

DRAFT FOR CONSULTATION

Employment Relations (Employee Remuneration Disclosure) Amendment Bill

Member's Bill

Explanatory note

General policy statement

This Bill amends the Employment Relations Act 2000 to protect employees who discuss or disclose their remuneration.

In New Zealand some individual, and possibly collective, employment contracts may include terms prohibiting employees from discussing or disclosing their remuneration (including salary, wages and other conditions) to third parties, including other employees of the same employer. These terms are currently permitted and breaching these terms may be considered a breach of good faith or a disciplinary matter subjecting the individual to detriment or adverse treatment by their employer.

Other jurisdictions (including the US and the UK) have prohibited such contractual terms because they lead to pay secrecy and do not encourage pay transparency between employees, and this can lead to discriminatory outcomes. This Bill would propose to make such clauses ineffective in relation to any adverse treatment by an employer (if the contractual term is broken). This Bill would seek to ensure that employees can discuss and disclose their own pay rate to others without detrimental repercussions to their employment.

It is hoped that this would lead to greater transparency in pay and allow any pay discrimination to be more easily identified and remedied.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides for the Bill to come into force on the day after Royal assent.

Clause 3 identifies the Employment Relations Act 2000 (the **principal Act**) as the Act being amended by the Bill.

Clause 4 amends section 103 of the principal Act to include adverse conduct for a remuneration disclosure reason as the basis for a personal grievance under the Act.

Clause 5 inserts *new section 110C* into the principal Act to define **adverse conduct for a remuneration disclosure reason**.

Clause 6 amends section 111 of the principal Act to include the definition in *new section 110C* in the definitions relating to personal grievances referred to in that section.

Clause 7 provides for transitional matters.

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New Part 7 inserted into Schedule 1AA

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations (Employee Remuneration Disclosure) Amendment Act **2024**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Employment Relations Act 2000.

4 Section 103 amended (Personal grievance)

After section 103(1)(k), insert:

- (l) that the employee's employer has, in relation to the employee, engaged in adverse conduct for a remuneration disclosure reason.

5 Section 110C inserted (Adverse conduct for remuneration disclosure reason)

After section 110B, insert:

110C Adverse conduct for a remuneration disclosure reason

- (1) For the purposes of **section 103(1)(l)**, an employer engages in **adverse conduct for a remuneration disclosure reason** if the employer or a representative of the employer, for a remuneration disclosure 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
 - (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.
- (2) For the purposes of **subsection (1)**, conduct described in that subsection is engaged in for a remuneration disclosure reason if it is engaged in because an employee:
 - (a) inquires about the remuneration of another employee employed in the workplace (whether by the same employer, or another employer):
 - (b) discusses, together with another employee employed in the workplace (whether by the same employer, or another employer), their remuneration:
 - (c) discloses their remuneration to any other person.
- (3) An employer may be found to have engaged in adverse conduct for a remuneration disclosure reason only if the remuneration disclosure reason was a substantial reason for the conduct.
- (4) For the purposes of **subsection (3)**, a remuneration disclosure 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.

- (5) To avoid doubt, an employer also engages in adverse conduct if the employer or a representative of the employer, in relation to the employee,—
- (a) organises to take any action referred to in **subsection (1)** or threatens to organise or take that action; or
 - (b) requests, instructs, induces, encourages, authorises, or assists another person to engage in adverse conduct for a remuneration disclosure reason:

6 Section 111 amended (Definitions relating to personal grievances)

- (1) In section 111, replace “and **retaliate** ” with “**retaliate**, and **adverse conduct for a remuneration disclosure reason**”.
- (2) In section 111, replace “and 110B” with “110B, and **110C**”.

7 Schedule 1AA amended

In **Schedule 1AA**,—

- (a) insert the Part set out in the Schedule of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Schedule
New Part 7 inserted into Schedule 1AA

s 7

Part 7

**Provisions relating to Employment Relations (Employee
Remuneration Disclosure) Amendment Act 2024**

22 Application to pre-commencement remuneration disclosure

Sections 103(1)(l), 110C, and 111 apply even if the remuneration disclosure occurred before the commencement of the Employment Relations (Employee Remuneration Disclosure) Amendment Act **2024**.