



# Unions and Collective Bargaining



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Department of Labour  
TE TARI MAHI



## ⇒ About the Department of Labour

The Department of Labour provides information and investigates problems to do with employment and workplace health and safety. We can help employers and employees with:

- › employment conditions
- › minimum legal requirements
- › problem resolution
- › health and safety
- › ways to work better
- › labour market information.

## ⇒ More information

[www.dol.govt.nz](http://www.dol.govt.nz)

0800 20 90 20

Information, examples and answers to your questions about the topics covered here can be found on our website [www.dol.govt.nz](http://www.dol.govt.nz) or by calling us free on 0800 20 90 20.

### Disclaimer

This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Department of Labour is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

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## → Introduction

Unions represent the collective interests of workers in specific industries and occupations. Many workers find that union membership is the most efficient way of representing their interests because they lack the knowledge and resources to represent themselves effectively.

This booklet sets out the role and legal requirements surrounding unions and the collective bargaining process contained in the Employment Relations Act 2000. Information on individual employment agreements can be found in the Department's *Employment Relationships* guide and detailed information for employers in the *How to Hire* guide.

Also in this series are booklets on:

- › Minimum Employment Rights
- › Holidays and Leave
- › Solving Problems at Work
- › Going to the Employment Relations Authority
- › Employment Relationships
- › How to Hire





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## → Unions

Unions have expertise in employment issues and the sole legal right to negotiate collective agreements. They can also represent members on collective and individual employment issues.

### ■ **Joining a Union**

If there is union representation in the workplace, employees will be invited to join when they start work. The New Zealand Council of Trade Unions (CTU) website [www.union.org.nz](http://www.union.org.nz) has a *Union Directory* listing the contact details of various unions for different occupations and industries. All unions must be registered with the Registrar of Unions.

### ■ **Union membership rights**

Employees have the right to decide whether they want to join a union and, if so, which union. It is illegal for an employer or anyone else to put unreasonable pressure on someone to join or to not join a union, or to discriminate against someone because they joined or didn't join a union.

Union members must be allowed to attend two union meetings (no longer than two hours each) each calendar year, on pay and during normal work hours. This is separate from and additional to discussions between union members and union representatives that take place in the workplace. Union members can also take paid education leave to attend employment relations courses approved by the Minister of Labour.

Employees can also require their employer to deduct union fees from their wages and pay them to a union.

### ■ **Rights of employees engaged in union activities**

Employees involved in union activities enjoy special protections under the Employment Relations Act. It is illegal for an employer to offer inferior conditions, to sack, or to force someone out of a job because they are involved in union activities. Such activities include being a union officer, delegate or collective bargaining representative; protecting employment rights; or participating in a lawful strike.

### ■ **Union access to workplaces**

Unions are legally allowed to enter a workplace for employment and union business. Union representatives intending to visit a workplace need to get permission from the employer first.

Both the employer and the union should deal with union visits in good faith. Permission for union visits must not be unreasonably withheld. The employer must respond within one working day after the request is received. If the employer decides not to grant access, they must provide written reasons for this decision no later than one working day after the date of the decision. If the employer does not respond within two working days of the request, then that is taken as consent for the union representative to enter.

If the employer denies consent but does not provide reasons in writing for the refusal, or unreasonably withholds consent, the employer could be subject to a financial penalty imposed by the Employment Relations Authority.



## → Good faith

Establishing and maintaining good faith relationships is the basis of the employment relations system in New Zealand, for both collective and individual arrangements.

Good faith is a legal requirement – but it is also a tool and an investment. Good faith can help parties in their dealings with one another. It also lays the foundation for productive ongoing relationships among employers, employees and unions.

Good faith generally involves using practical common sense and treating others in the way you would like to be treated. This means dealing with each other honestly, openly and with mutual respect. Acting in good faith reduces the risk of conflict and problems.

There isn't a single set of requirements, because every workplace is different. However, there are some key expectations of a good faith relationship:

- › Employers, employees and unions should be responsive and communicative with each other.
- › The employment agreement should reflect genuine discussion and negotiation.
- › The employee should have access to appropriate information when the employer is making decisions that may affect his/her job.
- › Problems that arise should be dealt with in a manner that is consistent with what a reasonable person would do.

Employers should have good processes and procedures for dealing with issues and employees should be aware of them. Making sure that everyone in the workplace understands what to expect is a good start.

The employer and union representing employees must both bargain in a fair way and act in good faith towards each other.

## → Collective Bargaining

Where a union represents employees in a workplace they may negotiate a collective agreement. Bargaining for a collective employment agreement can cover a range of issues, but it must include the coverage of the agreement, either by the work performed or the workers involved, and the term of the agreement.

The Employment Relations Act 2000 recognises that there is no one way to bargain. Every bargaining situation is different, and it is normal that parties will have different views on how to proceed and what is required for their circumstances. However, the Act sets out requirements for parties which will promote orderly collective bargaining. For example, the parties must use their best endeavours to enter into an arrangement that sets out a process for conducting bargaining in an effective and an efficient manner. The employer and employee must bargain in good faith with each other.

