given a “reasonable time” after the initial request would not constitute a new request.

Section 100K sets out conditions of pre-termination negotiations that employers must inform the employee of before initiating such negotiations.

Pre-termination negotiations

Section 100L states that an employer must not begin pre-termination negotiations without agreement from the employee.

Section 100M provides that the duty of good faith under section 4 of the Act would be limited, during pre-termination negotiations, to parties not engaging in misleading or deceptive behaviour. A person who breached the duty by engaging in misleading or deceptive behaviour would be liable to a penalty imposed by the Employment Relations Authority (the Authority).

Termination agreements

Section 100N would apply if the employer and employee agree, through pre-termination negotiations, to terms on which the employment relationship will be terminated. A termination agreement would then be established between the employer and employee. Subsections (2) and (3) set out what the terms of the agreement must include and requirements for the employer that must be met before the employee signs the agreement. Subsections (4) and (5) provide the legal status of the terms of the agreement, and specify that a minor aged 16 years or over may be party to an agreement, and bound to it, as if they were of full age and capacity. Subsection (6) provides that any person who breaches the terms of an agreement would be liable to a penalty imposed by the Authority.

Effect of unfair pre-termination negotiations and process defects

Section 100P sets out that an employer must not engage in unfair pre-termination negotiations. Subsections (4) and (5) set out what would constitute unfair pre-termination negotiations. It includes an employer knowingly entering into negotiations when an employee is unable to understand the provisions or implications of the agreement due to diminished capacity at that time. Subsection (2) states that, if the authority were to find that an employer had engaged in unfair negotiations, it would be allowed to make an order cancelling the termination agreement and providing for specified remedies. Engaging in unfair negotiations would also make an employer liable to a penalty imposed by the Authority. The meaning of unfair bargaining for individual employment agreements is defined in section 68 of the Act. We understand that there is a high threshold to meet the requirements of unfair bargaining under section 68, and we intend for unfair pre-termination negotiations to have a similarly high threshold.

Section 100Q provides that the Authority would be able to cancel a termination agreement if an employee were found to have been treated unfairly because of their employer’s failure to follow procedural requirements established by the bill.

Admissibility of evidence

Section 100R provides that evidence of pre-termination negotiations would be inadmissible in any proceeding before the Authority or before the court. Subsection (2) specifies circumstances when this would not apply.

New Zealand Labour Party and Green Party of Aotearoa New Zealand differing view

The New Zealand Labour Party and the Green Party of Aotearoa New Zealand strongly oppose the Employment Relations (Termination of Employment by Agreement) Amendment Bill. We believe this bill will allow employers to dismiss people without cause and without fair process. It is contrary to good faith, access to justice, and the principles of fair and equitable treatment. Additionally, under the existing law there is the possibility of terminating employment in a mutually agreed way if the employer and employee agree to without-prejudice conversations and have the benefit of representation. The Employment Relations Act 2000 promotes mediation as the “primary problem-solving mechanism” and promotes a robust concept of good faith which encourages parties in the employment relationship to establish and maintain a productive employment relationship. “Good faith” is a statutory conception, and along with the active promotion of mediation to resolve employment relationship issues, creates a system that encourages difficult situations to be resolved through discussion and agreement, not litigation.

This bill will make it easier for employers to dismiss employees and make it impossible for the employee to stay in their role following these employer-initiated discussions. This bill would increase the power imbalance between the employer and the employee.

Appendix

Committee process

The Employment Relations (Termination of Employment by Agreement) Amendment Bill was referred to this committee on 9 April 2025. We invited the member in charge of the bill to provide an oral submission. She did so on 21 May 2025.

We called for submissions on the bill with a closing date of 22 May 2025. We received and considered submissions from 76 interested groups and individuals. We heard oral evidence from 9 submitters at hearings in Wellington.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Committee membership

Katie Nimon (Chairperson)

Carl Bates (Deputy Chairperson)

Dr Vanessa Weenink (Acting Chairperson from 16 July to 8 August 2025)

Shanan Halbert

Francisco Hernandez

Grant McCallum

Dr Parmjeet Parmar

Hon Willow-Jean Prime

Hon Phil Twyford

Mike Butterick and Laura McClure participated in our consideration of this bill.

