

# BILLS DIGEST

**EMPLOYMENT RELATIONS (FLEXIBLE WORKING HOURS)  
AMENDMENT BILL 2005**  
*(Member's Bill: Rod Donald)*

**Date of Introduction: 17 March 2005**

**Bills Digest No. 1236**



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

06 April 2005

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<b>EMPLOYMENT RELATIONS (FLEXIBLE WORKING HOURS) AMENDMENT BILL 2005</b>
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Date of introduction: 17 March 2005  
Member: Rod Donald  
Select Committee: As at 06 April, 1<sup>st</sup> reading not held

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<b>PURPOSE</b>
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“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”<sup>1</sup>.

<b>BACKGROUND</b>
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“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”<sup>2</sup>.

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

<sup>2</sup> Employment Relations (Flexible Working Hours) Amendment Bill, 2005 No 253-1, Explanatory Note, p. 2.

## MAIN PROVISIONS

### **Purpose**

The Bill provides that its purpose is to grant “qualifying employees”<sup>3</sup> the right to change their working hours where they have the full-time care of:

- a child or children under five years; or
- a “disabled child”<sup>4</sup> or children up to and including eighteen years (*Clause 3(1)*).

Employers will be required to make a formal business assessment of how “flexible working hours”<sup>5</sup> can be achieved (*Clause 3(2)*).

### **Right to request variation of employment agreement**

The Bill provides that a qualifying employee may apply to his or her employer for a change in his or her terms and conditions of employment if:

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<sup>3</sup> The Bill defines the term “qualifying employee” to mean “... an employee who has:

- full-time care of a child or children under five years or has full time care of a disabled child or children up to and including eighteen years; and
- has been for the immediately preceding six months, in the employment of the same employer” (*Clause 4, definition of “qualifying employee”*).

<sup>4</sup> The Bill defines the term “disabled child” as “... a child who is entitled to a disability living allowance within the meaning of Section 39A of the Social Security Act 1964 (*Clause 4, definition of “disabled child”*)”.

Section 39A of the Social Security Act 1964 provides that for the purposes of relevant sections of that Act, the term “child with a serious disability” means a dependent child who:

- has a physical or mental disability;
- because of that disability needs constant care and attention; and
- is likely to need such care and attention permanently or for a period exceeding twelve months (*Section 39A(1) of the Social Security Act 1964*).

The Social Security Act 1964 also provides that in determining whether a child with a serious disability needs constant care and attention the “chief executive” must consider whether the child requires:

- from another person, frequent attention in connection with his or her bodily functions; or
- attention and supervision substantially in excess of that normally required by a child of the same age and sex; or
- regular supervision from another person in order to avoid substantial danger to himself or others (*Section 39A(2) of the Social Security Act 1964*).

<sup>5</sup> The Bill defines “flexible working hours” as meaning “... working arrangements for qualifying employees such as job-shares, part-time work, and hours of work by arrangement with the employer (*Clause 4, definition of “flexible working hours”*)”.

- the change relates to either the hours the employee is required to work or the days on which the employee is required to work; and
- 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 five years, or a disabled child up to and including the age of eighteen years.

The right to request such a variation of an employment agreement exists in spite of Section 61<sup>6</sup> of the Employment Relations Act 2000.

An application must:

- specify the change applied for and the date on which it is proposed the change should become effective;
- 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
- explain how the employee at present looks after the child concerned *or* how the changes proposed would enable the employee to look after the child [*Comment*: unclear which is required, the intention appears to be the latter].

The Bill further provides that such an application must be made before the fourteenth day before the day on which the child concerned reaches the age of five or, if disabled, eighteen years. If an employee has already made such an application, he or she may not make a further application to the same employer before the end of the period of twelve months beginning with the date on which the previous application was made (*Clause 6, New Section 61A of the Employment Relations Act 2000*).

### **Employer's duties in relation to an application**

The Bill provides that an employer "must acknowledge that a qualifying employee has the right to work whenever possible". The employer must deal with the

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<sup>6</sup> Section 61(1) of the Employment Relations Act 2000 provides that the terms and conditions of employment of an employee who is bound by an applicable collective agreement may include any additional terms and conditions that are:

- mutually agreed to by the employee and the employer, whether before, on, or after the date on which the employee became bound by the collective agreement; and
- not inconsistent with the terms and conditions in the collective agreement.

Section 61(2) of the Employment Relations Act 2000 provides that if the applicable collective agreement expires or the employee resigns from the union that is bound by the agreement,

- the employee is employed under an individual employment agreement based on the collective agreement and any additional terms and conditions agreed under Section 61 (1); and
- the employee and employer may, by mutual agreement, vary that individual employment agreement as they think fit.

application “as soon as possible” and refuse the application only when it cannot reasonably be accommodated on one or more of the following grounds:

- “inability to re-organise work among existing staff”;
- “inability to recruit additional staff”;
- “detrimental impact on quality”;
- “detrimental impact on performance”;
- “insufficiency of work during the periods the employee proposes to work”;  
and
- “planned structural changes” (*Clause 6, New Section 61B of the Employment Relations Act 2000*).

### **Complaints to Employment Relations Authority**

The Bill provides that an employee who makes an application may lodge it with the Employment Relations Authority (the Authority) if:

- the employer has failed to deal with the application “as soon as possible” or has refused the application on one or more of the grounds set out above even though it could “reasonably be accommodated”; or
- the decision made by the employer to reject the application was based on incorrect facts (*Clause 6, New Section 61C of the Employment Relations Act 2000*).

### **Jurisdiction**

The Bill provides for the amendment of the Act providing jurisdiction for the Authority and also provides that where the Authority finds a complaint “well-founded”, it must make a declaration to that effect and may make:

- an order for reconsideration of the application; and
- an award of compensation (which must, generally and subject to statutory maxima, be just and equitable in all the circumstances) to be paid by the employer to the employee (*Clause 7, amending Section 161 of the Employment Relations Act 2000*).