

Oral submission

Employment Relations Amendment Bill

Parliament Buildings, 10.30am 19 September 2013
To the Transport and Industrial Relations Select Committee

Overview

The Federation of Business and Professional Women New Zealand, known as BPW New Zealand, congratulate the select committee on extending the right to request flexible work arrangements to all employees. Business and Professional Women New Zealand have requested this right since 1981 and we are delighted to see this change.

We are an organisation that has many small to medium business owners as members who look for an environment where they can grow their businesses. We are also an organisation that speaks on behalf of all women to ensure equity in employment. So we look at this bill through a very balanced lens.

We understand that the aim of this bill was to create an employment relations framework that increases flexibility and choice, ensures a balance of fairness for employers and employees, and reduces compliance costs, particularly for genuine small to medium –sized enterprises. It also included the aim of ensuring the rights of employees were well protected.

We have two major concerns about this bill:

- a) That employee's rights are not sufficiently protected and it is the most vulnerable part-time employees, mainly women, who will directly bear the cost of a more flexible labour market through lower wages, poorer conditions, health risks and an alarming increase in job insecurity. This is exacerbated by the current environment of high unemployment.
- b) That the safeguards in this bill are generally dependent on negotiation and trusting relationships to ensure a fair outcome. In reality the balance of power is with the employer and because many employees' jobs are insecure the likelihood of challenge to any decision is low. In practice we fear that most of these safeguards will be ignored.

Today we would like to look at these two major factors of loss of employee rights and poor safeguards against three particular parts of the bill:

- The first thirty days of employment
- transfer of undertakings
- rest and meal breaks

These are clauses 3 to 5 of our written submission

The first thirty day rule (Clause 3.2 and 3.3 in our written submission)

BPW NZ sees that collective employment agreements are good for women. They actively support equity in the workplace, including reducing the gender wage gap. Collective agreements also provide a benchmark for terms and conditions of employment that may be obtained by the many individual employees who, for whatever reason, are not covered by a union. Many women, part-time, casual and contracted employees, are in that category.

The repeal of the 30 day rule for new employees, who are not union members, will disadvantage young people and a large group of low skilled workers who re-enter the workforce repeatedly. As a budgeter in South Auckland I am very aware of the vulnerability of women meshed in an on-going cycle of insecure work followed by periods on the benefits often when children are born and then trying to move back to the workforce. In Pukekohe where a lot of work is seasonal the common lot of many women is forever being a “new employee”. This proposal has the express intent of offering new employees pay and conditions less than that contained in the collective and further undermines collective bargaining.

Greater protection is needed for these workers, not less.

Rest and meal breaks – part 6D (Clause 4 in our written submission)

BPW NZ has concerns that the proposed changes in this area will undermine the health and safety of employees and their colleagues. We see no need to change the current provisions governing this area which ensure that employees have the right to regular rest and meal breaks and already contain some flexibility.

We quoted in our written submission clauses from Article 97 of the International Labour Organisation and article 11f of the Convention for the Elimination of all forms of Discrimination Against Women which clearly state the need to protect the health and safety of workers.

By removing minimum standards of protection health and safety standards could erode. Employees may agree to less than adequate breaks for fear of not being hired, resulting in health and safety issues for the individual and for those they work with. Fatigue and hunger are concerns as is the management of regular food intakes for some common medical conditions and toilet breaks are essential for women.

Of major concern is the “compensatory measures” or “safeguards”. Employees are likely to lack the necessary power to protect a minimal level of entitlement. Requirements for “reasonable and appropriate” breaks provide little practical protection when the groups most likely to be adversely affected if those requirements are ignored are also the very groups least able to challenge such unlawful behaviour.

Carolyn Savage will now give us an example:

Carolyn’s story

Thank you Carolyn. This case underlines our concern.

The third area we are addressing is:

Transfer of undertakings provisions – part 6A (Clause 5 in our written submission)

The Ministry of Business Innovation and Employment estimates that approximately 26,000-29,000 employees could be affected by these proposals, comprising of workers from the cleaning sector, caretakers, hospital orderlies and laundry workers. These occupational groups are predominantly women, many of whom are Māori, Pacific peoples and other ethnic minorities.

With many of our members employers, we recognise that there are good employers and many small businesses that provide excellent working conditions. Changes of ownership, however, could mean that some incoming employers (if exempt) could cut conditions and benefits given by a previous employer. AND the majority of businesses in New Zealand would come within the 'exempt' category. This increases the potential for a widespread loss of employees' hard won terms and conditions, increasing societal inequities.

If this proposed change is insisted upon by the Government we would like to see the figure of nineteen employees lowered to five or even less.

In summary

Taking a large picture view of our labour market we are concerned that the cost of the move to an increasingly flexibility is going to be played out in poor outcomes in the lives of our most vulnerable. We are concerned that women with insecure part-time jobs are losing protections. The money they bring to their families is likely to reduce and they will be at risk of health problems through deterioration in conditions. This bill further marginalises our low skilled workers, mainly women, whose employment will become more precarious.

We note that no detailed gender impact analysis has been done.

We believe we are all deluding ourselves if we think that the redress for marginalised workers is through negotiation and challenge. For those with precarious employment in a competitive labour market the safeguards are virtually non-existent. Those workers, often with poor English skills, are likely to accept any conditions employers impose. The voice of those women will not be heard and so BPW NZ speaks as for these women and opposes the changes we have spoken of.