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Employment Relations (Termination of Employment by
Agreement) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Laura McClure

Employment Relations (Termination of Employment by Agreement) Amendment Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations (Termination of Employment by Agreement) Amendment Act ~~2024~~.

2 Commencement

This Act comes into force on the day after Royal assent.

3 Principal Act

This Act amends the Employment Relations Act 2000 ~~(the principal Act)~~.

4 ~~New cross-heading and new sections 101A to 101B inserted~~

~~After section 101, insert:~~

	<i>Termination of employment by agreement</i>	
101A	Agreement to terminate employment	
(1)	Subsection (2) applies —	
(a)	to an offer made by an employer to an employee —	
(i)	for the purpose of reaching an agreement to terminate the employment relationship; and	15
(ii)	as part of that agreement, for the employer to pay the employee a specified sum in full and final settlement of any cause of action arising out of the employment relationship; and	
(b)	regardless of whether there is an existing employment relationship problem.	20
(2)	An offer made to an employee under subsection (1) does not in itself constitute grounds for a personal grievance.	
(3)	An agreement made under subsection (1) is enforceable only if —	

- ~~(a) the agreement is in writing and signed by each party; and~~
 - ~~(b) the agreement states the relevant legislation which applies to such settlement agreements; and~~
 - ~~(c) before the employee signed the agreement, the employer advised the employee that they should seek independent advice on the proposed agreement before signing; and~~ 5
 - ~~(d) the employer gave the employee a reasonable opportunity to obtain independent advice before the employee signed the agreement.~~
- ~~(4) An offer made under **subsection (1)** may include a requirement for both parties not to disclose any terms of the agreement to the employer's current employees.~~ 10

101B Negotiations to terminate employment inadmissible

- ~~(1) Evidence of pre-termination negotiations under **section 101A** is inadmissible in any proceeding before the Authority.~~
- ~~(2) In **subsection (1)**, **pre-termination negotiations** means any discussions held or offers made before the termination of the employment relationship in question, with a view to it being terminated on terms agreed between the employer and the employee.~~ 15
- ~~(3) Despite **subsection (1)**, the Authority may admit evidence of a communication or information in relation to pre-termination negotiations if satisfied that there is a prima facie case that the communication was made or received, or the information was compiled or prepared, for a dishonest purpose or to enable or aid anyone to commit or plan to commit what the person claiming the privilege knew, or reasonably should have known, to be an offence.~~ 20
- ~~(4) **Subsection (1)** does not apply to —~~ 25
 - ~~(a) the terms of an agreement under **section 101(A)**; or~~
 - ~~(b) evidence necessary to prove the existence of such an agreement in a proceeding in which the conclusion of such an agreement is in issue; or~~
 - ~~(c) the use in a proceeding, solely for the purposes of an award of costs, of a written offer that —~~ 30
 - ~~(i) is expressly stated to be subject to this section except as to costs; and~~
 - ~~(ii) relates to an issue in the proceeding.~~
- ~~(5) This section applies despite sections 106(2) and 189(2).~~

4 **New Part 8B inserted** 35
After section 100G, insert:

Part 8B**Termination of employment by agreement****100H Object of this Part**

The object of this Part is to enable an employer and an employee to—

- (a) begin pre-termination negotiations with a view to terminating the employment relationship; and 5
- (b) enter into an agreement terminating the employment relationship.

100I Interpretation

In this Part, unless the context otherwise requires,—

pre-termination negotiations means all discussions, correspondence, and other interactions between the employer and employee about the termination of the employment relationship, and includes— 10

- (a) all offers made during the negotiations; and
- (b) the employer's request to begin pre-termination negotiations and the employee's response to that request 15

termination agreement means an agreement entered into by an employer and an employee under **section 100N**.

