



Affiliated with the International Federation of Business and Professional Women

BPW
NEW ZEALAND

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To the Committee Secretariat, Transport and Industrial Relations Committee
Parliament Buildings
Wellington

Online:

Re: Submission on Employment Standards Legislation Bill 2015

Submission:

This submission is from the NZ Federation of Business and Professional Women (BPW NZ) Inc.

Our interest in this Bill is because we are committed to representing the interests of working women and advancing and empowering women in the workplace. This is reinforced by our membership of the UN Women's Empowerment Principles (WEPs) which holds as one of its principles "treating all women and men fairly at work – respect and support human rights and nondiscrimination".

We also speak with a mandate from our annual conference having passed the following resolution in May this year:

"THAT the New Zealand Federation of Business and Professional Women (BPW NZ) Inc urges the government to recognise the increasing number of workers in precarious working arrangements which provide no security of hours of work and implement appropriate policy and legislative responses:

- (a) enact legislation to ban "zero hour contracts" with (i) exclusivity rights of employment and (ii) those that require people to work any hours offered***
- (b) develop a best practice code of conduct aimed at employers who wish to use flexible hours contracts***
- (c) provide clear information for employees working insecure hours on their rights to social welfare top-up as needed and how to apply***
- (d) keep gender-based statistics at the Ministry of Social Welfare on the number of workers needing intermittent income top-ups because of fluctuating hours.***

1.0 General Comments:

- 1.1** BPW NZ congratulates the Transport and Industrial Relations Select Committee on introducing this omnibus Bill which recognises that exploitative employment practices are detrimental to society and proposes many amendments to employment law.
- 1.2** In particular we are pleased to see the following reforms:
- a) Extending “parental leave and payments to more workers” and increasing “the flexibility of the parental leave scheme through amendments to the Parental Leave and Employment Protection Act;”
 - b) “stronger and more effective enforcement of employment standards (such as the minimum wage and holidays entitlements) through amendments to the Employment Relations Act, Minimum Wage Act, Holidays Act, and Wages Protection Act;”
- 1.3** We support the intent of this Bill to prohibit “certain practices in employment relationships that lack sufficient mutuality between the parties (particularly in relation to “zero hours’ contracts) through amendments to the Employment Relations Act, Minimum Wages Act, Holidays Act and Wages Protection Act.
- 1.4** We applaud the aims of this Bill to amend employment law to prohibit current practices around “zero hours” contracts but not the mechanisms that have been used. We are concerned that this Bill will legitimize “zero hour agreements” and “minimum hour contracts” as a legal form of employment with the attendant issues of legalizing and legitimizing prohibition on other forms of work.
- 1.5** Our concern is for vulnerable workers, particularly women, and we believe this Bill will lead to an increase in exploitative employment agreements through the imbalance inherent in agreements reached between an employer and a worker anxious for any employment. We do not see it providing protection in cases of insufficient mutuality.
- 1.6** BPW NZ suggest that an increase in “zero hour” contracts will lead to a higher proportion of women on such contracts and lead to a continuing increase in the gender pay gap. We urge the Select Committee request a gender impact analysis of these changes to provide an assessment of who will be most affected. This is in line with CEDAW (Convention of the Elimination of All Forms of Discrimination against Women)

Article 2 which New Zealand has ratified.

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) *To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*

- (b) *To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*
- (c) *To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*
- (d) *To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- (e) *To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*
- (f) *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*
- (g) *To repeal all national penal provisions which constitute discrimination against women.*

1.7 This Bill will have an adverse effect on the lives of the most vulnerable workers who will accept wide ranging availability clauses and put their lives on hold waiting for work to be offered with resultant deterioration of the social fabric of our communities and society.

1.8 We quote:

The **third principle of the Women’s Empowerment Principles:**

“THAT businesses ensure the health, safety and well-being of all women and men workers”

2.0 Comments specific to Zero Hours (proposed sections 67C-67E of the Employment Relations Act 2000)

2.1 BPW NZ is concerned that “zero hour agreements” will move from their current position of dubious legality to a legitimate form of employment with increased usage by employers.

2.2 BPW NZ welcomes the attempt to clarify availability by putting clauses to that affect in employment contracts. However the safeguards around the availability clauses are almost non-existent. There is no lower threshold on how low this compensation can be.

