

House of Representatives

Supplementary Order Paper

Tuesday, 8 March 2016

Employment Standards Legislation Bill

Proposed amendments

Hon Michael Woodhouse, in Committee, to move the following amendments:

Clause 5: new section 1B

In *clause 5, new section 1B(3)(a)(iii)*, replace “**section 28**” (page 13, line 35) with “Part 7A”.

In *clause 5, new section 1B(4)(b)*, renumber subparagraph (iii) as paragraph (c).

In *clause 5, new section 1B(4)(b)*, renumber subparagraph (iv) as paragraph (d).

Clause 6

In *clause 6(1)*, definition of **employee**, replace the first line and paragraph (a) (page 15, lines 12 to 14) with:

employee—

- (a) means a person who is an employee within the meaning of section 6 of the Employment Relations Act 2000; and

In *clause 6(1)*, definition of **employee**, in paragraph (b) (page 15, lines 16 and 17), replace “a person who will have been employed as an employee” with “includes a person who was an employee”.

In *clause 6(8)*, definition of **self-employed person**, in paragraph (b) (page 16, line 7), replace “also means a person who will have been” with “includes a person who was”.

Clause 37: new section 33

In *clause 37, new section 33*, replace “If an employee intends to be” (page 31, line 25) with “If an employee, or his or her spouse or partner, intends to be”.

In *clause 37, new section 33(a)*, replace “the employee will be” (page 31, line 28) with “the employee (or his or her spouse or partner, as applicable) will be”.

In *clause 37, new section 33(b)*, replace “the employee intends” (page 31, line 30) with “the employee (or his or her spouse or partner, as applicable) intends”.

Clause 55: new section 71CE

In *clause 55*, replace *new section 71CE(4)* (page 39, lines 28 to 30) with:

- (4) **Subsections (2)(b) and (3)(a)** do not apply to an employee if the parental leave payment the employee receives is in respect of a child born before the end of the 36th week of gestation.

Clause 86A

In *clause 86A* (page 50, after line 16), insert as *subclause (2)*:

- (2) In section 65(4), after “Labour Inspector”, insert “or the employee concerned”.

Clause 87: new section 67G

In *clause 87*, replace *new section 67G(4)* (page 53, line 38 to page 54, line 6) with:

- (4) The period of notice specified under **subsection (2)(a)** must be determined having regard to all relevant factors, including—
 - (a) the nature of the employer’s business, including the employer’s ability to control or foresee the circumstances that have given rise to the proposed cancellation; and
 - (b) the nature of the employee’s work, including the likely effect of the cancellation on the employee; and
 - (c) the nature of the employee’s employment arrangements, including whether there are agreed hours of work in the employee’s employment agreement and, if so, the number of guaranteed hours of work (if any) included among those agreed hours.

In *clause 87, new section 67G(4A)*, replace “Compensation payable for cancellation of shifts” (page 54, line 7) with “Compensation specified under **subsection (2)(b)**”.

In *clause 87, new section 67G(4A)(a)*, replace “given before cancelling the shift” (page 54, line 9) with “specified in the employee’s employment agreement under **subsection (2)(a)**”.

In *clause 87*, after *new section 67G(5A)* (page 54, after line 27), insert:

- (5B) To avoid doubt, nothing in this section enables an employer to cancel an employee’s shift if that cancellation would breach the employee’s employment agreement.

In *clause 87*, replace *new section 67G(6)* (page 54, lines 30 to 34) with:

- (6) In this section, **shift** means a period of work performed in a system of work in which periods of work—
 - (a) are continuous or effectively continuous; and

(b) may occur at different times on different days of the week.

Clause 87: new section 67H

In *clause 87, new section 67H(3A)(b)*, replace “for a greater extent” (page 55, lines 27 and 28) with “to a greater extent”.

Clause 88

In *clause 89, new section 103(1)(h)*, replace “**sections 67C, 67E, 67G, and 67H**” (page 55, lines 37 and 38) with “**section 67C, 67E, 67G, or 67H**”.

Clause 89

In *clause 89(2), new section 130(1B)*, replace “If an employee’s hours of work and pay are agreed” (page 56, line 11) with “If an employee’s number of hours worked each day in a pay period and the pay for those hours are agreed”.

In *clause 89(2)*, replace *new section 130(1C)* (page 56, lines 18 to 20) with:

- (1C) In **subsection (1B)**, the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee’s employment agreement.
- (1D) Despite **subsection (1C)**, the employer must record any additional hours worked that need to be recorded to enable the employer to comply with the employer’s general obligation under **section 4B(1)**.

Clause 95: new section 142B

In *clause 95, new section 142B(4)(d)*, after “intentional” (page 60, line 13), insert “or reckless”.

Clause 96: new section 148A

In *clause 96(4), new section 148(3)*, replace “or the Holidays Act 2003” (page 70, line 6) with “, the Holidays Act 2003, or the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016”.

Clause 108: new section 233A

In *clause 108, new section 233A(1)*, after “the copy” (page 73, line 26), insert “, unless the disclosure is for the purposes of an Act specified in section 223(1)”.

Clause 118: new section 76A

In *clause 118, new section 76A*, after “the Authority” (page 79, line 17), insert “or the court (as the case may be)”.

Clause 120: new section 81

In *clause 120(4), new section 81(3A)*, replace “If an employee’s hours of work are agreed and the employee works those hours (the **usual hours**), it is sufficient compli-

ance with subsection (2)(c) if those usual hours are stated in—” (page 80, lines 24 to 26) with “If an employee’s number of hours worked each day in a pay period and the pay for those hours are agreed and the employee works those hours (the **usual hours**), it is sufficient compliance with subsection (2)(c) if those usual hours and pay are stated in—”.