*Request to begin pre-termination negotiations***100J Employer may ask employee to begin pre-termination negotiations**

- (1) An employer may ask an employee to begin pre-termination negotiations. 20
- (2) A request under **subsection (1)** must—
 - (a) inform the employee of their right to obtain representation before responding to the request and at any other time in any process that follows under this Part; and
 - (b) give the employee a reasonable opportunity to obtain that representation; and 25
 - (c) provide the employee with the information specified in **section 100K**.
- (3) The employee may decline the request.
- (4) If the employee agrees to the request, the employer must make a record of the request and the employee's response. 30
- (5) A request under **subsection (1)**—
 - (a) may be made whether or not there is an existing employment relationship problem; and
 - (b) is not by itself grounds for an employee to raise a personal grievance under section 103(1)(a) or (b); and 35

(c) may not be made more than once in any 6-month period, unless there is a genuine reason based on reasonable grounds to make another request in that period.

(6) For the purposes of **subsection (5)(c)**, a reminder of a request, given a reasonable time after the request is made, is not a new request.

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100K Information about pre-termination negotiations

For the purposes of **section 100J(2)(c)**, the employer must inform the employee of the following:

(a) the employee may decline the request to begin pre-termination negotiations (see **section 100J(3)**):

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(b) negotiations may not begin without the employee's agreement to begin the negotiations (see **section 100L**):

(c) the duty of good faith under section 4 is met during pre-termination negotiations if the parties do not, whether directly or indirectly, do anything—

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(i) to mislead or deceive each other during the negotiations; or

(ii) that is likely to mislead or deceive each other during the negotiations (see **section 100M**):

(d) the employee's employment may be terminated under this Part only if the parties enter into a termination agreement (see **section 100N**):

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(e) the employee is entitled to obtain independent advice on the proposed terms of a termination agreement (see **section 100N(3)**):

(f) the terms of a termination agreement are the full and final settlement of any cause of action arising out of the employment relationship between the parties (see **section 100N(4)(a)**.

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Pre-termination negotiations

100L Pre-termination negotiations not to begin without employee agreement

An employer must not begin pre-termination negotiations without the employee's agreement to begin the negotiations.

100M No misleading or deceptive behaviour during pre-termination negotiations

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(1) The duty of good faith under section 4 is met during pre-termination negotiations if the parties to the negotiations do not, whether directly or indirectly, do anything—

(a) to mislead or deceive each other during the negotiations; or

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(b) that is likely to mislead or deceive each other during the negotiations.

(2) However, section 4 otherwise continues to apply to the employment relationship.

(3) A person who breaches **subsection (1)** is liable to a penalty imposed by the Authority.

Termination agreements

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100N Termination agreements

(1) This section applies if, as a result of pre-termination negotiations, the employer and employee agree to the terms on which the employment relationship is to be terminated.

(2) The terms of the termination agreement must— 10

(a) specify the sum the employer is to pay to the employee for agreeing to terminate the employment relationship; and

(b) state that the agreement is made under this section; and

(c) be in writing; and

(d) be signed by the employer and the employee. 15

(3) Before the employee signs the agreement, the employer must—

(a) inform the employee that they are entitled to seek independent advice on the proposed terms of the agreement; and

(b) give the employee a reasonable opportunity to obtain that advice.

(4) The terms of the agreement— 20

(a) are the full and final settlement of any cause of action arising out of the employment relationship between the parties; and

(b) are final and binding on, and enforceable by, the parties; and

(c) may not be cancelled under any of sections 36 to 40 of the Contract and Commercial Law Act 2017; and 25

(d) except for enforcement purposes, may not be brought by a party before the Authority or the court, whether by action, appeal, application for review, or otherwise.

(5) For the purposes of **subsection (4)**, a minor aged 16 years or over may be a party to an agreement, and may be bound by that agreement, as if the minor were a person of full age and capacity. 30

(6) A person who breaches a term of an agreement is liable to a penalty imposed by the Authority.

