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BILLS DIGEST

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Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill 2009

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Portfolio:	Labour
Select Committee:	As at 15 December, 1st Reading not held.
Published: 15 December 2009 Prepared by John McSoriley 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 Bill amends the Employment Relations Act 2000 (the Act) to change the law with regard to the entitlements of employees to rest breaks and meal breaks.

Background

Part 6D (especially Section 69ZD) of the Employment Relations Act 2000 provides a statutory entitlement for employees during shift or "work period".

Under Section 69ZD, employers are required to provide employees with paid rest breaks and unpaid meal breaks as follows:

- one 10-minute rest break if they have worked more than 2 hours but not more than 4 hours;
- 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 applies as if their work period had started again at the end of the eighth hour.

With regard to the timing of breaks, Section 69ZE 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.

The need for the Bill

A recent media release issued by the Minister of Labour, Hon Kate Wilkinson, stated as follows:

"The Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill amends the Employment Relations Act 2000, giving employers and employees the opportunity to develop rest and meal break policies best suited to individual requirements.

"Ms Wilkinson says the Bill moves the legislative focus from prescription to flexibility, and encourages both employers and staff to negotiate in good faith about workable rest and meal break arrangements.

" 'Everyone needs to take breaks during their hours of work - but the law as it stands is too rigid and makes life difficult for a number of occupations and industries.

" 'A one-size-fits-all approach to the taking of rest and meal breaks simply doesn't work. This government recognises that and we want to restore some common-sense to the law with the introduction of this Bill.' "

Under the Bill, there is still the requirement to provide meal breaks and paid rest breaks, but there will now be the added provision for compensatory measures - for example, later start or earlier finish times, or time off in lieu. The Bill introduces flexibility for workplaces to time rest breaks and meal breaks to suit service or production continuity"¹.

Main Provisions

Entitlement to breaks

The Bill requires an employer to provide an employee with rest breaks and meal breaks that:

¹ Media release, Hon Kate Wilkinson, *Bill for new rest and meal break legislation introduced*, 27 October, 2009.

- provide the employee with a reasonable opportunity for rest and refreshment and to attend to personal matters during the employee's work period; and
- are appropriate for the duration of the employee's work period.

The employee's entitlement to rest breaks or meal breaks may be subject to restrictions, but only if the restrictions are reasonable and necessary, having regard to the nature of the employee's work and they relate to one or more of the following:

- the employee continuing to be aware of his or her work duties, or if required, continuing to perform some of his or her work duties, during the break;
- the circumstances when an employee's break may be interrupted;
- the employee taking his or her break in the workplace or at a specified place within the workplace (*Part 1, Clause 5, substituting Section 69ZD of the Act*).

Comment

The Bill removes the definite break entitlements provided by the current law and replaces them with a right for the employee to have breaks, but this right is not precisely defined as to frequency or length. This provides greater opportunity for disagreement between employers and employees. Definition of breaks may be included in employment contracts (see below).

Timing of rest breaks

The Bill provides that if an employer and employee cannot agree on when the employee is to take his or her breaks or on the duration of the breaks, the employer may specify reasonable times and durations that, " ... having regard to the employer's operational environment or resources and the employee's interests, enable the employer to maintain continuity of service or production" (*Part 1, Clause 5, substituting Section 69ZE of the Act*).

Comment

Timing is to be basically at the discretion of the employer subject to a requirement of "reasonableness", a vague concept. This also will provide greater opportunity for disagreement between employer and employees.

Compensatory measures

The Bill provides that an employer is not required to provide rest breaks and meal breaks in accordance with substituted Section 69ZD (described above):

- to the extent that the employer and employee agree that the employee is to be provided with compensatory measures; or
- to the extent that, having regard to the nature of the work performed by the employee, the employer cannot reasonably provide the employee with rest breaks and meal breaks.

The Bill defines the term "compensatory measures" as follows:

" ... a measure that is designed to compensate an employee for a failure to provide rest breaks or meal breaks in accordance with Section 69ZD(1) ... and " ... includes (without limitation) a measure that provides the employee with time off work at an alternative time during the employee's work period, for example, a later start time, an earlier finish time, or an accumulation of time off work that may be taken on 1 or more occasions" (*Part 1, Clause 5, inserting New Section 69ZEA into the Act*).

Comment

This means that where the employer is of the opinion, "having regard to the nature of the work performed by the employee", that the employer " ... cannot reasonably provide the employee with rest

breaks and meal breaks", the employer does not have to do so provided that "compensatory measures" are provided. The definition of "compensatory measures" sets out examples of such measures but no objective manner for measuring their adequacy in particular cases. This will also lead to greater opportunities for disagreement between employers and employees.

Other arrangements

Employers may provide an employee with enhanced or additional entitlements to rest breaks and meal breaks (whether specified in an employment agreement or not) on a basis agreed with the employee (*Part 2, Clause 7 substituting Section 67ZG of the Act*).

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