In *clause 120(4)*, replace *new section 81(3B)* (page 80, lines 32 to 34) with:

- (3B) In **subsection (3A)**, the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee’s employment agreement.
- (3C) Despite **subsection (3B)**, the employer must record any additional hours worked that need to be recorded to enable the employer to comply with the employer’s general obligation under **section 4B(1)** of the Employment Relations Act 2000.

Schedule 4: new Schedule 1AA

In *Schedule 4, new Schedule 1AA, clause 2*, replace “breaches of this Act” (page 90, line 12) with “conduct”.

Schedule 5: new Schedule 1AA

In *Schedule 5, new Schedule 1AA, clause 2*, replace “breaches of this Act” (page 91, line 12) with “conduct”.

Schedule 6: new Schedule 1

In *Schedule 6, new Schedule 1, clause 2(2)*, replace “breaches of this Act” (page 92, line 17) with “conduct”.

Explanatory note

This Supplementary Order Paper amends the Employment Standards Legislation Bill.

Amendments to Part 1 of the Bill (relating to the Parental Leave and Employment Protection Act 1987)

Clause 5 is amended to correct a cross-reference and to correct paragraph numbering.

In *clause 6*, minor technical amendments are made to clarify the definitions of **employee** and **self-employed person**.

Clause 37, which replaces section 33, is amended. The amendment makes a technical change to ensure that the notice that must be given when an employee seeks parental leave in respect of a child to whom the employee, or his or her spouse or partner, does not give birth, applies both to an employee who will be the primary carer of the child and also to an employee whose spouse or partner will be the primary carer of the child.

Clause 55, which inserts new section 71CE, is amended to clarify that the requirement that keeping-in-touch hours not be worked within the first 28 days after a child is born does not apply to an employee who receives a parental leave payment in respect of a preterm child (irrespective of whether or not the employee also received a preterm baby payment).

Amendments to Part 2 of the Bill (relating to the Employment Relations Act 2000)

Clause 86A is amended by adding *new subclause (2)* to allow the employee concerned (in addition to a Labour Inspector) to take action against an employer who fails to comply with section 65 (form and content of individual employment agreement).

Clause 87 is amended as follows:

- *new section 67G(4)* is replaced. *New subsection (4)* sets out matters that must be considered when determining whether the period of notice for cancelling a shift (to be specified in the employment agreement) is reasonable. The considerations include the nature of the employer's business (and whether or not the employer could control or foresee the circumstances giving rise to the cancellation) and the employees' work (and the likely impact of the cancellation on the employee):
- *new section 67G(4A)* is amended to clarify that the determination of compensation is made for the purposes of being specified in the employment agreement:
- in *new section 67G(4A)(a)*, a technical amendment is made in relation to a reference to the notice to be given for cancelling a shift:
- after *new section 67G(5A)*, *new subsection (5B)* is inserted, making it clear that *new section 67G* does not permit cancellation of a shift in breach of an employment agreement:
- *new section 67G(6)* is replaced with a new subsection that defines **shift** to mean a period of work in a system of work periods that may be continuous or effectively continuous and that may occur at different times on different days of the week:
- *new section 67H(3A)(b)* is amended to make a minor grammatical correction.

A technical correction is made to *clause 88*.

Clause 89 is amended as follows:

- *new section 130(1B)* is amended by clarifying the reference to an employee's **usual hours of work** that an employer may record:
- *new section 130(1C)* is replaced by *new subsections (1C) and (1D)*. *New subsection (1C)* extends *new subsection (1B)* (allowing a simpler means of recording an employee's usual hours of work) to additional hours worked by a salaried employee in accordance with the employee's employment agreement. *New subsection (1D)* ensures that *new subsection (1C)* does not override the employer's duty under *new section 4B* to keep records that demonstrate compliance with minimum entitlement provisions.

Clause 95 is amended by inserting “or reckless” after “intentional” in *new section 142B(4)(d)*. The effect of this amendment is that reckless breaches of minimum entitlement provisions may be serious breaches to which the enforcement provisions of *new Part 9A* apply.

Clause 96(4) inserts *new subsection (3)* in section 148A, which allows for mediation and agreed terms of settlement in relation to certain entitlements. *New subsection (3)* specifies these entitlements and the amendment to *new subsection (3)* includes entitlements under the recently enacted Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016.

Clause 108 is amended by adding an exception to *new section 233A(1)*. That provision prohibits Labour Inspectors and the Ministry of Business, Innovation, and Employment from disclosing information obtained by Labour Inspectors under section 229. The exception allows disclosure for the purposes of the Acts specified in section 223(1).

Amendments to Part 3 of the Bill (relating to the Holidays Act 2003)

Clause 118 is amended by the insertion of a reference to the court after “the Authority” in *new section 76A*, because the court may also determine penalties under the Act.

Clause 120, which amends section 81, is amended to replicate the changes made to *clause 89*, which amends section 130 of the Employment Relations Act 2000.

Amendments to Schedules

Schedule 4, which sets out *new Schedule 1AA* (of the Employment Relations Act 2000), is amended so that amendments made by this Act do not apply to conduct (rather than breaches) that occurred before the commencement of this Act.

Schedule 5, which sets out *new Schedule 1* (of the Minimum Wage Act 1983) is amended so that amendments made by this Act do not apply to conduct (rather than breaches) that occurred before the commencement of this Act.

Schedule 6, which sets out *new Schedule 1* (of the Wages Protection Act 1983) is amended so that amendments made by this Act do not apply to conduct (rather than breaches) that occurred before the commencement of this Act.

Departmental disclosure statement

The Ministry of Business, Innovation and Employment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.