

Employment Relations (Flexible Working Hours) Amendment Bill

Member's Bill

Explanatory note

The purpose of this bill is to amend the Employment Relations Act 2000 to provide employees with young and dependent children the statutory right to request part-time and flexible hours, and a framework in which they can negotiate reduced working hours.

It will introduce a duty on employers to consider seriously, requests for flexible working arrangements from the parents of young children. The duty to consider will apply in respect of parents with children under the age of five where the parents are employees and have worked for the same employer for a minimum of six months. For the parents of disabled children, the children's age limit will be 18 years of age.

The intention of the amendment is to foster dialogue and better relationships in the workplace, to increase the employment rate for parents of young children by offering them expanded flexible working opportunities, and assist parents to balance work and family life.

Parents will make a request in writing, setting out the working pattern they want and how it could be made to work.

Employers will have a duty to seriously consider any such request and to make a formal business assessment of how such flexible working arrangements could be achieved. If a request is turned down, employers will need to demonstrate, if challenged, that a clear business case exists for rejecting the request. The bill sets out the reasons which would justify rejecting a request – including the burden of additional costs to the business and inability to organise work within available staffing.

The employee, in turn, will be able to challenge a decision through an appeals procedure. Parents will be given two weeks to appeal in writing against the decision, and set out the reasons for the appeal. Where cases cannot be resolved in the workplace, binding mediation and arbitration will be available, and the opportunity for an employee to take a case to the Employment Tribunal.

Placing a legislative duty on employers to seriously consider requests from parents with young children to work flexibly will be an important step in making parents' lives easier. For the first time parents will be encouraged by law to start a dialogue about working parents that better meets their childcare responsibilities.

Research has repeatedly identified the tension of balancing paid work and family responsibilities as a major social issue in New Zealand.

Over 41 per cent of New Zealand families with dependent children have a youngest child of pre-school age (0-4). Women in particular who are often the main caregivers of children are frequently burdened with the extra stress from having to do both paid work and domestic labour. With the ability to work flexibly, there should be greater opportunity to achieve a life balance in the responsibilities for caring for children and those presented by work.

This bill will benefit businesses as well as parents. Work and family balance impacts on job satisfaction, workplace productivity and safety at work. Overseas studies show that family friendly strategies in the workplace such as are proposed in this bill reduce staff turnover and therefore recruitment costs, lower absentee rates, improve morale levels and employee loyalty and increase workplace productivity.

Research suggests that many parents drop out of the labour market because they cannot find ways of combining paid work and the demands of looking after young children. Greater opportunities for flexible working will enable some parents who would otherwise leave the labour market to remain in employment at the end of maternity leave. An increased employment rate for parents of young children will have benefits for employers in terms of reduced turnover costs and increased skills retention and continuity of employment.

Rod Donald

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Employment Relations (Flexible Working Hours) Amendment Act **2005**.
- (2) In this Act, the Employment Relations Act 2000¹ is called "the principal Act". 5
- ¹ 2000 No 2

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

- (1) The purpose of this Act is to grant qualifying employees the right to change their working hours where they have the full-time care of— 10
- (a) a child or children under 5 years; or
- (b) a disabled child or children up to and including 18 years. 15
- (2) Employers will be required to make a formal business assessment of how flexible working hours can be achieved.

4 Interpretation

Section 5 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**disabled child** means a child who is entitled to a disability living allowance within the meaning of section 39A of the Social Security Act 1964 5

“**flexible working hours** mean working arrangements for qualifying employees such as job-shares, part-time work, and hours of work by arrangement with the employer

“**qualifying employee** means an employee who has— 10

“(a) full-time care of a child or children under 5 years or has full time care of a disabled child or children up to and including 18 years; and

“(b) has been for the immediately preceding 6 months, in the employment of the same employer”. 15

5 Act to bind the Crown

This Act binds the Crown.

6 New sections 61A to 61C inserted

The principal Act is amended by inserting, after section 61, the following sections: 20

“61A Right to request variation of employment agreement

“(1) Despite section 61, a qualifying employee may apply to his or her employer for a change in his or her terms and conditions of employment if—

“(a) the change relates to— 25

“(i) the hours the employee is required to work; or

“(ii) the days on which the employee is required to work; and

“(b) the employee’s purpose for applying for the change is to enable the employee to care for someone who, at the time of application, is a child under the age of 5 years, or a disabled child up to and including the age of 18 years. 30

“(2) An application under this section must—

“(a) state that it is such an application: 35

“(b) specify the change applied for and the date on which it is proposed the change should become effective:

- “(c) explain what effect, if any, the employee thinks making the change applied for would have on his or her employer and how, in the employee’s opinion, any such effect might be dealt with; and
- “(d) explain how the employee meets, in respect of the child concerned, the conditions as specified in **subsection (1)(b)**. 5
- “(3) An application under this section must be made before the fourteenth day before the day on which the child concerned reaches the age of 5 or, if disabled, 18 years.
- “(4) If an employee has made an application under this section, he or she may not make a further application under this section to the same employer before the end of the period of 12 months beginning with the date on which the previous application was made. 10
- “(5) For the purposes of this section and **sections 61B and 61C**, **employee** means a qualifying employee. 15
- “61B Employer’s duties in relation to application under section 61A**
- “(1) An employer must acknowledge that a qualifying employee has the right to work whenever possible. 20
- “(2) An employer to whom an application under **section 61A** is made must—
- “(a) deal with the application as soon as possible; and
- “(b) refuse the application only when it cannot reasonably be accommodated on one or more of the following grounds: 25
- “(i) inability to re-organise work among existing staff:
- “(ii) inability to recruit additional staff: 30
- “(iii) detrimental impact on quality:
- “(iv) detrimental impact on performance:
- “(v) insufficiency of work during the periods the employee proposes to work; and
- “(vi) planned structural changes.
- “61C Complaints to Employment Relations Authority** 35
- “(1) An employee who makes an application under **section 61A** may lodge an application with the Employment Relations Authority if—

- “(a) the employer has failed in relation to the application to comply with **section 61B(2)**; or
- “(b) a decision made by the employer to reject the application was based on incorrect facts.
- “(2) No complaint under this section may be made in respect of an application which has been disposed of by agreement or withdrawn. 5
- “(3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under this section may be made until the employer notifies the employee of a decision to reject the application on appeal. 10
- “(4) The Authority must not consider a complaint under this section unless it is presented—
- “(a) before the end of the period of 3 months beginning with the relevant date; or 15
- “(b) within such further period as the Authority considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.
- “(5) In **subsection (4)(a)**, **relevant date** means, in the case of a complaint permitted by **subsection (3)**, the date on which the employee is notified of the decision on the appeal.” 20
- 7 Jurisdiction**
- (1) Section 161(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph: 25
- “(ca) matters alleged to arise under **section 61B** in relation to an employer’s duties:”.
- (2) Section 161 of the principal Act is amended by adding the following subsections:
- “(4) Where the Authority finds a complaint under **section 161(1)(ca)** well-founded, it must make a declaration to that effect and may make— 30
- “(a) an order for reconsideration of the application; and
- “(b) an award of compensation to be paid by the employer to the employee. 35
- “(5) The amount of compensation awarded under **section 161(4)** must be such amount, not exceeding the permitted maximum,

as the Authority considers just and equitable in all the circumstances.”