### ■ Support available

Advice and assistance on the process are available from the Department of Labour. Getting advice early can often avoid disputes later.

Help understanding the collective bargaining process and a *Code of Good Faith in Collective Bargaining* are available on the Department of Labour website [www.dol.govt.nz](http://www.dol.govt.nz).

The Department's Partnership Resource Centre offers training on interest-based bargaining. This can help both parties to work towards a collective agreement that reflects both the separate and joint business and union strategies for the workplace.

If problems arise in bargaining, parties may access the support of Department Mediation Services. Where there are sustained breaches of good faith, there are processes available through the Employment Relations Authority to investigate the breaches and settle an agreement. Visit [www.era.govt.nz](http://www.era.govt.nz) for further information.



## ■ Collective agreements

The objective of collective bargaining is to establish or renew a collective employment agreement. This must comply with a number of legal requirements.

It must:

- › identify who is covered by the agreement – this is the “coverage clause”
- › include a plain language explanation of the services available to sort out employment relations problems
- › have a clause stating how the agreement can be changed
- › include the expiry date (or the event that will trigger expiry)
- › identify a provision that complies with the Holidays Act 2003 requirement for employees to be paid at least time and a half for work on public holidays.

In most cases, it must also include a provision setting out how the employer will protect his employees if the business is sold or contracted out.

After the collective agreement is signed, both union and employer must each send a printed copy of the collective agreement to the Registrar of Unions. This can be sent to:

**Chief Executive  
Department of Labour  
P O Box 3705  
Wellington 6011**

They must also include any other document referred to by the collective agreement or incorporated into it unless that document is publicly available.

Parties should also include, for statistical purposes, the number of employees covered by the collective agreement and the negotiated wage movement (% increase).

Employers and unions must retain a signed copy of the collective employment agreement and must provide a copy to the employee on request.

## ■ Bargaining procedures

There are set procedures for negotiating a collective agreement with which parties must comply.

## Single-party bargaining

Single-party bargaining is where there is one union and one employer involved as parties. It may generally be initiated by:

- › a union, within 60 days before the expiry of an existing collective agreement
- › an employer, within 40 days before the expiry of an existing collective agreement.

If there is no existing collective agreement, a union can initiate bargaining at any time. An employer may only initiate bargaining if there is, or has previously been, a collective agreement covering at least some of the employees whose work is covered by the proposed collective agreement.

## Multi-party bargaining

Multi-party bargaining is where there is involvement of more than one union or more than one employer or both. It may generally be initiated by:

- › a union or unions, provided that:
  - at least one of the existing collective agreements will expire within 60 days, and
  - all the other collective employment agreements will expire within 120 days.
- › an employer or employers provided that:
  - at least one of the existing collective agreements will expire within 40 days, and
  - all the other collective employment agreements will expire within 100 days.

If there is no existing collective agreement, a union can initiate bargaining at any time. An employer may only initiate bargaining if there is, or has previously been, a collective agreement covering at least some of the employees whose work is covered by the proposed collective agreement.

## Other requirements for collective bargaining

Other requirements are:

- › Unions must, if initiating multi-party bargaining, ballot their members before beginning bargaining. If an employer or employers initiate multi-party bargaining, unions may decide to ballot their members.
- › Bargaining must be initiated by written notice identifying the intended employer and union parties and the intended coverage (i.e. type of work) of the collective bargaining.



- › Employers must, within 10 days (or sooner if possible) of initiating bargaining or receiving notice, advise union and non-union employees whose work comes within the intended coverage.
- › Employers have the right to request consolidation of bargaining when facing separate notices from two or more unions relating to similar coverage. Employers must do so within 40 days of receiving the first notice.
- › At the beginning of bargaining, a union must state what membership ratification process it will follow prior to signing any resulting collective agreement.

### ■ Communication during bargaining

An employer is able to communicate directly with his or her employees – including communicating about the employer’s proposals for the collective agreement – while bargaining for a collective employment agreement. Such communication must be consistent with the duty of good faith.

Both unions and employers must not undermine or do anything that is likely to undermine the bargaining process. They must also respect the role and authority of each others’ representatives. Unless the union and employer agree, they cannot bargain either directly or indirectly about terms and conditions of employment with the parties represented. Such negotiations must always be undertaken by the union and employer representatives officially involved.

### ■ Undermining collectives by “passing on”

Employers must not undermine collective bargaining or collective agreements by automatically passing on collectively bargained terms and conditions to employees not covered by that collective bargaining or agreement.

This does not mean that an employer cannot offer other employees the same, or substantially the same, terms and conditions as those in the collective agreement. Employers must bargain in good faith with their individual employees. When they do so, the outcome may be similar or the same, in many or most respects, to the outcome in other collective or individual bargaining that the employer is involved in.

