

BILLS DIGEST

**EMPLOYMENT RELATIONS (FLEXIBLE WORKING ARRANGEMENTS)
AMENDMENT BILL 2005**
(Member's Bill - Sue Kedgley)
(SUPPLEMENTARY ORDER PAPERS 2007 Nos 148 and 153)

Date of Release: 17 October 2007

Bills Digest No. 1568



NEW ZEALAND PARLIAMENTARY LIBRARY

Bills Digest No. 1568

Published by the Parliamentary Library
Parliament Buildings, Wellington
New Zealand.

02 November 2007

Prepared by John McSoriley B.A.L.L.B., Barrister
Legislative Analyst
Ph. (04) 471-9626 (Ext. 9626)
Fax (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.

Copyright

© NZ Parliamentary Library, 2007

Except for educational purposes permitted under the Copyright Act 1994, no part of this document may be reproduced or transmitted in any form or by any means, including information storage and retrieval systems, other than by Members of Parliament in the course of their official duties, without the consent of the Parliamentary Librarian, Parliament Buildings, Wellington, New Zealand.

This document may also be available through commercial online services and may be viewed and reproduced in accordance with the conditions applicable to those services.

**EMPLOYMENT RELATIONS (FLEXIBLE WORKING ARRANGEMENTS)
AMENDMENT BILL 2005
(SUPPLEMENTARY ORDER PAPERS 2007 Nos 148 and 153)**

Date of introduction:	17 March 2005
Member:	Sue Kedgley
Select Committee:	Transport and Industrial Relations
Date report presented:	24 March 2006 (interim) & 30 July 2007
SOP No 148 released:	17 October 2007 (Hon Ruth Dyson)

PURPOSE

“The purpose of this Bill is to amend the Employment Relations Act 2000 [(the Act)] 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”¹.

The Bill as introduced is described in [Bills Digest No 1236](#).

The Bill as reported is described in [Bills Digest No 1536](#).

The Select Committee recommended that the title be changed from the Employment Relations (Flexible Working Hours) Amendment Bill to the Employment Relations (Flexible Working Arrangements) Amendment Bill (*Clause 1*).

MAIN CHANGES PROPOSED

Supplementary Order Paper 2007 No 148

Right to vary working arrangements when caring for any person

SOP No 148 recommends that the provisions providing a statutory right for employees to request a variation of terms and conditions of their working arrangements because they provide care of "certain persons" (i.e a child or children under 5 years, a disabled child or disabled children or a dependant relative or dependant relatives) be amended to extend this right to employees who provide care of "any persons" (*Clause 6A of the Bill, inserting New Part 6AA into the Act, amending New Sections 69AA(a) and 69AAB(2)(a) of the Act*).

Appeals

The Bill as introduced provides that if an employer does not deal with a request satisfactorily, mediation under Part 10 of the Act may be invoked and then an appeal would lie to the Employment Relations Authority.

¹ Employment Relations (Flexible Working Hours) Amendment Bill, 2005 No 253-1, Explanatory Note, p. 1.

SOP No 148 proposes that from an employer, a reference may be made to a Labour Inspector, then mediation is available, and then an appeal lies to the Employment Relations Authority (*Clause 6A of the Bill, inserting New Part 6AA into the Act, amending New Section 69AA(d) and substituting New Sections 69AAH and 69AAI*).

Where employer must refuse request of employee

SOP 148 proposes that an employer must refuse a request if:

- the request is from an employee who is bound by a collective agreement;
- the request relates to working arrangements to which the collective agreement applies; and
- the employee's working arrangements would be inconsistent with the collective agreement if the employer were to approve the request (*Clause 6A of the Bill, inserting New Part 6AA into the Act, inserting New Section 69AAEA(3) into the Act*).

New offence

The Bill requires that an employer must deal with a request of an employee to change their working arrangements as soon as possible but not later than three months after receiving the request. The employer must also notify the employee whether his or her request has been approved or refused and in, the event of a refusal, give the grounds with an explanation of the reasons.

SOP No 148 provides that if the employer does not comply with these duties, the employer is liable to a maximum penalty of \$2,000, "imposed by the Authority". The penalty is to be paid to the employee concerned (*Clause 6A of the Bill, inserting New Part 6AA into the Act, inserting New Sections 69AAIA and AAIB into the Act*).

Supplementary Order Paper 2007 No 153

Privative clause

SOP 153 proposes that an investigation or determination of the Employment Relations Authority under New Part 6AA of the Act cannot be challenged, appealed against, reviewed, quashed, or called in question in any court (*inserting New Clause 8 into the Bill, inserting New Section 179B into the Act*).

Comment

This type of provision is called a "privative clause". In the case of *Attorney-General v Car Haulways (NZ) Ltd* [1974] 2 NZLR 331 it was stated: "If a statute plainly empowers an authority to decide a question of law conclusively ... a privative clause ... makes the decision immune from challenge, even though an error of law may be apparent on the record, unless the error of law goes to the jurisdiction of the authority".