Effect of unfair pre-termination negotiations and process defects

100P Employer must not engage in unfair pre-termination negotiations 35

(1) An employer must not engage in unfair pre-termination negotiations.

- (2) If the Authority finds that an employer has engaged in unfair pre-termination negotiations, the Authority may make an order cancelling the termination agreement and provide for any 1 or more of the following remedies:
- (a) reinstatement of the employee in the employee's former position or the placement of the employee in a position no less advantageous to the employee: 5
 - (b) the reimbursement to the employee of a sum equal to the whole or part of the wages or other money lost by the employee as a result of the termination:
 - (c) the payment to the employee of compensation, including compensation for— 10
 - (i) humiliation, loss of dignity, and injury to the feelings of the employee; and
 - (ii) loss of any benefit, whether or not of a monetary kind, that the employee might reasonably have been expected to obtain if the termination had not occurred. 15
- (3) An employer who breaches subsection (1) is liable to a penalty imposed by the Authority.
- (4) For the purposes of this Part, **unfair pre-termination negotiations** means—
- (a) 1 or more of paragraphs (a) to (c) of subsection (5) apply to the employee; and 20
 - (b) the employer or the employer's representative—
 - (i) knows of the circumstances described in the paragraph or paragraphs that apply to the employee; or
 - (ii) ought to know of the circumstances in the paragraph or paragraphs that apply to the employee because the employer or the employer's representative is aware of facts or other circumstances from which it can be reasonably inferred that the paragraph or paragraphs apply to the employee. 25
- (5) The circumstances are that the employee, at the time of pre-termination negotiations or entering into the termination agreement,— 30
- (a) is unable to adequately understand the provisions or implications of the agreement by reason of diminished capacity due, for example, to—
 - (i) age; or
 - (ii) sickness; or 35
 - (iii) mental or educational disability; or
 - (iv) a disability relating to communication; or
 - (v) emotional distress; or

- (b) reasonably relies on the skill, care, or advice of the employer or the employer's representative; or
- (c) is induced to enter into the agreement by oppressive means, undue influence, or duress.

100Q Effect of process defect

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- (1) The Authority may make an order cancelling a termination agreement if an employee is found to have been treated unfairly because of—
 - (a) any defect in the process followed by an employer under **sections 100J(2) or (4) or 100N(3)**; or
 - (b) a failure to comply with **section 100N(2)**.
- (2) However, the Authority must not determine a termination agreement to be invalid solely because of a matter referred to in **subsection (1)(a) or (b)** if it did not result in the employee being treated unfairly.

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*Admissibility of evidence***100R Evidence of pre-termination negotiations inadmissible**

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- (1) Evidence of pre-termination negotiations is inadmissible in any proceeding before the Authority or the court.
- (2) **Subsection (1)** does not apply to—
 - (a) unfair pre-termination negotiations (*see section 100P*); or
 - (b) evidence of a defect in the process followed by an employer under **sections 100J(2) or (4) and 100N(3)** if the Authority finds that, because of the defect, the employee has been treated unfairly; or
 - (c) evidence of a failure to comply with **section 100N(2)** if the Authority finds that, because of the failure, the employee has been treated unfairly; or
 - (d) pre-termination negotiations if an employee raises a personal grievance under section 103(1)(c) to (k) in relation to those negotiations; or
 - (e) evidence of pre-termination negotiations required to prove the terms of a termination agreement; or
 - (f) evidence necessary to prove the existence of a termination agreement in a proceeding in which the conclusion of such an agreement is in issue; or
 - (g) the use in a proceeding, solely for the purposes of an award of costs, of a written offer made during pre-termination negotiations that—
 - (i) is expressly stated to be without prejudice except as to costs; and
 - (ii) relates to an issue in the proceeding.

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Employment Relations (Termination of Employment by Agreement) Amendment Bill

Legislative history

7 November 2024
9 April 2025

Introduction (Bill 95–1)
First reading and referral to Education and Workforce
Committee