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# BILLS DIGEST

Digest No. 1610

## Employment Relations (Breaks and Infant Feeding) Amendment Bill 2008

<b>Date of Introduction:</b>	02 April 2008
<b>Portfolio:</b>	Labour
<b>Select Committee:</b>	As at 08 April, 1st Reading not held.
<b>Published: 09 April 2008</b>  Prepared by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

### Purpose

The aim of the Bill is to amend the Employment Relations Act 2000 (the ERA) to require employers to provide facilities and breaks for employees who wished to breastfeed and to provide employees with rest and meal breaks<sup>1</sup>.

<sup>1</sup> Employment Relations (Breaks and Infant Feeding) Amendment Bill, 2008 No 205-1, Explanatory note, General policy statement, p. 1.

## Background

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"The objective of these amendments is to create minimum standards for a modern workforce in respect of the protection and promotion of infant feeding through breastfeeding and the provision of rest and meal breaks. Further, these amendments support government policy concerning the choices of employees, particularly regarding their work-life balance and caring responsibilities"<sup>2</sup>.

### The need for the Bill

"Breastfeeding is critical to providing the best start for infants and important to both infant and maternal health. Evidence suggests, however, that access to breastfeeding breaks and facilities in the workplace is mixed.

"There is no explicit legal requirement for employees to have rest and meal breaks. While almost 93% of active collective agreements provide for rest and meal breaks, there are some problems regarding the organisation of work in specific sectors, which means that the actual provision of rest and meal breaks may be inadequate. Little is known about whether break provisions are included in individual employment agreements, which cover a majority of the workforce.

"The proposed Employment Relations (Breaks and Infant Feeding) Amendment Bill ... seeks legislative amendments to promote and protect infant feeding by requiring employers to provide facilities and breaks for employees who wish to breastfeed, supported by a code of employment practice. The Bill would also provide an entitlement to minimum rest and meal break provisions"<sup>3</sup>.

## Main Provisions

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### Breastfeeding facilities and breaks

#### Obligations placed on Employers

This Bill amends the ERA to require employers to provide appropriate facilities and breaks for employees who wish to breastfeed (including expressing breast milk), as far as is reasonable and practicable "in the circumstances" (*Part 2, Clause 5, inserting New Part 6C into the ERA, New Section 69Y, subsection (1)*).

#### What is reasonable and practical in the circumstances?

The Bill provides that employers are be able to take into account their operational environment and resources (*Part 2, Clause 5, inserting New Part 6C into the ERA, New Section 69Y, subsection (3)*).

#### Breaks unpaid unless agreed

The breaks are unpaid unless the employee and employer agree otherwise (*Part 2, Clause 5, inserting New Part 6C into the ERA, New Section 69Y, subsection (2)*).

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<sup>2</sup> Ibid.

<sup>3</sup> Employment Relations (Breaks and Infant Feeding) Amendment Bill, 2008 No 205-1, Regulatory impact statement, executive summary, p. 5.

## Breaks in addition to "rest and meal breaks"

The breastfeeding breaks are to be provided in addition to the "rest and meal breaks" described below. Where an employer and employee agree, however, the rest and meal breaks may also be used as breastfeeding breaks (*Part 2, Clause 5, inserting New Part 6C into the ERA, New Section 69Z*).

## Code of employment practice

The Bill provides that a code of employment practice must be approved by the Minister as soon as practicable after the commencement of the Bill. The code relates to the employer's obligations under New Section 69Y (*Part 2, Clause 5, inserting New Part 6C into the ERA, New Section 69ZA*).

## Penalty

Employers may be liable to a penalty imposed by the Employment Relations Authority if they do not comply with New Section 69Y. This is a maximum penalty of \$5,000 for individuals and \$10,000 for a company or other corporation. The Authority is given the power to order employers to comply with their obligations (*Part 2, Clause 5, inserting New Part 6C into the ERA, New Section 69ZB; Section 135(2) of the ERA prescribes the penalties outlined above*).

## Rest and meal breaks

### Requirements placed on employers

The Bill requires employers to provide employees with paid rest breaks and unpaid meal breaks as follows:

- one 10-minute rest break if they have worked 4 hours or less;
- one 10-minute rest break and one 30-minute meal break if they have worked more than 4 hours but not more than 6 hours; and
- two 10-minute rest breaks and one 30-minute meal break if they have worked more than 6 hours but not more than 8 hours.

If an employee has worked for more than 8 hours, the requirements above will apply as if their work period had started again at the end of the eighth hour (*Part 2, inserting New Part 6D into the ERA, New Section 69ZD*).

### Timing of breaks

The Bill provides that where an employee is entitled to one 10-minute rest break, the employer must provide that in the middle of the work period where reasonable and practicable. Where an employee is entitled to one 10-minute rest break and one 30-minute meal break, the employer must provide the rest break one-third of the way through the work period and the meal break two-thirds of the way through the work period where reasonable and practicable. Where an employee is entitled to two 10-minute rest breaks and one 30-minute meal break, the employer must provide the meal break in the middle of the work period, and the rest breaks halfway between the start of work and the meal break and the meal break and the finish of work where reasonable and practicable. Employees and employers, however, may agree to vary the timing of the breaks (*Part 2, inserting New Part 6D into the ERA, New Section 69ZE*).

## Penalty

Employers may be liable to a penalty imposed by the Employment Relations Authority if they do not comply with New Sections 69ZD and 69ZE. The maximum penalty will be \$5,000 for individuals and \$10,000 for a company or other corporation. The Authority will also have the power to order employers to comply with their obligations (*Part 2, Clause 5, inserting New Part 6D into the ERA Act, New Section 69ZF; Clause 6, amending Section 137(1)(a)(ii) of the ER; Section 135(2) of the ERA prescribes the penalties outlined above*).

## Other provision may exist

The Bill provides that employers and employees are able to agree to enhanced or additional entitlements to rest and meal breaks. The rest and meal break entitlements are minimum provisions and do not apply to employees covered by other legislative or regulatory provisions for rest and meal breaks, where those other provisions are enhanced or additional to the entitlements in the Bill (*Part 2, Clause 5, inserting New Part 6D into the ERA; New Section 69ZH*).

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