



The Employment Relations Amendment Bill: Myths and facts

MYTH: Union representatives will be able to go into any workplace at any time and the employer wouldn't know they are there.

FACT: There will still be requirements a union representative must follow when they enter a workplace. They will only be able to enter for certain purposes and will need to do so during business hours. They will also need to follow health, safety and security procedures. On arrival, a union representative will need to make a reasonable attempt to find the employer or, if they are unable to, they will need to provide a written statement with the date, time and reason for their visit. This will prevent union representatives from being required to wait days to access a workplace. Timely access is important for urgent situations, such as during health and safety incidents.

MYTH: A union representatives will be able to enter farmhouses or people's homes where employees work.

FACT: Unions representatives cannot enter houses or workplaces that are also residences without express, prior permission. This is the current law and will not be changed by this proposed Bill.

MYTH: Union delegates will spend excessive amounts of work time on union activities, instead of doing their job.

FACT: The new provisions will only allow workers to spend reasonable time doing union-related activities during their paid work hours. They will also need to agree with their employer to do so or, at a minimum, notify them in advance. An employer will be able to deny the request if it will unreasonably disrupt the business or the employee's duties.

This recognises that union delegate activities can contribute to productive employment relationships, such as participating in collective bargaining and low-level dispute resolution.

MYTH: Employees will lose their right to privacy, with information automatically shared with the union.

FACT: An employee will receive a form when they start their job, offering the choice between an individual and a collective agreement. Their choice, along with their name and place of work, will be passed onto unions. However, employees can easily opt-out of sharing this information with the union on the same form.

An opt-out provides an extra level of assurance that businesses are providing the form to their employees, while maintaining workers' right to privacy.

MYTH: Large employers won't be able to test the suitability of employees under a trial period.

FACT: Large employers (with 20 or more employees) will be able to continue to use probationary periods to assess an employee's skills against the role's responsibilities. A probationary period lays out a fair process for managing performance issues and ending employment if the issues aren't resolved.

This means employers can still have the confidence to take on new people, while providing employees with security of work.

MYTH: Employers will be forced to settle collective agreements even where they don't or can't agree.

FACT: Although parties must try to conclude a collective agreement, if there are genuine reasons based on reasonable grounds not to, then the Bill will not force the parties to conclude the collective agreement.

This will encourage parties to remain at the bargaining table and reach an agreement.

MYTH: Employers will be forced to settle multi-employer collective agreements, if a union asks them to join.

FACT: The Bill does not force an employer to conclude such an agreement – it only requires them to come to the bargaining table. The union and employer will be able to agree to settle a single employer collective agreement instead.

The change will promote collective bargaining, as it provides greater certainty to unions seeking to initiate multi-employer collective agreements, by requiring employers to participate in the process.

MYTH: Employees will have to take rest or meal breaks at specific times set out in law.

FACT: There will be plenty of flexibility for employers and workers to agree when to take their rest and meal breaks. It's only if they cannot agree on when then the breaks are to be taken, that the law will require the breaks to be in the middle of the work period, so long as it's reasonable and practicable.

This will give the majority of employees a minimum number of breaks, spaced throughout the day, so they have time to eat, rest and refresh and are able to work safely and productively.

MYTH: Employees will be reinstated into their role regardless of what they did to be dismissed, for example, even if the employee stole from the employer.

FACT: Reinstatement cannot be imposed if an employee has not requested reinstatement as a remedy. The Authority would make an assessment of whether reinstatement is practicable and reasonable, given the circumstances of the case. This assessment would take into account a number of factors, including whether the trust and confidence between the parties has broken down.

Reinstatement, where it is possible, is an important protection for the employee who may struggle to find another job in the short term. It also gives employers motivation to make sure they act fairly and reasonably when dismissing staff.