2.3 A requirement to be available will put workers lives on hold. This not only means the ability to earn from another job during those times but also the ability to participate in family and community life

2.4 The ability to agree reasonable terms on such contracts will be beyond the ability and confidence of most workers desperate for employment to negotiate. Minimum terms are needed for such contracts.

- 2.5** BPW NZ is particularly concerned about the vulnerability of ethnic women in New Zealand who may be forced through family ties to accept very poor conditions in businesses with family connections. New immigrant women and ethnic students, who have difficulty in finding work, are more likely to accept bad conditions than other sectors of society..
- 2.6** BPW NZ knows through anecdotal evidence that women are the most effected. We would request that the Government start collecting this data and segregating by gender to have an appreciation of how serious this problem is.

Currently someone on a low hourly rate with fluctuating hours can receive a top-up payment from Work and Income for the weeks where their pay dips below the benefit line. However the Department of Social Development do not currently make available the statistics on the number of workers receiving top up payments let alone their gender. It is only through the Official Information Act that information on this trend can be obtained. BPW NZ urges that data be collected and segregated by gender.

3.0 Comments specific to Shift Cancellation (proposed section 67F of the Employment Relations Act 2000)

- 3.1** BPW NZ congratulates the committee on the intent of including a clause setting out conditions around reasonable notice of cancellation of a shift and compensation payable if the shift is cancelled without such notice. Our concern is the likelihood of such clauses being used to remove certainty of hours and income at little or no cost. Business risk is being transferred onto workers.
- 3.2** No minimal amount or reasonable test is included for the compensation. There is no provision for ensuring that workers with limited bargaining power will receive appropriate compensation.

4.0 Comments specific to Restrictions on Secondary Employment (proposed section 67G of the Employment Relations Act 2000)

- 4.1** BPW NZ welcomes the aim of the clause to make prohibitions on secondary employment unenforceable. However we have concerns that this clause is not tight enough and we know from the United Kingdom example that such Bills may be ill conceived. The Small Business, Enterprise and Employment Act came in to provide protection for UK workers in March this year but already it is shown to be toothless and unable to protect workers from exclusivity contracts.

5.0 Comments specific to human rights issues

- 5.1** BPW NZ is concerned the current Bill may trap women in a cycle of poverty and increase the gender pay gap. This is inconsistent with CEDAW

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

6.0 Summary

- 6.1** BPW NZ would like to see the Government address the issues of zero hour contracts but feel that the measures in this Bill will not achieve their aims as there is little protection provided. Much of the Bill relies on agreement in a power imbalance situation and no thresholds to ensure exploitative practices are prevented are in place.
- 6.2** BPW NZ urges the government to carry out a gender impact analysis of this bill, according to CEDAW recommendations, and to make the outcome of the analysis public. Providing information on the growing needs of workers in insecure work with fluctuating hours to access top-up payments from Work and Income is a vital part of understanding the size of this issue.

Our Organisation

Our organisation's aims are to link professional and business women throughout the world, to provide support, to lobby for change and to promote the ongoing advancement of women. We work for equal opportunities and status for all women in economic, civil and political life and the removal of discrimination in all countries. We promote our aims and organise our operating structure without distinction as to race, language or religion.

Our structure is comprised of a National Executive, 14 branches and a number of individual members in areas where there is no branch. We are an apolitical organisation.

International Status:

BPW NZ is affiliated to BPW International which has General Consultative Status at the United Nations through the UN Economic & Social Council (ECOSOC). This enables BPW International to appoint official representatives to UN agencies worldwide and to accredit members to attend specific UN meetings.

BPW International endorses the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee and its Optional Protocol at state party level. BPW International upholds the outcome documents of the annual UN Commission on the Status of Women (CSW) which evaluates progress, identifies challenges, sets global standards and formulates policies to promote gender equality and women's empowerment worldwide. BPW International endorses the Beijing Platform for Action.

We wish that the following also appear in support of our submission:

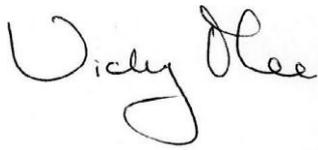
Hellen Swales, Vice President Issues BPW NZ

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Thank you for the opportunity to speak to our submission and we hope that our comments are of use to you.

On behalf of

New Zealand Federation of Business and Professional Women Inc.



Vicky Mee
President



Hellen Swales
Vice President, Issues