It is, however, a breach of good faith if:

- › during collective bargaining, an employer passes on a term or condition reached in bargaining with the intent or the effect of undermining the bargaining (‘a term or condition reached in bargaining’ means a term or condition that the parties have agreed or accepted should be a term or condition of the collective agreement if the agreement is concluded and ratified)
- › once a collective agreement has been concluded, an employer passes on a term or condition in the collective agreement with both the intent and the effect of undermining the collective agreement.

Unions and employers are still able to agree that collective terms and conditions may be passed on to other employees or other unions. Where there is such an agreement the employer can, in good faith pass on collective terms and conditions.

Matters to be taken into account in deciding whether or not an employer has breached good faith are:

- › whether the employer bargained with the employee or employees before agreeing to a term or condition that was the same or substantially the same as a term or condition agreed in collective bargaining
- › whether the employer consulted the union
- › the number of employees covered by the collective bargaining or agreement compared to the number of employees not covered
- › how long the collective agreement has been in force.

### ■ Duration of the collective agreement

A collective agreement comes into effect on the date stated in the agreement. The agreement may, however, state that different parts of the agreement come into effect on different dates. If there is no date stated, it comes into effect on the date the last party signs it.

The collective agreement expires on the earlier of either its stated expiry date or three years after it takes effect. If, however, the union initiates bargaining before it expires, the agreement continues in force. The agreement continues in force for up to 12 months, or until it is replaced



within the 12-month period with a new collective agreement.

Additional unions and employers may join an existing collective agreement where the collective agreement specifically allows this to occur.

When a collective agreement expires or is no longer in force:

- › Each existing employee will automatically have an individual employment agreement based on the expired collective agreement (plus any additional terms and conditions agreed previously). However, employer and employee can agree to change this individual employment agreement.
- › New employees are hired on the basis of an individual employment agreement negotiated with the employer.

## → Getting help

### ■ Resolving problems

The sooner an issue is dealt with, and the better a process is followed, the less likely it is that outside assistance will be required. It is important that all parties, in good faith, try to resolve any problems directly. Some parties may be able to settle their differences quickly and with less cost for support using a mediator as a third party.

### ■ Mediation

The Department of Labour provides free mediation services and can help at different stages of the collective bargaining process such as:

- › when bargaining is being set up
- › when the bargaining process arrangement is being negotiated
- › when negotiations are stalled
- › during the final settlement phase.

Mediation services will be offered as soon as possible to parties where notice is given of an intention to strike or lockout in an essential industry.

Mediators can:

- › provide the parties with relevant information
- › help with bargaining
- › suggest options for resolving any issues the parties disagree on.

More information can be found on the Department of Labour website [www.dol.govt.nz](http://www.dol.govt.nz) or by calling 0800 20 90 20.

### ■ Employment Relations Authority

The Employment Relations Authority is an independent body set up under the Employment Relations Act 2000. Its role is to resolve employment relationship problems by looking into the facts and making a decision based on the merits of the case, not on technicalities. It investigates employment relationship problems and has the power to make legally binding decisions on these matters.

Where collective bargaining runs into serious difficulties, one or more of the bargaining parties can ask the Employment Relations Authority to help resolve their differences. This is known as “facilitation”.

However, the Authority can only facilitate bargaining in certain circumstances. These circumstances are where:

- › there has been a serious and sustained breach of good faith that has undermined the collective bargaining
- › the bargaining has been unduly drawn out and extensive efforts to resolve the parties’ differences have failed
- › there has been a lengthy or acrimonious strike or lockout, or
- › a strike or lockout has been proposed that would substantially damage the public interest.

If the Authority agrees to assist the parties, the Authority member responsible will decide what process will be used to assist bargaining. The facilitation process takes place in private.

During facilitation, bargaining continues and employers and employees are not prevented from using strikes and lockouts.



At the end of the facilitation process, the Authority can make recommendations about:

- › the process the parties should use to reach agreement
- › the terms and conditions of the collective agreement.

The parties do not have to follow the Authority's recommendations, but they must consider the recommendations, in good faith, and cannot reject the recommendations without first considering them.

The Authority may choose to make its recommendations public in the interests of reaching a settlement.

The Employment Relations Authority may also cancel or vary an individual employment agreement or may order compensation in any of the following situations:

- › One of the parties was unable to understand what they were agreeing to by reason of diminished capacity (due, for example, to age, sickness, mental or educational disability, a disability relating to communication, or emotional distress).
- › One of the parties relied on the other's knowledge or skill.
- › One party unfairly pressured the other.
- › The employer did not allow the employee the opportunity to seek independent advice.

More information, and application forms, can be obtained from the Employment Relations Authority's website [www.era.govt.nz](http://www.era.govt.nz) or from the Department of Labour.

### ■ Partnership Resource Centre

The Partnership Resource Centre works with employers, unions and employees to help them work together to focus on common goals and lift performance. It offers a range of resources for people exploring partnership practices, and training in interest-based bargaining, engagement and problem solving. Information and contact details are available on the Department's website [www.dol.govt.nz](http://www.dol.govt.nz).



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You could also talk to your local union, employers' association or another professional employment advisor.

