

IN CONFIDENCE

Employment Relations (Termination of Employment by Agreement) Amendment Bill

Member's Bill

Explanatory note

General policy statement

This Bill allows for protected negotiations to occur between an employer and an employee to terminate the employee's contract if, for example, the demands of the business mean that it is imperative to dismiss the employee. The Bill allows for the employer to seek to terminate the contract by mutual consent by requesting the employee to sign a settlement agreement in which the employee agrees, in return for specified compensation, to have their contract of employment terminated and not to bring a personal grievance claim against the employer under any cause of action they may have at the time the contract is terminated. Pre-termination negotiations will not be admissible in any future proceedings relating to the employment relationship unless certain exceptions apply. Similar legislation exists in the United Kingdom and will be an effective tool in New Zealand for both employers and employees.

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 the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Employment Relations Act 2000 (the **principal Act**).

Clause 4 inserts *new sections 101A and 101B* into the principal Act.

New section 101A provides that employers may make an offer to an employee, including payment of a specified sum to the employee, for the purpose of terminating the employment relationship by mutual consent. Such offers do not in themselves give rise to personal grievance claims. *New subsection (3)* sets out the requirements for such settlement agreements to be enforceable.

New section 101B provides that offers made under *new subsection 101A* are inadmissible in employment proceedings, unless an exception applies under *new subsections 101B(4) to (5)*.

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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:

*Termination of employment by agreement***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
 - (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.
- (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
 - (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.

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.
- (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.

- (4) **Subsection (1)** does not apply to—
- (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—
 - (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).